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Practice Group(s):

Sports

Sports Media Rights and the Digital Single Market...is your business ready?

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On 6 May 2015 the European Commission (the "**Commission**") published its strategy for a 'Digital Single Market' for Europe. The Commission's communication outlines its grand vision for a Europe in which *'the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence'*.

The Commission's overall strategy has been built on three pillars:

1. Better access for consumers and businesses to digital goods and services across Europe;
2. Creating the right conditions and a level playing field for digital networks and innovative services to flourish; and
3. Maximising the growth potential of the digital economy.

Of particular interest to businesses in the sports media rights industry will be the Commission's proposals to prevent *'unjustified geo-blocking'* and modernise (and harmonise) existing copyright rules, as steps to achieving its goal under the first pillar.

The Commission's view is that, except where justified, geo-blocking should be expressly prohibited so that EU consumers and businesses can take full advantage of the single market in terms of choice and lower prices. The materials published by the Commission have not yet clarified what should be considered a legitimate justification for the use of geo-blocking. As the proposals relate to all e-commerce activity (and not just the supply of online audio-visual content), the Commission may attempt to implement a 'one size fits all' approach, which could interpret legitimate justifications for geo-blocking narrowly, to the detriment of businesses involved in the sale, or purchase and distribution, of online sports content and other media rights.

However, the Commission does acknowledge, that in the case of the creative audio-visual industry generally, territoriality of rights is currently an essential component of market value, and therefore, an essential element of its financing model. A similar argument is being put forward for sports rights. As a result, in these two cases some exceptions or restrictions to compulsory cross border access to digital content could be envisaged.

However, the debate has just started, and the time is coming to move from declarations and comments to regulations and legal texts. Despite the Commission's acknowledgement, it is of some concern to see a growing tension within the different Commission services, where those officials directly responsible for sports policy and for culture and audio-visual promotion attempt to promote this reasoning to those with a broad horizontal interest in ecommerce and the digital single market. It is, therefore, increasingly important for businesses in this sector to make their voices heard over the coming months, as the Commission balances its own internal voices in the shaping of its legislative proposals in this area. As these proposed reforms are high on its agenda,

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those relating to copyright modernisation are expected by the end of this year, with geo-blocking proposals set to be published in early 2016.

If you would like to discuss with us how the Commission's strategy may impact your business, please contact one of the authors.

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