# Amended proposal for a Council Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission [1]

(93/C 25/04)

*COM(92) 526 final — SYN 358*

*(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 2 December 1992)*

[1] OJ No C 255, 1. 10. 1991, p. 3.

| ORIGINAL PROPOSAL | AMENDED PROPOSAL |
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| **Proposal for a Council Directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission** | **Proposal for a Council Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission** |
| THE COUNCIL OF THE EUROPEAN COMMUNITIES, | |
| THE COUNCIL OF THE EUROPEAN COMMUNITIES, | |
| Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof, | Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof, |
| Having regard to the proposal from the Commission, | Having regard to the proposal from the Commission, |
| In cooperation with the European Parliament, | In cooperation with the European Parliament, |
| Having regard to the opinion of the Economic and Social Committee, | Having regard to the opinion of the Economic and Social Committee, |
| (1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe; | Unchanged |
| (2) Whereas to that end the Treaty provides for the establishment of a common market and an area without frontiers; whereas this is to include the abolition of obstacles to the free movement of services and the institution of a system ensuring that competition in the common market is not distorted; whereas to that end the Council may adopt directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons; | Unchanged |

| ORIGINAL PROPOSAL | AMENDED PROPOSAL |
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| (3) Whereas broadcasts transmitted across frontiers within the Community, in particular by satellite and cable, are one of the most important ways of pursuing these Community objectives, which are at the same time political, economic, social, cultural and legal; | Unchanged |
| (4) Whereas the Council has already adopted Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities [1], which makes provision for the promotion of the distribution and production of European television programmes and for advertising and sponsorship, the protection of minors and the right of reply; | Unchanged |
| (5) Whereas, however, the achievement of these objectives in respect of cross-border satellite broadcasting and the cable retransmission of programmes from other Member States is currently still obstructed by a series of differences between national rules of copyright and some uncertainties as to the law; whereas this means that holders of rights are exposed to the threat of seeing their works exploited without payment of remuneration or that the individual holders of exclusive rights in various Member States block the exploitation of their rights; whereas the legal uncertainty in particular constitutes a direct obstacle to the free circulation of programmes within the Community; | Unchanged |
| (6) Whereas a distinction is currently drawn for copyright purposes between broadcasting by direct satellite and broadcasting by communications satellite; whereas since individual reception is possible and nowadays affordable with both types of satellite, there is no longer any justification for this differing legal treatment; | (6) Whereas a distinction is currently drawn for copyright purposes between communication to the public by direct satellite and communication to the public by communications satellite; whereas since individual reception is possible and nowadays affordable with both types of satellite, there is no longer any justification for this differing legal treatment; |
| (7) Whereas the free broadcasting of programmes is further impeded by the current legal uncertainty as to whether broadcasting by a satellite whose signals can be received directly affects the rights in the country of transmission only, or in all countries of reception together; whereas since communications satellites and direct satellites are treated alike for copyright purposes, this legal uncertainty now affects almost all programmes broadcast in the Community by satellite; | Unchanged |
| (8) Whereas, furthermore, the legal certainty, which is a prerequisite for the free movement of broadcasts within the Community, is missing where programmes transmitted across frontiers are fed into and retransmitted through cable networks; | Unchanged |

[1] OJ No. L 298, 17. 10. 1989, p. 23.

