



Position Statement of the Max Planck Institute for Innovation and Competition on the Proposed Modernisation of European Copyright Rules

PART H

Content Circulation in Europe (COM(2016) 594)

I. Objective

1. In the context of its programme for the modernisation of European copyright law of the 14th of September 2016, the European Commission presented a proposal for a Regulation on the exercise of copyright and related rights with regard to certain online transmissions of broadcasting organisations and the retransmission of television and radio programmes (COM(2016) 594 final). The proposal provides for **further development of the satellite broadcasting and cable retransmission Directive** (Directive 93/83/EEC, hereinafter SatCab Directive). Like the SatCab Directive, this proposal also contains two regulatory areas, which must be distinguished from one another.
2. Firstly, the **acquisition of rights** (so-called rights clearance) is to be facilitated for cross-border services offered by radio broadcasters themselves. Today it is common for broadcasting organisations to offer their programmes simultaneously over the Internet (**simulcasts**). In addition, media services enabling the time-shifted retrievability of broadcasts over the Internet and also providing background information (**catch-up services**), have become established. The SatCab Directive does not apply to either type of offer. This gap is intended to be closed by the proposed Regulation. The proposal takes up the country-of-transmission principle of the SatCab Directive and transforms it into a **country-**

of-origin principle for ancillary online services (see Article 1(a) of the proposal). Relevant provisions are therefore Articles 1(a) and 2 of the draft Regulation.

3. Secondly, the aim is **to facilitate the cross-border retransmission** of the initial transmission by third parties. Operators of retransmission services do not create their own broadcasts, but bundle the channels of television and radio stations to make them available to a wider audience. In this regard, the proposed Regulation is intended to overcome technical limitations resulting from the SatCab Directive. Specifically, the system of mandatory collective management **is to be extended to certain cross-border online retrasmisions**. The relevant provisions can be found in Articles 1(b), 3 and 4 of the proposal for a Regulation.
4. The Max Planck Institute recognises the need for regulation and advocates the Commission's initiative to simplify the cross-border availability of broadcasts over the Internet. The SatCab Directive considerably facilitated the cross-border availability of media content in the 1990s. However, it is far more than twenty years old, and its regulatory content is limited to the transmission technologies of that time. The Internet has since revolutionised cross-border access to information and media content. The proposed Regulation is intended to **close the regulatory gaps** that have arisen through technical development and to **facilitate the legal cross-border distribution of broadcasts over the Internet**.
5. However, the Commission's proposal suffers from a number of **ambiguities**. They concern the **scope of the proposed Regulation** and its **impact on international jurisdiction**; it is also unclear to what extent **territorial limitations on a contractual basis** are permissible with regard to antitrust law and the fundamental freedoms. Further areas appear to be incoherent and, in the view of the Institute, require correction. This mainly concerns the **choice of the legislative instrument**. The main points of the proposal are briefly described below and are placed in the context of European copyright law. Subsequently, the criticisms are discussed.

II. Content of the Regulation

1. Ancillary online services

6. The first part of the draft Regulation refers to the making available of broadcasting content across borders over the Internet by the broadcasters themselves. The territoriality of copyright and the application of the *lex loci protectionis* doctrine as a conflict of law rule, as also described in Article 8 of the Rome II Regulation, results in the parallel applicability of every national copyright regime within the scope of which copyright-protected content is made available. Accordingly, there is no unitary copyright, but a set of national copyrights. This means that broadcasters must observe all those national copyright regimes, and, above all, acquire copyrights for all areas, in which their broadcast can be received.
7. In order to facilitate cross-border satellite broadcasts, the SatCab Directive introduced the country-of-transmission principle in Article 1(2)(b). On the basis of this, **only the input of the signals to the satellite is relevant** from a copyright perspective. Only where the input is made does the “communication to the public” take place. This ensured that the rights had to be cleared only for one Member State. However, this facilitation for broadcasters is, in technical terms, restricted to transmission via satellite. The SatCab-RL does not apply to the online transmission of content. A corresponding facilitation for this is therefore provided for in Article 2 in conjunction with Article 1(a) of the proposed Regulation.
8. The proposed Regulation – like the SatCab Directive and the proposal for a Portability Regulation (COM (2015) 627 final) before it – uses the means of a **territorial fiction**. This is not a provision of private international law, as the term employed, *country-of-origin principle*, implies. Rather, **the copyright-relevant act is located in only one country**. In less technical terms, online broadcasting (communication to the public, making available and reproduction) takes place only in the Member State in which the broadcaster has its main establishment.

2. Retransmission of third-party content over the Internet

9. The second part of the proposed Regulation relates to the retransmission of content by third parties. Here the proposal intends to overcome the technical limitations of the SatCab-RL. The rights to grant or refuse authorisation for retransmissions carried out in certain closed online networks such as **IPTV** and not transmitted by wire or microwave systems are also to be subject to mandatory collective management. However, as is the case with Articles 9(1) and 1(3) of the SatCab Directive, the scope of the draft Regulation is limited to the **retransmission of programmes “from another Member State”**. Thus, purely national retransmissions are subject to national legislation.

III. The proposal in the context of European copyright law

10. The Commission's proposal for a Regulation cannot be considered in isolation. It is one piece in the puzzle of the overall policy for developing a digital internal market. An overview of the proposed rights package and its references to the existing *acquis communautaire* can be found in Part A of the Position Statement of the Max Planck Institute on the Proposed Modernisation of European Copyright Rules.
11. Specifically, the following relationships are to be emphasised:
 - The proposal is an extension of the **SatCab Directive**, which is technically limited to transmission via satellite by broadcasters and to the retransmission via cable networks and microwave systems.
 - There also is a close link with the Commission's proposal for a **portability regulation**. The latter focuses on cross-border portability for the use of online content services purchased by consumers in their Member State of residence. Such online content services are intended to be accessible to consumers even if they are temporarily abroad. However, the scope of the proposed Regulation is limited to services provided within a **subscriber rela-**

tionship. Its scope is thus narrowly circumscribed and does not include services provided by broadcasters outside a subscriber relationship. Here, too, the Commission employs a territorial fiction.

- Of importance for the proposed Regulation is also the legal basis for **collective rights management**. With regard to the retransmission of broadcast content, this is made evident by the fact that a system of mandatory collective management is to be established. This **requires a functioning collective rights management system**. But also the rights for the primary transmission and ancillary online services are partly licensed by collecting societies. For this purpose, the Directive on Collective Rights Management (Directive 2014/26/EU) establishes minimum standards. Its aim is, among other things, to encourage collecting societies to grant pan-European licences for online music rights.
- Unlike the other Commission proposals on the modernisation of copyright, the proposal for a Regulation does not directly define the subject matter of copyright. While the proposal for a Directive on copyright in the internal digital market (**COM (2016) 593 final**) is intended to augment the harmonisation of national copyright laws – for instance through the implementation of mandatory exceptions and limitations – the country-of-origin principle aims to preclude the parallel application of several national copyright regimes and to concentrate the assessment of cross-border use of copyright within a single legal system. At the same time, a widespread harmonisation of substantive law can mitigate the disruptions caused by such concentration on a single legal regime. This is reflected in the second part of the proposed Regulation, which provides for a system of mandatory collective management for the purpose of exercising retransmission rights. It is closely **related to the provisions** of the draft Directive **implementing exceptions and limitations**, and therefore has an influence on the design of substantive copyright law.

- Finally, the proposed Regulation is to be distinguished from the Directive on **Audiovisual Media Services** (Directive 2010/13/EU). The latter is to be amended by the draft Directive COM (2016) 287 final. It focuses on the establishment of the country-of-origin principle, supplemented by the implementation of uniform minimum standards regarding **content offered by media service providers**. Substantive copyright is not a subject of the Directive.
- The same applies to the proposed **Geo-Blocking Regulation** (COM (2016) 289 final). It aims to improve **access to goods and services in the internal market**. The proposal prohibits inter alia the restriction of access to websites and other online interfaces on the basis of the nationality or place of residence of the consumer. According to Recital 6 of the proposal, audiovisual services are, for the time being, excluded from the scope of the Geo-Blocking Regulation.

IV. The legislative instrument

12. The context in which the Commission proposal is put forward illustrates the complexity of existing European copyright law, with essential elements of the *acquis communautaire* being left unmentioned, notably the InfoSoc Directive. However, the Commission's proposals are a far cry from the urgently needed **systematisation of copyright**. This is mainly due to its choice of legislative instrument.
13. The Commission proposes the adoption of a **Regulation**, which is clearly **linked to the SatCab Directive**, as it incorporates the two main mechanisms of the SatCab Directive. Firstly, it is based on the country-of-transmission principle; secondly, the system of mandatory collective management is introduced for the purpose of exercising retransmission rights.

14. Against this background, it is hard to understand why the Commission chose to propose an act of law which is substantially and formally detached. If a regulatory framework already exists for a given subject matter, this framework should first be adapted to fit new requirements. The reasons given by the Commission in Recital 17 for adopting a Regulation, in contrast, are not at all convincing. While regulations do offer the advantage of a direct and uniform application of the law – implementation problems do not apply – this argument is of a general nature and would, if at all, have to apply to European copyright as a whole. Approaches to realise a **unitary European copyright system** are conceivable; they are also addressed by the Max-Planck-Institute in its general remarks on the Commission's modernisation proposals (Part A, para. 29 et seq.). As long as the European copyright model is, however, fragmentary, the best possible integration must be ensured within the existing legal instruments. This objective is not achieved by the Commission's approach.
15. In support of the proposal of a Regulation, the Commission relies on the argument of **avoiding fragmentation**. The opposite is the case. Fragmentation is almost provoked if a regulatory matter which constitutes a cohesive whole is not connected in a single legal act. The same applies if the regulation addresses only cross-border constellations. If purely national issues are thus subject to national, but transnational (directly applicable) issues subject to European law, the result is the epitome of fragmentation.
16. Furthermore, in Articles 3(3) and (4) the Member States are urged to indicate a collecting society which is deemed to be mandated to manage the rights of the rights holders who do not exercise their right to choose, and to specify a specific period within which outsiders are entitled to claim their rights against those collecting societies. If this is not already regulated in the national law on collective rights management, Article 3(3) and (4) thus creates a **need for transposition** for the Member States, which hardly accords with the nature of a Regulation.

