

Compromise amendments

Proposal for a regulation 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 (2016/0284(COD))

Rapporteur: Tiemo Wölken

AMC 1

Covers AM 10 (Rapporteur), AM 191 (Reda, Andersson, Geringer de Oedenberg)

Proposal for a regulation

Article -1 (new)

Text proposed by the Commission

Amendment

Article -1

Subject matter

1. This Regulation establishes legal mechanisms to facilitate the clearance of copyright and related rights relevant for the cross-border provision of ancillary online services and to facilitate digital retransmissions over a controlled-closed environment ~~as well as broadcasting organisations' on-demand services originating in other Member States.~~

2. Those legal mechanisms include the establishment of the country of origin principle as regards the exercise of those rights. The legal mechanisms also include provisions on mandatory collective management of copyright and related rights relevant for retransmission, on legal presumptions of representation by collective management organisations and on the exercise of retransmission rights by broadcasting organisations.

AMC 2

Covers AM 11 (Rapporteur), AM 197 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 198 (Reda, Andersson, Geringer de Oedenberg), AM 199 (Delvaux, Kammerevert), AM 200 (Mastalka, Chrysogonos), AM 202 (Wölken, Weidenholzer, Regner, Gebhardt, Geringer de Oedenberg, Cofferati, Negrescu) AM 203 (Dorfman, Sogor, Tomasevski, Tremosa, Gambus, Winkler, Urtasun, Gal, Terricabras, Hudghton, Torvalds, Tokes, Bilbao Barandica, Kosa, Delvaux, Svoboda)

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 ~~linear and non-linear~~ radio or television programmes ~~before, during- simultaneously with~~ or after their broadcast by the broadcasting organisation for a period defined in the contract, as well as of any material produced by or for the broadcasting organisation which is ancillary to such broadcast; ~~and of any content produced, co-produced or commissioned by or for the broadcasting organisation or licensed to it, including without any connection to the~~ broadcast;

AMC 3

Covers AM 12 (Rapporteur), AM 204 (Reda), AM 205 (Cavada, Jouland), AM 206 (Roziere) AM 207 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 208 (Delvaux, Kammerevert), AM 209 (Le Grip), AM 210 (Karim), AM 211 (Buda), AM 212 (Estaras Ferragut, de Grandes Pascual), IMCO 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 Council***, 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.

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, ***including by direct injection, irrespective of the retransmission technology or network used, provided that the retransmission takes place in a controlled-closed environment***, 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.

Kommentiert [OS1]: Direct Injection = to be covered by AM Cavada.

AMC 3A

Covers AM 13 (Rapporteur), AM 213 (Cavada, Brunon Wenta, Jouland), AM 214 (Roziere), AM 215 (Niebler, Voss), AM 216 (Estaras Ferragut, de Grandes Pascual), AM 217 (Mastalka, Chrysogonos), AM 218 (Reda, Andersson, Geringer de Oedenberg), AM 219 (Le Grip), CULT 20, IMCO 17, ITRE 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 by which broadcasting organisations transmit their programme-carrying signals for reception by the public to distributors (organisations other than the broadcasting organisation - see the Berne Convention) point to point via a private line – by wire or over the air, including by satellite – in such a way that the programme-carrying signals cannot be received by the general public during such transmission; the distributors then offer these programmes to the public simultaneously, in an unaltered and unbridged form, for viewing or listening on cable networks, microwave systems, digital terrestrial, IP-based and mobile networks or similar networks.~~means the point to point transmission by a broadcasting organization of its program carrying signal exclusively to signal distributors without those signals being accessible to the public.~~

AMC 4

Covers AM 220 (Delvaux, Kammerevert), AM 221 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 222 (Cavada, Joulard), CULT 19

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(b b) "~~controlled~~ closed environment"
means any environment in which a retransmission operator provides an ~~encrypted~~ retransmission service protected by content security methods only to a definable group of users who are contractually authorized to access such service.

Kommentiert [OS2]: "controlled" is quite delicate while talking about services provided over the open internet.

Kommentiert [KM3]: Replaced by "Content Security Methods" since encryption is a security method applying only to satellite.

Kommentiert [OS4]: As suggested by ALDE in their last comment; inspired by AM 222 Cavada.

