The Suspension Or the End of the 3PM Blackout?

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With less than one week to go until the Premier League resumes, English football fans are going to have the opportunity watch every game for the first time ever. On 3 April 2020 UEFA announced that it had accepted a request from the Premier League to suspend the 3pm blackout rule which has prevented broadcasters from showing 3pm games on Saturdays since long before the Premier League era. With so many matches to be played in quick succession, only a handful will actually take place at 3pm on a Saturday, but this could be a significant step towards changing football broadcasting for good. Could this be the historical spark that changes the status quo?

The Regulation

The regulatory basis for the broadcasting blackout has been covered previously on Sport Shorts, see here for an in-depth recap. In summary:

- Article 48 of the UEFA Statutes states that Member Associations have the exclusive rights to broadcast and use, as well as authorise for broadcast and use, matches within their jurisdiction.

- Article 3 of the UEFA Regulations Governing the Implementation of Article 48 of the UEFA Statutes, provides that each Member Association may decide on two and a half hours on a Saturday or a Sunday during which any transmission of
football may be prohibited within the territory of the relevant Member Association.

- In the UK, matches are prohibited from being broadcast between 14:45 and 15:15 on Saturdays.

**The arguments**

Advocates of the blackout rule insist that it is necessary to protect participation in grassroots football and the gate receipts for lower league clubs. These were the initial goals of the rule since its inception, as enshrined in Article 2 of the UEFA Regulations Governing the Implementation of Article 48 of the UEFA Statutes. The current crisis has shone a light on the importance of gate receipts for most of the clubs in the Football League, many of which rely on that money for around a third of their total income.

Opponents to the rule argue that the blackout rule is not capable of achieving its stated aim. This was a view expressed by Advocate General Kokott in her 2011 Opinion in C-403/08. AG Kokott compared the Premier League with other European Leagues (in particular, France, Germany, Italy and Spain, or in Northern Ireland), finding that “in Germany today all Bundesliga matches are evidently transmitted live without attendance at matches in the top two leagues suffering as a result.”

Another important consideration is piracy, one of the largest problems affecting the Premier League. Broadcasting revenue makes up by far the largest income stream of almost every Premier League club, with some relying on TV money for as much as 70% of their total revenue. The closest anti-piracy efforts come to a silver bullet, is making all of the content available by legal means. Conversely, an argument often relied upon by those that use pirated material is that they are forced to pirate the content as they cannot access it any other way.

**A change in the balance**

On 3 April 2020, UEFA publically announced that the 3pm blackout was being lifted:

> “Uefa has lifted the ‘blocked hours’ protection granted to England and Scotland for the remainder of the 2019-20 season following requests from the relevant national associations as a result of measures taken in relation to the Covid-19 pandemic.”

Organised football finds itself in a unique and unprecedented position. The arguments set out above have fallen away, at least temporarily, and all stakeholders accept that if football is going to resume, it is going to be impossible for fans to attend games in the short-term. There are also significant question marks over when grassroots football will be able to resume in full. When these factors are added to consumers’ yearning for televised sport and broadcasters’ dearth of content, there is no one left opposing the lifting of the rule. The UK’s Culture Secretary has even suggested that broadcasting matches on free to air TV will actively discourage people from leaving their homes and assist with containing the virus.
The financials behind broadcasting Project Restart are not public, but under other circumstances lifting the restrictions could increase revenue for the Premier League, and for other Football League clubs. In the end, the longevity of this trial may be inextricably tied to the longevity of the virus. If we are still experiencing restrictions on movement and social gatherings at the start of next season, the blackout will almost certainly be lifted again. This could well lead to a scenario where the blackout is lifted and, at some point in the season, fans are able to attend matches once again. Such a scenario would provide for a more useful trial run that could gauge the impact of lifting the blackout in measurable terms and settle the arguments once and for all.

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