17. **Systematic considerations** also do not justify the Commission's approach (see Sections VI and IX of Part A of the Position Statement). The proposed Regulation is based on subject matter of the SatCab Directive. This Directive was already transposed into national law in the 1990s. If a Regulation is now put on top of this already transposed law – and its statutory basis in the Directive – systematic problems are inevitable.
18. There are three alternative regulatory methods promising a systematic approach:
 - **Option 1:** Repeal of the SatCab Directive and the adoption of a joint Regulation.
 - **Option 2:** Transfer of the proposed Regulation into the SatCab Directive or, at most, another Directive that complements the latter.
 - **Option 3:** The separation of retransmission on the one hand and original transmission by the broadcasting companies on the other. The retransmission could be regulated uniformly by a Directive (linking the corresponding provisions of the SatCab Directive and the proposed Regulation), while the original transmission via satellite and a parallel transmission over the Internet by means of media services (“the ancillary online services”) would be addressed in one common Regulation. This Regulation should, at the same time, include the content of the Portability Regulation.
19. Option 1 has the advantage of containing the related regulatory subject matter in a single legal act. The instrument of a **Regulation ensures uniformity**. A transposition into national law is not necessary. With regard to the rules on satellite broadcasting, this would be quite feasible considering the crucial role of the country-of-transmission principle. However, the transfer of further areas of the SatCab Directive appears to be more problematic. Thus, in Article 2, broadcasting rights are implemented as independent exploitation rights. Exploitation rights themselves have never been implemented by directly applicable European law. They are deeply rooted in the national structures of copyright law and may

be harmonised, but need adaptation to their own system. As long as the foundation for a unitary copyright title is not created at European level, this is only possible through harmonisation by means of Directives.

20. With regard to **retransmission** – both according to the SatCab Directive and in the sense of the proposed Regulation – the transfer of the normative content into a Regulation appears to be impractical. Retransmission within the meaning of Article 1 No. 3 SatCab Directive – i.e. via cable and microwave systems – **refers exclusively to cross-border retransmission**. The same applies to retransmission within the meaning of Article 1(b) of the draft Regulation. Only programmes “from another Member State” are covered here. There is, however, a corresponding **need for regulation of retransmission** via cable and microwave or in the sense of Article 1(b) **of national programmes** on the **national level**. As a rule, however, the Member States do not distinguish between national and cross-border retransmission when transposing the Directive (see, for example, Sec. 20b Copyright Act for German law). The creation of a uniform legal framework for cross-border and national retransmission, therefore, is only possible by addressing the European part in a Directive.
21. **Option 2** is based on these considerations. Option 2 has the **advantage that the proven SatCab Directive remains unchanged** while options 1 and 3 would result in a repeal or at least a substantial modification of the SatCab Directive. Option 2, on the other hand, would allow for retransmission, as currently provided for in the draft Regulation, to be incorporated into the national regulatory model through the transposition of a Directive. At the national level, therefore, both the retransmission via cable and microwave systems and the online retransmission of national and foreign programmes could be regulated exhaustively and embedded in the national framework. The territorial fiction contained in Article 1(2)(b) of the SatCab Directive, which underlies the regulatory mechanism currently governing communication to the public by satellite, could also be laid down in a Directive addressing communication to the public and the making

available of the original broadcast through an ancillary online service. It would even be possible to bring the European legal framework together into **a single Directive for all relevant acts**. Certainly, the disadvantage of a Directive is that national implementation is not always successful, especially since national and European law overlap. However, such disadvantages are of a general and structural nature. To remove them from the system of European copyright law would presuppose an overarching approach and a true paradigm shift, while ultimately nothing can be achieved with selective interventions.

22. Option 3 calls for the greatest legislative effort, but in the Institute's view offers the greatest possible systematic advantages. Option 3 follows the principle **everything that can be regulated in a uniform and exclusively European way** is placed within a **Regulation**. On the other hand, **everything that needs to be regulated at national level**, but at the same time shows a European dimension, is addressed through the means of the **Directive**. In this model, the SatCab Directive remains largely intact. Insofar as it contains provisions on the broadcasting right and retransmission, the instrument of a Directive indeed appears to be coherent. However, all those areas which introduce a **territorial fiction** and thus constitute "quasi conflict of law" rules **should be addressed in a single Regulation**. In concrete terms, this means that Articles 1(a) and 2 of the proposed Regulation and Article 1(2) (b) of the SatCab Directive and the content of the proposal for the portability of online content services (COM(2015) 627 final), with Article 4 as the most relevant provision, are transferred into a single Regulation. This Regulation also contains the exceptions to the territoriality of the law in a bundled form.

V. Specific issues

1. Regarding the ancillary online services (Articles 2 and 1(a))

23. In Article 2, the scope of the proposed Regulation covers exclusively the distribution of content through **simulcasts and catch-up TV** by broadcasting organisations.

a) Limitation to additional online services

24. It is to be welcomed that the proposal is limited to ancillary online services, which depend on a original broadcast by the broadcasting organisations. This **excludes original webcastings and podcasts**, which are independent of a primary transmission. Without this restriction, distortions of competition would arise because platforms that are not also broadcasting organisations would not benefit from simplified rights clearing for similar offers. In addition, the link to the existence of a primary transmission allows a clear application of this Regulation, whereas decoupling would lead to its dilution.

b) The “limited period of time”

25. Subsequent or ancillary online services, such as the catch-up services of broadcasters, should only fall within the scope of the Regulation if their availability is temporary (Article 1(a) of the proposed Regulation). Some criticise this criterion as too vague and instead demand a legally defined time limit, so as to clarify the scope of the Regulation.
26. The Max Planck Institute does not share these concerns for two reasons. Firstly, these services offered by the broadcasting organisations are still developing and a usual time frame has yet to be established. Introducing a strict legal rule could disrupt this process. Secondly, the question of whether and for what time period media content should be available online is, in fact, **up to the parties**. Rightholders are not obliged to allow broadcasters to make their content available online

at all. Consequently, they are also free to limit the time period for which broadcasters are permitted to provide online access the content. Thus there is no need for a legal restriction on this freedom of contract.

27. If the time criterion is abandoned and the agreement on the period of availability of individual content is left to the contracting parties, the proposed Regulation can be adapted as follows:

- In Article 1(a): “*... simultaneously or not simultaneously to ~~with or for a defined period of time after~~ their broadcast ...*”.
- In Recital 8: “*They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, ~~within a defined time period~~ after the broadcast, to television and radio programmes which have been previously broadcast by the broadcasting organisation (so-called catch-up services).*”

2. Regarding retransmission (Articles 3 and 1(b))

28. The limitation of mandatory collective management to the rights for retransmission over closed networks like IPTV appears to be reasonable. An extension of the facilitated rights clearance to open systems such as OTT services is not desirable, as they compete with the business models of paid video-on-demand services, such as Netflix, Amazon Lovefilm and Maxdome. This could hamper the development of the latter. However, an extension of the facilitation of the rights clearance should not be ruled out in the future if the actual developments can be estimated more clearly.

VI. Questions of international jurisdiction

29. A key question which the Commission has not taken into account concerns the effects of the country-of-origin principle on issues of international jurisdiction. The place of general international jurisdiction (*forum generale*) of Article 4(1) and Article 63 Brussels Regulation (2012) always leads to the jurisdiction of the

courts of the domicile of the defendant. By way of derogation from this, the place of jurisdiction in matters of tort or delict – according to Article 7(2) of the Brussels Regulation – provides the plaintiff with an additional forum at the place where the harmful event occurred or may occur. This **additional forum at the place where the event occurred could now be dispensed with by concentrating the relevant copyright act in the country where the broadcasting organisation has its principal establishment.**

30. The same has recently been decided by the Vienna Court of Appeal (judgement of 27 April 2016 in Case No. 5 R 182/15V) regarding the effects of the country-of-transmission principle of the SatCab Directive. According to the Vienna Court, the alternative ground of jurisdiction based on the unlawful act regarding an infringement by means of satellite broadcasting is only set in the Member State which is regarded as the country of transmission within the meaning of the Directive. According to the Court, this results from the **effect of the country-of-transmission principle**, which deems the entire copyright-relevant act as taking place in the country of transmission. The same threatens to apply to the distribution of relevant content through ancillary online services. Here, too, it is to be assumed that the copyright-relevant act takes place solely in the country of principle establishment of the broadcasting organisation.
31. However, the exclusion of the additional forum in matters of tort or delict constitutes an unnecessary **obstacle to the enforcement of rights at the expense of the rightholders**. This must be changed. Article 7(2) of the Brussels Regulation pursues not only the idea that the Court at the place where the harmful event occurred is the most appropriate because of the proximity to the subject matter of the dispute and better possibilities of taking evidence (close connection); the provision also realises general thoughts originating in the principle of effect. Where an alleged infringement produces harmful effects a court should be able to examine the infringement. This is increasingly the case in commercial law, especially as companies choose the market place themselves; there the defence

is reasonable and to be expected. Where the proposed Regulation **shifts the market place, this is merely a legal fiction**. The more important actual effects, namely, the reception of the programme at the place concerned, do not change. By contrast, the concentration of jurisdiction at the place where the broadcasting organisation has its principle establishment would reduce its risk of being sued at the place where its actual business is focused. There is no reasonable justification for this.

