



Council of the
European Union

Brussels, 15 January 2019
(OR. en)

5225/19

LIMITE

PI 5
CODEC 61
EDUC 11
COMPET 25
AUDIO 3
CULT 7
DIGIT 4
TELECOM 8

Interinstitutional File:
2016/0284(COD)

NOTE

| | |
|-----------------|--|
| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee |
| No. prev. doc.: | WK 431/19 |
| No. Cion doc.: | ST 12258/16 + ADD1 + ADD2 + AD3 + ADD4 |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting and retransmission of television and radio programmes - Analysis of the final compromise text with a view to agreement |

I. INTRODUCTION

This proposal aims to promote the cross-border provision of online services ancillary to broadcasts and to facilitate digital retransmissions over closed networks of TV and radio programmes originating in other Member States by adapting the Union legal framework. It will promote consumers' access to more TV and radio programmes originating in other Member States, both as concerns ancillary online services of broadcasting organisations and retransmission services, while maintaining a high level of protection for right holders.

II. STATE OF PLAY: FULL COMPROMISE ACHIEVED

On 15 December 2017, the COREPER granted the Presidency a mandate to start the negotiations with the Parliament with a view to reaching an agreement at first reading. Negotiations with the Parliament started in February 2018.

In total, six trilogues meeting took place with the European Parliament, on 20 February 2018, 13 March 2018, 17 April 2018, 8 October 2018, 28 November 2018 and 13 December 2018. A first revised mandate was granted to the Presidency on 13 April 2018 to prepare the third trilogue meeting and a second mandate on 3 October 2018 to prepare the fourth meeting. The negotiations have been difficult and have been several times on the edge of complete breakdown on several occasions. Nevertheless, a political agreement was finally reached on 13 December 2018 under the Austrian Presidency and still within the remit of our mandate.

III. CONTENT OF THE COMPROMISE

1. Scope of application of the country of origin principle (Article 2 and Recital 9b)

The compromise towards Parliament's position which was to reduce the scope to news and current affairs consists of including broadcasters' own productions, which clearly excludes third party productions controlled by the broadcaster. It is reflected in Article 2(1) while the notion of "own productions" is explained in recital 9b.

2. Retransmission services – OTTs (Article 1 ba), Article 3, Recital 12)

The Compromise consists of allowing that retransmission services over the open internet fall under the scope of the mandatory collective management regime only when they are provided in a managed environment, in order to ensure that only authorised users can access the content.

3. Direct injection (Article X, Recitals X and Y, Article 1(3) of Directive 93/83/EEC and Article 5 para. 2)

The inclusion of a provision on Direct Injection was an important point for the Parliament while the Council decided not to regulate the technique of direct injection in its mandate due to the lack of assessment and analysis of its impact on the market.

The solution which has been agreed, is to cover situations where broadcasters transmit their signals to the public via signal distributors only (“pure direct injection”). As regards situations where the broadcasters transmit their programmes to the public directly the retransmission regime will apply (“parallel direct injection”).

The process of delivering a broadcaster’s programme via signal distributors will constitute one single act of communication to the public by two parties, both of which need authorisation from the relevant rightholders for their respective contributions.

As regards signal distributors, mandatory collective management will apply as they face similar problems for the clearance of rights as cable operators do. However, the Member States will have the possibility to decide if they wish to introduce mandatory collective management for signal distributors or not.

Finally, signal distributors, which provide technical means only, should have the possibility to rebut the presumption that they contribute to an act of communication to the public.

Given the complexity of the issue and the fact that some Member States have already developed solutions, it is important to leave further room for manoeuvre to Member States. Thus, the proposal suggests that Member States should be able to provide for the modalities for obtaining authorisation from rightholders. Also the Article on transitional provision has been adapted to allow more time for existing contracts to adapt to this new provision.