| ORIGINAL PROPOSAL | AMENDED PROPOSAL |
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| (9) Whereas the development of the acquisition of rights on a contractual basis is already making a vigorous contribution to the creation of the desired European audiovisual area; whereas the continuation of such contractual agreements should be ensured, and their smooth application in practice should be promoted wherever possible; | Unchanged |
| (10) Whereas at present cable operators in particular cannot be sure to have actually acquired all the programme rights covered by such an agreement; | Unchanged |
| (11) Whereas, lastly, parties in different Member States are not all similarly bound by obligations which prevent them from improperly refusing to negotiate on the acquisition of the rights necessary for cable distribution or improperly allowing such negotiations to fail; | (11) Whereas, lastly, parties in different Member States are not all similarly bound by obligations which prevent them from, without valid reason, refusing to negotiate on the acquisition of the rights necessary for cable distribution or allowing such negotiations to fail; |
| (12) Whereas the legal framework for the creation of a single audiovisual area laid down in Directive 89/552/EEC must therefore be supplemented with reference to copyright; | Unchanged |
| (13) Whereas, therefore, an end should be put to the differences of treatment of the transmission of programmes by communications satellite which exists in the Member States, so that the vital distinction throughout the Community becomes whether protected works and other protected matter are communicated to the public; whereas this will also ensure equal treatment of the suppliers of cross-border broadcasts, regardless of whether they use a direct broadcasting satellite or communications satellite; | Unchanged |
| (14) Whereas the legal uncertainty regarding the rights to be acquired which impedes cross-border satellite broadcasting will be overcome by defining the notion of communication to the public by satellite at a Community level; whereas this definition will at the same time specify where the act of communication takes place; whereas such a definition is necessary to avoid the cumulative application of several national laws to one single act of broadcasting; whereas communications to the public occurs only when and in the Member State where a broadcasting organization takes a single decision on the content and the transmission of programme-carrying signals; whereas there is no communication if the chain of broadcasting equipment between the point where such single decision is taken and the transmission of the relevant signals from the satellite is interrupted; | (14) Whereas the legal uncertainty regarding the rights to be acquired which impedes cross-border satellite broadcasting will be overcome by defining the notion of communication to the public by satellite at a Community level; whereas this definition will at the same time specify where the act of communication takes place; whereas such a definition is necessary to avoid the cumulative application of several national laws to one single act of broadcasting; whereas communication to the public by satellite occurs only when and in the Member State where the programme carrying signals are introduced under the control and responsability of the broadcasting organization into an uninterrupted chain of communication leading to the satellite and down towards the earth; whereas normal technical procedures relating to programme-carrying signals may not be considered as interruptions to the chain of broadcasting; |

| ORIGINAL PROPOSAL | AMENDED PROPOSAL |
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| | (15) Whereas the acquisition on a contractual basis of exclusive broadcasting rights should comply with any legislation on copyright and rights related to copyright in the Member State in which 'communication to the public by satellite' occurs; |
| | (16) Whereas the principle of contractual freedom, on which this Directive is based, will make it possible to continue limiting the exploitation of these rights, especially as far as certain technical means of transmission or certain language versions are concerned; |
| (15) Whereas in arriving at the amount of the payment to be made for the rights acquired the parties should take account of the actual or potential audience throughout the area in which the broadcast can be received; | (17) Whereas in arriving at the amount of the payment to be made for the rights acquired the parties should take account of all aspects of the broadcast, such as the actual audience, the potential audience and the language version; |
| (16) Whereas a special transitional provision applicable to existing agreements should be provided for so that at the latest by 1998 these agreements will be adapted in the light of the new legal framework; | (18) Unchanged |
| (17) Whereas programmes broadcast from non-member countries to the territory of the Community will be outside the scope of this Directive; whereas they may be treated differently in the law of the Member States from programmes transmitted from a Member State if the protection provided for by this Directive is not granted in the non-member country or only granted to a lesser extent; | (19) Whereas communications to the public by satellite from non-member countries will under certain conditions be deemed to occur within a Member State of the Community; |
| (18) Whereas the arrangements made should also include provisions for the protection of holders of copyrights and neighbouring rights; whereas it is necessary to ensure that protection for specific categories is accorded in all Member States to the extent provided for by this Directive and that this protection is not subject to a statutory licence system; whereas only in this way is it possible to ensure that any difference in the level of protection within the common market will not create distortions of competition which might result in an unjustified disadvantage for programme suppliers and holders of rights in Member States with a high level of protection; | (20) Whereas it is necessary to ensure that protection for authors, performers, producers of phonograms and broadcasting organizations is accorded in all Member States and that this protection is not subject to a statutory licence system; whereas only in this way is it possible to ensure that any difference in the level of protection within the common market will not create distortions of competition; |
| | (21) Whereas the harmonization of legislations envisaged in this Directive entails the harmonization of the provisions ensuring a high level of protection of authors, performers, phonogram producers and broadcasting organizations; whereas this harmonization will no longer allow a broadcasting organization to take advantage of differences in levels of protection by relocating activities, to the detriment of audiovisual production; |

