

# Cooperation network on satellite free-to-air broadcasting of pornographic/erotic content

Maja Cappello

AGCOM, Italian Communications Authority

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# Overview

## 1. Facts

- Frequent FTA transmission of pornographic content
- Difficulties in finding the responsible broadcaster

## 2. Cooperation network

- Looking for best practices
- Kick-off plan

## 3. Practical aspects

- Discussion among MS
- Discussion among RAs

# 1. The facts

## FTA pornographic content on satellite: the case of Italy

- ▶ In September 2007 the European Commission started a pre-226 procedure against Italy following a complaint.
- ▶ Focus of the procedure is the violation of Art. 22 of the TWF Directive due to FTA satellite broadcasting of pornographic content, usually promoting phone-sex, apparently falling under Italian jurisdiction.
- ▶ Only one of the 14 broadcasters signalled by the complainants had been authorised by Italian authorities.
- ▶ Most of them were established in third countries.
- ▶ Investigations were extended to other satellite broadcasters authorised by Italy.

## Finding the responsible broadcaster

- ▶ Italian experience shows that FTA transmission of pornographic content happens very often on an illegal basis, apparently without any authorisation / registration (pirates).
- ▶ Broadcasters established in third countries could be referred to Italian jurisdiction mainly because of the criteria on editorial responsibility and satellite up-link.
- ▶ In some cases the application of jurisdiction criteria under Art. 2 TWF could lead to different Member States.
- ▶ In all cases of broadcasters not authorised in Italy, none of them was transmitting anymore at the moment of the investigations carried out by Italian police.
- ▶ Blogs on specialised web-pages show that users are perfectly aware of the continuous moves of pirate broadcasters.

## **Main difficulties arisen during the procedure**

- ▶ The absence of homogeneous conditions for the management of spatial transmission capacity for satellite broadcasting, especially with regard to authorisations, very often jeopardises monitoring and sanctioning activities.
- ▶ Monitoring activities scanning frequency signals allow to discover capacity / up-link providers, but not always the content provider, due to the lack of informative obligations on the former who are not required to check whether the applicant holds a regular title.
- ▶ The lack of a regularly updated central databases of all authorised / registered satellite broadcasters, especially in third countries but parties to the Convention on transfrontier television (ECTT), makes it often difficult to find the competent country.

## **2. A cooperation network**

# Why a cooperation network

- ▶ The creation of a cooperation network could be an efficient tool in order to overcome practical obstacles often arising during monitoring and sanctioning activities and reduce cases of pirate broadcasters.
- ▶ Legal basis is art. 23B of AVMSD:
  - ▶ “Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 hereof, notably through their competent independent regulatory bodies.”

# Looking for best practices

- ▶ From the practical experience of each EU, EEA or candidate country, a tendency towards a system of best practices could be a winning idea (eg. procedures, sanctions, definitions) to create a certain framework.
- ▶ A questionnaire has been handed out among Member states to focus on:
  - ▶ institutional aspects (who authorises, monitors and sanctions),
  - ▶ application of jurisdiction criteria, features of monitoring activities (how and when),
  - ▶ qualifications of paras 1 and 2 of Art. 22 AVMSD,
  - ▶ sanctions applicable and applied in the two cases of Art. 22.
- ▶ Once all answers are completed, Agcom will circulate a report on the state of art in the involved countries.

