“Online (re)transmission of TV programmes”

Summary of the workshop

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Online re(transmission) of TV programmes

Summary of the EAO workshop

Brussels, 21 June 2017

Council of Europe Liaison Office to the European Union
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1. Introduction to the workshop

The 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[1] (Regulation Proposal), adopted by the European Commission on 14 September 2016, proposes to introduce the principle of the country of origin (COO) for certain types of online transmissions of TV and radio programmes, such as simulcasting and catch-up services, with the goal of facilitating the licensing of content online by broadcasters and ultimately to increase cross-border access to broadcasters' online services in the Digital Single Market.

It also introduces a mandatory collective management system for the clearance of rights for retransmissions of TV and radio programmes provided by means other than cable, on equivalent closed networks, with the objective of facilitating the use of programmes by third-party platforms.

Under the new rules, for the purpose of clearing rights for some online transmissions by broadcasters, the rights of communication to the public, making available and reproduction will be deemed to take place solely in the member state in which the broadcasting organisation is established.

In this way, the broadcasting organisation would only have to clear the rights necessary for the member state in which it has its principal establishment. However, the licences granted under the COO principle would have to take into account all aspects of such online services, including the audience and the language versions of the programmes.

A round-table workshop was held on 21 June in Brussels in order to discuss certain aspects of the Regulation Proposal. The workshop was organised, and the discussion facilitated by the European Audiovisual Observatory (Strasbourg) upon request of the European Commission. This publication summarises the main points of the discussion and should not be considered as an exhaustive report of all that was said during the workshop.

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0594.

2. Summary of the workshop

The Regulation Proposal at the centre of the workshop has the ultimate aim of facilitating cross-border access to content for the benefit of consumers; in this context, various aspects of it had to be considered: How might this be achieved? What types of services and content are relevant, or under consideration? What are the benefits for the consumer? What is the potential impact on the rightsholders of audiovisual content, their modes of licensing rights, and their on-going recoupment of investment, revenues and ability to finance production? What is the potential impact on the facilitation of rights clearance for broadcasters and distributors of audiovisual content? What is the potential impact on the overall industry ecosystem and the business models of the main stakeholders?

In order to address all these issues, the workshop was divided in two Panels.

Panel 1 (morning) discussed the scope of application of the new rules and its impact on the value chain in the audiovisual sector: Session 1 identified the main obstacles to cross-border access to broadcasters' online services and focused on the definitions of the services concerned, based on market information; Session 2 discussed the possible impact of extending the COO principle to broadcasters' ancillary online services from different stakeholders' perspectives.

Panel 2 (afternoon) discussed in Session 1 the scope and impact of introducing mandatory collective management to retransmission services operating by means other than cable. Session 2 addressed the increasing use of direct injection technology in certain countries, and the resulting impact on the clearance of rights for this type of transmission and the difficulties faced by rightsholders and distributors of TV programmes, based on the relevant national and EU case law.

The workshop was attended by a broad range of invited stakeholders: public and commercial broadcasters, and their respective European associations (EBU and ACT); European associations representing a range of significant actors in the creative sector (European and international film and television producers, audiovisual authors, music rightsholders, sports rightsholders, film distributors, consumer organisations, and national film agencies); collective rights management organisations (CMOs and their European associations); television content distribution companies (cable, IPTV, and OTT); and representatives of the European Commission (DG CONNECT) and the European Parliament (JURI), as observers.

2.1. The agenda

Time	Duration	Topic	Speakers and primary discussants
9.00-9.30		**Opening of the workshop by the European Audiovisual Observatory**	**Susanne Nikoltchev** Executive Director, EAO
		Introductory note to the "SatCab Proposal" by the European Commission	**Giuseppe Abbamonte** Director Media Policy, DG CONNECT
9.30-13.30	**4 hrs**	**Panel 1.** **Cross border access to broadcasters' online services**	
9.30-11.00	**1.5 hrs**	**Session 1 - Scope and main obstacles to cross-border access to broadcasters' online services**	Chair: **Francisco Cabrera**, Legal analyst, EAO
9.30-9.45	15'	Snapshot presentation 1: Which services and content are offered online by broadcasters?	**Gilles Fontaine**, Head of Department for market information, EAO
9.45.10.00	15'	Snapshot presentation 2: Insight into the clearing of rights for TV programmes by broadcasters	**Jan Bernd Nordemann**, Honorary Professor, Humboldt University Berlin Partner, Boehmert & Boehmert Law Firm
10.00-11.00	60'	Discussion	
11.00-11.30	**30'**	**Coffee break**	
11.30-13.30	**2 hrs**	**Session 2 - Possible impact of extending the country of origin principle to broadcasters' ancillary online services**	Chair: **Maja Cappello**, Head of Department for legal information, EAO
11.30-11.45	15'	Snapshot presentation 3: The extension of the country of origin principle to broadcasters' ancillary online services	**Bernt Hugenholtz** Professor of Intellectual Property Law, Institute for Information Law of the University of Amsterdam
11.45-13.30	1h45	Discussion	

Time	Duration	Topic	Speakers and primary discussants
13.30-14.30	**60'**	**Lunch break**	
14.30-17.30	**3 hrs**	**Panel 2.** **The clearance of rights for retransmissions of TV and radio programmes by means other than cable**	
14.30-15.45	**75'**	**Session 1 - Scope and impact of introducing mandatory collective management to retransmission services operating by means other than cable**	Chair: **Sophie Valais**, Legal analyst, EAO
14.30-14.45	15'	Snapshot presentation 4: The impact of mandatory collective management on the exercise of retransmission rights	**Oleksander Bulayenko** Researcher, Centre for Intellectual Property Studies, University of Strasbourg
14.45-15.45	60'	Discussion	
15.45-16.15	**30'**	**Coffee break**	
16.15-17.30	**75'**	**Session 2 - Questions related to transmissions using the 'direct injection' technique**	Chair: **Maja Cappello**, Head of Department for legal information, EAO
16.15-16.30	15'	Snapshot presentation 5: National and EU case law on direct injection	**Sari Depreeuw** Professor of Intellectual Property Law, Saint-Louis University of Brussels
16.30-17.30	60'	Discussion	
17.30-17.45	**15'**	**Wrap-up by the European Commission**	**Marco Giorello** Acting head of Unit, Unit I2, Copyright, DG CONNECT
17.45-18.00	**15'**	**Closing of the workshop by the EAO**	**Susanne Nikoltchev** Executive Director, EAO

2.2. Opening of the workshop

Susanne Nikoltchev, Executive Director of the European Audiovisual Observatory, opened the workshop and welcomed the participants. She explained that the reason for the workshop was to bring together the interested groups to discuss the various issues at stake. She explained that the Observatory plays no role in recommending policy. Its role is to serve the industry with information and analysis, as well as to encourage discussion.

She encouraged the participants to contribute their knowledge and experience in an open discussion on the key issues underlying the Regulation Proposal.

Giuseppe Abbamonte, Director of Media Policy at DG CONNECT, also welcomed the participants and thanked the Observatory for organising the workshop. He briefly outlined the aim of the Commission's Regulation Proposal, and noted the various issues of debate, such as the application of the country of origin (COO) principle for clearing rights for broadcasters' ancillary services. He stressed that the proposal does not limit the contractual freedom of broadcasters and producers and should not affect remuneration, as the licences granted under the COO principle should take into account the audience and language versions of the programmes, including audiences in other member states.

He also briefly referred to the concerns regarding the Regulation Proposal in conjunction with the on-going competition investigation in the Pay TV case,[2] and commented that competition law decisions only deal with the case at hand and are not of a generally applicable character.

He was confident that the day's exchanges would shed more light on current licensing practices and how they may be affected by the Regulation Proposal. In addition, he mentioned the different approaches being discussed at the committees of the European Parliament with regard to limiting the scope of application of the COO principle to particular types of content.

In relation to the extension of the SatCab approach to digital retransmissions of TV and radio programmes to services other than cable but provided on equivalent closed networks, he explained that this would increase the offer of foreign channels. In this context, the Commission has excluded over-the-top (OTT) services, which they believe do not provide the same safeguards as those services provided over closed networks. Finally, he referred to the question of direct injection, which he considered to be an increasingly used technique that raises several interesting and complex questions.

[2] http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023.

2.3. Cross border access to broadcasters' online services

The morning Panel was devoted to the first part of the Regulation Proposal, namely the issue of cross-border access to broadcasters' online services, exploring its two main aspects:

- Session 1, chaired by **Francisco Cabrera**, senior legal analyst at the Department for Legal Information of the European Audiovisual Observatory, addressed the scope of and the main obstacles to cross-border access to broadcasters' online services;
- Session 2, chaired by **Maja Cappello**, Head of the Department for Legal Information of the European Audiovisual Observatory, addressed the possible impact of extending the country of origin principle to broadcasters' ancillary online services.

2.3.1. Which services and content are offered online by broadcasters?

2.3.1.1. Snapshot presentation

The scene was set by a presentation given by **Gilles Fontaine**, Head of the Department for Market Information of the European Audiovisual Observatory, which aimed to provide an overview of ***what was actually happening on the market***, that is to say, what type of services and content broadcasters are offering online.[3] Looking at data from 21 free-to-air television channels (the main public and commercial), the presentation addressed several questions: what exactly is catch-up?; what is available in simulcast and catch-up on the national market?; what is being made available outside the country of origin?

The key messages from the presentation were the following:

Broadcasters ***present simulcasting and catch-up in a variety of ways***. In general, there is a common service for simulcast and catch-up, and there is often one service for all channels of the same broadcasting group. Regarding the organisation of the broadcasters' video offer, there are three main variants: the video offer is a feature of the general broadcaster's website; simulcast and catch-up is a main entry to the broadcaster's website; and sometimes there is a stand-alone video service, via a separate URL.

