



7.2.2017

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes
(COM(2016)0594 – C8-0384/2016 – 2016/0284(COD))

Rapporteur: Petra Kammerevert

SHORT JUSTIFICATION

The proposal for a regulation deals, in essence, with the issue of whether and how internet-based cross-border transmissions of broadcasting organisations' offerings can be placed on an equal footing with transmissions via cable and satellite. Whilst the country-of-origin principle familiar from satellite broadcasting is to apply to the broadcasters' *own* online services, services to which third parties have rights are to be made more easily accessible across borders by making the right to retransmission (which currently covers only cable) more technologically neutral.

Your rapporteur takes the view that an online service's relationship to a broadcast has no bearing on the issue of its assignment to a copyright licensing system, and that it does not matter whether or not an online service is 'ancillary'. The deciding factor should be whether the online service is provided by a broadcasting organisation. Particularly when it comes to young people, who increasingly consume only online broadcasts, the need for online content to be related to a broadcast seems obsolete. It does not seem necessary to apply categories laid down in competition law, such as retention period and the relationship to a broadcast, to copyrighted material.

In addition, services that are broadcast over an open internet access service will fall within the scope of the regulation, provided that the user group remains closed. On the open web, cross-border services that can manage their user group in a closed environment have already proved successful. The existence of a 'closed network', however, is too stringent a condition to ensure that creative services can be made available to a perceptibly broader audience at a fair price.

Lastly, the text stresses once again that the aim is not to render the principles of territorial exploitation of rights or contractual freedom null and void. With a view to establishing a viable remuneration model for the integral retransmission of broadcasting organisations' online services, your rapporteur favours the extended collective licensing model. This model has proved successful in Scandinavia for some years.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) The development of digital technologies and internet has transformed the distribution of and access to television

Amendment

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and radio programmes. Users increasingly expect to have access to television and radio programmes both live and on-demand, using traditional channels such as satellite or cable and also through online services. Broadcasting organisations are therefore increasingly offering, in addition to their own broadcasts of television and radio programmes, *online services ancillary to their broadcast, such as simulcasting and catch-up services*. Retransmission services operators, which aggregate broadcasts of television and radio programmes into packages and provide them to users simultaneously to the initial transmission of the broadcast, unaltered and unabridged, use various techniques of retransmission such as cable, satellite, digital terrestrial, closed circuit IP-based or mobile networks as well as the open internet. On the part of users, there is a growing demand for access to broadcasts of television and radio programmes not only originating in their Member State but also in other Member States of the Union, including from members of linguistic minorities of the Union as well as from persons who live in another Member State than their Member State of origin.

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Or. de

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) A number of barriers hinder the provision of online services *which are ancillary to broadcasts* and the provision of retransmission services and thereby the free circulation of television and radio programmes within the Union. Broadcasting organisations transmit daily many hours of news, cultural, political,

Amendment

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documentary or entertainment programmes. These programmes incorporate a variety of content such as audiovisual, musical, literary or graphic works, which is protected by copyright and/or related rights under Union law. That results in a complex process to clear rights from a multitude of right holders and for different categories of works and other protected subject matter. Often the rights need to be cleared in a short time-frame, in particular when preparing programmes such as news or current affairs. In order to make their online services available across borders, broadcasting organisations need to have the required rights to works and other protected subject matter for all the relevant territories which further increases the complexity of the rights' clearance.

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Or. de

Amendment 3

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Council Directive 93/83/EEC¹⁷ facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States of the Union. However, the provisions of that Directive on transmissions of broadcasting organisations are limited to satellite transmissions and therefore do not apply to online services ***ancillary to broadcast*** while the provisions concerning retransmissions of television and radio programmes from other Member States are limited to simultaneous, unaltered and unabridged retransmission by cable or microwave systems ***and do not extend to such retransmissions by means of other technologies.***

Amendment

(6) Council Directive 93/83/EEC¹⁷ facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States of the Union. However, the provisions of that Directive on transmissions of broadcasting organisations are limited to satellite transmissions and therefore do not apply to online services while the provisions concerning retransmissions of television and radio programmes from other Member States are limited to simultaneous, unaltered and unabridged retransmission by cable or microwave systems.

¹⁷Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission OJ L 248, 6.10.1993, p. 15–21. OJ L 248, 15.4.2010, p. 15–24.

