

# Modernizing Copyright

## The issue

Whether you are at home, in the office, or on the road, today there are many new ways of accessing audiovisual content, not just on TV screens and radios, but also on computers, on mobile devices and games consoles.

As audiences expect to be able to follow their favourite programmes whenever and wherever they want, public service broadcasters strive to meet new audience expectations and fulfil their mission to guarantee the widest possible access to their content across all platforms.

However, current copyright rules are not adapted to the digital world: nowadays different rights clearance systems apply to traditional/linear broadcasting and to the on-demand/time-delayed use of programmes. So broadcasters must clear the rights for all materials in their own programming used online, even if they have already been used in the original, linear broadcast.

By investing EUR10 billion a year in original European content, public service broadcasters offer EU audiences a wide range of programmes and have an enormous wealth of audiovisual archives - 28 million hours of programming. To make their programmes available, broadcasters need to clear the rights on all platforms.

This takes a lot of time and effort, gives rise to considerable administrative costs, and is in many cases impossible to achieve (i.e. only a few seconds of background music not cleared can jeopardise the entire rights clearance process of a programme). As a result, viewers cannot access their favourite programmes online and broadcasters face difficulties in putting their historic archives of unique materials online having gone through a thorough and expensive process to convert them into digital files.

The EU has recognized, particularly in the Digital Agenda, the need to modernize copyright clearance. As the internet is a cross-border platform, only a coherent EU reform can lead to a modern and easy rights clearance system, in which audiences can access content wherever and whenever they want.



## EBU Position

### ■ Apply the law of only one country, instead of 27, to clear the rights

*As internet services are cross-border, EU Broadcasters are asking for an easy and efficient rights clearance system based on the application of the law of one country – the country in which the broadcaster is established – instead of the application of 27 national laws. The EBU proposals, however, only cover broadcasters' programming. They respect the contractual freedom of film producers to negotiate their exclusive rights individually with broadcasters.*

### ■ Promote extended collective licensing in the Member States

*Collective management is indispensable in cases where broadcasters cannot go individually to each rights holder to clear the rights (e.g. a major broadcaster negotiates approximately 70,000 contracts per year with rights holders). "Extended" collective licensing, a practical variant of collective management successfully applied in the Nordic countries, simplifies the rights clearance process, in particular for archives, and should therefore be available in each Member State.*

### ■ Simplify music licensing to broadcasters

*Broadcasters are mass users of music in their works; a major broadcaster may use up to 200,000 pieces of music in its programmes every week. Collective arrangements (one-stop-shop licensing) for rights clearance of the worldwide music repertoire should be extended to cover on-demand services as well.*

## Background

### Modern rights clearance for all broadcasters' services

#### Technological neutrality

Broadcasters want to make their content available on all platforms nationally and across borders, so that viewers can follow their favourite programmes wherever and whenever they want (e.g. podcasts and catch up services like the BBC iplayer). However, before they make any of their TV programmes available online, broadcasters must deal with often burdensome processes to clear the rights.

This is a particular difficulty for TV productions as a large number of different rights-holders – between 50 and 100 actors, singers, musicians, scriptwriters, etc. – may contribute to a single programme. All of them own the copyright on their works. Broadcasters must clear the rights for all materials they use, on whatever platform.

Technological developments have already led EU policy-makers to modernize regulations governing content in the Audiovisual Media Services Directive (AVMS). This Directive covers all audiovisual media services – traditional television (linear service) and video-on-demand (non-linear services) – irrespective of the technology used to deliver them (principle of technological neutrality).

The same principle of technological neutrality should be applied to copyright so that the same rules govern identical audiovisual content, regardless of the technology or distribution platform used, i.e. rights clearance for non-linear broadcast-like services should follow the same mechanisms as linear broadcasting services. It is therefore time for Europe to modernize copyright rules to embrace all audiovisual media services.