32. This consequence likewise cannot be justified on the grounds of facilitated rights clearance. The facilitation of rights clearance – and thus, ultimately, **facilitation of cross-border activities – does not require an artificial transfer of jurisdiction**. For the rightholders, on the other hand, the curtailment of the forum at the market place entails considerable additional expenses and is associated with a high cost risk, particularly where the party concerned is compelled to bring an action abroad. It is true that the court at the place where the harmful event occurred is only competent to decide on the compensation for the damage caused in the state of the court seised, and it can also order an injunction only in that regard. In many cases, however, an exemplary court decision may suffice to resolve the legal dispute entirely.
33. Admittedly, the Commission proposal does not ignore these contexts entirely, proposing as it does to limit the effects of Article 2, in that it applies only “*for the purposes of exercising copyright*”. However, this restriction does **not** appear to be **sufficiently clear** with regard to the provisions of the Brussels Regulation. Recital 19 also indicates that the Commission does not intend to exert an influence on questions of jurisdiction. However, this should be clarified in the proposal. To this end, Article 2 should be amended by the addition of a further paragraph with the following provision:

The country of origin principle referred to in paragraph 1 shall not apply to questions regarding international jurisdiction.

Munich, March 4, 2017

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Annex: Synopsis German – English

| | PART H Content Circulation in Europe (COM(2016) 594) <u>Stellungnahme</u> | PART H Content Circulation in Europe (COM(2016) 594) <u>Position Paper</u> |
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| 1 | <p>I. Zielsetzung</p> <p>Im Zusammenhang mit ihrem Programm zur Modernisierung des europäischen Urheberrechts vom 14. September 2016 legte die Europäischen Kommission einen Vorschlag für eine Verordnung für die Wahrnehmung von Urheberrechten und verwandten Schutzrechten in Bezug auf bestimmte Online-Übertragungen von Rundfunkveranstaltern und die Weiterverbreitung von Fernseh- und Hörfunkprogrammen (COM(2016) 594 final) vor. Der Vorschlag stellt eine Weiterentwicklung der Satellitenrundfunk- und Kabelweiterleitungsrichtlinie (Richtlinie 93/83/EWG, im Folgenden SatCab-RL) dar. Wie die SatCab-RL enthält auch dieser Vorschlag zwei Regelungsbereiche, welche voneinander zu unterscheiden sind.</p> | <p>I. Objective</p> <p>In the context of its programme for the modernisation of European copyright law of the 14th of September 2016, the European Commission presented a proposal for a Regulation on the exercise of copyright and related rights with regard to certain online transmissions of broadcasting organisations and the retransmission of television and radio programmes (COM(2016) 594 final). The proposal provides for further development of the satellite broadcasting and cable retransmission Directive (Directive 93/83/EEC, hereinafter SatCab Directive). Like the SatCab Directive, this proposal also contains two regulatory areas, which must be distinguished from one another.</p> |
| 2 | <p>Erstens soll der Erwerb von Rechten (sog. Rechteclearing) für eigene, grenzüberschreitende Angebote von Rundfunkveranstaltern erleichtert werden. Denn heute ist es üblich, dass Rundfunkveranstalter ihre Sendungen parallel über Internet verbreiten (Simulcasts). Daneben haben sich Mediathekendienste etabliert, welche die zeitversetzte Abrufbarkeit von Sendungen über Internet ermöglichen und darüber hinaus Hintergrundinformationen anbieten (Catchups). Für solche Angebote gilt die SatCab-RL nicht. Diese Lücke soll durch die vorgeschlagene Verordnung geschlossen werden. Dabei nimmt der Vorschlag die Idee des Sendelandprinzips der SatCab-RL auf und</p> | <p>Firstly, the acquisition of rights (so-called rights clearance) is to be facilitated for cross-border services offered by radio broadcasters themselves. Today it is common for broadcasting organisations to offer their programmes simultaneously over the Internet (simulcasts). In addition, media services enabling the time-shifted retrievability of broadcasts over the Internet and also providing background information (catch-up services), have become established. The SatCab Directive does not apply to either type of offer. This gap is intended to be closed by the proposed Regulation. The proposal takes up the country-of-transmission principle of the SatCab Directive</p> |

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| | <p>transformiert dieses zu einem <i>Ursprungsland-prinzip für sendebegleitende Online-Dienste</i> („ergänzende Online-Dienste“ nach Art. 1(a) des Vorschlags). Relevante Vorschriften sind insoweit Art. 1(a) und Art. 2 des Verordnungsvorschlags.</p> | <p>and transforms it into a <i>country-of-origin principle for ancillary online services</i> (see Article 1(a) of the proposal). Relevant provisions are therefore Articles 1(a) and 2 of the draft Regulation.</p> |
| 3 | <p>Zweitens geht es um die Erleichterung der grenzüberschreitenden Weiterleitung der Erstübertragung durch Dritte. Weiterverbreitungssunternehmen schaffen keine eigenen Sendeinhalte, sondern bündeln die Programme der Fernseh- und Radiosender, um sie einem weiteren Publikum zugänglich zu machen. Diesbezüglich sollen durch die vorgeschlagene Verordnung technische Einschränkungen, welche sich aus der SatCab-RL ergeben, überwunden werden. Konkret soll die Verwertungsgesellschaftspflicht für die Rechtewahrnehmung auf bestimmte grenzüberschreitende Onlineweiterleitungen erstreckt werden. Die maßgeblichen Vorschriften finden sich in Art. 1(b) und Art. 3, 4 des Verordnungsvorschlags.</p> | <p>Secondly, the aim is to facilitate the cross-border retransmission of the initial transmission by third parties. Operators of retransmission services do not create their own broadcasts, but bundle the channels of television and radio stations to make them available to a wider audience. In this regard, the proposed Regulation is intended to overcome technical limitations resulting from the SatCab Directive. Specifically, the system of mandatory collective management is to be extended to certain cross-border online retransmissions. The relevant provisions can be found in Articles 1(b), 3 and 4 of the proposal for a Regulation.</p> |
| 4 | <p>Das Max-Planck-Institut erkennt den Regelungsbedarf und befürwortet den Vorstoß der Kommission, die grenzüberschreitende Zugänglichmachung von Rundfunkprogrammen über das Internet zu vereinfachen. Die SatCab-RL hat die grenzüberschreitende Verfügbarkeit von Medieninhalten in den 90er Jahren erheblich erleichtert. Sie ist nun aber deutlich über zwanzig Jahre alt, und ihr Regelungsgehalt beschränkt sich auf die damaligen Übertragungstechnologien. Zwischenzeitlich hat das Internet den grenzüberschreitenden Zugang zu Information und Medieninhalten revolutioniert. Mit der vorgeschlagenen Verordnung soll die durch die technische Entwicklung eingetretene Regulierungslücke geschlossen und die legale grenzüberschreitende Verbreitung von Sendungen über das Internet erleichtert werden.</p> | <p>The Max Planck Institute recognises the need for regulation and advocates the Commission's initiative to simplify the cross-border availability of broadcasts over the Internet. The SatCab Directive considerably facilitated the cross-border availability of media content in the 1990s. However, it is far more than twenty years old, and its regulatory content is limited to the transmission technologies of that time. The Internet has since revolutionised cross-border access to information and media content. The proposed Regulation is intended to close the regulatory gaps that have arisen through technical development and to facilitate the legal cross-border distribution of broadcasts over the Internet.</p> |
| 5 | <p>Allerdings leidet der Vorschlag der Kommission an einer Reihe von Unklarheiten. Sie betreffen die Reichweite der vorgeschlagenen Verordnung und ihre Auswirkungen auf das internationale Zivilprozessrecht; außerdem stellt sich die</p> | <p>However, the Commission's proposal suffers from a number of ambiguities. They concern the scope of the proposed Regulation and its impact on international jurisdiction; it is also unclear to what extent territorial limitations on a contractual basis are permissible with regard to</p> |