¹⁷Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission OJ L 248, 6.10.1993, p. 15–21. OJ L 248, 15.4.2010, p. 15–24.

Or. de

Amendment 4

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Therefore, cross-border provision of online services *ancillary to broadcast* and retransmissions of television and radio programmes originating in other Member States should be facilitated by adapting the legal framework on the exercise of copyright and related rights relevant for those activities.

Amendment

(7) Therefore, cross-border provision of *the broadcasting organisations'* online services and retransmissions of television and radio programmes originating in other Member States should be facilitated by adapting the legal framework on the exercise of copyright and related rights relevant for those activities.

Or. de

Amendment 5

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) The *ancillary* online services covered by this Regulation are those services offered by broadcasting organisations *which have a clear and subordinate relationship to the broadcast*. They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, *within a*

Amendment

(8) The online services covered by this Regulation are *exclusively* those services offered by broadcasting organisations. They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, *before, during or* after the broadcast, to television and radio programmes which have been

defined time period after the broadcast, to television and radio programmes which have been previously broadcast by the broadcasting organisation (*so-called* catch-up services). In addition, **ancillary online services** include services which give access to material which enriches or otherwise expands television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content. **The provision of access to individual works or other protected subject matter that have been incorporated in a television or radio programme should not be regarded as an ancillary online service.** Similarly, the provision of access to works or other protected subject matter independently of broadcast, such as services giving access to individual musical or audiovisual works, music albums or videos, **do not fall under the definition of ancillary online service.**

previously broadcast by the broadcasting organisation (*e.g.* catch-up services **or previews**). In addition, **they** include services which give access to material which enriches, **makes more accessible** or otherwise expands television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content. **An online service may also consist of online content from a broadcasting organisation which provides access to works that have been produced, co-produced or commissioned under its own editorial responsibility and are only broadcast online.** The provision of access to works or other protected subject matter independently of broadcast, such as services giving access to individual musical or audiovisual works, music albums or videos, **and webcasting will fall within the scope of this Regulation.**

Or. de

Amendment 6

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In order to facilitate the clearance of rights for the provision of **ancillary** online services across borders it is necessary to provide for the establishment of the country of origin principle as regards the exercise of copyright and related rights relevant for acts occurring in the course of the provision of, the access to or the use of an **ancillary** online service. That principle of country of origin should apply exclusively to the relationship between right holders (or entities representing right holders such as collective management organisations) and broadcasting

Amendment

(9) In order to facilitate the clearance of rights for the provision of online services across borders it is necessary to provide for the establishment of the country of origin principle as regards the exercise of copyright and related rights relevant for acts occurring in the course of the provision of, the access to or the use of an online service. That principle of country of origin should apply exclusively to the relationship between right holders (or entities representing right holders such as collective management organisations) and broadcasting organisations and solely for

organisations and solely for the purpose of the provision of, the access to or the use of an *ancillary* online service. The principle of country of origin should not apply to any subsequent communication to the public or reproduction of content which is protected by copyright or related rights and which is contained in the *ancillary* online service.

the purpose of the provision of, the access to or the use of an online service. The principle of country of origin should not apply to any subsequent communication to the public or reproduction of content which is protected by copyright or related rights and which is contained in the online service.

Or. de

Amendment 7

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Through the *principle* of contractual freedom it will be possible to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Regulation, especially as far as certain technical means of transmission or certain language versions are concerned, provided that any such limitations of the exploitation of those rights are in compliance with Union law.

Amendment

(11) Through the *principles of territorial exploitation of rights and* contractual freedom it will be possible to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Regulation, especially as far as certain technical means of transmission or certain language versions are concerned, provided that any such limitations of the exploitation of those rights are in compliance with Union law.

Or. de

Amendment 8

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile and similar networks, provide services which are equivalent to those provided by

Amendment

(12) Operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile and similar networks *and via an internet access service in accordance with*

operators of cable retransmission services when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes, where this initial transmission is by wire or over the air, including by satellite **but excluding online transmissions**, and intended for reception by the public. They should therefore be within the scope of this Regulation and benefit from the mechanism introducing mandatory collective management of rights. Retransmission services which are offered on the open internet should be **excluded** from the scope of this Regulation **as those services have different characteristics. They are not linked to any particular infrastructure and their ability to ensure a controlled environment is limited** when compared for example to cable or closed circuit IP-based networks.

