

European Parliament: Proposed Regulation on copyright and online transmissions of broadcasters

IRIS 2018-1:1/10

*Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam*

On 27 November 2017, the Committee on Legal Affairs of the European Parliament published its Report, including a draft European Parliament Resolution, on the proposed Regulation 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. This ninety-six-page Report follows the Committee's vote on 21 November 2017 on the proposed Regulation.

The European Commission first published the proposed Regulation in September 2016 (see IRIS 2016-9/4) as part of the Commission's Digital Single Market Strategy for Europe (see IRIS 2015-6/3), which aims to create a modern, more European copyright framework (see IRIS 2016-2/3). The Commission's Regulation seeks to make it easier for broadcasters to release their content online throughout the EU. It introduced a country-of-origin principle to facilitate the clearance of rights for ancillary online services by broadcasting organisations, where the relevant copyright act takes place solely in the member state where the broadcasting organisation is established. It also sought to facilitate the clearance of rights for retransmission services provided over closed networks, such as IPTV (other than cable), by introducing rules on mandatory collective management.

Notably, a Report from the Committee on Legal Affairs' Rapporteur was published on 10 May 2017, with the Rapporteur stating that the Regulation seemed "too narrow," and recommended that "the specific reference to broadcast programmes should be deleted." Following the Opinions from the Committee on Culture and Education, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, and the Rapporteur's Report, the draft European Parliament Resolution contains thirty pages of amendments to the Commission's proposal. The most notable amendment concerns Article 2 of the draft Regulation related to the scope, which provides that the country-of-origin principle would only apply to ancillary online services to an initial broadcast of "exclusively news and current affairs programmes". Moreover, a new Article 2(2a) would mean that Article 2 would not limit parties' freedom to agree on any specific methods or criteria for calculating the amount of payment to be made for the rights subject to the country-of-origin principle, such as those based on the

broadcasting organisation's revenues generated by the online service.

Thus, broadcasters would only have to clear the rights in their own country to make available their online news and current affairs content for audiences in other EU countries. However, it would be possible for broadcasters to “geo-block” their online content if the rightsholder and broadcaster so agreed in their contracts.

The proposal will now be considered by the European Parliament sitting in plenary session.

Committee on Legal Affairs, Report 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, 27 November 2017

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2017-0378&language=EN#title3>

Committee on Legal Affairs, “More online TV and radio across borders,” 21 November 2017

<http://www.europarl.europa.eu/news/en/press-room/20171121IPR88503/more-online-tv-and-radio-across-borders>

Committee on Legal Affairs, Rapporteur: Tiemo Wölken, Draft Report 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, 10 May 2017

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONGML+COMPARL+PE-604.674+01+DOC+PDF+V0//EN&language=EN>

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, 14 September 2016

[http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0594/COM_COM\(2016\)0594_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0594/COM_COM(2016)0594_EN.pdf)

