The Danish Authors' and Performers' Rights Council

Lautrupsgade 9 – 2100 København Ø

E-mail: info@samraadetforophavsret.dk – www.samraadetforophavsret.dk

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

I. General information on respondents

I'm responding as Representing The Danish Authors' and Performers' Rights Council

My nationality: Denmark

My name: Kaspar Lindhardt

E-mail address: kli@koda.dk

The Danish Authors' and Performers' Rights Council (DAPRC) is registered in the Transparency Register of the European Commission and the European Parliament with the registration number: **165610018869-34**

The DAPRC represents Authors and Performers.

The DAPRC operates in Denmark

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

The Danish Authors' and Performers' Rights Council

Please enter your address, telephone and email.

Lautrupsgade 9, DK-2100 Copenhagen Ø, + 45 61 89 31 82, info@samraadetforophavsret.dk / kli@koda.dk

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

Copenhagen, Denmark

The Danish Authors' and Performers' Rights Council is a non-governmental council consisting of authors and artists unions and Collective Management Organisations in Denmark.

As such, the reply below reflects the views of both authors and performers represented by these unions and CMOs as well as the views of the unions and CMOs.

The members of the Danish Authors' and Performers' Rights Council are:

• Billedkunstnernes Forbund	*Danish Visual Artists*
• Dansk Artist Forbund	*Danish Artists' Union*
• Dansk Filmfotograf Forbund	*Danish Association of Cinematographers*
• Dansk Forfatterforening	*Danish Authors' Society*
• Dansk Journalistforbund	*Danish Union of Journalists*
• Dansk Kapelmesterforening	*Danish Conductors Association*
• Dansk Komponist Forening	*Danish Composers' Society*
• Dansk Kunstnerråd	*Council of Danish Artists*
• Dansk Metal	*Danish Metalworkers' Union*
• Dansk Musiker Forbund	*Danish Musicians Union*
• Dansk Skuespillerforbund	*Danish Actors' Association*
• Danske Billedkunstneres Fagforening	*Danish Union of Visual Artists*
• Danske Designere	*Danish Designers*
• Danske Dramatikeres Forbund	*Danish Playwrights' and Screenwriters' Guild*
• Danske Filminstruktører	*Danish Film Directors*
• Danske Jazz-, Beat- og Folkemusikautorer	*Danish Society for Jazz, Rock and Folk Composers*
• Danske Kunsthåndværkere	*Danish Arts and Crafts Association*
• Danske Populærautorer	*Danish Song-writers' Guild*
• Danske Skønlitterære Forfattere	*Danish Fiction Writers Association*
• Danske Tegneserieskabere	*Danish Cartoon Authors*
• Film- og TV-arbejderforeningen	*Danish Film- and Television Workers' Union*
• Foreningen af Danske Sceneinstruktører	*The Association of Danish Stage Directors*
• Fællesrådet for Udøvende Kunstnere	*Joint Council of Creative Artists*
• Gramex	[CMO for performing artists and record companies]
• Koda	*Koda, Composers' Rights in Denmark*
• NCB, Nordisk Copyright Bureau	*NCB, Nordic Copyright Bureau*
• PROSA	[trade union of IT professionals]
• Sammenslutningen af Danske Scenografer	*Danish Scenographers*
• Teknisk Landsforbund TEF	*Danish Association of Professional Technicians*
• TEGNERNE, Tegnerforbundet af 1919	*Danish Illustrators*
• Udvalget til Beskyttelse af Videnskabeligt Arbejde	*The Committee for Protection of Scientific Work*

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).

Initially, it is important to realize that even if the "country of origin"-principle has made satellite broadcast in Europe easier (by solving the problem of technically unavoidable overspill that occurs due to the footprint of a satellite not being confined to a single member state, it is not without faults.

In relation to the Commission's focus on cross-border, the principle has not solved all problems related to cross-border access, especially in relation to premium content, including sports. Likewise, due to market considerations, it has not lead to the sale of satellite services subscriptions across borders on any significant scale, aside from broadcasters that have misused the principle in order to circumvent obligations grounded in the AVMS-directive (previously the Television without Frontiers directive) or in tax laws, by establishing themselves in other member states than the states of their sole target audience ("targeted channels"). This forum shopping

has also lead to for instance Nordic commercial broadcasters established in the UK clearing Nordic music rights in targeted channels with Nordic language with PRS in the UK, and not in the target countries.

