



Dr Ros Lynch
Copyright and IP Enforcement Director
Intellectual Property Office
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

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Dear Ros

The European institutions have been discussing the proposal for a Regulation on online broadcasting transmissions and retransmissions since its publication in September 2016. Specifically, discussions on the proposal by CULT, IMCO and JURI are imminent.

We urge UK policy makers at European Parliament and Council level to reject the Regulation on online broadcasting transmissions and retransmissions in its entirety. This is because of:

- **Negative effects on competition and choice in the market**
- **Detrimental impact on rightsholders' remuneration and protection which would disproportionately impact SMEs**
- **Lack of economic evidence**
- **Conflict with proportionality principles**

Voluntary market based solutions are already delivering on the policy objective, i.e. to promote the cross-border provision of online services ancillary to broadcasts and to facilitate digital retransmissions over closed networks of TV and radio programmes originating in other Member States.

At the very least, any further extension of the Regulation put forward in some of the amendments at the European Parliament Committees need to be rejected.

UK Music.

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.

UK Music
4th floor
49 Whitehall
London, SW1A 2BX

T. 020 3713 8444
info@ukmusic.org
www.ukmusic.org

2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society. A full list of UK Music members can be found in the annex.
3. The music industry is worth £4.1 billion to the economy and generated exports of £2.2 billion in 2015. The industry now employs 119,020 people. Based on UK Music's annual Measuring Music report, the value of music the sector has grown by 17% over the past four years, out-performing much of the rest of the UK economy.

The Regulation.

4. The proposed Regulation on online broadcasting transmissions and retransmissions, which extends the application of the Country of Origin principle to ancillary online service and mandatory collective management, is not justified given:-
 - Market distortions and the accompanying detrimental impact on the UK music industry (in particular SMEs) and other content services
 - Detrimental impact on rightsholders' remuneration and protection which would disproportionately impact SMEs (see paras 5 and 6).
 - Inconsistency of mandatory collective management with key principles of the Collective Management Directive 2014 (see para 7)
 - Negative effects on competition and choice in the market (see para 9)
 - Lack of economic evidence (see para 8),
 - Conflict with the proportionality principles (see para 9)

Market distortions and the accompanying detrimental impact on the UK.

5. Country of Origin principles ignore fundamental commercial realities about the market and lead to distortions. At a basic level the economic impact of a service on the market and between competing services is felt where the service is consumed, not where it originates. Country of Origin principles distort the normal operation of markets in many ways including for example:
 - (i) By encouraging unjustified forum shopping which results in a "race to the bottom" in terms of value and
 - (ii) By raising unanswered questions in relation to services that originate from outside of the EU or from the EU into other territories.
 - (iii) By unfairly prejudicing the interests of rightsholders who have invested in exclusive rights on a territorial basis. Such rightsholders would see income from exploitation directed at consumers in their territory being treated as arising in other territories where they may not hold the rights. It is important to point out that this prejudice is likely to disproportionately negatively impact SMEs compared with multinational companies.
 - (iv) By distorting competition between broadcasters and multi territory online content service providers who are already operating and licensing rights on a country of destination basis. Country of Origin principles are diametrically opposed to the recent Regulation on the online portability of cross border content services. In order to facilitate portability of services that Regulation looks at the country of residence of the recipient of the services rather than the country from which the services originate. A Country of Origin principle in relation to broadcasters for certain cross border services creates undesirable and unnecessary confusion in this context.

The undesirable incentives and the market distortions created by country of origin principles are the reason for the recent changes to the treatment of VAT on online services in the EU. The Directive on the Common System of Value Added Tax (2006/112/EC) established the principle that radio and television broadcasting services and electronically supplied services should be taxed at the place of establishment of the customer for the purposes of a functioning internal market so as not to distort competition or hinder free movement of services. VAT accordingly now follows country of destination rather than country of origin principles.

The previous regime resulted in forum shopping and prevented the tax authorities in member states from receiving VAT on services provided to consumers in their territory. The previous country of origin VAT treatment also created market distortions between competing online services by allowing services that were able to locate themselves in member states that offered lower VAT rates to be in a position to compete unfairly on price with services that were not able to do so. It is entirely inconsistent for EU policy to set a country of destination approach with regards to VAT in recognition of the distortions created by country of origin and yet to deviate from that principle in relation to broadcast services.

Detrimental impact on rightsholders' remuneration and protection.