| ORIGINAL PROPOSAL | AMENDED PROPOSAL |
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| (19) Whereas the minimum protection provided for neighbouring rights is mainly taken from the substance of the Rome International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which at present must be considered to provide the most comprehensive standard of protection of neighbouring rights in the international field; whereas this standard has been accepted by the majority of Member States; whereas, however, in accordance with the aims of this Directive, it is not appropriate to allow for derogations corresponding to those provided for in the Rome Convention; | (22) Whereas the protection provided for rights related to copyright is aligned to that contained in Council Directive 92/100/EEC [1] for the purposes of communication to the public by satellite; whereas in particular this will ensure that performers and phonograms producers are guaranteed an appropriate remuneration for the communication to the public by satellite of their performances or phonograms; |
| (20) Whereas the cable retransmission of programmes from other Member States is an act subject to copyright and neighbouring rights; whereas the cable operator must therefore obtain the authorization from every holder of rights in each part of the programme retransmitted; whereas, under this Directive, the authorizations should be granted contractually unless an exception is provided for in the case of existing legal licence schemes; | (23) Whereas the cable retransmission of programmes from other Member States is an act subject to copyright and, as the case may be, rights related to copyright; whereas the cable operator must therefore obtain the authorization from every holder of rights in each part of the programme retransmitted; whereas, under this Directive, the authorizations should be granted contractually unless a temporary exception is provided for in the case of existing legal licence schemes; |
| (21) Whereas this Directive, through the obligation to have recourse to a collecting society, provides for the exclusive collective exercise of the authorization right to the extent that this is required by the special features of cable retransmission; whereas this Directive is thereby seeking to ensure that the smooth operation of contractual arrangements is not called into question by the intervention of outsiders holding rights in individual parts of the programme; whereas the authorization right as such remains intact and only the exercise of this right is regulated to some extent, so that the right to authorize a cable retransmission can still be assigned; whereas this Directive does not affect the exercise of moral rights; | (24) Unchanged |
| | (25) Whereas the exemption provided for in Article 10 does not limit the choice of holders of rights to transfer their rights to a collecting society and thereby have a direct share in the remuneration paid by the cable distributor for cable retransmission; |

[1] OJ No L 346, 27. 11. 1992, p. 61.

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| (22) Whereas contractual agreements regarding the authorization of cable retransmission shall be promoted by additional measures; whereas, to begin with, all the rights necessary for a cable retransmission should be acquired in the form of a general contract; whereas, furthermore, any party shall be entitled, at any moment, to call upon the assistance of impartial mediators whose task it is to assist negotiations and to put forward non-binding proposals; whereas, finally, it is necessary to ensure that the negotiations are not improperly blocked or that individual holders of rights are not improperly prevented from taking part in the negotiations; whereas none of these measures for the promotion of the acquisition of rights calls into question the contractual nature of the acquisition of cable rights; | (26) Whereas contractual agreements regarding the authorization of cable retransmission shall be promoted by additional measures; whereas a party seeking the conclusion of a general contract should for its part be obliged to submit collective proposals for an agreement; whereas, furthermore, any party shall be entitled, at any moment, to call upon the assistance of impartial mediators whose task it is to assist negotiations and to put forward non-binding proposals; whereas, finally, it is necessary to ensure that the negotiations are not blocked without valid justification or that individual holders are not prevented without valid justification from taking part in the negotiations; whereas none of these measures for the promotion of the acquisition of rights calls into question the contractual nature of the acquisition of cable rights; |
| (23) Whereas, however, Community rules are not needed to deal with all of those matters whose effects, perhaps with some commercially insignificant exceptions, are felt only inside the borders of a single Member State; | (27) Unchanged |
| (24) Whereas this Directive lays down the minimum rules needed to establish and guarantee free and uninterrupted cross-border broadcasting by satellite and simultaneous, unaltered cable retransmission of programmes broadcast from other Member States, on what is essentially a contractual basis; | (28) Unchanged |
| (25) Whereas this Directive does not prejudice further harmonization in the field of copyright and neighbouring rights and the collective administration of such rights; | (29) Whereas this Directive does not prejudice further harmonization in the field of copyright and rights related to copyright and the collective administration of such rights; |
| (26) Whereas it is therefore a matter for the Member States to supplement the general provisions needed to achieve the objectives of this Directive by taking legislative and administrative measures in their domestic law, provided these do not run counter to the objectives of this Directive and are compatible with Community law; whereas, in particular, Member States are accordingly free to lay down rules for the protection of rights related to copyright which go beyond those provided for in this Directive; | (30) Whereas it is therefore a matter for the Member States to supplement the general provisions needed to achieve the objectives of this Directive by taking legislative and administrative measurs in their domestic law, provided these do not run counter to the objectives of this Directive and are compatible with Community law; |
| (27) Whereas this Directive does not affect the applicability of the competition rules in Article 85 and 86 of the Treaty, | (31) Unchanged |