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| | <p>Frage, inwieweit vertragliche Territorialitätsbegrenzungen im Hinblick auf das Kartellrecht und die Grundfreiheiten zulässig sind. Weitere Bereiche erscheinen inkohärent und bedürfen aus Sicht des Instituts der Korrektur. Dies betrifft vor allem die Wahl des legislativen Mittels. Nachfolgend werden die wesentlichen Punkte des Vorschlags kurz beschrieben und im Kontext des europäischen Urheberrechts verortet. Anschließend wird auf die Kritikpunkte eingegangen.</p> | <p>antitrust law and the fundamental freedoms. Further areas appear to be incoherent and, in the view of the Institute, require correction. This mainly concerns the choice of the legislative instrument. The main points of the proposal are briefly described below and are placed in the context of European copyright law. Subsequently, the criticisms are discussed.</p> |
| 6 | <p>II. Regelungsinhalt</p> <p>1. Ergänzende Online-Dienste</p> <p>Der erste Teil des Verordnungsvorschlags bezieht sich auf die grenzüberschreitende Zugänglichmachung von Sendeinhalten über das Internet durch die Sendeanstalten selbst. Die Territorialität des Urheberrechts und die kollisionsrechtliche Geltung der <i>lex loci protectionis</i>, wie sie auch in Art. 8 Rom II VO niedergelegt ist, führen dazu, dass sämtliche Urheberrechtsordnungen parallel anwendbar sind, in deren Geltungsbereich ein urheberrechtlich geschützter Inhalt zugänglich gemacht wird. Entsprechend besteht kein einheitliches Urheberrecht, sondern ein Bündel nationaler Urheberrechte. Für die Rundfunkanstalten bedeutet dies, dass sie all jene nationalen Urheberrechtsordnungen beachten müssen – und vor allem die Urheberrechte für all jene Gebiete erwerben müssen –, in denen ihre Sendung zu empfangen ist.</p> | <p>II. Content of the Regulation</p> <p>1. Ancillary online services</p> <p>The first part of the draft Regulation refers to the making available of broadcasting content across borders over the Internet by the broadcasters themselves. The territoriality of copyright and the application of the <i>lex loci protectionis</i> doctrine as a conflict of law rule, as also described in Article 8 of the Rome II Regulation, results in the parallel applicability of every national copyright regime within the scope of which copyright-protected content is made available. Accordingly, there is no unitary copyright, but a set of national copyrights. This means that broadcasters must observe all those national copyright regimes, and, above all, acquire copyrights for all areas, in which their broadcast can be received.</p> |
| 7 | <p>Zur Erleichterung grenzüberschreitender SatellitenSendungen führte die SatCab-RL in Art. 1 Nr. 2(b) das Sendelandprinzip ein. Urheberrechtlich relevant ist gestützt darauf nur die Eingabe der Signale zum Satelliten. Nur dort wo die Eingabe erfolgt, findet die „öffentliche Wiedergabe“ statt. Dadurch wurde sichergestellt, dass die Rechte nur für einen Mitgliedstaat geklärt werden müssen. Diese Erleichterung für die Rundfunkveranstalter ist in technischer Hinsicht jedoch auf den Übertragungsweg über Satellit beschränkt. Die SatCab-RL gilt nicht für die Onlineübertragung der Inhalte. Eine entsprechende Erleichterung für diese</p> | <p>In order to facilitate cross-border satellite broadcasts, the SatCab Directive introduced the country-of-transmission principle in Article 1(2)(b). On the basis of this, only the input of the signals to the satellite is relevant from a copyright perspective. Only where the input is made does the “communication to the public” take place. This ensured that the rights had to be cleared only for one Member State. However, this facilitation for broadcasters is, in technical terms, restricted to transmission via satellite. The SatCab-RL does not apply to the online transmission of content. A corresponding facilitation for this is therefore</p> |

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| | wird daher in Art. 2 in Verbindung mit Art. 1(a) des Verordnungsvorschlages vorgesehen. | provided for in Article 2 in conjunction with Article 1(a) of the proposed Regulation. |
| 8 | Der Verordnungsvorschlag nutzt – wie bereits zuvor die SatCab-RL und der Vorschlag für eine Portabilitätsverordnung (COM(2015) 627 final) – das Mittel einer territorialen Fiktion . Dabei handelt es sich nicht – wie der verwendete Begriff <i>Ursprungslandprinzip</i> suggeriert – um eine Vorschrift des Internationalen Privatrechts. Vielmehr wird die urheberrechtlich relevante Handlung in nur einem Land verortet . Untechnisch ausgedrückt findet die Onlineverbreitung (öffentliche Wiedergabe, Zugänglichmachung und Vervielfältigung) also nur in jenem Mitgliedstaat statt, in welchem das Rundfunkunternehmen seine Hauptniederlassung hat. | The proposed Regulation – like the SatCab Directive and the proposal for a Portability Regulation (COM (2015) 627 final) before it – uses the means of a territorial fiction . This is not a provision of private international law, as the term employed, <i>country-of-origin principle</i> , implies. Rather, the copyright-relevant act is located in only one country . In less technical terms, online broadcasting (communication to the public, making available and reproduction) takes place only in the Member State in which the broadcaster has its main establishment. |
| 9 | <p>2. Weiterverbreitung fremder Inhalte über das Internet</p> <p>Der zweite Teil des Verordnungsvorschlags bezieht sich auf die Weiterverbreitung von Sendeinhalten durch Dritte. Hier sollen die technischen Beschränkungen der SatCab-RL überwunden werden. Damit sollen auch die Rechte an Weiterverbreitungen, welche in bestimmten, geschlossenen Onlinenetzen wie IPTV erfolgen und nicht drahtgebunden oder über Mikrowellensysteme übermittelt werden, der Verwertungsgesellschaftspflicht unterfallen. Der Anwendungsbereich des Verordnungsentwurfs beschränkt sich jedoch – genau wie bei Art. 9 (1), 1 (3) der SatCab-RL – auf die Weiterverbreitung von Programmen „aus einem anderen Mitgliedstaat“. Rein nationale Weiterverbreitungen unterliegen damit nationaler Gesetzgebung.</p> | <p>2. Retransmission of third-party content over the Internet</p> <p>The second part of the proposed Regulation relates to the retransmission of content by third parties. Here the proposal intends to overcome the technical limitations of the SatCab-RL. The rights to grant or refuse authorisation for retransmissions carried out in certain closed online networks such as IPTV and not transmitted by wire or microwave systems are also to be subject to mandatory collective management. However, as is the case with Articles 9(1) and 1(3) of the SatCab Directive, the scope of the draft Regulation is limited to the retransmission of programmes “from another Member State”. Thus, purely national retransmissions are subject to national legislation.</p> |
| 10 | <p>III. Der Vorschlag im Kontext des europäischen Urheberrechts</p> <p>Der Verordnungsvorschlag der Kommission kann nicht isoliert betrachtet werden. Er bildet einen Mosaikstein im Gesamtkonzept zur Entwicklung eines digitalen Binnenmarktes. Eine Übersicht über das vorgeschlagene Urheberrechtspacket und seine Bezüge zum bestehenden <i>acquis communautaire</i> findet sich in Part A der Stellungnahme</p> | <p>III. The proposal in the context of European copyright law</p> <p>The Commission's proposal for a Regulation cannot be considered in isolation. It is one piece in the puzzle of the overall policy for developing a digital internal market. An overview of the proposed rights package and its references to the existing <i>acquis communautaire</i> can be found in Part A of the Position Statement of the Max</p> |

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| | des Max-Planck-Instituts zur Modernisierung des europäischen Urheberrechts. | Planck Institute on the Proposed Modernisation of European Copyright Rules. |
| 11 | <p>Konkret sind folgende Zusammenhänge hervorzuheben:</p> <ul style="list-style-type: none"> Der Vorschlag stellt eine Erweiterung der Sat-Cab-RL dar, welche technisch auf die Übertragung via Satellit durch die Rundfunkveranstalter und auf die Weiterleitung über Kabelnetze und Mikrowellensysteme beschränkt bleibt. Ein enger Zusammenhang besteht außerdem mit dem Vorschlag der Kommission für eine Portabilitätsverordnung. Jene hat die grenzüberschreitende Portabilität für die Nutzung von Online-Inhaltsdiensten im Blick, die Verbraucher in ihrem Wohnsitzmitgliedstaat erworben haben. Auf derartige Online-Inhaltsdienste sollen Verbraucher auch dann zugreifen können, wenn sie sich vorübergehend im Ausland aufhalten. Der Anwendungsbereich jenes Verordnungsvorschlags beschränkt sich jedoch auf Dienstleistungen, welche innerhalb eines Abonnementverhältnisses erbracht werden. Sein Anwendungsbereich ist damit eng umgrenzt und bezieht Leistungen, welche Rundfunkanstalten außerhalb eines Abonnementverhältnisses erbringen, nicht ein. Auch hier arbeitet die Kommission mit den Mitteln einer territorialen Fiktion. Von Bedeutung für den Verordnungsvorschlag sind außerdem die Rechtsgrundlagen für die kollektive Rechtewahrnehmung. Hinsichtlich der Weiterleitung der Sendeinhalte wird dies dadurch deutlich, dass dafür eine Verwertungsgesellschaftspflicht etabliert werden soll. Dies setzt ein funktionierendes Verwertungsgesellschaftssystem voraus. Aber auch die Rechte für die Primärsendung und ergänzende Online-Dienste werden teilweise durch Verwertungsgesellschaften wahrgenommen. Hierfür schafft die Richtlinie über die kollektive Rechtewahrnehmung (RL 2014/26/EU) Mindeststandards. Ihr Ziel besteht unter anderem darin, Verwertungsgesellschaften dazu zu animieren, paneuropäische Lizenzen für Online-Musikrechte zu vergeben. | <p>Specifically, the following relationships are to be emphasised:</p> <ul style="list-style-type: none"> The proposal is an extension of the SatCab Directive, which is technically limited to transmission via satellite by broadcasters and to the retransmission via cable networks and microwave systems. There also is a close link with the Commission's proposal for a portability regulation. The latter focuses on cross-border portability for the use of online content services purchased by consumers in their Member State of residence. Such online content services are intended to be accessible to consumers even if they are temporarily abroad. However, the scope of the proposed Regulation is limited to services provided within a subscriber relationship. Its scope is thus narrowly circumscribed and does not include services provided by broadcasters outside a subscriber relationship. Here, too, the Commission employs a territorial fiction. Of importance for the proposed Regulation is also the legal basis for collective rights management. With regard to the retransmission of broadcast content, this is made evident by the fact that a system of mandatory collective management is to be established. This requires a functioning collective rights management system. But also the rights for the primary transmission and ancillary online services are partly licensed by collecting societies. For this purpose, the Directive on Collective Rights Management (Directive 2014/26/EU) establishes minimum standards. Its aim is, among other things, to encourage collecting societies to grant pan-European licences for online music rights. Unlike the other Commission proposals on the modernisation of copyright, the proposal for a Regulation does not directly define the subject matter of copyright. While the proposal for a Directive on copyright in the in- |