4. Legal nature of the instrument

The compromise also includes the change of the legal nature of the instrument from Regulation into Directive to give Member States the necessary flexibility to implement the provision on direct injection into their national legislation. The text has been adapted accordingly during the technical meetings which followed the political agreement.

IV. CONCLUSION

The Permanent Representative Committee is thus invited to:

- **endorse the annexed compromise text as agreed in the trilogue,**
- **mandate the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this document (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.**

Proposal for a**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1), 62 and 114 thereof,

Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
After consulting the Committee of the Regions,
Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to contribute to the functioning of the internal market, it is necessary to provide for wider dissemination of television and radio programmes originating in other Member States for the benefit of users across the Union by facilitating licensing of copyright and related rights in works and other protected subject-matter contained in broadcasts of certain types of television and radio programmes. Indeed, television and radio programmes are important means of promoting cultural and linguistic diversity, social cohesion and increasing access to information.

¹ OJ C [...], [...], p. [...].

- (2) The development of digital technologies and internet has transformed the distribution of and access to television and radio programmes. Users increasingly expect to have access to television and radio programmes both live and on-demand, using traditional channels such as satellite or cable and also through online services. Broadcasting organisations are therefore increasingly offering, in addition to their own broadcasts of television and radio programmes, online services ancillary to their broadcast, such as simulcasting and catch-up services. Retransmission services operators, which aggregate broadcasts of television and radio programmes into packages and provide them to users simultaneously to the initial transmission of the broadcast, unaltered and unabridged, use various techniques of retransmission such as cable, satellite, digital terrestrial, closed circuit IP-based or mobile networks as well as the open internet. Furthermore, operators that distribute television and radio content to users have different ways to obtain programme-carrying signals of broadcasting organisations, including by means of direct injection. On the part of users, there is a growing demand for access to broadcasts of television and radio programmes not only originating in their Member State but also in other Member States of the Union, including from members of linguistic minorities of the Union as well as from persons who live in another Member State than their Member State of origin.
- (3) Broadcasting organisations transmit daily many hours of television and radio programmes. These programmes incorporate a variety of content such as audiovisual, musical, literary or graphic works which is protected by copyright and/or related rights under Union law. That results in a complex process to clear rights from a multitude of right holders and for different categories of works and other protected subject matter. Often the rights need to be cleared in a short time-frame, in particular when preparing programmes such as news or current affairs. In order to make their online services available across borders, broadcasting organisations need to have the required rights to works and other protected subject matter for all the relevant territories which further increases the complexity of the rights' clearance.

- (4) Operators of retransmission services, that normally offer multiple programmes which use a multitude of works and other protected subject matter included in the retransmitted television and radio programmes, have a very short time-frame for obtaining the necessary licences and hence also face a significant rights clearing burden. There is also a risk for authors, producers and other right holders of having their works and other protected subject matter exploited without authorisation or payment of appropriate remuneration. Such remuneration for the retransmission of their works and other subject matter is important to ensure a diverse content offer, which is also in the interest of consumers.
- (5) The rights in works and other protected subject matter are harmonised, among others, through Directive 2001/29/EC of the European Parliament and of the Council and Directive 2006/115/EC of the European Parliament and of the Council, which provide for a high level of protection for right holders.
- (6) Council Directive 93/83/EEC facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States of the Union. However, the provisions of that Directive on transmissions of broadcasting organisations are limited to satellite transmissions and therefore do not apply to online services ancillary to broadcasts while the provisions concerning retransmissions of television and radio programmes from other Member States are limited to simultaneous, unaltered and unabridged retransmission by cable or microwave systems and do not extend to such retransmissions by means of other technologies.
- (7) Therefore, cross-border provision of online services ancillary to broadcasts and retransmissions of television and radio programmes originating in other Member States should be facilitated by adapting the legal framework on the exercise of copyright and related rights relevant for those activities. This should be done by taking into account the financing and production of creative content, and in particular of audio-visual works.

