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Public Service Media (PSM) are key contributors to the creative economy and major developers of legal offers of online content. They are devoted to providing citizens with wide access to high quality content on all relevant platforms and devices.

The licensing process of copyright-protected works is at the centre of the distribution of content and the remuneration of rightsholders.¹ While the overall legal framework for copyright remains fit for purpose, introducing efficient and modern licensing schemes will advance Digital Single Market objectives and offers solutions where broadcasters wish to offer their programmes online and across borders.

PSM are rightsholders and mass copyright users

PSM produce, assemble and distribute a vast amount of original programmes on a daily basis for TV and radio as well as online linear and on-demand. This requires numerous licences for copyright works and involves a huge number of audiovisual, musical and other underlying rights and a great variety of rightsholders.

Remunerating a vast number of various rightsholders

Copyright licensing by PSM represents an unparalleled contribution to the creative economy. Royalties paid by PSM – as a result of copyright licensing - remunerate a vast number of rightsholders for their protected works and are vital for the European cultural and creative sector. PSM organisations in the EU invest approximately EUR 20 billion in content every year.

Obtaining all the necessary licences implies a highly intensive and complex administrative process: a major PSM negotiates roughly 70,000 contracts per year with rightsholders. In this regard, simple and efficient licensing mechanisms are a crucial instrument for PSM to ensure that all rights are appropriately cleared.

Contractual flexibility and territoriality are crucial

Contractual flexibility must be maintained, as it enables rightsholders and users to negotiate how, when and where licensed content is offered, in order to best match consumer preferences. This flexibility hinges upon the possibility to exploit all types of works on a territorial basis and, as regards audiovisual programmes in particular, on an exclusive basis.

In practice, territoriality underpins the funding of European works and has a positive effect on the creative value chain and cultural diversity. By contrast, its abolition would have serious unintended consequences for audiences, limiting choice in terms of quantity and diversity. It would also tend to favour only the largest copyright users and intermediaries acting at a pan-European or global scale.

¹ In this document the term “copyright” covers authors’ rights and neighbouring rights.

**Copyright
licensing fit for
the digital age
and media
convergence**

Today audiences rightfully expect to watch and listen to PSM programmes across devices on TV, radio or online. PSM programmes are, accordingly, made available for live viewing, as well as catch-up and on-demand. The framework for copyright licensing should thus be modernised on a technologically-neutral basis in order to cater for the wide range of devices and platforms available to viewers and listeners.

To enable broadcasters to offer cross-border services when and where they choose to do so, applying a technologically-neutral approach, collective licensing and the 'country-of-origin' principle would streamline complex licensing processes and ensure adequate remuneration for rightsholders without undermining contractual flexibility.

**A single
applicable law
to boost
access to
broadcasters'
online content**

When a broadcaster is required to take into account different national copyright laws whenever its programme may be accessible cross-border, the administrative burden renders it extremely complex to clear all the necessary rights. Considering that PSM offer free-to-air content for a national audience and are funded at national level, this additional burden implies a huge effort for a marginal outcome.

A simple rights-clearance system which already exists for satellite TV should be extended to broadcasters' online services. The 1993 Satellite and Cable Directive introduced the country-of-origin principle for a single satellite broadcast, even if the signal covers 28 countries. The value of the license takes account of all parameters, such as the audience and the language.

Enabling rights clearance via the same system for broadcasters' online services, combined with the territoriality principle, would significantly simplify operations, strengthen legal certainty and break down a barrier for free-to-air broadcasters offering online, cross-border services in the Internal Market.

**Platform
neutral
retransmission**

The Satellite and Cable Directive also introduced collective licensing of the underlying rights for the simultaneous retransmission of TV programmes in other Member States which is only applicable to cable TV. This system should be equally applied to similar cases where a broadcaster wishes to allow the simultaneous and identical programme retransmission over third party platforms (e.g. IPTV), while preserving the broadcasters' own prerogative to authorize or prohibit such retransmission of their signal.

In addition, applying a similar system for the underlying rights for the re-use of broadcasters' on-demand services on third-party platforms (with mandatory collective licensing or extended collective licensing) would help where broadcasters wish to make these services available in other EU Member States.

ECL: a multi-purpose solution for digital content

Extended collective licensing (ECL) systems already exist in the copyright laws of several EU Member States. Based on voluntary agreements between copyright users and rightholders' representatives (e.g. a collecting society), they offer specific solutions for the most complex licensing cases.

While the overall legal framework for copyright remains appropriate, the licensing process needs to be updated to foster the availability of media content. Existing solutions should be adapted on a technologically-neutral basis:

- **A single applicable law for broadcasters' own online media services ("Satellite model");**
- **The "cable licensing model" for the underlying rights of linear programmes on third-party platforms;**
- **Extended or mandatory collective licensing for the underlying rights of broadcasters' on-demand media services on third-party platforms.**

EU State of play

A review of EU copyright legislation has been presented as a policy priority for the European Commission and a proposal could be presented in 2016. As part of the Digital Single Market strategy, the European Commission has also announced a review of the 1993 Satellite and Cable Directive to assess the need to enlarge its scope to broadcasters' online transmissions.