

Commercial Broadcasters: EC copyright package may undermine audiovisual industry's financing with questionable outcomes for Europe's viewers and cultural diversity.

BRUSSELS, 14 September 2016. The European Commission released today a set of proposals altering the rules governing copyright. Of chief importance to commercial broadcasters across Europe is the proposed Regulation that lays down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (“the Regulation”).

Commercial broadcasters welcome the recognition of contractual freedom as a corner-stone of the European audiovisual landscape, based on cultural diversity and efficient allocation of investments and distribution of original content. ACT members also welcome the Commission's ongoing commitment to ensure that premium content can continue to be licensed on a territorial basis. Nevertheless ACT and a large swathe of the AV sector remain concerned that this Regulation, in combination with increasing restrictions to contractual freedom, may undermine financing of works to the ultimate detriment of EU consumers and cultural diversity in Europe.

Extending the Country of Origin (CoO) principle, even when limited to certain broadcasters' activities online, is unwelcome. None of the legal¹ and economic² evidence, commissioned by the EC itself, suggests that such an extension would be in the interests of EU consumers or Europe's creative industries. In fact, a majority of consulted stakeholders (Member States, right holders, authors' societies, commercial broadcasters and online service providers) have indicated that such an extension would jeopardise investment in audiovisual works.

Further, the evidence shows that the Regulation may play a part in undermining territoriality and thereby affect European consumers and the AV industry in the short term (up to €9.3bn per annum) and the medium to long term (up to €4.5bn per annum)³. This loss is the product of less European content being produced and less access to/affordable content being available to consumers with a clear impact on cultural diversity across Europe. The current Portability proposal remains the most adapted instrument to ensure consumer benefit whilst respecting the economic fundamentals of the sector. In all other scenarios tabled in the DSM plans, consumers and industry will be worse off than in the current situation⁴.

As such, there are compelling grounds for a substantial rethink to ensure investment in high quality original EU content is preserved for the benefit of European viewers and the job intensive EU audiovisual sector. The EU must champion Europe's creative industries now, rather than making unnecessary changes that may undermine contractual freedom and damage future investments.

ACT members note the so-called “value gap” provisions in the proposal for a Directive on Copyright in the Digital Single Market are a step in the right direction in order to address the responsibility of online service providers which enable access to protected works.

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About ACT

The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. At ACT we believe that the healthy and sustainable commercial broadcasting sector has an important role to play in the European economy, society and culture. Our role is to protect and to promote the interests of the European private broadcasters. We engage with the EU institutions to achieve a balanced and appropriate regulatory framework which will encourage further investment and growth in our sector. This will allow the commercial audiovisual industry to continue to do what we do best – getting great content to viewers. See our most recent communications [here](#)

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¹ Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society. De Wolf and Partners, October 2013 pp. 176, 179. [Link](#)

² Study on the making available right and its relationship with the reproduction right in cross-border digital transmissions. De Wolf & Partners, December 2014, p. 105. [Link](#) ; Economic Analysis of the Territoriality of the Making Available Right in the EU. Charles River Associates, March 2014, pp. 2, 118. [Link](#)

³ The impact of cross-border access to audiovisual content on EU consumers. Oxera and O&O, May 2016. [Link](#)

⁴ A study on the potential impact on the Digital Single Market on the sports audiovisual ecosystem in Europe. Analysys Mason, May 2016 [Link](#)