

Public Consultation on the Review of the EU Satellite and Cable Directive

Fields marked with * are mandatory.

I. General information on respondents

* I'm responding as:

- An individual in my personal capacity
- A representative of an organisation/company/institution

* What is your nationality?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

If other, please specify

* What is your name?

What is your e-mail address?

* Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

- Yes
- No
- Not applicable (I am replying as an individual in my personal capacity)

Please indicate your organisation's registration number in the Transparency Register.

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If you are an entity not registered in the Transparency Register, please register in the [Transparency Register](#) before answering this questionnaire. If your entity responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

* Please choose the reply that applies to your organisation and sector.

- Member State
- Public authority
- End user/consumer (or representative of)
- Public service broadcaster (or representative of)
- Commercial broadcaster (or representative of)
- Authors (or representative of)
- Performers (or representative of)
- Film/AV producer (or representative of)
- Phonogram producer (or representative of)
- Publisher (or representative of)
- Collective management organisation (or representative of)
- TV/radio aggregators (or representative of)
- VOD (video on demand) operators (or representative of)
- ISPs (internet service providers) (or representative of)
- IPTV (internet protocol television) operators (or representative of)
- DTT (digital terrestrial television) providers/DTT bouquet providers (or representative of)
- Cable operators (or representative of)
- Other

If other, please specify

We also reply to this consultation as commercial broadcaster, film/AV producer, VOD operator, IPTV operator

My institution/organisation/business operates in:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

If other, please specify

Please enter the name of your institution/organisation/business.

Please enter your address, telephone and email.

What is the primary place of establishment of the entity you represent?

France

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II. Assessment of the current provisions of the Satellite and Cable Directive

1. The principle of country of origin for the communication to the public by satellite

For satellite broadcasting, the Directive establishes (Article 1.2) that the copyright relevant act takes place "*solely in the Member State where, under the control and responsibility of the broadcasting organization, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth*" (often referred to as "the country of origin" principle). So, rights only need to be cleared for the "country of origin" of the broadcast (and not for the country/ies of reception, i.e. the countries where the signals are received^[1]). The Directive indicates that in determining the licence fee for the right of communication to the public "*the parties should take account of all aspects of the broadcast such as the actual audience, the potential audience and the language version*" (Recital 17).

[1] There is no case-law from the Court of Justice of the European Union regarding the interpretation of Article 1.2 of the Directive.

1. Has the principle of "country of origin" for the act of communication to the public by satellite under the Directive facilitated the clearance of copyright and related rights for cross-border satellite broadcasts?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

1.1. If you consider that problems remain, please describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news).

The Satellite and Cable Directive was designed to facilitate the transmission of content by satellite in the EU. The Directive establishes that rights have only to be cleared within the "country of origin" of the broadcast, without consent being required in every EU Member State where the signal is received.

For Orange, the Satellite and Cable Directive has facilitated the clearance of rights for Free-To-Air channels. On the other hand, cross-border access to premium content remains constrained. Indeed, territoriality of premium content is key for right holders in the monetization of their rights and for competition within national markets. In that case, the Satellite and Cable Directive does not appear as a solution. Indeed, exclusivity and geographical licensing are key means of developing high-value products and services and of helping in the differentiation between players on the market. Right holders manage the transmission of premium content on a country-by-country basis, leading to the use of encryption techniques and conditional access. Today, these characteristics remain key factors to sustain the huge investments required for premium content.

Finally, on sports events, black screen are imposed by European TV Channels to distributors, in order to impede access to these events from other Member States. These exploitation rights belong directly to the organizers and these events are not qualified as intellectual property works. Hence, again this is not an issue for the Satellite and Cable Directive debate.

2. Has the principle of "country of origin" for the act of communication to the public by satellite increased consumers' access to satellite broadcasting services across borders?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

2.1. Please explain and indicate (using exact figures if possible) what is, to your knowledge, the share (%) of audiences from Member States other than the country of origin in the total audience of satellite broadcasting services.

2.2. If you consider that problems remain, describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news) or to specific types of services (e.g. public services broadcasters', commercial broadcasters', subscription based, advertising based, content specific channels) or other reasons.

