



**Consultation on the Review of the EU Satellite and Cable Directive**

16 November 2015

**MPA Group submission on European Commission**

**Consultation on the Review of the EU Satellite and Cable Directive**

**Question 1: Has the principle of "country of origin" for the act of communication to the public by satellite under the Directive facilitated the clearance of copyright and related rights for cross-border satellite broadcasts?**

**No**; it is generally impossible to provide evidence as to whether the principle of "country of origin" for the act of communication to the public by satellite under the Directive had any impact on the clearance of copyright and related rights for cross-border satellite broadcasts.

In practice, musical works' collecting societies have been licensing satellite broadcast services uplinked in their territory and for their repertoire for considerable time. In the area of cross-border satellite broadcasting the market is working without any fragmentation. It is impossible to assess whether the country of origin principle has contributed to this or not. Technological and societal developments seem more relevant to the development of a single market for satellite broadcasting than the artificial imposition of legal constructs.

**Question 2: Has the principle of "country of origin" for the act of communication to the public by satellite increased consumers' access to satellite broadcasting services across borders?**

**No**; For the reasons set out in our response to question 1 it is not possible to assess whether the principle of "country of origin" for the act of communication to the public by satellite has increased consumers' access to satellite broadcasting services across borders.

Moreover, we suggest the main reason for increased consumers' access is the normal functioning of market forces.

**Question 2.1: Please explain and indicate (using exact figures if possible) what is, to your knowledge, the share (%) of audiences from Member States other than the country of origin in the total audience of satellite broadcasting services.**

We have no figures.

**Question 2.2: If you consider that problems remain, describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news) or to specific types of services (e.g. public services broadcasters', commercial broadcasters', subscription based, advertising based, content specific channels) or other reasons.**

Within its scope, i.e. satellite broadcasting and cable retransmission, the Satellite and Cable Directive has not had an obvious negative impact on the business or on the development of a single market for the areas it covers. However, in the absence of any evidence to the contrary we suggest its impact on a single European market for satellite broadcasting and cable retransmission has been neutral at best. We note the continued preference of consumers for local content which the Commission staff working paper accompanying the Digital Single Market Strategy for Europe recognises. This preference is amongst others based on local culture and language.

**Question 3: Are there obstacles (other than copyright related) that impede the cross-border provision of broadcasting services via satellite?**

**No;** it is not in our expertise to assess whether there are obstacles (other than copyright related). In our area of expertise, licenses for musical works are widely and easily available.

**Question 4: Are there obstacles (other than copyright related) that impede the cross-border access by consumers to broadcasting services via satellite?**

**Yes;** different languages; local market conditions, including credit card penetration; different consumer protection laws, different cultural demands for programs etc. We refer to the findings of Commission staff working paper accompanying the Digital Single Market Strategy and the 2015 Eurobarometer paper 'Cross-border access to online content.'

**Question 5: Are there problems in determining where an act of communication to the public by satellite takes place?**

**No;** the law establishing the actual place of uplink is clear, i.e. where the act of introducing, "under the control and responsibility of the broadcasting organisation, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth" takes place.

**Question 6: Are there problems in determining the licence fee for the act of communication to the public by satellite across borders, including as regards the applicable tariffs?**

**Yes;** in practice there have been difficulties, the music industry depends on the information provided by satellite broadcast services which is not always easily available, e.g. as regards services targeted only at other member states.

**Question 7: Is the level of harmonisation established by the Directive (or other applicable EU Directives) sufficient to ensure that the application of the "country of origin" principle does not lead to a lower level of protection of authors or neighbouring right holders?**

**No/ to a limited extent.** As expressed in previous questions we are not convinced about the actual impact of the "country of origin" principle on the market, in particular given that licenses have been readily available for considerable time. Music publishers are collecting revenues for the licensing of the use of music in satellite broadcasts.

However, we remain concerned about a possible race to the bottom for the revenues from licenses for satellite broadcast services if they are allowed to operate in countries with weaker protection of copyright abusing the country of origin principle.

**Question 8: Has the application of the “country of origin” principle under the Directive resulted in any specific costs (e.g. administrative)?**

**Question 9: With regard to the relevance, coherence and EU added value, please provide your views on the following: ...**

No opinion

**Question 10: Has the system of management of rights under the Directive facilitated the clearance of copyright and related rights for the simultaneous retransmission by cable of programmes broadcast from other Member States?**

No; given the lack of evidence of an impact of the Directive. We understand that our colleagues from UK Music put forward concerns in particular as regard Section 73 of the UK Copyright Designs and Patents Act 1988 which we support. We are confident that this provision will be replaced in the near future.

