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b-solutions

FINAL REPORT BY THE EXPERT

Advice Case: Stop geo-blocking! Overcoming discrimination and developing intercultural competences by providing access to online content across borders

Advised Entity: European Grouping of Territorial Cooperation Euregio Meuse-Rhine EGTC, BE-NL-DE

Expert: Hildegard Schneider and Saskia Marks

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1. Description of the Obstacle

A. The obstacles as presented by the EGTC Euregio Meuse-Rhine

The Euregio Meuse-Rhine knows a lot of flows and movements by its citizens across national borders. These border commuters become more and more numerous, resulting mainly from the integration of the labour and housing market. A real European mindset has been created where the choice to live and/ or to work on the other side of the border is easily taken. The border becomes a minor criteria in the choice of crucial personal decisions such as where to live, where to work, where to send the children at school, etc. As a lot of progress has been achieved concerning the process of European integration, some hurdles, however, remain and new obstacles are even set up. To develop comprehensive intercultural competences, the population needs to get the same access to audio-visual content and information wherever the person is living or working. Audio- visual services and information on the German television channels for instance should be available to a citizen who lives in Belgium or the Netherlands as to the one who has his residence in Germany. This is not only needed to develop a common understanding, to get relevant information but also to acquire important skills (such as for example linguistic vocabulary required for the education of children who are not living in the country their parents came from). Culture and information are mainly spread through audio-visual services. Not having the same access to audio-visual content might therefore lead to adverse effects not only within the education of children but also for professionals as cross-border commuters on their working place or for citizens within their daily activities. To sum up, this circumstance has thus adverse consequences for all cross-border cooperation activities and services. Citizens are used to access media content via satellite television or other means. Agreements were found in the past to overcome such needs. The digital transformation of almost all our daily professional and common activities re-opens however this problematic, which initially thought to have been solved. The practice of geo-blocking sets up new borders to citizens and professionals to get access to audio-visual content.

B. Analysis of existing obstacles by the adviser

Geo-blocking is a technology that restricts access to certain Internet content based upon the user's geographical location, usually his or her residence. The Euregio Meuse-Rhine (EMR) views the blocking of access to online audio-visual content as particularly problematic for the development of comprehensive intercultural competences and consider it discriminatory. This view is in line with a Resolution of the European Parliament,[1] which underlines that linguistic minorities in the European Union should have access to audio-visual content via the media from another Member State.

[1] European Parliament, Resolution of 13 November 2018 on minimum standards for minorities in the EU, §§44-45.

The technology of geo-blocking is only a means to enforce territorial copyright licenses, which are the obstacle at heart. Copyrights (for authors) and related rights (for performers, producers and broadcasters) are granted to ensure that those who have created or invested in, *inter alia*, audio-visual content, can determine how that content can be used and receive remuneration for it. Copyright and related rights include so-called "economic rights" which enable rightholders to control (license) the use of their works. These rights normally take the form of exclusive rights and include the right to copy or otherwise reproduce any kind of work and other protected subject matter; the right to distribute copies to the public and the right to communicate to the public performances of such works and other protected subject matter.[2] However, the rights commonly used in licensing agreements are often limited by restrictions on

a) the technology that the digital content providers may lawfully use to transmit the content,

b) the duration of the right, i.e. the period during which the digital content prover is lawfully entitled to offer the product, and

c) the geographic area or areas in which the digital content provider may lawfully offer the product[3]

As mentioned above, the obstacle at heart are the *territorial* copyright licences (restriction c)), that is, copryight licences limited to a certain area. These copyright licences are to a large extent licensed on a national basis. This is especially true for content relating to sports, films and fiction TV. The vast majority of digital content providers use geo-blocking to enforce these territorial restrictions.[4] This report will focus on the geo-blocking of online retransmissions of North Rhine-Westphalian television programmes in the German-speaking Community of Belgium.

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[2] European Commission; Proposed Directive on collective management of copyright and related rights and multi-territorial licensing – frequently asked questions, available at https://ec.europa.eu/commission/presscorner/detail/en/MEMO_12_545, last accessed on Wednesday 15 January 2020.
[3] European Commission; Final Report on the E-Commerce Sectory Inquiry, COM (2017) 229 Final, §21.
[4] European Commission; Final Report on the E-Commerce Sectory Inquiry, COM (2017) 229 Final, §§65-66.

2. Relevant International and European Legislation

There are various legal instruments relating to the rights of linguistic minorities, the technology of geo-blocking and the licensing of copyrights. This section will firstly assess the role of the Council of Europe and whether legal instruments concluded in the framework of the Council of Europe might be helpful to solve the problem.

Secondly, it will provide an overview of European Union legislation and case-law in this field and discuss their relevance for the presented problem.

