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:

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- (•) A representative of an organisation/company/institution

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- ( ) Poland
- ( ) Portugal
- ( ) Romania
- ( ) Slovakia
- ( ) Slovenia
- ( ) Spain
- ( ) Sweden
- (•) United Kingdom
- ( ) Other

If other, please specify

* What is your name?

Hugo Cox

What is your e-mail address?

hugo.cox@prsformusic.com

* 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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- ( ) 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

My institution/organisation/business operates in:

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- [ ] Czech Republic
- [ ] Denmark
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- [x] United Kingdom
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If other, please specify

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

PRS for Music

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

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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).

Music collecting societies had already developed a multi-territory licensing solution for the footprint of satellite services, in response to the development in the market, so the legislative changes of the Satellite and Cable Directive had little impact in practice. PRS already licensed broadcasters to include musical works in their UK-originating transmissions for the footprint of the satellite, including the rights and repertoire entrusted by other societies.

However, the Directive has given rise to some problems with enforcement against non-EU broadcasters. Article 1(2)(d) of the Directive does not provide sufficient safeguards in respect of satellite broadcasts from non-EU states. PRS has had difficulties licensing certain broadcasters that appear to broadcast from outside the EU, particularly from the Middle East.

This is a serious issue and this type of difficulty would be even more serious if country of origin were applied to online transmissions, since they can be initiated from any number of jurisdictions around the world and it can be very hard to identify where they are transmitted from.

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.

We do not have data on share of audience for audiences outside UK. PRS receives viewing data for the UK (BARB) but comprehensive and authoritative data for audiences outside the UK is less accessible.

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, adverting based, content specific channels) or other reasons.

No opinion

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.

There are various reasons why broadcasters may not want to broadcast to a larger footprint. In many cases, they are not the consequence of ‘obstacles’ but rather of deliberate commercial decisions. For example, some licensed services may only want to buy (or have funds to acquire) rights for one territory or group of territories. There are other regulatory reasons why satellite broadcasts are not available in all countries.

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.

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.

There can be a lack of clarity over where the act of communication to the public by satellite takes place due to differing interpretations of the wording of Article 1(2)(a) of the Directive.

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.

The Directive provides guidance for territory of destination rates in Recital 17. In principle, the fee should be determined by reference to the market and applicable rates of the territory of the reception audience ('territory of destination'). Competition decisions also support territory of destination charging (IFPI simulcast).

There are difficulties in applying this in practice a) where there is spillover to other territories and b) where services have chosen to locate in one territory but target their services solely to a number of different territories each with a different tariff structure. Ultimately these problems are capable of resolution through litigation, tariff tribunals and/or competition law and do not require a reopening of the Directive.

The challenges with establishing territory of destination pricing underline the risk of arbitrage and the distortionary effects of a country of origin policy. This illustrates why we oppose the extension of this principle to any other communication to the public.

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.

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The difficulties referred to above have led to certain costs (see
answers to questions 1.1, 5 and 6).

While we have illustrated some problems with the Directive, especially
the satellite provisions, these arise from the application of country of
origin principles. These problems underpin the problems with country of
origin rules for rightsholders, and will be important evidence and
reason why there should be no extension of country of origin rules to
specific users or uses or online more generally.
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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.

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Issues highlighted above that are generated by the current Directive do
not require review of the Directive; a clarifying statement could
suffice.
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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).

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The Directive has not had an impact in practice in the UK. Cable
retransmission of programmes broadcast from other Member States is very
limited in the UK (just a handful of news and current affairs channels
are supplied).

Cable licensing in the UK of UK-originating wireless broadcasts is
complicated by the continuation of a specific exception for cable ‘in
area’ of broadcast, in section 73 Copyright Designs and Patents Act
1988. The UK Government has now committed to repeal of that section,
which will alter licensing in future.
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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.

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.

Disputes have not arisen for which the mechanisms would have been appropriate.

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.

Because in practice the Directive has had little impact in the UK. See 10.1.

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.

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).

We do not support the extension of the 'country of origin' principle to any online uses.

Please see answer to question 15.4.

Extending 'country of origin' to the types of transmission set out in questions 15.1 - 15.3 may cause impacts such as those described in the answer to question 15.4.

If country of origin were applied to broadcasters' transmissions but not to equivalent transmissions by other 'non-broadcaster' services, then this would imbalance the position between similar services in a single market, and distort competition.