ORIGINAL PROPOSAL

AMENDED PROPOSAL

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

**DEFINITIONS**

*Article 1*

For the purpose of this Directive:

(a) 'satellite' means any satellite operating either on frequencies which under telecommunications law allow reception by the public (a broadcasting satellite) or on frequencies which are reserved for closed, point-to-point communication (a communications satellite). In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the case of broadcasting satellites;

(b) 'communication to the public by satellite' inside the Community means the act of taking a single decision on the content and the transmission by satellite of programme-carrying signals by the broadcaster. This act of communication to the public by satellite occurs in the Member State where the broadcaster takes the single decision on the content and the transmission by satellite of programme-carrying signals. If the programme-carrying signals are encrypted, communication to the public by satellite means the act of taking a single decision on the content and the transmission of the programme carrying signals under the condition that decoders are provided to the public by the broadcaster himself or with his approval. There is no communication to the public by satellite, however, if there is any interruption of the chain of broadcasting equipment between the point where a single decision is taken and the transmission of the relevant signals from the satellite;

CHAPTER I

**GENERAL PROVISIONS**

*Article 1*

For the purpose of this Directive:

1. 'satellite' means any satellite operating on frequency bands which, under telecommunications law, are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication. In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the first case;

2. 'communication to the public by satellite' means the act of introducing, under the control and responsibility of the broadcasting organization, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth.

   (a) The act of communication to the public by satellite occurs solely in the Member State where under the control and responsibility of the broadcasting organization the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

   (b) If the programme-carrying signals are encrypted, then there is communication to the public by satellite under the condition that means for the decrypting of the broadcast are provided to the public by the broadcasting organization or with his consent.

   (c) Where an act of communication to the public by satellite occurs in a non-Community State in which the protection provided under Chapter II of this Directive does not exist, and

   — if the progamme-carrying signals are transmitted to the satellite from an uplink station situated in a Member State, the act of communication to the public shall be deemed to have occured in that Member State and the rights provided for under Chapter II shall be exercisable against the person operating the uplink station, or

   — if there is no use of an up-link station situated in a Member State but a broadcasting organization established in a Member State has commissioned the act of communication to the public, that act shall be deemed to have occurred in that Member State and the rights provided for under Chapter II shall be exercisable against the broadcasting organization;

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| (c) 'cable retransmission' means the simultaneous, unaltered and unabridged retransmission of a broadcast from another Member State by a cable or microwave system for reception by the public; | 3. 'cable retransmission' means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public; |
| (d) 'broadcasting' means the initial transmission, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public; | Deleted |
| (e) 'collecting society' means an organization whose members have appointed it to manage copyright or related rights. | 4. 'collecting society' means any organization which manages or administers copyright or rights related to copyright; |
| | 5. for the purposes of this Directive the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors. |
| CHAPTER II | CHAPTER II |
| **BROADCASTING OF PROGRAMMES BY SATELLITE** | **BROADCASTING OF PROGRAMMES BY SATELLITE** |
| *Article 2* | *Article 2* |
| **Broadcasting right** | **Broadcasting right** |
| Member States shall provide a right for the auther to authorize or to prohibit the communication to the public by satellite of copyright works, subject to the provisions set out in this Chapter. | Member States shall provide an exclusive right for the author to authorize or prohibit the communication to the public by satellite of copyright works, subject to the provisions set out in this Chapter. |
| *Article 3* | *Article 3* |
| **Acquisition of broadcasting rights** | **Acquisition of broadcasting rights** |
| 1. Member States shall ensure that the right refered to in Article 2 may be acquired only by agreement. | 1. Member States shall ensure that the authorization referred to in Article 2 may be acquired only by agreement. The remuneration shall be stated in the agreement and shall take account of all aspects of the broadcast. |
| 2. Where, on 31 July 1991, it is provided by a Member State that an agreement between a collecting society and a broadcasting organization may be extended to include holders of rights not represented by the collecting society, this shall continue to be possible until 31 December 1997. | 2. A Member State may provide that a collective agreement between a collecting society and a broadcasting organization concerning a given category of works may be extended to rightholders of the same category who are not represented by the collecting society provided that:<br>— the communication to the public by satellite similcasts a terrestrial broadcast by the same broadcasting organization, and<br>— the unrepresented rightholder shall, at any time, have the possibility of excluding the effect of the extension of the collective agreement to his rights and of exercising his rights either individually or collectively. |
| 3. Paragraph 2 shall not apply to cinematographic works, including works created by a process analogous to cinematography. | Unchanged |

