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**TELFONICA'S CONTRIBUTION TO THE EC CALL FOR
EVIDENCE ON COMBATING ONLINE PIRACY OF SPORTS
AND OTHER LIVE EVENTS – ASSESSMENT OF THE MAY
2023 COMMISSION RECOMMENDATION**

MAY 27TH 2025
TELEFONICA, S.A.

1. INTRODUCTION

The Commission Recommendation on combating online piracy of sports and other live events ('the Recommendation') was adopted on 4 May 2023 to address the challenges linked to unauthorised retransmissions of sports and other live events.

As stated in the text of the Recommendation itself, by 17 November 2025 the Commission should assess the Recommendation's effects on unauthorised retransmissions of sports and other live events. In assessing the effects of the Recommendation, the Commission will look at how its various measures are being implemented, as well as their effects on the level of piracy of live events.

Telefónica, **as both audiovisual content platform [Telefónica Audiovisual Digital S.L.U./ Movistar Plus+] and as a telecommunications operator providing Internet access services (ISP)**, welcomes the opportunity to comment on this Call for Evidence.

In particular, Telefónica Audiovisual Digital S.L.U. provides audiovisual services under the commercial brand "Movistar Plus+", through a prepaid subscription model, featuring, among others, original content "Originales Movistar+" (Movies, Series, Documentaries, Shows), and Movistar Plus+ Channels (Movistar Plus+ Channel, Originals by Movistar Plus+, Movistar Plus+ Cinema, Movistar Plus+ Series, Movistar Plus+ Documentaries), as well as live sports content, including football [LALIGA EA SPORTS, LALIGA HYPERMOTION, the Premier League, Copa del Rey, Champions League, UEFA Europa League, and UEFA Conference League], and other sports [Basketball, Tennis, Golf, Rugby].

Through the commercial brand "Movistar Plus+" [Website: <https://www.movistarplus.es/>], the audiovisual content service is offered both as part of the "miMovistar fiber and mobile communications pack" for Telefónica España customers and in OTT mode (for customers of any telecommunications operator).

2. GENERAL REMARKS

Legal Instruments to Combat Audiovisual Piracy

First, we would like to stress that a non-binding "Recommendation" is not the most effective instrument for the deployment and generalisation of protective measures against piracy of live audiovisual content.

Article 288 of the Treaty on the Functioning of the European Union enables other binding legal instruments that would have a direct effect on the effectiveness of protective measures.

The need for effective legal instruments with direct effect is supported by figures from certain studies: between 43% and 46% of users with Internet access services report pirate audiovisual content. This figure is graphic enough to justify the need for a binding legislation instrument, like a Regulation.

Digital Services Act is insufficient to combat online piracy of live sports.

Digital Services Act, considering the inherently cross-border nature of the Internet, includes certain due diligence obligations for different categories of intermediary service providers, such as having contact points and identifying legal representatives. Nevertheless, the DSA is in our view insufficient to combat online piracy of live sports, for the following reasons.

Voluntary Nature of Article 7

Article 7 of the DSA introduces the Good Samaritan principle, which allows service providers to voluntarily take measures to detect and remove illegal content without losing their liability exemptions. While this principle encourages proactive behaviour, it does not impose mandatory actions, leaving significant gaps in the fight against live sports piracy.

Limited Scope of Article 16

Article 16 of the DSA imposes additional obligations on online platforms but excludes hosting services that do not allow public dissemination of content. This exclusion means that many intermediaries, such as the ones below mentioned, are not subject to the stricter requirements, reducing the overall effectiveness of the DSA in combating piracy:

- a) File hosting and sharing, dedicated server hosting, including server hardware and network infrastructure and administration for hosting websites, applications, and data.
- b) DNS domain name resources, VPN virtual networks, IP address managers, and providers of direct server navigation technologies, or similar technologies, that facilitate access to resources containing illegal content, evading or avoiding detection by an Internet Service Provider, content delivery networks, proxies, including reverse proxies, and content adaptation.

Lack of Specific Mandates for Live Sports Piracy

The DSA does not provide specific mandates for addressing the piracy of live sports broadcasts. Live sports events are particularly vulnerable to piracy due to their real-time nature, and the DSA's general provisions are not sufficient to address this unique challenge.

Weak Enforcement Mechanisms

While the DSA includes enforcement mechanisms, such as fines and sanctions, these measures may not be robust enough to deter piracy effectively. The enforcement process can be slow and may not provide timely relief for live sports events that are being pirated.