See answer to question 1.1

3. Are there obstacles (other than copyright related) that impede the cross-border provision of broadcasting services via satellite?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

3.1. Please explain and indicate which type of obstacles.

The cross-border provision of broadcasting services via satellite is impacted by different type of obstacles. The answer to question 1.1 provides a first overview of the existing situation.

In parallel, other obstacles exist such as the existence of different national cultures and languages; national quotas, according to the geographical origins of the content; the need for the adoption of open standards for content delivery; the cost of compliance with different national consumer protection laws and fiscal regulations; the cost of providing customer care and customer complaints in several languages; the risk of fraud and non-payments and the diverse economic realities which make a single price impossible.

4. Are there obstacles (other than copyright related) that impede the cross-border access by consumers to broadcasting services via satellite?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

4.1. Please explain and indicate which type of obstacles.

Cross-border access can be impacted by the material conditions imposed to access the broadcasting service via satellite. Currently, consumers need to pay for specific equipment, namely a SAT receiver and a specific card.

In addition, contractual practices may also undermine cross-border access for consumers. This is particularly the case when licensing contracts prohibit the selling of equipment outside the Member State explicitly mentioned in the licensing contract. Such practices have been qualified as a breach of competition law and as an obstacle to the freedom to provide services (ECJ, 2011, MURPHY).

5. Are there problems in determining where an act of communication to the public by satellite takes place?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

5.1. Please explain.

In order to distribute TV services, Orange receives most of the European TV channels' signals from the satellite transmission. Most of channels editors do not mention in the contract where the act of communication to the public by satellite takes place. But this has no impact on Orange's activities.

6. Are there problems in determining the licence fee for the act of communication to the public by satellite across borders, including as regards the applicable tariffs?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

6.1. Please explain.

In view of the application of the “country of origin” principle, the Directive harmonised the rights of authors to authorise or prohibit the communication to the public by satellite (Recital 21, Article 2), established a minimum level of harmonisation as regards the authorship of a cinematographic or audiovisual work (Article 1.5) and as regards the rights of performers, phonogram producers and broadcasting organisations (Recital 21, Articles 4 to 6).

7. Is the level of harmonisation established by the Directive (or other applicable EU Directives) sufficient to ensure that the application of the "country of origin" principle does not lead to a lower level of protection of authors or neighbouring right holders?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

7.1. Please explain. If you consider that the existing level of harmonisation is not sufficient, please indicate why and as regards which type of right holders/rights.

For the purposes of evaluating the current EU rules, the Commission should assess the costs and relevance, coherence and EU added value of EU legislation. These aspects are covered by questions 8-9 below.

8. Has the application of the “country of origin” principle under the Directive resulted in any specific costs (e.g. administrative)?

- Yes
- No
- No opinion

8.1. Please explain.

9. With regard to the relevance, coherence and EU added value, please provide your views on the following:

9.1. Relevance: is EU action in this area still necessary?

- Yes
- No
- No opinion

9.2. Coherence: is this action coherent with other EU actions?

- Yes
- No
- No opinion

9.3. EU added value: did EU action provide clear added value as compared to an action taken at the Member State level?

- Yes
- No
- No opinion

9.4. Please explain.

2. The management of cable retransmission rights

The Directive provides a double track copyright clearing process for the simultaneous retransmission by a cable operator of an initial transmission from another Member State (by wire or over the air, including by satellite) of TV or radio programmes (Article 1.3).

Broadcasters can license to cable operators the rights exercised by them in respect of their own transmission, irrespective of whether the rights concerned are broadcasters' own or have been transferred to them by other copyright owners and/or holders of related rights (Article 10). However, according to Article 9, all other rights (of authors and neighbouring right holders) necessary for the cable retransmission of a specific programme can only be exercised through a collecting society. Finally, Articles 11 and 12 introduce negotiation and mediation mechanisms for dispute resolution concerning the licensing of the cable retransmission rights.

10. Has the system of management of rights under the Directive facilitated the clearance of copyright and related rights for the simultaneous retransmission by cable of programmes broadcast from other Member States?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

10.1. Please explain. If you consider that problems remain, please describe them (e.g. if there are problems related to the concept of "cable"; to the different manner of managing rights held by broadcasters and rights held by other right holders; to the lack of clarity as to whether rights are held by broadcasters or collective management organisations).

