



Plenary sitting

A8-0378/2017

27.11.2017

*****I**
REPORT

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))

Committee on Legal Affairs

Rapporteur: Tiemo Wölken

Rapporteur for the opinion (*):
Petra Kammerevert, Committee on Culture and Education

(*) Associated committee – Rule 54 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	31
OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION.....	34
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY	55
OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION	79
PROCEDURE – COMMITTEE RESPONSIBLE	95
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	96

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0594),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0384/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 25 January 2017¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Culture and Education, the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A8-0378/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

Amendment 1

Proposal for a regulation Recital 1

Text proposed by the Commission

(1) In order to contribute to the functioning of the internal market, it is necessary to provide for wider dissemination of **television and radio** programmes originating in other Member States for the benefit of users across the Union by facilitating licensing of copyright and related rights in works and other protected subject-matter contained in broadcasts of such programmes. Indeed, **television and radio** programmes are important means of promoting **cultural and linguistic diversity, social cohesion and** access to information.

Amendment

(1) In order to contribute to the functioning of the internal market **and especially to increase access to information**, it is necessary to provide for wider dissemination of **news and current affairs** programmes originating in other Member States for the benefit of users across the Union by facilitating licensing of copyright and related rights in **those** works and other protected subject-matter contained in broadcasts of such programmes. Indeed, **news and current affairs** programmes are important means of promoting access to information.

Amendment 2

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Audiovisual media service providers should endeavour to ensure that their technical services are gradually made accessible to persons with visual or hearing disabilities.

Amendment 3

Proposal for a regulation Recital 3

(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, 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.***

(3) Broadcasting organisations transmit daily many hours of news ***and current affairs*** programmes. These programmes incorporate a variety of ***different*** content 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. ***For news and current affairs programmes, it is necessary to clear those rights in a short time-frame.*** In order to make their ***ancillary*** 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.

Amendment 4

Proposal for a regulation

Recital 4

(4) Operators of retransmission services, ***that*** normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights

(4) Operators of retransmission services ***of television or radio programmes including works or other protected subject matter carry out an act of communication to the public irrespective of whether the retransmission of the television or radio programme is made by the same technical means or different technical means than***

clearing burden. There is also a risk for right holders of having their works and other protected subject matter exploited without authorisation or payment of remuneration.

those used for the initial act of broadcasting, and irrespective of whether or not such retransmission takes place within the actual or intended area of reception of the initial broadcast. As retransmission services normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, operators of retransmission services have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. There is also a risk for producers, authors, creators and other right holders of having their works and other protected subject matter exploited without authorisation or payment of appropriate and fair remuneration.

Amendment 5

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) To the extent that retransmission services that normally offer multiple programmes use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, they should have the possibility, in line with the principle of contractual freedom, of obtaining the necessary licences and thereby guaranteeing right holders equitable remuneration so that they can continue to offer a wide variety of content. Such a possibility would also be in the consumer's interest.

Amendment 6

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council¹ and Directive 2006/115/EC of the European Parliament and of the Council.²

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10–19.

² Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28–35.

Amendment 7

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

(5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council¹ and Directive 2006/115/EC of the European Parliament and of the Council², ***which serve in particular to ensure a high level of protection for rights holders.***

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10–19.

² Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28–35.

Amendment

(7) Therefore, cross-border provision of online services ancillary to broadcast ***of news and current affairs programmes*** 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. ***Whereas the adaptation of the legal framework may result in limitations on the exercise of exclusive rights, it should only apply in certain special cases which do not conflict with***

the normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the right holder. Therefore, also bearing in mind the importance of the principle of territoriality for the financing and production of creative content, and in particular of audio-visual works, any legislative intervention should necessarily be extremely limited and narrow and be in line with the Union principles of necessity and proportionality.

Amendment 8

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 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

Amendment

(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 **news and current affairs** programmes in a **strictly** linear manner simultaneously to the broadcast and services giving access, within a defined time period after the broadcast, to **news and current affairs** programmes which have been previously broadcast by the broadcasting organisation (so-called catch-up services). 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.

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.

Amendment 9

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 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.

Amendment

(9) In order to facilitate the clearance of rights **allowing the broadcaster to provide** ancillary online services **solely related to news and current affairs programmes** 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 **those** ancillary online **services**. 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 the purpose of the provision of, the access to or the use of **those** ancillary online **services related to news and current affairs programmes**. 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.

Amendment 10

Proposal for a regulation Recital 9a (new)

Text proposed by the Commission

Amendment

(9a) The country of origin principle provided for in this Regulation should not apply to ancillary online services which are primarily or solely targeted to a Member State other than that in which the broadcasting organisation has its principal place of establishment. Such a service, primarily or solely targeted at a particular Member State, is a service the programmes of which are clearly aimed at the population of a specific Member State other than that in which the broadcasting organisation has its principal place of establishment, and the audience of which is clearly limited to the population of that specific Member State, and in respect of which it is unlikely that listeners or viewers will be found outside the specific Member State at which the programmes are aimed. Aspects which make it possible to identify the target audience include in particular language, including the language used in subtitles, advertising, dubbing, the audience at which the promotion of the broadcasting service is aimed and/or the local character of the programming.

Amendment 11

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) Since the provision of, the access to or the use of an ancillary online service is deemed to occur solely in the Member State in which the broadcasting organisation has its principal

(10) Since the provision of, the access to or the use of an ancillary online service ***to news and current affairs programmes*** is deemed to occur solely in the Member State in which the broadcasting

establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of the payment to be made for the rights in question, the parties should take into account all aspects of the ancillary online service such as the features of the service, the audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and *the* language *version*.

organisation has its principal establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of the payment to be made for the rights in question, the parties should *use objective criteria and* take into account all aspects of the ancillary online service such as the features of the service, *including the duration of the online availability*, the audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and *all available* language *versions*.

Amendment 12

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) *It is necessary to recall that through* the principle of contractual freedom *and in order to support existing licensing models, such as exclusive territorial licensing, which enables the financing mechanism vital to audiovisual production, optimal distribution and the promotion of cultural diversity*, it is *necessary* to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Regulation provided that any such limitations of the exploitation of those rights are in compliance with *national and* Union law.

Amendment 13

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) This regulation is not aimed at encouraging forum shopping practices. The principle of 'country of origin' should not apply to online services which are mainly or solely targeted at audiences other than the audience of the Member State in which the broadcasting organisation has its principal place of establishment, in order to limit practices whereby a broadcaster attempts to establish itself in other Member States to avoid disadvantageous financial obligations or to profit from more favourable licencing arrangements compared to the Member State in which it has its principal place of establishment. To assess whether the online service is targeting an audience outside of its Member State, the features of the service as well as the language versions used should be taken into account.

Amendment 14

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

(11 b) Based on the principle of contractual freedom and in order not to unreasonably prejudice existing licensing models such as exclusive territorial licensing, the cross-border retransmission from another or into another Member State is limited to the retransmission of cable-like or IPTV-like services within managed environments.

Amendment 15

Proposal for a regulation

Recital 11 c (new)

Text proposed by the Commission

Amendment

(11c) This Regulation, in line with the principle of contractual freedom, does not prevent existing licensing models, such as territorial licensing, and is without prejudice to existing provisions of national contract law in the field of copyright regarding appropriate remuneration, as well as existing collective management solutions for retransmission within a Member State.

Amendment 16

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(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 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

(12) Operators of retransmission services offered on satellite, digital terrestrial ***or cable-like or IPTV-like services within managed environments*** 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 ***other than cable-like or IPTV-like services within managed environments*** should be excluded from the scope of this Regulation

infrastructure and their ability to ensure a controlled environment is limited when compared for example to cable or closed circuit IP-based networks.

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.

Amendment 17

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 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.

Amendment

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, ***cable-like or IPTV-like services within managed environments*** 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 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. ***The right to refuse authorisation as such remains intact, and only the manner of exercising that right is regulated to some extent. This also implies that it is always possible to decide whether or not grant the right of retransmission.***

Amendment 18

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13 a) Collective management organisations should be able to apply provisions on the exercise of the right in retransmission laid down in this Regulation through the extension of a collective agreement with an operator of a retransmission service also to the rights of right holders not represented by the organisation, where such a system is provided by virtue of national law.

Amendment 19

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Broadcasters that transmit their programme-carrying signals through a direct injection process to distributors which in accordance with the Berne Convention are third parties in relation to the broadcaster for reception by the public should be jointly liable with their distributors for the single and indivisible acts of communication to the public and making available to the public, as defined in Article 3 of Directive 2001/29/EC, which they carry out together. Such broadcasting organisations and such distributors should therefore obtain an authorisation from the right holders in question for their respective participation in such acts.