With regard to the ***accessibility of content*** on catch-up services, different models are emerging: there are services clearly dedicated to simulcast and catch-up for 7 days, or 30 days; there exist free on demand video libraries where all programmes are kept online for a very significant period of time, such as 10 years, and constitute archives; and

[3] The full presentation is available online here: http://www.obs.coe.int/documents/205602/8729269/Fontaine+-+EAO+workshop+-+21-06-17.pdf.

sometimes, catch-up is part of the broadcaster's SVOD service. An overview of the rate of availability on the online national markets by free-to-air broadcasters revealed that the share of (the linear) programmes available online ranged from 20% to 100%. The potential reasons for these differences include programming, rights, costs, etc. In relation to the genres of programming, in general, ***flow programmes are much more available*** than stock programmes. Hence, the more flow programmes in the schedule, the higher the share of programmes available in catch-up. Indeed, Fontaine ***concluded that programme genre is a key factor*** for the availability of content on catch-up.

With regard to ***availability across borders***, Fontaine's research had also looked at the availability in France of the online content of several broadcasters from other countries. There was either programme per programme geo-blocking, complete geo-blocking or sometimes part of the programming was available as a pay SVOD service abroad. On average, with the programme by programme approach, 80% of the content available online in the country of origin was also available in France.

2.3.1.2. Discussion

On the issue of ***broadcasters' ancillary online services,*** there was a sense that "catch-up" television services are no longer so easy to define. The notion that they may still be ancillary or "subordinate" to the main broadcasting services was also questioned. Several participants from the production sector stressed the significance of online audiences for TV series, in particular youth audiences. Also, it was highlighted that for several broadcasters, catch-up is becoming a free VOD and is moving into the territory of pay VOD.

The aspect of ***distinctions between genres, and types of content***, and indeed ***types of broadcasters***, recurred in the discussion throughout the day. One comment from the production sector concerned how the findings of Fontaine's study may reflect the real commercial implications of placing certain content online. From the commercial broadcasters' side, it was noted that "formats" need to be categorised outside the general entertainment type of programme ("flow programme") due to their high levels of protection.

A distinction between types of channel, whether ***free or pay,*** was also reiterated by the discussants, as the pay TV channels have an entirely different eco system and environment. For pay TV, there was a certain consensus that, in the future, the portability of services (allowing subscribers to access their services when abroad) would solve any needs they may have to make their programming available online and across borders.

The main distinction that emerged concerned the ***different needs of the public and the commercial*** television sectors. While the commercial free-to-air channels were using online and catch-up, they saw no cross-border demand for their content. For some of them, online remains a complementary service, and there is no capacity for everyone to make all content available online.

For public service broadcasters, the issue of the cross-border availability of their content does not seem to be a real market issue. It was stressed that they had a ***specific remit which includes serving young adults*** and, in addition, providing ***a range of programmes online only***. Public service broadcasters have a national remit and this does not encompass to enter the markets of other member states. Their aim is to enhance the free flow of information and in particular to make services in their national language available to national citizens abroad and to others who may be interested in the programmes.

The example of the European public broadcaster ARTE was highlighted, which recently relaunched its online offering, no longer distinguishing between catch-up and "online first" content, with all the programmes organised by topic. The channel always has rights for France and Germany, and where possible, broader territorial rights. The ARTE Europe initiative (providing a range of programmes subtitled in English, Spanish and Polish available Europe-wide or worldwide) indicated a foreign demand for their programmes.

2.3.2. Insight into the clearing of rights for TV programmes by broadcasters

2.3.2.1. Snapshot presentation

The following presentation provided an ***insight into the clearing of rights for TV programmes by broadcasters*** and was given by **Jan Bernd Nordemann**, Honorary Professor, Humboldt University Berlin, and Partner at Boehmert & Boehmert Law Firm.[4] The key messages from this presentation are outlined below.

The process of rights clearance for TV programmes (acquiring the rights necessary for the intended use), *in particular for independent productions,* has different aspects. Broadcasters must clear five sets of relevant licensing categories of audiovisual works for transmission.

The first set includes ***forms of use (modes of exploitation),*** that is to say, the version of the work from the country of origin (original, dubbed or subtitled). Also relevant are broadcasting rights in relation to platforms (free-to-air, DTT, cable, satellite etc.). Additionally, there may be on-demand rights, or ancillary uses such as catch-up. The more extensive on-demand rights that broadcasters acquire are, the more they compete with video on demand services.

The second element relates to ***time of rights clearance***, which could be from three to ten years. Catch-up may be more limited. The third category of rights issues relates to ***quantity of use***, for example there may be a limit to the number of airings on linear TV.

[4] The full presentation is available online here: http://www.obs.coe.int/documents/205602/8729269/Nordemann+-+EAO+workshop+-+21-06-17.pdf.

The fourth set, ***exclusive/non-exclusive rights,*** is of significance**.** Linear broadcast rights may be exclusive. Sometimes catch-up or on-demand rights may not be exclusive as those rights may also be granted to special on-demand services.

And finally, of course the ***territorial rights,*** including the home country and sometimes multi-territorial (often organised by language). He concluded that ***transaction costs would not be reduced with the application of the COO principle***, as territorial rights are just one cost factor out of five. In addition, the rights are more expensive if acquired on a more extensive territorial basis, or they may not be available.

Nordemann then looked at the main conflicts around the Regulation Proposal: ***what interests are at stake and how can these interests be balanced***? Regarding producers, he claimed that a qualitative rather than a quantitative assessment (weighing their rights against a large number of potential end consumers) would be more appropriate. On the one hand, exclusive rights have a high value and producers need to be able to slice rights in a way that brings the best return on investment. On the other hand, the public broadcasters wish to reach their Diasporas or contribute to cultural diversity, while consumers may have an interest in receiving foreign content.

He concluded that the ***current legal status already provides contractual freedom for broadcasters*** who want to reach consumers abroad. Introducing a general COO principle for online transmissions could drive rightsholders to have pan-European licences. Parties would then lose flexibility to shape exclusive territory according to individual needs and budget. This is useful for pan-European broadcasters, but not for smaller ones (as licences would become more expensive), and may present a threat to cultural diversity.

2.3.2.2. Discussion

At the outset, consumers' representatives quoted a recent report on German consumers, according to which 70% of consumers were aware of geo-blocking. The report claimed there was a strong interest in having access to more content. Rightsholders and broadcasters, on the other hand, argued that the demand for cross-border access to content is negligible.

On the question of ***transactional costs*** and the extent to which they would be reduced via the COO principle, several stakeholders agreed with Professor Nordemann's conclusion. For the commercial broadcasters, the issue of territories can be dealt with in the negotiating of rights, adjusting the territories to two, three, or even to all 28 member states. They also stressed the point that territory is just one aspect of this process. Rights in musical works, managed by authors' CMOs, were cited as a complicated example of underlying rights, the clearance of which had been eased by the Collective Rights Management (CRM) Directive.

Producers' representatives stated that the Regulation Proposal does not ***distinguish between transaction costs for different content***. Producers are concerned, since the result of solving the problem for easing rights clearance for broadcasters will have an impact on the sustainability of their business.. The commercial broadcasters also noted that even if

transactional costs decreased, this could never offset the increased prices for (pan-European) license fees.

In the discussion that followed, again the ***distinctions between genres and types of content***, and indeed ***types of broadcasters,*** re-appeared. The distinction between types of audiovisual works, whether ***acquired content or in-house productions***, also became central to the discussion. Alongside this, with regard to genres, the distinctions between ***types of programmes*** and the nature of the ***process of rights clearance*** was discussed.

Public service broadcasters commented that the focus of Professor Nordemann's presentation had been on the acquisition of programmes, whereas the main concern for certain public service broadcasters is the clearing of rights for ***own produced and commissioned content*** and for online distribution, given the large volume of rights' clearance. Reference was also made to the need for broadcasters to deal with any non-contractual rights clearance, that is to say, especially exceptions and limitations since these are not harmonised EU-wide. In particular, ***clearing rights for programming such as documentaries,*** news, informational programmes etc., could turn out to be far more complicated than, for example, clearing rights for a VOD catalogue with only acquired production. It was noted that these programmes include a high number of cut material like still pictures, short audiovisual material, sound etc. Whereas the question of music could be cleared based on collective agreements, this is not (always) the case for the other parts included in the programme. The bottom line is that the country-of-origin rule does not imply that the online rights need no longer be cleared. The COO principle would maintain that need, together with the contractual freedom to agree on any condition for online use. The public service broadcasters argued that the COO principle helps with rights clearance to some extent. With respect to the question of the remuneration of online rights, all parameters, such as the features, audience and language concerned, will be taken into account. It was considered that this would secure rightsholders' remuneration for cross-border overspill.

According to the producers and pay TV providers, there is a distinction between what it means to clear rights for news, current affairs (which need to be aired quickly and may give rise to issues as to rights clearance), and genres such as TV series and films where the producer will clear all rights in advance.

Commercial broadcasters experience no major demand for their content across borders, while public channels may have a different experience, but warned that a legislative possibility to privilege public service broadcasters would cause problems with regard to the balance between public service and commercial broadcasters.

From the perspective of sports rightsholders, it was important to underline the fact that sport is its own genre and does not face the same patchwork of rights. The centralisation of rights has already happened in sports, for example with the joint selling of the rights for the Champions League.

