Public Consultation on the Review of the EU Satellite and Cable Directive

Fields marked with * are mandatory.

I. General information on respondents

* I'm responding as:

- ( ) An individual in my personal capacity
- (X) A representative of an organisation/company/institution

* What is your nationality?

Other

If other, please specify

We represent a pan European network covering 17 EU countries.

* What is your name?

CEPI-European Coordination of Independent Producers

What is your e-mail address? cepi@europe-analytica.com

Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

Yes

Please indicate your organisation's registration number in the Transparency Register.

ID 59052572261-62

If you are an entity not registered in the Transparency Register, please register in the Transparency Register before answering this questionnaire. If your entity responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

* Please chose the reply that applies to your organisation and sector.

Producer (or representative of) AV content

If other, please specify

My institution/organisation/business operates in:
Belgium

Please enter the name of your institution/organisation/business.

CEPI

Please enter your address, telephone and email.

Avenue Livingstone 26, 1000 Brussels

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What is the primary place of establishment of the entity you represent?

Brussels

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II. Assessment of the current provisions of the Satellite and Cable Directive

1. The principle of country of origin for the communication to the public by satellite

For satellite broadcasting, the Directive establishes (Article 1.2) that the copyright relevant act takes place "solely in the Member State where, under the control and responsibility of the broadcasting organization, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth" (often referred to as "the country of origin" principle). So, rights only need to be cleared for the "country of origin" of the broadcast (and not for the country/ies of reception, i.e. the countries where the signals are received[1]). The Directive indicates that in determining the licence fee for the right of communication to the public "the parties should take account of all aspects of the broadcast such as the actual audience, the potential audience and the language version" (Recital 17).

[1] There is no case-law from the Court of Justice of the European Union regarding the interpretation of Article 1.2 of the Directive.

1. Has the principle of "country of origin" for the act of communication to the public by satellite under the Directive facilitated the clearance of copyright and related rights for cross-border satellite broadcasts?

1.1. If you consider that problems remain, please describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news).

The principles of "country of origin" described in Recital 14 and Article 1(2) (b) and of commercial freedom enshrined in Recital 16 and Article 3 (1) have set a framework which allows for national, multi-territorial and pan-European licenses.

However, the multi-territorial and pan-European options have been scarcely used. As the European Commission correctly assessed in its Green Paper xxx, the reason for this is that *"the consumer demand abroad and the potential for advertising generated revenue does not currently justify the additional costs related to the setting up of services and the licensing of content"*[1].

This reality illustrates the nature of European audiences, which prefer local content and do not have an appetite for foreign European content. In addition, the business model according to which licenses are granted by producers to broadcasters territory per territory allows for co-productions to take place throughout Europe.

Production is extremely high risk and is dependent upon high levels of investment. This investment is often obtained prior to the actual shooting of a film of TV programme. As a consequence most productions rely on a specific financing system based on a guarantee. Rights are sold specifically by platform, territory and language and based on a very specific business model which is designed to fully optimise the exploitation of a work. This business model considers where demand exists as well as specific cultural and linguistic factors. Often the producer will grant territorial exclusivity to a broadcaster or distributor in exchange for a high level of investment. Private investors will look at the guarantee as evidence that they will recoup the investment they make. Without this guarantee the level of investment would be low and important works may never be produced. The contractual freedom currently provided under EU copyright law therefore allows for a flexible financing system which allows the producer to maximise the exploitation of a work.

The importance of territorial licensing has been recently acknowledged by the European Parliament, which stated that "*the financing, production and co-production of films and television content depends to a great extent on exclusive territorial licenses granted to local distributers on a range of platforms reflecting the cultural specificities of the various markets in Europe; that being so, (*the European Parliament*) emphasises that the ability, under the principle of freedom of contract, to select the extent of territorial coverage and the type of distribution platform encourages investment in film and television content and promotes cultural diversity; (*the European Parliament*) calls on the Commission to ensure that any initiative to modernise copyright is preceded by a wide-ranging study of its likely impact on the production, financing and distribution of films and television content, and also on cultural diversity*"[2].