The third section will provide a preliminary conclusion.

A. Council of Europe

The first important player in the field of geo-blocking is the Council of Europe. In this regard, the European Charter for Regional or Minority Languages (ECRML) is of particular importance. Its preamble mentions the maintenance and development of regional and minority languages as one of its key objectives. Pursuant to Article 11 ECRML, the following positive obligations rest on contracting states:

1. Broadcasters have to offer programs in the regional or minority languages (Article 11(1)(a)iii); (b)ii));
2. States should encourage the production of audio and audio-visual works in the regional or minority languages (Article 11(1)(d));
3. Minimum one newspaper should exist in a regional or minority language (Article 11(e)(i)), respectively articles in regional or minority languages should be published on a regular basis in newspapers;
4. Existing measures for financial assistance should also be applied to audio-visual productions in regional and minority languages (Article 11(f)(ii))
5. Freedom of reception of radio/ television in a certain regional or minority language from other countries should be guaranteed (i.e. disturbing the reception or so-called geo-blocking is not allowed) (Article 11 (2)).

However, it must be noted that Belgium is not a contracting state to the ECRM. Therefore, there is no duty on the German-speaking Community to facilitate the freedom of reception of online North Rhine-Westphalian radio and/or television based on this Convention.

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B. European Union

A second important player in the context of cross-border media service and geo-blocking is the EU. Various instruments deserve to be mentioned and shortly considered:

1. EEC Directive 93/83 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission[5]
2. EC Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society[6]
3. EU Directive 2010/13 on the provision of audiovisual media services[7]
4. EU Regulation 2017/1128 on cross-border portability of online content services in the internal market[8]
5. EU Regulation 2018/302[9] on unjustified geo-blocking and other forms of discrimination
6. EU Directive 2019/790 on copyright and related rights in the Digital Single Market[10]
7. EU Directive 2019/789 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[11]
8. Overview of the relevant case law of the Court of Justice of the European Union (CJEU)

1. EEC Directive 93/83 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

This Directive, in force since 1995, aims to facilitate the cross-border transmission of audio-visual programmes, particularly broadcasting via satellite and retransmission by cable.

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[5] 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.

[6] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

[7] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

[8] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market.

[9] Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

[10] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

[11] Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 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, and amending Council Directive 93/83/EEC.

For satellite broadcasting, the Directive establishes the country of origin principle. This means that if a copyright licensee in Member State A broadcasts a movie signal, which is received in Member State B, the rights of a licensee in State B are not infringed. In the case of simultaneous cable retransmissions, the Directive introduces the collective management of the rights.[12]

In Germany, this Directive was implemented by means of the *Viertes Gesetz zur Änderung des Urheberrechtsgesetzes vom 8. Mai 1998*. In Belgium, this Directive was implemented by means of the *Loi du 30/06/1994 relative au droit d'auteur et aux droits voisins*.

2. EC Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society

The directive aimed to update the European legislative framework on copyright. In particular, it had four goals:

1. To align EU legislation with international law;
2. To strengthen intellectual property protection in light of technological developments that led to the emergence of the Internet as a major distribution channel for content;
3. To reduce the existing disparities between national legal systems in terms of the basic definition of copyright, the scope of the rights to reproduction, communication, and distribution, the exceptions and limitations allowed, and the enforcement methods and practices; and
4. To ensure an adequate level of remuneration and compensation of authors and performers.[13]

This directive is one of the core instruments of European Union copyright legislation. However, based upon the research results, it is not of significant importance for this specific case.

3. EU Directive 2010/13 on the provision of audiovisual media services

Directive 2010/13 (Audiovisual Media Services Directive) was updated in 2018 to ensure its compatibility with the 2015 Digital Single Market Strategy. Since its 2018 update, the directive does not only cover traditional TV broadcasters and video on demand providers, but also video-sharing platforms such as YouTube as well as content shared on social media services.[14] It is predominantly concerned with:

1. providing rules to shape technological developments
2. creating a level playing field for emerging audiovisual media

[12] European Commission; The Satellite and Cable Directive, accessible at https://ec.europa.eu/digital-single-market/en/satellite-and-cable-directive, last accessed on Friday 25 October 2019.
[13] Centre for European Policy Studies; The Implementation, Application and Effects of the EU Directive on Copyright in the Information Society [Report] (2015). Available at https://www.ceps.eu/system/files/SR120_0.pdf, last accessed on Friday 25 October 2019.
[14] European Commission; The Revision of the Audiovisual Media Services Directive, accessible at https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd, last accessed on Friday 25 October 2019.

3. preserving cultural diversity
4. protecting children and consumers
5. safeguarding media pluralism
6. combatting racial and religious hatred
7. guaranteeing the independence of national media regulators[15]

However, based upon the research results, this Directive is not of significant importance for this specific case of geo-blocking.