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| <ul style="list-style-type: none"> Anders als die übrigen Vorschläge der Kommission zur Modernisierung des Urheberrechts gestaltet der Verordnungsvorschlag nicht unmittelbar den Inhalt des Urheberrechts. Während der Richtlinievorschlag für das Urheberrecht im digitalen Binnenmarkt (COM(2016) 593 final) die Harmonisierung der nationalen Urheberrechtsordnungen vertiefen soll – etwa durch die Schaffung zwingender Schranken –, zielt das Ursprungslandprinzip darauf ab, die Geltung mehrerer, parallel anwendbarer Urheberrechtsregime zu vermeiden und die Beurteilung einer grenzüberschreitenden Nutzung des Urheberrechts einer einzigen Rechtsordnung zuzuführen. Gleichzeitig vermag eine weitreichende Harmonisierung des materiellen Rechts die Erschütterungen, welche durch die Konzentration auf eine Rechtsordnung entstehen, abzumildern. Dies spiegelt sich im zweiten Teil des Verordnungsvorschlags – der Verwertungsgesellschaftspflicht für die Weiterleitungsrechte –, welche in enger Beziehung zu den Schrankenregelungen im Richtlinievorschlag steht und insoweit auch einen Einfluss auf die Ausgestaltung des Urheberrechts hat. Abzugrenzen ist der Verordnungsvorschlag schließlich von der Richtlinie über audiovisuelle Mediendienste (Richtlinie 2010/13/EU). Diese soll durch den Richtlinievorschlag COM(2016) 287 final geändert werden. Ihr Fokus liegt auf der Etablierung des Herkunftslandprinzips, ergänzt um die Schaffung einheitlicher Mindeststandards für die Inhalte der Mediendienstanbieter. Das Urheberrecht selbst ist nicht Gegenstand jener Regelung. Gleiches gilt für die geplante Geo-Blocking-Verordnung (COM(2016) 289 final). Durch sie soll der Zugang der Verbraucher zu Waren und Dienstleistungen im Binnenmarkt verbessert werden. Der Vorschlag verbietet unter anderem die Zugangsbeschränkung zu Webseiten und anderen Online-Schnittstellen auf Grund der Staatsangehörigkeit oder des Wohnsitzes des Verbrauchers. Audiovisuelle Dienstleistungen sind nach Erwägungsgrund 6 | <p>ternal digital market (COM (2016) 593 final) is intended to augment the harmonisation of national copyright laws – for instance through the implementation of mandatory exceptions and limitations – the country-of-origin principle aims to preclude the parallel application of several national copyright regimes and to concentrate the assessment of cross-border use of copyright within a single legal system. At the same time, a widespread harmonisation of substantive law can mitigate the disruptions caused by such concentration on a single legal regime. This is reflected in the second part of the proposed Regulation, which provides for a system of mandatory collective management for the purpose of exercising retransmission rights. It is closely related to the provisions of the draft Directive implementing exceptions and limitations, and therefore has an influence on the design of substantive copyright law.</p> <ul style="list-style-type: none"> Finally, the proposed Regulation is to be distinguished from the Directive on Audiovisual Media Services (Directive 2010/13/EU). The latter is to be amended by the draft Directive COM (2016) 287 final. It focuses on the establishment of the country-of-origin principle, supplemented by the implementation of uniform minimum standards regarding content offered by media service providers. Substantive copyright is not a subject of the Directive. The same applies to the proposed Geo-Blocking Regulation (COM (2016) 289 final). It aims to improve access to goods and services in the internal market. The proposal prohibits inter alia the restriction of access to websites and other online interfaces on the basis of the nationality or place of residence of the consumer. According to Recital 6 of the proposal, audiovisual services are, for the time being, excluded from the scope of the Geo-Blocking Regulation. |
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| | des Vorschlags vorerst vom Regelungsbereich der Geo-Blocking-Verordnung ausgenommen. | |
| 12 | IV. Das legislative Instrument Der Kontext, in welchem sich der Kommissionsvorschlag bewegt, verdeutlicht die Komplexität des geltenden europäischen Urheberrechts – wobei wesentliche Teile des urheberrechtlichen <i>acquis communautaire</i> hier unerwähnt bleiben müssen, allen voran die InfoSoc-RL. Von der dringend erforderlichen Systematisierung des Urheberrechts sind die Vorschläge der Kommission jedoch weit entfernt. Zu tun hat das vor allem mit dem legislativen Instrument. | IV. The legislative instrument The context in which the Commission proposal is put forward illustrates the complexity of existing European copyright law, with essential elements of the <i>acquis communautaire</i> being left unmentioned, notably the InfoSoc Directive. However, the Commission's proposals are a far cry from the urgently needed systematisation of copyright . This is mainly due to its choice of legislative instrument. |
| 13 | Die Kommission schlägt den Erlass einer Verordnung vor, deren Verbindung zur SatCab-RL offensichtlich ist, nimmt sie die beiden wesentlichen Mechanismen der SatCab-RL doch auf. Erstens orientiert sie sich am Sendelandprinzip, zweitens wird die die Verwertungsgesellschaftspflicht hinsichtlich der Rechte für die Weiterverbreitung von Sendungen eingeführt. | The Commission proposes the adoption of a Regulation , which is clearly linked to the SatCab Directive , as it incorporates the two main mechanisms of the SatCab Directive. Firstly, it is based on the country-of-transmission principle; secondly, the system of mandatory collective management is introduced for the purpose of exercising retransmission rights. |
| 14 | Vor diesem Hintergrund ist der Vorschlag eines inhaltlich und formal losgelösten Rechtsaktes kaum nachvollziehbar. Besteht für eine Regelungsmaterie bereits ein Gefäß, sollte in erster Linie versucht werden, dieses an veränderte Bedürfnisse anzupassen. Demgegenüber vermag die Begründung, welche die Kommission in Erwägungsgrund 17 für den Erlass einer Verordnung anführt, in keiner Weise zu überzeugen. Richtig ist zwar, dass der Erlass von Verordnungen den Vorteil der unmittelbaren und einheitlichen Rechtsanwendung mit sich bringt – Umsetzungsprobleme entfallen. Dieses Argument ist freilich genereller Natur, womit es – wenn schon – auf das europäische Urheberrecht insgesamt Anwendung finden müsste. Ansätze zur Verwirklichung eines europäischen Einheitsurheberrechts sind durchaus denkbar; sie werden auch vom Max-Planck-Institut in den allgemeinen Anmerkungen zu den Modernisierungsvorschlägen der Kommission aufgegriffen (Part A Rn. 29 ff). Solange das europäische Urheberrechtsmodell jedoch Stückwerk ist, muss | Against this background, it is hard to understand why the Commission chose to propose an act of law which is substantially and formally detached. If a regulatory framework already exists for a given subject matter, this framework should first be adapted to fit new requirements. The reasons given by the Commission in Recital 17 for adopting a Regulation, in contrast, are not at all convincing. While regulations do offer the advantage of a direct and uniform application of the law – implementation problems do not apply – this argument is of a general nature and would, if at all, have to apply to European copyright as a whole. Approaches to realise a unitary European copyright system are conceivable; they are also addressed by the Max-Planck-Institute in its general remarks on the Commission's modernisation proposals (Part A, para. 29 et seq.). As long as the European copyright model is, however, fragmentary, the best possible integration |

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| | auf die bestmögliche Integration innerhalb der bestehenden Rechtsakte geachtet werden. Dieses Ziel wird mit dem Konzept der Kommission verfehlt. | must be ensured within the existing legal instruments. This objective is not achieved by the Commission's approach. |
| 15 | Zur Begründung dafür, dass eine Verordnung vorgeschlagen wird, beruft sich die Kommission auf das Argument der Vermeidung von Fragmentierung . Das Gegenteil ist der Fall. Fragmentierungen werden geradezu provoziert, wenn eine Regelungsmaterie, welche einen inneren Zusammenhang bildet, nicht in einem einheitlichen Rechtsakt verbunden wird. Gleiches gilt, wenn nur grenzüberschreitende Konstellationen adressiert werden. Unterliegen rein nationale Sachverhalte damit nationalem, transnationale hingegen (direkt anwendbarem) europäischem Recht, entsteht der Inbegriff einer Fragmentierung. | In support of the proposal of a Regulation, the Commission relies on the argument of avoiding fragmentation . The opposite is the case. Fragmentation is almost provoked if a regulatory matter which constitutes a cohesive whole is not connected in a single legal act. The same applies if the regulation addresses only cross-border constellations. If purely national issues are thus subject to national, but transnational (directly applicable) issues subject to European law, the result is the epitome of fragmentation. |
| 16 | Außerdem werden die Mitgliedstaaten in Art. 3 (3) und (4) dazu aufgerufen, eine Verwertungsgesellschaft zu benennen, die bei nicht Ausübung des Wahlrechts der Rechteinhaber als bevollmächtigt gilt, und zugleich einen konkreten Zeitraum festzulegen, innerhalb dessen Außenseiter ihre Rechte gegenüber den Verwertungsgesellschaften geltend machen können. Soweit dies nicht bereits im nationalen Verwertungsgesellschaftsrecht geregelt ist, schaffen Art. 3 (3) und (4) damit einen Umsetzungsbedarf für die Mitgliedstaaten , was kaum dem Wesen einer Verordnung entspricht. | Furthermore, in Articles 3(3) and (4) the Member States are urged to indicate a collecting society which is deemed to be mandated to manage the rights of the rights holders who do not exercise their right to choose, and to specify a specific period within which outsiders are entitled to claim their rights against those collecting societies. If this is not already regulated in the national law on collective rights management, Article 3(3) and (4) thus creates a need for transposition for the Member States, which hardly accords with the nature of a Regulation. |
| 17 | Auch systematische Erwägungen rechtfertigen den Ansatz der Kommission nicht (siehe hierzu Abschnitt VI und IX der Stellungnahme Part A). Der Verordnungsvorschlag baut auf den Inhalten der SatCab-RL auf. Jene Richtlinie wurde bereits in den Neunzigerjahren in nationales Recht umgesetzt. Wenn auf dieses umgesetzte Recht – und seiner Verankerung in der Richtlinie – nun eine Verordnung aufgesetzt wird, sind systematische Probleme unvermeidlich. | Systematic considerations also do not justify the Commission's approach (see Sections VI and IX of Part A of the Position Statement). The proposed Regulation is based on subject matter of the SatCab Directive. This Directive was already transposed into national law in the 1990s. If a Regulation is now put on top of this already transposed law – and its statutory basis in the Directive – systematic problems are inevitable. |
| 18 | Drei alternative Regelungsmodelle versprechen eine systematische Lösung: | There are three alternative regulatory methods promising a systematic approach: |