Other problems related to the principle of "country of origin" are:

-It does not allow for a correct calculation of the potential audiences of content, thus preventing producers from obtaining a correct remuneration for the licensing of the broadcasting right.

-The rules referring to acts of broadcasting which are initiated outside of the EU and received in a Member State are not strong enough. Consequently, many broadcasters established outside the EU but operating inside escape the application of the Directive.

[1] COM(2011) 427 final, page 6.
[2] P8_TA-PROV(2015)0273, paragraph 13.

-The definition of the broadcasting act as the moment when the signals enter into an uninterrupted chain and into an uplink to a satellite creates problems in situations where the content is introduced in the said chain in an EU member and broadcasted in third countries. This situation incentivizes some broadcasters to locate themselves in the EU and upload content of no interest to EU citizens for small fees to then broadcast it in third countries.

2. Has the principle of "country of origin" for the act of communication to the public by satellite increased consumers' access to satellite broadcasting services across borders?

No

2.1. Please explain and indicate (using exact figures if possible) what is, to your knowledge, the share (%) of audiences from Member States other than the country of origin in the total audience of satellite broadcasting services.

2.2. If you consider that problems remain, describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news) or to specific types of services (e.g. public services broadcasters', commercial broadcasters', subscription based, adverting based, content specific channels) or other reasons.

3. Are there obstacles (other than copyright related) that impede the cross-border provision of broadcasting services via satellite?

No

3.1. Please explain and indicate which type of obstacles.
As we have explained in Q1.1 there are no obstacles to provide cross-border broadcasting services. The lack of these services is solely based on a business decision determined by the lack of appetite by European audiences and to safeguard the financing model of European AV content.

4. .Are there obstacles (other than copyright related) that impede the cross-border access by consumers to broadcasting services via satellite?

No

4.1. Please explain and indicate which type of obstacles.
As explained in Q1.1, and was acknowledged by the European Commission in its Green Paper of 2001, the lack of consumer access to cross-border services is a consequence of the lack of demand for such access, which makes the provision of those services economically not viable.

5. Are there problems in determining where an act of communication to the public by satellite takes place?

Yes

5.1. Please explain.

The principle of "country of origin" of the SatCab Directive clearly states that the communication to the public takes place where the broadcasts are introduced in the uninterrupted chain leading to the uplink. This chain is normally located in the country where the satellite broadcaster is established. Consequently, it is possible to determine straightforward where the act of communication to the public is taking place.

However, the connection between the principle of "country of origin" and the uplink of the signal incentivises broadcasters to carry out the broadcasting act in third countries while targeting EU Member States.

When broadcasters established in the EU and targeting Member States carry out the broadcasting act outside the EU, they claim that the Directive is not applicable. In addition, broadcasters also argue that the reception in EU Member States takes place in an individual voluntary basis by consumers. As such, they cannot quantify the potential audiences. The end result is a lack of revenue on the producers' side.

In our view, such practices are intended to avoid the application of the Directive by carrying out the uplink of the signal from third countries while targeting the EU.

If the SatCab Directive was to be modified, CEPI would support extending the scope of application to broadcasting acts taking place outside the EU and targeting Member States, precisely to avoid the activites described above.

6. Are there problems in determining the licence fee for the act of communication to the public by satellite across borders, including as regards the applicable tariffs?

Yes

6.1. Please explain.

Problems arise when producers choose to license through collective management organisations, due to the limitation to contractual freedom inherent to predetermined fees. This situation is produced because AV content has a different value in each territory depending on the tastes of each local audience.

When a producer licenses individually with the broadcaster, both parties agree on a price based on the value of the content in each of the territories where the broadcaster whishes to communicate it to the public. On the other hand, when a broadcaster licenses through a collecting society, it does not negotiate but merely pays a fee. That fee does not take account of where the content is going to be communicated to the public. An unintended consequence of this situation is a race to the bottom between collecting societies of different countries on the price of fees in order to attract broadcasters.

