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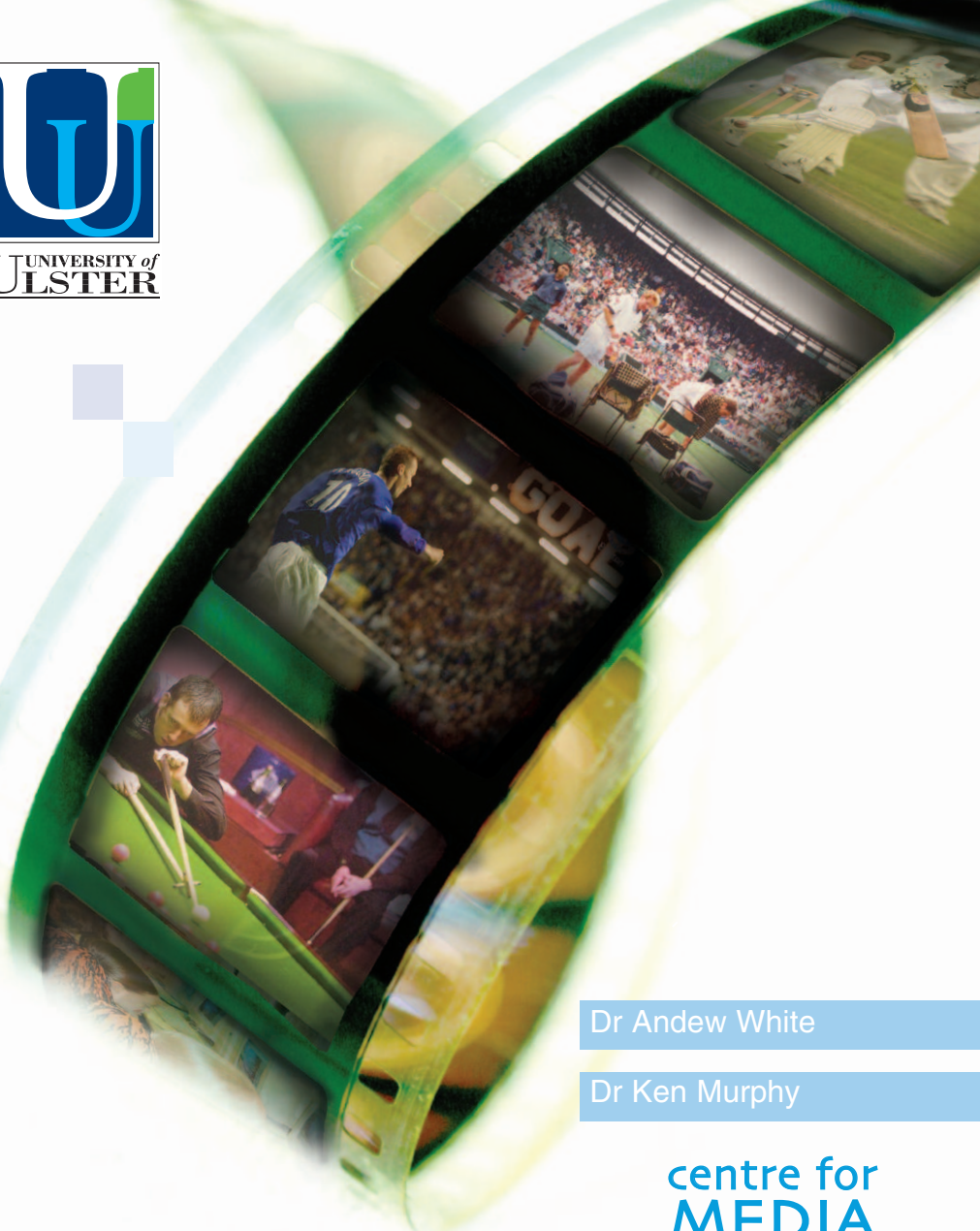


# MEDIA POLICY BRIEFING PAPERS

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**CENTRE FOR MEDIA RESEARCH:  
MEDIA POLICY BRIEFING PAPERS**

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Events in the UK and the Republic of Ireland**

**PREFACE**

This series of papers has been produced by the Policy research group, of the Centre for Media Research at the University of Ulster, Coleraine, Northern Ireland.