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| | <ul style="list-style-type: none"> Option 1: Aufhebung der SatCab-RL und der Erlass einer gemeinsamen Verordnung. Option 2: Überführung des vorgeschlagenen Verordnungsinhalts in die SatCab-RL – oder allenfalls eine weitere Richtlinie, die jene ergänzt. Option 3: Trennung von Weiterleitung einerseits und originärer Übertragung durch die Sendeunternehmen andererseits. Die Weiterleitung könnte einheitlich durch eine Richtlinie geregelt werden (die entsprechenden Vorschriften der SatCab-RL und des Verordnungsvorschlags verbindend), während die originäre Sendung über Satellit und deren parallele Übertragung über Internet durch Mediathekendienste („die ergänzenden Online-Dienste“) in einer gemeinsamen Verordnung geregelt würden. Diese Verordnung sollte dann freilich zugleich den Inhalt der Portabilitätsverordnung aufnehmen. | <ul style="list-style-type: none"> Option 1: Repeal of the SatCab Directive and the adoption of a joint Regulation. Option 2: Transfer of the proposed Regulation into the SatCab Directive or, at most, another Directive that complements the latter. Option 3: The separation of retransmission on the one hand and original transmission by the broadcasting companies on the other. The retransmission could be regulated uniformly by a Directive (linking the corresponding provisions of the SatCab Directive and the proposed Regulation), while the original transmission via satellite and a parallel transmission over the Internet by means of media services (“the ancillary online services”) would be addressed in one common Regulation. This Regulation should, at the same time, include the content of the Portability Regulation. |
| 19 | <p>Option 1 hat den Vorteil, dass die zusammengehörende Regelungsmaterie in einem einzigen Rechtsakt zu finden ist. Mit dem Instrument der Verordnung ist die einheitliche Geltung gesichert. Eine Umsetzung in nationales Recht ist nicht erforderlich. Hinsichtlich der Vorschriften zur Satellitensendung wäre dies im Hinblick auf die zentrale Bedeutung des Sendelandprinzips durchaus möglich. Problematischer erscheint jedoch die Überführung weiterer Bereiche der SatCab-RL. So führt diese in Art. 2 das Senderecht als eigenständiges Verwertungsrecht ein. Verwertungsrechte selbst wurden bislang nie durch unmittelbar geltendes europäisches Recht eingeführt. Sie sind tief in den nationalen Strukturen des Urheberrechts verwurzelt und mögen zwar harmonisiert werden, bedürfen jedoch der Anpassung an das eigene System. Dies ist bislang – solange das Fundament für einen einheitlichen Urheberrechtstitel auf europäischer Ebene nicht geschaffen ist – nur im Wege der Richtlinienharmonisierung möglich.</p> | <p>Option 1 has the advantage of containing the related regulatory subject matter in a single legal act. The instrument of a Regulation ensures uniformity. A transposition into national law is not necessary. With regard to the rules on satellite broadcasting, this would be quite feasible considering the crucial role of the country-of-transmission principle. However, the transfer of further areas of the SatCab Directive appears to be more problematic. Thus, in Article 2, broadcasting rights are implemented as independent exploitation rights. Exploitation rights themselves have never been implemented by directly applicable European law. They are deeply rooted in the national structures of copyright law and may be harmonised, but need adaptation to their own system. As long as the foundation for a unitary copyright title is not created at European level, this is only possible through harmonisation by means of Directives.</p> |
| 20 | <p>Auch hinsichtlich der Weiterverbreitung – sowohl nach der SatCab-RL als auch im Sinne des</p> | <p>With regard to retransmission – both according to the SatCab Directive and in the sense of the</p> |

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| | <p>Verordnungsvorschlags – erscheint eine Überführung des Regelungsgehalts in eine Verordnung wenig praktikabel. Die Weiterleitung im Sinne von Art. 1 Nr. 3 SatCab-RL – also über Kabel- und Mikrowellensysteme – bezieht sich ausschließlich auf die grenzüberschreitende Weiterleitung. Gleiches gilt für die „Weiterverbreitung“ im Sinne von Art. 1(b) des Verordnungsvorschlags. Auch hier werden nur Programme „aus einem anderen Mitgliedstaat“ erfasst. Entsprechender Regelungsbedarf für die Weiterleitung oder Weiterverbreitung nationaler Programme besteht jedoch auch auf nationaler Ebene. In der Regel unterscheiden die Mitgliedstaaten bei der Umsetzung der Richtlinie aber nicht zwischen nationaler und grenzüberschreitender Weiterleitung (siehe beispielsweise § 20b UrhG für das deutsche Recht). Die Schaffung einer einheitlichen Rechtslage für grenzüberschreitende und nationale Weiterleitungen bzw. Weiterverbreitungen erlaubt daher nur die Verortung des europäischen Teils in einer Richtlinie.</p> | <p>proposed Regulation – the transfer of the normative content into a Regulation appears to be impractical. Retransmission within the meaning of Article 1 No. 3 SatCab Directive – i.e. via cable and microwave systems – refers exclusively to cross-border retransmission. The same applies to retransmission within the meaning of Article 1(b) of the draft Regulation. Only programmes “from another Member State” are covered here. There is, however, a corresponding need for regulation of retransmission via cable and microwave or in the sense of Article 1(b) of national programmes on the national level. As a rule, however, the Member States do not distinguish between national and cross-border retransmission when transposing the Directive (see, for example, Sec. 20b Copyright Act for German law). The creation of a uniform legal framework for cross-border and national retransmission, therefore, is only possible by addressing the European part in a Directive.</p> |
| 21 | <p>Auf diesen Überlegungen baut Option 2 auf. Option 2 hat den Vorteil, dass die an sich bewährte SatCab-RL erhalten bleibt, während die Optionen 1 und 3 auf eine Aufhebung oder zumindest eine erhebliche Veränderung der SatCab-RL hinauslaufen würden. Bei der Option 2 hingegen würde die Weiterverbreitung, wie sie derzeit im Verordnungsvorschlag vorgesehen ist, über den Weg der Umsetzung einer Richtlinie in das nationale Regelungsmodell zur Weiterleitung integriert. Auf nationaler Ebene könnte also umfassend und integriert sowohl die Weiterleitung über Kabel- und Mikrowellensysteme als auch die Online-Weiterverbreitung nationaler wie ausländischer Programme geregelt werden. Die dem Regelungsmechanismus zugrundeliegende territoriale Fiktion, die heute für die öffentliche Wiedergabe über Satellit in Art. 1 Nr. 2(b) der SatCab-RL enthalten ist, lässt sich auch für die öffentliche Wiedergabe und Zugänglichmachung der Primärsendung in einem ergänzenden Online-Dienst in einer Richtlinie festlegen. Dabei wäre es sogar möglich,</p> | <p>Option 2 is based on these considerations. Option 2 has the advantage that the proven SatCab Directive remains unchanged while options 1 and 3 would result in a repeal or at least a substantial modification of the SatCab Directive. Option 2, on the other hand, would allow for retransmission, as currently provided for in the draft Regulation, to be incorporated into the national regulatory model through the transposition of a Directive. At the national level, therefore, both the retransmission via cable and microwave systems and the online retransmission of national and foreign programmes could be regulated exhaustively and embedded in the national framework. The territorial fiction contained in Article 1(2)(b) of the SatCab Directive, which underlies the regulatory mechanism currently governing communication to the public by satellite, could also be laid down in a Directive addressing communication to the public and the making available of the original broadcast through an ancillary online service. It would even be possible to bring the European legal</p> |