4. EU Regulation 2017/1128 on cross-border portability of online content services in the internal market[16]

EU Regulation 2017/1128 (Portability Regulation) aims to broaden access to online content services for subscribers temporarily present in another State of the European Union. It enables consumers to access their portable online content services in exactly the same way in other Member States of the EU as in their home Member State.

The European Commission provides the following example: a French consumer, who has subscribed to *CanalPlay* film and series online services, will be able to watch the *CanalPlay* films and series when he or she goes on holidays to Croatia. All providers who offer paid online content services (such as e.g. Netflix or HBO) are bound by this new Regulation since 1 April 2018. Services provided without payment (such as the online services of public TV or radio broadcasters) can also decide to provide portability to their subscribers.[17] The mechanics on which this regulation builds on are threefold:

1. Manner of applying copyright protection

Article 4 establishes the country of origin principle. The copyright-relevant act only takes place in the Member State of Residence of the subscriber.

2. Treatment of copyright licenses

Article 5 renders territorial limitations on such licenses unenforceable.

3. Technological protection measures

[15] European Commission; The Audiovisual Media Services Directive, accessible at https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd, last accessed on Tuesday 22 October 2019.
[16] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market.
[17] European Commission; Cross-border Portability Online Content Services, accessible at https://ec.europa.eu/digital-single-market/en/cross-border-portability-online-content-services, last accessed on Friday 25 October 2019.

Article 3 obliges content service to disable technological protection measures, such as geo-blocking, for subscribers **temporarily** present in another Member State.[18]

It should be noted that the Portability regulation is concerned with short stays abroad only. Therefore, it cannot be applied to solve the problem as presented by the EMR.

5. EU Regulation 2018/302 on unjustified geo-blocking and other forms of discrimination

Regulation 2018/302 addresses unjustified online sales discrimination based on customers' nationality, place of residence or place of establishment. However, it is not applicable in the case at hand, as the Regulation explicitly does not include audio-visual services.[19] The Regulation justifies the exclusion of audio-visual services on the basis that these types of services are mainly provided on the basis of exclusive territorial licenses.[20]

Therefore, as the Regulation currently stands, there is no new approach to the issue of territorial copyright licenses for audio-visual services and the related geo-blocking practises.[21] However, the Commission has indicated that it wishes to assess the impact of the Regulation on the internal market within two years of entry into force (entry into force 3 December 2018).[22] In its evaluation, which is expected in 2020, the Commission will assess whether the scope of the Regulation should be extended to certain electronically supplied services, which offer copyright-protected content such as music, e-books, software and online games, and other audio-visual services. Depending on this evaluation and the measures taken this might in the future be of relevance for the case at hand.

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[18] Schmidt-Kessen, M. J.; EU Digital Single Market Strategy, Digital Content and Geo-Blocking: Cost and Benefits of Partitioning EU's Internal Market. Columbia Journal of European Law, p. 567.

[19] Article 1(3) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC jointly with Article 2(2)(g) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

[20] Clause 8 of the Preamble to Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

[21] Schmidt-Kessen, M. J.; EU Digital Single Market Strategy, Digital Content and Geo-Blocking: Cost and Benefits of Partitioning EU's Internal Market. Columbia Journal of European Law, p.566.

[22] Article 9 Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

6. EU Directive 2019/790 on copyright and related rights in the Digital Single Market

This Directive entered into force on 7 June 2019 and has to be transposed into national law by Member States until 7 June 2021. The Directive aims at modernizing European Union copyright law by taking into account the increasing digital and cross-border uses of protected content.[23]

However, based upon the research results, this Directive is not of significant importance for this specific case.

7. EU Directive 2019/789 2019 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

Contrary to Directive 2019/790, Directive 2019/789 is particularly relevant for this case, as it is directly concerned with the retransmission of online content and broadcasting organisations. This Directive entered into force on 7 June 2019 and has to be transposed into national law by Member States until 7 June 2021. The Directive, inter alia:

(i) facilitates the clearance of copyright and related rights of radio and certain TV content for cross-border digital broadcast and retransmissions;

(ii) complements the existing Directive 93/83/EEC (Satellite and Cable Directive);

(iii) establishes and extends the "country of origin" principle

(iv) extends the system of mandatory collective management[24]

For the case at hand, especially point (iii) is relevant. Under Article 3(1) of the new directive, the country of origin principle is extended to the following ancillary online services:

- radio programmes; and
- television programmes which are:
    - news and current affairs programmes; or
    - fully financed own productions of the broadcasting organisation

Sports events are explicitly excluded from the scope.