Amendment 20

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) The exemption provided for in this Regulation for the rights in retransmission exercised by broadcasting organisations in respect of their own transmission should not limit the choice of holders of rights to transfer their rights to a collective management organisation and thereby have a direct share in the remuneration paid by the operator of a retransmission service.

Amendment 21

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) In order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of an ancillary online service, it is necessary to apply **the principle of country of origin** also to existing agreements but with a transitional period.

Amendment

(15) In order to prevent circumvention of the application of the country of origin principle **applicable to news and current affairs programmes** through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of an ancillary online service, it is necessary to apply **this** principle also to existing agreements but with a transitional period.

Amendment 22

Proposal for a regulation Recital 15a (new)

Text proposed by the Commission

Amendment

(15a) Broadcasters that transmit their programme-carrying signals through a direct injection process to distributors for reception by the public should be jointly liable with their distributors for the single and indivisible acts of communication to the public and making available to the public, as defined in Article 3 of Directive

2001/29/EC, which they carry out together. Such broadcasting organisations and distributors should therefore obtain a separate authorisation from the right holders in question for their respective participation in such acts.

Amendment 23

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there ***may be*** an interference with the exercise of the rights of right holders insofar as mandatory collective management ***is required for*** the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner ***for*** specific services ***and in order to allow more widespread cross-border dissemination of television and radio programmes by facilitating the clearance of these rights.***

Amendment

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there ***is*** an interference with the exercise of the rights of right holders insofar as mandatory collective management ***takes place*** for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner ***and to limit it to*** specific services ***which are similar to cable and satellite retransmissions and take place in a managed environment.***

Amendment 24

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) A review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess, ***among others, to what*** extent the cross-border provision of ancillary online services has increased to the benefit of European consumers and hence also to the

Amendment

(18) ***In line with the principles of better regulation,*** a review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess ***the impact of the Regulation, including the provisions on direct injection, on Europe's creative***

benefit of improved cultural diversity in the Union.

industries, on the financing of European audio-visual works and on rightholders. The review should also take into account the extent to which the cross-border provision of ancillary online services, and the level on investment in new content, has increased to the benefit of European consumers and businesses, and hence also to the benefit of improved cultural diversity in the Union.

Amendment 25

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Since the objective of this Regulation, namely promoting the cross-border provision of ancillary online services and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of ancillary online services, this **Regulation establishes enabling mechanisms to facilitate the clearance of copyright and related rights.** This Regulation does not oblige broadcasting organisations to provide such services across borders. Neither does this Regulation oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Regulation concerns only the exercise of

Amendment

(19) Since the objective of this Regulation, namely promoting the cross-border provision of ancillary online services **to news and current affairs programmes** and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be **in some cases** better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of **certain** ancillary online services **of broadcasters**, this Regulation does not oblige broadcasting organisations to provide such services across borders. Neither does this Regulation oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Regulation concerns only the exercise of certain retransmission rights to

certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union,

the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union,

Amendment 26

Proposal for a regulation Recital 19 a(new)

Text proposed by the Commission

Amendment

(19a) The retransmission of programmes from other Member States is an act subject to copyright and, in some cases, related rights. Online services should therefore obtain the authorisation of every right holder for each part of the retransmitted programme. In accordance with this Regulation, authorisations should be granted contractually, unless a temporary exception is provided for under existing legal licencing schemes.

Amendment 27

Proposal for a regulation Article -1 (new)

Text proposed by the Commission

Amendment

Article -1

Subject matter

1. This Regulation establishes legal mechanisms to facilitate the clearance of copyright and related rights relevant for the cross-border provision of ancillary online services and to facilitate digital retransmissions over a closed environment.

2. Those legal mechanisms include the establishment of the country of origin

principle as regards the exercise of those rights. The legal mechanisms also include provisions on mandatory collective management of copyright and related rights relevant for retransmission, on legal presumptions of representation by collective management organisations and on the exercise of retransmission rights by broadcasting organisations.

Amendment 28

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 ***limited to cable-like or IPTV-like services which are*** 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 29

Proposal for a regulation

Article 1 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) "direct injection" means a two- or more step process by which broadcasting organisations transmit their programme-carrying signals for reception by the public to distributors that are organisations other than those broadcasting organisations in accordance with the Berne Convention point to point via a private line – by wire or over the air, including by satellite – in such a way that the programme-carrying signals cannot be received by the general public during such transmission; the distributors then offer these programmes to the public simultaneously, in an unaltered and unabridged form, for viewing or listening on cable networks, microwave systems, digital terrestrial, IP-based and mobile networks or similar networks.

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(b b) "managed environments" are exclusively defined as cable-like services or IPTV-like services with secured and restricted access, where a retransmission operator provides an end to end encrypted retransmission service to its contractually authorised users.

Amendment 31

Proposal for a regulation

Article 2

Article 2

Application of the principle of ‘country of origin’ to **ancillary** online services

(1) The acts of communication to the public and of making available occurring when providing an ancillary online service by or under the control and responsibility of a broadcasting organisation as well as the acts of reproduction which are necessary for the provision of, the access to or the use of **the** ancillary online service shall, for the purposes of exercising copyright and related rights relevant for these acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

(2) When fixing the amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties shall take into account all aspects of the ancillary online service such as **the** features of the ancillary online service, the audience, and **the** language **version**.

Article 2

Application of the principle of ‘country of origin’ to online services **to broadcasts of news and current affairs programmes**

(1) The acts of communication to the public and of making available occurring when providing an ancillary online service **to an initial broadcast of exclusively news and current affairs programmes** by or under the control and responsibility of a broadcasting organisation, as well as the acts of reproduction **of such news and current affairs programmes** which are necessary for the provision of, the access to or the use of **such** ancillary online service shall, for the purposes of **acquiring and exercising the acquired** copyright and related rights relevant for these acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

(2) When fixing the amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties shall take into account all aspects of the ancillary online service such as features of the ancillary online service, **including the duration of online availability**, the audience, and **all available** language **versions**.

(2a) Paragraph 2 shall not limit the parties' freedom to agree on any specific methods or criteria for calculating the amount of payment to be made for the rights subject to the country of origin principle such as those based on the broadcasting organisation's revenues generated by the online service.

(2b) Paragraphs 1 and 2 are without prejudice to the principles of territoriality and contractual freedom under copyright and any right provided under Directive 2001/29/EC. On this basis, the parties

shall be entitled to continue agreeing on the introduction of limits on the exploitation of the rights referred to in paragraph 1, provided that any such limitations are in compliance with Union and national law.

(2c) The retransmission of the initial transmission of a television or radio programme from one Member State to other Member States by means of an ancillary online service as defined in this Regulation shall take place in compliance with the applicable copyright, related rights, and rights to other subject matter and on the basis of individual or collective contractual agreements between copyright owners, holders of related rights, holders of rights to other subject matter, and retransmission service operators.

Amendment 32

Proposal for a regulation Article 3

Text proposed by the Commission

Article 3

Exercise of the right in retransmission by right holders other than broadcasting organisations

(1) Holders of copyright and related rights other than broadcasting organisations *may* exercise their rights to ***grant or refuse the authorisation for a retransmission only through a collective management organisation.***

(2) ***Where a right holder has not transferred the management of the right referred to in paragraph 1 to a collective***

Amendment

Article 3

Exercise of the right in retransmission ***other than by cable*** by right holders other than broadcasting organisations

(-1) The right of retransmission is an exclusive right and has to be authorised by the holders of copyright and other related rights.

(1) Holders of copyright and related rights other than broadcasting organisations ***shall*** exercise their rights to ***allow access to retransmission services within managed environments*** only through a collective management organisation.

management organisation, the collective management organisation which manages rights of the same category for the territory of the Member State for which the operator of the retransmission service seeks to clear rights for a retransmission shall be deemed to be mandated to manage the right on behalf of that right holder.

(3) Where more than one collective management organisation manages rights of that category for the territory of that Member State, the right holder shall be free to choose which of those collective management organisations is deemed to be mandated to manage his or her right. If in such a situation the right holder does not choose the collective management organisation, it shall be for the Member State for whose territory the operator of the retransmission service seeks to clear rights for a retransmission to indicate which of the collective management organisations is deemed to be mandated to manage the right of that right holder.

(4) A right holder shall have the same rights and obligations resulting from the agreement between the operator of the retransmission service and the collective management organisation which is deemed to be mandated to manage his or her right as the right holders who have mandated that collective management organisation and shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the retransmission which includes his or her work or other protected subject matter.

