



## Public Consultation on the Review of the EU Satellite and Cable Directive

### I. General Information on respondents

I'm responding as:	A representative of an organisation: Design and Artists Copyright Society (DACCS)
What is your nationality?	United Kingdom
What is your name?	Reema Selhi, Legal and Policy Manager
What is your e-mail address?	<a href="mailto:Reema.selhi@dacs.org.uk">Reema.selhi@dacs.org.uk</a>
Is your organisation represented in the transparency register of the European Commission and the European Parliament?	Yes
Please indicate your organisation's registration number in the Transparency Register.	103615018634-15
Please chose the reply that applies to your organisation and sector	<p>Collective management organisation:</p> <p>Established by artists for artists, DACCS is a not-for-profit visual artists' rights management organisation. Founded over 30 years ago, DACCS is a flagship organisation that campaigns for artists' rights, championing their sustained and vital contribution to the creative economy. We are passionate about transforming the financial landscape for visual artists through innovative new products and services, and act as a trusted broker for 90,000 artists worldwide.</p> <p>In our support of artists and their work, DACCS collects and distributes royalties to visual artists and their estates through four rights management schemes: Payback, Artist's Resale Right, Copyright Licensing and Artimage.</p>
My organisation operates in:	United Kingdom
Please enter the name of your organisation:	Design and Artists Copyright Society (DACCS)
Please enter your address, telephone and e-mail:	33 Old Bethnal Green Road, London E2 6AA 0207 553 9063 <a href="mailto:Reema.selhi@dacs.org.uk">Reema.selhi@dacs.org.uk</a>
What is the primary place of establishment of the entity you represent:	United Kingdom and other EEA countries. See a full list here: <a href="http://www.dacs.org.uk/about-us/sister-societies">http://www.dacs.org.uk/about-us/sister-societies</a>
DACCS does not object to its contribution, together with the identity of the contributor, being published on the internet.	

## II. Assessment of the current provisions of the Satellite and Cable Directive

### 1. The principle of country of origin for the communication to the public by satellite

For satellite broadcasting, the Directive establishes (Article 1.2) that the copyright relevant act takes place "solely *in the Member State where, under the control and responsibility of the broadcasting organization, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth*" (often referred to as "the country of origin" principle). So, rights only need to be cleared for the "country of origin" of the broadcast (and not for the country/ies of reception, i.e. the countries where the signals are received [1]). The Directive indicates that in determining the licence fee for the right of communication to the public "the *parties should take account of all aspects of the broadcast such as the actual audience, the potential audience and the language version*" (Recital 17).

[1] There is no case-law from the Court of Justice of the European Union regarding the interpretation of Article 1.2 of the Directive.

#### DACS' overall view:-

DACS believes that the 'country of origin' principle under Article 1(2) of Directive 93/83/EEC (the Directive) and the provisions of the Directive create certainty for licensors and licensees of cable retransmission rights. However, DACS does not agree that the Directive should be widened nor should the country of origin principle be applied to online transmissions or any broadcast on the internet as it would be detrimental to rightsholders, which is explained further at question 15.

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?

Yes

To a large extent

To a limited extent

No

No opinion

- 1.1. If you consider that problems remain, please describe them and indicate, if relevant, whether they relate to specific types of content (e.g. audiovisual, music, sports, news).

No response
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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?

Yes

To a large extent

To a limited extent

No

**No opinion**

- 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.

**No response**

- 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.

**No response**

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

Yes

To a large extent

To a limited extent

No

**No opinion**

- 3.1. Please explain and indicate which type of obstacles.

**No response**

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

Yes

To a large extent

To a limited extent

No

**No opinion**

- 4.1. Please explain and indicate which type of obstacles.

No response

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

Yes

To a large extent

To a limited extent

No

No opinion

- 5.1. Please explain.

There are no problems in this respect as the Directive is clear in defining the country of origin principle for an act of communication to the public.

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

To a large extent

To a limited extent

No

No opinion

6.1. Please explain.

**The original broadcaster and the cable retransmission service determine the licence fee through commercial negotiations.**

In view of the application of the "country of origin" principle, the Directive harmonised the rights of authors to authorise or prohibit the communication to the public by satellite (Recital 21, Article 2), established a minimum level of harmonisation as regards the authorship of a cinematographic or audiovisual work (Article 1.5) and as regards the rights of performers, phonogram producers and broadcasting organisations (Recital 21, Articles 4 to 6).

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?

**Yes**

To a large extent

To a limited extent

No

No opinion

7.1. Please explain. If you consider that the existing level of harmonisation is not sufficient, please indicate why and as regards which type of right holders/rights.