Orange's affiliates provide linear TV and on demand services, such as catch up TV. Here is an overview of Orange's activities in the EU:

- In France, TV services are provided via IPTV xDL/ FTTX, on mobile networks (3G/ 4G), and on satellite. In particular, Orange provides European channels packages (German TV Channels, English TV Channels, Italian TV Channels...). In parallel, Orange also carries publishing activities with Orange Cinema Series channels (OCS) and provides four TV services and catch up services, which can be accessed from France.
- In Poland, Orange distributes European channels via IPTV and Satellite (i.e. BBC, Arte, DW, TV5 Monde, France24). Agreements are found via NC+.
- In Romania, Orange distributes European channels via satellite and internet (i.e. entertainment/knowledge/world news, TV5 Monde, France24). These channels are available via "Universe HD Package" to access BBC and "World HD package" for France24.
- In Spain, Orange distributes European Channels such as DW, BBC, TV5 Monde, France24, ProTV via The "Tematico" Package. These channels are available via internet platforms.
- In Belgium, Mobistar is preparing the launch of TV services provided with coaxial networks.

As a distributor of TV services, the cable retransmission regime is fundamental for Orange's activities, in particular, concerning mandatory collective right management.

But in our view, the current scope for cable retransmissions is outdated and needs to be reviewed to take into consideration the technological developments since 1993. Indeed, new retransmissions technologies have appeared in the EU and globally, such as IPTV or mobile.

Today, as regards the Directive's provisions on retransmissions over cable, we consider a technologically-neutral approach as highly important as it would better reflect today's technological and market realities, as well as ensure futureproofness, facilitate the clearance of rights and ensure greater legal safety for companies. For Orange, the Directive should cover all types of retransmissions, no matter the technology used.

Finally, on sports events, black screen are imposed by European TV Channels to distributors, in order to impede access to these events from other Member States. The exploitation rights belong directly to the organizers and these events are not qualified as intellectual property works. Hence, this is not an issue for the Cable and Satellite Directive debate.

11. Has the system of management of rights under the Directive resulted in consumers having more access to broadcasting services across borders?

- Yes
- To a large extent
- To a limited extent
- No
- No opinion

11.1. Please explain. If you consider that problems remain, please describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news) or to specific types of services (e.g. public services broadcasters', commercial broadcasters', subscription based, advertising based, content specific channels) or other reasons.

The Satellite and Cable Directive has been a first step in facilitating consumers' access to broadcasting services across borders. This is particularly the case for Free-To-Air channels.

However, access to premium content is not covered by the current Satellite and Cable Directive due to economic models based on geographical licensing and exclusivity provisions granted by rights holders. Territoriality is key for right holders in the monetization of their rights and for competition within national markets. Exclusivity and geographical licensing are key means of developing high-value products and services and help to differentiate between players on the market. Conditional access system may be imposed for some TV programs as well as geo-location in order to comply with appropriate requirements. In that case, the Satellite and Cable Directive is not the proper instrument for such an issue.

In parallel, some current financing system impact consumer access. As an example, in France, territoriality impacts presale agreements where local distributors benefit from exclusive distribution rights for a limited territory if they pay in advance a percentage of the estimated revenues generated by the retransmission of the TV programs.

12. Have you used the negotiation and mediation mechanisms established under the Directive?

- Yes, often
- Yes, occasionally
- Never
- Not applicable

12.1. If yes, please describe your experience (e.g. whether you managed to reach a satisfactory outcome) and your assessment of the functioning of these mechanisms.

12.2. If not, please explain the reasons why, in particular whether this was due to any obstacles to the practical application of these mechanisms.

So far, the use of the negotiation and mediation mechanisms established under the Directive has not been necessary for Orange. However, in our view, the current negotiation and mediation mechanisms should ensure resolution within reasonable timescales, which are appropriate to meet current business requirements for the launch of new services and, thereby, aim to extend the scope of attractive legally-sound offers to consumers.