The Centre provides a venue for Media Studies research in which questions of media history, media policy, media technologies, cross-cultural flows and new media developments are being explored in diverse ways within an Irish, British and international context.

As part of its remit, the Centre aims to provide an informed voice on contemporary matters of public concern, including the maintenance of national and regional cultures in the face of media globalisation, and to contribute to the public policy agenda in Northern Ireland, the UK and beyond. The Centre seeks to enhance public discussion of the media through authoritative, evidence-based research on media regulation, strategies of support for local media production, and the study of different audiences, including questions of media literacy and citizenship.

As part of its brief, the Policy group reviews and summarises topical issues of media policy and these summaries are published in these briefing papers. The first of these papers concerned the future of the BBC, and included the response made by the CMR to the British Government's 2005 Green Paper on this question. This, the third paper, presents a review of broadcasting rights for sporting events in the UK and the Republic of Ireland; future papers will include reviews of the Freedom of Information Act 2000 and a review of the issues arising from a CMR seminar in April 2005 on children, media and conflict.

The group welcomes feedback on any of these papers, and if there are further media policy issues that you feel should be discussed, reviewed, researched, or disseminated, please let us know. The papers are published both as online documents, downloadable from the university website, and in hard copy. If you would like a hard copy, please contact Barbara Butcher at [ba.butcher@ulster.ac.uk](mailto:ba.butcher@ulster.ac.uk)

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## **1. INTRODUCTION**

During the summer of 2005 controversy over broadcasting rights for sport in the UK reached its zenith when English cricket fans' celebration of its team's regaining of the 'Ashes' from Australia was tempered by the knowledge that home test matches would not be broadcast live by a free-to-air channel during the next four summers (2006-2009). Campaigners seeking to overturn the England and Wales Cricket Board's (ECB) decision cited examples where governments of other nation-states had intervened to scupper deals between sporting bodies and subscription-based channels for the live broadcasting of major events. One such example was the decision by the Irish Government to over-turn a deal that had been struck in 2002 by the FAI (Football Association Ireland) with BSkyB – ironically the same broadcaster that now has exclusive rights to live home test cricket matches in England – for the live coverage of the Republic of Ireland's soccer team's competitive home matches. An inquiry was set up by the House of Commons Culture, Media and Sport Committee inquiry on broadcasting rights for cricket, and this paper grew out of the CMR's submission to it, reproduced here in the appendix. Given that EU nation-states' telecommunications policies are largely directed by the Union's 'Television Without Frontiers' directive, a general investigation of the way in which two neighbouring EU states approach the whole issue of broadcasting rights for sporting events will hopefully be useful not only to Media Studies scholars and sporting enthusiasts but also those interested in comparative politics, EU law and the relationship between the nation-state and large media corporations. Of particular interest is the question of whether viewers of sporting events are citizens or consumers. In other words, should access to certain sporting events be seen as part of a package of cultural rights embodied in citizenship or should the public be treated merely as consumers who make viewing choices within a broadcasting free market?

## **2. BROADCASTING RIGHTS FOR SPORTING EVENTS IN THE UK**

Indigenous sporting events and those that are deemed of significant interest to the general public have traditionally been provided by the main terrestrial broadcasters in the UK, either ‘live’ or in deferred, ‘highlights’ packages. For at least the latter part of the twentieth century this has meant that events such as the FA Cup Final, Wimbledon tennis tournament and home test cricket matches have been televised live and on a free-to-view platform. These events were ‘listed’ by the Government to ensure that they would be transmitted in this way. At the moment, there are two lists, A and B<sup>1</sup>. Group A events must be broadcast live by free-to-air channels, effectively BBC1, BBC2, ITV and Channel 4/S4C. Group B events can be shown live on pay-TV channels provided that highlights are shown on free-to-air channels. This paper will use the example of the moving of the broadcasting rights for home test cricket matches from group A to group B as a means of discussing more generally the issues of broadcasting rights for UK sports.