In addition, the broad scope of the principle of "country of origin" makes it difficult to determine the fee, particularly when the content is going to be broadcasted outside of the EU, where the monitoring systems to determine the level of audiences may not be guaranteed. The reason for this difficulty, again, is that the value of any AV content varies greatly from country to country, based on the local audiences. Moreover, it must be borne in mind that there is no magic formula to determine how well an AV production will function on a foreign audience. This creates a level of uncertainty that is not easy to quantify in the fees.

In view of the application of the "country of origin" principle, the Directive harmonised the rights of authors to authorise or prohibit the communication to the public by satellite (Recital 21, Article 2), established a minimum level of harmonisation as regards the authorship of a cinematographic or audiovisual work (Article 1.5) and as regards the rights of performers, phonogram producers and broadcasting organisations (Recital 21, Articles 4 to 6).

7. Is the level of harmonisation established by the Directive (or other applicable EU Directives) sufficient to ensure that the application of the "country of origin" principle does not lead to a lower level of protection of authors or neighbouring right holders?

Yes

7.1. Please explain. If you consider that the existing level of harmonisation is not sufficient, please indicate why and as regards which type of right holders/rights.

The current harmonization level introduced by Directives 93/83/EEC (SatCab Directive) and 2006/115/ECC 9 (Rental Rights Directive) guarantees the protection of authors throughout the entire EU. CEPI is not aware of problems derived from lack of protection of copyright or related rights due to lack of harmonization.

In this regard, CEPI would like to remind that authorship rules are components of complex legal systems which change from country to country based on their cultural traditions. Consequently, any change in this area needs to take careful account of the spilling over effects that it may have on the entire copyright system. As such, we believe that unless imperative reasons apply, and in accordance to the principles of subsidiarity, opportunity and proportionality, EU action in the form of legislation is not needed at the present time.

For the purposes of evaluating the current EU rules, the Commission should assess the costs and relevance, coherence and EU added value of EU legislation. These aspects are covered by questions
8-9 below.

8. Has the application of the "country of origin" principle under the Directive resulted in any specific costs (e.g. administrative)?

Yes

8.1. Please explain.

As the Directive states and the market logic demands, producers and broadcasters need to take into consideration the potential audiences when setting the fees for the broadcasting of AV content. For this exercise to be carried out properly, broadcasters need to be transparent in relation to their number of users and data on the consumption of works. However, there are no mechanisms to gather this vital information.

As a consequence, producers need to spend own resources on the monitoring of the markets. These markets are evolving at a rapid pace, and audience monitoring is not as accessible as it would be desired. Moreover, producers do not always have the resources to monitor audiences in order to value correctly the licenses that they negotiate with broadcasters.

All these factors represent cost and gain losses for AV producers.

9. With regard to the relevance, coherence and EU added value please provide your views on the following:

9.1. Relevance: is EU action in this area still necessary?

No

9.2. Coherence: is this action coherent with other EU actions?

No

9.3. EU added value: did EU action provide clear added value as compared to an action taken at the Member State level?

No opinion

9.4.
Please
explain.

2. The management of cable retransmission rights

The Directive provides a double track copyright clearing process for the simultaneous retransmission by a cable operator of an initial transmission from another Member State (by wire or over the air, including by satellite) of TV or radio programmes (Article 1.3). Broadcasters can license to cable operators the rights exercised by them in respect of their own transmission, irrespective of whether the rights concerned are broadcasters' own or have been transferred to them by other copyright owners and/or holders of related rights (Article 10). However, according to Article 9, all other rights (of authors and neighbouring right holders) necessary for the cable retransmission of a specific programme can only be exercised through a collecting society. Finally, Articles 11 and 12 introduce negotiation and mediation mechanisms for dispute resolution concerning the licensing of the cable retransmission rights.

10. Has the system of management of rights under the Directive facilitated the clearance of copyright and related rights for the simultaneous retransmission by cable of programmes broadcast from other Member States?

