

The Consumer Voice in Europe

Ref: BEUC-X-2017-104

Brussels, 05 October 2017

Re: Broadcasting - BEUC asks you to support country-of-origin principle

Dear Member of the JURI committee,

I am writing on behalf of BEUC, The European Consumer Organisation, in view of the upcoming vote on the European Commission's proposal for a regulation on online transmissions.

BEUC welcomes the European Commission's proposal as it sets the grounds to facilitate the clearance of rights by broadcasting organisations and therefore enables them to provide greater choices of content to consumers across the EU.

By supporting the country-of-origin principle for the transmission of copyrighted content the regulation will create the conditions for a real Single Market of content whilst respecting the principle of contractual freedom and territorial licensing.

Below we outline the reasons why the extension of the country-of-origin principle to online content will benefit consumers. This model will allow broadcaster to provide wider choice of audiovisual content to consumer across the EU.

a) There is an unmet consumer demand for online content

Consumers are increasingly interested in accessing audiovisual content such as films, TV shows, sport events or documentaries from providers across the borders. They do not expect national boundaries on the Internet. For instance, a recent survey^[1] from our German member vzbv showed that 70% of German consumers would like to subscribe to foreign offers for sports, films and TV series. The demand for foreign content is even higher among youngsters. Furthermore, a European Commission survey^[2] from 2015 on 'Cross-border access to online content' shows that Europeans are interested to look for online content in another Member State when such content is not available in their own country. Therefore, this proposal would make it easier for consumers to access content online by facilitating the clearance of copyright by broadcasting organisations.

b) This proposal does not jeopardise the principle of contractual freedom or territorial licensing models

Contrary to what has been argued by the creative industry, the European Commission's proposal does not preclude territorial licensing practices in the distribution of audio-visual content across the European Union.

[1] Ref.: http://www.vzbv.de/sites/default/files/digital_content_without_borders_factsheet_vzbv.pdf

[2] Flash Eurobarometer 411

BEUC recognises the importance for content producers to sell their products on a territorial basis since this allows the development of legal offers that can be better tailored to the expectations of most consumers in each domestic market.

When evaluating the impact of the proposed country-of-origin principle to online services the following points should be considered:

- **Territoriality will continue to play a key role in the European online audiovisual market because the country-of-origin principle will not prevent rights holders from selling their content on a country-by-country basis.** This is because local adaptation of contents will still be necessary (e.g. for dubbing and subtitling). The sales of content on a territorial basis will also still be necessary for the aggregation of content e.g. for selling it as part of a pay-TV package.
- Secondly, the **extension of the country-of-origin principle to online distribution does not amount to a pan-European licensing system.** It is important to make clear that the aim of the proposed regulation is to enable broadcasters to give access to content to consumers from another Member State without having to go through costly and inefficient clearing procedures.

c) DG Competition cross-border pay-TV case and the broadcasting regulation do not overlap

It has been argued that the broadcasting regulation and the DG Competition cross-border pay-TV investigation overlap and that therefore the European legislator should wait for the decision on the pay-TV case before deciding on this regulation. This is not true. The pay-TV case concerns only contractual agreements between specific undertakings (Hollywood studios and certain commercial broadcasters) while the broadcasting regulation is about clarifying the means for *all* broadcasters to clear broadcasting rights. Furthermore, the Commission's proposal specifically states in recital 11 that territorial licensing is still possible within the limits of EU law. Thus, **nothing in the proposal nor in DG Competition investigation affects the ability of rightsholders and broadcasters to enter into territorial licensing agreements.**

d) This proposal will strengthen cultural diversity in Europe

Contrary to what part of the audio-visual industry argues, the extension of the country-of-origin principle to online distribution will not affect Europe's cultural and linguistic diversity. It is wrong to assume that because consumers should be able to access content from other Member States, they will stop consuming local audiovisual services. Recent data reveals that consumption patterns in traditional distribution channels like cinema remain stable^[4] and local TV is still the most used medium to watch audio-visual content.

On the contrary, **Europe's cultural diversity will be strengthened because consumers will be able to discover other European cultures just through one click.** The European market is already dominated by Hollywood productions and one of the structural weaknesses of the European film industry is the lacking ability to reaching a broader audience beyond national borders^[5]. Thus, addressing copyright rules to facilitate the clearance of rights will be one important step to bring European works closer to consumers across the EU.

It is high time that the EU aims at completing the Single Market from a consumer perspective.

^[4] European Audiovisual Observatory Yearbook 2012 – as quoted by European Commission in COM (2014) 272 final, p. 5

^[5] European Commission's 2014 Communication "European film in the digital era", p.3

Enabling cross-border access to content is a long overdue and necessary step to bring the benefits of the Single Market and of the European Union directly to its citizens.

Thank you very much in advance for considering our recommendations.

We remain at your disposal should you require any further information.

Yours sincerely,

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Digital Team Leader

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Legal Officer