### **Legislative background**

As part of a global telecommunications industry, broadcasting is deemed by the European Union to be an activity that needs to be regulated within the ‘Single Market’. Therefore, the ‘Television Without Frontiers’ directive - adopted in 1989 and amended in 1997 – essentially means that the European Union takes the lead in

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<sup>1</sup> Group A comprises the Olympic Games, FIFA World Cup Finals Tournament, FA Cup Final, Scottish Cup Final (in Scotland), Grand National, Derby, Wimbledon Tennis Finals, European Football Championship Finals Tournament, Rugby League Challenge Cup Final and the Rugby World Cup Final. Group B comprises cricket test matches played in England, non-finals play in the Wimbledon Tournament, all other matches in the Rugby World Cup Finals Tournament, Six Nations Rugby Tournament matches involving Home Countries, Commonwealth Games, World Athletic Championship, Cricket World Cup (the Final, semi-finals and matches involving Home Nations’ Teams, Ryder Cup and the Open Golf Championship).

coordinating its member states' broadcasting policies in the following areas:

- law applicable to television broadcasts;
- promoting the production and distribution of European works;
- access of the public to major (sports) events;
- television advertising and sponsorship;
- protection of minors;
- right of reply.

Article 3a(1) deals specifically with broadcasting rights for sport:

Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

Article 3a(2) compels individual Member States to notify the Commission of the measures that they will put in place to ensure compliance with Article 3a(2).

The UK Government's response, 'The Television Broadcasting Regulations 2000', amended its own 1996 Broadcasting Act by revising its list of events categorised under groups A and B. It was at this stage that cricket test matches in England were moved to

group B. Section 17 of the ‘ITC Code on Sports and other Listed Events, revised January 2000’ outlines the circumstances under which group B events can be broadcast live:

17. For those events listed in Group B in Appendix 1, the ITC will give its consent to exclusive live coverage of an event by a broadcaster providing a service in one category (the first service) if *adequate provision* [our emphasis] has been made for secondary coverage by a broadcaster providing a service in the other category (the second service). The minimum which the ITC will consider to be adequate is where the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event (or the play in the event taking place on any one day), subject to a minimum of 30 minutes for an event (or the play in the event on any day) lasting an hour or more, whichever is the greater. ...

In Appendix 2 of the Code, the ITC lists those services that meet the ‘qualifying conditions’ as set out in the ‘Television Broadcasting Regulations 2000’. Given that one of the conditions is that a channel provides at least 95% coverage of the UK population, only the following four broadcasters meet the criteria: Channel 3, Channel 4, BBC1 and BBC2. It could be argued that section seventeen’s call for secondary *adequate provision* for sporting events broadcast live by satellite channels cannot be met by channels other than these four.

### **The House of Commons Culture, Media and Sport Committee Report on Broadcasting Rights for Cricket and the Government’s response**

In 2005 the England and Wales Cricket Board (ECB) awarded the rights to broadcast live England’s home test matches from 2006 to 2009 to BSkyB. In addition, a deal for the highlights of England’s home test matches was struck with Channel 5. The controversy over this decision was exacerbated by England’s success over the previous eighteen months, culminating in its regaining of the

‘Ashes’ from Australia in the summer of 2005. Indeed, such was the furore that the House of Commons Culture, Media and Sport Committee decided to initiate a short inquiry on 19 October 2005, inviting written submissions and holding an oral evidence session on 29 November 2005.