Yes

10.1. Please explain. If you consider that problems remain, please describe them (e.g. if there are problems related to the concept of "cable"; to the different manner of managing rights held by broadcasters and rights held by other right holders; to the lack of clarity as to whether rights are held by broadcasters or collective management organisations).

According to the Commission's original proposal, the collective management of copyright clearing process for the simultaneous retransmission by a cable operator of an initial transmission from another Member State was introduced in order to avoid the "outsider problem" i.e. "network operators can never be sure that outsiders will not claim individually a right to authorize the retransmission"[3]. The exception for broadcasters included in Article 10 was justified on the basis that these organizations are aware of the rights that they own and therefore the "outsider problem" is neutralized.

The resulting framework, however, has been very detrimental to producers. As the Commission's report on the implementation of the Directive rightly reproduced, "some right holders feel they are

[3] COM (91) 276 final page 24

in part adversely affected by the mandatory management of rights, as it results in their losing income and is not conductive to the best possible defence of their own interests."[4]

The introduction of the mandatory collective licensing represents a limitation to contractual freedom, particularly when it only applies to one of the parties. Under the current situation, producers cannot negotiate with broadcasters or cable operators the clearance of rights, which is determined by a fee set by the collective management organisations. On the other hand, the broadcasters enter market negotiations with the cable operators, therefore obtaining higher revenues.

Another problem related to this system refers to the technology changes which have taken place since the Directive was adopted in 1993. At the moment, digital terrestrial television has completely displaced free to air methods of broadcasting. Consequently, a more technologically neutral language in legislation could avoid problems

11. Has the system of management of rights under the Directive resulted in consumers having more access to broadcasting services across borders?

No

11.1. Please explain. If you consider that problems remain, please describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news) or to specific types of services (e.g. public services broadcasters', commercial broadcasters', subscription based, advertising based, content specific channels) or other reasons.

12. Have you used the negotiation and mediation mechanisms established under the Directive?

Not applicable

12.1. If yes, please describe your experience (e.g. whether you managed to reach a satisfactory outcome) and your assessment of the functioning of these mechanisms.

12.2. If not please explain the reasons why, in particular whether this was due to any obstacles to the practical application of these mechanisms.

For the purposes of evaluating the current EU rules, the Commission should assess the costs as well as the relevance, coherence and EU added value of EU legislation. These aspects are covered by questions 13-14 below.

13. Has the application of the system of management of cable retransmission rights under the Directive resulted in any specific costs (e.g. administrative)?

[4] COM (2002) 430 final page 8

No opinion

13.1. Please explain your answer.

14. With regard to the relevance, coherence and EU added value, please provide your views on the following:

14.1. Relevance: is EU action in this area still necessary?

No

14.2. Coherence: is this action coherent with other EU actions?

No

14.3. EU added value: did EU action provide clear added value when compared to an action taken at Member State level?

No

14.4. Please explain your answers.

III. Assessment of the need for the extension of the Directive

The principles set out in the Directive are applicable only with respect to satellite broadcasting and cable retransmissions [2]. They do not apply to transmissions of TV and radio programmes by other means than satellite or to retransmissions by other means than cable. Notably these principles do not apply to online transmissions or retransmissions.

Until relatively recently, broadcasters' activities mainly consisted of non-interactive transmissions over the air, satellite or cable and broadcasters needed to clear the broadcasting/communication to the public rights of authors, performers and producers. However, the availability of broadcasters' programmes on an on-demand basis after the initial broadcast (e.g. catch-up TV services) is on the increase. Providing such services requires broadcasters to clear a different set of rights than those required for the initial broadcast, namely the reproduction right and the making available right. Forms of transmission such as direct injection in cable networks or transmissions over the internet (e.g. webcasting) are also increasing. Digital platforms also enable programmes to be retransmitted simultaneously across networks other than cable (e.g. IPTV, DTT, simulcasting).

[2] The concept of retransmission is generally understood as the simultaneous transmission of a broadcast by a different entity such as a cable operator.