Questions 15.1, 15.2, and 15.3 differentiate between different types of broadcaster service. We would note that these categories can overlap and are likely to become increasingly blurred.

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

See the answer to question 15.1.

PRS typically grants simulcasting rights alongside broadcast rights (both to UK licensees and to other EU CMOs).

Please note that in 2014 EBU, ECSA, GESAC and ICMP established practical guidelines for licensing multi-territory broadcast-related online activities (http://www3.ebu.ch/contents/news/2014/04/ebugesacicmpecsa-recommendation.html).

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

See the answer to question 15.1.

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

The application of the ‘country of origin’ principle to online services is likely to have far-reaching impacts for rightsholders and on the management of online rights across the EU. These impacts could be very serious and deserve very careful evaluation.

There is a risk that the country of origin principle will lead to forum shopping. While this might be a low risk with public service broadcasters whose services are located permanently and by definition in one place, commercial broadcasters and online services are mobile and could easily relocate for regulatory or copyright reasons.

The extension of country of origin could cause rightholders and CMOs to withdraw rights from national CMOs if they perceived any risk to the value of rights. The effect of this would be the fragmentation of rights. The unintended consequence would then be that users would have to negotiate rights from separate CMOs and rightsholders, and would face the loss of blanket licences of rights for broadcasting. The negative impact of country of origin on collective licensing was considered and rejected as an option in the impact assessment of the CRM Directive (Option B4):

‘Besides the difficulties associated with the identification of the country of origin, the main risk associated with this option is that it will lead to publishers and some CS to opt out from the extended licences in all MS. The result is likely to be the "pulling out" of all commercially valuable repertoire from many of the CS in the EU. Accordingly, in some MS it would be more difficult to obtain a licence from a local CS (which has seen many opt-outs and/or has limited technical abilities to administer MT licences) than in others.’

These impacts are expected to be the same now as were assessed in 2012.

A country of origin rule for online would also run counter to the logic of the Collective Rights Management Directive adopted by the EU in 2014. Title III of that Directive underpins multi-territory licensing (i.e. licensing rights for each territory of exploitation) by setting standards for CMOs.

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

No.

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

It is better to allow the market to adapt licensing from national to multi-territory licensing via negotiation, than to impose a regulatory approach, with foreseeable harmful impact.

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)?

See answer to question 15.4. As noted, rightholders and CMOs may withdraw their rights from national CMOs.

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

There are no options that would be satisfactory. All possible criteria for determining such a concept are problematic. Country of origin does not work for online transmissions. To go down this route would risk exposing the rightsholder to considerable risk, as was outlined in the De Wolf Report.

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

Yes, it is likely to make licensing and enforcement more difficult as services can move their servers/place of establishment to obstruct enforcement.

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

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)?

We note that the consultation document says: ‘The concept of retransmission is generally understood as the simultaneous transmission of a broadcast by a different entity such as a cable operator’. We would make the following observations: (a) broadcasts are usually transmitted by a platform that is a different entity from the broadcaster (e.g. BBC programmes are transmitted to BSkyB for satellite delivery; to Freeview for DTT delivery; to TalkTalk for IPTV delivery; to Virgin for cable delivery); (b) these transmissions go out simultaneously across several platforms and (c) it is probably highly unusual for a platform to pick up a free-to-air broadcast and retransmit it – the normal practice would be ‘direct injection’. (An exception to this is TVCatchup – see answer to question 20.1.)

If ‘direct injection’ is deemed to be a type of ‘retransmission’, then this question is asking about all/most broadcasting (cable being excluded by the question). If ‘direct injection’ is not deemed to be a type of ‘retransmission’, then we are not sure there is any broadcasting taking place that falls within this definition.

If ‘direct injection’ is deemed to be a type of ‘retransmission’, then PRS licenses this right to the broadcaster for the UK.

In relation to cross-border transmissions:

- The decision of the CJEU in Airfield has established principles in relation to retransmission via satellite.
- For retransmissions via other means of delivery (e.g. DTT and cable), particularly where the broadcaster’s transmission to the platform is via ‘direct injection’, various national courts across Europe have reached inconsistent decisions as to which entities are liable and in which jurisdictions. Therefore, licensing practice is inconsistent and sometimes the legal uncertainty makes securing licences difficult. So long as there are disputes, revenue is not collected and paid to creators. It is hoped that the CJEU’s upcoming judgment in SBS Belgium (Case C-325/14) will help to clarify the rules.
- Simulcasting outside the UK: PRS licenses these EEA rights to other EU CMOs.