(5) A Member State may provide that, where a right holder authorises the initial transmission within its territory of a work or other protected subject matter, the right holder shall be deemed to have agreed not to exercise his or her rights in retransmission on an individual basis but to exercise them in accordance with this

(3) Where more than one collective management organisation manages rights of that category for the territory of that Member State, the right holder shall be free to choose which of those collective management organisations is deemed to be mandated to manage his or her right. If in such a situation the right holder does not choose the collective management organisation, it shall be for the Member State for whose territory the operator of the retransmission service seeks to clear rights for a retransmission to indicate which of the collective management organisations is deemed to be mandated to manage the right of that right holder.

Regulation.

(5a) Collective management organisations shall maintain a database providing information related to the management of copyright and related rights covered by this Article, including information on the right holder, the type of use, the territory and period of time.

(5b) The possibility to call upon mediation and the prevention of the abuse of negotiating positions as provided for in Article 11 and Article 12(1) of Council Directive 93/83/EEC shall also be available for the purposes of this Regulation.

Amendment 33

**Proposal for a regulation
Article 3 a (new)**

Text proposed by the Commission

Amendment

Article 3 a

Exploitation of broadcasting programmes through retransmission

The retransmission of works or other protected subject-matter included in a television or radio programme initially communicated to the public by a broadcasting organisation is an act of communication to the public of such a programme, irrespective of whether the retransmission service operator uses the same technical means or different technical means than those used for the initial act of broadcasting and irrespective of whether or not such retransmission takes place within the actual or intended area of reception of the initial broadcast.

Amendment 34

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4 a

*Exploitation of broadcasting programmes through a direct injection process
Broadcasters that transmit their programme-carrying signals through a direct injection process to distributors that are organisations other than those broadcasting organisations in accordance with the Berne Convention for reception by the public shall be jointly liable with their distributors for the single and indivisible acts of communication to the public and making available to the public, as provided for in Article 3 of Directive 2001/29/EC, which they carry out together. Such broadcasting organisations and such distributors should therefore obtain an authorisation from the right holders in question for their respective participation in such acts.*

Amendment 35

Proposal for a regulation Article 5

Text proposed by the Commission

Amendment

Article 5

deleted

Transitional Provisions

Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public and the making available occurring in the course of provision of an ancillary online service as well as for the acts of reproduction which are necessary for the provision of, the access to or the use of an ancillary

online service which are in force on [the date mentioned in Article 7(2), to be inserted by OPOCE] shall be subject to Article 2 as from [the date mentioned in Article 7(2) + 2 years, to be inserted by OPOCE] if they expire after that date.

Amendment 36

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

(1) No later than [3 years after the date mentioned in Article 7(2) to be inserted by OPOCE], the Commission shall carry out a review of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

Amendment

(1) No later than [3 years after the date mentioned in Article 7(2) to be inserted by OPOCE], the Commission shall carry out a review of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. ***The report shall be made easily and effectively accessible to the public.***

Amendment 37

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

(2) Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.

Amendment

(2) Member States shall provide the Commission, ***in a timely and accurate manner***, with the necessary information for the preparation of the report referred to in paragraph 1.

Amendment 38

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

(2) It shall apply from [6 months following the day of its publication, to be

Amendment

(2) It shall apply from [**18** months following the day of its publication, to be

inserted by OPOCE].

inserted by OPOCE].

EXPLANATORY STATEMENT

Easier access to TV and radio programmes via the internet is central to the efforts to complete the Digital Single Market. The invisible national borders which still persist in the digital sphere must become more permeable so that content which is already available online can be accessed across borders. It is absurd that access to digital content, which of its very nature is rapidly transferable and accessible, should be restricted by national borders, while physical goods have been able to cross these borders for some time.

In the field of copyright, geoblocking measures are the result of both legal fragmentation and the application of the territoriality principle.

While the regulation under consideration here does not restrict the application of the territoriality principle, the legal fragmentation problem is to be resolved through the introduction of a legal fiction in the form of the country-of-origin principle. In that respect, the regulation achieves a very balanced compromise between the conflicting interests. The rapporteur rejects other restrictions, so as not to narrow the scope of the regulation.

Legal fragmentation leads to excessive transaction costs, which in turn discourage broadcasting operators from guaranteeing cross-border access. The lack of opportunities for legal access prevents works from realising their full social potential. Broadcasting services are increasingly being consumed not via the traditional transmission routes of cable, satellite and the airwaves, but via the internet. In the process, however, it is not just the preferred way of accessing broadcasting services which is changing, but viewer behaviour as a whole, away from linear TV towards the non-linear, deferred consumption of services via the user's terminal device of choice. This change is particularly striking among the younger generation. The proposal deliberately does not go down the route of abolishing national licences in favour of a single pan-European licence, however. Instead, it takes up the tried and tested principle laid down in Article 1(2)(b) of Directive 93/83/EEC, the 'country-of-origin' principle, and extends it to the online sphere. In practice, this will simplify the management of rights by determining which national copyright law applies, thereby doing away to a very great extent with the problem of excessive transaction costs. On the other hand, the regulation does not introduce an obligation for broadcasting operators to provide services.

The rapporteur is aware of the significance of the European film industry and is keen for it to be safeguarded and promoted. For example, it provides some 1 million jobs, for scriptwriters, for film crews and actors and for ancillary service providers, and contributes to cultural diversity, which in turn is vital to the functioning of an information society and of democracy.

However, this diversity will have its full impact only if it is available to individuals, because only in this way can inclusive public discourse be promoted. The regulation promotes this form of diversity, without in any way calling into question any quantitative or qualitative aspect of diversity.

The rapporteur takes the view that the regulation will greatly improve the everyday lives of people in a wide range of groups in the EU. While the regulation on the cross-border portability of online content services in the internal market (hereinafter: the Portability Regulation) guarantees the cross-border use of payment services for services which have already been purchased, it makes this conditional on the user's stay in another Member State

being merely temporary. This includes stays for travel, holiday or study purposes.

The regulation under consideration here, meanwhile, focuses on groups of people who are permanently resident in a Member State and yet have a legitimate interest in accessing the online services of broadcasting operators established in other Member States.

This covers the 13.6 million or so people who, along with their families, are actively exercising their right to freedom of movement under EU law. This shows up particularly clearly the rigid nature of the borders that still exist in the digital internal market, unlike in the analogue single market. While freedom of movement for persons and goods in the internal market is guaranteed, access to broadcasting services, and thus to programmes from one's home country, is not.

The regulation will also benefit linguistic minorities in a number of Member States. In border areas in particular it is hard to explain to people why access to programmes broadcast in their native language is possible using old technologies, but not via the internet - which is by now also an established technology.

The regulation will also protect the legitimate interest in promoting foreign languages, which are the basis of understanding between European nations, by enabling people to listen to programmes broadcast in languages other than their own.

It will also simplify pan-European access to programmes from other Member States, thus making an important contribution to forming a European viewing public.

Lastly, the services covered by the Portability Regulation mostly provide only entertainment, while access to news and information services is excluded from its scope. Such access, however, is essential, particularly in the era of 'fake news' and declining trust in traditional media. It has special relevance as a tool for fostering democracy. Easier access to programmes from other Member States is to be welcomed in the interests of promoting an information society.

Competition law limits contractual freedom only in cases where anti-competitive agreements have been concluded (Article 101 and 102 TFEU). It is not the purpose of copyright law, however, to protect against possible breaches of primary law. What is more, in its *Murphy* judgment¹ the Court of Justice of the European Union has explicitly stated that its case law on intellectual property licensing agreements should be interpreted as meaning that exclusive licensing agreements referring to a single broadcasting Member State do not as such automatically lead to a finding of a breach of competition law. Other factors are needed to justify such a finding.

By broadening the scope of the country-of-origin principle, the justifying factor under competition law, namely the lack of the necessary broadcasting rights, ceases to apply. It is conceivable, however, that other legitimate interests, such as local interests and cultural preferences, might continue to be used to justify geoblocking measures.

The need for legislation is also emphasised by the fact that 82% of public and 62% of private broadcasting operators employ some kind of geoblocking, making it significantly harder to

¹ ECJ judgment of 4.10.2011, C-403/08 and C-429/08, paragraphs 137 et seq.

access information services. The number of people using Video Private Networks (VPN) to access content shows that there is a need for means of access, which should be met by enacting legislation which makes it possible to access this content legally.