One of the main reasons for cross-border disputes, is the risk that licensing of content in secondary and tertiary markets in other European countries, where it constitutes "niche" content, might affect the value in the primary market where it constitutes premium content. Because of territoriality, content can be sold in other markets exclusively or at a discount, which is necessary to penetrate these. Especially exclusive sale of pre-sale rights have emerged as a primary financing model of European cinema and television, as the sale of DVDs has declined. Financing through pre-sale rights and coproduction across Europe is a European success story, and tinkering with the basis of these possibilities would jeopardize the already fragile financing new audiovisual works.

The primary reason why the "country of origin"-principle has worked to the extent is has, is that the principle has not had a large disruptive effect on the primary products and the primary markets, because the overspill of satellite signals to single households in other countries in practice has been negligible. One area where the principle has not been accepted by the market, is in relation to sports, which is the most common subject of territorial disputes. This is due to the disruptive effect, or fear thereof, on territorial licensing of sports. Sports is not protected by copyright according to the ECJ, and serves to illustrate that territoriality of content has more to do with market forces, than national copyright laws.

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?

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.

It should be noted that some broadcasters target their broadcasts towards the audience of a single Member State other than the one in which the broadcaster is established. In this scenario, the audience from "a Member State other than the country of origin" is 100% from that one single Member State, and not the country from which the broadcaster is broadcasting.

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?

3.1. Please explain and indicate which type of obstacles.

The DAPRC would like to use this opportunity to state that it firmly believes that copyright is not an obstacle that impedes provision of broadcasting services via satellite. On the contrary it is there to facilitate, promote and ensure legal access to creative works. Copyright law and contracts provide the necessary legal framework to provide the access to works and thus are at the centre of the sustainable development of the cultural and creative sectors that rely on such rights to create and build their markets in the most efficient and meaningful manner for consumers and European citizens in general.

As mentioned in answer to Question 1.1 above and several answers under Section III below, CMOs representing musical works grant multi-territorial licences, where required and appropriate. That is not necessarily the case for film distributors and broadcasters who may have specific constraints, and therefore legitimate reasons for acting differently. Thus, for example, the various national markets have their own dynamic and logic which needs to be respected for an optimal exploitation of the films: this can justify a different timing for the release of the films. National broadcasters can also be reluctant to invest in pan-European rights when their activity is mainly national.

Therefore, the lack of a pan-European satellite market is not the result of copyright law, it is more related to the characteristics of the market.

4. Are there obstacles (other than copyright related) that impede the cross-border access by

consumers to broadcasting services via satellite?

4.1. Please explain and indicate which type of obstacles.

Please see answer to Question 3.1.

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

X To a limited extent

5.1. Please explain.

It may happen that the location of the act of communication to the public by satellite is considered differently due to differing interpretations of the wording of Article 1(2)(a) of the SatCab Dir. The determination of the relevant country of origin is dependent on different circumstances and actions (e.g. the preparation of programming, technical arrangement relating to the relevant satellite uplink) which can take place in separate territories. It is challenging to assess, from the outside, where the relevant actions technically take place. The collecting societies have to rely on the facts and elements provided by the broadcasters and are in a difficult position to properly verify such information. In a way, this allows broadcasters almost “free choice” as regards the “country of origin” and can lead to uncertainty in licensing, “forum shopping” and in certain instances even avoidance of relevant licences by certain services.

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?

X To a limited extent

6.1. Please explain.

The lack of information provided by users can make calculation of appropriate licensing fees very challenging.

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?

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.

As stated in answers to Questions 5.1 and 6.1, the practice of certain broadcasters led to lower remuneration for rights holders.

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)?

8.1. Please explain.

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?

X No

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

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

9.4. Please explain.

The DAPRC believes that there is no need to review the satellite provisions of the SatCab Dir and that the Commission could deal with the outstanding issues, as outlined above in answer to Question 1.1, through interpretative guidelines regarding the need for transparency from the satellite broadcasters and the information to be provided by them. In this respect, it can be noted that the CRM Dir provides in its Articles 16 and 17 an obligation for commercial users to provide to the collective management societies the information necessary for the grant of licenses. Such provisions should be transposed in such a way as to address such issues. It needs to be added that the extension of these provisions to online exploitations

would also not be desired (please see our answers in Section III).

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?

X 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).

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

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?

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)?

X No

13.1. Please explain your answer.

Such a system was either in place or authors' societies have quickly adapted without any significant cost.

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?

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

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

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:

If the principle is extended to online, especially in relation to on demand, it will be much more disruptive, because the technology is not limited in the same way that satellite broadcasting is. Premium content can generally be included in satellite broadcast without disruptive effect, as it is part of a programming schedule in channels targeted at a different audience, which it requires a specific technical set-up to receive. This is not the case in relation to online, and especially not in relation to on demand.

This will instead lead to licenses being sold as pan-European licenses, which will mainly suit large American companies, and not be obtainable for national European distributors, except for maybe a select few. This will also lead to content being aggregated in a few large catalogues, which would hurt European diversity, as these will not have the same need or incentive to push “niche” European content. Alternatively, European content will only be available from service providers in the home market of a production, meaning that end users in other member states will have to pay a premium home-market price, in order to access content they will likely consider as niche, and are interested in, but probably not at a premium price.

As has already been seen in the on demand market, these American companies will use any forum shopping possibilities to limit their costs. This would include establishing themselves in the member states with the lowest protection of copyright, and might lead some member states to a copyright race to the bottom, in order to attract these businesses. This will put further pressure on national European distributors, who indeed want to support European culture and right holders, but struggle with the competition from American corporations, which do not compete according to the same rules, either because of forum shopping or the use of the safe harbor provision in the E-commerce-directive. Likewise, it might lead to a license fee race to the bottom, in areas where several collective management organizations hold the rights to the complete European repertoire through law or through reciprocal agreements.

Looking at the jurisprudence of the EU Court of Justice, the international treaties on copyright and general EU rules must be interpreted in a mandatory way to the effect that also law of the country where the effect of a communication to the public takes place is applicable, i.e, the country of reception. As such, the “country of origin”-principle in relation to broadcast is an anomaly in a special area with elements that are not present in other areas e.g. technically unavoidable overspill. Instead of expanding the “country of origin”-principle to other areas, it should be considered to amend the principle, in accordance with what has worked in relation to broadcast, in such a way that the “country of origin”-principle only applies in cases, where there is technically unavoidable overspill, as the consideration behind the principle is not present e.g. in the case of targeted channels, as pointed out above.

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

As regards Question 15.1, the examples given are confusing and misleading as to what exactly is being referred to.

Indeed, IPTV services are generally retransmission services and not transmission services (except as regards the so-called cable and satellite channels) whereas webcasting services are transmission services.

Where retransmission services are concerned, the CoO principle makes no sense.

As regards transmission services, The DAPRC believes that there are already appropriate licensing schemes in place to answer market needs and therefore no further legislative action is required (please see answer to Question 22).

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.

It must be recalled, as underlined by the De Wolf Study prepared for the European Commission, that such concept is fundamentally detrimental to the rights holders, and can therefore not be approved by them, in that it encourages *forum shopping*: a service provider could choose the country where it would benefit from the most favourable conditions to exploit a work. Such criticism is incurred whatever the retained criterion: location of the server, location of the economic residence, location of the person uploading. Such location can very easily be changed. The criterion is also deceptively simple in particular as regards companies with a complex and diversified structure and/or operations, e.g. if several servers are used in different countries.

Such criterion is therefore totally unsatisfactory and we note that copyright was excluded from the general principle of the country of origin in the E-commerce directive as well.

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

The DAPRC does not see any reason why the extension of such principle in the online sector would result in more cross border accessibility of online services.

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

The Commission has announced that it will deal in the very near future with the portability of subscription services, which is key, and some other cross-border aspects of the copyright framework in the coming months.

In any case, The DAPRC is of the opinion that the most important problem in the digital environment preventing a healthy, competitive and strong market in Europe actually is the so-called “transfer of value” in favour of certain online service providers that carry out copyright protected acts but hide behind the safe harbour regime of the E-commerce directive to avoid having to seek the rights holders’ consent and to pay them a remuneration. Cultural content is no longer exclusively available from DSPs that license and pay for the content they provide on a national or pan-European basis, such as Spotify, iTunes, Netflix or Deezer. Today, such content is mostly available and shared through platform-based services that claim online intermediary status, like YouTube, Dailymotion, SoundCloud, Facebook, Google Search, Snapchat, TuneIn etc. Such services do not create or invest in cultural content, yet they aggregate it and make it

available from other websites or individual users. Most of them provide content through sophisticated platforms (content aggregation services, video sharing platforms, UGC sites, social media, etc.) on which they actively communicate protected works to the public. These activities are often monetised and generate vast revenues through the use of cultural content. These services however claim to be exempt from copyright/authors' right, in order to avoid sharing their revenues with content creators. Most of them refuse to get a license and pay for the cultural content they provide.

Many of these self-proclaimed online intermediaries are the primary point of access to cultural content for users. This transfer of value is going from content creators to large self-proclaimed online intermediaries. Such services, when they are contacted by authors' societies, claim "safe harbour", contend that their activities are not copyright relevant and/or argue that they only host content uploaded by others to refuse creators' requests for appropriate remuneration. Thereby, they deprive creators of fair value and undermine the existence and emergence of innovative legitimate digital service providers who compete against these players. It also makes the market entry and cross-border roll-out of new online services much more challenging, since those services that refuse any liability are leading the market for consumers' access to creative works, without investing in the creative works they benefit from, by refusing licensing request of rights holders or by offering take it or leave it conditions to lower the value of creative works.

Addressing this "transfer of value" would be crucial for i) authors to get a share of the revenue their content generates, ii) fans and users to benefit from the innovation which a fairer online market can offer and to know that their favourite creators are fairly remunerated, iii) digital service providers and start-ups to finally have access to a level playing field. This would eventually yield a more vibrant and sustainable digital market place, where both the legitimate services and rights holders can rely on consumers' demand to develop better offers that include widest possible repertoire, streamlined rights clearance and appropriate remuneration of creators.

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)?

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

Considering the practices of certain broadcasters for satellite broadcasting and the fact that in most cases online services choose their country of establishment according to tax reasons or are likely to choose the countries with more favourable copyright regimes as stated by the De Wolf Study (*forum shopping*), the extension of the CoO principle to online services would most likely have a negative impact on rights holders. The economic study prepared by CRA for the Commission also notes that "*the fact that the application of the Country of Origin may encourage opportunistic or sub-optimal jurisdictional choices should be taken into account by the policy-maker*."

Such criterion is therefore totally unsatisfactory and The DAPRC notes that copyright was excluded from the general principle of the country of origin in the E-commerce directive as well.

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

Yes. Please see answers to Questions 15 to 18.

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)?

As regards the examples given in the question, it needs to be noted that simulcasting is not a retransmission. As regards satellite retransmission, in many cases, satellite package providers are licensed for 'retransmission right' without any special regime (mandatory collective management) and the original broadcasters are licensed for broadcasting right.

This is in line with the *Airfield* judgment of the CJEU that holds that "*Article 2 of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission must be interpreted as requiring a satellite package provider to obtain authorisation from the right holders concerned for its intervention in the direct or indirect transmission of television programmes*".

However in certain countries, such as in Poland and Hungary, there is a tendency to consider all retransmissions in the same manner as in the cable retransmission provisions of the SatCab Dir that requires a specific arrangement of mandatory collective management.

Currently, there are also services offering retransmission of programmes within a TV package to the households through IPTV and/or other internet based closed networks. The relevant rights and applicable rules regarding such services have been interpreted differently in some Member States. Technologically neutral approach for instance has already been recognised in several Member States in law or in practice such as Denmark, Hungary, Czech Republic, Belgium, Sweden, Austria and the Netherlands and practical solutions found in some other countries. Clarification of this point by the Commission for a streamlined understanding across the EU would therefore be useful.

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

Please see answer to Question 20.

THIS IS THE LAST ANSWERED QUESTION/KLI

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?

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

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?

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

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)?

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

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)?

[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?

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

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)?

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?

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

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.