**Question 11: Has the system of management of rights under the Directive resulted in consumers having more access to broadcasting services across borders?**

No; The existence of Section 73 of the UK Copyright Designs and Patents Act 1988 renders it impossible to assess whether consumers have more access to broadcasting services in the UK due to the Directive, or not. As with our response to questions 1 and 2 on satellite broadcasting it is generally impossible to qualify the actual impact of the Directive on any increased access to broadcasting services given that other, mainly technological, factors will be more important.

**Question 12: Have you used the negotiation and mediation mechanisms established under the Directive?**

No.

**Question 13: Has the application of the system of management of cable retransmission rights under the Directive resulted in any specific costs (e.g. administrative)?**

No opinion.

**Question 14: With regard to the relevance, coherence and EU added value, please provide your views on the following:**

**Question 14.1: Relevance: is EU action in this area still necessary?**

**No.**

**Question 14.2: Coherence: is this action coherent with other EU actions?**

**No opinion;** the licensing based system is working within the parameters of the Satellite and Cable Directive; there is no need to change a system which has been in operation for over 20 years.

**Question 16: Would such an extension of the "country of origin" principle result in more cross border accessibility of online services for consumers?**

**No;** in general we doubt that the "country of origin" principle resulted in more cross border accessibility to satellite broadcasts and cable retransmissions under the existing system. There is no evidence for any contribution of the application of the country of origin principle; in particular in view of other technological and market developments and the availability of licenses (see above).

The main reason for more cross border accessibility of online services for consumers is that multi territorial licenses are readily available. There is an increasing amount of online services available for consumers without application of the country of origin principle. The market is working without intervention.

**Question 17: What would be the impact of extending the "country of origin" principle on the collective management of rights of authors and neighbouring right holders (including any practical arrangements in place or under preparation to facilitate multi territorial licensing of online rights)?**

Any interference with the existing system for online transmission will create uncertainty and potentially destroy the existing licensing based market of online music for considerable time to come.

**Question 18: How would the "country of origin" be determined in case of an online transmission? Please explain.**

Whilst we recognise considerable problems in determining the "country of origin" in case of online transmission in particular regarding the concurrent application of the Satellite and Cable Directive and the Information Society Directives respectively we are not in a position to answer this question. We are opposed to the extension of the country of origin principle to online transmissions. The extension of the country of origin principle conflicts with the approach taken in the Information Society Directive and the interpretation by the Court of Justice of the European Union on "making available."

**Question 19: Would the extension of the "country of origin" principle affect the current level of copyright protection in the EU?**

**Yes,** see our response to question 18.

Regarding questions 20 onwards we only have comments to question 28; in particular we do not have any practical experience with dispute resolution/ mediation system which might reflect to its practical relevance.

**Question 28. Would extending the mandatory collective licensing regime raise questions on the EU compliance with international copyright obligations (1996 WIPO copyright treaties and TRIPS)?**

**Yes;** mandatory collective licensing is a concept which generally infringes the freedom of right holders to use their intellectual property which infringes fundamental rights laid down in Article 17(2) of the EU Charter of Fundamental Rights and Freedoms, as well as the specific provisions in the WIPO Internet Treaties of 1996.

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## About the MPA Group:

The MPA group represents the UK music publishing sector; it consists of:

The **Music Publishers Association** (“MPA”) which is a trade association representing and safeguarding the interests of its members, who are UK music publishing companies.

The **Mechanical-Copyright Protection Society Ltd** (“MCPS”) which licenses mechanical rights to music users, collects fees and distributes royalties to its 20 thousand, mostly unpublished, writer members and 6.5 thousand publisher members who in turn represent tens of thousands of writers;

**Printed Music Licensing Ltd** (“PMLL”) which manages licences, on behalf of over 75 print publishers, for the copying of printed sheet music in schools and distributes royalties to its members; and

**Independent Music Publishers European Licensing** (IMPEL) which acts on behalf of music publishers for the licensing and administration of the mechanical rights in their Anglo American repertoire for pan-European (and wider) online activities.

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