



23.6.2017

OPINION

of the Committee on Industry, Research and Energy

for the Committee on Legal Affairs

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

Rapporteur: Jerzy Buzek

PA_Legam

SHORT JUSTIFICATION

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

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

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

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

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

Amendment

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

important means of promoting cultural and linguistic diversity, social cohesion and access to information.

broadcasts of such programmes.

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 3

Proposal for a regulation Recital 2

Text proposed by the Commission

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

(2) The development of digital technologies ***of the online marketplace is transforming*** the distribution of and access to television and radio programmes. Users increasingly expect to have access to television and radio programmes both live and on-demand, using traditional channels such as satellite or cable and also through online services. Broadcasting organisations are therefore increasingly offering, in addition to their own broadcasts of television and radio programmes, ancillary to their broadcast online services, such as simulcasting and catch-up services, ***in order to broaden their standard programming***. Retransmission services operators, which aggregate broadcasts of television and radio programmes into packages and provide them to users simultaneously to the initial transmission

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.

of the broadcast, unaltered and unabridged, use various techniques of retransmission such as cable, satellite, digital terrestrial, closed circuit IP-based or mobile networks as well as the open internet. *The distribution of and access to television and radio programmes is therefore increasingly done on a multiplatform and technologically neutral basis.* On the part of users, there is a growing demand for access to broadcasts of television and radio programmes *on any platform in a borderless environment, therefore* not only originating in their Member State but also in other Member States of the Union, including from members of linguistic minorities of the Union as well as from persons who live in *a* Member State *other* than their Member State of origin *or who travel there temporarily.*

Amendment 4

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 5

Proposal for a regulation Recital 3

Text proposed by the Commission

Amendment

(3) A number of barriers hinder the provision of online services which are ancillary to broadcasts and the provision of retransmission services and thereby the free circulation of television and radio programmes within the Union.

(3) Broadcasting organisations transmit daily many hours of news *and current affairs* programmes. These programmes incorporate a variety of content such as audiovisual, musical, literary or graphic works, which is protected by copyright

Broadcasting organisations transmit daily many hours of news, *cultural, political, documentary or entertainment* programmes. These programmes incorporate a variety of content such as audiovisual, musical, literary or graphic works, which is protected by copyright and/or related rights under Union law. That results in a complex process to clear rights from a multitude of right holders and for different categories of works and other protected subject matter. Often the rights need to be cleared in a short time-frame, in particular when preparing programmes such as news or current affairs. In order to make their online services available across borders, broadcasting organisations need to have the required rights to works and other protected subject matter for all the relevant territories which further increases the complexity of the rights' clearance.

and/or related rights under Union law. That results in a complex process to clear rights from a multitude of right holders and for different categories of works and other protected subject matter. Often the rights need to be cleared in a short time-frame, in particular when preparing programmes such as news or current affairs. In order to make their online services available across borders, broadcasting organisations need to have the required rights to works and other protected subject matter for all the relevant territories which further increases the complexity of the rights' clearance.

Amendment 6

Proposal for a regulation

Recital 4

Text proposed by the Commission

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

Amendment

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

Amendment 7

Proposal for a regulation

Recital 5

Text proposed by the Commission

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

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

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

Amendment 8

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Council Directive 93/83/EEC¹⁷ facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States of the Union. However, the provisions of that Directive on transmissions of broadcasting organisations are limited to satellite

Amendment

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

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

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

Amendment

(6) Council Directive 93/83/EEC¹⁷ facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States of the Union. However, the provisions of that Directive on transmissions of broadcasting organisations are limited to satellite

transmissions and therefore do not apply to online services ancillary to broadcast while the provisions concerning retransmissions of television and radio programmes from other Member States are limited to simultaneous, unaltered and unabridged retransmission by cable or microwave systems ***and do not extend to such retransmissions by means of other technologies.***

¹⁷ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission OJ L 248, 6.10.1993, p. 15–21.

Amendment 9

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Therefore, cross-border provision of online services ancillary to broadcast and retransmissions of television and radio programmes originating in other Member States ***should be facilitated by adapting the*** legal framework on the exercise of copyright and related rights relevant for those activities.

transmissions and therefore do not apply to online services ancillary to broadcast while the provisions concerning retransmissions of television and radio programmes from other Member States are limited to simultaneous, unaltered and unabridged retransmission by cable or microwave systems.

¹⁷ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission OJ L 248, 6.10.1993, p. 15–21.

Amendment

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

Amendment 10

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) The ancillary online services covered by this Regulation are those services offered by broadcasting organisations which have a clear and subordinate relationship to the broadcast. They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, within a defined time period after *the broadcast*, to television and radio programmes which have been previously broadcast by the broadcasting organisation (*so-called* catch-up services). In addition, ancillary online services include services which give access to material which enriches or otherwise expands television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content. *The provision of access to individual works or other protected subject matter that have been incorporated in a television or radio 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 11

Proposal for a regulation

Recital 10

Amendment

(8) The ancillary online services covered by this Regulation are those services offered by broadcasting organisations which have a clear and subordinate relationship to the broadcast. They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, within a defined time period after *broadcasting*, to television and radio programmes which have been previously broadcast *or, before broadcasting, to television and radio programmes which will be broadcast* by the broadcasting organisation (*for example* catch-up services *or previews*). In addition, ancillary online services include services which give access to material which enriches or otherwise expands television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content *or any service by a broadcasting organisation that exclusively consists of the provision to the public of works produced by the broadcasting organisation*. The provision of access to works or other protected subject matter independently *and separately from the broadcasting organisation's programming*, such as services giving access to individual musical or audiovisual works, music albums or videos, do not fall under the definition of ancillary online service

Text proposed by the Commission

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

Amendment

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

Amendment 12

Proposal for a regulation

Recital 11

Text proposed by the Commission

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

Amendment

(11) ***This Regulation affects neither the rights provided under Directive 2001/29/EC nor the acquisition or sale of rights on a contractual basis for such ancillary online services. Therefore, through the principles of territoriality and contractual freedom it will be possible to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Regulation, especially as far as certain technical means***

of transmission or certain language versions are concerned, provided that any such limitations of the exploitation of those rights are in compliance with *national and Union laws*.