For the purposes of evaluating the current EU rules, the Commission should assess the costs as well as the relevance, coherence and EU added value of EU legislation. These aspects are covered by questions 13-14 below.

13. Has the application of the system of management of cable retransmission rights under the Directive resulted in any specific costs (e.g. administrative)?

- Yes
- No
- No opinion

13.1. Please explain your answer.

Orange currently operates as TV service distributor on several national markets such as France, Poland, Romania or Spain for instance. Orange has to bear the related administrative costs of the collecting rights management system. This is particularly the case for the costs linked to negotiations or declarations. In parallel, Orange has to pay fees as a distributor to collecting societies and, more importantly, to broadcasters as holders of related or derived rights.

14. With regard to the relevance, coherence and EU added value, please provide your views on the following:

14.1. Relevance: is EU action in this area still necessary?

- Yes
- No
- No opinion

14.2. Coherence: is this action coherent with other EU actions?

- Yes
- No
- No opinion

14.3. EU added value: did EU action provide clear added value when compared to an action taken at Member State level?

- Yes
- No
- No opinion

14.4. Please explain your answers.

For Orange, EU action has provided added value in the coordination of national legislations and in facilitating the clearance of rights. Such an action should be maintained to ensure that IPTV, retransmission over the internet, as well as mobile retransmission are covered on a technology neutral basis.

III. Assessment of the need for the extension of the Directive

The principles set out in the Directive are applicable only with respect to satellite broadcasting and cable retransmissions^[2]. They do not apply to transmissions of TV and radio programmes by other means than satellite or to retransmissions by other means than cable. Notably these principles do not apply to online transmissions or retransmissions.

Until relatively recently, broadcasters' activities mainly consisted of non-interactive transmissions over the air, satellite or cable and broadcasters needed to clear the broadcasting/communication to the public rights of authors, performers and producers. However, the availability of broadcasters' programmes on an on-demand basis after the initial broadcast (e.g. catch-up TV services) is on the increase. Providing such services requires broadcasters to clear a different set of rights than those required for the initial broadcast, namely the reproduction right and the making available right. Forms of transmission such as direct injection in cable networks or transmissions over the internet (e.g. webcasting) are also increasing. Digital platforms also enable programmes to be retransmitted simultaneously across networks other than cable (e.g. IPTV, DTT, simulcasting).

[2] The concept of retransmission is generally understood as the simultaneous transmission of a broadcast by a different entity such as a cable operator.

1. The extension of the principle of country of origin

15. Please explain what would be the impact of extending the "country of origin" principle, as applied to satellite broadcasting under the Directive, to the rights of authors and neighbouring right holders relevant for:

15.1. TV and radio transmissions by other means than satellite (e.g. by IPTV, webcasting).

For Orange, any extension of the “country of origin” principle should be carefully assessed for several reasons.

The benefit of extending this principle to online transmissions may be very limited for EU companies. Indeed, only a few EU companies have or aim to achieve, depending on their business models, a portfolio of multi-national rights.

In parallel, the extension of the “country-of-origin” principle to other means of transmission would also imply a complete review of the current system of exclusivity. As an illustration, the investment of a small national operator to buy an item of exclusive content on its territory would be jeopardized by the possibility of the clients, on this same territory, to buy the same content from another Member State (for example, earlier or under different conditions).

The need to maintain fair conditions for competition should also be taken into consideration. The “country of origin” principle was introduced into the Satellite and Cable Directive for satellite transmissions only, for which the country of origin had to be identified. These transmissions imply the use of heavy infrastructures in the form of satellites positioned in space. Yet, it was necessary to relate the uplink part of the transmission to one specific Member State; for this “link” to be established, the legal definition introduced into the Directive aimed at clearly allocating the character of “country-of-origin” to a certain Member State.

As regards online service providers, the situation is very different. On one side, unlike satellite transmissions, it is easy to move servers. On the other side, harmonization is lacking in the audiovisual market. Seen together, there is therefore a considerable risk of forum shopping where some online service providers could (re-)locate their servers to a Member State where less stringent rules apply. Companies which are established in Member States with a high level of intellectual property protection would be at a disadvantage, creating the risk of competition distortion in the EU market. Circumvention of the applicable rules must be avoided – inter alia the rules on audiovisual media, copyright and related rights, and taxes.