The rapporteur is proposing the following important improvements to the Commission text:

- Rules on remuneration. The rapporteur is keen to reiterate the immense cultural importance of European film. To take account of the concerns voiced in particular by creative workers in the European film industry, the rapporteur proposes to clarify the rules on remuneration in Article 2(2) and to incorporate rules on remuneration into Article 3. The proposed clarification will ensure that authors, in particular of niche works, receive appropriate additional remuneration.
- The scope of the regulation, applying only to ancillary online services, seems too narrow in view of technological developments and the rapidly changing nature of the services on offer. In order to make that scope more appropriate, the rapporteur takes the view that the specific reference to broadcast programmes should be deleted. There are already programmes provided by broadcasting operators which are available only online.
- A transitional provision is being proposed regarding the application of the country-of-origin principle for purchased films and purchased episodes of television series, which are not productions that have been commissioned, so that business models can be brought into line with the new rules.
- A narrow time restriction is likewise not appropriate and the rapporteur is proposing to delete this reference. Time limits are already imposed under national law. In the rapporteur's view, it should be for the contracting parties to decide on the period of accessibility and to pay for this accordingly.
- Provision is made for direct injection liability.
- Cable retransmission must be made technology-neutral where it is equivalent to retransmissions from cable network operators, in order to take account of technological progress in this area too.

28.6.2017

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

(*) Associated committee – Rule 54 of the Rules of Procedure

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 and radio programmes. Users increasingly expect to have access to television and radio programmes both live and on-

Amendment

(2) The development of digital technologies and internet has transformed ***and continues to transform*** the distribution of and access to television and radio programmes. Users increasingly expect to have access to television and

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.

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, such as simulcasting, *webcasting* and catch-up services, *that are complementary to their traditional linear output. Furthermore, broadcasting organisations are also making television- and radio-like programmes available online only or online first. Such practices represent a growing reality that can be explained by changing market realities and consumer demands.* 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. *The distribution of and access to television and radio programmes is therefore increasingly done on a multi-platform and technology-neutral basis.* On the part of users, there is a growing demand for access to broadcasts of television and radio programmes *on any platform in a borderless environment, therefore* 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.

Amendment 2

Proposal for a regulation

Recital 3

(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, 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.

(3) Broadcasting organisations transmit daily many hours of news ***and current affairs*** 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 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.

Amendment 3

Proposal for a regulation

Recital 4

(4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. ***There is also a risk for***

(4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights

right holders of having their works and other protected subject matter exploited without authorisation or payment of remuneration.

clearing burden.

Amendment 4

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council¹⁵ and Directive 2006/115/EC of the European Parliament and of the Council.¹⁶

¹⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10–19.

¹⁶ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28–35.

Amendment 5

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) Council Directive 93/83/EEC¹⁷

Amendment

(5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council¹⁵ and Directive 2006/115/EC of the European Parliament and of the Council.¹⁶ ***The principal objective of those instruments is to establish a high level of protection for rightholders.***

¹⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10.

¹⁶ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28.

(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.

¹⁷ Council 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.

facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States of the Union.

¹⁷ Council 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.

Amendment 6

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

deleted

Amendment 7

Proposal for a regulation

Recital 8

Text proposed by the Commission

Amendment

(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 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.

deleted

Amendment 8

Proposal for a regulation

Recital 11

Text proposed by the Commission

Amendment

(11) Through the principle of

(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.

contractual freedom *and in order to support existing licensing models, such as exclusive territorial licensing, which make the financing mechanisms that are vital to audiovisual production as well as the optimal distribution and promotion of cultural diversity possible, it should* 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, *such as geo-blocking and geo-filtering*, or certain language versions are concerned, provided that any such limitations of the exploitation of those rights are in compliance with Union law.

Amendment 9

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The underlying rationale of many international co-production agreements is that the rights in the co-production are exercised separately and independently by each co-producer, by dividing the exploitation rights between them along territorial lines. In exercising the rights of each co-producer, the rights of another co-producer have to be taken into account while respecting the financing share of the parties. Where authorisation of communication to the public or making available to the public of co-produced audiovisual works by one co-producer would seriously prejudice the value of the exploitation rights of another co-producer, agreements between the co-producers could contain provisions to cover situations in which the latter co-producer has to give his or her consent to the authorisation by the former co-producer, for example where the language version or versions of the works

made available, including where the version is dubbed or subtitled, coincide with the language or the languages widely understood in the territory allotted by the agreement to another co-producer. Therefore, agreements between the co-producers could require, to the extent compatible with Union law, the use of technical measures in order to prevent the party from interfering in another party's agreed territorial exploitation.

Amendment 10

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) Direct injection technologies allow the programme-carrying signal of a broadcaster organisation to be transmitted exclusively to operators of retransmission services. The operators in turn package the signals and deliver them to their customers, frequently including other value added related services such as catch-up, local portability, streaming services. Delivering programming that is bundled and managed by broadcaster organisations accounts for a significant share of revenue for operators of cable retransmission services. Operators of retransmission services should continue to remunerate rights holders irrespective of the technology used.

Amendment 11

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) Operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile

(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 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.

and similar networks **and via an internet access service in accordance with Regulation (EU) No 2015/2120 of the European Parliament and of the Council^{1a}**, provide services **that** 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, **as well as** 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 **that** are offered on the open internet should **only** be excluded from the scope of this Regulation **if they cannot** ensure a **closed** environment when compared for example to cable or closed circuit IP-based networks.

^{1a} **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 Recital 13

Text proposed by the Commission

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial,

Amendment

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, IP-

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 retransmission service through a collective management organisation. This is without prejudice to Directive¹⁸ 2014/26/EU and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation.

¹⁸ Directive 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.

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 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.

¹⁸ Directive 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.

Amendment 13

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In order to satisfy consumer demand, the exercise of retransmission rights as defined in this Regulation and in Council Directive 93/83/EEC should also apply to functionalities which are closely connected to the linear broadcast for which the retransmission rights are obtained. Time-shifted services, which are only made available for a certain period of time, as agreed by contract between the parties, during or after the retransmission, such as internet-based PVR (personal video recording) and restart-TV, should be regarded as such functionalities. A functionality which

substitutes a broadcasting organisation's online services should not be considered as a functionality which is closely connected to the linear broadcast for which the retransmission rights are obtained. The exercise of retransmission rights should therefore not apply to such a functionality offered by a retransmission operator.

Amendment 14

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

(15) In order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of an ancillary online service, it is necessary to apply the principle of country of origin also to existing agreements but with a transitional period.

deleted

Amendment 15

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Broadcasters that transmit their programme-carrying signals through a direct injection process to distributors for reception by the public should be jointly liable with those distributors for the single and indivisible acts of communication to the public and making available to the public, as defined in Article 3 of Directive 2001/29/EC, which they carry out together. Such broadcasting organisations

and distributors should therefore obtain an authorisation from the rightholders concerned as regards their respective participation in such acts.

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) ‘current affairs programmes’ means a genre of broadcast journalism in which the emphasis is on detailed analysis and discussion of news stories that have recently occurred or are ongoing at the time of broadcast;

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) ‘news programmes’ means a genre of programme that places emphasis on news reports produced for simple presentation as soon as possible, often with a minimum of analysis;

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(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

(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.

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 *ultimately* 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. ***Online retransmissions are within the scope of this Regulation as long as they are linked to a particular infrastructure or are capable of ensuring a controlled user group environment;***

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.

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 19

Proposal for a regulation Article 1 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) “closed environment” means any environment in which a retransmission operator only provides a retransmission service to a definable group of consumers;

Amendment 20

Proposal for a regulation
Article 1 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) “*direct injection*” means a two- or more step process by which broadcasting organisations transmit “point to point” – by wire or over the air, including by satellite – in such a way that the programme-carrying signals cannot be received by the general public during such transmission, their programme-carrying signals for reception by the public to distributors who then offer those programmes to the public, simultaneously in an unaltered and unabridged manner, for viewing or listening on cable, microwave systems, satellite, digital terrestrial, IP-based or similar networks.

Amendment 21

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 or solely targeted at an audience in a Member State which is not the broadcasting organisation’s country of principal establishment.

Amendment 22

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

Text proposed by the Commission

Amendment

(1b) Paragraph 1 shall not undermine contractual freedom in the field of copyright law and shall be without prejudice to the rights set out in Directive 2001/29/EC. Rightholders and rights users may therefore agree to limit the

geographical scope of rights affected by the principle of country of origin, provided that they respect the relevant rules.

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

(1c) Paragraph 1 shall not apply to acts of communication to the public, making available to the public and reproduction of:

(i) audiovisual works licensed to the broadcasting organisation by a third party, including by another broadcasting organisation, except if such audiovisual works are commissioned and fully financed by the broadcasting organisation providing the online service referred to in paragraph 1;

(ii) co-produced audiovisual works unless they are fully financed by the broadcasting organisation; and

(iii) works or other protected subject-matter included in transmissions of sports events.