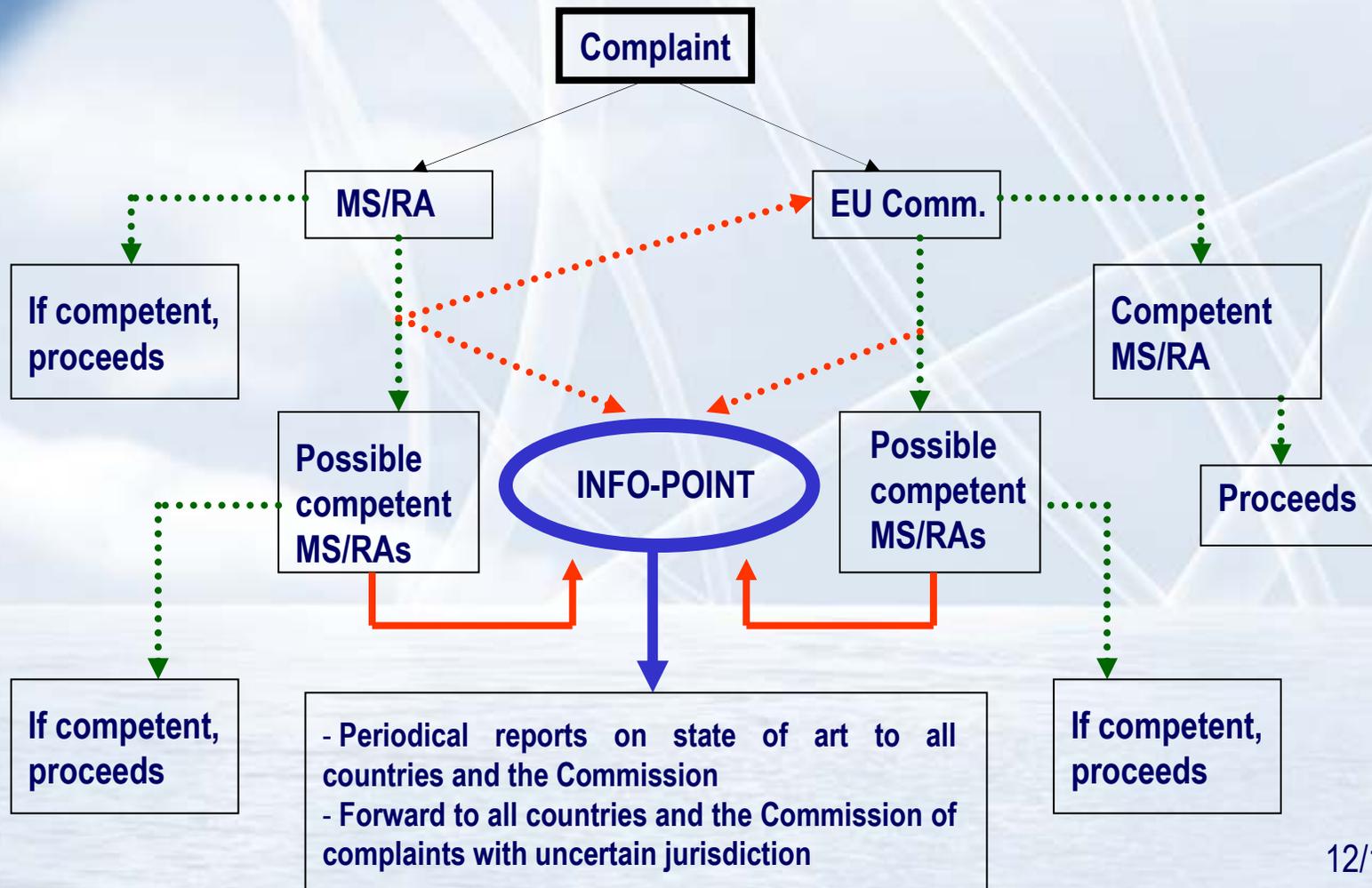
# A first level of minimum cooperation

- ▶ How to deal with “transfrontier” complaints:
  - ▶ Each regulator receiving a complaint from a citizen concerning a channel NOT under its responsibility, involves the competent regulator:
    - ▶ replies to the complainant asking him/her to address the complaint to the competent regulator OR
    - ▶ addresses directly the complaint to the competent regulator, informing the complainant
  - ▶ The competent regulator who treats the case:
    - ▶ replies to the complainant in substance AND POSSIBLY
    - ▶ informs the regulator initially involved about the conclusion of the proceeding.

# Possible reinforced cooperation

- ▶ Light and low-cost coordination activity to be managed by a central “info-point” on a rotation basis by the national regulators.
- ▶ Efficient management of complaints so as to give the complainant an answer of the outcome within a reasonable time, if feasible in his/her own language.
- ▶ All complaints implying transfrontier cases should be forwarded to the central info-point and to the Commission.
- ▶ Periodic reports from the central info-point on the state of art, hereunder jurisdiction cases, possible black lists of pirate broadcasters, pending procedures and their solution.

# Information flow



## **3. Practical aspects to discuss**

## Discussion among Member States

- ▶ Points discussed at the Contact committee of 31 March 2009:
  - ▶ Existing cooperation tools VS specific cooperation network.
  - ▶ Centralised management VS decentralised handling of complaints.
  - ▶ Answering procedures in complainant's language: YES/NO.
  - ▶ National definitions of pornography VS Commission's interpretation.
  - ▶ Obligation for providers to inform RAs: YES/NO.
  - ▶ Fixed images or sequence of fixed images VS programmes.
  - ▶ Images not accompanying programmes VS teleshopping.
  - ▶ Webstreaming of pornographic content: YES/NO.
  - ▶ Databases also of up-link providers: YES/NO.
  - ▶ Black lists of broadcasters to circulate among RAs: YES/NO.

## Discussion among RAs

- ▶ Possible aspects to discuss also at the Regulator's Group:
  - ▶ Creation of a single e-mail address to be managed on rotation by the MS/NRA in charge of the info-point.
  - ▶ Creation of a common workspace / closed website to ease the management and visibility of complaints and info requests among involved countries.
  - ▶ Management of human and economic resources: centralised vs decentralised approach.
  - ▶ Regular update of databases of all authorised satellite broadcasters and satellite up-link providers.
  - ▶ Content of periodical reports: general overview and re. involved broadcasters.
  - ▶ Creation of common standards for the relations between broadcasters and capacity / up-link providers, as information obligations.
  - ▶ Integration with other possible cooperation systems, as cooperation with non-EU countries, EPRA, capacity and up-link providers, database of broadcasters (MAVISE).



Thank you for your attention!

For suggestions or queries, please contact  
[m.cappello@agcom.it](mailto:m.cappello@agcom.it)