15.2. Online services ancillary to initial broadcasts (e.g. simulcasting, catch-up TV).

Please refer to question 15.1.

15.3. Any online services provided by broadcasters (e.g. video on demand services).

Orange does not support the extension of the country of origin principle to online services provided by broadcasters. As mentioned previously, there is currently a lack of regulatory harmonization on the EU audiovisual market. Combined with the country of origin principle, this could favor some opportunistic companies with significant financial resources establishing themselves in the Member States where less stringent rules apply and where the collecting societies impose the lowest fees, in order to provide their services across a broad footprint in the EU.

In addition, in our view, the country of origin principle should not cover Video On Demand services. Indeed, EU companies may suffer from the current regulatory imbalance. This is particularly the case for VOD services operated locally and subject to a high level of regulation which limits their attractiveness outside national boundaries. This is the case for rules on financing quotas or the promotion of European works. Orange has also highlighted this issue in its reply to the consultation on the review of the AVMS Directive. In addition, these services do not have the same business models and capacities as non-EU companies to clear rights on a pan-European basis, to prepay audiovisual works available in the entire EU, or to operate services at EU level due to the high operating costs of, for example, subtitling, marketing investments, etc.

15.4. Any online content services provided by any service provider, including broadcasters.

See answer to question 15.3.

16. Would such an extension of the "country of origin" principle result in more cross border accessibility of online services for consumers?

The extension of the country of origin principle may result in more cross-border accessibility of online services for consumers in the short term, but may impact negatively both consumers and EU companies in the long term. That's why, for Orange, any extension of the country of origin principle should be carefully assessed.

Indeed, some companies choose the least-demanding Member State as their country of origin. In that case, the audience would be able to access large quantities of content regulated by low level standards, including those relating to the protection of the audience.

In addition, in our view, regulation of copyright should ensure fair competition between players on the EU market. Its implementation should not offer any possibility of circumventing the level of protection provided by copyright regulation.

For the impact on companies, please see also our answer in question 15.3.

16.1. If not, what other measures would be necessary to achieve this?

See answer to question 16.

17. What would be the impact of extending the "country of origin" principle on the collective management of rights of authors and neighbouring right holders (including any practical arrangements in place or under preparation to facilitate multi territorial licensing of online rights)?

18. How would the "country of origin" be determined in case of an online transmission? Please explain.

In the event that the Commission would extend the country-of-origin principle to online transmissions, objective criteria are needed to avoid any forum shopping from players in the EU market. Criteria should be assessed accordingly.

As a starting point, the criterion of the Member State where the head office is located should not be relevant for identifying the "country of origin". The principles for determining the country of (main) establishment in accordance with the constant jurisprudence of the ECJ should be used, with the aim of achieving the greatest possible coherence with the appropriate criteria in other relevant Directives. This will presumably require the determination of criteria which are capable of truly reflecting faithfully the "real link to the economy" of a specific (host) Member State and which are based on factual circumstances that should represent a high level of stability, i.e. these should not be subject to arbitrary unilateral manipulation. In any case, should the European Commission intend to suggest an extension of the country-of-origin principle to online transmissions, fair competition among all the players active on the EU market must be secured. This entails thoroughly assessing the question of whether the level of harmonization currently reached - by all of the applicable provisions on the activity at hand - is sufficient to fulfill this objective of paramount importance. And in our view, the right level of harmonization has not been reached.

19. Would the extension of the "country of origin" principle affect the current level of copyright protection in the EU?

The extension of the country of origin principle would affect the current level of copyright protection as long as the lack of harmonization on the EU media market remains. In that case, the rules of the least demanding Member State will significantly benefit non-EU based companies, generating competition distortion on the market.

19.1. If so, would the level of EU copyright harmonisation need to be increased and if so in which areas?

In our view, the top priority should be to increase the degree of harmonization in the audiovisual regulation across the EU. Currently, this lack of harmonization disadvantages EU companies in the provision of audiovisual media services. This is particularly the case for the rules on release windows, quotas and the financing system for the audiovisual sector.