[23] For more information, see World Intellectual Property Organization; European Union: Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, available at https://www.wipo.int/news/en/wipolex/2019/article_0008.html, last accessed on Friday 25 October 2019.

[24] For more information, see World Intellectual Property Organization; European Union: Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations [...], available at https://www.wipo.int/news/en/wipolex/2019/article_0007.html, last accessed on Friday 25 October 2019.

Applied to the case of the German-speaking Community in Belgium, the extension of the country of origin principle entails that a Belgian licensee of a North Rhine-Westphalian emission cannot enforce its copyright license against a person living in the German-speaking Community having picked up a signal from North Rhine-Westphalia. It should be borne in mind that the "picking up of a signal from North Rhine-Westphalia" is significantly more complicated, if not impossible, due to the technology of geo-blocking. For emissions not falling under the scope of this new Directive, such as sports programmes, the country of origin principle does not apply. As a consequence, the Belgian licensee of that programme could still enforce its copyright license against the consumer living in the German-speaking Community having picked up a signal from North Rhine-Westphalia.

In line with the CJEU case law examined below, Article 3(3) of the Directive provides that the contractual freedom of the right-holders and broadcasting organisations is not limited. Thus, exclusive territorial licensing can still be agreed upon and may also be contractually enforced.

This Directive has not been implemented in Germany or Belgium yet. The deadline for implementation is set for 7 June 2021.

8. Case law of the Court of Justice of the European Union (CJEU)

In the *Coditel* cases,[25] the CJEU held that a segmentation of the internal market along national borders by means of territorial licenses (in this case covering the broadcast of copyrighted movies) could be justified by the characteristics of the particular industry (in this case the film industry). The Court underlined that the "right of a copyright owner and his assigns to require fees for any showing is part of the *essential function* of copyright in this type of literary and artistic work". In addition, the Court put forward a pragmatic argument in pointing out that the broadcasting market in the EU largely consisted of national monopolies, as a consequence of which copyright licenses other than territorial licenses would be impracticable. In conclusion, the Court held that copyright licenses for the broadcast of a movie were not contrary to the rules on free movement under EU law.[26]

Contrary to the Coditel cases, where contract law was the only mechanism to enforce the territorial licenses, the CJEU was faced with a specific technology reinforcing territorial copyright licenses in the *Murphy* case.[27] In this case, the Football Association Premier League had concluded excusive territorial licensing agreements with various national broadcasters. The licensing agreements included a clause that obliged broadcasters to encrypt the broadcasts and to offer decryption devices only to subscribers in their own territory. The UK law in place at that time prohibited foreign decoding devices, thereby reinforcing this enforcement technology under the licensing agreement.

[25] Case C-78/70, *Deutsche Grammophon v Metro SB*, ECLI:EU:C:1971:59 and Case C-262/81, *Coditel v Ciné-Vog Films*, ECLI:EU:C:1982:334.

[26] Schmidt-Kessen, M. J.; EU Digital Single Market Strategy, Digital Content and Geo-Blocking: Cost and Benefits of Partitioning EU's Internal Market. Columbia Journal of European Law, pp. 570-571.

[27] Joined Cases C-403/08 and C-429/08, *Football Association Premier League v Karen Murphy*, ECLI:EU:C:2011:631.

Firstly, the Court held that these UK laws were contrary to the free movement of services (Article 56 of the Treaty on the Functioning of the European Union). Secondly, in assessing whether this restriction could be justified on the basis of the objective of protecting copyrights, the Court held that the inclusion of the obligation to encrypt the broadcast and to only selectively offer decryption devices was not necessary in order to reach this goal. The Court held that the technology was not necessary to ensure that the right holder received appropriate remuneration.[28] The exclusive copyright licences already secured this aim. Thus, the Court drew a distinction between exclusive territorial copyright licences (proportionate and legal) and technology enforcing these licenses (unnecessary and contrary to EU law). The *Murphy* case is of particular relevance as the technology used can be seen as a "predecessor" of geo-blocking. By analogy, it could be argued that the law on the free movement within the EU introduces a prohibition on geo-blocking clauses in licensing agreements.

However, consensus seems to exist that a prohibition on geo-blocking does not solve the problem of cross-border access to online audio-visual media services. After all, territorial copyright licenses continue to be in place. Put differently, a prohibition on geo-blocking would simply mean that copyright owners would need to protect their licences via copyright litigation, instead of via geo-blocking.[29]

C. Conclusions of the above

As established above, Directive 2019/789 is of great relevance in this case, as it extends the country of origin principle to certain ancillary online services. Nonetheless, there remain two obstacles in place that prevent the online retransmissions of North Rhine-Westphalian television programmes in the German-Speaking Community of Belgium:

1. The existence of territorial copyright licenses;

2. The technology of geo-blocking.

It is unlikely that this first obstacle will be removed soon, as copyrights are, by their very nature, tied to national borders. With regard to the second obstacle, it could be argued that the *Murphy* case prohibits the use of geo-blocking. However, the use of exclusive territorial licences is still allowed.