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| | <p>den europäischen Rechtsrahmen für alle relevanten Handlungen in einer einzigsten Richtlinie zusammenzuziehen. Gewiss liegt der Nachteil der Richtlinienregelung darin, dass die nationale Umsetzung nicht immer hinreichend gelingt, zumal sich nationales und europäisches Recht überlagern. Diese Nachteile sind aber allgemeiner und struktureller Natur. Sie aus dem System des europäischen Urheberrechts zu beseitigen, setzte einen übergeordneten Ansatz und einen eigentlichen Paradigmenwechsel voraus, während mit punktuellen Eingriffen letztlich nichts gewonnen wird.</p> | <p>framework together into a single Directive for all relevant acts. Certainly, the disadvantage of a Directive is that national implementation is not always successful, especially since national and European law overlap. However, such disadvantages are of a general and structural nature. To remove them from the system of European copyright law would presuppose an overarching approach and a true paradigm shift, while ultimately nothing can be achieved with selective interventions.</p> |
| 22 | <p>Die Option 3 verlangt den größten gesetzgeberischen Aufwand, bietet aus Sicht des Instituts aber auch die größtmöglichen systematischen Vorteile. Option 3 folgt dem Prinzip, dass alles, was einheitlich und ausschließlich europäisch geregelt werden kann, einer Verordnung zugeführt wird. Demgegenüber wird alles, was innerstaatlich geregelt werden muss, aber zugleich eine europäische Dimension aufweist, über das Mittel der Richtlinie adressiert. Die SatCab Richtlinie bleibt in diesem Modell weitgehend erhalten. Soweit sie Regelungen zum Senderecht an sich und zur Weiterleitung enthält, erscheint das Mittel der Richtlinie denn auch kohärent. Hingegen sollten all jene Bereiche, die eine territoriale Fiktion einführen und damit „quasi-kollisionsrechtliche“ Vorschriften darstellen, in einer Verordnung zusammengefasst geregelt werden. Konkret bedeutet dies, dass Art. 1(a) und 2 des Verordnungsvorschlags und Art. 1 Nr. 2(b) der SatCab-RL sowie der Inhalt des Verordnungsvorschlags zur Portabilität von Online-Inhaltsdiensten (COM(2015) 627 final), mit Art. 4 als maßgebender Vorschrift, in eine einheitliche Verordnung überführt werden. In dieser Verordnung finden sich dann auch die Ausnahmen der Territorialität des Rechts in gebündelter Form.</p> | <p>Option 3 calls for the greatest legislative effort, but in the Institute's view offers the greatest possible systematic advantages. Option 3 follows the principle everything that can be regulated in a uniform and exclusively European way is placed within a Regulation. On the other hand, everything that needs to be regulated at national level, but at the same time shows a European dimension, is addressed through the means of the Directive. In this model, the SatCab Directive remains largely intact. Insofar as it contains provisions on the broadcasting right and retransmission, the instrument of a Directive indeed appears to be coherent. However, all those areas which introduce a territorial fiction and thus constitute “quasi conflict of law” rules should be addressed in a single Regulation. In concrete terms, this means that Articles 1(a) and 2 of the proposed Regulation and Article 1(2) (b) of the SatCab Directive and the content of the proposal for the portability of online content services (COM(2015) 627 final), with Article 4 as the most relevant provision, are transferred into a single Regulation. This Regulation also contains the exceptions to the territoriality of the law in a bundled form.</p> |
| 23 | <p>V. Einzelfragen</p> <p>1. Zu den ergänzenden Onlinediensten (Art. 2 und 1(a))</p> | <p>V. Specific issues</p> <p>1. Regarding the ancillary online services (Articles 2 and 1(a))</p> |

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| | Der Anwendungsbereich des Verordnungsvorschlags umfasst in Art. 2 ausschließlich die Verbreitung der Inhalte über Simulcasts und Catchups durch die Rundfunkanstalten. | In Article 2, the scope of the proposed Regulation covers exclusively the distribution of content through simulcasts and catch-up TV by broadcasting organisations. |
| 24 | a) Begrenzung auf ergänzende Online-Dienste Es ist zu begrüßen, dass der Vorschlag sich auf ergänzende Online-Dienste beschränkt, die von einer Primärsendung durch die Rundfunkveranstalter abhängen. Ausgeschlossen sind damit originäre Webcasting-Angebote und Podcasts , die unabhängig von einer Primärübertragung erfolgen. Ohne diese Beschränkung entstünden Wettbewerbsverzerrungen, weil Plattformen, die nicht zugleich Rundfunkveranstalter sind, für vergleichbare Angebote nicht in den Genuss vereinfachter Rechteklärung kämen. Zudem erlaubt die Kopplung an das Vorliegen einer Primärsendung einen klaren Anwendungsbereich dieser Regelung, während eine Entkoppelung zu dessen Verwässerung führen würde. | a) Limitation to additional online services It is to be welcomed that the proposal is limited to ancillary online services, which depend on a original broadcast by the broadcasting organisations. This excludes original webcastings and podcasts , which are independent of a primary transmission. Without this restriction, distortions of competition would arise because platforms that are not also broadcasting organisations would not benefit from simplified rights clearing for similar offers. In addition, the link to the existence of a primary transmission allows a clear application of this Regulation, whereas decoupling would lead to its dilution. |
| 25 | b) Das Merkmal „begrenzter Zeitraum“ Nachgelagerte Online-Dienste wie die Catchups in den Mediatheken der Sender sollen nur dann in den Anwendungsbereich der Verordnung fallen, wenn ihre Verfügbarkeit zeitlich begrenzt ist (Art. 1(a) des Verordnungsvorschlags). Dieses Kriterium wird teilweise als zu vage kritisiert und stattdessen eine gesetzlich definierte zeitliche Höchstgrenze gefordert, um den Anwendungsbereich der Verordnung klarer zu umgrenzen. | b) The “limited period of time” Subsequent or ancillary online services, such as the catch-up services of broadcasters, should only fall within the scope of the Regulation if their availability is temporary (Article 1(a) of the proposed Regulation). Some criticise this criterion as too vague and instead demand a legally defined time limit, so as to clarify the scope of the Regulation. |
| 26 | Diese Bedenken teilt das Max-Planck-Institut aus zwei Gründen nicht. Erstens befinden sich die entsprechenden Angebote der Sender noch in einer Aufbauphase und ein üblicher zeitlicher Rahmen muss sich erst noch etablieren. Die Einführung einer gesetzlichen Regelung könnte diesen Prozess behindern. Zweitens unterliegt die Frage, ob und für welchen Zeitraum Medieninhalte online verfügbar sein sollen, richtigerweise der Disposition der Parteien . Rechteinhaber sind nicht verpflichtet, den Sendern die Onlinewiedergabe überhaupt zu erlauben. Folglich steht es ihnen auch frei, eine erlaubte Wiedergabe zeitlich zu befristen. Für eine | The Max Planck Institute does not share these concerns for two reasons. Firstly, these services offered by the broadcasting organisations are still developing and a usual time frame has yet to be established. Introducing a strict legal rule could disrupt this process. Secondly, the question of whether and for what time period media content should be available online is, in fact, up to the parties . Rightholders are not obliged to allow broadcasters to make their content available online at all. Consequently, they are also free to limit the time period for which broadcasters are permitted to provide online access the content. |

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| | gesetzliche Beschränkung dieser Vertragsfreiheit besteht deshalb kein Bedarf. | Thus there is no need for a legal restriction on this freedom of contract. |
| 27 | <p>Wird das zeitliche Kriterium aufgegeben und die Vereinbarung über die Dauer der Verfügbarkeit einzelner Inhalte den Vertragsparteien überlassen, kann der Verordnungsvorschlag wie folgt angepasst werden:</p> <ul style="list-style-type: none"> • In Art. 1(a): „.... <u>zeitgleich oder nicht zeitgleich mit oder für einen begrenzten Zeitraum nach ihrer Übertragung</u> ...“. • In Erwägungsgrund 8: „Dazu gehören Dienste, die Fernseh- und Hörfunkprogramme zeitgleich mit ihrer Übertragung linear zugänglich machen, sowie Dienste, die vom Rundfunkveranstalter bereits übertragene Fernseh- und Hörfunkprogramme <u>für einen begrenzten Zeitraum nach ihrer Übertragung</u> zugänglich machen (sogenannte Catch-up-Dienste).“ | <p>If the time criterion is abandoned and the agreement on the period of availability of individual content is left to the contracting parties, the proposed Regulation can be adapted as follows:</p> <ul style="list-style-type: none"> • In Article 1(a): “... simultaneously or not simultaneously to with or for a defined period of time after their broadcast ...”. • In Recital 8: “They include services giving access to television and radio programmes in a linear manner simultaneously to the broadcast and services giving access, <u>within a defined time period</u> after the broadcast, to television and radio programmes which have been previously broadcast by the broadcasting organisation (so-called catch-up services).” |
| 28 | <p>2. Zur Weiterverbreitung (Art. 3 und 1(b))</p> <p>Die Begrenzung der Verwertungsgesellschaftspflicht auf die Rechte zur Weiterverbreitung in geschlossenen Systemen wie IPTV erscheint sinnvoll. Eine Erstreckung des erleichterten Rechteerwerbs auf offene Systeme wie OTT-Services ist nicht wünschenswert, denn sie stehen in Konkurrenz zu den Geschäftsmodellen der bezahlungspflichtigen Video-on-Demand Angebote wie Netflix, Amazon Lovefilm und Maxdome. Dies könnte deren Entwicklung erschweren. Eine Erweiterung des vereinfachten Rechteclearings ist für die Zukunft jedoch nicht ausgeschlossen, wenn die tatsächlichen Entwicklungen besser abschätzbar sind.</p> | <p>2. Regarding retransmission (Articles 3 and 1(b))</p> <p>The limitation of mandatory collective management to the rights for retransmission over closed networks like IPTV appears to be reasonable. An extension of the facilitated rights clearance to open systems such as OTT services is not desirable, as they compete with the business models of paid video-on-demand services, such as Netflix, Amazon Lovefilm and Maxdome. This could hamper the development of the latter. However, an extension of the facilitation of the rights clearance should not be ruled out in the future if the actual developments can be estimated more clearly.</p> |
| 29 | <p>VI. Das Internationale Zivilprozessrecht</p> <p>Eine zentrale Frage, welche die Kommission nicht berücksichtigt hat, betrifft die Auswirkungen des Ursprungslandprinzips auf das Internationale Zivilprozessrecht. Der allgemeine Internationale</p> | <p>VI. Questions of international jurisdiction</p> <p>A key question which the Commission has not taken into account concerns the effects of the country-of-origin principle on issues of interna-</p> |

