

Hello!

Anne-Catherine Lorrain

Policy Advisor on Legal Affairs

Greens-EFA in the European Parliament

JURI Committee

anne-catherine.lorrain@europarl.europa.eu

Cable (Re)-Transmissions: Regulated by 'Tailor-Made' EU Copyright rules

- **SatCab directive** (1993)

on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

- Commission's **Regulation proposal**

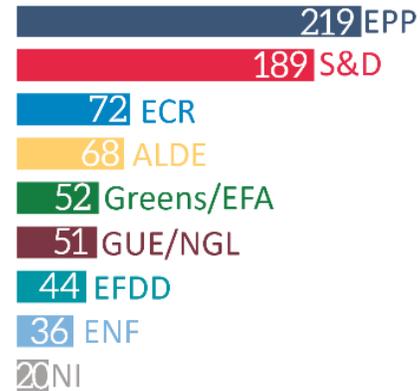
*on the exercise of copyright and related rights applicable to certain **online transmissions and retransmissions** of television and radio programmes (2016 'copyright package')*

- **JURI Report** (November 2017); Rapporteur: ~~Tiemo Wölken (SD)~~ JURI Chair (EPP)
- European **Parliament legislative Resolution** (adopted by EP in December 2017)
- Inter-institutional negotiations / **trilogue** (January 2018 - January 2019)
- EP final adoption (**Directive**): March 2019

European Parliament, 2014-19

Size of the political groups

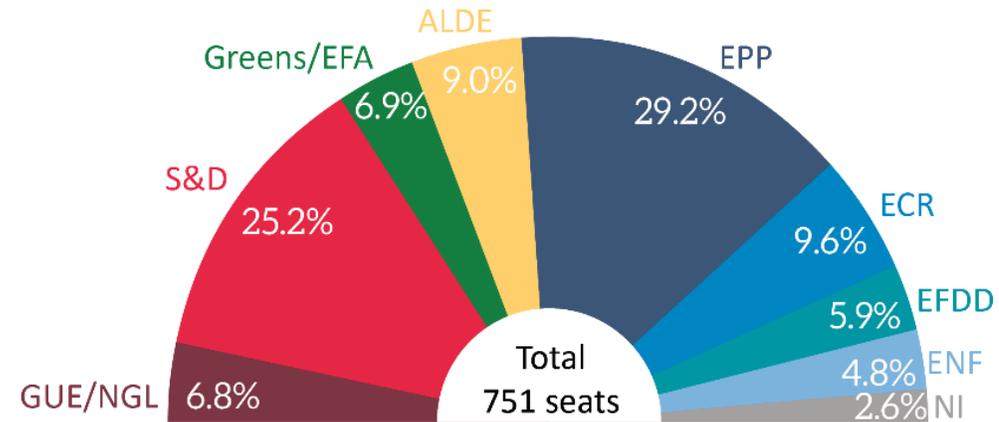
Number of MEPs in each political group as of 1 April 2018.



751
MEPs

Proportion of Members in each political group

Share of each political group in the total 751 seats in the Parliament.



Cable (Re)-Transmissions: Regulated by 'Tailor-Made' EU Copyright rules

- **More (online) *access*** to AV works for citizens in the EU via facilitated cross-border **clearance of rights (licensing)**
- Territoriality (against ***geo-blocking***) / technology neutral / future proof
- Focus on the transmission ***operators***
- **Economic impact / industry** focused

Change of legal basis:

~~Article 114 TFEU~~

Articles 53(1) [freedom of establishment] and **62 TFEU** [freedom to provide services]

SatCab 'Regulation': Core Compromises...

... in the footsteps of SatCab Directive 1993

- Country of Origin principle

Scope:

Radio programmes;

TV programmes: news & current affairs, 'fully financed own productions of the broadcasting organisation'.

- Collective Management

- Contractual Freedom

- Mediation

- **Direct Injection**

- **Regulation Directive**

How Direct Injection became THE most political compromise.

Direct Injection (DI)

Common practice broadcasters / retransmission operators...