Amendment 24

Proposal for a regulation

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The principle of contractual freedom safeguards the ability to limit the exploitation of the rights affected by the principle of country of origin laid down in paragraph 1, including by agreeing absolute territorial exclusivity. In the event that decisions in relation to Union law prevent contractual clauses which grant and/or enforce absolute territorial

exclusivity, the provision in paragraph 1 shall no longer apply.

Amendment 25

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Where an author has transferred his or her right of retransmission to a broadcasting organisation or a producer, that author shall retain the right to obtain equitable remuneration for the retransmission of his or her work. The administration of such a right may be entrusted to a collective management organisation representing authors.

This provision shall not preclude collective bargaining agreements, operating arrangements and joint remuneration rules of broadcasting organisations, producers and trade unions provided that the author is granted an equitable remuneration for the retransmission of his or her work.

Amendment 26

Proposal for a regulation

Article 5

Text proposed by the Commission

Amendment

Article 5

deleted

Transitional provision

Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public and the making available occurring in the course of provision of an ancillary online service as well as for the acts of reproduction which are necessary for the provision of, the access to or the use of an ancillary online service which are in force on [the

date mentioned in Article 7(2), to be inserted by OPOCE] shall be subject to Article 2 as from [the date mentioned in Article 7(2) + 2 years, to be inserted by OPOCE] if they expire after that date.

Amendment 27

Proposal for a regulation Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

***Exploitation of broadcasting programmes
through a direct injection process***

Broadcasting organisations that transmit their programme-carrying signals through a direct injection process to distributors for reception by the public are jointly liable together with such distributors for the single and indivisible acts of communication to the public and making available to the public, as defined in Article 3 of Directive 2001/29/EC, which they carry out together. Such broadcasting organisations and such distributors shall therefore obtain an authorisation from the rights holders concerned as regards their respective participation in such acts.

Amendment 28

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(1) No later than [3 years after the date mentioned in Article 7(2) to be inserted by OPOCE], the Commission shall carry out a review of this Regulation and present a report on the main findings to the European Parliament, the Council and the European

(1) No later than [3 years after the date mentioned in Article 7(2) to be inserted by OPOCE], the Commission shall carry out a review of this Regulation and present a report on the main findings to the European Parliament, the Council and the European

Economic and Social Committee.

Economic and Social Committee. *The report shall be made easily and effectively accessible to the public.*

**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)

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes
References	COM(2016)0594 – C8-0384/2016 – 2016/0284(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	CULT 6.10.2016
Associated committees - date announced in plenary	16.3.2017
Rapporteur Date appointed	Petra Kammerevert 25.10.2016
Discussed in committee	28.2.2017
Date adopted	21.6.2017
Result of final vote	+: 19 –: 9 0: 1
Members present for the final vote	Dominique Bilde, Andrea Bocskor, Silvia Costa, Angel Dzhambazki, Jill Evans, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Curzio Maltese, Stefano Maullu, Morten Messerschmidt, Luigi Morgano, Momchil Nekov, John Procter, Michaela Šojdrová, Martin Sonneborn, Yana Toom, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
Substitutes present for the final vote	Emma McClarkin, Martina Michels
Substitutes under Rule 200(2) present for the final vote	David Borrelli

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
ECR	Angel Dzhambazki, Emma McClarkin, Morten Messerschmidt, John Procter
PPE	Andrea Bocskor, Svetoslav Hristov Malinov, Stefano Maullu, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Michaela Šojdrová
S&D	Silvia Costa, Giorgos Grammatikakis, Momchil Nekov, Julie Ward, Krystyna Łybacka
Verts/ALE	Helga Trüpel

9	-
ALDE	María Teresa Giménez Barbat, Yana Toom
EFDD	David Borrelli
ENF	Dominique Bilde
GUE/NGL	Curzio Maltese, Martina Michels
NI	Martin Sonneborn
S&D	Petra Kammerevert
Verts/ALE	Jill Evans

1	0
S&D	Luigi Morgano

Key to symbols:

+ : in favour

- : against

0 : abstention

23.6.2017

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

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: Jerzy Buzek

SHORT JUSTIFICATION

The proposal for a regulation aims at promoting wider dissemination of television and radio programmes by extending certain principles of the 1993 Satellite and Cable Directive to the online environment, including the country-of-origin principle to “ancillary” online services of broadcasters and the extension of mandatory collective rights management for retransmission services provided by means other than cable, over closed networks.

The rapporteur supports the general approach taken by the Commission to extend the country-of-origin principle to “ancillary” online services of broadcasters to facilitate licencing of copyrights and related works. In addition, the rapporteur welcomes the provisions regarding the extension of mandatory collective rights management, but takes the view that also retransmissions over the open internet should be covered, provided they are linked to a controlled environment, such as a definable user group based on user registration or verification.

At the same time it should be stressed, that these new rules are compatible with the principle of contractual freedom, which is crucial for the long-term viability of European audio-visual works. The rapporteur seeks to strengthen these provisions by taking into account the impact of this Regulation on the financing of and investment in audio-visual work in Europe in the Commission’s review of the Regulation.

AMENDMENTS

The Committee on Industry, Research and Energy 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 1

Text proposed by the Commission

(1) In order to contribute to the functioning of the internal market, it is necessary to provide for wider dissemination of television and radio programmes originating in other Member States for the benefit of users across the Union by facilitating licensing of copyright and related rights in works and other protected subject-matter contained in broadcasts of such programmes. ***Indeed, television and radio programmes are important means of promoting cultural and linguistic diversity, social cohesion and access to information.***

Amendment

(1) In order to contribute to the functioning of the internal market ***and to promote cultural and linguistic diversity, social cohesion, and access to information***, it is necessary to provide for wider dissemination of television and radio programmes originating in other Member States for the benefit of users across the Union by facilitating licensing of copyright and related rights in works and other protected subject-matter contained in broadcasts of such programmes.

Amendment 2

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The creation of business links between media and radio services operators in Member States should be encouraged, so that, at the request of a consumer resident in any given Member State, bundled services can be provided that include programmes from another Member State.

Amendment 3

Proposal for a regulation

Recital 2

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

(2) The development of digital technologies **of the online marketplace is transforming** the distribution of and access to television 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, ancillary to their broadcast online services, such as simulcasting and catch-up services, **in order to broaden their standard programming**. 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. **The distribution of and access to television and radio programmes is therefore increasingly done on a multiplatform and technologically neutral basis**. On the part of users, there is a growing demand for access to broadcasts of television and radio programmes **on any platform in a borderless environment, therefore** 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 **a** Member State **other** than their Member State of origin **or who travel there temporarily**.

Amendment 4

Proposal for a regulation Recital 2 a (new)

(2a) *Audiovisual media service providers should endeavour to ensure that their technical services are gradually made accessible to persons with visual or hearing disabilities.*

Amendment 5

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, 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.

Amendment

(3) Broadcasting organisations transmit daily many hours of news ***and current affairs*** 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.

Amendment 6

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. There is also a risk for right holders of having their works and other protected subject matter exploited without authorisation or payment of remuneration.

Amendment

(4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. There is also a risk for right holders of having their works and other protected subject matter exploited without authorisation or payment of *fair* remuneration ***if the access to the service is not provided based on individual subscriptions, a definable user group or in exchange of a price. Such a risk can however be addressed through contractual agreements.***

Amendment 7

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council¹⁵ and Directive 2006/115/EC of the European Parliament and of the Council.¹⁶

Amendment

(5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council¹⁵ and Directive 2006/115/EC of the European Parliament and of the Council¹⁶, ***which serves in particular to ensure protection of right holders.***

¹⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10–19.

¹⁶ Directive 2006/115/EC of the European Parliament and of the Council of 12

¹⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10–19.

¹⁶ Directive 2006/115/EC of the European Parliament and of the Council of 12

December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28–35.

December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28–35.

Amendment 8

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.***

¹⁷ Council 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.

Amendment 9

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Therefore, cross-border provision

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 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.

¹⁷ Council 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.