- (8) The ancillary online services covered by this Directive are those services offered by broadcasting organisations which have a clear and subordinate relationship to their broadcasts. They include services giving access to television and radio programmes in a strictly linear manner simultaneously to the broadcast and services giving access, within a defined time period after the broadcast, to television and radio programmes which have been previously broadcast by the broadcasting organisation (so-called catch-up services). In addition, the ancillary online services covered by this Directive include services that give access to material which enriches or otherwise expands television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content. This Directive should apply to both ancillary online services that are provided to users by broadcasting organisations together with the broadcasting service and to ancillary online services that, whilst having a clear and subordinate relationship with the broadcast, can be accessed by users separately from the broadcasting service without the precondition for the user to obtain access to the broadcast service, for example via a subscription. This is without prejudice to the broadcasting organisations' freedom to offer such ancillary online services free of charge or against the payment of money. The provision of access to individual works or other protected subject matter that have been incorporated in a television or radio programme, or to works or other protected subject matter which are not related to any programme broadcast by the broadcasting organisation, such as services giving access to individual musical or audiovisual works, music albums or videos, for example through video-on-demand services, do not fall in the scope of the services covered by this Directive.

- (9) In order to facilitate the clearance of rights for the provision of ancillary online services across borders, it is necessary to provide for the establishment of the country of origin principle as regards the exercise of copyright and related rights relevant for acts occurring in the course of the provision of, the access to or the use of an ancillary online service. This should cover the clearance of all rights that are necessary for the broadcasting organisation to be able to communicate or make available to the public their programmes when providing ancillary online services, including the clearance of any copyright and related rights in the works or other subject matter used in the programmes, for example the rights in phonograms or performances. That principle of country of origin should apply exclusively to the relationship between right holders (or entities representing right holders such as collective management organisations) and broadcasting organisations and solely for the purpose of the provision of, the access to or the use of an ancillary online service. The principle of country of origin should not apply to any subsequent communication to the public or making available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them and reproduction of content which is protected by copyright or related rights and which is contained in the ancillary online service.

- (9b) Taking into account the specificities of the financing and licensing mechanisms for certain audiovisual works, often based on exclusive territorial licensing, it is appropriate, as regards television programmes, to limit the scope of application of the country of origin principle set out in this Directive to certain categories of programmes. These include news and current affairs programmes as well as a broadcasting organisation's own productions which are exclusively financed by it whereas the funds for the financing used by the broadcasting organisation for its productions may come from public funds. For the purposes of this Directive, broadcasting organisations' own productions should be understood as covering productions carried out by a broadcasting organisation with the use of its own resources, but not productions commissioned by the broadcasting organisation to producers that are independent from the broadcasting organisation nor to co-productions. For the same reasons, the principle of country of origin should not apply to the television broadcasts of sports events under this Directive. The principle of the country of origin should apply only when programmes are used by the broadcasting organisation in its own ancillary online services. It should not apply to the licensing of a broadcasting organisation's own productions to third parties, including to other broadcasting organisations. The principle of country of origin should not affect the freedom of right holders and broadcasting organisations to agree, in compliance with Union law, on limitations, including geographic limitations, to the exploitation of their rights.
- (9ba) The principle of country of origin provided for in this Directive does not establish any obligation for broadcasting organisations to communicate or make available programmes in their ancillary online services or to provide such ancillary online services in a Member State other than the Member State of their principal establishment.

- (10) Since the provision of, the access to or the use of an ancillary online service is deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment, while de facto the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in arriving at the amount of the payment to be made for the rights in question, the parties take into account all aspects of the ancillary online service such as the features of the service, including the duration of the online availability of programmes included in the service, the audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and the language versions provided. It should nevertheless remain possible to use specific methods for calculating the amount of payment to be made for the rights subject to the country of origin principle, such as those based on the broadcasting organisation's revenues generated by the online service, which are notably used by radio broadcasting organisations.
- (11) Through the principle of contractual freedom it will be possible to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Directive, provided that any such limitations of the exploitation of those rights are in compliance with Union law.