2. The extension of the system of management of cable retransmission rights

20. According to your knowledge or experience, how are the rights of authors and neighbouring right holders relevant for the simultaneous retransmissions of TV and radio programmes by players other than cable operators currently licensed (e.g. simulcasting or satellite retransmissions)?

As a distributor of TV services, regulation of cable retransmission is of major importance for Orange. In our view, the current scope for cable retransmissions is outdated and needs to be reviewed accordingly, taking into account technological developments since 1993. New retransmissions technologies have emerged in the EU and globally, such as IPTV, retransmissions over the internet and mobile retransmissions.

Today, although mobile retransmissions have become a new means of distributing content, negotiations still have to be conducted on a country-by-country basis. Including retransmissions over mobile networks in the scope of the Directive would assist companies to clear rights for the retransmission of TV programs, and ensure more consistency in both fixed and mobile offers. The same programs would be available both through fixed and mobile networks, reducing the risk of black out.

As regards the Directive's provisions on retransmission in cable, we consider a technologically neutral approach as highly important. This would help to facilitate the rights clearance process and ensure legal certainty for companies. Companies would no longer be burdened by the complexity of the cross-border rights clearing process involving a number of players.

For Orange, it should be explicitly mentioned that the relevant Directive's provisions cover all types of retransmissions, no matter the technology used (mobile, IPTV, open internet and any other network used for the retransmission). Such an approach would reflect better today's technological and market realities as well as ensure futureproofness, facilitate the clearance of rights and ensure greater legal certainty for companies.

Finally, in our view, the directive should adopt an exhaustive approach where both TV programs and ancillary services are covered. Today, TV channels have developed additional services together accompanying their programs and which provide a real added value. This is particularly the case for catch up TV services. Such an approach would facilitate the clearance of rights for services which should be considered as pertaining to the transmission.

20.1. Are there any particular problems when licensing or clearing rights for such services?

In our view, the fragmentation of the rights slows down the clearing process. The necessary rights do not depend on the same right holder and this generates uncertainty as to whether or not the companies have obtained the necessary complete set of rights to retransmit TV programs.

21. How are the rights of authors and neighbouring right holders relevant for the transmission of broadcasters' services via direct injection in cable network currently licensed?

As Orange, we do not operate any direct injection. But in our view, rights of authors and neighbouring right holders are relevant for the transmission of broadcasters' services via direct injection. The transmission operator should be the sole liable for authorization fees in the process. However, in case the Commission considers the retransmission operator as liable for authorization fees, we consider that the regime of the Satellite and Cable Directive should apply.

21.1. Are there any particular problems when licensing or clearing rights for such services?

In the event that no initial transmission has taken place, the mandatory collective right management cannot apply and the related one stop shop for the clearance of rights will not become effective. Authorizations would also have to be given both by producers and authors excepted when right holders are voluntarily represented by a collective right management society.

22. How are the rights of authors and neighbouring right holders relevant for non-interactive broadcasters' services over the internet (simulcasting/ linear webcasting) currently licensed?

In the case of linear services, retransmission over the internet should be covered by the current Directive's provisions on retransmissions.

22.1. Are there any particular problems when licensing or clearing rights for such services?

As mentioned previously, for Orange, the current scope for cable retransmission is outdated and needs to be reviewed, taking into account technological developments since 1993. New retransmission technologies have appeared, such as IPTV, retransmissions over the internet and mobile retransmissions.

The directive's provisions should cover on a technologically neutral basis all the fixed and mobile retransmissions including the distribution of TV services via IPTV services and retransmissions over the internet. Such an approach would ease the rights clearance and ensure legal certainty for companies.

23. How are the rights of authors and neighbouring right holders relevant for interactive broadcasters' services currently licensed (e.g. catch-up TV, video on demand services)?

See answer to question 23.1

23.1. Are there any particular problems when licensing or clearing rights for such services?

Most of the contracts related to these services are managed on an individual basis. Although music rights benefit from mandatory collective right management (in France with SACEM), other types of authors' rights do not. This is particularly the case for the rights covered by agreements made with producers. Individual negotiation is also required for neighbouring rights.