(7) Therefore, ***in order to facilitate***

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.

cross-border provision of online services ***which are*** ancillary to broadcast and retransmissions of television and radio programmes originating in other Member States, ***it is necessary to adapt the specific*** legal framework on the exercise of copyright and related rights relevant for those activities. ***Online cross-border access to European content will be further enhanced by including in the ancillary online services of broadcasting organisations services that exclusively consist of the provision to the public of works which are produced under their editorial responsibility and that are only broadcast online.***

Amendment 10

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 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***

Amendment

(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 defined time period after ***broadcasting***, to television and radio programmes which have been previously broadcast ***or, before broadcasting, to television and radio programmes which will be broadcast*** by the broadcasting organisation (***for example*** catch-up services ***or previews***). 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 ***or any service by a***

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.

broadcasting organisation that exclusively consists of the provision to the public of works produced by the broadcasting organisation. The provision of access to works or other protected subject matter independently and separately from the broadcasting organisation's programming, 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

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Since the provision of, ***the access to or the use of*** an ancillary online service is deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of the payment to be made for the rights in question, the parties should take into account all aspects of the ancillary online service such as the features of the service, the audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and ***the language version.***

Amendment

(10) Since the provision of an ancillary online service is deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of the payment to be made for the rights in question, the parties should take into account all aspects of the ancillary online service such as the features of the service, the ***potential and effective*** audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and ***all language versions. Online services which, taken as a whole, are primarily and mainly targeted at an audience outside the Member State in which the broadcasting organisation has its principal establishment should be excluded from the scope of this Regulation.***

Amendment 12

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) ***This Regulation affects neither the rights provided under Directive 2001/29/EC nor the acquisition or sale of rights on a contractual basis for such ancillary online services. Therefore, through the principles of territoriality 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 national and Union laws.***

Amendment 13

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 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

Amendment

(12) Operators of retransmission services offered on satellite, digital terrestrial, IP-based, mobile and similar networks, ***as well as certain other retransmissions***, 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 ***and*** online transmissions, and intended for reception by the public. They should therefore be within the scope of this Regulation and

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*.

Amendment 14

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 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.

¹⁸ Directive 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.

benefit from the mechanism introducing mandatory collective management of rights. Retransmission services which are offered on the open internet should be *included in* the scope of this Regulation as *long as* they are *provided in* a controlled environment *such as a defined group of subscribers or registered users and comparable to closed circuits networks*.

Amendment

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, 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 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.

¹⁸ Directive 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.

Amendment 15

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14 a) Broadcasters that transmit their programme carrying signals through a direct injection process to distributors for reception by the public should be jointly liable with their distributors for the single and indivisible acts of communication to the public and of making available to the public, as defined in Article 3 of Directive 2001/29/EC, which they carry out together. Such broadcasting organisations and distributors should therefore obtain an authorisation from the rights holders concerned with regard to their respective participation in such acts.

Amendment 16

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

(14 b) The application of copyright and related rights is in some cases divided into numerous territorially defined national rights, with different right holders and exercised in some cases by a different entity. A database maintained by collective management organisations is therefore needed to facilitate the identification of right holders and the ability of broadcasting organisations and retransmission operators to conclude licensing agreements.

Amendment 17

Proposal for a regulation
Recital 14 c (new)

Text proposed by the Commission

Amendment

(14 c) The exemption provided for in Article 4 for the rights exercised by broadcasting organisations should not limit the choice of right holders to transfer their rights to a collective management organisation and thereby have a direct share in the remuneration paid by the operator of a retransmission service.

Amendment 18

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) In order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of an ancillary online service, it is necessary to apply the principle of country of origin also to existing agreements but with a transitional period.

deleted

Amendment 19

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there may be an interference

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there may be an interference

with the exercise of the rights of right holders insofar as mandatory collective management is required for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner for specific services and in order to allow more widespread cross-border dissemination of television and radio programmes by facilitating the clearance of these rights.

with the exercise of the rights of right holders insofar as mandatory collective management is required for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner for specific services and in order to allow more widespread cross-border dissemination of television and radio programmes, ***as well as access to information***, by facilitating the clearance of these rights. ***In addition, this Regulation is without prejudice to arrangements in Member States concerning the management of rights such as extended collective licences, legal presumptions of representation or transfer, collective management or similar arrangements or a combination of them.***

Amendment 20

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) A review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess, among others, to what extent the cross-border provision of ancillary online services has increased to the benefit of European consumers and hence also to the benefit of improved cultural diversity in the Union.

Amendment

(18) A review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess, among others, ***and in the light of the entry into force of the Regulation* of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market***, to what extent the cross-border provision of ancillary online services has increased to the benefit of European consumers and hence also to the benefit of improved cultural diversity in the Union, ***paying special attention to its impact on investment in European content.***

* ***Regulation not yet adopted.***

Amendment 21

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Since the objective of this Regulation, namely promoting the cross-border provision of ancillary online services and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of ancillary online services, this Regulation establishes enabling mechanisms to facilitate the clearance of copyright and related rights. This Regulation does not oblige broadcasting organisations to provide such services across borders. Neither does this Regulation oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Regulation concerns only the exercise of certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union,

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point a

PE604.674v02-00

68/96

RR\1140488EN.docx

Amendment

(19) Since the objective of this Regulation, namely promoting the cross-border provision of ancillary online services *of broadcasters* and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of ancillary online services *of broadcasters*, this Regulation establishes enabling mechanisms to facilitate the clearance of copyright and related rights. This Regulation does not oblige broadcasting organisations to provide such services across borders. Neither does this Regulation oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Regulation concerns only the exercise of certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union,

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) "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 the following services:***

(i) "Catch-up service" means a service consisting in the provision to the public, for a limited period of time, of radio or television programmes which have been previously broadcast by the broadcasting organisation;

(ii) "Simulcasting service" means a service consisting in the provision to the public of radio or television programmes in a linear manner simultaneously to the broadcast;

(iii) "Ancillary expanded audiovisual material services" means services which give access to material which enriches or expands television and radio programmes broadcast by a broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content.

These definitions include online services provided by a broadcasting organisation that consist of the provision to the public of works produced by the broadcasting organisation and that are only broadcast online;

Amendment 23

**Proposal for a regulation
Article 1 – paragraph 1 – point b**

(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 Council¹⁹**, 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.

(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, by wire or over the air, including that by satellite **or** online transmission, of television or radio programmes intended for the reception by the public, provided that such retransmission is **equivalent to those carried out by cable retransmission services operators and is made in a closed environment and** by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility such transmission was made **and for which that party has acquired the relevant rights. Online retransmissions are within the scope of this Regulation provided that they take place in a controlled environment and the group of recipients of such retransmissions can be clearly defined.**

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 24

Proposal for a regulation

Article 1 – paragraph 1 – point b a (new)

(b a) "direct injection" means a two- or more step process whereby broadcasting organisations transmit the signals carrying their television or radio programmes intended for reception by the public to service providers through a point-to-point communication -by wire or over the air, including by satellite – in such a way that the signals cannot be accessed by the general public during such transmission. Service providers offer these programmes to the public, simultaneously in an unaltered and unabridged manner, for viewing or listening by various techniques such as cable, microwave systems, satellite, digital terrestrial, IP-based, mobile or similar networks.

Amendment 25

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

(1) The acts of communication to the public and of making available occurring when providing an ancillary online service by or under the control and responsibility of a broadcasting organisation as well as the acts of reproduction **which are necessary for the provision of, the access to or the use** of the ancillary online service shall, for the purposes of exercising copyright and related rights relevant for these acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Amendment

(1) The acts of communication to the public and of making available **of news and current affairs programmes** occurring when providing an ancillary online service by or under the control and responsibility of a broadcasting organisation as well as the acts of reproduction **of news and current affairs programmes which are necessary for the provision** of the ancillary online service shall, for the purposes of exercising copyright and related rights relevant for these acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Amendment 26

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

Text proposed by the Commission

Amendment

(1 a) Paragraph 1 is without prejudice to the principles of territoriality and contractual freedom under copyright and to any right provided under Directive 2001/29/EC. On this basis, the parties shall be entitled to continue agreeing on the introduction of limits on the exploitation of the rights referred to in paragraph 1, provided that any such limitations are in compliance with Union and national law.

Amendment 27

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

Amendment

(2) When fixing the amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties shall take into account all aspects of the ancillary online service such as the features of the ancillary online service, the audience, and the language *version*.

(2) When fixing the amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties shall take into account all aspects of the ancillary online service such as the features of the ancillary online service, the audience ***in the Member State in which the broadcaster has its principal establishment, as well as the audience in other Member States***, and the ***different*** language *versions*.

Amendment 28

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

Text proposed by the Commission

Amendment

(2 a) Any disputes with regard to the exercise of the rights resulting from this

Article shall fall under the competent jurisdiction of the Member State in which the broadcasting organisation providing the online service is established.

Amendment 29

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

Text proposed by the Commission

Amendment

(2 b) Paragraph 1 does not apply to ancillary online services that are primarily and mainly targeted at an audience outside the Member State in which the broadcasting organisation has its principal establishment.

Amendment 30

Proposal for a regulation Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1 a) When authors have transferred their right to retransmission to a producer, they shall retain an unwaivable right to obtain equitable remuneration for the retransmission of the work which may be exercised only through a collective management organisation representing authors, unless other collective management agreements guarantee such remuneration to audiovisual authors.