Overall, the majority of stakeholders agreed that transaction costs would actually not be reduced by very much (if at all) with the introduction of the COO principle for licensing, while the prices for the rights would actually increase.

2.3.3. Possible impact of extending the country of origin principle to broadcasters' ancillary online services

2.3.3.1. Snapshot presentation

Bernt Hugenholtz, Professor of Intellectual Property Law, Institute for Information Law of the University of Amsterdam, introduced the second session of the morning, and looked at the ***extension of the country of origin principle to broadcasters' ancillary online services.***[5]

The following outlines the key issues addressed in the presentation.

Hugenholtz spoke of the COO as a "country of origin rule". In his opinion, proposing a regulation (and not merely a directive) was an innovative step compared to the other harmonisation initiatives in the field of copyright.

"Ancillary online services" are defined in the Regulation Proposal (at Article 1a). Ancillary is the key word, suggesting subordinate, related to but not as important as the broadcast. The services of relevance are ***simulcasting, non-linear catch-up, and additional content such as previews, reviews*** and supplemental content. An important part of the definition is that the service needs to be ***provided by or under control of broadcasting organisations.***

The "country of origin" approach is an extension of the concept from the Satellite and Cable Directive (SatCab Directive). Article 2 provides that the "act of communication to the public" that occurs in these ancillary services (and acts of reproduction), are "***for the purpose of copyright deemed to occur solely in the country of origin of establishment of the broadcaster"***. It is not exactly the same as the SatCab Directive since, for the latter, the country of origin is the member state of the uplink.

The rule deviates from the assumption that for acts of online content communication to the public that transcend national borders, there is a need for online licensing for all countries where the service is made available. Hugenholtz did not believe that this was the end of territoriality, as feared by the industry, citing both the Explanatory Memorandum and Recital 11 of the Regulation Proposal. There is ***no obligation on broadcasters to provide ancillary services online across borders***. Contractual freedom and the ability to continue limiting the exploitation of the rights affected by the COO principle are also addressed in Recital 11. The COO principle applies only to the versions broadcast in the country of origin; rightsholders ***can still impose territorial limitations and geo-blocking***. He noted that the reference to ***limitations being compatible with European Union law*** was unclear: did it refer to competition law, or to freedom of services?

Regarding the ***Premier League*** case,[6] which examined whether territorial exclusivity, as applied to satellite distribution, is in compliance with Article 101 of the Treaty of the

[5] The full presentation is available online here: http://www.obs.coe.int/documents/205602/8729269/Hugenholtz+-+EAO+workshop+-+21-06-17.pdf.

Functioning on the European Union (TFEU, anti-trust provision), the conclusion was that in principle, ***territorial licensing is not problematic per se but it cannot have an absolute effect of barring passive sales.***[7] The Pay TV case (Sky UK) led to Paramount's commitment to accept a change in the licensing conditions, in line with the Premier League case.

Finally, as regards the impact on stakeholders: for public service broadcasters, this will facilitate rights clearance for online broadcasting across the European Union with a small risk that these rights may become more expensive; for consumers, it implies easier access to foreign content; for rightsholders, it removes licensing opportunities on a country by country basis. Many countries have rights to fair remuneration which might be bypassed with the COO principle. It was commented that this is a change in the way of doing business; if there is a desire for more market integration and a European market for cultural goods, this is the way forward.

2.3.3.2. Discussion

2.3.3.2.1. The COO principle

In the discussion, the first issue to be addressed was the ***concept of the COO principle***. Professor Hugenholtz commented that it is a unitary rule (as with the SatCab Directive) which regulates an act of communication as being relevant only in the country of origin. The European Commission intervened to clarify that the COO principle provides a "legal fiction" that the communication to the public is only taking place in the country of establishment of the relevant broadcaster. Hence, it is not that different from what happens in the Audiovisual Media Services Directive (AVMSD). Several participants representing commercial broadcasters did not agree that the "legal fiction" involved was the same as for the AVMSD, and that just designating the law applicable is very different to saying that relevant acts are deemed only to take place in the country of origin.

The public service broadcasters noted that the COO principle for satellite broadcasting was different to that of the AVMSD, as the latter is more strictly applied, while the satellite rule only states where the act of communication takes place and explicitly takes account of actual and potential audiences. They further recalled that there are many other forms of COO principles, such as a non-discrimination principle, as applied in the Services Directive; and from that perspective the satellite rule is the one with the least intrusive impact.

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[6] http://curia.europa.eu/juris/celex.jsf?celex=62008CJ0403&lang1=en&type=TXT&ancre.

[7] "Passive" sales mean responding to unsolicited requests from individual customers including delivery of goods or services to such customers. This contrasts with: "Active" sales mean actively approaching individual customers by for instance direct mail, including the sending of unsolicited e-mails, or visits; or actively approaching a specific customer group or customers in a specific territory through advertisement in media, on the internet or other promotions specifically targeted at that customer group or targeted at customers in that territory.

A significant issue in the discussion was that of ***contractual freedom***, where several participants assessed this in relation to ***competition law*** and the pending case involving Sky UK and certain US film producers. It was claimed that there was interaction between the Regulation Proposal and the Sky case, which is of concern to the industry. There is a fear among commercial broadcasters that contractual freedom will not be guaranteed in the future, as the competition cases are not, in their opinion, narrow in scope and restricted to the parties concerned.

The European Commission's DG COMP has stated that these clauses (in the Sky case) might be ***anti-competitive "by object"***[8] and some participants noted that is likely to reach similar conclusions in other cases regarding similar clauses in other contracts. Most participants feared that this would set precedents. However, these fears were not shared by public broadcasters in view of the draft Regulation.

Commercial broadcasters also questioned whether it would be useful to insert Recital 11 (principle of contractual freedom) as an article in the Regulation Proposal. A recent academic analysis[9] was mentioned that had concluded that adding words in a recital or article is not enough to guarantee that it will not have the impact outlined above. Commercial broadcasters also questioned how the COO principle ***may impact the enforcement of competition law***. Would the reversal of the ***country of destination*** principle for copyright to a COO principle impact upon exemptions under Article 101 TFEU?

Producers noted that, irrespective of the impact of the application of EU competition law on the freedom to agree territorial exclusivity, the weaker bargaining power of producers vis-à-vis broadcasters would render the so-called contractual freedom under the Regulation Proposal meaningless.

A further aspect introduced in the debate and considered by the industry as related both to the Regulation Proposal and the competition law cases was the issue of ***unjustified geo-blocking***.[10] For most of the industry (sports rights representatives, commercial and public service broadcasters, producers of films and TV programmes), there is concern that

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[8]"Restrictions of competition "by object" are those that by their very nature have the potential to restrict competition. These are restrictions which in the light of the objectives pursued by the Union competition rules have such a high potential for negative effects on competition that it is unnecessary for the purposes of applying Article 101(1) of the Treaty to demonstrate any actual or likely anti-competitive effects on the market." See *European Commission Guidance on restrictions of competition "by object" for the purpose of defining which agreements may benefit from the De Minimis Notice*, http://ec.europa.eu/competition/antitrust/legislation/de_minimis_notice_annex.pdf.

[9] Ibañez Colomo P. (2017): *Copyright Reform against the background of Pay TV and Murphy: A legal analysis,* https://antitrustlair.files.wordpress.com/2017/06/ibanez-colomo-copyright-reform-against-the-background-of-pay-tv-and-murphy.pdf.

[10] The European Commission has developed a regulation to "end unjustified geo-blocking", to prevent direct and indirect discrimination based on the customers' nationality, place of residence or place of establishment in cross-border commercial transactions between traders and customers in the European Union. The draft regulation currently excludes from its scope copyright-protected content such as audiovisual and radio broadcasting services. In May 2017, the trilogue negotiation with the Council and the Commission was launched to discuss the final text.
See here: http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52016SC0173.

although audiovisual services are currently outside the scope of the geo-blocking regulation proposal, this may change with the review of the regulation in three years. It was commented that in the context of the Digital Single Market, the audiovisual sector cannot be compared to roaming, as it is culturally-specific content. The European Commission clarified that there was no intention to include audiovisual services in the geo-blocking regulation.

Public service broadcasters stressed that they are also producers and rightsholders and have an expectation of the value of all rights. Regarding ***facilitating rights clearance***, it was stated that, given that there are many rightsholders in their programmes, the process is very cumbersome and requires heavy administration. For example, with historical documentaries or current affairs programmes, there are difficulties with respect to the high amount of cut material like still pictures, audiovisual material, sound etc. If these difficulties were multiplied over 27 other countries, this would clearly lead to disproportionate administration costs. From their perspective, the COO principle will help to clear more programmes for online transmission. Where rights are territorially limited, they will continue to geo-block and this will not change with the proposed regulation. Likewise, with co-productions, geo-blocking will continue when requested by one co-producer whose value of the exploitation of the rights are seriously prejudiced by the exploitation of another co-producer – taking into account the respective financial share. Another public service broadcaster explained that when they produce documentaries, drama and often co-productions, they are aware of the need for territoriality and contractual freedom, as these are also the basis for the financing of their own productions. They are aware that the clearing of rights is not so straightforward. They also confirmed that relationships with external rightsholders would not change, and that it must therefore be possible for ***geo-blocking to continue*** in order to arrive at reasonable arrangements.

From the consumers' point of view, it was stated that the Regulation Proposal does not endow any rights on consumers to access content from other member states. The impact on consumers will depend entirely on the decisions of the industry, also in light of the outcome of the Sky case. This seems to be a balance that companies may have to accept in relation to the benefits they gain from EU freedoms.

