

SUBSIDIARY LEGISLATION 415.07

COPYRIGHT AND RELATED RIGHTS APPLICABLE TO CERTAIN ONLINE TRANSMISSIONS OF BROADCASTING ORGANISATIONS AND RETRANSMISSIONS OF TELEVISION AND RADIO PROGRAMMES REGULATIONS

1st June, 2021

LEGAL NOTICE 234 of 2021.

1. (1) The title of these regulations is the Copyright and Related Rights applicable to Certain Online Transmissions of Broadcasting Organisations and Retransmissions of Television And Radio Programmes Regulations. Citation and scope.

(2) The scope of these regulations is to transpose Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying 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, and amending Council Directive 93/83/EEC.

2. In these regulations, unless the context otherwise requires: Interpretation.

"Act" means the Copyright Act; Cap. 415.

"ancillary online service" means an online service consisting in the provision to the public, by or under the control and responsibility of a broadcasting organisation, of television or radio programmes simultaneously with or for a defined period of time after their broadcast by the broadcasting organisation, as well as of any material which is ancillary to such broadcast;

"cable retransmission" shall have the same meaning as assigned to it in article 2 of the Act:

Provided that this definition shall apply regardless of how the operator of a cable retransmission service obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission;

"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;

"managed environment" means an environment in which an operator of a retransmission service provides a secure retransmission to authorised users;

"retransmission" means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined above, 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, 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 over an internet access service as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120, it is carried out in a managed environment.

Application of the "country of origin" principle to ancillary online services.

3. (1) The acts of communication to the public of works or other protected subject matter, by wire or wireless means, and of making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, occurring when providing to the public:

(a) radio programmes; and

(b) television programmes which are:

(i) news and current affairs programmes; or

(ii) fully financed own productions of the broadcasting organisation,

in an ancillary online service by or under the control and responsibility of a broadcasting organisation, as well as the acts of reproduction of such works or other protected subject matter which are necessary for the provision of, the access to or the use

of such online service for the same programmes shall, for the purposes of exercising copyright and related rights relevant for those acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment:

Provided that paragraph (b) of this sub-regulation shall not apply to the broadcasts of sports events and works and other protected subject matter included in them.

(2) (a) When setting the amount of the payment to be made for the rights to which the country of origin principle, as set out in sub-regulation (1) applies, the parties shall take into account all aspects of the ancillary online service, such as features of the service, including the duration of online availability of the programmes provided in that service, the audience, and the language versions provided.

(b) Sub-regulation (2)(a) shall not preclude calculation of the amount of the payment on the basis of the broadcasting organisation's revenues generated by the online service.

(3) The country of origin principle set out in sub-regulation (1), shall be without prejudice to the contractual freedom of the rightholders and broadcasting organisations to agree, in compliance with Union law, to limit the exploitation of such rights, including those under article 7 of the Act.

4. (1) (a) Acts of retransmission of programmes have to be authorised by the holders of the exclusive right of communication to the public.

Exercise of the rights in retransmission by rightholders other than broadcasting organisations.

(b) Rightholders may exercise their right to grant or refuse the authorisation for a retransmission only through a collective management organisation.

(2) Where a rightholder has not transferred the management of the right referred to in paragraph (b) of sub-regulation (1) to a collective management organisation, the collective management organisation which manages rights of the same category for Malta, for which the operator of a retransmission service seeks to clear rights for a retransmission shall be deemed to have the right to grant or refuse the authorisation for a retransmission for that rightholder:

Provided that, where more than one collective management organisation manages rights of that category for the territory of Malta, it shall be for the Member State for the territory of which the operator of a retransmission service seeks to clear rights for

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a retransmission to decide which collective management organisation or organisations have the right to grant or refuse the authorisation for a retransmission.

(3) A rightholder shall have the same rights and obligations resulting from an agreement between an operator of a retransmission service and a collective management organisation or organisations that act pursuant to sub-regulation (2) as rightholders who have mandated that collective management organisation or organisations:

Provided that the rightholder shall also be able to claim those rights within a period of three (3) years from the date of the retransmission which includes his or her work or other protected subject matter.

Exercise of the rights in retransmission by broadcasting organisations.

5. (1) Regulation 4 does not apply to the rights in retransmission exercised by a broadcasting organisation in respect of its own transmission, irrespective of whether the rights concerned are its own or have been transferred to it by other rightholders.

(2) Where broadcasting organisations and the operators of retransmission services enter into negotiations regarding authorisation for retransmission under these regulations, those negotiations are to be conducted in good faith.

Mediation.

6. (1) Where no agreement is concluded between the collective management organisation and the operator of a retransmission service, or between the operator of a retransmission service and the broadcasting organisation regarding authorisation for retransmission of broadcasts, either party may, unless otherwise agreed to by all parties, call upon the assistance of one or more mediators appointed by Malta Mediation Centre in accordance with the procedure stipulated under the Mediation Act. The task of the mediator shall be to provide assistance with negotiation. The mediator shall act impartially and with confidentiality and shall facilitate the discussion between the parties to find ways and means and draw up proposals, in order for the parties to seek and resolve their differences. The mediators shall nonetheless not take decisions for the parties.

Cap. 474.

(2) Mediations falling within the remit of these regulations shall only be conducted on a voluntary basis.

(3) When calling upon the assistance of one or more mediators appointed by the Malta Mediation Centre and thereafter entering into mediation proceedings, such proceedings shall be conducted in accordance with the procedures and formalities stipulated under the Mediation Act.

Cap. 474.

(4) Mediation shall only commence and proceed on condition that before the commencement of the mediation process, the parties sign beforehand and submit to the Malta Mediation Centre, a statement declaring that they are fully aware and cognisant of the implications of the Act and these regulations:

Provided that this also implies that disclosure may have to be permitted in accordance with article 27 of the Mediation Act.

Cap. 474.

(5) Subject to the formalities required under this regulation, if a proposal is formally submitted to the parties by the mediator and the parties do not register their objection thereto in writing with the mediator and the other party, within three (3) months from the electronic notification of such proposal, then in accordance with Council Directive 93/83/EEC such proposal shall be assumed to be binding upon all the parties.

7. 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.

Transmission of programmes through direct injection.

8. Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public of works or other protected subject matter, by wire or wireless means, and the making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, occurring in the course of provision of an ancillary online service as well as for the acts of reproduction which are necessary for the provision of, the access to or the use of such online service which are in force on 7 June 2021 shall be subject to regulation 3 as from 7 June 2023 if they expire after that date:

Transitory provision.

Provided that authorisations obtained for the acts of communication to the public falling under regulation 7 which are in force on 7 June 2021 shall be subject to regulation 7 as from 7 June 2025 if they expire after that date.