1. The extension of the principle of country of origin

15. Please explain what would be the impact of extending the "country of origin" principle, as applied to satellite broadcasting under the Directive, to the rights of authors and neighbouring right holders relevant for:

15.1. TV and radio transmissions by other means than satellite (e.g. by IPTV, webcasting).

15.2. Online services ancillary to initial broadcasts (e.g. simulcasting, catch-up TV).

15.3. Any online services provided by broadcasters (e.g. video on demand services).

15.4. Any online content services provided by any service provider, including broadcasters.

Common response to questions 15 to 15.4

The introduction of the "country of origin" for rights licensing would have the main effect of weakening copyright territoriality in the EU, thus opening the way for pan European licenses.

The introduction of pan-European licenses would be very harmful to audiovisual producers. The creative industry behind film and television productions relies on a financial model that has proved successful. Undermining the business models behind this would seriously interrupt creativity. Each film is a prototype and the making of a film or television show is an R&D process that involves developing scripts, casting, location, scouting and production designs. Producers have to invest significantly to enable this process, even before the first frame has been shot. It is quite common for films to be abandoned in the early stages because of the high costs involved. Investors such as the producers bear these costs. The prototypical nature of audiovisual productions makes it impossible to determine which will become a success and which not. Unpredictable factors play a big role such as social climate, trends, and contemporary culture. Only one in ten films actually makes a return on their investment.

Other investors are also involved in the process of film- and television-show making, so the risks and levels of financial investment are spread to some extent. Audiovisual content is produced for a certain public and then the rights are sold to local distributors per platform and territory. These broadcasters and distributors know how to market and distribute in their specific territories where the film is most likely to be successful. This system allows for producers to adapt to the dynamics of different territories and to tailor a production for a certain market. Contractual freedom ensures that investors are able to choose territories for which a production is made. This incentive to invest in a sector that had a turnover of €129 billion in 2010, was served by 126,000 SMEs and employed 560,000 people, should not be reduced by pan-European licensing.

From a cultural point of view, licensing to such an extent could lead to a homogenization of both language and culture. Very few platforms will be able to afford the acquisition and market costs of pan-European distribution; these are particularly high in Europe due to specific market and regulatory differences. It would push producers to create content that is closest to a common cultural denominator.

In 2006, the Council adopted the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The recognition of cultural diversity in Europe was later also embedded in Articles 6 and 167(2) of the TFEU, stating that the Commission shall "contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity". Pan-European licenses could have a negative effect on the blossoming of the cultures of the 28 member states.

Generally speaking, customer demand is available through a variety of linear and non-linear media. In the cases where there is demand for cross-border content, the market is leading to solutions, which is always the right direction. The audiovisual industry has been investing in new online distribution channels

that complement existing linear channels. As has been highlighted by the sector during Licenses for Europe, steps have been taken to improve the access to content for diaspora communities.

As we have stated in Q1, the European Parliament recently acknowledged the importance of territorial licensing and called on the Commission on carrying out a comprehensive study on the effects of eliminating territoriality before engaging in any legislative change to the current framework.

It should also be stressed that, according to the Commission's proposal for the SatCab Directive, the principle of 'country of origin' was introduced because of technical reasons. According to that document, "*a satellite footprint cannot be defined with enough precision to allow the individual countries of reception to be determined exactly".* In addition, "*a failure of negotiations with anyone of the right owners in anyone of the Member States would now have the consequence that the entire satellite transmission would be obstructed."*[5]

These technical problems could have been true in relation to the satellite technology of the early 1990's, but they do not relate to the current possibilities of making digital content available country per country. Currently, digital content can be made available in all the countries where the rights have been cleared with an absolute precision, geo-blocking it for the territories where the licenses have not been cleared and avoiding any spillover effect.

16. Would such an extension of the "country of origin" principle result in more cross border accessibility of online services for consumers?

No. As satellite broadcasting has shown, the principle of 'country of origin' has not changed the fact that European audiences do not have an appetite for cross border access to content. In relation to digital content, the latest Eurobarometer shows that only 17% of internet users have tried to use a subscription for online content in another Member State[6].