AMC 5

Covers AM 14, 15, 17 (Rapporteur), AM 231 (Cavada, Jouland), AM 233, 240, 256 (Reda, Andersson, Geringer de Oedenberg), AM 235, 245, 260 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 236, 247 (Dorfman, Sogor, Tomasevski, Tremosa, Gambus, Winkler, Urtasun, Gal, Terricabras, Hudghton, Torvalds, Tokes, Bilbao Barandica, Kosa, Delvaux, Svoboda), AM 237, 246, 261 (Delvaux, Kammerevert), AM 238 (Mastalka, Chrysogonos), AM 255 (Regner, Weidenholzer), AM 259 (Estaras Ferragut, de Grandes Pascual), CULT 21

Proposal for a regulation

Article 2

Text proposed by the Commission

Application of the principle of ‘country of origin’ to ancillary online services

(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.

(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

Application of the principle of ‘country of origin’ to online services ~~by broadcasters~~

(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 a) Paragraph 1 shall not apply to

(a) audiovisual sporting events,

(b) purchased films cinematographic works and purchased episodes of television audiovisual series and fictions,

(c) cinematographic and audiovisual co-productions,

(d) audiovisual commissioned works, which are not predominantly financed by the broadcaster,

except if they have been commissioned.

(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

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account all aspects of the online service such as the features of the online service, the *size of the* audience, *the duration of online availability* and *all available language versions*.

(2 a) *Paragraph 2 shall not limit the parties' freedom to agree on any specific methods or criteria for calculating the amount of payment to be made for the rights subject to the country of origin principle such as those based on the broadcasting organisation's revenues generated by the online service.*

Kommentiert [KM5]: Ok for all political groups.

AMC 6

Covers AM 19 (Rapporteur), AM 268 (Wölken, Weidenholzer, Regner, Gebhardt, Geringer de Oedenberg, Coffferati, Negrescu), AM 271 (Roziere), AM 272, 300 (Dorfman, Sogor, Tomasevski, Tremosa, Gambus, Winkler, Urtasun, Gal, Terricabras, Hudghton, Torvalds, Tokes, Bilbao Barandica, Kosa, Delvaux, Svoboda), AM 278 (Cavada, Joulard), AM 279, 303 (Roziere), AM 280 (Mastalka, Chrysogonos), AM 298, 299 (Delvaux, Kammerevert), AM 301, 302 (Reda, Andersson, Geringer de Oedenberg), CULT 13, IMCO 21, ITRE 30

Proposal for a regulation

Article 3

Text proposed by the Commission

Exercise of the rights in retransmission by right holders other than broadcasting organisations

(1) Holders of copyright and related rights other than broadcasting organisations may exercise their rights to grant or refuse the authorisation for a retransmission only through a collective management organisation.

(2) Where a right holder has not transferred the management of the right referred to in paragraph 1 to a collective management organisation, the collective management organisation which manages rights of the same category for the territory of the Member State for which the operator

Amendment

Exercise of the rights in retransmission ~~and in re-use of broadcasting organisations' on-demand services~~ by right holders other than broadcasting organisations

(1) Holders of copyright and related rights other than broadcasting organisations may exercise their rights to grant or refuse the authorisation for a retransmission only through a collective management organisation.

~~*(1 a) Where an author or performer transferred or assigned the right of retransmission, he or she retains an unwaivable right for appropriate remuneration against the retransmission operator for the retransmission of his or her work. This claim may only be ceded to a collective management society in advance and only a management society may claim it. Such an arrangement shall not preclude collective agreements, operating agreements or joint remuneration rules for broadcasters, insofar as they guarantee equitable remuneration.*~~

(2) Where a right holder has not transferred the management of the right referred to in paragraph 1 to a collective management organisation, the collective management organisation which manages rights of the same category for the territory of the Member State for which the operator of the retransmission service seeks to clear

of the retransmission service seeks to clear rights for a retransmission shall be deemed to be mandated to manage the right on behalf of that right holder.

(3) Where more than one collective management organisation manages rights of that category for the territory of that Member State, the right holder shall be free to choose which of those collective management organisations is deemed to be mandated to manage his or her right. If in such a situation the right holder does not choose the collective management organisation, it shall be for the Member State for whose territory the operator of the retransmission service seeks to clear rights for a retransmission to indicate which of the collective management organisations is deemed to be mandated to manage the right of that right holder.

(4) A right holder shall have the same rights and obligations resulting from the agreement between the operator of the retransmission service and the collective management organisation which is deemed to be mandated to manage his or her right as the right holders who have mandated that collective management organisation and shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the retransmission which includes his or her work or other protected subject matter.