The Committee was particularly concerned with what it believed was the breaching of a so-called ‘gentlemen’s agreement’ between the then Secretary of State Chris Smith and Lord MacLaurin, the then ECB Chairperson. After the DCMS had decided in 1998 to accept the recommendation of an advisory group chaired by Lord Gordon of Strathblane that home test matches in England should be listed as a group B event, Smith and MacLaurin met and made a verbal agreement that this did not mean that home test matches would *completely* be removed from free-to-air TV; an understanding that both Smith and MacLaurin corroborated in their testimony to the Committee. Subsequently, MacLaurin did a deal with Channel 4 and BSkyB in which the vast majority of home test matches – and all the most important ones like ‘Ashes’ test matches – would be broadcast live free-to-air. Therefore, it was the view of the Committee that both the ECB and the Secretary of State, Tessa Jowell, renege on this agreement when the 2005 deal was struck. The Committee concludes that these so-called ‘gentleman’s agreements’ should not be used by policy-makers.

Despite this, the Committee does not believe that home test matches should be re-designated as group A events, primarily because it concedes that the 2005 deal will generate so much money for grassroots cricket in the UK; indeed, the difference between BSkyB’s bid and those from free-to-air channels was around £80 million over the 2006-2009 period. It does, though, believe that the ECB should have insisted on a non-exclusive deal which would have allowed some test matches to be shown live free-to-air. It is also critical of the decision to award the highlights package to Channel 5 as, by the ITC’s own admission, this is not a broadcaster that is available to 95% of the UK population. The Committee is not sanguine about the likelihood of the 2005 deal being revoked, merely calling for the Minister of Sport to attempt to convene a meeting with free-to-air broadcasters and BSkyB. It does, though, propose that the ECB treats the next deal for broadcasting rights as



‘non-exclusive’, thus ensuring that some home test match cricket will be able to be broadcast live free-to-air.

The DCMS responded to the Committee’s report in its Command Paper 6772, ‘Government Response to the Culture, Media and Sport Select Committee Report on Broadcasting Rights for Cricket. Session 2005-2006’. The central thrust of the Government’s response is that within the existing listing framework, the responsibility for decisions on broadcasting rights should rest with the ECB. For this reason, it is not prepared to compel the ECB to insist that the next rights deal is non-exclusive. It also points out that the onus is on free-to-air broadcasters as well: if they fail to put together bids that are financially attractive to the ECB, it should not be surprising that they are rejected. It believes that Channel 5’s highlights package should be seen in this light. And, while the channel clearly does not command 95% coverage of the UK population, the Government argues that its 92% coverage is not far from the minimum acceptable figure. The Government does, however, assent to the Committee’s call for the Minister of Sport to convene a meeting if the BBC, or any other free-to-air broadcaster, indicates their willingness to negotiate with BSkyB to try to secure some live home test match cricket under the existing deal.

### **3. BROADCASTING RIGHTS FOR SPORTING EVENTS IN THE REPUBLIC OF IRELAND**

#### **Cultural rights and Article 3a**

Access to televised sporting events on terrestrial television has been much reduced by the migration of sports to the pay-per-view and subscription television channels. In general, the proliferation of new channels via new technologies has led to the pursuit of popular content to drive the subscription revenues of cable and satellite broadcasters. The commercial exploitation of digitalization through the further proliferation of channels has recently accentuated this trend. The likelihood of nationally significant sporting experiences being removed from general access informed the development of legislation by the European Union that enables member states to draw up a list of events of national importance and designate that those events continue to be made available to a substantial

proportion of the public on free-to-air television. Decisions about whether or not a list should be generated and what events should be designated, rests with each member state. The rationale underlying the legislation contends that certain public events can be seen as cultural assets of a state and its citizens. According to Graham Murdock, in addition to civil, political and social rights, cultural citizenship entails that citizens have a right to 'full membership of a social and cultural formation' (Murdock, 1992). This includes the ability to access popular cultural forms, such as sports programming. The legislation, its underlying rationale, and the subsidiarity which it implies, has led to different European Union member states taking different routes to its implementation. The following section will outline the legislative framework that the Republic of Ireland has adopted in relation to the European directive. Following that, a brief overview will be given of the events which shaped the eventual activation of this legislation. These events help to clarify some of the uncertainties that surrounded the directive and its legislative expression at the time. Finally, the current status of the legislation will be evaluated as will the issue of whether or not the status of public broadcasters and their relationship to events of major importance has been given sufficient attention.