Amendment 31

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

reutilisation 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 right holders of the same group who are not already represented by the representative association. The unrepresented right holders may object to this extension at any time and manage their rights individually or collectively in another grouping.

Amendment 32

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

Text proposed by the Commission

Amendment

(5b) Collective management organisations shall maintain a database providing information relating to the application of the copyright and related rights including the owner of a right, the type of use, the territory, and period of time applicable to the protected works.

Amendment 33

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

Text proposed by the Commission

Amendment

(5c) Paragraphs 1 to 5 shall apply to service providers who transmit to the public television and radio programmes of broadcasting organisations received through direct injection.

Amendment 34

Proposal for a regulation Article 4 a (new)

Article 4 a

Exploitation of broadcasting programmes through a direct injection process

Broadcasting organisations that transmit their programme carrying signals through a direct injection process to distributors for reception by the public are jointly liable together with such distributors for the single and indivisible acts of communication to the public and of making available to the public, as defined in Article 3 of Directive 2001/29/EC, which they carry out together. In such a situation, both the broadcasting organisation and the distributors involved in the process should obtain an authorisation from the relevant right holders as concerns their respective participation and exploitation in such acts.

Amendment 35

**Proposal for a regulation
Article 5**

Article 5

deleted

Transitional provision

Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public and the making available occurring in the course of provision of an ancillary online service as well as for the acts of reproduction which are necessary for the provision of, the access to or the use of an ancillary online service which are in force on [the date mentioned in Article 7(2), to be inserted by OPOCE] shall be subject to Article 2 as from [the date mentioned in Article 7(2) + 2 years, to be inserted by OPOCE] if they expire after that date.

Amendment 36

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

(2) It shall apply from [**6** months following the day of its publication, to be inserted by OPOCE].

Amendment

(2) It shall apply from [**12** months following the day of its publication, to be inserted by OPOCE].

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes	
References	COM(2016)0594 – C8-0384/2016 – 2016/0284(COD)	
Committee responsible Date announced in plenary	JURI 6.10.2016	
Opinion by Date announced in plenary	ITRE 6.10.2016	
Rapporteur Date appointed	Angelika Mlinar 21.11.2016	
Discussed in committee	24.4.2017	25.4.2017
Date adopted	21.6.2017	
Result of final vote	+: 40	–: 15
	0: 0	
Members present for the final vote	Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, David Borrelli, Cristian-Silviu Buşoi, Jerzy Buzek, Edward Czesak, Jakop Dalunde, Christian Ehler, Fredrick Federley, Adam Gierak, Theresa Griffin, András Gyürk, Rebecca Harms, Hans-Olaf Henkel, Eva Kaili, Kaja Kallas, Krišjānis Kariņš, Seán Kelly, Jaromír Kohlíček, Peter Kouroumbashev, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Angelika Mlinar, Csaba Molnár, Dan Nica, Angelika Niebler, Aldo Patriciello, Morten Helveg Petersen, Miroslav Poche, Michel Reimon, Herbert Reul, Paul Rübig, Algirdas Saudargas, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Vladimír Urutchev, Kathleen Van Brempt, Henna Virkkunen, Lieve Wierinck, Flavio Zanonato, Carlos Zorrinho	
Substitutes present for the final vote	Pilar Ayuso, Francesc Gambús, Françoise Grossetête, Constanze Krehl, Werner Langen, Olle Ludvigsson, Florent Marcellesi, Anne Sander, Davor Škrlec	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

40	+
ECR	Edward Czesak, Hans-Olaf Henkel, Zdzisław Krasnodębski, Evžen Tošenovský
PPE	Pilar Ayuso, Bendt Bendtsen, Jerzy Buzek, Cristian-Silviu Buşoi, Christian Ehler, Francesc Gambús, Françoise Grossetête, András Gyürk, Krišjānis Kariņš, Seán Kelly, Werner Langen, Janusz Lewandowski, Angelika Niebler, Aldo Patriciello, Herbert Reul, Paul Rübig, Anne Sander, Algirdas Saudargas, Vladimir Urutchev, Henna Virkkunen
S&D	José Blanco López, Adam Gierek, Theresa Griffin, Eva Kaili, Peter Kouroumbashev, Constanze Krehl, Miapetra Kumpula-Natri, Olle Ludvigsson, Edouard Martin, Csaba Molnár, Dan Nica, Miroslav Poche, Patrizia Toia, Kathleen Van Brempt, Flavio Zanonato, Carlos Zorrinho

15	-
ALDE	Fredrick Federley, Kaja Kallas, Angelika Mlinar, Morten Helveg Petersen, Lieve Wierinck
EFDD	David Borrelli, Dario Tamburrano
GUE	Xabier Benito Ziluaga, Jaromír Kohlíček, Paloma López Bermejo
Verts/ALE	Jakop Dalunde, Rebecca Harms, Florent Marcellesi, Michel Reimon, Davor Škrlec

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention

6.6.2017

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

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: Vicky Ford

AMENDMENTS

The Committee on the Internal Market and Consumer Protection 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 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

Amendment

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

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 television and radio programmes, **including catch-up services**, 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. ***Such growing demand is a positive development and geo-blocking should not be the default position for all audiovisual content produced in the Union and transmitted online. However, the territorial funding model for European content is vital to the success of the European audiovisual media sector.***

Amendment 2

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. There is also a risk for right holders of having their works and other protected subject matter exploited

Amendment

(4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. There is also a risk for right holders of having their works and other protected subject matter exploited

without authorisation or payment of remuneration.

without authorisation or payment of *appropriate* remuneration.

Amendment 3

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 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.

Amendment

(8) The ancillary online services covered by this Regulation are services offered by broadcasting organisations which include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and *non-linear* services giving access *at the earliest one month before, during or* after the broadcast, to television and radio programmes broadcast by the broadcasting organisation (so-called *streaming and* 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, *as well as material genuinely produced for the online environment*. 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 music albums or videos do not fall under the definition of ancillary online service.

Amendment 4

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Since the provision of, the access to or the use of an ancillary online service is deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of **the payment** to be **made** for the rights in question, the parties should take into account all aspects of the ancillary online service such as the features of the service, the audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and **the language version**.

Amendment

(10) Since the provision of, the access to or the use of an ancillary online service is deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of **appropriate remuneration** to be **paid** for the rights in question, the parties should take into account all aspects of the ancillary online service such as the features of the service, the **actual and potential** audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and **all available language versions and subtitled versions**. **Furthermore, such remuneration should be reasonable in relation to the economic value of the service provided.**

Amendment 5

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

Amendment

(11) **It is important to recall that,** 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, **as the implementation of Directive 93/83/EEC has proven,** especially as far as certain technical means of transmission or certain

rights are in compliance with Union law.

language versions *and the nature and execution of certain contracts* are concerned, provided that any such limitations of the exploitation of those rights are in compliance with *national and* Union law.

Amendment 6

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) As affirmed by the Court of Justice, it is possible for rightsholders to obtain appropriate remuneration for the exploitation of their works or other subject-matter in compliance with Article 101 TFEU.

Amendment 7

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) This Regulation, in line with the principle of contractual freedom, does not prevent existing licensing models, such as territorial licensing, and is without prejudice to existing provisions of national copyright contract law regarding appropriate remuneration, as well as existing collective management solutions for retransmission within a Member State.

Amendment 8

Proposal for a regulation Recital 12

(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 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.**

(12) Operators of retransmission services offered on satellite, digital terrestrial, **both open and** closed circuit IP-based, mobile and similar networks, 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 , 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. **IP-based** retransmission services, **both offered on closed-circuit networks and** on the open internet, should be **included in** the scope of this Regulation **and benefit from the mechanism introducing mandatory collective management of rights as long as they ensure** a controlled environment **comparable to** closed circuit networks **and can show that their services are provided to a clearly-definable group of subscribers or registered users. The inclusion of such services is crucial for allowing, in line with consumer expectations, portability of such services within the Member State of residence, as well as beyond, through the mechanism established by Regulation (EU) 2017/... of the European Parliament and of the Council ^{1a}.**

1a Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market (2015/0284(COD)).

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 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.

¹⁸ Directive 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.

Amendment 10

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

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 a controlled environment and a definable user group can be ensured**, 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 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.

¹⁸ Directive 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.