Moreover, as stated above, the current legislative framework of the right to making available allows for multi-territorial and pan European licenses. In this regard, the Eurobarometer shows that the current rules are sufficient to satisfy the needs of EU users. That 17% of internet users can be broken down into the following categories: the vast majority (10%) found that the service worked perfectly; "*3% said the content available was limited or different in the other Member State, and 1% said they could only access previously downloaded content. A further 3% said they could not access their service, even with a good Internet connection."*[7] These data mirrors the Commission's observations in its staff working document accompanying the Digital Single Market Strategy, where it is stated that national AV content is broadly available.[8]

Consequently, it can be concluded that European audiences are mostly not interested in cross border access and that those who are interested are for the most part well served with the content from European independent producers.

16.1. If not, what other measures would be necessary to achieve this?

The development of successful business models which provide culturally diverse content across borders is often affected by other factors than consumer demand, including the lack of micro-payment facilities, consumer protection rules, relevant hardware penetration, VAT rates, and piracy. CEPI believes that the Commission can play a role in improving these conditions which play an inherent part of audiovisual creation. We welcome the Creative Europe programme and the 60 per cent ceiling for difficult cross-border films recently introduced into the Cinema Communication. Headache

It is the creativity and innovation of the audiovisual sector which drives the production and distribution across borders of content. The future development of the European film industry will depend on these qualities and policy should focus on supporting the industry rather than inhibiting its development.

[5] COM (91) 276 final page 22
[6] Flash Eurobarometer 411, page 86.
[7] Idem.
[8] SWD(2015) 100 final, page 26.

Furthermore, we would suggest that the Commission could play an important role in advertising and promoting the legal offers currently available, of which many consumers are failing to take advantage.

17. What would be the impact of extending the "country of origin" principle on the collective management of rights of authors and neighbouring right holders (including any practical arrangements in place or under preparation to facilitate multi territorial licensing of online rights)?

Such a measure would weaken the territoriality of copyright, with all the adverse consequences for AV production in Europe that we have described above.

18. How would the "country of origin" be determined in case of an online transmission? Please explain.

Online transmissions in the form of streaming, download or broadcasting are complex acts which may take place in different countries at the same time. Moreover, thanks to the current technology, the digital operator does not need to be located in the same country where content is uploader, in opposition to satellite broadcasting.

Consequently, regardless of the criteria used to determine the "country of origin", such regime would incentivise the digital operators to choose the country with the lowest level of protection. This race to the bottom will go beyond copyright, due to the "country of origin" applicable to the AVMS Directive.

19. Would the extension of the "country of origin" principle affect the current level of copyright protection in the EU?

19.1. If so, would the level of EU copyright harmonisation need to be increased and if so in which areas?

2. The extension of the system of management of cable retransmission rights

20. According to your knowledge or experience, how are the rights of authors and neighbouring right holders relevant for the simultaneous retransmissions of TV and radio programmes by players other than cable operators currently licensed (e.g. simulcasting or satellite retransmissions)?

Audiovisual producers obtain the rights from authors and other holders as one-stop shop, which facilitates the clearing of the rights with broadcasters.

20.1. Are there any particular problems when licensing or clearing rights for such services?

No

21. How are the rights of authors and neighbouring right holders relevant for the transmission of broadcasters' services via direct injection in cable network currently licensed?

This question should remain pending until the Court of Justice of the European Union resolves on case C-325/14, SBS v Belgium.

21.1. Are there any particular problems when licensing or clearing rights for such services?

No

22. How are the rights of authors and neighbouring right holders relevant for non-interactive broadcasters' services over the internet (simulcasting/ linear webcasting) currently licensed?

Audiovisual producers obtain the rights from authors and other holders as one-stop shop, which facilitates the clearing of the rights with broadcasters.

22.1. Are there any particular problems when licensing or clearing rights for such services?

No

23. How are the rights of authors and neighbouring right holders relevant for interactive broadcasters' services currently licensed (e.g. catch-up TV, video on demand services)?

Audiovisual producers obtain the rights from authors and other holders as one-stop shop, which facilitates the clearing of the rights with broadcasters.

