**COPYRIGHT LICENSING**

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. 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 decide to offer programmes online and across borders.

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| 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 huge variety of 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 rightholders 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 rightholders. 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 audiovisual programmes in particular on an exclusive basis.  In practice, territoriality underpins the future 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.  In order to effectively ensure territoriality, it is also crucial to protect in all circumstances broadcasters’ prerogative to authorize or prohibit the retransmission of their broadcast signal on third-party platforms. |
| **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 today.  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 rightholders 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 to offer a programme 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 to define the applicable law 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.  In the framework of these principles, enabling rights clearance via the same system for broadcasters’ online services 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 decides to authorise the simultaneous and identical programme retransmission over third party platforms.  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 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 by the end of autumn 2015. As part of the Digital Single Market strategy, the European Commission has also announced a review of the 1993 Cable and Satellite Directive to assess the need to enlarge its scope to broadcasters’ online transmissions.