**No response**

For the purposes of evaluating the current EU rules, the Commission should assess the costs and relevance, coherence and EU added value of EU legislation. These aspects are covered by questions 8-9 below.

8. Has the application of the "country of origin" principle under the Directive resulted in any specific costs (e.g. administrative)?

Yes

No

**No opinion**

8.1. Please explain.

**No response**

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

9.1. Relevance: is EU action in this area still necessary?

Yes

No

No opinion

9.2. Coherence: is this action coherent with other EU actions?

Yes

No

No opinion

9.3. EU added value: did EU action provide clear added value as compared to an action taken at the Member State level?

Yes

No

No opinion

9.4. Please explain.

No response

## 2. The management of cable retransmission rights

The Directive provides a double track copyright clearing process for the simultaneous retransmission by a cable operator of an initial transmission from another Member State (by wire or over the air, including by satellite) of TV or radio programmes (Article 1.3). Broadcasters can license to cable operators the rights exercised by them in respect of their own transmission, irrespective of whether the rights concerned are broadcasters' own or have been transferred to them by other copyright owners and/or holders of related rights (Article 10). However, according to Article 9, all other rights (of authors and neighbouring right holders) necessary for the cable retransmission of a specific programme can only be exercised through a collecting society. Finally, Articles 11 and 12 introduce negotiation and mediation mechanisms for dispute resolution concerning the licensing of the cable retransmission rights.

## DACS' view:-

DACS collects royalties for visual artists whose works have appeared in a broadcast that has then been subject to retransmission by cable, and distributes these royalties through a collective licensing scheme, Payback. It should be noted that the visual art works are not subject to retransmission on their own.

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?

**Yes**

To a large extent

To a limited extent

No

No opinion

- 10.1. Please explain. If you consider that problems remain, please describe them (e.g. if there are problems related to the concept of "cable"; to the different manner of managing rights held by broadcasters and rights held by other right holders; to the lack of clarity as to whether rights are held by broadcasters or collective management organisations).

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

**Yes**

To a large extent

To a limited extent

No

**No opinion**

- 11.1. Please explain. If you consider that problems remain, please 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.

No response
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12. Have you used the negotiation and mediation mechanisms established under the Directive?

Yes, often

Yes, occasionally

Never

**Not applicable**

12.1. If yes, please describe your experience (e.g. whether you managed to reach a satisfactory outcome) and your assessment of the functioning of these mechanisms.

**No response**

12.2. If not, please explain the reasons why, in particular whether this was due to any obstacles to the practical application of these mechanisms.

**No response**

For the purposes of evaluating the current EU rules, the Commission should assess the costs as well as the relevance, coherence and EU added value of EU legislation. These aspects are covered by questions 13-14 below.

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

Yes

No

**No opinion**

13.1. Please explain your answer.

**No response**

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

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

Yes

**No**

No opinion

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

Yes

No

No opinion

14.3. EU added value: did EU action provide clear added value when compared to an action taken at Member State level?

Yes

No

No opinion

14.4. Please explain your answers.

<p><b>By its action, the EU facilitated remuneration of authors and neighbouring rights holders for cable retransmission rights, something which individual Member States could not have achieved.</b></p>
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### III. Assessment of the need for the extension of the Directive

The principles set out in the Directive are applicable only with respect to satellite broadcasting and cable retransmissions [2]. They do not apply to transmissions of TV and radio programmes by other means than satellite or to retransmissions by other means than cable. Notably these principles do not apply to online transmissions or retransmissions.

Until relatively recently, broadcasters' activities mainly consisted of non-interactive transmissions over the air, satellite or cable and broadcasters needed to clear the broadcasting/communication to the public rights of authors, performers and producers. However, the availability of broadcasters' programmes on an on-demand basis after the initial broadcast (e.g. catch-up TV services) is on the increase. Providing such services requires broadcasters to clear a different set of rights than those required for the initial broadcast, namely the reproduction right and the making available right. Forms of transmission such as direct injection in cable networks or transmissions over the internet (e.g. webcasting) are also increasing. Digital platforms also enable programmes to be retransmitted simultaneously across networks other than cable (e.g. IPTV, DTT, simulcasting).

[2] The concept of retransmission is generally understood as the simultaneous transmission of a broadcast by a different entity such as a cable operator.