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| *Article 4*<br>**Performers** | *Article 4*<br>**Rights related to copyright** |
| Member States shall provide that performers shall enjoy the right:<br>— to authorize or prohibit the communication to the public by satellite of their performance except where the performance used in the broadcasting is itself already a broadcast performance or is made from a fixation,<br>— to authorize or prohibit the fixation of their unfixed performances,<br>— to authorize or prohibit the reproduction of a fixation of their performance. | 1. For the purposes of communication to public by satellite, the Member States shall provide that the rights of performers, phonogram producers and broadcasting organizations are protected in accordance with the provisions of Articles 6, 7, 8 and 10 of Directive 92/100/EEC.<br>2. For the purposes of paragraph 1, 'broadcasting by wireless means' in Directive 90/100/EEC shall be understood as including communication to the public by satellite as set out in Article 1, paragraph 2.<br>3. The provisions laid down in Article 3, paragraph 1, of this Directive shall aply to the acquisition of rights granted to performers and broadcasting organizations pursuant to Article 8 of Directive 92/100/EEC, without prejudice to the provisions of Article 10 of Directive 92/100/EEC. |
| *Article 5*<br>**Remuneration for the use of phonograms**<br>Member States shall provide that if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for a communication to the public by satellite, a single equitable remuneration shall be paid to the performers, or to the producers of the phonograms, or to both. | Deleted |
| *Article 6*<br>**Broadcasting organizations**<br>Member States shall provide that broadcasting organizations shall enjoy the right to authorize or prohibit:<br>— the simultaneous retransmission of their broadcasts by satellite,<br>— the fixation of their broadcasts,<br>— the reproduction of fixations of their broadcasts. | Deleted |
| *Article 7*<br>**Limitations on rights**<br>1. Member States may provide for limitations to the protection guaranteed by Articles 4, 5 and 6 only as regards:<br>— private use,<br>— use of short excerpts in connection with the reporting of current events,<br>— ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts,<br>— use solely for purposes of teaching or scientific research. | Deleted |

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| 2. Notwithstanding paragraph 1 of this Article, any Member State may provide for the same kinds of limitation with regard to the protection of performers, producers of phonograms and broadcasting organizations as it provides for in its legislation concerning the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. | |
| | *Article 5*<br>**Relation between copyright and related rights**<br>Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright. |
| *Article 8*<br>**Minimum protection** | *Article 6*<br>**Minimum protection** |
| 1. Member States may provide for more far-reachingprotection for authors, and holders of neighbouring rights under their jurisdiction than that required by Articles 2 to 6. | 1. Member States may provide for more far-reaching protection for holders of rights related to copyright than that required by Article 8 of Directive 92/100/EEC. |
| 2. In applying paragraph 1 Member States shall observe the definitions contained in points (a) and (b) of Article 1. | 2. In applying paragraph 1 Member States shall observe the definitions contained in paragraphs 1 and 2 of Article 1. |
| *Article 9*<br>**Transitional provision** | *Article 7*<br>**Transitional provision** |
| Agreements concerning the exploitation of protected works and services, in force on 1 January 1995, shall not be subject to Articles 2 to 8 until 31 December 1997 if they expire after that date. | Agreements concerning the exploitation of protected works and subject matter, in force on 1 January 1995, shall be subject to the provisions of Articles 2, 3 and 4, paragraph 2, from 1 January 1998 on if they expire after that date. |
| CHAPTER III<br>**CABLE RETRANSMISSION** | CHAPTER III<br>**CABLE RETRANSMISSION** |
| *Article 10*<br>**Cable retransmission right** | *Article 8*<br>**Cable retransmission right** |
| 1. Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and neighbouring rights are observed, and that such retransmission takes place on the basis of agreements between copyright owners, holders of neighbouring rights and cable operators. | 1. Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and rights related to copyright are observed, and that such retransmission takes place on the basis of agreements between copyright owners, holders of rights related to copyright and cable operators. |