An additional obstacle arises when the emissions fall outside the scope of Directive 2019/789. If the emissions are not geo-blocked and are picked up by someone in the German-speaking Community of Belgium, a Belgian licensee of the North Rhine-Westphalian broadcasts can still enforce its copyright license against the consumers in the German-Speaking Community, as here the extended country of origin principle does not apply.

[28] Schmidt-Kessen, M. J.; EU Digital Single Market Strategy, Digital Content and Geo-Blocking: Cost and Benefits of Partitioning EU's Internal Market. Columbia Journal of European Law, pp. 572-573.

[29] Schmidt-Kessen, M. J.; EU Digital Single Market Strategy, Digital Content and Geo-Blocking: Cost and Benefits of Partitioning EU's Internal Market. Columbia Journal of European Law, pp. 574-575.

3. Description of a Possible Solution

A first solution would be for the government of the German-Speaking Community to contact the relevant authorities in North Rhine-Westphalia responsible for the transposition and implementation of Directive 2019/789. This way the government of the German-Speaking Community could assess what obstacles in the field of geo-blocking and exclusive territorial licenses remain after the transposition of the Directive (final deadline 7 June 2021). Furthermore, the responsible authorities in North Rhine-Westphalia could take into account the position of the German-Speaking Community when implementing the Directive.

A second solution would be for the government of the German-Speaking Community to purchase a copyright license allowing the online retransmissions of North Rhine-Westphalian television programmes in the German-speaking Community of Belgium. In this regard, two steps can be discerned.

Firstly, the expert recommends that the government of the German-Speaking Community reflect on what audio-visual content would be relevant for the German-speaking Community (e.g. audio-visual content only, all the content of a specific television channel...).

Secondly, and depending on the choices under step 1, the government of the German-Speaking Community should enter into negotiations with the relevant entities in North Rhine-Westphalia. By whom the copyright licences can be bought from depends on the copyright and contractual arrangements in North Rhine-Westphalia.

There are three options as to who the licenses can be bought from:

1. From the original source (copyright holder of the emission);
2. From the entity managing the copyrights, usually referred to as “collective management organisation”;
3. From the television channels that broadcast these emissions on the internet. This is only possible if the licenses the television channels hold, allow the re-selling of licenses.[30]

[30] Should the German Community wish to finance these licenses with the help of its citizens, it could consider levying a fee. This is the system currently maintained in North Rhine-Westphalia and generally in Germany and is known as the “Rundfunkbeitrag”. For more information see https://www.rundfunkbeitrag.de, last accessed on Friday 25 October 2019.

4. Pre-Assessment of whether the Case could be solved with the European Cross-Border Mechanism (ECBM)

The European Cross-Border Mechanism would enable the application, in a given Member State and in relation to a common cross-border region, of the laws of a neighbouring Member State if the laws of the former are a legal obstacle to the delivery of a joint project. However, as copyrights are, by their very nature tied to national borders, the ECBM cannot provide a solution in this particular field.

5. Methodology

This report is based on extensive legal doctrinal analyses. In a first phase, relevant literature, legislation and case law were collected. In a second phase, these sources were analysed and applied to the case.

References and Appendix/Appendices if any

Appendix I: Directive 2019/789

Hildegard Schneider and Saskia Marks

Appendix I: Directive 2019/789

DIRECTIVE (EU) 2019/789 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019

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, and amending Council Directive 93/83/EEC

(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 Article 53(1) and Article 62 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 Committee[31],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative

procedure[32], Whereas:

1. In order to contribute to the proper functioning of the internal market, it is necessary to provide for wider dissemination in Member States of television and radio programmes that originate in other Member States, for the benefit of users across the Union, by facilitating the licensing of copyright and related rights in works and other protected subject matter contained in broadcasts of certain types of television and radio programmes. Television and radio programmes are important means of promoting cultural and linguistic diversity and social cohesion, and of increasing access to information.
2. The development of digital technologies and the 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, through traditional channels, such as satellite or cable,

[31] OJ C 125, 21.4.2017, p. 27.

[32] Position of the European Parliament of 28 March 2019 (not yet published in the Official Journal) and decision of the Council of 15 April 2019.

