



Modern copyright for digital media

17 March 2010,
European Parliament,
Brussels



European
Broadcasting Union
promoting public service media

Modern copyright for digital media: EBU proposals for the audiovisual sector

Peter Weber

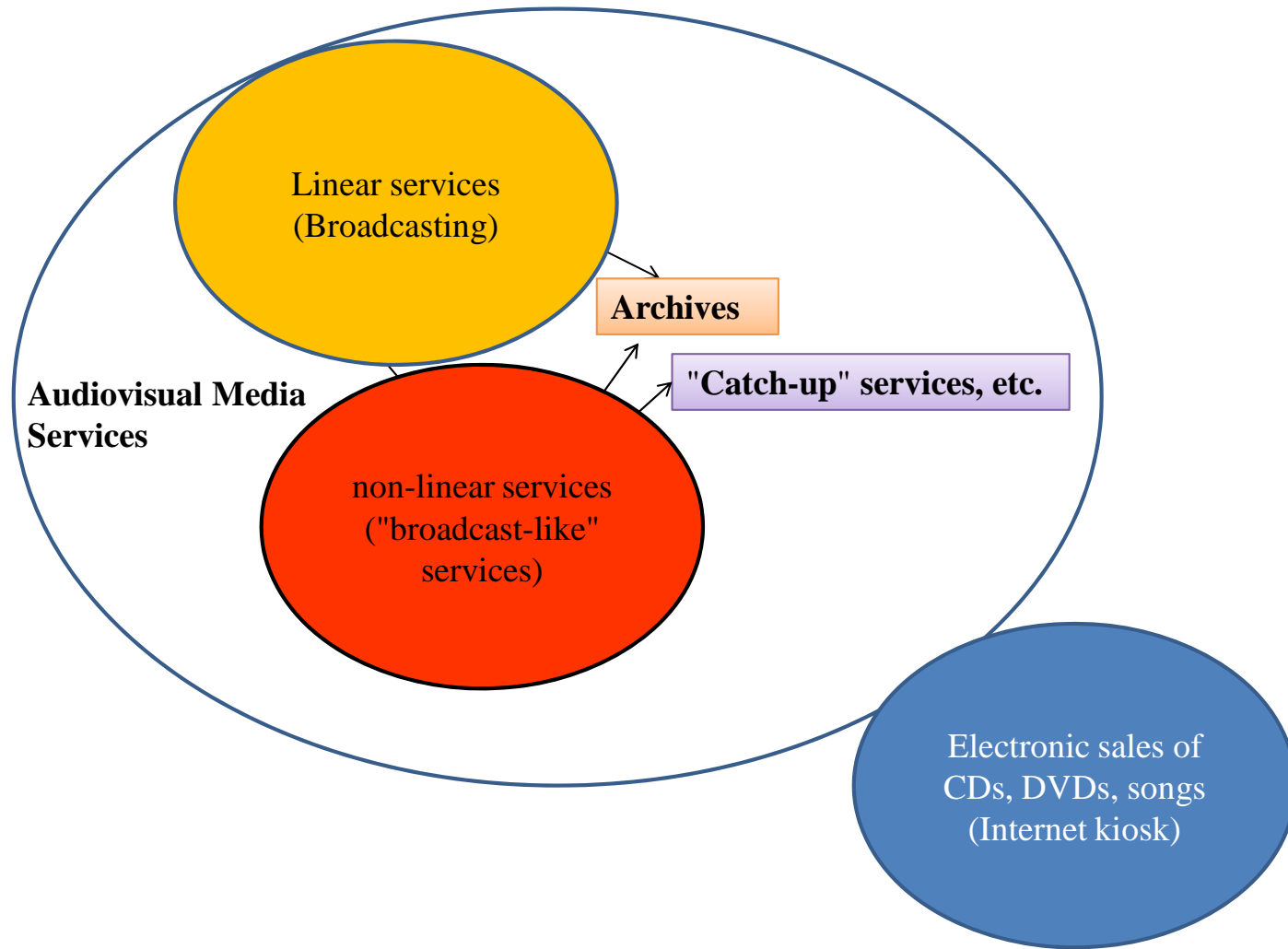
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Overview

- Focus on rights clearance
+: No need to revise 2001 Copyright Directive
- Sectoral approach
+: Benefits for all audiovisual (hereafter: plus radio-like) media services
- Extending existing rights clearance systems
+: Win-win situation for right holders and users
- EU-wide rules for collective rights management
+: Same basic rules and obligations for coll. societies