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| 2. Notwithstanding paragraph 1, Member States may retain until 31 December 1997 such statutory licence systems that are in operation or expressly provided for by national law on 31 July 1991. | 2. Unchanged |
| *Article 11* | *Article 9* |
| **Exercise of the cable retransmission right** | **Exercise of the cable retransmission right** |
| 1. Member States shall ensure that the right of copyright owners and holders of neighbouring rights to authorize or prohibit the cable retransmission of a broadcast may be exercised only through a collecting society. | 1. Member States shall ensure that the right of copyright owners and holders of rights related to copyright to grant or refuse authorization to a cable operator for the cable retransmission of a broadcast may be exercised only through a collecting society representing the professional categories concerned. |
| 2. A holder of a right who has not transferred the management of his rights to a collecting society shall have a claim to compensation on the collecting society which manager rights of the same category. His claim shall be confined to the sum which he would have received if he had mandated the collecting society to exercise his rights. | 2. Where a rightholder has not transferred the management of his rights to a collecting society, the collecting society which manages rights of the same category shall be deemed to be mandated to manage his rights. Where more than one collecting society manages rights of that category, the rightholder shall be free to choose which of those collecting societies is deemed to manage his rights. A rightholder referred to in this paragraph shall enjoy the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is deemed to be mandated to manage his rights as the members of that collecting society and he shall be able to claim those rights, within a period of two years. |
| *Article 12* | *Article 10* |
| **Exercise of the cable retransmission right by broadcasting organizations** | **Exercise of the cable retransmission right by broadcasting organizations** |
| Article 11 shall not apply to the rights exercised by a broadcasting organization in respect of its own transmissions. | 1. Member States shall ensure that Article 9 does not apply to the rights exercised by a broadcasting organization in respect of its own transmissions, irrespective of whether the rights concerned are its own or have been transferred to it by other copyright owners and/or holders of rights related to copyright. |
| | 2. The derogation provided for in paragraph 1 shall be without prejudice to the option for copyright owners and holders of rights related to copyright to claim, through their collecting societies, direct participation in the remuneration paid by cable operators for cable retransmission. |

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| *Article 13*<br>**General contracts**<br>Member States shall ensure that a party seeking the conclusion of a general contract is for its part obliged to submit collective proposals for an ageement. | Deleted |
| *Article 14*<br>**Mediators** | *Article 11*<br>**Mediators** |
| 1. Where no agreement is concluded regarding authorization of the cable retransmission of a broadcast, Member States shall ensure that either party may call upon the assistance of one or several mediators referred to in paragraphs 2 and 3. | 1. Unchanged |
| 2. The mediators shall have the task of providing assistance with negotiation. They may also submit non-binding recommendations to the parties. | 2. Unchanged |
| | 3. If neither of the parties expresses and motivates its opposition to this recommandation within a period of three months from the notification of the recommendation to the parties it is presumed that all the parties accept the recommendation. |
| 3. Member States shall ensure that the mediators are so selected that their impartiality is beyond doubt. | 4. The mediators shall be so selected that their neutrality and impartiality are beyond doubt. |
| *Article 15*<br>**Prevention of the abuse of negotiating positions** | *Article 12*<br>**Prevention of the abuse of negotiating positions** |
| Member States shall ensure that the parties do not improperly prevent negotiation regarding authorization for cable retransmission. | Member States shall ensure, by means of civil or administrative law, as appropriate, that the parties do not without valid justification prevent negotiation regarding authorization for cable retransmission. |
| CHAPTER IV<br>**GENERAL PROVISIONS** | CHAPTER IV<br>**GENERAL PROVISIONS** |
| *Article 16*<br>**Competition rules** | Deleted |
| This Directive shall be without prejudice to the Community competition rules. | |
| *Article 17*<br>**Collective administration of rights** | *Article 13*<br>**Collective administration of rights** |
| The regulation of the activities of collecting societies shall be a matter for the Member States. | The provisions of this Directive shall be without prejudice to the regulation of the activities of collecting societies by the Member States. |

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| *Article 18* | *Article 14* |
| **Final provisions** | **Final provisions** |
| 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1995. They shall immediately inform the Commission thereof.<br><br>When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States. | 1. Unchanged |
| 2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive. | 2. Unchanged |
| *Article 19* | *Article 15* |
| This Directive is addressed to the Member States. | Unchanged |