### Public broadcasters vital to the EU copyright economy

Modernizing copyright rules is not only of utmost importance to the EU cultural sector but also to its copyright economy. The EU broadcasting sector contributes over EUR 30 billion to the EU copyright economy. One third of this sum is paid by European public broadcasters for rights used in their original European productions and in their 28 million hours of archive materials. This means that in the majority of European countries, publicly funded broadcasters tend to invest heavily in original content (original journalism, documentaries, a culturally diverse range of programming topics, etc.). If they are to continue investing such substantial amounts in quality content on all platforms, broadcasters need rights-clearance mechanisms to be simplified!



#### Strong rights, easy access

European public broadcasters' proposals seek a balanced approach that provides 'easy access' for consumers, simplifying the distribution of content across the internal market, while duly protecting all rights-holders. It is all about streamlining the system and reducing the growing administrative burden of rights clearance so that more content is available on all platforms nationally and across borders. With more efficient rights-clearance mechanisms, we could save money that could be invested in the production of creative content or paid out to copyright holders.

## Extend existing copyright principles to the digital era

### Apply the law of only one country – not 27

If broadcasters had to apply the national laws of 27 Member States to their non-linear services, this would be burdensome, inefficient, and it would sometimes be impossible for them to provide online services.

A successful rights-clearance system already exists for satellite TV which, like Internet services, is generally cross-border. This effective system – established by the EU Satellite & Cable Directive – is based on the ‘country-of-origin principle’.

Under this Directive, a single law applies to a single satellite broadcast signal, even if the signal (the satellite’s ‘footprint’) covers more than 40 countries. As Internet content is generally cross-border, EU public service broadcasters are asking to extend the country-of-origin principle of satellite broadcasting to the online and on-demand world. This would save them needing to clear the rights in each Member State for a single act of broadcasting, and the law of only one country would apply, i.e. the law of the country in which the broadcaster is established. In addition, this would be a significant contribution to the availability of cross-border services in Europe.

The country-of-origin principle as applied to broadcasting safeguards the interests of rights-holders and allows them to agree on fair remuneration for their services, considering all aspects of the broadcast (e.g. language, audience, etc.) and the terms and conditions under which they wish to exploit their works.

The EBU’s proposals only cover broadcasters’ programming and not third-party uses. They respect the contractual freedom of film producers to negotiate their exclusive rights individually with broadcasters and agree on the conditions for distribution on other platforms.

### Success story: Satellite and cable broadcasting

Rights clearance for cable and satellite broadcasting has worked well in Europe because the law of just one country is applied – instead of 27 – and payments can be centralized to one collecting society. Easy and efficient copyright rules have largely contributed to the successful development of the cable and satellite industries.

According to the European Audiovisual Observatory there were more than 4,300 different TV channels broadcast over satellite in the 27 EU countries plus Croatia and Turkey on 31 December 2010. If we take into account the variety of language versions, there would be more than 4,500 TV channels broadcast over satellite in these 29 countries.

### Promote extended collective licensing in the Member States

Broadcasters need rights clearance mechanisms to be simplified and efficient. The key to this efficiency lies in collective licensing, and in the important role that collecting societies play in the digital era.

Copyright owners may find it difficult or inconvenient to licence the use of their works themselves. As a result, they turn to collecting societies to do so on their behalf. Collecting societies represent different categories of right holders e.g. actors, authors of literary or visual art works, music etc. Collective licensing means that a user may be offered a blanket licence covering use of all the repertoire of the collecting society for mass use. This benefits users as they do not need to negotiate a large number of individual licences.

Collective licensing is indispensable for broadcasters too in cases where it is practically impossible for them to go to rights-holders for copyright clearance of each of the materials used in their own productions for mass use.

## Nordic model

Extended collective licensing, as used in the Nordic countries, has demonstrated its effectiveness in clearing rights for on-demand delivery of content and broadcasters' archives where no other feasible solution exists.

The extended collective licensing system enables a collecting society to licence all works in a given category, including rights-holders who have not specifically signed up to that society. Importantly, the system remains voluntary, in particular because right holders retain the right to opt out of the agreement, at any time, and prohibit the use of their works.