Representatives of the recording industry evoked recital 21 of the SatCab directive, which states that in order to avoid distortions of competition, protection must be guaranteed across the member states and that the protection shall not be subject to any statutory license systems. In this context, and in particular for sound recordings, this means that were the COO rule to be applied, sound recording rightsholders would have to be granted full exclusive rights instead of mere remuneration rights for the broadcasters' services covered by the rule.

2.3.3.2.2. Pre-sales and the financing of production

Several participants discussed the financing of production, where one relies on pre-sales of future distribution rights and co-productions based on territorial exclusivity to raise production capital, and how the issue of territoriality also forms part of the negotiations with broadcasters where they have economic interests in content production. The film producers noted that the current system is based on voluntary agreements. As a general rule, it will be necessary to request geo-blocking. Also highlighted was the ***often weak bargaining position of the producers***, particularly of smaller producers when dealing with broadcasters. There was a belief that ***commercial freedom is an illusion*** because of a lack of bargaining power, and because of the interaction with competition law.

Regarding the fees for licensing online rights, some stakeholders argued that at the time discussions with broadcasters take place, the value is usually unknown, so the question is, how a value can be put on the rights when the production does not yet exist. When a broadcaster or pay-TV network gets involved in a film or a TV series, it invests to have the exclusive rights. It can build a marketing campaign centred on the fact that it offers that product exclusively to its customers. Lack of territorial exclusivity, or partial territorial exclusivity, would discourage investment as it would reduce the value of the relevant rights. Even with regard to languages, if a niche for a national language product is removed in any of the major countries, this would damage the financing of this product. A TV series typically needs to reach a niche audience in all of the countries.

Pay-TV providers also claimed that the proposed Regulation poses a risk to co-productions with a substantial re-nationalisation of markets, where it would remove the ability of smaller producers to do co-productions, carry out deficit financing, or create partnerships. Instead, there would be a one-stop shop; a prospect that no-one in the industry wants.

The film agencies' representatives noted that there was an industry consensus on the need to create a benefit for the whole value chain and reinforce cultural diversity. They sensed that the Regulation Proposal would lead to the opposite result, and to fewer European co-productions. They also raised the question of whether this is the best solution, and stated that various other proposals in that respect had been put forward by them in a declaration at the last Cannes festival.

As concerns the rightsholders' perspective and ***the impact on the current rights licensing*** systems, for music producers there was concern that the Regulation Proposal would negatively impact upon the current system (leading to less flexibility and choice for users, as well as fewer safeguards and less protection for rightsholders). For example, in the music sector, the system of licensing rights in sound recordings is based on the granting of multi-territorial licences, and this has been the practice for many years. For certain online services, the music industry has established this practice by setting up a network of voluntary reciprocal agreements between the collecting societies in different member states; hence, they believe market solutions already exist.

From the perspective of certain collective management societies, the COO principle could lead to ***forum shopping*** to the detriment of rightsholders' interests. The COO

principle would not encourage wider cross-border use, as it only helps to determine where the relevant act of communication takes place.

Sports rightsholders commented that without exclusivity it would be impossible for ***small markets to access high premium rights*** and sell it in local versions. For example, sports have very different values in different member states.

The discussion then focused on what the industry stakeholders termed as ***"exclusivity light".*** Representatives from the producers' sector explained how the financing plans for projects (TV, films) are based on different types of exclusivity: platform exclusivity, free and pay, time exclusivity, release windows, and territorial language versions. For each deal, there is always a different mix of these elements. With "exclusivity light", instead of full territorial exclusivity, obviously the value of rights would drop. Producers' representatives underlined that the European Commission, when implementing the Digital Single Market (DSM), had committed itself to ensuring cross-border access to legally purchased online services while respecting the value of rights. From the film distributors' perspective, it was added that they also invest at script level and calculate levels of investment according to potential market opportunities, and that they need certainty regarding territorial exclusivity in order to estimate the value of rights and recoupment opportunities.

Film producers continued to question whether contractual freedom would exist for producers going forward, given their weaker bargaining power vis-à-vis broadcasters and the implications of the application of EU competition law. They also questioned the overall need for regulation. They expressed concerns at the impact of "exclusivity light" on the future financing of content, as well as on distribution opportunities, as also highlighted by film distributors. The Regulation Proposal, in their opinion, does not solve the problem of copyright infringement in the country of soft sell ("passive sales") under EU competition law by a distributor only holding rights for another territory. They took issue with the focus on remuneration and recalled that the ability to build the financing in the first place is of key concern. They believe that contractual freedom enabled rightsholders to opt out of the country of origin in the SatCab environment, but that this is a totally different situation, given the economic potential of Internet distribution and its future influence on the entire eco-system and film sector value chain.

Public service broadcasters underlined the fact that they invest heavily in genuine European content and that, of course, in the situation whereby a communication to the public authorised by one co-producer would seriously prejudice the value of the exploitation rights of another co-producer, each co-producer can request the use of appropriate technical measures (geo-blocking).

Regarding negotiation positions, it was also mentioned that in some countries, for example in Germany, there are very broad framework contracts and terms of trade. The point was further raised by public broadcasters that many of the above concerns had also been expressed in the context of satellite broadcasting, but these concerns had proved to be unfounded. However, it was stated by others that the online context is different from the satellite platform.

Many participants stated that the main problem with the Regulation Proposal is that ***it is too broad***. The justification for intervention with regard to transaction costs does not necessarily apply to many of the programme types that will be concerned by the rule. Concerning the problems faced by broadcasters for older programmes (where clearance of rights were not envisaged for simulcast and catch-up), the authors could offer to discuss collective licensing solutions to facilitate their online exploitation.

In the discussion on the ***scope of the Regulation Proposal***, it became clear that in relation to the types of content (as outlined above), many stakeholders asked for ***clearer distinctions*** as to the types of content that may come under the COO principle, and a dramatic narrowing down of the scope of the Regulation proposal, although the preference would clearly be to delete the COO principle altogether.

Representatives of certain collective management societies found the European Parliament's Culture and Education (CULT) committee's proposal to limit the scope of the COO principle to broadcasters' own productions and fully financed commissioned productions interesting. They noted that another proposal had been made in the Committee on Industry, Research and Energy (ITRE) to limit the scope of the provision to news and current affairs.

The European Commission representative confirmed the result of the discussions of the CULT and ITRE Committees of the European Parliament (which took place on the same day as the workshop) and enquired about the views of the industry on their proposals.

Some commercial broadcasters noted that the scope of the Regulation Proposal, even if limited to own or fully financed commissioned productions, was still too wide. They feared that if these were to be the focus of the scope, and then if geo-blocking were to be removed in the future (due to regulation or competition issues), own production or fully financed productions would be the only types of content not sold in a territorial way. This would cause a competitive problem for own productions in comparison with other content.

The producers agreed with this and explained that fully financed and/or commissioned programmes or films may still have territorial rights built into the financing plan of the independent production company(ies) that have developed and produced the audiovisual work on behalf of the broadcaster. Hence, even a reduced application of COO would further reduce the ability to raise production capital and generate revenues for rightsholders and potentially lead to their impoverishment. In addition, applying the COO principle to the licensing of certain broadcasters' services may create obstacles when it comes to selling the work to on-demand services as it would have a negative impact on the perceived value of the work for other forms of digital distribution.

Overall, there was a consensus between rightsholders and commercial broadcasters that the negative effects of the COO principle are disproportionate to the problem the EC is trying to resolve (no or very limited effect on transaction costs).

The European Commission representative remarked that this had been a very interesting session, covering a very complex issue. He noted the problems that some public service broadcasters have in clearing underlying rights. He also noted that for small producers, there was an issue regarding their weaker negotiating positions. Finally, he commented on the important distinctions made as regards types of content where the rights are particularly difficult to clear.

2.4. The clearance of rights for retransmissions of TV and radio programmes by means other than cable

The afternoon Panel was devoted to the second part of the Regulation Proposal, namely the issue of mandatory collective management for the clearance of rights, and explored two main aspects:

- Session 1, chaired by **Sophie Valais**, senior legal analyst at the Department for Legal Information of the European Audiovisual Observatory, addressed the scope and impact of the new system with regard to retransmission services operating by means other than cable;
- Session 2, chaired by **Maja Cappello**, Head of the Department for Legal Information of the European Audiovisual Observatory, addressed the questions related to transmissions using the "direct injection" technique.

2.4.1. Scope and impact of introducing mandatory collective management to retransmission services operating by means other than cable

The first afternoon panel focused on the part of the Regulation Proposal related to the retransmission by third parties of TV and radio programmes from another member state. The Regulation Proposal provides that the right to grant or refuse authorisation of retransmission shall be exercised through mandatory collective management or via the broadcaster if he has acquired the rights per Article 4 of the Regulation Proposal. The proposal is an extension of the SatCab model, which is limited to retransmission via cable networks and microwave systems.[11]

[11] Operators of retransmission services, which aggregate broadcasts of TV (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 discussion addressed several issues, including the impact upstream of the licensing process, when rights are negotiated between producers or broadcasters and third party operators; downstream on the licensing chain, when retransmission rights are acquired by platforms; and the question of the scope of the Regulation Proposal with regard to relevant types of distribution/retransmission services.

2.4.1.1. Snapshot presentation

The fourth key presentation of the workshop came from **Oleksandr Bulayenko**, Researcher, Centre for Intellectual Property Studies (CEIPI), University of Strasbourg, and looked at ***the impact of mandatory collective management on the exercise of retransmission rights.***[12] The key points from his presentation are outlined below.