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1. Country of origin: Introduction

- Existing solution under Sat/Cab Directive for satellite broadcasting (= same as for spill-over): The broadcast takes place only in the country of the uplink (Art. 1, § 2b Sat/Cab), thus one single licence, irrespective of footprint
- Recital 17 Sat/Cab: All aspects of the broadcast (e.g. language, audience) taken into account for remuneration = contractual freedom for right holders
- Plus: Safeguards against circumvention (in both Sat/Cab and AVMS Directive)



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1. Country of origin: Issue and proposal

- **Issue:** Online avm services in same situation as broadcasting:
 - only one country from where service is provided
 - service potentially receivable in (but not specifically targeting) several countries
 - If need be, safeguards against circumvention (e.g. server location alone not decisive)
- **Proposal:** Rights clearance to be as for broadcasting
- +: One licence based on country of origin but **maintaining contractual freedom for right holders**
- +: **No need for multiterritorial licence applying 27 laws**
- +: **Not applicable to retail-like online services** (because customary e-commerce activities not covered by AVMS Directive)



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2. Incidental reproduction: Issue and proposal

Issue: Rights for same activity in different hands; no separate economic value for incidental reproductions

Proposal: (avm) communication right to include reproductions for technical purposes

+: Only one right/licence per economic exploitation



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3. Retransmission: Introduction

- Retransmission of broadcast programmes is separate copyright act (Berne Convention), thus requiring prior permission from all right holders in content and signal
- Current rights clearance solution: **Mandatory collective licensing** for (transfrontier but in practice also national) retransmission of linear programmes (Art. 9, 10 Sat/Cab)
- Cable operator clears retransmission rights only via the collecting societies and per broadcaster involved
= no need for individual licences from all different programme contributors



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3. Retransmission: Issue and proposal

- **Issue:** Rights clearance system functions well, but is limited to traditional **cable** (+ microwave) retransmission:
 - : **No level playing-field for other retransmission platforms**
 - **Proposal:** Make same system technologically neutral for all retransmissions of linear programmes **on whatever platform**, including:
 - IPTV
 - Mobile retransmission
 - Retransmission via the Internet (e.g. Zattoo)
- +: Improvement of EU-wide circulation of services**



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4. EU legal framework for collecting societies

1. Simplify collective licensing for music extracts incorporated into avm services
2. Introduce Nordic model of "extended collective licensing" in all Member States
3. Find (national) solutions for re-use of archives
4. Supervision

Overall aim:

Enhance efficiency of collective rights clearance



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4.1 Use of music in avm services: Issue and proposal

- **Issue:** For audiovisual media (and radio-like) services, clearance of music rights for thousands of small pieces of music per day/week not possible on individual basis
- Music rights for *broadcasting* already licensed through agreements with collecting societies: hence, nothing is simpler than to extend these contracts to cover on-demand uses
- **Proposal:** One-stop-shop licensing for avm services via existing collecting societies must be guaranteed. If not achieved (within a short period) on a **voluntary** basis, then collective licensing should be made **mandatory**

+: Same rights clearance for all audiovisual media services (thus incl. broadcast-like services but not retail sales)



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4.2 Extended collective licensing – the Nordic model

- Rights-holding organizations negotiate with users the conditions for a particular use of works
- The resulting agreement is applicable to all right holders of that organization, even if they are not a member
- Right holders disagreeing with the terms can "opt out"

= Exclusivity and contractual freedom is respected



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4.2 Extended collective licensing: Issue and proposal

- This system should be **available** in all Member States
- But national level to decide *for which use(s)* it should be applied.
- Examples:
 - Timeshifted use of programmes by cable (or other retransmitting) operator
 - Orphan works
 - Use by schools, etc.



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4.2. Special case:PSBs' archives

**28 million hours of
radio and TV
content**

Use extended collective licensing

- Unless other national solution found (details per country may differ)
- Aim: Archives of broadcasters (**not**: acquired productions where rights held by external producer) to be made available for re-use, including for broadcast-like services, subject to appropriate remuneration

+: Cultural heritage available to the public, plus additional income for right-holders: A classic win-win situation!



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4.3 Supervision of collecting societies

Issue: Safeguard one-stop shop model (competition law not suitable)

Proposal: Coll. societies EU-wide to be subject to same basic principles

+: Legal certainty for societies + efficient rights clearance.



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