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| | <p>Gerichtsstand des Art. 4 (1) und Art. 63 EuGVVO (2012) führt stets zur Zuständigkeit der Gerichte des Sitzlandes des Beklagten. Abweichend hiervon verschafft der Gerichtsstand der unerlaubten Handlung des Art. 7 Nr. 2 EuGVVO dem Kläger einen weiteren Gerichtsstand an dem Ort, an dem das schädigende Ereignis eingetreten ist oder einzutreten droht. Dieser zusätzliche Gerichtsstand am Verletzungsort könnte nun durch die Konzentration der urheberrechtlich relevanten Handlung im Sitzland des Rundfunkveranstalters entfallen.</p> | <p>tional jurisdiction. The place of general international jurisdiction (<i>forum generale</i>) of Article 4(1) and Article 63 Brussels Regulation (2012) always leads to the jurisdiction of the courts of the domicile of the defendant. By way of derogation from this, the place of jurisdiction in matters of tort or delict – according to Article 7(2) of the Brussels Regulation – provides the plaintiff with an additional forum at the place where the harmful event occurred or may occur. This additional forum at the place where the event occurred could now be dispensed with by concentrating the relevant copyright act in the country where the broadcasting organisation has its principal establishment.</p> |
| 30 | <p>Entsprechendes wurde kürzlich vom OLG Wien (Urteil vom 27.04.2016 – 5 R 182/15V) hinsichtlich der Wirkungen des Sendelandprinzips der SatCab-RL angenommen. Ihm zufolge besteht der Sondergerichtsstand der unerlaubten Handlung in Bezug auf eine Rechtsverletzung durch Satelliten-sendungen nur in dem Mitgliedstaat, der als Sendeland im Sinne der Richtlinie anzusehen ist. Dies folgt nach Ansicht des Gerichts aus den Wirkungen des Sendelandprinzips, welche den gesamten urheberrechtlich relevanten Akt im Sendeland konzentriere. Gleichermaßen droht hinsichtlich der Verbreitung der Inhalte über ergänzende Online-Dienste. Auch hier soll eine Konzentration der urheberrechtlich relevanten Handlung im Sitzland der Rundfunkanstalt erfolgen.</p> | <p>The same has recently been decided by the Vienna Court of Appeal (judgement of 27 April 2016 in Case No. 5 R 182/15V) regarding the effects of the country-of-transmission principle of the SatCab Directive. According to the Vienna Court, the alternative ground of jurisdiction based on the unlawful act regarding an infringement by means of satellite broadcasting is only set in the Member State which is regarded as the country of transmission within the meaning of the Directive. According to the Court, this results from the effect of the country-of-transmission principle, which deems the entire copyright-relevant act as taking place in the country of transmission. The same threatens to apply to the distribution of relevant content through ancillary online services. Here, too, it is to be assumed that the copyright-relevant act takes place solely in the country of principle establishment of the broadcasting organisation.</p> |
| 31 | <p>Die Ausschaltung des zusätzlichen Gerichtsstands der unerlaubten Handlung stellt jedoch eine unnötige Erschwerung der Rechtsdurchsetzung zu lasten der Rechteinhaber dar. Dies ist zu ändern. Art. 7 Nr. 2 EuGVVO verfolgt nicht nur den Gedanken, dass das Gericht am Ort des schädigenden Ereignisses wegen der Nähe zum Streitgegenstand und der leichteren Möglichkeit einer Beweisauf-</p> | <p>However, the exclusion of the additional forum in matters of tort or delict constitutes an unnecessary obstacle to the enforcement of rights at the expense of the rightholders. This must be changed. Article 7(2) of the Brussels Regulation pursues not only the idea that the Court at the place where the harmful event occurred is the most appropriate because of the proximity to the</p> |

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| | <p>nahme zur Entscheidung des Rechtsstreits am besten geeignet ist; die Norm verwirklicht auch das Auswirkungsprinzip. Dort wo sich eine behauptete Rechtsverletzung auswirkt, soll ein Gericht die Verletzung auch prüfen können. Dies gilt verstärkt im Wirtschaftsrecht, zumal Unternehmen den Marktort selbst wählen; dort ist ihnen die Verteidigung durchaus zuzumuten. Wenn der Verordnungsvorschlag den Marktort verschiebt, so erfolgt dies lediglich im Rahmen einer rechtlichen Fiktion. Die – gewichtigeren – tatsächlichen Auswirkungen, nämlich die Empfangbarkeit der Sendung am betreffenden Ort, ändern sich dadurch nicht. Demgegenüber verminderte die Konzentration des Gerichtsstands am Ort der Hauptniederlassung des Rundfunkveranstalters ohne sachliche Rechtfertigung dessen Risiko, am Ort seiner tatsächlichen Geschäftstätigkeit verklagt zu werden.</p> | <p>subject matter of the dispute and better possibilities of taking evidence (close connection); the provision also realises general thoughts originating in the principle of effect. Where an alleged infringement produces harmful effects a court should be able to examine the infringement. This is increasingly the case in commercial law, especially as companies choose the market place themselves; there the defence is reasonable and to be expected. Where the proposed Regulation shifts the market place, this is merely a legal fiction. The more important actual effects, namely, the reception of the programme at the place concerned, do not change. By contrast, the concentration of jurisdiction at the place where the broadcasting organisation has its principle establishment would reduce its risk of being sued at the place where its actual business is focused. There is no reasonable justification for this.</p> |
| 32 | <p>Diese Konsequenz ist auch nicht mit der Begründung des vereinfachten Rechteclearings zu rechtfertigen. Dafür – und damit letztlich für die Erleichterung der grenzüberschreitenden Tätigkeit – ist eine künstliche Verlegung des Gerichtsstands nicht erforderlich. Für die Rechtseinhaber hingegen führt die Beschneidung des Gerichtsstands am Marktort zu erheblichem Mehraufwand und ist mit einem hohen Kostenrisiko verbunden, dies namentlich dann, wenn der Betroffene gezwungen ist, Klage im Ausland zu erheben. Zwar kann das Gericht am internationalen Gerichtsstand der unerlaubten Handlung nur über den Ersatz der Schäden entscheiden, die in dem Staat des angerufenen Gerichts verursacht worden sind, und es kann auch nur insoweit eine Unterlassungsanordnung aussprechen. In vielen Verfahren genügt jedoch die gewissermaßen exemplarische Entscheidung eines Gerichts, um den Rechtsstreit umfassend beizulegen.</p> | <p>This consequence likewise cannot be justified on the grounds of facilitated rights clearance. The facilitation of rights clearance – and thus, ultimately, facilitation of cross-border activities – does not require an artificial transfer of jurisdiction. For the rightholders, on the other hand, the curtailment of the forum at the market place entails considerable additional expenses and is associated with a high cost risk, particularly where the party concerned is compelled to bring an action abroad. It is true that the court at the place where the harmful event occurred is only competent to decide on the compensation for the damage caused in the state of the court seised, and it can also order an injunction only in that regard. In many cases, however, an exemplary court decision may suffice to resolve the legal dispute entirely.</p> |
| 33 | <p>Ganz ignoriert der Kommissionsvorschlag diese Zusammenhänge zwar nicht. Vielmehr sollen die Wirkungen von Art. 2 des Verordnungsvorschlags insoweit eingeschränkt sein, als Art. 2 nur „<i>für die Zwecke der Wahrnehmung des Urheberrechts</i>“</p> | <p>Admittedly, the Commission proposal does not ignore these contexts entirely, proposing as it does to limit the effects of Article 2, in that it applies only “<i>for the purposes of exercising copyright</i>”. However, this restriction does not appear</p> |

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| <p>gilt. Diese Einschränkung erscheint im Hinblick auf Friktionen mit der EuGVVO jedoch nicht eindeutig genug. Auch der Erwägungsgrund 19 lässt erahnen, dass die Kommission nicht die Intention hat, Einfluss auf Fragen der gerichtlichen Zuständigkeit zu nehmen. Entsprechendes ist dann allerdings klarstellend in den Vorschlag aufzunehmen. Hierzu bietet sich eine Ergänzung von Art. 2 um einen weiteren Absatz an, mit folgendem Inhalt:</p> <p><i>Das in Absatz 1 genannte Ursprungslandprinzip gilt nicht für Fragen der Internationalen Zuständigkeit der Gerichte.</i></p> | <p>to be sufficiently clear with regard to the provisions of the Brussels Regulation. Recital 19 also indicates that the Commission does not intend to exert an influence on questions of jurisdiction. However, this should be clarified in the proposal. To this end, Article 2 should be amended by the addition of a further paragraph with the following provision:</p> <p><i>The country of origin principle referred to in paragraph 1 shall not apply to questions regarding international jurisdiction.</i></p> |
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