Regulation (EU) No 2015/2120 of the European Parliament and of the Council, provide services which are equivalent to those provided by operators of cable retransmission services when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes, where this initial transmission is by wire or over the air, including by satellite but excluding online transmissions, and intended for reception by the public. They should therefore be within the scope of this Regulation and benefit from the mechanism introducing mandatory collective management of rights. Retransmission services which are offered on the open internet should **only be excluded** from the scope of this Regulation **if they cannot** ensure a controlled environment **and their services do not have a clearly definable user group** when compared for example to cable or closed circuit IP-based networks.

Or. de

Amendment 9

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile or similar networks, and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC should apply. The rules established in that Directive include the obligation to exercise the right to grant or refuse authorisation to an operator of a

Amendment

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile or similar networks **and via the open internet if the user group is definable**, and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC should apply. The rules established in that Directive include the obligation to exercise

retransmission service through a collective management organisation. This is without prejudice to Directive 2014/26/EU and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation.

¹⁸Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84, 20.3.2014, p. 72–98.

the right to grant or refuse authorisation to an operator of a retransmission service through a collective management organisation. This is without prejudice to Directive 2014/26/EU¹⁸ and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation.

¹⁸Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84, 20.3.2014, p. 72–98.

Or. de

Amendment 10

Proposal for a regulation

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) "**ancillary** online service" means an online service consisting in the provision to the public, by or under the control and responsibility of a broadcasting organisation, of radio or television programmes simultaneously with **or for a defined period of time** after their broadcast by the broadcasting organisation as well as of any material produced by or for the broadcasting organisation which is ancillary to such broadcast;

Amendment

(a) "online service" means an online service consisting in the provision to the public, by or under the control and responsibility of a broadcasting organisation, of radio or television programmes simultaneously with, **before, during or** after their broadcast by the broadcasting organisation as well as of any material produced by or for the broadcasting organisation which is ancillary to such broadcast **or a broadcasting organisation's online service which makes works produced, co-produced or commissioned under its own editorial responsibility available online;**

(Note: This amendment applies throughout the text. If it is adopted, 'ancillary online service' is to be replaced by 'online service' throughout the text.

Amendment 11**Proposal for a regulation****Article 1 – paragraph 1 – point b***Text proposed by the Commission*

(b) "retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC ***and other than retransmission provided over an internet access service as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council***, intended for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite but excluding online transmission, of television or radio programmes intended for the reception by the public, provided that such retransmission is made by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility such transmission was made.

Amendment

(b) "retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC, intended for reception by the public of an initial transmission from another Member State, ***in a closed environment***, by wire or over the air, including that by satellite but excluding online transmission, of television or radio programmes intended for the reception by the public, provided that such retransmission ***has the same characteristics as the cable retransmission and*** is made by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility such transmission was made.

¹⁹***Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1.***

Amendment 12

Proposal for a regulation Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Paragraph 1 shall not apply to online services which, taken as a whole, are primarily and mainly targeted at an audience outside the Member State in which the broadcasting organisation is established. Paragraph 1 shall not undermine the principle of territorial exploitation of rights or contractual freedom in copyright law, and shall be without prejudice to the rights set out in Directive 2001/29/EC.

Or. de

Amendment 13

Proposal for a regulation Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The competent jurisdiction for disputes with regard to the exercise of the rights resulting from this Article shall be that of the Member State in which the broadcasting organisation is established.

Or. de

Amendment 14

Proposal for a regulation Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(5a) Member States shall ensure that, in connection with the integral retransmission of broadcasting

organisations' online services, a collective contract, signed by a representative association including users of the works or associations of users for a set group of works, can be extended to rightsholders of the same group who are not already represented by the representative association. The unrepresented rightsholders may object to this extension at any time and manage their rights individually or collectively in another grouping.

Or. de

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR FOR THE OPINION HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft opinion, until the adoption thereof in committee.

Entity and/or person
European Broadcasting Union (EBU)
European Composer and Songwriter Alliance (ECSA)
European Grouping of Societies of Authors and Composers (GESAC)
International Confederation of Music Publishers (ICMP)
ARD
ZDF
Vodafone
Association of European Radios (AER)
Association for the International Collective Management of Audiovisual Works (AGICOA)
GSM-Association (GSMA)
European Film Agency Directors (EFADs)
Verbraucherzentrale Bundesverband e.V.
Society of Audiovisual Authors (SAA)
Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA)
Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e. V. (Bitkom)