(12) Operators of retransmission services may use different technologies when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial broadcast transmission from another Member State of television or radio programmes. The programme-carrying signals may be obtained by operators of retransmission services from broadcasting organisations, which themselves transmit those to the public, in different ways, for example by capturing the signals transmitted by the broadcasting organisations or receiving the signals directly from them through the technical process of direct injection. Their services may be offered on satellite, digital terrestrial, closed circuit IP-based, mobile and similar networks or through internet access services as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council. Operators using these technologies for their retransmissions should therefore be within the scope of this Directive and benefit from the mechanism introducing mandatory collective management of rights. In order to ensure sufficient safeguards against the unauthorised use of works and other subject matter, which is particularly important in the case of paid-for services, retransmission services which are offered through internet access services should be included in the scope of this Directive only when those retransmission services are provided in an environment where only authorised users can access the retransmissions and the level of content security provided is comparable to the level of security for content transmitted over managed networks, such as cable or closed-circuit IP-based networks, where content retransmitted is encrypted. These requirements should be feasible and adequate.

- (13) To retransmit initial transmissions of radio and TV programmes, operators of retransmission services need to obtain an authorisation of the holders of the exclusive right of communication to the public. In order to provide legal certainty to the operators of retransmission services and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC, which include the obligation to exercise the right to grant or refuse authorisation to an operator of a retransmission service through a collective management organisation, should apply. Under those rules, the right to grant or refuse authorisation as such remains intact, and only the exercise of that right is regulated to some extent. Right holders should obtain appropriate remuneration for the retransmission of their works and other subject matter. When determining reasonable licensing terms, including the license fee, for a retransmission in accordance with Directive 2014/26/EU, the economic value of the use of the rights in trade, including the value allocated to the means of retransmission should, *inter alia*, be taken into account. This is without prejudice to the collective exercise of the single equitable remuneration right for performers and phonogram producers for the communication to the public of commercial phonograms as provided for in Article 8(2) of Directive 2006/115/EC and to Directive 2014/26/EU and in particular to its provisions concerning rights of right holders with regard to the choice of a collective management organisation.
- (13a) This Directive should allow agreements to be concluded between a collective management organisation and retransmission operators, for the rights that are subject to mandatory collective management under this Directive, to be extended to apply to the rights of right holders who are not represented by that collective management organisation, without the possibility for the right holders to exclude their works or other subject-matter from the application of this mechanism. In cases when there is more than one collective management organisation that manages the rights of the relevant category for its territory, it should be for the Member State for whose territory the operator of retransmission services seek to clear the rights for a retransmission to determine which collective management organisation or organisations have the right to grant or refuse the authorisation for a retransmission.

- (13b) To ensure the efficient collective management of rights and the accurate distribution of revenues collected under the mandatory collective management mechanism introduced by this Directive, it is important that collective management organisations maintain proper records of membership, licences and use of works and other subject matter, in accordance with the transparency obligations set out in Directive 2014/26/EU.
- (14) Any rights held by broadcasting organisations themselves in respect of their broadcasts, including rights in the content of the programmes, should be exempted from the mandatory collective management of rights applicable for retransmissions. Operators of retransmission services and broadcasting organisations generally have ongoing commercial relations and as a result the identity of broadcasting organisations is known to operators of retransmission services and hence the clearance of rights with broadcasting organisations is comparatively simple. Thus, to obtain the necessary licences from broadcasting organisations, operators of retransmission services do not face the same burden as they face to obtain licences from holders of rights in works and other protected subject matter included in the retransmitted television and radio programmes. Therefore, there is no need for the simplification of the licensing process with regard to rights held by broadcasting organisations. It is however necessary to ensure that where broadcasting organisations and operators of retransmission services enter into negotiations, they negotiate in good faith regarding the licensing of rights for the retransmissions covered by this Directive. Directive 2014/26/EU provides for similar rules applying to collective management organisations.
- (14b) The rules provided for in this Directive for the rights in retransmission exercised by broadcasting organisations in respect of their own transmissions should not limit the choice of holders of rights to transfer their rights either to a broadcasting organisation or to a collective management organisation and thereby have a direct share in the remuneration paid by the operator of a retransmission service.