### **National culture or international public culture**

Article 3A is situated in the wider legislative framework of the Television Without Frontiers Directive. The Directive acknowledges a broadcasting environment that is increasingly market driven and internationally entwined. In this respect it acknowledges the international nature of emerging European media markets. Such markets are predicated on pre-existing patterns of cultural exchange (not always equal) related to factors of cultural, linguistic and geographical proximity (Hesmondhalgh, 2002). Interrelated patterns of political, economic and cultural development, as well as geographical proximity, have led to a substantial intermixing of cultural tastes and identifications that makes 'nationality' an imperfect tool for acknowledging cultural heritage. If historically, as is the case of Ireland and the UK, there has been an overlap between media systems, then this effect can be more pronounced. The availability of the BBC along the east coast of Ireland and along the border with Northern Ireland acted as a spur for the development of a national alternative in 2RN/RTE. This

complemented but never fully replaced the UK options. When cable television technology was introduced in Ireland it was the availability of the UK public service channels that drove its uptake. In Northern Ireland, the availability of signal overspill from the South, facilitated a sizeable section of the population which considered itself better served by RTE's coverage of Gaelic Games and Irish affairs. The complexities of cultural and social formations are thus not easily separated out by the cookie cutter of the 'national'. Thus the commercial exchange of sports rights in one jurisdiction will invariably have knock on effects on a neighbouring country where commonalities in cultural tastes and practices pertain.

The complexities can be better illustrated with reference to the decision by the English Rugby Football Union (ERFU) to sell the rights to England's home internationals in the Six Nations Rugby Championship 2002. Rugby, ostensibly an English code, has had widespread popular support, both nationally and locally in the Republic of Ireland. This has largely been the result of the widening of access facilitated by free-to-air terrestrial coverage of the game by the public broadcaster RTE. However, the Irish rugby team is an all-Ireland team, making it geographically but not politically an 'Irish' team. The integration of 'Ulster Rugby' and 'Irish Rugby' involves consistent negotiation but never the less is considered emblematic of the potential of positive cross-community and cross-border relations. The sale by the ERFU of exclusive rights to BSkyB created the circumstances wherein only subscribers to that service had access to a crucial England/Ireland clash in Twickenham. The championship had not been listed in either the UK or Ireland. In the event, the interests of the Northern Irish supporters of the 'Irish' team were not represented by either the UK or Irish Government. The question thus becomes one of whether more sophisticated measures are necessary to ensure that citizens and their complex identities require more fundamental interventions to ensure access to what have historically evolved as public cultures. This would suggest the need for an increasingly international co-ordination of transactions relating to rights, both cultural and proprietary.

### **Adopting Article 3a**

Article 3a of the television without frontiers directive was transposed into Irish law by the Broadcasting (Major Events

Television Coverage) Act 1999. The Act enables the Minister for Communication and Natural Resources to designate events that are considered: 1. to have a special general relevance for the people of Ireland; and 2. have a generally recognized distinct cultural importance for the people of Ireland. The Act also proposes two criteria on how such judgments may be made, i.e. whether the event involves 'participation by a national or non-national team or by Irish persons' and 'past practice or experience with regard to television coverage of the event or similar events'. It also allows for a number of different options in relation to how an event should be designated for broadcast on a free television service, 'on a live, deferred or both live and deferred basis' and 'in whole, in part or both in whole and in part'. Under the terms of the Act, the Minister is obliged to follow a number of procedures before designating any given event. This procedure includes consultation with the Minister for Arts, Sport and Tourism and the event organizers and broadcasters. Following this consultation a list must be published wherein the public are invited to comment on its contents before it makes its way through the Irish parliament to become national legislation. It was during the time lag produced by this procedure that the Football Association of Ireland (FAI) opted to sell the rights to the Irish national soccer team's home European Championship and World Cup qualifying matches.