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 such broadcasts, such as simulcasting and catch-up services. Operators of retransmission services, which aggregate broadcasts of television and radio programmes into packages and provide them to users simultaneously with the initial transmission of those broadcasts, unaltered and unabridged, use various techniques of retransmission, such as cable, satellite, digital terrestrial, and mobile or closed circuit IP-based networks, as well as the open internet. Furthermore, operators that distribute television and radio programmes to users have different ways of obtaining the programme-carrying signals of broadcasting organisations, including by means of direct injection. There is a growing demand, on the part of users, for access to broadcasts of television and radio programmes not only originating in their Member State, but also in other Member States. Such users include members of linguistic minorities in the Union, as well as persons who live in a Member State other than their Member State of origin.

3. Broadcasting organisations transmit daily many hours of television and radio programmes. Those programmes incorporate a variety of content, such as audiovisual, musical, literary or graphic works, protected under Union law by copyright or related rights or both. That results in a complex process of clearing the rights of a multitude of rightholders, and for various 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 programmes. 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 clearance of such rights.

4. Operators of retransmission services typically offer multiple programmes comprising a multitude of works and other protected subject matter and have a very short time frame for obtaining the necessary licences and, hence, face a significant rights clearance burden. Authors, producers and other rightholders also risk having their works and other protected subject matter used without authorisation or payment of appropriate remuneration. Such remuneration for the retransmission of their works and other protected subject matter is important to ensure that there is a diverse content offer, which is also in the interest of consumers.

5. The rights in works and other protected subject matter are harmonised, inter alia, through Directive 2001/29/EC of the European Parliament and of the Council[33] and Directive 2006/115/EC of the European Parliament and of the Council[34], which provide for a high level of protection for rightholders.

6. Council Directive 93/83/EEC[35] facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States. 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. Furthermore, the provisions concerning retransmissions of television and radio programmes from other Member States are limited

[33] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

[34] Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28).

[35] 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 (OJ L 248, 6.10.1993, p. 15).

to simultaneous, unaltered and unabridged retransmission by cable or microwave systems and do not cover retransmissions by means of other technologies.

7. Accordingly, cross-border provision of online services that are 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. That adaptation should be done by taking account of the financing and production of creative content, and, in particular, of audiovisual works.

8. This Directive should cover ancillary online services offered by a broadcasting organisation, which have a clear and subordinate relationship with the broadcasting organisation's broadcasts. Those services include services that give access to television and radio programmes in a strictly linear manner, simultaneously to the broadcast, and services that give 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 that 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 ancillary online services that are provided to users by broadcasting organisations together with the broadcasting service. It should also apply to ancillary online services that, while having a clear and subordinate relationship with the broadcast, can be accessed by users separately from the broadcasting service without there being a precondition for the users to have to obtain access to that broadcasting service, for example via a subscription. This does not affect the freedom of broadcasting organisations to offer such ancillary online services free of charge or against payment. 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 that 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 video-on-demand services, should not fall within 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 that occur in the course of the provision of, the access to or the use of an ancillary online service. That principle should cover the clearance of all rights that are necessary for a broadcasting organisation to be able to communicate to the public or make available to the public its programmes when providing ancillary online services, including the clearance of any copyright and related rights in the works or other protected subject matter used in the programmes, for example the rights in phonograms or performances. That country of origin principle should apply exclusively to the relationship between rightholders, or entities representing rightholders, 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 country of origin principle should not apply to any subsequent communication to the public of works or other protected subject matter, by wire or wireless means, or to any subsequent making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, or to any subsequent reproduction of the works or other protected subject matter which are contained in the ancillary online service.

10. Given the specificities of the financing and licensing mechanisms for certain audiovisual works, which are 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 types of programmes. Those types of programmes should include news and current affairs programmes as well as a broadcasting organisation's own productions which are exclusively financed by it, including where the funds for the financing used by the broadcasting organisation for its productions 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 excluding productions commissioned by the broadcasting organisation to producers that are independent from the broadcasting organisation and co- productions. For the same reasons, the country of origin principle should not apply to television broadcasts of sports events under this Directive. The country of origin principle 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 country of origin principle should not affect the freedom of rightholders and broadcasting organisations to agree, in compliance with Union law, on limitations, including territorial limitations, to the exploitation of their rights.

11. The country of origin principle set out in this Directive should not result in any obligation for broadcasting organisations to communicate or make available to the public 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.

12. Since the provision of, the access to or the use of an ancillary online service is, under this Directive, 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 setting 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 for the rights subject to the country of origin principle, such as methods based on the revenues of the broadcasting organisation generated by the online service, which are used, in particular, by radio broadcasting organisations.

13. On account of the principle of contractual freedom, it will remain possible to limit the exploitation of the rights affected by the country of origin principle set out in this Directive, provided that any such limitation is in compliance with Union law.