(5) A Member State may provide that, where a right holder authorises the initial transmission within its territory of a work or other protected subject matter, the right holder shall be deemed to have agreed not to exercise his or her rights in retransmission on an individual basis but to exercise them in accordance with this Regulation.

rights for a retransmission shall be deemed to be mandated to manage the right on behalf of that right holder.

(3) Where more than one collective management organisation manages rights of that category for the territory of that Member State, the right holder shall be free to choose which of those collective management organisations is deemed to be mandated to manage his or her right. If in such a situation the right holder does not choose the collective management organisation, it shall be for the Member State for whose territory the operator of the retransmission service seeks to clear rights for a retransmission to indicate which of the collective management organisations is deemed to be mandated to manage the right of that right holder.

(4) A right holder shall have the same rights and obligations resulting from the agreement between the operator of the retransmission service and the collective management organisation which is deemed to be mandated to manage his or her right as the right holders who have mandated that collective management organisation and shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the retransmission which includes his or her work or other protected subject matter.

(5) A Member State may provide that, where a right holder authorises the initial transmission within its territory of a work or other protected subject matter, the right holder shall be deemed to have agreed not to exercise his or her rights in retransmission on an individual basis but to exercise them in accordance with this Regulation.

~~(5 a) Paragraphs 1 to 5 of this Article shall apply also to the integral re-use of~~

~~the broadcasting organisation's on-demand services by a party other than the broadcasting organisation under whose control and responsibility such services were primarily made available.~~

~~(5 b) — The rights clearance mechanism regarding the exercise of the rights in retransmission by rightholders other than broadcasting organisations established in paragraphs 1 to 5 of this Article as well as in Chapter III of Council Directive 93/83/EEC also applies to functionalities that are closely connected to the linear retransmission and made available for a limited period of time after or during the retransmission.~~

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

(5 d) The possibility to call upon mediation and the prevention of the abuse of negotiating positions as provided for in art. 11 and 12 paragraph 1 Council Directive 93/83/EEC shall also be available for the purposes of this Regulation.

Kommentiert [KM6]: To be voted separately.

Kommentiert [OS7]: Reda AM 302, IMCO 21. A similar provision is included in Art 21 I h) CRM Directive. The aim would be that

- Broadcasters have an easy overview over rightholders;
- Rightholders receive their fair remuneration;
- Consumers get more legal paid access.

Kommentiert [OS8]: Replaces AMC 7.

AMC 6A

Covers ...

**Proposal for a regulation
Article 3 a (new)**

Text proposed by the Commission

Amendment

Article 3a

Exploitation of broadcasting programmes through a direct injection process Direct injection giving rise to retransmission

Direct injection shall be deemed to give rise to a retransmission for the purpose of Art 3 of this regulation and Directive 93/83. Broadcasters that transmit their programme-carrying signals through a direct injection process to distributors (in accordance with the Bern Convention, these are third parties in relation to the broadcaster) for reception by the public shall be jointly liable with their distributors for the single and indivisible acts of communication to the public and making available to the public, as defined in Article 3 of Directive 2001/29/EC, which they carry out together. Such broadcasting organisations and such distributors should therefore obtain an authorisation from the right holders in question for their respective participation in such acts.

Kommentiert [OS9]: Please insert all AMs related to Direct Injection.

Kommentiert [KM10]: Needs to become Art 4a.

AMC 7

Covers AM 310 (Wölken, Weidenholzer, Regner, Gebhardt, Geringer de Oedenberg, Coffferati, Negrescu), AM 327 (Voss)

Proposal for a regulation

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Prevention of the abuse of negotiating positions

Member States shall ensure by means of civil or administrative law, as appropriate, that the parties enter and conduct negotiations, including regarding authorization for retransmission, in good faith, under fair, reasonable and non-discriminatory terms and do not prevent or hinder negotiations without valid justification.

Kommentiert [OS11]: Replaced by a reference to art 12 I CabSat Directive in AMC 6 (5d).

AMC 7

Covers AM (Rapporteur), Covers AM 3 (Rapporteur), AM 96 (Reda, Andersson, Geringer de Oedenberg), AM 97 (Mastalka, Chrysogonos), AM 98 (Wölken, Weidenholzer, Regner, Gebhardt, Geringer de Oedenberg, Cofferati, Negrescu), AM 100 (Karim), AM 101 (Adinolfi, Ferrara, Borrelli, Tamburrano), IMCO 4, ITRE 11

Kommentiert [OS12]: To be checked

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 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, 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. ***The taking into account of such factors should not preclude the use, in addition, of any particular methods or criteria for calculating the amount of payments, such as a calculation based on a percentage of revenues as is currently done in the radio broadcasting sector.***

Kommentiert [NM13]: Corresponds to paragraph 2 a in AMC 5; approved by all groups.