Various national courts across Europe have reached inconsistent decisions as to which onward transmissions qualify as licensable acts. This, however, is not an issue with the Directive, which does not define the scope of a cable retransmission right (EGEDA, Case C-293/98, paragraph 24).

The concept of ‘cable retransmission’ in the Directive is unclear and/or out-of-date:

- ‘Cable’: TV is now delivered via various different wires or ‘cables’, in particular ADSL, ‘cable’ and broadband. All of them deliver both TV and internet. If ‘cable’ does not include the internet, then that is not because of the wire that is used but another aspect of the technology/system involved.

- ‘Cable retransmission’: the definition includes microwave retransmission. Microwave transmissions do not generally appear to be used in the way they were previously for broadcast retransmissions though they are used for satellite, wireless internet services and mobile phone transmissions, which may not be the intention of the legislator.
- ‘Retransmission’: the consultation document says, ‘The concept of retransmission is generally understood as the simultaneous transmission of a broadcast by a different entity such as a cable operator.’ However, the CJEU has not interpreted the concept. Does it include transmission of a signal received via ‘direct injection’* or only retransmission of public signals? From a practical licensing perspective, how are rightholders to know when a cable transmission is relaying a public signal or a private one?

However, given that, as noted previously, parties transmitting musical works require licences regardless, it may be irrelevant how they are categorized or what technology is employed.

* The definition of ‘direct injection’ in this response is that given in the SBS Belgium reference to the CJEU: a two-step process in which a broadcasting organisation transmits its programme-carrying signals in an encrypted form via satellite, a fibre-optic connection or another means of transmission to distributors (satellite, cable or xDSL-line), without the signals being accessible to the public during or as a result of that transmission, and in which the distributors then send the signals to their subscribers so that the latter may view the programmes.

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

See answer to question 20.

In the UK the internet retransmission service TVCatchup has sought to rely on the UK’s copyright exception for cable retransmission (section 73 of the Copyright, Designs and Patents Act 1988). The question of whether the concept of ‘cable’ in Article 9 of the Copyright Directive includes internet retransmission has been referred to the CJEU.

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 noted in answer to question 20, where the broadcast is in the UK PRS generally licenses rights for ‘direct injection’ in a cable network in the UK to the broadcaster. UK cable services have, however, relied on the UK’s s. 73 copyright exception for cable retransmission of wireless PSB broadcasts made from the UK. The exception will be repealed by the UK government.

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

Where cable services rely on the s. 73 exception they have not been licensed in the UK. See the answer to question 20 above for issues in the rest of Europe.

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 UK, PRS licenses these rights to broadcasters. PRS grants other EU CMOs online simulcasting rights for the EEA.

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

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)?

In the UK PRS for Music grants on-demand rights to broadcasters. This is for the UK or sometimes pan-European rights for certain repertoire.

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

No

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).

The situation in the UK shows that the market can adapt to licensing and does not require a legal change.

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.

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?

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

It would have to be assessed.

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?

PRS supports voluntary licensing of retransmissions for all platforms.

Extended collective licensing was rejected as a solution during consideration of the Collective Rights Management Directive. This was described in the impact assessment of the Collective Rights Management Directive in relation to Option B4:

'Furthermore, significant discrepancies in the efficiency of CS would persist across the EU, in particular as there will not be a need to precisely identify repertoire to grant a license (all repertoire will be presumed as covered). There will be no incentive to address the current inefficiencies related to identification of repertoire, invoice of uses and distribution of royalties. The burden of such inefficiencies will be held by rightholders, notably foreign rightholders.'

These impacts are expected to be the same now as were assessed in 2012.

If an extended collective licensing system were introduced, safeguards should be introduced to ensure it is cost neutral for members of CMOs (in terms of services delivered to non-members), that there are clear opt-outs and transparent procedures for publicising the rights and licences that may be subject to extended collective licensing.

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

No

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?

Article 11 mediation could theoretically be useful if negotiations stalled but there is nothing to prevent CMOs and rightsholders from having recourse to mediation anyway. Article 12 seems a very weak provision.

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?

A greater transparency of broadcasters and online services (their location, licensing status) would support the development of a digital single market e.g. a central register or data source for checking status. Users should be under an obligation to provide good quality data to CMOs (Article 17 CRM Directive) and could play a relevant part in improving data and information supplied to licensors.

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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