Recommendations for Complementary Measures

To effectively combat online piracy of live sports, the following complementary measures are recommended:

- Implement mandatory takedown requirements for live sports piracy.
- Extend the scope of Article 16 to include hosting services that facilitate piracy.
- Enhance enforcement mechanisms to provide timely and effective relief.
- Encourage collaboration between service providers, rights holders, and regulatory authorities.

The Technology Underpinning the Internet

Audiovisual piracy, particularly of sports content on the Internet, is subject to continuous changes in the technical configurations deployed by certain technology companies. This situation highlights the need for legal instruments that establish dynamic and adaptable protective measures, using tools that match the same level of technical development.

For example, the operation of so-called Virtual Private Networks (VPNs), which conceal real location; the use of TLS protocol modifications such as ECH (Encrypted Client Hello), which hides information to ISPs in HTTPS connections; and the use of QUIC, which runs over UDP and facilitates concealment of the connection.

The technical foundations of these new technologies prevent ISPs from adopting protective measures against illicit content, such as online piracy. Therefore, any legal instrument must consider this technical constraint as a key factor in the effectiveness of protective measures.

In addition, P2P networks based on Acastream, which share and access live sports audiovisual content, account for 30–40% of the total volume of platforms with such pirated content (live sports). Although BitTorrent-based P2P networks are not new to the piracy phenomenon, their increased use for accessing live sports content is noteworthy. These P2P networks are used within distribution platforms (social networks, websites, etc.) as sources of pirated content and, in some cases, as essential components of apps (APKs).

Services offered through add-ons for media players, such as KODI-type extensions, facilitate the piracy of live audiovisual content, and there is an increase in developments aimed at enabling such illicit access.

Protective Measures Deployed by Telefónica Audiovisual Digital

To eradicate piracy, which directly threatens the stability of the audiovisual ecosystem, Movistar Plus+ deploys anti-piracy actions, detailed below:

- Telefónica implements technical measures across various distribution modes (Satellite, IPTV-Fiber-DECO, OTT [Android-Google, iOS-Apple, Microsoft]), such as access control and DRM, among others, to protect audiovisual content.
- “Dynamic Court rulings,” which essentially are judicial authorizations allowing pirated Internet resources to be sent to telecommunications operators in Spain for blocking:
 - Ruling No. 310/2024, dated December 18, from Commercial Court No. 6 of Barcelona: Joint ruling by LaLiga and Movistar+ with dynamic blocking measures for illegal live LaLiga football matches content, sending IP addresses for blocking to Spanish Internet access providers on match days, before and after each match.
 - Ordinary Procedure 764/2022, Commercial Court No. 6 of Barcelona: Movistar+ ruling with dynamic blocking measures, sending a weekly list (Thursdays) of domains (DNS, FQDN), URLs, and IP addresses for blocking illegal Movistar+ content.
 - Ordinary Procedure 719/2022, Commercial Court No. 9 of Barcelona: Joint ruling by LaLiga/Movistar+ with dynamic blocking measures, sending a weekly list (Fridays) of domains, URLs, and IP addresses for blocking illegal LaLiga content.
- Criminal complaints: In cases of pirate services operating in Spain where elements triggering a police and judicial investigation are detected and identified, given the presence of both unlawful

activity (piracy) and individuals, natural and legal persons, residing in Spanish territory and linked to such activity, a formal complaint is filed with Law Enforcement and Judicial Authorities so that they proceed in accordance with the applicable legislation.

3. RESPONSE TO THE QUESTIONNAIRE

1. To what extent have Member States and stakeholders implemented the measures set out in the Recommendation?

This question particularly concerns the following recommendations:

- i) ensuring that notifications related to unauthorized live event broadcasts are handled diligently, including through cooperation between intermediary service providers and rights holders;
- ii) ensuring that rights holders can request injunctions, even before an event begins, to stop repeated infringements, subject to appropriate safeguards;
- iii) raising awareness of legal offers and increasing their availability; and
- iv) promoting voluntary cooperation between national authorities for information exchange.

The weakness of the Recommendation does not lie in its accurate analysis of the context at the time of its publication regarding the growing problem of online piracy of live events, especially sports content, but rather in the fact that certain intermediaries who shape the technological functioning of the Internet viewed it as a non-binding legal instrument.

Therefore, cooperation between rights holders and certain intermediary service providers under the Recommendation's guidelines is not working, as this type of intermediary does not consider it mandatory.