(X) In order to ensure legal certainty and to maintain a high level of protection for rightholders, it is appropriate to provide that when broadcasting organisations transmit by direct injection their programme-carrying signals only to signal distributors without the broadcasting organisations also directly transmitting their programmes to the public, and the signal distributors send these to their users to allow them to watch or listen to the programmes, only one single act of communication to the public is deemed to occur in which both the broadcasting organisations and the signal distributors participate with their respective contributions. The broadcasting organisations and the signals distributors should therefore obtain authorisation from the rightholders for their specific contribution to the single act of communication to the public. The participation of the broadcasting organisations and signal distributors in the single act of communication to the public should not give rise to joint liability of the broadcasting organisation and the signal distributor for the act of communication to the public. Member States should remain free to provide at national level for the modalities for obtaining authorisation for such a single act of communication to the public including the relevant payments to be made to the rightholders, taking into account the respective exploitation of the works and other subject matter by the broadcasting organisations and signal distributors related to the single act of communication to the public. As signal distributors face, in a similar manner as operators of retransmission services, a significant burden for rights clearance, except for the rights held by broadcasting organisations, Member States should be allowed to provide that signal distributors also benefit from a mechanism of mandatory collective management of rights for their transmissions in the same way and to the same extent as operators of retransmission services for retransmissions covered by Directive 93/83/EEC and this Directive. In cases where signal distributors merely provide broadcasting organisations with technical means, within the meaning of the case-law of the Court of Justice of the European Union, to ensure or improve the reception of the broadcast, the signal distributors should not be considered to be participating in an act of communication to the public.

- (Y) When broadcasting organisations transmit their programme-carrying signals directly to the public, thereby carrying out an initial act of transmission, and at the same time simultaneously pass the signals to other organisations through the technical process of direct injection for example to ensure the quality of the signals for retransmission purposes, the transmissions by these other organisations constitute a separate act of communication to the public from the one carried out by the broadcasting organisation. In these situations the rules on retransmissions laid down in this Directive and in Directive 93/83/EEC should apply.
- (15) In order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of the online service, it is necessary to apply the principle of country of origin also to existing agreements but with a transitional period, during which the principle should not apply to those contracts allowing for time to adapt them, where necessary, in accordance with this Directive. It is also necessary to provide for a transitional period in order to allow broadcasters, signal distributors and rightholders to adapt to the new rules set out in Article X on the exploitation of works and other subject matter through direct injection.
- (16) This Directive respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Whilst there may be an interference with the exercise of the rights of right holders insofar as mandatory collective management takes place for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe such a condition in a targeted manner and to limit it to specific services.

- (18) In line with the principles of better regulation, a review of the Directive, including its provisions on direct injection, should be undertaken after the Directive has been in force for a period of time, in order to assess, among others, its benefits for European consumers, its impact on the creative industries in the European Union, and on the level of investment in new content, and hence also to the benefit of improved cultural diversity in the Union.
- (19) Since the objective of this Directive, namely promoting the cross-border provision of ancillary online services for certain types of programmes and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objective. As concerns the cross-border provision of ancillary online services, this Directive does not oblige broadcasting organisations to provide such services across borders. Neither does this Directive oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Directive concerns only the exercise of certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and only with regard to television and radio programmes originating in other Member States of the Union.
- (19a) Member States should be able to apply the rules on retransmission established in this Directive and in the Council Directive 93/83/EEC to situations where both the initial transmission and the retransmission take place within their territory.

