

Questions and answers: Directive on television and radio programmes

What is the current situation for online transmission and retransmission of television and radio programmes?

Broadcasters are increasingly offering their broadcasts online (for instance through their simulcasting or catch-up services). However, such online programming often remains unavailable in other Member States, even if there is interest abroad to access it. The clearance of rights for such uses can be particularly burdensome: a broadcaster needs to obtain authorisations from various rightholders, for different categories of works and other protected content, and separately for every Member State, where the programme will be available online.

Retransmission services aggregate TV and radio channels into packages. They are increasingly provided using technologies other than cable (for example IPTV), but the current rules facilitating rights' clearance for operators of those services are limited to retransmissions by cable. The operators of retransmission services using other technologies (for example, satellite, IPTV, digital terrestrial, mobile network, internet) cannot benefit from these rules facilitating rights' clearance. Currently, the complexity in clearing the rights makes it difficult for these services to offer programmes coming from other Member States.

How will the new Directive contribute to developing cross-border access to TV and radio programmes?

The new Directive addresses the difficulties related to the clearance of copyright in two ways:

- By establishing the **principle of the "country of origin"**: the rights required to make certain programmes available on the broadcasters' online services (for instance their simulcasting or catch-up services) are to be cleared only for the broadcaster's country of principal establishment (instead of all Member States in which the broadcaster wishes to make its programmes available). The licence fee paid by the broadcasters to right holders will have to reflect the audience of the programmes. The country of origin principle will help broadcasters to make certain programmes (all radio programmes, and, for TV, news and current affairs programmes, as well as fully financed own productions of broadcasters) available online also in other Member States. As a result, consumers will have more choice to watch and listen to online programmes transmitted by broadcasters established elsewhere in the EU. Citizens of linguistic minorities or Europeans living in another Member State will have better possibilities to follow programmes in their mother tongue.
- By extending **the system of mandatory collective management**, which is currently applicable to cable retransmissions only, to retransmission services provided through other means (such as Internet Protocol

television (IPTV), satellite, digital terrestrial or online technologies. This system allows retransmission operators to clear the necessary rights in a simpler manner – they need to clear the relevant rights with broadcasters whose channels they retransmit and with collective management organisations, i.e. organisations that represent a multitude of right holders and not with several individual right holders on a one-to-one basis (e.g. a music composer or an audiovisual performer). At the same time this system ensures that the rights of all concerned rightholders are covered. The new rules will allow the retransmission operators to offer to their users more channels from across the European Union. For example, Belgian operators offering TV packages to Belgian customers using IPTV technology will be able to clear rights more easily for channels from other Member States and include them in their packages.

Which services are covered by the country of origin principle?

The country of origin principle will apply to online services of broadcasters that give access to programmes, which are transmitted through traditional broadcasts.

The services covered include simultaneous online transmission of broadcasts (simulcasting), offering the possibility to watch and/or listen to the broadcast programmes for a defined period of time after their initial broadcast (catch-up), and transmitting content that enriches, extends or complements the broadcast (including for example previews, complements such as “the making of”).

The country of origin does not apply to video-on-demand (VOD) services.

Which types of programmes are covered by the country of origin principle?

The country of origin principle will apply to all radio programmes, and to certain TV programmes – to news and current affairs programmes and programmes that are fully-financed own productions of the broadcasting organisations.

The country of origin principle will therefore not apply to TV productions acquired from third parties or commissioned by the broadcasting organisations from independent producers. Television broadcasts of sport events are also excluded.

Will broadcasters be obliged to make such programmes available online across borders?

No. The country of origin principle is an enabling mechanism for broadcasters, who wish to offer programmes on their online services across borders, but it will not oblige them to do so.

Which retransmission services will benefit from the system of mandatory collective management?

Cable operators already benefit from mandatory collective management under

the existing Satellite and Cable Directive (Directive 93/83/EEC). Thanks to the new Directive, operators of retransmission services provided by other technologies (satellite, IPTV, digital terrestrial, mobile network, internet) will benefit from the same regime to clear the rights that are needed in order to retransmit radio and TV programmes from other Member States. Retransmission services over the internet are covered by the new rules to the extent their services are provided in a managed environment (i.e. an environment in which authorised users can access secure retransmissions).

The rules on mandatory collective management do not apply to rights in retransmissions that are held by broadcasters. In such cases broadcasters licence the rights to operators of retransmission services directly, as is already the case for cable retransmissions under the Satellite and Cable Directive.

What is direct injection? What are the new rules introduced by the Directive?

Direct injection is a process increasingly used by broadcasters to transmit their programmes to the public. Instead of transmitting their programmes directly to the public over the air or by wire, broadcasters send their programmes to distributors, which transmit them to the public.

The Directive clarifies that when broadcasters transmit their programme-carrying signals by direct injection exclusively to distributors, and the latter transmit these to the public, there is an act of communication to the public, in which both the broadcaster and the distributors participate, and for which they need to obtain authorisation from rightholders. This new provision will help to ensure that rightholders are adequately remunerated when their works are used in programmes transmitted through direct injection.

For Further Information