### **The directive in action**

The issue of broadcast rights and access to sports programming became an explosive issue in Irish public life in summer 2002. The drama surrounding the sending home of Roy Keane from the World Cup had already elevated the subject of the management of the Irish national soccer team to a topic of widespread discussion. When, soon after, the Football Association of Ireland (FAI) announced that it had sold the rights to Ireland's home qualifying matches for the upcoming European Championship to British based satellite operator BSkyB, the issue of free-to-air access to national events also came to the fore. The FAI stood to gain €7.5 million from the deal and argued that it was an important financial input into the development of the sport in Ireland. Whereas the Government wrung its hands and expressed its displeasure at the deal it suggested that there was nothing it could do as the FAI/BSkyB deal, as a private contract, was 'done and dusted'. However as the story was publicly debated it emerged that this response did not

adequately reflect the options open to the government. These options arose from an expanded interpretation of Article 3a of the 'Television without Frontiers' directive as outlined above. The government, it emerged, was not powerless to intervene. Representatives of the European Commission's Education and Culture directorate clarified that the legislation allowed for the retrospective listing of events wherein all previous contracts for sports rights could be overridden by a retrospective listing of events. It also clarified that governments were free to list a whole tournament if they so wished to do so. The commission even agreed to fast track the process so that the greatest amount of matches could be returned to free-to-air broadcasting. Following a surge of public and media pressure, the government consulted the Attorney General on the legalities of the matter and then established a public consultation on the development of a list of designated events. In 2003 a statutory instrument activated the list and BSkyB were forced to negotiate a deal with RTE to allow for free-to-air transmission of the remaining European matches.

By 2003, the designation of major events was enacted. The key events that were placed on the protected list included:

- The Summer Olympics
- The All-Ireland Senior Inter-County Football and Hurling Finals
- Ireland's home and away qualifying games in the European Football Championship and the FIFA World Cup Tournaments
- Ireland's games in the European Football Championship Finals Tournament and the FIFA World Cup Finals Tournament
- The opening games, the semi-finals and final of the European Football Championship Finals and the FIFA World Cup Finals Tournament
- Ireland's games in the Rugby World Cup Finals Tournament
- The Irish Grand National and the Irish Derby
- The Nations Cup at the Dublin Horse Show

In addition to this, the six nations rugby football championship was also designated as an event of major importance but one which must only be provided on a deferred basis. The latter designation points to a two-tiered approach wherein a secondary importance is accorded to given events.

### **Assessing the process**

A crucial element in the events recounted above was the failure of the Government to pre-empt the sale of important rights by activating the list enabled by the 1999 Act. Whereas the procedural obligations of the Act recognize the importance of ensuring consensus and co-operation amongst the various stakeholders, a government is mandated to act as representatives of the public interest, not as impartial broker. It is here that fora for the elaboration of public purposes in sports and cultural issues were initially absent from the overall process. Government and state officials thus found themselves deferring to the proprietary and financial agenda of economic stakeholders. The crux of the matter thus resided in the difficult and imbalanced interpretation of where proprietary rights end, and where cultural rights begin.

As justification for the sale of the exclusive rights for the qualifiers, the FAI argued that they did not receive high enough ratings to justify designation, whereas the extra revenue from Sky would help build the national soccer infrastructure. The determinate value placed on exclusive access to these games won out against an indeterminate value of allowing free-to-air access. The latter value points to the importance of an accessible national culture wherein benefits accrue to both the society and its cultural heritage. For society, equal access is guaranteed and commonalities result from shared experiences, fostering inclusion, participation and solidarity in social life. It also provides a forum for the negotiation of what the 'national' means during times of ubiquitous change. For the sport, wider access holds out the possibility of a greater popularity for the activity in relation to both spectators and participants. This in turn ensures the future vibrancy of the sport/cultural activity itself.