The major effect is the large amount of time companies have to spend in negotiations and in managing a large number of contracts.

Furthermore, given the lack of clarity on the functionalities which can be covered by rights administered by these societies, there is a risk of hampering the evolution of platform offers, thus threatening a competitive, innovative and level playing field.

24. What would be the impact of extending the copyright clearance system applicable for cable retransmission (mandatory collective licensing regime) to:

24.1. the simultaneous retransmission^[3] of TV and radio programmes on platforms other than cable (e.g. satellite, IPTV, internet)?

[3] Understood as the simultaneous transmission of the broadcast by a different entity than the broadcaster (see footnote 2).

As mentioned previously, extending the copyright clearance system applicable for cable retransmission is necessary for all fixed and mobile retransmissions.

The directive's provisions should be technologically neutral and cover all fixed retransmissions including the distribution of TV services via IPTV services and the retransmission over the internet. In parallel, today, although mobile retransmissions have become a new means of distributing content, negotiations still have to be conducted on a country-by-country basis. Extending the provisions for retransmissions to mobile would assist companies in the clearance of rights for the retransmission of TV programs, and ensure more consistency in fixed and mobile offers. The same programs would be available through fixed and mobile networks, reducing the risk of black out. Such clarification would help in facilitating the rights clearance process and ensuring legal certainty for companies.

24.2. the simultaneous transmission^[4] of TV and radio programmes on platforms other than cable (e.g. satellite, IPTV, internet)?

[4] Understood as the simultaneous transmission of the broadcast by the broadcaster itself.

Orange does not support the extension of the system of management of cable retransmission for the simultaneous transmission (i.e. the transmission by the editor of the audiovisual service itself) of TV program by platforms other than cable (satellite, IPTV, internet). Orange would point out that the copyright clearance system was designed for retransmission and not for primary emission and must benefit distributors of TV services rather editors of TV services.

25. In case of such an extension, should the different treatment of rights held by broadcasting organisations (Article 10 of the Directive) be maintained?

26. Would such an extension result in greater cross border accessibility of online services? Please explain.

27. Given the difference in the geographical reach of distribution of programmes over the internet (i.e. not limited by geographical boundaries) in comparison to cable (limited nationally), should any extension be limited to "closed environments" (e.g. IPTV) or also cover open simultaneous retransmissions and/or transmissions (simulcasting) over the internet?

In our view, for the reasons expressed previously, the extension of the directive should cover both closed environment such as IPTV and open simultaneous retransmissions over the internet.

28. Would extending the mandatory collective licensing regime raise questions on the EU compliance with international copyright obligations (1996 WIPO copyright treaties and TRIPS)?

29. What would be the impact of introducing a system of extended collective licencing for the simultaneous retransmission and/or the simultaneous transmission of TV and radio programmes on platforms other than cable, instead of the mandatory collective licensing regime?

The Commission refers to a specific form of collective right management where the most representative collecting society of the creation sector can represent all the right holders of the same category, without a specific prior mandate to negotiate with organizations of distribution platforms.

In our view, several issues need to be considered carefully. Indeed, some practical problems remain and have to be taken into account, such as the level of representativeness of the society to operate the extended collective licensing.

30. Would such a system of extended collective licencing result in greater cross border accessibility of online services?

3. The extension of the mediation system and the obligation to negotiate

31. Could the current mechanisms of negotiation and mediation in Articles 11 and 12 of the Directive be used to facilitate the cross border availability of online services when no agreement is concluded regarding the authorisation of the rights required for an online transmission?

Orange has never made use of the mediation system.
See answer to question 12.2

32. Are there any other measures which could facilitate contractual solutions and ensure that all parties concerned conduct negotiations in good faith and do not obstruct negotiations without justification?

IV. Other issues

33. These questions aim to provide a comprehensive consultation on the main themes relating to the functioning and possible extension of the Directive. Please indicate if there are other issues that should be considered. Also, please share any quantitative data reports or studies to support your views.

Please upload your file, if you wish so.

Background Documents

Context of the Consultation-Introduction-EN.pdf (/eusurvey/files/b9a61416-4e7d-4db7-95a8-87dbecca3c79)

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