(19b) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents*, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article -1

Subject matter

This Directive lays down rules, which aim at enhancing the cross-border access to more radio and television programmes, by facilitating the clearance of rights for the provision of on-line services ancillary to the broadcasts of certain types of television and radio programmes, and for the retransmission of television and radio programmes. It also lays down rules for the transmission of radio and television programmes through the process of direct injection.

Article 1

Definitions

For the purpose of this Directive, the following definitions shall apply:

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

- (b) "retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC, intended for reception by the public of an initial transmission from another Member State of television or radio programmes intended for the reception by the public, where such initial transmission is by wire or over the air, including that by satellite but excluding online transmission, provided that:
- (i) the retransmission is made by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility such transmission was made regardless of the way the party carrying out the retransmission obtains the programme-carrying signals from the broadcasting organisation for retransmission purpose, and
 - (ii) the retransmission over an internet access service as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council is carried out in a managed environment.
- (ba) "managed environment" means an environment where a retransmission operator provides a secure retransmission to authorised users.
- (bb) "direct injection" means a technical process by which a broadcasting organisation transmits its programme-carrying signals to organisations other than broadcasting organisations in such a way that the programme-carrying signals are not accessible to the public during that transmission.

CHAPTER II
BROADCASTING ORGANISATIONS' ANCILLARY ONLINE SERVICES

Article 2

Application of the principle of 'country of origin' to ancillary online services

- (1) The acts of communication to the public and of making available to the public, by wire or wireless means, in such a way that members of the public may access works or other subject matter from a place and at a time individually chosen by them, occurring when providing to the public
- (a) radio programmes, and
 - (b) television programmes which are:
 - (i) news and current affairs, or
 - (ii) fully financed own productions of the broadcasting organisation
- in an ancillary online service by or under the control and responsibility of a broadcasting organisation as well as the acts of reproduction which are necessary for the provision of, the access to or the use of such online service for the same programmes shall, for the purposes of exercising copyright and related rights relevant for these acts be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Paragraph 1(b) shall not apply to the broadcasts of sports events and works and other subject matter included in them.

- (2) Member States shall ensure that, when fixing the amount of the payment to be made for the rights subject to the country of origin principle as set out in paragraph 1, the parties take into account all aspects of the ancillary online service such as features of the ancillary online service, including the duration of online availability of the programmes provided in that service, the audience, and the language versions provided.

This shall not preclude the option of calculating the amount of the payments to be made, on the basis of the broadcasting organisation's revenues.

- (3) The principle of country of origin set out in paragraph 1 is without prejudice to the contractual freedom of the holders of copyright and related rights and of broadcasting organisations to agree, in compliance with Union law, on the introduction of limitations on the exploitation of those rights, including those under Directive 2001/29/EC.

CHAPTER III
RETRANSMISSION OF TELEVISION AND RADIO PROGRAMMES

Article 3

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

- (-1) Acts of retransmission of programmes have to be authorised by the holders of the exclusive right of communication to the public.
- (1) Member States shall ensure that holders of copyright and related rights other than broadcasting organisations may exercise their rights to grant or refuse the authorisation for a retransmission only through a collective management organisation.
- (2) Where a right holder has not transferred the management of the right referred to in paragraph 1 to a collective management organisation, the collective management organisation which manages rights of the same category for the territory of the Member State for which the operator of the retransmission service seeks to clear rights for a retransmission shall be deemed to have the right to grant or refuse the authorisation for a retransmission for that right holder.
- (3) In situations referred to in paragraph 2 where more than one collective management organisation manages rights of that category for the territory of that Member State, it shall be for the Member State for whose territory the operator of the retransmission service seeks to clear rights for a retransmission to decide which collective management organisation or organisations shall have the right to grant or refuse the authorisation for a retransmission.