The level of non-compliance and lack of cooperation is unprecedented: the intermediary Cloudflare Inc., operating in Spain, violates Court orders (as cited earlier), consciously and repeatedly refusing to provide effective protective measures regarding the pirate services it manages.

Telefónica actively maintains ongoing contact with all types of intermediaries to facilitate all avenues of cooperation aimed solely at achieving effective protection of audiovisual content. However, with certain intermediaries, it only encounters resistance to complying with both Court rulings and common-sense approaches to combating online piracy, particularly of sport and other live events.

In this context, simply enabling "abuse" email addresses or similar measures is not effective. What would work is the establishment of robust, long-term trusted flaggers programs, enabling effective technical takedown measures based on prior verification of the notice and treating "link portals/websites" as piracy facilitators, thus subject to technical disabling.

An example of the need for better cooperation from certain intermediaries is the operation of the pirate platform "MAGIS." Without the collaboration of specific Internet intermediaries, this platform - despite existing Court orders to shut it down - would not currently be functioning.

2. To what extent has the Recommendation contributed to reducing the piracy of online events?

We do not have data linking the Recommendation to any hypothetical reduction in the percentage of online piracy activity.

3. To what extent have other EU or national policies and external factors influenced the incidence of unauthorized live event broadcasts?

The main external factor that directly influences the piracy of live sports content is the conscious and repeated non-compliance by certain intermediaries who facilitate the operation of pirate platforms, thereby supporting their financial stability.

4. Has cross-border cooperation between national authorities improved as a result of the Recommendation?

We do not have data linking the publication of the Recommendation to any hypothetical improvement in cross-border cooperation.

5. What have been the economic impacts, including possible costs, of implementing the measures set out in the Recommendation for Member States and stakeholders, particularly service providers and rights holders?

Telefónica, both as a provider of audiovisual content and as an Internet access operator, invests in:

a) tools for detecting and enforcing judicial instruments (court rulings);

b) tools that allow us to manage a high volume of notices to intermediaries automatically and effectively; and

c) content protection services to reach 24/7 all intermediaries who, in any way, facilitate access to pirated content.

Telefónica believes that every Internet intermediary must contribute in an effective and proportionate manner to deploying technical measures against piracy.

6. Has the Recommendation proven to be consistent with the EU legislation on which it is based (Directive 2001/29/EC, Digital Services Act, and Directive 2004/48/EC)?

The weakness of the Recommendation does not lie in its accurate analysis of the context at the time of its publication regarding the growing phenomenon of live audiovisual content piracy, especially sports events, or in its consistency with the European legal framework. Rather, the issue is that not being a binding legal instrument, a Recommendation is not an effective legal instrument to compel non-cooperative actors, such as certain intermediaries who shape the technological functioning of the Internet, to assist through adequate and timely technical measures.

7. What have been, in particular, the potential impact of the Digital Services Act in unauthorized retransmissions of live sports and other live events?

We do not have data linking the publication of the Digital Services Act to any specific measures against the piracy of audiovisual content. However, we believe it should have such an impact, as outlined in previous sections.

8. Has the Recommendation addressed the needs of the relevant stakeholders?

Unfortunately, we have data showing an increase in pirated content since the publication of the Recommendation in May 2023. Therefore, it cannot be considered as having contributed to the objective of establishing effective anti-piracy measures for audiovisual content.

9. In view of technological, market, and societal developments, are the measures set out in the Recommendation still effective in achieving their original objectives?

No. As we have outlined in previous comments, we believe that only effective legislative measures that are mandatory and include dynamic and adaptable technical requirements for all types of intermediaries will be effective and will bring a useful approach to combat online piracy of sports and other live events.

10. Has the Recommendation contributed to ensuring a more consistent approach across all Member States?

We do not have data linking the publication of the Recommendation to a more consistent approach across all Member States.

A binding legal instrument like a Regulation tackling the specificities of online piracy of live events, like sports, would more effectively lead to a consistent approach across the EU.

11. Are further EU-level measures needed to prevent unauthorized live event broadcasts or the illegal distribution of other types of copyright-protected content, also considering the impact of the Digital Services Act?

Yes. A legal instrument that is considered binding and mandates technical measures against online piracy of sports and other live events is needed. Such legal instrument (eg.: a Regulation) would complement DSA by tackling the specificities of live content with provisions regarding immediate removal of illegal live broadcasts and in any case within 30 minutes of the receipt of the notification.

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