AMC 8

Covers AM 1 (Rapporteur), AM 26 (Delvaux, Kammerevert), AM 27 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 28 (Mastalka, Chrysogonos), AM 30 (Reda), CULT 1, ITRE 3, IMCO 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 ***and continues to transform*** 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, such as simulcasting, ***webcasting*** and catch-up services. ***Furthermore, over-the-top audiovisual content services which are intended for end-users and run over an Internet network for the purpose of providing audiovisual content not directly related to a specific broadcast continue to gain in importance.*** 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. ***The distribution of and access to television and radio programmes is therefore increasingly done on a multi-platform and technology-neutral basis.*** On the part of users, there is a growing demand for access to television and radio programmes ***on any platform in a borderless environment, therefore*** not only originating in their Member State but

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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 *as well as persons who study other languages than their mother tongue.*

AMC 9

Covers AM 33 (Roziere), AM 36 (Karim), AM 37 (Reda), AM 38 (Mastalka, Chrysogonos), AM 39 (Adinolfi, Ferrara, Borrelli, Tamburrano), CULT 2, ITRE 5

Proposal for a regulation

Recital 3

Text proposed by the Commission

(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. 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.

Amendment

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

AMC 10

Covers AMs 42 (Karim), AM 51 (Zwiefka, Brunon Wenta), AM 49 (Adinolfi, Ferrara, Borrelli, Tamburrano), CULT 3, IMCO 2, ITRE 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 **by contracts** the necessary licences and hence also face a significant rights clearing burden. There is also a risk for **authors, creators and other** right holders of having their works and other protected subject matter exploited without authorisation or payment of **appropriate and fair** remuneration.

AMC 11

Covers AM 56 (Buda), AM 57 (Zwiefka, Brunon Wenta), CULT 4, ITRE 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 Council and Directive 2006/115/EC of the European Parliament and of the Council.

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 Council and Directive 2006/115/EC of the European Parliament and of the Council, ***which serve in particular to ensure a high level of protection for right holders.***

AMC 12

Covers AM 58 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 59 (Reda, Andersson, Geringer de Oedenberg), AM 62 (Mastalka, Chrysogonos), ITRE 8

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Council Directive 93/83/EEC 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.***

Amendment

(6) Council Directive 93/83/EEC 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.

AMC 13

Covers AM 66 (Niebler, Voss), AM 69 (Reda), AM 71 (Mastalka, Chrysogonos), AM 72 (Adinolfi, Ferrara, Borrelli, Tamburrano)

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.

Amendment

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

AMC 14

Covers AM 2 (Rapporteur), AM 76 (Delvaux, Kammerevert), AM 77 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 78 (Dorfmann et al), AM 79 (Mastalka, Chrysogonos), AM 80 (Wölken, Weidenholzer, Regner, Gebhardt, Geringer de Oedenberg, Coffferati, Negrescu), AM 81 (Reda, Andersson, Geringer de Oedenberg), IMCO 3, ITRE 10

Kommentiert [OS14]: Please insert the other Authors.

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

(8) The ancillary online services covered by this Regulation are those services **giving access to television and radio programs offered by broadcasting organisations**. They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, to television and radio programmes which have been broadcast by the broadcasting organisation (**e.g.** catch-up services). In addition, ancillary online services include services which give access to material which enriches, otherwise expands **or improves the accessibility of** television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content. **Such access is particularly important to reach younger audiences. Younger audiences are the main users of the internet as a means of watching television and listening to radio programmes. Therefore it is essential to enable broadcasters to disseminate also such kinds of programmes online across national borders.**

AMC 15

Covers AM 87 (Mastalka, Chrysogonos), AM 88 (Reda), AM 89 (Adinolfi, Ferrara, Borrelli, Tamburrano)

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In order to facilitate the clearance of rights for the provision of ancillary online services across borders it is necessary to provide for the establishment of the country of origin principle as regards the exercise of copyright and related rights relevant for acts occurring in the course of the provision of, the access to or the use of an ancillary online service. That principle of country of origin should apply ***exclusively*** to the relationship between right holders (or entities representing right holders such as collective management organisations) and broadcasting organisations and ***solely for the purpose of the provision of, the access to or the use of an ancillary online service.*** The principle of country of origin should not apply to any subsequent communication to the public or reproduction of content which is protected by copyright or related rights and which is contained in the ancillary online service.