6. In addition, Country of Origin limits the scope of the communication to the public/making available right to the country of uplink. It immediately drastically reduces the protection afforded to rightsholders by preventing the enforcement by rightsholders of their rights by reference to activities in the countries in which consumption of the relevant services takes place. Country of Origin does not recognise that there are sometimes different rightsholders or interested parties for different countries and therefore cuts across rightsholders' rights and legitimate business models. Licensing under a Country of Origin principle has meant that the licensable act of communication can often take place in a country which is entirely different to the country in which the commercial impact of the satellite broadcast is felt. The result is that, where the rightsholders are different as between the territory of uplink and the territory of consumption, the rightsholders most directly affected by the activity in question are not efficiently compensated, if at all.

Inconsistency of mandatory collective management with key principles of the Collective Management Directive.

7. Mandatory collective licensing is not coherent with the emphasis the Collective Management Directive places on a pro-competitive landscape. It is also not consistent with the wider importance of the freedom for rightsholders to select which rights to mandate to a collective rights management organisation of their choice. In the field of cable retransmission rights such a mandatory system has not delivered efficient or transparent solutions for rightsholders. It is not a good basis for a multi territory licensing solution, particularly where there is no evidence that extending this principle would not result in a vibrant multi-territory licensing environment. The development of efficient, transparent and pro-competitive multi-territory licensing solutions requires a voluntary system that allows rightsholders to choose their route to market and their representatives.

Lack of economic evidence.

8. There is no economic evidence which justifies the extension of the Country of Origin principle to online services. The Impact Assessment published by the European

Commission does not provide anywhere near sufficient evidence of a positive impact on the market to justify the extension to ancillary online services.

There is not even convincing evidence that the original Satellite and Cable Directive of 1993 had any positive impact on the development of satellite and Cable transmission, in fact quite the contrary¹. The application of the Country of Origin to satellite broadcast has not delivered a proliferation of multi territory broadcast services. If compared to the international available digital online services we note that these are licensed voluntarily on country of destination principles (and are not covered by any statutory licensing regime). The current market driven approach provides efficient multi territory solutions that are not limited to the European single market reflecting the nature of the Internet. In addition, in the event the UK leaves the single market as currently anticipated by March 2019 this would create various complexities with Regulations based on reciprocity between EEA member states. Legislation is likely to be at best ineffective and at worst disruptive.

Conflict with the proportionality principles.

9. A legal instrument contravenes with proportionality principles enshrined in European law when the content and form of the action exceeds what is necessary in order to achieve the objectives set by the Treaties. This is the case with the Regulation at hand. Public sector broadcasters, composers, music publishers and collecting societies have already agreed and implemented a Memorandum of Understanding in 2014 which sets out governing principles relating to the licensing of specific online services². Further, a country of origin principle constitutes a serious risk to the successful evolution of pan European and multi territory licensing solutions which are already operating in the market based on country of destination principles and the existing copyright regime. Statutory interference is not justified.

Voluntary market based solutions.

10. Voluntary market based solutions are proven to be capable of delivering on the policy objective that is behind the proposed Regulation. Principles concerning the voluntary licensing of certain online services provided by broadcasters in the EU which are related to their linear broadcast activities was the subject of a recommendation agreed between the EBU, ECSA, GESAC and ICMP (Recommendation for the Licensing of Broadcast-Related Online Activities, 2014).

This is a clear indication that the stakeholders can, subject to taking into account critical concerns and commercial considerations on each side, deliver market based solutions without the need for any regulation. It also demonstrates that digital services are already licensed on a pan-European basis pursuant to the principles established under the Information Society Directive. These services are more effective at offering consumers access to services cross border than satellite services operating under country of origin principles.

¹ The European Commission Green Paper on the Online Distribution of AV in the EU state that “more than fifteen years after the application of the relevant Directive, this approach [the COO approach under the Directive] does not seem to have led to a broad emergence of pan-European satellite broadcasting”.

² EBU, ECSA, GESAC and ICMP Recommendation for the Licensing of Broadcast-Related Online Activities, 2014

We have [commented](#) to the UK IPO in December 2016. Our member the Music Publishers Association has provided an elaborated view on the proposal which can be accessed [here](#).

Kind regards



Jo Dipple
CEO, UK Music

CC UK MEPs and IPO

IMCO Vicky Ford Catherine Stihler Daniel Dalton	CULT Jill Evans Andrew Lewer John Procter	JURI Mary Honeyball Sajjad Karim
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Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies.
- BASCA - British Academy of Songwriters, Composers and Authors – BASCA is the membership association for music writers and exists to support and protect the professional interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing.
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition – the voice of the featured recording artists.
- MMF - Music Managers Forum - representing 425 managers throughout the music industry.
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union representing 30,000 musicians.
- PPL is the music licensing company which works on behalf of over 90,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.

- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 114,000 composers, songwriters and publishers and an international repertoire of 10 million songs.
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

For more information please contact Tom Kiehl, Director of Government and Public Affairs, UK Music on tom.kiehl@ukmusic.org or 020 3713 8454.