- (4) Member States shall ensure that a right holder has the same rights and obligations resulting from the agreement between the operator of the retransmission service and the collective management organisation or organisations which act in accordance with paragraph 2, as the right holders who have mandated that collective management organisation or organisations and shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the retransmission which includes his or her work or other protected subject matter.

Article 4

Exercise of the rights in retransmission by broadcasting organisations

- (1) Member States shall ensure that Article 3 shall not apply to the rights exercised by a broadcasting organisation in respect of its own transmission, irrespective of whether the rights concerned are its own or have been transferred to it by other holders of copyright or by holders of related rights.
- (2) Member States shall provide that, where broadcasting organisations and the operators of the retransmission services enter into negotiations regarding authorisation for retransmission under this Directive, those negotiations are conducted in good faith.

Article 4a (new)

Mediation

Member States shall ensure that the possibility to call upon the assistance of one or more mediators as provided for in Article 11 of the Directive 93/83/EEC is also available where no agreement is concluded between the collective management organisation and the retransmission operator or the retransmission operator and the broadcasting organisation regarding the authorisation for retransmission of broadcasts.

Article 4a

Retransmissions of an initial transmission originating in the same Member State

Member States may apply the rules of this Chapter and of Chapter III of Directive 93/83/EEC to situations where both the initial transmission and the retransmission take place within their territory.

CHAPTER
TRANSMISSION OF PROGRAMMES THROUGH DIRECT INJECTION

Article X

Transmission of programmes through direct injection

- (1) When a broadcasting organisation transmits by direct injection its programme-carrying signals to a signal distributor without the broadcasting organisation itself simultaneously transmitting those programme-carrying signals directly to the public, and the signal distributor transmits these programme-carrying signals to the public, the broadcasting organisation and the signal distributor shall be deemed to be participating in a single act of communication to the public for which they shall obtain authorisation from rightholders. Member States may provide for the modalities for obtaining authorisation from rightholders.
- (2) Member States may provide that the rules on the exercise of rights set out in Articles 3, 4, and 4a apply mutatis mutandis to the exercise by holders of copyright and related rights of the right to grant or refuse the authorisation to signal distributors for a transmission referred to in paragraph 1 carried out by one of the technical means referred to in Article 1(3) of Directive 93/83/EEC or Article 1 (b) of this Directive.

CHAPTER IV
FINAL PROVISIONS

Article Xa

Amendment to Directive 93/83/EEC

In Article 1 of Directive 93/83/EEC, paragraph 3 is replaced by the following:

- "3. For the purposes of this Directive, 'cable retransmission' means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public, regardless of the way the operator of a cable retransmission service obtains the programme-carrying signals from the broadcasting organisation for retransmission purposes."

Article 6

Review

- (1) By [6 years after the entry into force of this directive], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The report shall be published and made available to the public on the website of the Commission.
- (2) Member States shall provide the Commission, in a timely manner, with the relevant and necessary information for the preparation of the report referred to in paragraph 1.

Article (new)

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 years after the entry into force of this Directive. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

Article 5

Transitional provision

Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public and the making available to the public, by wire or wireless means, in such a way that members of the public may access works or other subject matter from a place and at a time individually chosen by them, occurring in the course of provision of an ancillary online service as well as for the acts of reproduction which are necessary for the provision of, the access to or the use of such online service which are in force on [the date mentioned in (Article on transposition), to be inserted by OPOCE] shall be subject to Article 2 as from [the date mentioned in (Article on transposition) + 2 years, to be inserted by OPOCE] if they expire after that date.

Authorisations obtained for the acts of communication to the public falling under Article [X/DI] which are in force on [the date mentioned in (Article on transposition), to be inserted by OPOCE] shall be subject to Article [X/DI] as from [the date mentioned in (Article on transposition)+ 4 years, to be inserted by OPOCE] if they expire after that date.

Article 7

Entry into force

- (1) This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 7a

Addressees

This Directive is addressed to the Member States.

Done at Brussels,
