Agreement on cross-border access to online radio and television programmes

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On 13 December 2018, the Council and European Parliament announced that an agreement had been reached on a future Directive facilitating the licensing of copyright-protected material contained in online television and radio programmes. In 2016, the Commission originally proposed a Regulation on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (see IRIS 2018-1/10). However, as the Council states, the “originally proposed Regulation will have to be redrafted so that it takes the form of a Directive”.

The stated purpose of the Directive is to facilitate (a) clearance of rights for online services ancillary to broadcasts; (b) clearance of cross-border retransmission rights; and (c) the clarification of the legal status of "direct injection". The Council noted that broadcasting organisations are increasingly offering, in addition to their traditional broadcasts of television and radio programmes, online services that are ancillary to their broadcast. Such services constitute parallel transmissions over the Internet (“simulcasting”) and the possibility to view or listen to a programme later than at the time of the original broadcast (“catch-up services”). In order to make these services available across borders, broadcasting organisations need to clear - in respect of all relevant territories - the rights to works and other protected subject matter contained in their broadcasts. The Directive will facilitate such a rights clearance by allowing broadcasting organisations to clear all relevant rights in the member state of their principal establishment.

The Directive will cover all radio programmes, television news and current affairs programmes, and television programmes that are fully financed own productions of the broadcasting organisation in question. Existing contracts will remain unaffected for a period of four years from the entry into force of the Directive. The Commission will assess the need for extending this coverage to additional types of television programmes six years after the entry into force of the Directive.

Secondly, the Directive will facilitate the clearance of rights where a radio or television programme broadcast in one member state is retransmitted in another member state simultaneously, unaltered and unabridged. It will apply to

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retransmissions carried out via cable, satellite, digital terrestrial, closed-circuit IP-based or mobile networks. It also covers retransmissions undertaken over the open Internet, provided that they take place in a managed environment - that is to say they are subject to some kind of digital identification. Concerning the types of retransmissions covered by the Directive, the rights to works and other subject matter contained in the broadcast will have to be cleared through a collective management society. The collective management society must also be entitled to clear rights belonging to rightsholders who have not transferred their rights to it.

Finally, the Directive clarifies the legal status of the "direct injection" technique - that is to say when a broadcaster transmits its programme-carrying signals to signal distributors in such a way that those signals are not accessible to the public during that transmission. In such a case, only a single act of communication to the public is deemed to have occurred. This means that both the broadcaster and the signal distributor will have to clear the underlying rights.

The agreement will now have to be endorsed by the European Parliament and the Council before it can be formally adopted.

Council of the EU, "Enhanced cross-border access to online content: EU agrees new rules", 13 December 2018

https://www.consilium.europa.eu/en/press/press-releases/2018/12/13/enhanced-cross-border-access-to-online-content-eu-agrees-new-rules/

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