#### **4. SIMILARITIES AND DIFFERENCES IN THE RESPECTIVE APPROACHES OF THE UK AND IRISH GOVERNMENTS**

As member states of the European Union, both the UK and the Republic of Ireland must adhere to the ‘Television Without Frontiers’ directive. But, as this paper demonstrates, there is considerable scope for interpreting the provisions of this directive in widely varied ways. The UK Government’s response to Article 3a(1) is largely to leave it to the governing bodies of sports to decide how the sporting public should be catered for. Not surprisingly, this makes it more likely that the public interest will be defined in terms of the amount of money that broadcasting rights can generate for the sport; a mindset that favours subscription-based telecommunications companies over free-to-air channels. In many ways, the Irish Government’s approach is similar, allowing as it does national sporting bodies to strike their own deals with broadcasters. However, as the example of the over-turning of the FAI’s contract with BSkyB demonstrated, it is more receptive to the views of the sporting public and, significantly, is willing to break, what the UK Government argues are, private commercial contracts. In this sense, the Irish Government takes a much more literal interpretation of the Article 3a(1), believing that the expression ‘the member state’ compels it, not national sporting bodies, to take responsibility for protecting the sporting culture of the nation. This essential difference in approach between the two states means that national sporting culture in the UK will be more subject to the vicissitudes of financial circumstances than in the Republic of Ireland, whose political elite is more wary of endangering the interests of the sporting public than it is of large telecommunication companies.

Given its uneasy position at the nexus of both states, Northern Ireland is uniquely affected by the respective approaches to broadcasting of the British and Irish states. Television signals have never been a respecter of the physical border between the North and South of Ireland – a characteristic that has been accentuated in recent years’ with the proliferation of satellite channels and the rise of Internet-TV - and, consequently, many citizens of both parts of the island can access their neighbouring state’s television programmes. Indeed, given that around 40% of Northern Ireland’s population classify themselves as Irish nationalists, there is

substantial interest in accessing Southern-based programmes that reflect shared cultural interests, such as the Irish language, Gaelic sports and Irish history. Similarly, both nationalists and unionists throughout the island access British-based TV channels and follow British sport assiduously; for instance, a massive number of Irish people support Scottish and English soccer teams. This means that each state's policies on broadcasting rights for sporting events have a far greater impact on the other than do other neighbouring states in the EU. The symbiotic relationship between the respective sporting cultures of both states does not mean that policy-making should be coordinated, but it does provide a useful field of inquiry for Media Studies scholars.



## **APPENDIX**

### **THE CMR's SUBMISSION TO THE HOUSE OF COMMONS CULTURE, MEDIA AND SPORT COMMITTEE ON BROADCASTING RIGHTS FOR CRICKET**

#### **Summary**

This response will focus solely on the issue of the broadcasting rights for England's home test matches and, in particular, on "the commercial procedures governing the acquisition of broadcasting rights and constraints imposed by the statutory framework within which they operate". The technocratic language employed by the Committee fails to take into consideration the essentially political and cultural nature of this debate; it is on these issues that this response will be focused. The premise that this is merely about the maximisation of revenue for the England and Wales Cricket Board (ECB) should be challenged. That the ECB and the UK Government are both in agreement does not make their judgment correct. The example of the Irish Government's over-turning of a similar commercial contract to broadcast Ireland's home international soccer matches illustrates the options available to democratic governments willing to assert their political authority.

