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

Fields marked with * are mandatory.

Pages

New Section

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.



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 chose 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



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?



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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?

- [x] 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).



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?

- [x] 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, adverting based, content specific channels) or other reasons.



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.



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.



The bundling of satellite TV services and equipment is not compelling for consumers.

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.



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.



On the contrary, streamlining the licensing procedure and setting up a clear legal framework reduces transaction costs.

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.



The main objective of the satellite and cable directive is to lower transaction costs in cross-border licensing situations, thereby facilitating access to the markets and allowing for a European broadcasting area, while maintaining a high level of protection for rights holders. The directive is based on the principle of freedom of contract, while allowing the streamlining of the rights clearance process when necessary for the smooth functioning of the market.

Whereas the main principles of the directive should be preserved, the directive should be updated in a technology neutral way to accommodate the new ways for communicating television programmes to consumers within the internal market, including the making available of those programmes on demand.

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).



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.



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.



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).



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



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



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



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



Extending the field of application for the ”country of origin” principle to apply also on online activities of broadcasting organisations would probably have the same effect as the application of that principle on satellite broadcasting, that is streamline licensing procedures and reduce transaction costs. It can be assumed that it would give a legal backup to current licensing practices to the extent that they have evolved on the basis of the country of origin or the country of establishment of the broadcaster, which in Finland seems to be the case to some extent.

However, the directive should focus on the measures necessary to form a European audiovisual area, and should only be applicable to audiovisual programmes, not any online content.

The directive does not oblige broadcasters to provide broadcasting services on a cross-border or a European wide basis. In the view of Finland the freedom for broadcasters to provide services to the extent they wish and to the audience of their choice, should be maintained. Broadcasters should not be forced to offer their services or acquire rights for a European-wide audience.

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



Changes in the business models providing for tariffs based on actual audience instead of potential audience might increase the possibilities for smaller broadcasting companies to provide their services on a European-wide scale.

Increased competition might drive small broadcasting companies out of business. In order to assure the linguistic and cultural diversity of the European Union, additional measures should be considered.

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 opinion of Finland, the point of attachment to be applied could be discussed, and one option would be to use the same point of attachment as in the directive on audiovisual media services, that is, the country of establishment.

In those cases where online transmission (or on-demand access) is licensed in Finland, in practice the parties seem to have used the principle of the country of establishment of the broadcaster.

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



Not to our knowledge. The rights of the right holders remain the same notwithstanding the means of distribution of audiovisual works.

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)?



To our knowledge, they are licensed as retransmissions, unless they are included in the agreement on the original transmission.

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



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?



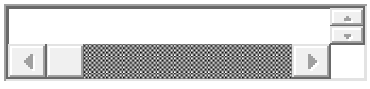
To our knowledge, such rights are licensed directly from the right holders, except regarding rights to music, which are licensed on a collective basis.

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



In some instances there have been open questions regarding whether an act is to be deemed a transmission or a retransmission. Finland is of the opinion that a distinction between transmission and retransmission is needed and that both transmission and retransmission should be defined in a technology neutral way.

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?



To our knowledge, such rights are licensed directly from the right holders, except regarding rights to music, which are licensed on a collective basis.

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



For small language and culture areas, like for instance the Åland Islands, it is not possible to get licenses as the market is too small to have commercial significance for the rights holders. This has a negative impact on the possibility of the inhabitants of the Åland Islands, which are linguistically and culturally strongly linked to Sweden, to access Swedish television as these days the broadcasting organisations increasingly make available some of its content only online, and that online content is usually geoblocked and therefore not accessible from the domain (.ax) of the Åland Island.

As the provision of online content does not come within the scope of retransmission in the directive, there has been no possibility for operators from the Åland Islands to retransmit online content made available by Swedish broadcasting organisations.

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 Finland broadcasters acquire the rights directly from producers and the providers of network-PVR services acquire the rights through collective management organisations and broadcasters.

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



See answer to question 22.1.

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)?

In Finland, the provisions on retransmission in the Copyright Act are technology neutral, and retransmission within IPTV (closed circuit IP-based network) is licensed in the same way as retransmission via cable. In Finland, retransmission is based on the extended collective licensing system.

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



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

There seems to be no reason why primary transmissions could not be licensed directly from the rights holders. Therefore there does not seem to be a market failure which would allow/require intervention through provisions on mandatory collective licensing.

[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?



Retransmission should normally be subject to the permission of the broadcasting organisation.

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



The Satellite and Cable directive has formed the basis for the legal arrangement making it possible to rebroadcast Swedish television in the Åland Islands. Due to the increased use by broadcasters of online transmissions (either direct webcasting or on-demand) and changes is consumer habits (increased use of hand-held devices and internet services) and lacking a legal framework making it possible to legally access that content, the people of the Åland Islands, which are Swedish speaking, are deprived of the possibility to access the services of the Swedish television (SVT Play).

An extension of the retransmission arrangement to the retransmission of online content would provide the possibility for operators in the Åland Islands to provide access to such online content to the audience in the Åland Islands.

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?



It should be noted that geoblocking provides the means to restrict access on a territorial basis, which can be compared to terrestrial broadcasting, limited geographically. Also other access restrictions than territorial restrictions, can be implemented through technical means.

Finland is of the view that rebroadcasting organisations should not be obliged to operate on a European wide scale or acquire European wide licenses to retransmit programmes.

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?



In our understanding the directive does not include provisions on mandatory collective licensing as to original transmissions, but only in relation to retransmission. In the opinion of Finland, direct licensing should be favored whenever possible. Only in cases of market failure does extended collective licensing (or mandatory collective licensing) provide viable solutions.

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?



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.