Amendment

(9) In order to facilitate the clearance of rights for the provision of ancillary online services across borders it is necessary to provide for the establishment of the country of origin principle as regards the exercise of copyright and related rights relevant for acts occurring in the course of the provision of, the access to or the use of an ancillary online service. That principle of country of origin should apply to the relationship between right holders (or entities representing right holders such as collective management organisations) and broadcasting organisations. The principle of country of origin should not apply to any subsequent communication to the public or reproduction of content which is protected by copyright or related rights and which is contained in the ancillary online service.

AMC 16

Covers AM 4 (Rapporteur), AM 102 (Buda), AM 103 (Zwiefka, Brunon Wenta), AM 104 (Le Grip), AM 106 (Reda), AM 107 (Delvaux, Kammerevert), AM 109 (Roziere), AM 110 (Adinolfi, Ferrara, Borrelli, Tamburrano), CULT 8, IMCO 5, ITRE 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) Through the principle of contractual freedom, it ***should remain*** 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, ***including competition provisions***.

AMC 17

Covers AM 6 (Rapporteur), AM 115 (Reda, Andersson, Geringer de Oedenberg), AM 116 (Mastalka, Chrysogonos), AM 117 (Voss), AM 118 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 119 (Cavada, Joulaud), AM 120 (Roziere), AM 121 (Delvaux, Kammerevert), AM 122 (Niebler), AM 123 (Buda), AM 124 (Estaras Ferragut, de Grandes Pascual), AM 125 (Zwiefka, Brunon Wenta), AM 127 (Karim), ITRE 13, CULT 11, IMCO 8

Kommentiert [OS15]: We try to align the Recital with the paragraph; all other AMs should fall.

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 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 *that* are offered on the open internet should *also fall within the scope of this Regulation on the condition they are provided under a closed environment and protected by content security methods* when compared for example to cable or closed circuit IP-based networks.

AMC 18

Covers AM 7 (Rapporteur), AM 129 (Cavada, Joulaud), AM 130 (Niebler), AM 131 (Zwiefka, Brunon Wenta), AM 132 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 134 (Voss), AM 135 (Reda)??, AM 136 (Estaras Ferragut, de Grandes Pascual), AM 137 (Buda), AM 138 (Roziere), AM 139 (Karim), CULT 12, IMCO 9, ITRE 14

Kommentiert [OS16]: Linguistic? German version?

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/EU and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation.

Amendment

(13) In order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, circuit IP-based, mobile or similar networks ***in closed environments protected by content security methods***, 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/EU and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation. ***The right to refuse authorization as such is maintained, and only the way in which it is exercised is regulated. This also implies that it is always possible to decide whether or not to grant the right of retransmission.***

AMC 19

Covers AM 168 (Cavada, Joulaud), AM 169 (Karim), AM 171 (Buda), AM 172 (Zwiefka, Brunon Wenta), AM 174 (Adinolfi, Ferrara, Borrelli, Tamburrano), IMCO 13, ITRE 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, ***including freedom of expression and of information, while also taking into account the rules laid down in Directive 2001/29/EC which ensures a high level of protection of copyright, related rights and other subject-matter.*** 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 and content,*** by facilitating the clearance of these rights.

AMC 20

AM 181 (Buda), AM 183 (Roziere), IMCO 14, ITRE 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) ***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, including the provisions on the direct injection, on Europe's creative industries, on the financing of European audio-visual works and on rightholders. The review should also take into account the extent to which*** the cross-border provision of online services, ***and the level on investment in new content,*** has increased to the benefit of European consumers and ***businesses, and*** hence also to the benefit of improved cultural diversity in the Union.

AMC 21

Covers AM, 176, [309](#), [319](#), [292](#).

Proposal for a regulation
Recital (new) 13 a

Kommentiert [OS17]: Please include all AMs on ECL.

Text proposed by the Commission

Amendment

Collective management organisations should be able to apply rules on retransmissions laid down in this regulation through a collective agreement with an operator of a retransmission service, extended to apply also to rights of rightholders not represented by the organisation, where such a system is provided by virtue of national law.