#### **Cricket as culture**

To focus almost solely on the economic merits or demerits of the broadcasting rights for test match cricket is flawed. Other cricketing nations are unashamed in their belief that the sport plays a major part in their respective national cultures. The Trinidadian writer CLR James illustrated the centrality of cricket to the development of anti-colonialism and national identity in the various West Indian nations in the 1950s. In Australia, the batting heroics of Don Bradman during the 1930s Depression elevated him to the role of national icon, a status that he retains to this day. Similarly, in England cricket is clearly more than merely another sport. In the age of reality TV, 24 hour news and the instantaneity of the Internet, how could a sport which takes four or five days to meander to a conclusion have attracted 8.4 million viewers to the denouement of the England versus Australia test match at Trent Bridge in August 2005 (this despite it clashing with BSkyB's live broadcast of the Newcastle United versus Manchester United FA Premiership match at St James's Park)? Because, not only is cricket

deeply embedded in English culture, it is also an enthralling antidote to the instantaneity of much of what passes for contemporary cultural life.

It also has an inclusivity that defies all attempts to pigeonhole it merely as a game for white, middle-class males. What other successful male national sporting team would have shared its victory parade with its female equivalent, as Michael Vaughan's side did with the similarly Ashes-winning England women's cricket team? At a time when British identity is threatened by the devolution of political power to Scotland and Wales, the England (ironically, essentially a 'British' team) cricket team represents a form of positive nationalism to which all can subscribe. Indeed, which other national sport has been captained by a Muslim? Nasser Hussein's central role in the revival of English cricket is indicative of the sport's essential progressivism. In a political environment where immigrants are required to take citizenship tests based on a series of questions about British culture, why should we allow the undermining of a part of that culture to which significant numbers of ethnic minorities have embraced so enthusiastically? In short, such is the importance of cricket to an inclusive national culture that any threat to its continued health through the lack of exposure must rigorously be resisted.

**Should commercial agreements always be honoured even if to do so would cause potential harm to a nation's culture?**

While the intervention of the Australian government to secure free-to-air coverage for this year's Ashes series for SBS is relatively common knowledge, there is another example of positive government intervention closer to home. In July 2002 a sporting governing body sought to exploit the recent success of its national team at the highest level of international competition by selling of the rights for all its home internationals for the next four years' to BSkyB. The rationale for this was that it would generate more money for the development of the sport at its grassroots. Sound familiar? But the Irish Government eventually overturned the contract between the Football Association Ireland (FAI) and the BSkyB over the live broadcasting Ireland's home internationals by directing that these matches were so important to Irish culture that they should be listed as free-to-view events.

At the time, concerns were expressed about the legalities of the state intervening to break what was essentially a private contract. However, the Irish Government argued that its actions were consistent with European law, which allows national governments to list events that they believe are of such cultural importance to their citizens that they should be broadcast on a free-to-view basis. Article 3A(1) of the 1997 EC directive 'Television Without Frontiers' (TWF), of which the UK is a signatory, is clear on this matter:

Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine

whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

England's home test matches could be shown "where necessary or appropriate for objective reasons in the public interest, [via] whole or partial deferred coverage". However, a commercial interest is clearly not an "objective reason[s] in the public interest", and, even if it was, Channel 5's deferred coverage amounting to 45 minutes of a six or seven hour per day is clearly stretching the notion of "*partial* [my emphasis] deferred coverage" to its absolute limit. The question is one of political will. If the UK Government believes that England's home test matches are of such importance to British culture that they should be broadcast live and uninterrupted, and that there are no objective reasons in the public interest for not doing so, then it must act to end the contract between the ECB and BSkyB, even if it means enacting legislation so that its broadcasting policy better reflects the Government's obligations under the TWF directive. In this sense, as the Irish example shows, the view of the ECB is irrelevant. If the Irish Government can take steps under the TWF to allow live free-to-air broadcasting of a sport that many in Ireland regard as 'foreign', then why cannot the UK Government act to defend the rights of supporters of a sport that is so central to English and British culture?

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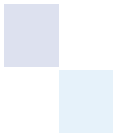
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