14. Operators of retransmission services can use different technologies when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes. The programme-carrying signals can be obtained by operators of retransmission services from broadcasting organisations, which themselves transmit those signals 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. Such operators' services can be offered on satellite, digital terrestrial, mobile or closed circuit IP-based and similar networks or through internet access

services as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council[36]. Operators of retransmission services using such technologies for their retransmissions should therefore be covered by this Directive and benefit from the mechanism that introduces mandatory collective management of rights. In order to ensure that there are sufficient safeguards against the unauthorised use of works and other protected subject matter, which is particularly important in the case of services that are paid for, retransmission services which are offered through internet access services should be included in the scope of this Directive only where those retransmission services are provided in an environment in which 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, in which content that is retransmitted is encrypted. Those requirements should be feasible and adequate.

15. To retransmit initial transmissions of television and radio programmes, operators of retransmission services have to obtain an authorisation from the holders of the exclusive right of communication to the public of works or other protected subject matter. 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 should apply. The rules under that Directive include the obligation to exercise the right to grant or refuse authorisation to an operator of a retransmission service through a collective management organisation. 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. Rightholders should receive appropriate remuneration for the retransmission of their works and other protected subject matter. When determining reasonable licensing terms, including the license fee, for a retransmission in accordance with Directive 2014/26/EU of the European Parliament and of the Council[37], 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 should be without prejudice to the collective exercise of the right to payment of a single equitable remuneration 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, in particular its provisions concerning the rights of rightholders with regard to the choice of a collective management organisation.
16. This Directive should allow agreements concluded between a collective management organisation and operators of retransmission services for rights that are subject to mandatory collective management under this Directive to be extended to apply to the rights of rightholders who are not represented by that collective management organisation, without those rightholders being allowed to exclude their works or other subject matter from the application of that mechanism. In cases where 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, in respect of the territory of which the operator of a retransmission service seeks 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.

[36] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

[37] Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

17. Any rights held by broadcasting organisations themselves in respect of their broadcasts, including rights in the content of programmes, should not be subject to 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. Accordingly, it is comparatively simple for those operators to clear the rights with broadcasting organisations. As a consequence, to obtain the necessary licences from broadcasting organisations, operators of retransmission services do not face the same burden as they face when seeking to obtain licences from holders of rights in works and other protected subject matter included in the television and radio programmes they retransmit. Therefore, there is no need for 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 applicable to collective management organisations.

18. The rules provided for in this Directive concerning the rights in retransmission exercised by broadcasting organisations in respect of their own transmissions should not limit the choice of rightholders to transfer their rights either to a broadcasting organisation or to a collective management organisation, thereby allowing them to have a direct share in the remuneration paid by the operator of a retransmission service.

19. Member States should be able to apply the rules on retransmission established in this Directive and in Directive 93/83/EEC to situations where both the initial transmission and the retransmission take place within their territory.

20. In order to ensure that there is legal certainty and to maintain a high level of protection for rightholders, it is appropriate to provide that when broadcasting organisations transmit their programme-carrying signals by direct injection only to signal distributors without directly transmitting their programmes to the public, and the signal distributors send those programme-carrying signals 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 signal distributors should therefore obtain authorisation from the rightholders for their specific contribution to the single act of communication to the public. Participation of a broadcasting organisation and a signal distributor in that single act of communication to the public should not give rise to joint liability on the part of the broadcasting organisation and the signal distributor for that act of communication to the public. Member States should remain free to provide at national level for the arrangements for obtaining authorisation for such a single act of communication to the public, including the relevant payments to be made to the rightholders concerned, taking into account the respective exploitation of the works and other protected subject matter, by the broadcasting organisation and signal distributor, related to the single act of communication to the public. Signal distributors face, in a similar manner to operators of retransmission services, a significant burden for rights clearance, except as regards rights held by broadcasting organisations. Member States should therefore be allowed to provide that signal distributors 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. 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 that the broadcast is received or to improve the reception of that broadcast, the signal distributors should not be considered to be participating in an act of communication to the public.

21. When broadcasting organisations transmit their programme-carrying signals directly to the public, thereby carrying out an initial act of transmission, and also simultaneously transmit those 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 those other organisations constitute a separate act of communication to the public from the one carried out by the broadcasting organisation. In those situations, the rules on retransmissions laid down in this Directive and in Directive 93/83/EEC, as amended by this Directive, should apply.

22. 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 the use of works and other protected subject matter, in accordance with the transparency obligations set out in Directive 2014/26/EU.

23. 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 that service, it is necessary to apply the country of origin principle also to existing agreements, but with a transitional period. During that transitional period, the principle should not apply to those existing agreements, thus providing 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 broadcasting organisations, signal distributors and rightholders to adapt to the new rules on the exploitation of works and other protected subject matter through direct injection set out in the provisions in this Directive on transmission of programmes through direct injection.