Bulayenko discussed the main elements of the Regulation Proposal with reference to the SatCab Directive, highlighting the similarities and differences between the two legislative acts. The Regulation Proposal refers to ***"mandatory" collective management***; however, in practice, collective rights management is only partly mandatory as it is complemented by broadcasters individually licensing their own (acquired and related) rights, while the exercise of authors' rights takes place only through CMOs.

The ***presumption of representation*** contained in the Regulation Proposal is a mechanism that applies when a rightsholder has not assigned his/her rights to a CMO. In this case, there is a legal presumption that the CMO working in the same domain in the same territory can assume responsibility for these rights. As regards the ***regulation of collective management***, there is a slight terminological difference to the SatCab Directive, in that the Regulation Proposal has a more updated terminology of a CMO, reflecting the regulatory framework of the CRM Directive.

The ***notion of retransmission*** concerns works that were already subject to communication to the public (already transmitted). This retransmission should be simultaneous, unaltered, unabridged (catch-up services are thus not covered). Altering or enriching content in any way is again not permitted either under the mechanism. The only alteration to the content that is permitted is the change of format (for example, from analogue to digital).

In addition, the scope is limited to retransmissions from one member state to another, and, in accordance with the subsidiarity principle, it does not cover retransmissions that would take place within a single member state. Finally, the retransmission is technically specific, namely limited to the means that are specified in the Regulation Proposal and should be carried out by organisations other than broadcasters.

Bulayenko commented briefly on the Regulation Proposal's impact on the different actors: for rightsholders other than broadcasters, these rights cannot be exercised

[12] The full presentation is available online here: http://www.obs.coe.int/documents/205602/8729269/Bulayenko+-+EAO+workshop+-+21-06-17.pdf.

individually but they can be transferred to broadcasters. This has ***advantages for smaller rightsholders*** but may ***limit the possibility for some producers to make individual deals***. The situation for broadcasters does not really change, which, some might argue, places the broadcasters at an advantage as it facilitates their aggregation of necessary rights. For transmitters, the proposal helps to avoid blackouts in the transmission and for CMOs it reinforces their involvement in the market.

Finally, he raised some issues for discussion: the separation of rights and the potential conflict with the ***exclusive nature of rights***; the ***co-existence of the SatCab Directive and the Regulation Proposal***, which set similar but not identical regimes; the extent to which the ***equal treatment of rightsholders*** can be achieved; and whether there would still be a possibility of mediation.

2.4.1.2. Discussion

It became apparent during the discussion that this aspect of the proposal was slightly less contentious than the aspects connected to the COO principle discussed during the morning panel. However, there were divided opinions in the group.

Some industry actors outlined the ***importance of retransmission rights' revenues*** (in the upstream market). For audiovisual authors, collection for retransmissions (cable, satellite, IPTV) represents a value of EUR 128 million (2015 data) and a further EUR 120 million for independent producers. It represents up to 40% of revenues for some of the CMOs. The fact that this system is based on a European directive and that the right of retransmission is a harmonised right which generates revenue is of significance, in particular regarding foreign exploitation of the programmes.

Producers' CMOs representatives also explained how they negotiate the fees with platforms; these are calculated as a certain amount per subscriber per month (approximately EUR 2 per year per subscriber). This represents just 2.5% of the operators' overall revenue for the CMOs managing the retransmission rights of independent producers. For authors' CMOs, the aggregated revenues for broadcasting and retransmission together represent 37% of rights collection in 2015.

Commercial broadcasters and producers argued, on the other hand, that collective management should be voluntary and that there is no need for legislative intervention in this regard. Producers and distributors' representatives agreed that the cable retransmission regime should in no event be extended to the open internet.

2.4.1.2.1. The extension of the SatCab Regime to IPTV and online services provided in a closed environment

The discussion also addressed ***difficulties in the current system in rights negotiations with platforms other than cable***. In some countries, there have been litigation or difficulties in the application of the system, so the clarification provided by the Regulation Proposal in that regard would be welcomed. Often, complications in getting a direct line of

negotiations with operators are reported because operators may claim to have acquired all rights from broadcasters and do not want to enter into discussions with authors and producers' CMOs. Alternatively, operators may enjoy legal exceptions and therefore do not work with CMOs. In some countries, for example in Germany, legal provisions prevent the authors from waiving their rights in the case of retransmissions.

At national level, the CMOs' attempts to deal with the services not included in the SatCab Regime have met with varying degrees of success. It can take time to negotiate platform by platform and it can also take time to clear rights with non-cable platforms. Creating a level playing field is important if the market is to reflect the importance of the revenues to authors and producers. One complication in agreements with aggregation platforms is ***the question of where the rights actually sit.*** Broadcasters may hold rights, including remuneration rights. Platforms often protect themselves by referring to the broadcasters' claim to hold all the rights; yet, it is not always clear whether this claim includes remuneration rights.

The majority of participants expressed support for the proposed extension of the SatCab system to closed networks that are similar to cable. In several countries, the SatCab Directive has already been implemented to include other retransmission services, such as IPTV, or market solutions have been found to cover such services. Others might have a general practice to apply collective management to satellite packages or IPTV services**.**

The commercial broadcasters, notwithstanding their interest in retransmission on all platforms, failed to see a need for legislative intervention. They see no market failure, as broadcasters license their channels to all platforms. Some participants noted that the current collective rights management system under the SatCab Directive works very well and that further regulation is not required.

Record producers, similar to commercial broadcasters, ***do not support*** legislative intervention in this area. It was stated that compulsory collective management is a limitation of rights, and they should have the ***choice to licence individually or collectively***, especially in view of market developments. As noted earlier, music producers in some cases choose to license via collective societies, and see no market failure that needs to be addressed.

With regard to sports rights, it was noted that the SatCab regime contains a clearer statement for the protection of contractual freedom than does the Regulation Proposal. UEFA does not authorise broadcasters to retransmit their matches except where there is a reciprocal agreement with other licensed broadcasters (in the country of the proposed retransmission). With mandatory collective licencing, the exclusive territory licensing arrangements are under threat. Sports rightsholders regulate the commercial environment around sports events such as sponsorship, advertising, etc. CMOs would not be able to contract all these aspects that need to be respected as regards sponsorship.

2.4.1.2.2. The extension of the SatCab Regime to non-linear online services

The last part of the discussion in this session specifically addressed the ***types of services and platforms*** that would come under the system.

As noted above, some representatives from the CMOs supported the Commission's proposal with regard to mandatory collective management as concerns the closed Internet. Some want to see it extended to similar services operating on the open internet, as it makes no sense to them that portable cable services without mobile internet, on the one hand, and services with mobile internet on the other hand, are dealt with under different regimes. They claim, however, that this is currently the case.

Regarding an extension of the system to players such as OTT services on the open internet, commercial broadcasters pointed out that the Commission has rejected this possibility and that they shared the Commission's concerns in this regard. This point of view was fully supported by some CMO's, the producers and sports rightsholders. Commercial broadcasters also considered that the ***intervention is excessive*** regarding contractual freedom because voluntary licensing models can offer solutions to the clearing of rights for IPTV.

For some other stakeholders, the mandatory collective management system should be extended to include rights clearance of an even broader range of rights. This would enable companies to offer ***"anytime, anywhere, etc." services*** including catch-up, simulcast etc. on apps or on cable networks, or other devices. Cable operators see a problem in the fact that customers can view their VOD services like Netflix but cannot access their cable package and accompanying services online. Hence, they also support the extension of the SatCab Regime to the open internet environment of closed user groups.

Producers, sports rightsholders and commercial broadcasters disagreed and argued that these services rely on exclusive rights, which are already licensed directly to (and by) broadcasters and platforms on a daily basis across the European Union. Furthermore, subjecting on-demand services to mandatory collective rights management would violate international norms (Berne, TRIPs and the WIPO Copyright Treaty). They argued that extending the mandatory collective rights management to OTT services would take away the ability of producers and distributors to secure revenues from licensing to open internet platforms on an exclusive basis.

From the point of view of OTT operators, there are very high transaction costs for rights clearance for OTTs. Whereas, as a matter of fact, there is a functioning regime for on-demand, it is more difficult for linear services online.

Some stakeholders from the CMOs pointed out the difficulty in having a defined list of relevant services due to on-going and rapid developments in the market. It is difficult to have a defined list, as ***services could evolve over time***. They are slow to authorise rights where the scope (regarding platforms) is not clearly defined under the current legal framework. A mandatory collective management seems to be the way forward, but it should be limited to linear services. They wish to facilitate rights clearance within a

framework that provides predictability and efficiency, and to ensure that rightsholders receive fair remuneration as the market evolves.

For producers, it is important to ***neither undermine the value of exclusive rights*** nor to remove the possibility of negotiating individually if that better fits the business model. They want a flexible system where the licensing of future internet distribution rights can be used as a source of financing. And finally, commercial broadcasters also expressed a preference for a restricted scope of the Regulation Proposal focused on linear services which would not include time-shifted services. The Regulation Proposal should not go beyond what currently exists for cable services under the SatCab Directive. Regarding IPTV and OTT, there are also differences due to signal integrity and programme quality and piracy that should be taken into account.

2.4.2. Questions related to transmissions using the "direct injection" technique

The focus of the second session of the afternoon was not actually part of the Regulation Proposal's text, but nonetheless relevant to the issue of retransmission. The European Parliament Committee on Legal Affairs (JURI) has namely proposed an amendment to address this issue (Wölken report).[13]

2.4.2.1. Snapshot presentation

The last presentation of the workshop was provided by **Sari Depreeuw**, Professor of Intellectual Property Law, Saint-Louis University of Brussels.