(13a) Distributors, such as cable or platform operators, that receive

programme carrying signals through a direct injection process for reception by the public should be covered by the mandatory collective management provisions outlined in this Regulation, even if a communication to the public has not taken place prior to the transmission of the signal by the distributor. Distributors should therefore obtain an authorisation from the relevant rightholders as concerns their respective participation in such acts, subject to mandatory collective management. The notion of “direct injection” is a technical term for the specific situation in which cable or other platform operators receive the broadcast signal directly from the broadcaster’s premises or via a privately-closed network, so that such broadcast signal is not transmitted for reception by the public before it is transmitted by the operator receiving the signal. In this situation, which typically occurs within a Member State, there is only one, single communication to the public of such a programme-carrying signal. This clarification is important in order to avoid further complexity in the interpretation of the notion of communication to the public, which would have consequences beyond the issue of retransmission.

Amendment 11

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The application of copyright and related rights is in some cases divided into numerous territorially defined national rights, with different rightholders and exercised in some cases by a different entity. A database maintained by collective management organisations is therefore needed to facilitate the identification of rightholders and the

ability of broadcasting organisations and retransmission operators to conclude licensing agreements.

Amendment 12

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) In order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of an ancillary online service, it is necessary to apply the principle of country of origin also to existing agreements but with a transitional period.

Amendment

deleted

Amendment 13

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there may be an interference with the exercise of the rights of right holders insofar as mandatory collective management is required for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner for specific services and in order to allow more widespread cross-border dissemination of television and radio programmes by facilitating the clearance of these rights.

Amendment

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there may be an interference with the exercise of the rights of right holders insofar as mandatory collective management is required for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner for specific services and in order to allow more widespread cross-border dissemination of television and radio programmes by facilitating the clearance of these rights. ***This Regulation***

should be without prejudice to any existing or future arrangements in the Member States concerning the management of rights such as extended collective licences, legal presumptions of representation or transfer, collective management or similar arrangements or a combination of them.

Amendment 14

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) A review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess, *among others*, to what extent the cross-border provision of ancillary online services has increased to the benefit of European consumers and hence also to the benefit of improved cultural diversity in the Union.

Amendment

(18) ***In line with the principles of better regulation***, a review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess ***the impact of the Regulation, and primarily***, to what extent the cross-border provision of ancillary online services has increased to the benefit of European consumers and hence also to the benefit of improved cultural diversity in the Union. ***This review should be coordinated, where appropriate, with provisions aimed at improving the cross-border accessibility of content on video-on-demand platforms that were included in Article 10 of Directive 2017/... of the European Parliament and of the Council^{1a}, in the form of a dispute resolution mechanism. Should this mechanism not lead to a significant increase in the cross-border availability of content on video-on-demand platforms, the inclusion of those services in the scope of this Regulation should be considered.***

^{1a} ***Proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM(2016)0593.***

Amendment 15

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) "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 ***produced by or for the broadcasting organisation, including co-productions, at the earliest one month before***, simultaneously with, ***during*** or for a defined period of time after their broadcast by the broadcasting organisation as well as of any material produced ***or co-produced*** by or for the broadcasting organisation which is ancillary to such broadcast;

Amendment 16

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 Council¹***, 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

Amendment

(b) "retransmission" means any unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC, ***in a controlled environment*** intended for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite, 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.

which made the initial transmission or under whose control and responsibility such transmission was made.

¹ 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 17

Proposal for a regulation

Article 1 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) “direct injection” means a two- or more step process by which broadcasting organisations transmit their programme-carrying signals point to point via a private line, in such a way that the programme-carrying signals cannot be received by the general public during the transmission, to a distributor who then offers these programmes to the public in an unaltered and unabridged manner, for viewing or listening on cable, microwave systems, satellite, digital terrestrial, IP-based or similar networks.

Amendment 18

Proposal for a regulation

Article 2 - paragraph 1

Text proposed by the Commission

(1) The acts of communication to the public and of making available occurring when providing an ancillary online service by or under the control and responsibility of a broadcasting organisation as well as the acts of reproduction which are necessary for the provision of, the access to or the use of the ancillary online service shall, for the purposes of exercising copyright and related rights relevant for these acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Amendment

(1) ***Without prejudice to the option to transfer exclusive rights***, the acts of communication to the public and of making available ***to the public*** occurring when providing an ancillary online service by or under the control and responsibility of a broadcasting organisation as well as the acts of reproduction which are necessary for the provision of, the access to or the use of the ancillary online service shall, for the purposes of exercising copyright and related rights relevant for these acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment. ***Any disputes over the exercise of such copyright and related rights shall fall under the jurisdiction of that Member State.***

Amendment 19

**Proposal for a regulation
Article 2 - paragraph 2**

Text proposed by the Commission

(2) When fixing the amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties shall take into account all aspects of the ancillary online service such as the features of the ancillary online service, the audience, and ***the language version***.

Amendment

(2) When fixing the ***appropriate*** amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties shall take into account all aspects of the ancillary online service such as the features of the ancillary online service, the audience, ***the potential audience in the Member State in which the broadcasting organisation has its principal establishment and any other Member States concerned***, and ***all language versions and subtitled versions***.

Amendment 20

Proposal for a regulation

Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(5a) Paragraphs 1 to 5 shall also apply to cases of direct injection, as defined in point (ba) of Article 1.

Amendment 21

Proposal for a regulation

Article 3 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

(5b) Collective management organisations shall maintain a database providing information related to the application of the copyright and related rights including the owner of a right, the type of use, the territory, and period of time.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes
References	COM(2016)0594 – C8-0384/2016 – 2016/0284(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	IMCO 6.10.2016
Rapporteur Date appointed	Vicky Ford 11.10.2016
Previous rapporteur	Julia Reda
Discussed in committee	9.2.2017 20.3.2017
Date adopted	11.5.2017
Result of final vote	+: 30 -: 6 0: 1
Members present for the final vote	Dita Charanzová, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Ildikó Gáll-Pelcz, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Antonio López-Istúriz White, Eva Maydell, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo
Substitutes present for the final vote	Lucy Anderson, Pascal Arimont, Birgit Collin-Langen, Edward Czesak, Lidia Joanna Geringer de Oedenberg, Kaja Kallas, Arndt Kohn, Julia Reda, Adam Szejnfeld, Marc Tarabella, Ulrike Trebesius
Substitutes under Rule 200(2) present for the final vote	Anne-Marie Mineur

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

30	+
ALDE	Dita Charanzová, Kaja Kallas, Jasenko Selimovic
ECR	Edward Czesak, Daniel Dalton, Ulrike Trebesius
EFDD	Marco Zullo
PPE	Pascal Arimont, Carlos Coelho, Birgit Collin-Langen, Anna Maria Corazza Bildt, Ildikó Gáll-Pelcz, Antonio López-Istúriz White, Eva Maydell, Jiří Pospíšil, Andreas Schwab, Ivan Štefanec, Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein
S&D	Lucy Anderson, Nicola Danti, Evelyne Gebhardt, Lidia Joanna Geringer de Oedenberg, Sergio Gutiérrez Prieto, Arndt Kohn, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Marc Tarabella

6	-
ECR	Anneleen Van Bossuyt
ENF	Mylène Troszczynski
GUE/NGL	Anne-Marie Mineur, Dennis de Jong
Verts/ALE	Pascal Durand, Julia Reda

1	0
EFDD	Robert Jarosław Iwaszkiewicz

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes			
References	COM(2016)0594 – C8-0384/2016 – 2016/0284(COD)			
Date submitted to Parliament	14.9.2016			
Committee responsible Date announced in plenary	JURI 6.10.2016			
Committees asked for opinions Date announced in plenary	INTA 6.10.2016	ITRE 6.10.2016	IMCO 6.10.2016	CULT 6.10.2016
Not delivering opinions Date of decision	INTA 12.10.2016			
Associated committees Date announced in plenary	CULT 16.3.2017			
Rapporteurs Date appointed	Tiemo Wölken 12.10.2016			
Discussed in committee	23.3.2017	29.5.2017	7.9.2017	
Date adopted	21.11.2017			
Result of final vote	+: -: 0:	14 9 1		
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Mady Delvaux, Rosa Estaràs Ferragut, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka			
Substitutes present for the final vote	Isabella Adinolfi, Daniel Buda, Angelika Niebler, Tiemo Wölken			
Substitutes under Rule 200(2) present for the final vote	John Flack, Emma McClarkin, Sabine Verheyen			
Date tabled	27.11.2017			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

14	+
ALDE	Jean-Marie Cavada
ECR	John Flack, Emma McClarkin
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
PPE	Daniel Buda, Rosa Estaràs Ferragut, Angelika Niebler, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Enrico Gasbarra

9	-
ALDE	António Marinho e Pinto
GUE:NGL	Jiří Maštálka
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
VERTS/ALE	Max Andersson, Julia Reda

1	0
EFDD	Isabella Adinolfi

Key to symbols:

+ : in favour

- : against

0 : abstention