Amendment 13

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Operators of retransmission services offered on satellite, digital terrestrial, *closed circuit* IP-based, mobile and similar networks, provide services which are equivalent to those provided by operators of cable retransmission services when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes, where this initial transmission is by wire or over the air, including by satellite *but excluding* online transmissions, and intended for reception by the public. They should therefore be within the scope of this Regulation and benefit from the mechanism introducing mandatory collective management of rights. Retransmission services which are offered on the open internet should be *excluded from* the scope of this Regulation as *those services have different characteristics*. They are *not linked to any particular infrastructure and their ability to ensure a controlled environment is limited when compared for example to cable or closed circuit IP-based networks*.

Amendment

(12) Operators of retransmission services offered on satellite, digital terrestrial, IP-based, mobile and similar networks, *as well as certain other retransmissions*, provide services which are equivalent to those provided by operators of cable retransmission services when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes, where this initial transmission is by wire or over the air, including by satellite *and* online transmissions, and intended for reception by the public. They should therefore be within the scope of this Regulation and benefit from the mechanism introducing mandatory collective management of rights. Retransmission services which are offered on the open internet should be *included in* the scope of this Regulation as *long as* they are *provided in* a controlled environment *such as a defined group of subscribers or registered users and comparable to closed circuits networks*.

Amendment 14

Proposal for a regulation

Recital 13

Text proposed by the Commission

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

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

Amendment 15

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

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

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

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

2001/29/EC, which they carry out together. Such broadcasting organisations and distributors should therefore obtain an authorisation from the rights holders concerned with regard to their respective participation in such acts.

Amendment 16

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

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

Amendment 17

Proposal for a regulation Recital 14 c (new)

Text proposed by the Commission

Amendment

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

Amendment 18

Proposal for a regulation
Recital 15

Text proposed by the Commission

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

Amendment

deleted

Amendment 19

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, ***as well as access to information***, by facilitating the clearance of these rights. ***In addition, this Regulation is without prejudice to arrangements in Member States concerning the management of rights such as extended collective licences, legal presumptions of representation or transfer, collective management or similar***

arrangements or a combination of them.

Amendment 20

Proposal for a regulation

Recital 18

Text proposed by the Commission

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

Amendment

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

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

Amendment 21

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Since the objective of this Regulation, namely promoting the cross-border provision of ancillary online services and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures in

Amendment

(19) Since the objective of this Regulation, namely promoting the cross-border provision of ancillary online services ***of broadcasters*** and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Union level, the Union may

accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of ancillary online services, this Regulation establishes enabling mechanisms to facilitate the clearance of copyright and related rights. This Regulation does not oblige broadcasting organisations to provide such services across borders. Neither does this Regulation oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Regulation concerns only the exercise of certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union,

adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of ancillary online services *of broadcasters*, this Regulation establishes enabling mechanisms to facilitate the clearance of copyright and related rights. This Regulation does not oblige broadcasting organisations to provide such services across borders. Neither does this Regulation oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Regulation concerns only the exercise of certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union,

Amendment 22

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 the following services:*

(i) "Catch-up service" means a service consisting in the provision to the public,

for a *limited* period of time, *of radio or television programmes which have been previously* broadcast by the broadcasting organisation;

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

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

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

Amendment 23

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

Text proposed by the Commission

(b) "retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC *and other than retransmission provided over an internet access service as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council*¹⁹, 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

Amendment

(b) "retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC, intended for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite *or* online transmission, of television or radio programmes intended for the reception by the public, provided that such retransmission is *equivalent to those carried out by cable retransmission services operators and is made in a closed environment and* by a party other than the

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.

broadcasting organisation which made the initial transmission or under whose control and responsibility such transmission was made **and for which that party has acquired the relevant rights. Online retransmissions are within the scope of this Regulation provided that they take place in a controlled environment and the group of recipients of such retransmissions can be clearly defined.**

¹⁹ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1.

Amendment 24

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

networks.

Amendment 25

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 26

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

Text proposed by the Commission

Amendment

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

Amendment 27

Proposal for a regulation

Article 2 – paragraph 2

Text proposed by the Commission

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

Amendment 28

Proposal for a regulation

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2 a) Any disputes with regard to the exercise of the rights resulting from this Article shall fall under the competent jurisdiction of the Member State in which the broadcasting organisation providing the online service is established.

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

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

Amendment 30

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 31

Proposal for a regulation

Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(5a) Member States shall ensure that, in connection with the integral reutilisation of broadcasting organisations' online services, a collective contract, signed by a representative association including users of the works or associations of users for a set group of works, can be extended to right holders of the same group who are not already represented by the representative association. The unrepresented right holders may object to this extension at any time and manage their rights individually or collectively in another grouping.

Amendment 32

Proposal for a regulation

Article 3 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

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

Amendment 33

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

Text proposed by the Commission

Amendment

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

Amendment 34

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4 a

Exploitation of broadcasting programmes through a direct injection process

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

participation and exploitation in such acts.

Amendment 35

Proposal for a regulation

Article 5

Text proposed by the Commission

Amendment

Article 5

deleted

Transitional provision

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

Amendment 36

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

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

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

PROCEDURE – COMMITTEE ASKED FOR OPINION

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

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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

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

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention