



EUROPEAN COMMISSION

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C(2017) 2463 final*

*Ms Malu DREYER
President of the Bundesrat
Leipziger Straße 3 - 4
D – 10117 BERLIN*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the 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 organisations and retransmissions of television and radio programmes {COM(2016) 594 final}.

When adopting the Digital Single Market Strategy¹ in May 2015, the Commission highlighted the need "to reduce differences between national copyright regimes and allow for wider online access to works by users across the EU". In its Communication 'Towards a modern, more European copyright framework'², the Commission further outlined targeted actions and a long-term vision to modernise European Union copyright rules. It notably proposed "a gradual approach to removing obstacles to cross-border access to content and to the circulation of works".

The proposal for a Regulation on certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes is one of the measures that were adopted by the Commission to ensure wider access to content across the European Union. It aims at facilitating the clearance of rights for cross-border online transmissions of television and radio programmes and retransmissions over closed networks.

The Commission welcomes the Bundesrat's support for the aim of the proposal, namely fostering the cross-border distribution of television and radio programmes. The Commission shares the view of the Bundesrat on the need to ensure an appropriate balance between the interests of right holders, distributors, producers, broadcasters and consumers. In this regard, the proposed Regulation constitutes a proportionate approach to facilitate access to a wider variety of television and radio programmes across the European Union.

¹ COM(2015) 192 final.

² COM(2015) 626 final.

The proposal presented by the Commission is currently in the legislative process involving both the European Parliament and the Council.

In response to the more specific comments in the Opinion, the Commission would like to refer the Bundesrat to the attached annex.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

ANNEX

The Commission has carefully considered the issues raised by the Bundesrat in its Opinion and would like to offer the following observations:

Paragraph 5: The Commission will check the consistency between the different language versions of the proposal.

Paragraph 6: The proposed Regulation builds on mechanisms used in the Satellite and Cable Directive (Council Directive 93/83/EEC³) for satellite broadcasting (country of origin) and cable retransmissions (mandatory collective management of rights) to facilitate the clearance of rights in the case of certain online transmissions of broadcasters and retransmissions of TV and radio programmes. However the proposed new rules do not interfere with or amend the rules set out in the Satellite and Cable Directive. They cover different types of rights (in particular communication to the public – other than broadcasting – and making available) and of services (ancillary online services and retransmission services provided by means other than cable). For these reasons the Commission considered it appropriate to propose a self-standing legislative instrument. A Regulation has been considered to be the best vehicle to ensure the uniform application of the rules across Member States as well as their simultaneous start of application. This is particularly important in view of the cross-border objective of the proposal and to guarantee legal certainty to service providers operating in different territories.

Paragraphs 7, 8 and 9: The impacts of introducing the country of origin principle on broadcasters and right holders have been carefully assessed in the Impact Assessment accompanying the proposal⁴. The country of origin principle applying to the licensing of online rights for broadcasters' ancillary services is expected to reduce transaction costs and therefore open new opportunities for broadcasters to make their programmes available online across borders. Considering its narrow scope of application (limited to broadcasters' ancillary online services) and the fact that it does not restrict the contractual freedom of the parties, the application of a country of origin approach is not expected to have disruptive effects on right holders. In some cases it could result in additional revenues for right holders, for example audiovisual producers who do not rely on territorial exclusivity would benefit from wider audience through the broadcasters' ancillary online services being made available across borders.

The Commission would like to highlight the fact that the proposal sets out an enabling mechanism but does not oblige broadcasters to provide their services across borders or right holders to grant pan-European licences (see recital 11 of the proposal for a Regulation). This

³ OJ L 248, 6.10.1993, p. 15-21.

⁴ Impact Assessment on the modernisation of EU copyright rules: <https://ec.europa.eu/digital-single-market/en/news/impact-assessment-modernisation-eu-copyright-rules>

means that, despite the application of the country of origin principle to the licensing of rights, broadcasters and right holders would remain free to contractually limit the distribution of content to certain territories, provided that applicable EU and national rules are respected.

Paragraph 10: Article 2(2) of the proposed Regulation provides that, under the application of the country of origin principle, the licence fees paid by broadcasters to right holders take account of all aspects of the ancillary online service, considering notably the features of the service, the audience and the language version. This provision is essential to ensure that right holders are remunerated for the access to and the use of ancillary online services taking place in Member States other than the Member State where the broadcaster has its principal establishment. The Commission considers that this provision is compatible with the contractual freedom of the parties as it only sets out the criteria that need to be taken into account in the negotiation between broadcasters and right holders.

Paragraph 11: Article 5 introduces a transitional period of two and a half years for the application of the country of origin principle to existing licensing agreements. This provision is essential to prevent the circumvention of the application of the country of origin principle through the extension of the duration of existing agreements. Taking account of the average duration of contracts between broadcasters and right holders, the Commission is of the view that the proposed time period is reasonable.