



**EU COMMISSION CONSULTATION  
ON THE REVIEW OF THE EU SATELLITE AND CABLE DIRECTIVE  
RESPONSE FROM THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)**

**16 November 2015**

1. The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people working across the value chain in the UK audiovisual industry, including television, film, video games and new digital media businesses. BSAC Members include not only all of the segments in the UK audiovisual value chain (including development, production, sales, acquisition and licensing of content), but also leading technology firms and ISPs. Most of these businesses are active in many European countries<sup>1</sup>.
  
2. The Satellite and Cable Directive provides legislation in an area that is important to many of BSAC's Members. However, as an umbrella group we do not have direct experience of working under the provisions in the Directive. We are therefore replying to this consultation with some general comments rather than detailed answers tailored to the specific questions. This Consultation seeks evidence regarding the effect of the current provisions in the Satellite and Cable Directive. However, some of the questions also seek to explore extending the scope beyond the two specific types of transmission covered by the Directive. It is regarding the suggestion that there might be such changes to the scope of the Directive that we wish to provide evidence. We have recently considered the impact of such proposals in depth in our recently published report on Portability and Cross-Border Access in Europe<sup>2</sup>, attached, and it is important that the points we have made are thoroughly understood. As you will see, this report, which we have recently made available to a range of stakeholders, including the European Commission, provides much relevant evidence depending on the scope of possible changes to the Satellite and Cable Directive. This evidence is particularly relevant regarding the importance of territoriality, the requirement to obtain the broadcaster's authorisation for simultaneous retransmission under the cable rules, and contractual freedom in relation to the granting of rights and the scope of any licences under the country of origin satellite rules.

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<sup>1</sup> See a complete list of our Membership, at <http://bsac.uk.com/membership-list.html>

<sup>2</sup> See the BSAC report, 'Copyright Protected Audiovisual Services: Portability and Cross Border Access' (20 October 2015), at <http://www.bsac.uk.com/policy-papers.html?download=319:portability-and-cross-border-access-in-europe>.

3. One of the reasons for implementing the Directive was to ensure that rights holders receive remuneration for the exploitation of their work by third parties, particularly from those with whom they did not necessarily have a contractual relationship. Ensuring that all right holders are able to receive payment for the exploitation of their work remains an important principle. The consultation raises issues broader than mechanisms for payment, but this principle will clearly be an important part of the debate on possible legislative changes.
4. We would like to express some concerns about the scope of the consultation. The provisions in the Satellite and Cable Directive are directed towards facilitating the clearance of copyright and related rights, but this is in the context of two specific and very different technologies. Those provisions are very carefully devised to ensure that they do not undermine contractual freedom in licensing agreements regarding how audiovisual content is made available to the public. It would therefore not in our view be appropriate to explore the much broader question of territoriality under a consultation that is only directed at a review of this Directive.
5. The range of issues being explored in this consultation gives rise to the same concerns as apply to proposals on cross-border access indicated in the Commission's Communication on a Digital Single Market Strategy for Europe<sup>3</sup>. We therefore urge the Commission to consider all available evidence in this review of the Satellite and Cable Directive. This would include all of the evidence provided by stakeholders, as well as that commissioned by the Commission itself, on the issues of portability and cross-border access. This should apply whether or not this evidence has been specifically drawn to the attention of the Commission as a result of this current consultation.
6. The very significant expansion of types of services by which audiovisual content can be enjoyed from the date on which the Directive was adopted means that it is impossible to draw any conclusions by just looking at satellite broadcasts and cable services that might be operating under the licensing provisions provided by the Directive<sup>4</sup>. A number of the questions that encourage the reporting of 'problems' regarding the licensing of two very specific types of transmission may therefore lead to misleading evidence being obtained when then seeking to use this to draw conclusions about the wider issues regarding the range of transmissions on the internet. Moreover, the way in which audiovisual content is licensed in order to make it available to consumers in a variety of ways is complicated. There should therefore be no rush to draw conclusions about the need for legislative change from how audiovisual content is licensed and so financed<sup>5</sup>.

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<sup>3</sup> See 'A Digital Single Market Strategy for Europe' SWD(2015) 100 final, at [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)

<sup>4</sup> See, for example, the evidence about the range of services available set out in paragraph 2.2 of the recent BSAC report 'Copyright Protected Audiovisual Services', referred to in Footnote 2 of this response.

<sup>5</sup> See, for example, the evidence about the importance of exclusive territorial rights in making and delivering European content to consumers, as explained in Section 4 of the recent BSAC report 'Copyright Protected Audiovisual Services', referred to in Footnote 2 of this response.

7. Some BSAC Members find the current provisions in the Directive that facilitate licensing useful and so we would not want to suggest that they should be repealed. Those who have benefitted from the provisions in the Directive include the independent production sector, which has received cable retransmission royalties. However, as we have already pointed out, the Directive upholds important contractual freedom regarding the licensing of audiovisual content. For satellite broadcasts, the existence of the country of origin rule does not mean negotiations with rights holders cannot cover the territories in which audiovisual material is to be made available to the public. For broadcasters, the ability to choose whether or not to agree to cable retransmissions is retained and to exercise directly those underlying rights which are licensed or acquired from rights holders.
8. We do, therefore, support the provisions in the Satellite and Cable Directive, but would have serious concerns if any changes to the principles of territoriality and contractual authorisation were pursued through the current consultation. It is also essential for the Commission to carefully consider the requirements in international conventions and treaties regarding exclusive rights for making audiovisual works available to the public, for example as in the WIPO Copyright Treaty 1996.

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