## 1. The extension of the principle of country of origin

15. Please explain what would be the impact of extending the "country of origin" principle, as applied to satellite broadcasting under the Directive, to the rights of authors and neighbouring right holders relevant for:

15.1. TV and radio transmissions by other means than satellite (e.g. by IPTV, webcasting).

Whilst the Directive has enabled rights clearance and remuneration of rightholders under Article 8 and Article 9, DACS believes that it is only appropriate for the specific type of cross-border retransmission of television broadcasts by local cable operators. We do not think that the Directive should be broadened as the "country of origin" principle is not suitable in an online environment and will significantly limit the rights of rightholders. This is because rights will be cleared in the country where the content has been uploaded/put online but not in all the other territories where the content will be available. This also causes logistical issues as there is no clarity on who would pay for the rights' clearances or how this would work in practice. Transmission by cable and satellite is an entirely different medium to online transmission and these services cannot be compared.

15.2. Online services ancillary to initial broadcasts (e.g. simulcasting, catch-up TV).

As per our response to q. 15.1

15.3. Any online services provided by broadcasters (e.g. video on demand services).

As per our response to q. 15.1

15.4. Any online content services provided by any service provider, including broadcasters.

As per our response to q. 15.1

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

No response

16.1. If not, what other measures would be necessary to achieve this?

No response

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)?

No response

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

DACS considers it is very likely that the "country of origin" principle would be determined by server location for online transmissions. DACS believes that this is very problematic as the server location is quite arbitrary: servers are difficult to locate and easy to move, making it very unclear and complex to truly determine which territory is the "country of origin".

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

To an extent, the extension of "country of origin" principle will be detrimental to copyright protection especially as the server location, which is the determining factor, is moveable and therefore "forum shopping" would ensue where a jurisdiction with either weaker protection or routes for enforcement would be chosen as the country of origin.

- 19.1. If so, would the level of EU copyright harmonisation need to be increased and if so in which areas?

No response

## 2. The extension of the system of management of cable retransmission rights

20. According to your knowledge or experience, how are the rights of authors and neighbouring right holders relevant for the simultaneous retransmissions of TV and radio programmes by players other than cable operators currently licensed (e.g. simulcasting or satellite retransmissions)?

DACS has no knowledge or experience in this field

- 20.1. Are there any particular problems when licensing or clearing rights for such services?

No response

21. How are the rights of authors and neighbouring right holders relevant for the transmission of broadcasters' services via direct injection in cable network currently licensed?

No response

- 21.1. Are there any particular problems when licensing or clearing rights for such services?

No response

22. How are the rights of authors and neighbouring right holders relevant for non-interactive broadcasters' services over the internet (simulcasting/ linear webcasting) currently licensed?

No response

22.1. Are there any particular problems when licensing or clearing rights for such services?

No response

23. How are the rights of authors and neighbouring right holders relevant for interactive broadcasters' services currently licensed (e.g. catch-up TV, video on demand services)?

No response

23.1. Are there any particular problems when licensing or clearing rights for such services?

No response

24. What would be the impact of extending the copyright clearance system applicable for cable retransmission (mandatory collective licensing regime) to:

24.1. The simultaneous retransmission<sup>[3]</sup> of TV and radio programmes on platforms other than cable (e.g. satellite, IPTV, internet)?

[3] Understood as the simultaneous transmission of the broadcast by a different entity than the broadcaster (see footnote 2).

No response

24.2. The simultaneous transmission<sup>[4]</sup> of TV and radio programmes on platforms other than cable (e.g. satellite, IPTV, internet)?

[4] Understood as the simultaneous transmission of the broadcast by the broadcaster itself.

No response

25. In case of such an extension, should the different treatment of rights held by broadcasting organisations (Article 10 of the Directive) be maintained?

No response

26. Would such an extension result in greater cross border accessibility of online services? Please explain.

No response

27. Given the difference in the geographical reach of distribution of programmes over the internet (i.e. not limited by geographical boundaries) in comparison to cable (limited nationally), should any extension be limited to "closed environments" (e.g. IPTV) or also cover open simultaneous retransmissions and/or transmissions (simulcasting) over the internet?

No response

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

No response

29. What would be the impact of introducing a system of extended collective licencing for the simultaneous retransmission and/or the simultaneous transmission of TV and radio programmes on platforms other than cable, instead of the mandatory collective licensing regime?

No response

30. Would such a system of extended collective licencing result in greater cross border accessibility of online services?

No response

### 3. The extension of the mediation system and the obligation to negotiate

31. Could the current mechanisms of negotiation and mediation in Articles 11 and 12 of the Directive be used to facilitate the cross border availability of online services when no agreement is concluded regarding the authorisation of the rights required for an online transmission?

No response

32. Are there any other measures which could facilitate contractual solutions and ensure that all parties concerned conduct negotiations in good faith and do not obstruct negotiations without justification?

No response

### IV. Other issues

33. These questions aim to provide a comprehensive consultation on the main themes relating to the functioning and possible extension of the Directive. Please indicate if there are other issues that should be considered. Also, please share any quantitative data reports or studies to support your views.

No response