23.1. Are there any particular problems when licensing or clearing rights for such services?

No

24. What would be the impact of extending the copyright clearance system applicable for cable retransmission (mandatory collective licensing regime) to:

24.1. the simultaneous retransmission[3] of TV and radio programmes on platforms other than cable (e.g. satellite, IPTV, internet)?

[3] Understood as the simultaneous transmission of the broadcast by a different entity than the broadcaster (see footnote 2).

24.2. the simultaneous transmission[4] of TV and radio programmes on platforms other than cable (e.g. satellite, IPTV, internet)?

Common response to Q24.1 and 24.2

Such extension would be a limitation on the contractual freedom which is at the heart of AV rights licensing. Moreover, as we stated above, the mandatory collective licensing for cable retransmission was introduced solely to avoid the 'outsider-problem'. Consequently, before extending that system to other forms of licensing, there should be proof that the same problems arise for these simultaneous transmissions, which is not the case.

[4] Understood as the simultaneous transmission of the broadcast by the broadcaster itself.

25. In case of such an extension, should the different treatment of rights held by broadcasting organisations (Article 10 of the Directive) be maintained?

No. As we have answered above (Q10), Article 10 of the Directive has created a framework in which producers have lost their market negotiation powers, giving broadcasters an advantageous bargaining position.

26. Would such an extension result in greater cross border accessibility of online services? Please explain.

No. As we have responded in Q1, 15 and 16, there is no appetite for cross border accessibility. Furthermore, any weakening of the principle of territoriality would seriously hamper the financing model of AV content in the EU.

27. Given the difference in the geographical reach of distribution of programmes over the internet (i.e. not limited by geographical boundaries) in comparison to cable (limited nationally), should any extension be limited to "closed environments" (e.g. IPTV) or also cover open simultaneous retransmissions and/or transmissions (simulcasting) over the internet?

28. Would extending the mandatory collective licensing regime raise questions on the EU compliance with international copyright obligations (1996 WIPO copyright treaties and TRIPS)?

No. In particular Article 8 of the WIPO Treaty on the right of making available clearly states that Article 11 (bis)2 of the Berne Convention (which authorises the parties to set a system of collective management of rights) is not applicable.

In addition, there are no explicit references to the extension of the mandatory collective licensing regime in those Treaties. Therefore, making rights necessarily subject to those systems without an explicit mandate could be problematic.

29. What would be the impact of introducing a system of extended collective licencing for the simultaneous retransmission and/or the simultaneous transmission of TV and radio programmes on platforms other than cable, instead of the mandatory collective licensing regime?

The current EU regime allows Member States to introduce those systems if they seem it necessary (see for instance the case of the Nordic countries). Therefore, action at the EU level is not necessary, in accordance with the principles of subsidiarity, opportunity and proportionality.

30. Would such a system of extended collective licencing result in greater cross border accessibility of online services?

No

3. The extension of the mediation system and the obligation to negotiate

31. Could the current mechanisms of negotiation and mediation in Articles 11 and 12 of the Directive be used to facilitate the cross border availability of online services when no agreement is concluded regarding the authorisation of the rights required for an online transmission?

32. Are there any other measures which could facilitate contractual solutions and ensure that all parties concerned conduct negotiations in good faith and do not obstruct negotiations without justification?

IV. Other issues

33. These questions aim to provide a comprehensive consultation on the main themes relating to the functioning and possible extension of the Directive. Please indicate if there are other issues that should be considered. Also, please share any quantitative data reports or studies to support your views.

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The European Coordination of Independent Producers (CEPI) was founded in 1989, to organise and represent the interests of independent television producers in Europe.

Today the Coordination represents approximately 95% of the entire European audiovisual production industry. All together, our members supply over 16000 hours of new programming each year to broadcasters in Europe, ranging from single documentaries and special event programming, to game shows, light entertainment and high-cost drama serials.

As the producers form the basic support of the audiovisual industry, it is necessary to articulate the interests of those producers within a unique European organisation.

For more information visit www.cepi.tv