... but no agreed definition (legal uncertainty).

DI = *retransmission*?

(as defined in SatCab 1993?)

Same legal consequences as SatCab 1993?)

SatCab 2019, Article 2(4) : Definition of DI

"direct injection" means a technical process by which a broadcasting organisation transmits its programme-carrying signals to an organisation other than a broadcasting organisation, in such a way that the programme-carrying signals are not accessible to the public during that transmission.

Direct Injection (DI)

Article 2(2): Definition of Retransmission

*(...) means any simultaneous, unaltered and unbridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC, intended for reception by the public, of an initial transmission from another Member State of television or radio programmes intended for reception by the public, where such initial transmission is by wire or over the air including that by satellite, **initial transmission**, but is not by online transmission, provided that:*

*(a) the retransmission is **carried out by a party other than the broadcasting organisation** which made the initial transmission or under whose **control and responsibility** that initial transmission was made, regardless of how the party carrying out the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission, and*

*(b) where the retransmission (...) is carried out in a **managed environment**;*

Direct Injection (DI):

How to regulate beyond cable?

- **Difficult negotiating context:** inclusion of DI requested by a minority of political groups in the EP (arguments from rightholders and from broadcasters).
- **Law-making pitfalls:** addressing the DI issue *without* changing copyright law principles...
 - without risking new definitions (definition of communication to the public);
 - in a context of technological change;
 - of poor clarification brought by case-law.

... while keeping in mind core law-making principles:

 - Legal certainty: predictability, practicability
 - Proportionality: problem / solution
- **Regulation Directive** (Directive 1993 + Directive 2019)
Implementation flexibility for Member States

Direct Injection (DI)

- **All** retransmission services (**technology neutral**): cable, satellite and **online services** (IP-based, digital terrestrial, mobile or closed circuit IP-based networks, as well as the open internet) **including OTT...**
- ... can use different retransmission technologies, including DI (Recital 14).
- The broadcaster *and* the retransmission service operator perform (together) a **single act of communication to the public** (,retransmission', parallel DI);
 - ~~Joint liability with the broadcaster~~
- Retransmission operators are subject to the same rules as under SatCab 1993:
 - obligation to obtain rightholders' authorisation (**mandatory collective management**);
 - to pay remuneration to rightholders.in cross-border situations but also within a given Member State (Recital 17).

(...) Under those rules, the right to grant or refuse authorisation as such remains intact, and only the exercise of that right is regulated to some extent. (...) [Recital 15: no change to the definition of the right of communication to the public]

CHAPTER IV

TRANSMISSION OF PROGRAMMES THROUGH DIRECT INJECTION

Article 8

Transmission of programmes through direct injection

- 1. When a broadcasting organisation transmits by direct injection its programme-carrying signals to a signal distributor, without the broadcasting organisation itself simultaneously transmitting those programme-carrying signals directly to the public, and the signal distributor transmits those programme-carrying signals to the public, the broadcasting organisation and the signal distributor shall be deemed to be participating in a single act of communication to the public in respect of which they shall obtain authorisation from rightholders. Member States may provide for arrangements for obtaining authorisation from rightholders.***

- 2. Member States may provide that Articles 4, 5 and 6 of this Directive apply mutatis mutandis to the exercise by rightholders of the right to grant or refuse the authorisation to signal distributors for a transmission referred to in paragraph 1, carried out by one of the technical means referred to in Article 1(3) of Directive 93/83/EEC or point (2) of Article 2 of this Directive.***

Direct Injection (DI)

9 recitals about DI, among which **Recital 20**:

'(...) Where signal distributors merely provide broadcasting organisations with 'technical means', within the meaning of the case-law of the Court of Justice of the European Union, to ensure that the broadcast is received or to improve the reception of that broadcast, the signal distributors should not be considered to be participating in an act of communication to the public. (...)'

2019 Directive

- Member States have a greater level of **flexibility to implement** the rules into national law.

Transitional (transposition) period:

2 years after the entry into force of this directive.

Review: 'by 6 years' after the entry into force of this directive.

Thanks! Questions?