The main points from her presentation on the ***National and EU case law on direct injection*** are outlined below.[14]

It included a brief overview of the legal framework (the SatCab Directive, the InfoSoc Directive, the Rental and Lending Rights Directive and the national implementation of the SatCab Directive); definitions of cable retransmission; technical schemes (traditional and direct injection); national case law (and cases of the CJEU); EU copyright reform; and open questions.

Under the copyright reform, both the Regulation Proposal and the EP committee draft report by MEP Wölken are relevant. This report recommends introducing a system of joint liability (broadcaster and cable operator) in the case of direct injection.

[13] Draft JURI report, 2016/0284(COD), 10 May 2017, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-604.674%2b01%2bDOC%2bPDF%2bV0%2f%2fEN.
[14] The full presentation is available online here: http://www.obs.coe.int/documents/205602/8729269/Depreeuw+-+EAO+workshop+-+21-06-17.pdf.

The cable retransmission right is a type of the ***communication to the public.*** In the SatCab Directive, rights should be taken care of either by a CMO or individually. There is a mandatory CMO for broadcasting retransmission except for the broadcasting organisations themselves. The presentation examined what cable retransmission is and if direct injection qualifies as such. Depreeuw briefly explained the nature of the traditional system of retransmission, whereby a cable operator picks up the free-to-air transmission that is being received in homes and injects it into the cable network to deliver to subscribers. With direct injection, a broadcaster composes the TV schedule and then transfers this directly to the cable operator. She noted a distinction between the two as to whether there is direct contact between the broadcaster and the cable operator (in the first case there isn't, whereas in the second case there is).

Sometimes, there is an initial free-to-air broadcast, and sometimes there is not. If there is a legal qualification of direct injection as a cable retransmission, then it can be argued that there are two communications to the public (first by the broadcaster and then by the cable operator) and a mandatory collective management system applies. If not, there is only one communication over cable, so there is no mandatory CMO and it is unclear who should clear the rights.

Reviewing the case law does not provide clear answers to the question of how direct injection should be qualified and, consequently, who should clear the underlying rights. Depreeuw noted that in the 1990s in Belgium, the courts ***considered that direct injection is retransmission by cable.*** Subsequent cases have seen the courts reach different conclusions. Two cases, in the Netherlands[15] and in Norway,[16] concluded that ***retransmission requires two communications to the public***: a primary communication by the broadcaster and a second by the cable operator. In the SBS case at the Court of Justice of the European Union (CJEU),[17] the Court decided that the broadcaster ***does not perform a communication to the public*** through direct injection. However, the CJEU nuanced its own statement: when broadcasters deliver in this way, ***they know that there will be a public*** (of cable subscribers). There is also an exception: when the cable operator offers ***a merely technical service*** to a broadcaster, then it may be possible that it is the broadcaster who communicates to the public. This left leeway for national courts to decide who makes the communication to the public.

2.4.2.2. Discussion

It emerged that the issue of direct injection has the most significant impact on CMOs.

Indeed, existing case law frequently involved challenges by these organisations seeking remuneration from cable operators. Some CMO representatives commented that they understand from the case law that ***direct injection is not a communication to the public***.

[15] Dutch Supreme Court 28 March 2014, ECLI:NL:HR:2014:735, (Norma/NL Kabel).
[16] Norwegian Supreme Court 10 March 2016, HR-2016-00562-A, (case no. 2015/1101 (Norwaca Vs Get AS.).
[17] 'Case C-325/14, SBS Belgium – broadcasting via third parties.

However, they considered the most important issue was ensuring payment to the rightsholders. They claimed that the ***discount in revenues due to direct injection is substantial***, and that the Regulation Proposal was an opportunity to address this problem.

According to other CMOs, there are a growing number of ***cases with no or substantially reduced remuneration from either broadcasters or cable operators***. They also considered this Regulation Proposal as a good opportunity to clarify the situation.

In addition, it was stated that a voluntary or individual negotiation would not guarantee payment in the same way. Again, it was stressed that this was not just a legal issue, but that it was important to understand that ***a change in a technical issue has a major impact on the negotiation of rights and on the money paid*** for the services.

Professor Hugenholtz commented that in the Netherlands a new law was introduced in 2015 to combat this with the introduction of an unwaivable remuneration right.

Overall, stakeholders agreed that direct injection technology raises issues which merit attention at national and/or EU level to ensure that stakeholders continue to benefit from the use of their works.

2.4.2.2.1. The issue of joint liability

Commercial broadcasters held that according to the case law of the CJEU, there is only one communication to the public with direct injection. They pointed out that this problem can still be managed on an individual basis or via a CMO. In the exercise of an exclusive right, one can freely negotiate. In principle, the rightsholder ***could claim that there is an increased value*** in that communication to the public. They also believed that direct injection is only a local issue and hence should be out of the scope of the Regulation Proposal.

According to public service broadcasters, the issue of joint liability is a wrong concept for direct injection. In the latter situation, there is no primary signal by the broadcaster to the public; hence, there is only one, single communication to the public by the distributor. Therefore it is this distributor that should be solely liable for the communication. They were also of the opinion that direct injection does not take place on a cross-border scale and that it therefore does not justify the need for EU regulation; it should be tackled at national level.

Some pay TV broadcasters shared their doubts about whether the proposed amendments would clarify this problem. They feared that they would rather add more confusion. The ***question concerns appropriate remuneration for rightsholders*** and that is what the solution should focus on.

On the question of whether it is necessary to re-think the meaning of a broadcaster, it was noted from some CMOs representatives that sometimes broadcasters are owned by retransmitters. The resulting editorial dependence questions the role of the broadcasters (which might also be viewed as producers or packagers of programmes). This concerned, however, only a marginal part of the market.

From the perspective of OTT platforms, there seems to be no difference between direct injection to cable operators and feeding into DTT or satellite systems, so in their view it should be up to the broadcaster to clear everything.

Some other stakeholders did not consider that the joint liability proposal was a useful amendment, as ***there is no clarity regarding how that would work in practice***. They would adhere to the ruling that there is one communication to the public, but noted that there can be agreements for rights clearance on both sides (broadcasters and retransmitting operators). Others suggested a simpler solution whereby direct injection would be added to the activities constituting a transmission which, when included in the package of signals offered by platforms, would constitute a retransmission. Direct injection would in effect be inserted into the established and well understood retransmission regime.

The European Commission representative enquired about the difference between a situation where there is a broadcast and then a delivery via direct injection, and a situation ***where there is no primary broadcast*** but just an assembly of programmes delivered to the cable operator. If there were no primary transmission by the broadcaster should the mandatory collection system be maintained?

Some CMO representatives expressed concern that direct injection would increase in the future. Collective management is mandatory only where broadcasters have not acquired the rights, meaning that in effect there is already a choice. While rightsholders have the option of transferring all their rights to broadcasters, the issue of payment remains. They believed that the solution which involves leaving remuneration arrangements to the market only works for larger producers.

Professor Depreeuw commented further on the situation with just "one act of communication". First, it is necessary to ask who is communicating. If there is joint liability, would both be subject to clearance via collective management? Should the broadcaster be treated as a producer and the operator clear rights via mandatory collective management? She stated that these are open questions, as both entities are somehow engaged.

2.5. Closing of the Workshop

Marco Giorello, Acting Head of the Copyright Unit, DG CONNECT, gave a short wrap up of the workshop, reviewing briefly the issues discussed (following on from the summation of Mr Abbamonte on the morning's panel).

These included discussions on the limitation of the scope of the country of origin with regard to the content covered (third party or own productions), as discussed in the morning, and exchanges of views on the broadening of the scope in relation to the retransmission issues, as discussed in the afternoon.

Concerning retransmission, he noted a certain amount of support for the Commission's proposal to apply mandatory collective management to retransmissions provided by

means other than cable but on equivalent closed networks. He raised the question of going beyond closed networks, as discussed in the afternoon, and recalled that the Commission had not retained this option. Regarding direct injection, he acknowledged that there are legitimate questions around these issues.

He concluded by thanking the Observatory for the organisation of the workshop and all of the participants for their commitment and for spending the full day at the workshop.

Susanne Nikoltchev, Executive Director, European Audiovisual Observatory, thanked the Commission for participating in the discussion and the presenters and all the participants for their active contribution. She closed the workshop with the announcement that the Observatory would put together a summary of the main elements of the discussion and make it available to the general public.

3. Annex

3.1. Preliminary mapping questionnaire

Please provide a concise reply (max 10-15 lines) to each of the questions below, if applicable/relevant to you, and add links to, where available, or attach position papers you would like to refer to for each of the topics. The replies will be used by the EAO to compile an overview table for the benefit of all participants to the workshop.

Cross border access to broadcasters' online services - Market perspective

1. What effects would cross-border access to broadcasters' online services such as simulcasting and catch-up TV have on the European audiovisual sector from a market perspective?

Clearance of rights and country of origin

2. What would be the impacts of introducing the country of origin principle to the licensing of broadcasters' ancillary services i.e. simulcasting and catch-up TV?

3. What kind of other measures would you suggest to facilitate the clearance of rights for cross-border transmissions of TV programmes while preserving the contractual freedom of right-holders?

Mandatory collective rights management

4. What would be the impacts of introducing a mandatory collective management of rights to retransmission services operating by means other than cable?

