



2016/0284(COD)

6.6.2017

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

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

Rapporteur: Vicky Ford

PA_Legam

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

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

Amendment

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

positive development and geo-blocking should not be the default position for all audiovisual content produced in the Union and transmitted online. However, the territorial funding model for European content is vital to the success of the European audiovisual media sector.

Amendment 2

Proposal for a regulation

Recital 4

Text proposed by the Commission

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

Amendment

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

Amendment 3

Proposal for a regulation

Recital 8

Text proposed by the Commission

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

Amendment

(8) The ancillary online services covered by this Regulation are services offered by broadcasting organisations which include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and *non-linear* services giving access *at the earliest one month before, during or* after the broadcast, to television and radio

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

Amendment 4

Proposal for a regulation Recital 10

Text proposed by the Commission

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

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

Amendment

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

establishment and in other Member States in which the ancillary online service is accessed and used, and *the* language *version*.

organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and *all available* language *versions and subtitled versions*. *Furthermore, such remuneration should be reasonable in relation to the economic value of the service provided.*

Amendment 5

Proposal for a regulation Recital 11

Text proposed by the Commission

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

Amendment

(11) *It is important to recall that,* through the principle of contractual freedom, it will be possible to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Regulation, *as the implementation of Directive 93/83/EEC has proven,* especially as far as certain technical means of transmission or certain language versions *and the nature and execution of certain contracts* are concerned, provided that any such limitations of the exploitation of those rights are in compliance with *national and* Union law.

Amendment 6

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

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

Amendment 7

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

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

Amendment 8

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) Operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile and similar networks, provide services which are equivalent to those provided by operators of cable retransmission services when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes, where this initial transmission is by wire or over the air, including by satellite but excluding online transmissions, and intended for reception by the public. They should therefore be within the scope of this Regulation and benefit from the mechanism introducing mandatory collective management of rights. Retransmission services **which are** offered

(12) Operators of retransmission services offered on satellite, digital terrestrial, **both open and** closed circuit IP-based, mobile and similar networks, provide services which are equivalent to those provided by operators of cable retransmission services when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes, where this initial transmission is by wire or over the air, including by satellite , and intended for reception by the public. They should therefore be within the scope of this Regulation and benefit from the mechanism introducing mandatory collective management of rights. **IP-based** retransmission services, **both** offered **on**

on the open internet should be *excluded from* the scope of this Regulation *as those services have different characteristics. They are not linked to any particular infrastructure and their ability to ensure a controlled environment is limited when compared for example to cable or closed circuit IP-based networks.*

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

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

Amendment 9

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile or similar networks, and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC should apply. The rules established in that Directive include the obligation to exercise the right to grant or refuse authorisation to an operator of a retransmission service through a collective management organisation. This is without prejudice to Directive 2014/26/EU¹⁸ and in particular to its provisions concerning rights of right holders with regard to the

Amendment

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile or similar networks, *and via the open internet if a controlled environment and a definable user group can be ensured*, and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC should apply. The rules established in that Directive include the obligation to exercise the right to grant or refuse authorisation to an operator of a retransmission service through a collective management organisation. This is without

choice of a collective management organisation.

prejudice to Directive 2014/26/EU¹⁸ and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation.

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

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

Amendment 10

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Distributors, such as cable or platform operators, that receive programme carrying signals through a direct injection process for reception by the public should be covered by the mandatory collective management provisions outlined in this Regulation, even if a communication to the public has not taken place prior to the transmission of the signal by the distributor. Distributors should therefore obtain an authorisation from the relevant rightholders as concerns their respective participation in such acts, subject to mandatory collective management. The notion of “direct injection” is a technical term for the specific situation in which cable or other platform operators receive the broadcast signal directly from the broadcaster’s premises or via a privately-closed network, so that such broadcast signal is not transmitted for reception by the public before it is transmitted by the operator receiving the signal. In this situation, which typically occurs within a Member State, there is only one, single

communication to the public of such a programme-carrying signal. This clarification is important in order to avoid further complexity in the interpretation of the notion of communication to the public, which would have consequences beyond the issue of retransmission.

Amendment 11

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

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

Amendment 12

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

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

deleted

Amendment 13

Proposal for a regulation

Recital 16

Text proposed by the Commission

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

Amendment

(16) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there may be an interference with the exercise of the rights of right holders insofar as mandatory collective management is required for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner for specific services and in order to allow more widespread cross-border dissemination of television and radio programmes by facilitating the clearance of these rights. ***This Regulation should be without prejudice to any existing or future arrangements in the Member States concerning the management of rights such as extended collective licences, legal presumptions of representation or transfer, collective management or similar arrangements or a combination of them.***

Amendment 14

Proposal for a regulation

Recital 18

Text proposed by the Commission

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

Amendment

(18) ***In line with the principles of better regulation***, a review of the Regulation should be undertaken after the Regulation has been in force for a period of time, in order to assess ***the impact of the Regulation, and primarily***, to what extent the cross-border provision of ancillary

benefit of improved cultural diversity in the Union.

online services has increased to the benefit of European consumers and hence also to the benefit of improved cultural diversity in the Union. *This review should be coordinated, where appropriate, with provisions aimed at improving the cross-border accessibility of content on video-on-demand platforms that were included in Article 10 of Directive 2017/... of the European Parliament and of the Council^{1a}, in the form of a dispute resolution mechanism. Should this mechanism not lead to a significant increase in the cross-border availability of content on video-on-demand platforms, the inclusion of those services in the scope of this Regulation should be considered.*

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

Amendment 15

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

Text proposed by the Commission

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

Amendment

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

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point b

Text proposed by the Commission

(b) "retransmission" means any *simultaneous*, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC *and other than retransmission provided over an internet access service as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council¹*, intended for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite *but excluding online transmission*, of television or radio programmes intended for the reception by the public, provided that such retransmission is made by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility such transmission was made.

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

Amendment

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

Amendment 17

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 18

Proposal for a regulation Article 2 - paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 19

Proposal for a regulation

Article 2 - paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 20

Proposal for a regulation

Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

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

Amendment 21

Proposal for a regulation

Article 3 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

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

PROCEDURE – COMMITTEE ASKED FOR OPINION

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

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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

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

1	0
EFDD	Robert Jarosław Iwaszkiewicz

Key to symbols:

+ : in favour

- : against

0 : abstention