24. In line with the principles of better regulation, a review of this Directive, including its provisions on direct injection, should be undertaken after a certain period of time of this Directive being in force, in order to assess, inter alia, its benefits for Union consumers, its impact on the creative industries in the Union, and on the level of investment in new content, and hence also the benefits regarding improved cultural diversity in the Union.

25. This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. While this Directive may result in an interference with the exercise of the rights of rightholders, 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 the application of mandatory collective management in a targeted manner and to limit it to specific services.

26. Since the objectives 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 but can rather, 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 those objectives. 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 with regard to television and radio programmes originating in other Member States.

27. In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[38], 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 that aim to enhance cross-border access to a greater number of television and radio programmes, by facilitating the clearance of rights for the provision of online services that are ancillary to the broadcast 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 television and radio programmes through the process of direct injection.

Article 2

Definitions

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

(1) ‘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 television or radio 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 broadcast;

I. ‘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 reception by the public, where such initial transmission is by wire or over the air including that by satellite, but is not by online transmission, provided that:

a. the retransmission is carried out by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility that

[38] OJ C 369, 17.12.2011, p. 14.

initial transmission was made, regardless of how the party carrying out the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission; and

b. where the retransmission is over an internet access service as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120, it is carried out in a managed environment;

II. 'managed environment' means an environment in which an operator of a retransmission service provides a secure retransmission to authorised users;

III. 'direct injection' means a technical process by which a broadcasting organisation transmits its programme-carrying signals to an organisation other than a broadcasting organisation, in such a way that the programme-carrying signals are not accessible to the public during that transmission.

CHAPTER II

Ancillary online services of broadcasting organisations

Article 3

Application of the country of origin principle to ancillary online services

1. The acts of communication to the public of works or other protected subject matter, by wire or wireless means, and of making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, occurring when providing to the public:

I. radio programmes; and

II. television programmes which are:

a. news and current affairs programmes; or

b. 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 of such works or other protected subject matter 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 those acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Point (b) of the first subparagraph shall not apply to the broadcasts of sports events and works and other protected subject matter included in them.

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

The first subparagraph shall not preclude calculation of the amount of the payment on the basis of the broadcasting organisation's revenues.

II. The country of origin principle set out in paragraph 1 shall be without prejudice to the contractual freedom of the rightholders and broadcasting organisations to agree, in compliance with Union law, to limit the exploitation of such rights, including those under Directive 2001/29/EC.

CHAPTER III

Retransmission of television and radio programmes

Article 4

Exercise of the rights in retransmission by rightholders 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.

Member States shall ensure that rightholders may exercise their right to grant or refuse the authorisation for a retransmission only through a collective management organisation.

2. Where a rightholder has not transferred the management of the right referred to in the second subparagraph of 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 a 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 rightholder.

However, 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 the territory of which the operator of a retransmission service seeks to clear rights for a retransmission to decide which collective management organisation or organisations have the right to grant or refuse the authorisation for a retransmission.

3. Member States shall ensure that a rightholder has the same rights and obligations resulting from an agreement between an operator of a retransmission service and a collective management organisation or organisations that act pursuant to paragraph 2, as rightholders who have mandated that collective management organisation or organisations. Member States shall also ensure that that rightholder is 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.

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Article 5

Exercise of the rights in retransmission by broadcasting organisations

- Member States shall ensure that Article 4 does not apply to the rights in retransmission 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 rightholders.

- Member States shall provide that, where broadcasting organisations and the operators of retransmission services enter into negotiations regarding authorisation for retransmission under this Directive, those negotiations are to be conducted in good faith.

Article 6

Mediation

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

Article 7

Retransmission of an initial transmission originating in the same Member State

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

CHAPTER IV

Transmission of programmes through direct injection

Article 8

Transmission of programmes through direct injection

- 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 those 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 in respect of which they shall obtain authorisation from rightholders. Member States may provide for arrangements for obtaining authorisation from rightholders.

- Member States may provide that Articles 4, 5 and 6 of this Directive apply *mutatis mutandis* to the exercise by rightholders 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 point (2) of Article 2 of this Directive.

CHAPTER V

Final provisions

Article 9

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 how the operator of a cable retransmission service obtains the programme- carrying signals from the broadcasting organisation for the purpose of retransmission.'.

Article 10

Review

- By 7 June 2025, 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.

- 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 11

Transitional provision

Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public of works or other protected subject matter, by wire or wireless means, and the making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them 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 7 June 2021 shall be subject to Article 3 as from 7 June 2023 if they expire after that date.

Authorisations obtained for the acts of communication to the public falling under Article 8 which are in force on 7 June 2021 shall be subject to Article 8 as from 7 June 2025 if they expire after that date.

Article 12

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2021. 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 for 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 13

Entry into force

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

Article 14

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 17 April 2019.