Direct injection

5. Do you think that clarifications are necessary (and if so, which) with regard to direct injection practices?

3.2. Overview summary of the replies from the workshop participants

3.2.1. From the views of public service broadcasters

	Public service broadcasters				
	EBU	**ARTE**	**Danish Radio**	**France Télévision**	**ZDF**
1. What effects would cross-border access to broadcasters' online services such as simulcasting and catch-up TV have on the European audiovisual sector from a market perspective?	Audiovisual value chain will be not be impacted by the Regulation and international co-productions will not be endangered. Proposal does not affect territoriality nor contractual freedom of broadcasters and rightsholders.	As the position of ARTE in the European audio-visual sector is unique and as the right clearance happens on a voluntary basis, the impact on the market is very limited.	From a Danish perspective, none. Particularly since the proposed Regulation does not affect territoriality and contractual freedom.	Would be beneficial to right-holders, broadcasters and platform operators and have an overall positive effect on the European audio-visual sector.	• need of free flow of information and European cultural diversity otherwise dominance of non-European content/information/news • application of COO will not damage the possibility of co-producers to exploit rights independently from each other • pan-European licenses would have a negative impact on availability of content and embrace risk of dominant positions and monopolies

	Public service broadcasters				
	EBU	**ARTE**	**Danish Radio**	**France Télévision**	**ZDF**
2. What would be the impacts of introducing the country of origin principle to the licensing of broadcasters' ancillary services i.e. simulcasting and catch-up TV?	Will give the necessary legal certainty to increase the cross border availability of EU AV content.	Current system of licensing makes it possible for TV channels to have some of their programmes available in other countries through negotiation. Any change has to include the support of creators and the interests of the right holders.	Will provide legal certainty. Put online services on equal footing with satellite transmissions.	NA	Rights have to be acquired in one single contract: only possible if the same legal framework applies which would give legal certainty. Respect of productions and co-productions, the contractual freedom is of course predominant. Therefore, the making available on a cross border basis depends on the terms and conditions of the contract.
3. What kind of other measures would you suggest to facilitate the clearance of rights for cross-border transmissions of TV programmes while preserving the contractual freedom of right-holders?	• further strengthen contractual freedom • explicitly clarify in the recital that geo-blocking will remain possible	Negotiations and discussions are very important. Importance of the circulation of European works within the EU has to be underlined.	COO should cover all our online services - particularly as the Regulation preserves contractual freedom and territoriality in Recital 11 – which profitably could be strengthened to clarify that geo-blocking will remain possible.	NA	Country of origin principle for all broadcasters' online services would be important in a converged world

	Public service broadcasters				
	EBU	**ARTE**	**Danish Radio**	**France Télévision**	**ZDF**
4. What would be the impacts of introducing a mandatory collective management of rights to retransmission services operating by means other than cable?	Facilitate a complex clearance of rights which would be the same for different competitors. It should further be clarified expressly that the Regulation is without prejudice to any existing or future arrangements in the Member States with regard to extended collective licensing systems or similar arrangements.	The fact that all the organisations and services that benefit from contents are associated to the remuneration of authors is important.	Denmark has already extended collective licensing of retransmission other than cable. Rights clearance handled concurrently with technological development	Is necessary to meet consumers' demand. • would reflect market evolutions and create a level playing field • would ensure fair negotiation and agreement between right-holders and platform operators • attractive legal offers corresponding to consumers' needs would prevent further development of illegal services.	Technological neutrality is needed. Platforms do have a competitive disadvantage compared to traditional cable operators.
5. Do you think that clarifications are necessary (and if so, which) with regard to direct injection practices?	Direct injection takes place only if no signal carrying such programme can be received at the same time by the public other than via cable or similar platform. In this situation, there is only one, single communication to the public.Whenever this communication is made by an organization other than the original one	NA	The Regulation does not seem to be the best instrument for clarification of direct injection practices as there is typically no cross border element.	NA	There is no urgent need for clarification in the regulation. If primary use: right clearance must be done directly with the rightsholders on individual contractual basis.If there has been a primary broadcast and the operator has a direct business relation to the customer, then it is retransmission: specific right clearance system for retransmission applies.Clarifications – if any - of direct injection must take account of the different situations.

3.2.2. From the views of commercial broadcasters

	Commercial broadcasters				
	ACT	**Canal+**	**Mediaset**	**RTL**	**SKY**
1. What effects would cross-border access to broadcasters' online services such as simulcasting and catch-up TV have on the European audiovisual sector from a market perspective?	Rights owners of high-value content would: • sell rights on pan-EU basis smaller national platforms will be unable to afford, larger content aggregators (often non-EU/US) would benefit • withhold content from online distribution until exclusive national windows expire = less content being available online in Europe Also: • ability for local broadcasters to invest in news and local programming will be seriously affected • multi-territory funding for European production will decline • prices increasing	A lot of works already circulate cross border. The creative financing system is based on the territoriality of rights.	Failure to geo-block by a neighbouring operator will undermine our territorial and/or platform exclusivities.	• jeopardize variety of programs, cutting down possibilities to finance AV content • profit only to big players • acquisition of rights would be more expensive • affect balance between commercial and public broadcasters • inability to market rights due to language barriers	• bad impact on market, financing • quality of productions • consumer: higher price and less choice • set different national players against each other

	Commercial broadcasters				
	ACT	**Canal+**	**Mediaset**	**RTL**	**SKY**
2. What would be the impacts of introducing the country of origin principle to the licensing of broadcasters' ancillary services i.e. simulcasting and catch-up TV?	Same as Question 1 Proposal effectively removes the territorial nature of copyright in this context by creating an automatic pan-European license.	• Would endanger the territorial licensing model which is a necessity for investments in audiovisual and cinematographic production based on pre-financing. • impact the industry's ability to invest in new content (particularly culturally diverse European programs) • repercussion on consumers' choice as well as jobs in the sector • favour the big actors	Territorial exclusivity will be undermined by services in other Member states featuring similar offers. Online content is easily accessible unlike satellite.	• bares high risks regarding territoriality, especially if preserving geo-blocking is not guaranteed (revision in 3 years) • negative impact on contractual possibilities would affect exploitation	• fundamentally undermine exclusive territorial licensing • cause reduced licence fees • undermine financing of content UNLESS geo-blocking is envisaged • Language versions would become bargaining
3. What kind of other measures would you suggest to facilitate the clearance of rights for cross-border transmissions of TV programmes while preserving the contractual freedom of right-holders?	disagree with the fact that clearance of rights for cross-border transmissions of TV programmes is difficult and needs to be facilitated. No evidence to support this allegation	Cross border transmissions of TV programmes is possible in the current framework. Applying the law of the country of origin instead of the country of origin principle for the acquisition of online services rights.	There are no difficulties in negotiating clearance. Might be trickier for news that have a limited life-span.	Not see any need	Market already adapting and flexible.

	Commercial broadcasters				
	ACT	**Canal+**	**Mediaset**	**RTL**	**SKY**
4. What would be the impacts of introducing a mandatory collective management of rights to retransmission services operating by means other than cable?	Any impingement on right holders' rights and/or ability to have exclusive rights in a certain territory would limit investment and breach international norms. Article 4 exemption (broadcasters' veto) is crucial.	Already available on a voluntary basis. Making it mandatory would be a breach to their capacity to manage their own rights. Could lead to a "forum shopping" effect between the existing organisations.	No need or justification for any extension. Would limit investment in AV works/online services and breach international norms Namely the WIPO Copyright Treaty (WCT), the WIPO Phonograms and Performances Treaty (WPPT) and the TRIPS agreement	• privileges IPTV and platforms over commercial broadcasters, film & music rightsholders • weakens the position of all rights holders	• limits investment in AV works/online services • breaches international norms
5.Do you think that clarifications are necessary (and if so, which) with regard to direct injection practices?	No "lack of liability" in case of direct injection; it will always be either the broadcaster or the distributor that is liable for the communication to the public.	Provide for a joint liability between the broadcaster and the distributor resulting in the sharing of the costs of retransmission and not in a double billing of these costs.	A case-by-case approach in light of specific infrastructure and commercial practices in the Member States.	No need. In Germany, direct injection is treated as cable retransmission in practice	NA

3.2.3. From the views of retransmission service providers and film producers

	Retransmission service providers		Film producers		
	Magine	**Orange**	**CEPI**	**EPC**	**FIAPF**
1. What effects would cross-border access to broadcasters' online services such as simulcasting and catch-up TV have on the European audiovisual sector from a market perspective?	• increased risk of big multinationals dominating the market making it nearly impossible for smaller local players to be profitable • increased rights costs	NA	• undermine territorial licensing • detrimental effects on industry and consumers • producers limited in ability to negotiate market value of their works	A significant erosion of the principle of territorial exclusivity that would discourage AV operators from investing, co-producing or financing	• would lead commercial investment in production and distribution to shrink, less films and TV programmes being produced, distributed and marketed in the future, hence less choice and offer for consumers in Europe. • would erode territoriality, which is fundamental to producers' ability to organize financing and distribution
2. What would be the impacts of introducing the country of origin principle to the licensing of broadcasters' ancillary services i.e. simulcasting and catch-up TV?	Simplifying rights clearance.	Extension should be carefully assessed. The impact assessment does not bring enough arguments to justify such an extension. Could undermine the functioning of the market for production and distribution of content and, in the end, harm	"arguably small or negligible" transaction costs for service providers	• less good-quality programmes • impacting negatively on: - the availability of programmes for consumers, - the economic progress of the European industry, - cultural diversity, - ultimately, on the freedom of expression.	The producer of a film or TV programme can already grant licenses covering one, several or multiple Member States.