This system has existed for nearly 50 years, and offers a pragmatic solution to the impossibility of controlling certain mass usage of works while ensuring an important source of revenue for right holders. It is up to Member States to decide for which particular uses this system can be applied to simplify copyright clearance, although it is especially suitable for solving the issue of broadcasters' archives.

## Unlocking Europe's audiovisual heritage

Public service broadcasters have 28 million hours of television and radio content programming in their archives, which represent Europe's audiovisual heritage. The on-line and on-demand accessibility of these archives is made very difficult because of current copyright rules, despite broadcasters' undertaking a thorough and expensive process converting them into digital files.

The rights-clearing process would entail finding each and every rights-holder and their respective contracts, interpreting and checking the scope of their rights, renegotiating on an individual basis for new uses of their materials. A single refusal or impediment could block the entire process.

For example, the BBC has calculated that clearing rights for the whole BBC archive would cost GBP 72 million in staff alone and take three years. ZDF has estimated the number of contracts to be 70,000 per year, which would make individual renegotiation for on-line usage impossible.

The EBU considers that the combined effect of the 'country-of-origin' principle and the 'extended collective licensing' could allow the use of broadcasters' archives in new digital services. It would significantly reduce the time, cost and resources for clearing the rights if a licence were obtained from a collective society in the country of origin of the media service provider. The system would also resolve the issue of orphan works.

### Piracy destroys creative industries

Broadcasters, like other rights-holders, suffer from digital piracy, as is shown by the circulation on the Internet of numerous illicit copies of television works and broadcasts. The problem of online piracy reinforces the need to modernize the copyright framework as soon as possible.

The EBU is convinced that the more complex the rights clearance process, the less legal content is available and the more illegal content can flourish. A better framework for rights clearance will help the circulation of legal content and reduce the appeal, and circulation, of illegal content.

## Simplify music licensing to broadcasters

Music licensing is a key issue for broadcasters as they are mass users of music in their works (e.g. a major broadcaster may use up to 200,000 pieces of music in its programmes every week).

Collective arrangements and one-stop-shop solutions for the use of musical works incorporated in broadcasters' programmes already exist for linear broadcasting as it is not feasible for broadcasters to clear music rights individually for thousands of pieces of music they use every day/week. However, the existing collective agreements should be extended to the on-line/on-demand world too.

Without such collective solutions, the risk of fragmentation of music rights or repertoires among different collecting societies would make it very difficult for broadcasters to offer their audiences the worldwide music repertoire on-line and on-demand.

EU broadcasters pay more than EUR 1 billion per year to music collecting societies. If these societies cannot offer both the global music repertoire and all the necessary rights to cover on-demand uses too on a voluntary basis, Member States should make such collective solutions compulsory.

## The EBU

The **European Broadcasting Union** (EBU) is the leading association of national media organizations in the world, bringing together 85 national media organizations in 56 countries in and around Europe.

The EBU represents its Members and promotes the values and distinctiveness of public service media in Europe and around the world. The Eurovision and Euroradio networks deliver news, sports, events and music to EBU Members and other media organizations.

Services to Members range from legal advice, technical standardization and development to coproduction and exchange of quality European content.

For more information about the EBU: <http://www.ebu.ch>

### Did you know?

- EBU Members reach a total audience of **650 million** people weekly.
- **75% of EU citizens** regularly watch EBU Members' main channels.
- EBU Members' invest in genres and programmes – documentaries, culture and social cohesion programmes – that would otherwise be underserved. Audiences turn to public service media for accurate and trustworthy news and information.
- Members invest **EUR 10 billion** annually in new European TV productions.
- EBU Members play a key role in bringing Europe into the digital age by adopting groundbreaking developments and being at the forefront of new media technologies from the take-up of DTT, to hybrid broadcast/broadband and television beyond HDTV.



**European Broadcasting Union**

Nicola Frank, Head of European Affairs

Avenue des Arts 56, 1000 Brussels, Belgium

brussels@ebu.ch; Tel.: +32 (0)2 286 9115; Fax: +32 (0)2 286 9110

[www.ebu.ch](http://www.ebu.ch)