	Retransmission service providers		Film producers		
	Magine	**Orange**	**CEPI**	**EPC**	**FIAPF**
		consumers.			
3. What kind of other measures would you suggest to facilitate the clearance of rights for cross-border transmissions of TV programmes while preserving the contractual freedom of right-holders?	Some sort of online tool	NA	Broadcasters can already easily negotiate licenses	facilitating the clearance of so-called "connected rights" (i.e. music royalties, etc.) should not be confused with an automatic clearance of territorial licensing rights. • would put those rights-holders (especially independent producers) at the mercy of broadcasters, who already enjoy a dominant position in the AV ecosystem	The producer of a film or TV programme can already grant licenses covering one, several or multiple Member States.
4. What would be the impacts of introducing a mandatory collective management of rights to retransmission services operating by means other than cable?	Increased need for transparency from such collecting societies.	Collective rights management for a technology neutral retransmission of TV services enables EU companies to offer a comprehensive and up-to-date product portfolio	• undermine contractual freedom • can lighten administrative burdens in situations involving complex multi-stakeholder licensing negotiations and in areas of legal uncertainty • vital to independent producers but for closed networks ONLY.	Producers lay on international circulation of works, and need fair negotiations and equitable remuneration for the use of each and every right and territory licensed or granted.	• undermine the value of exclusive rights by removing the possibility to license such rights individually • severely hamper the possibility for online distribution services to contribute to financing e.g. through pre-sale of distribution rights, across territories and platforms. • negatively affect recoupment opportunities and valuing each particular title.

	Retransmission service providers		Film producers		
	Magine	**Orange**	**CEPI**	**EPC**	**FIAPF**
5.Do you think that clarifications are necessary (and if so, which) with regard to direct injection practices?	NA	Reserves its position regarding any proposition that would introduce any jointly liability with regard to direct injection practices.	an act of communication to the public by the broadcaster, cable operator or both and covered by the Regulation	NA	Direct injection technology is a business concern for many producers and notes with interest the amendments tabled by MEPs in this context

3.2.4. From the views of film funding agencies, film distributors and music and sports rightsholders

	Film funding agencies	Film distributors	Music and sports rightsholders		
	EFAD	**FIAD**	**IFPI**	**SROC**	**UEFA**
1. What effects would cross-border access to broadcasters' online services such as simulcasting and catch-up TV have on the European audiovisual sector from a market perspective?	Without territorial licences we would see less investment in European films, fewer coproductions, less circulation, less competition, and finally less access for the European audiences to a diversity of cultural works.	• territoriality indispensible • 1st release to undermine other EU markets • marketing strategies challenged • higher risk, less investment	The analysis of the effects of the Regulation should not be restricted to the audiovisual sector but should include also its effect on audio streaming and other online services. COO would have harmful consequences on the exercise of rights in sound recordings, and would lead to a race to the bottom (application of low rates and low level of protection) because of the absence of full high level EU harmonization of sound recording rights. If COO rule is introduced, it could be applied to broadcasters' ancillary online services only if the rights implicated were sufficiently harmonised and not subject to statutory licences across Europe.	Undermine entire model. Territorial exclusivity: • gives broadcasters opportunity to monetise their investment in rights, • while enabling most competitions to be available across EU • protects the vastly different value of sporting rights in different geographic areas	There's a need to market sports rights on a national market by market basis. • impact upon the ability of UEFA's licensees to monetise their investment. • sports is "live", so this would impact on the fundamental basis of assessing value. • regarding sports, would impose across the EU/EEA the anti-competitive effect of listed-events (events of major importance Art. 14 AVMS Directive), without the justification of national significance and importance to the national public.

	Film funding agencies	Film distributors	Music and sports rightsholders		
	EFAD	FIAD	IFPI	SROC	UEFA
2. What would be the impacts of introducing the country of origin principle to the licensing of broadcasters' ancillary services i.e. simulcasting and catch-up TV?	Will not lead to higher remuneration for producers or other right holders, on the contrary, the right holders will be in a weaker negotiating position.	Not needed. "arguably small or negligible" transaction costs for service providers	COO would not facilitate rights clearance. Should the COO apply, it should only apply where right holders have not already put in place voluntary arrangements for multi-territory, multi-repertoire licensing, such as those for licensing of sound recordings in catch up and simulcasting services. The introduction of COO would put these voluntary schemes at risk, and could lead CMOs to no longer be willing to mandate each other to license their repertoire. Broadcasters would then have to negotiate with a number of CMOs instead of with a single CMO for aggregated repertoire.	• undermine both the concept of national copyright and the contractual freedom of rights holders. • lead to exclusive pan-European licensing, which would inevitably be set at highest price of any national (or regional) market, excluding many current broadcasters from obtaining rights	In relation to sports media rights, COO is simply not required. • Would impose a de facto pan-European licenced territory that only the largest media organisations would afford • Revenues would suffer
3. What kind of other measures would you suggest to facilitate the clearance of rights for cross-border transmissions of TV programmes while preserving the contractual freedom of right-holders?	The extension of the country of origin principle to cover these services is not needed, as broadcasters are already able to clear the necessary rights.	Broadcasters already able to clear necessary rights	Rather than imposing COO rule, EU should streamline cross border licensing (like it has done in e.g. the CRM Directive), and support market-led solutions such as the existing reciprocal arrangements in the music sector. The EU should also create level playing field for rights clearance by providing harmonized exclusive rights in sound recordings for all forms of communication to the public.	The key issue here is "access to content" not "access to existing channels". The market already has solutions (OTT services and rights owners individual B2C offerings).	There is no complex framework, therefore no facilitation needed.

	Film funding agencies	Film distributors	Music and sports rightsholders		
	EFAD	**FIAD**	**IFPI**	**SROC**	**UEFA**
4. What would be the impacts of introducing a mandatory collective management of rights to retransmission services operating by means other than cable?	NA	• limit contractual freedom • decrease value of rights	Not justified as it would have impact on services that are primary markets. Mandatory CRM is a limitation that deprives right holders of the right to decide by whom and on what terms their rights are exercised	NA	Same issues as to cross-border access and CoO
5.Do you think that clarifications are necessary (and if so, which) with regard to direct injection practices?	NA	As a new exploitation, content producers should get remuneration	NA	NA	NA

3.2.5. From the views of collective management organisations and consumers

	Collective management organisations			Consumers
	AGICOA	**GESAC**	**SAA**	**BEUC**
1. What effects would cross-border access to broadcasters' online services such as simulcasting and catch-up TV have on the European audiovisual sector from a market perspective?	Not within AGICOA's mandate. Territoriality cornerstone for viability of AV sector	As long as rights are appropriately cleared, cross-border access to broadcasters' online services gives better access to works and has a good impact on the market.	Would imply end of geo-blocking and limit financing of audiovisual works	• will increase the circulation of AV works by facilitating the clearance of rights. • AV industry will be strengthened as they will be able to reach a broader audience
2. What would be the impacts of introducing the country of origin principle to the licensing of broadcasters' ancillary services i.e. simulcasting and catch-up TV?	NA	• COO principle alone could undermine the freedom of rights holders to determine the geographical scope of their licences • would encourage service providers to choose the country with most favourable conditions to exploit works • would expand the problems regarding the rules of establishment	• would be an erosion of the territorial licensing system • undermine the sales and financing of audiovisual works	Facilitate the clearance of rights and consequently increase the cross-border availability of online content
3. What kind of other measures would you suggest to facilitate the clearance of rights for cross-border transmissions of TV programmes while preserving the contractual freedom of right-holders?	Issue is not about rights clearance but about demand. English language channels might have damaging consequences for local creators, channels and ultimately for consumers.	COO is not a solution to facilitate the clearance of rights for cross-border transmissions of TV programmes. Agreements based on voluntary aggregation of repertoires are the best solutions.	No demonstrated problem of clearance of rights for cross-border transmissions of TV programmes.	No conflict with contractual freedom: • local adaptations of contents will still be necessary • extension of the country-of-origin principle to online distribution does not amount to a pan-European licensing system and will not affect Europe's cultural and linguistic diversity

	Collective management organisations			Consumers
	AGICOA	**GESAC**	**SAA**	**BEUC**
4. What would be the impacts of introducing a mandatory collective management of rights to retransmission services operating by means other than cable?	• would level the playing field • facilitate rights clearance for cable-like services delivered over closed internet • provide a much-needed safety	An improvement. Should be extended to similar services operating on the open internet (beyond closed networks of operators).	SAA welcomes extending system of mandatory collective management for cable retransmissions of TV and radio broadcasts. This will clarify that all similar services are governed by same rules, independently of the technical means of retransmission.	Specific works (e.g. which are no longer distributed commercially) can continue to be legally distributed and that consumers are not deprived from accessing them.
5.Do you think that clarifications are necessary (and if so, which) with regard to direct injection practices?	CJEU issued rulings suggesting need for more clarity (see SBS and Airfield cases).Both broadcasters and distribution platforms should provide appropriate compensation	• establishing the principle of having one single act of communication to the public with two liable parties.• confirm the licensing obligation of both the broadcaster and the operator	It must be clarified that direct injection is covered by the mandatory collective management system of Directive 93/83/EEC.	Would require certain adaptations in the copyright legislation, particularly on the exclusion of certain acts of reproduction and exceptions and limitations.

3.3. The participants

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1	ANTHONIS	Emilie	ACT - Association of Commercial Television in Europe	Director of Legal and Public Affairs
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18	LEENHARDT	Amélie	ARTE	Head of ARTE Europe
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7	SCHNEEBERGER	Agnes	Senior TV and VOD Analyst
8	VALAIS	Sophie	Senior Legal Analyst

Abbreviations

AV Audiovisual

CMO Collective Management Organisation

COO Country of Origin

DSM Digital Single Market

CJEU Court of Justice of the European Union

EP European Parliament

IA Impact Assessment

IPTV TV/radio over closed circuit IP-based networks

MS Member State

OTT Over The Top

SVOD Subscription Video on Demand

VOD Video on Demand

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