



STATUTORY INSTRUMENTS.

S.I. No. 357 of 2022

EUROPEAN UNION (COPYRIGHT AND RELATED RIGHTS
APPLICABLE TO CERTAIN ONLINE TRANSMISSIONS AND
RETRANSMISSIONS) REGULATIONS 2022

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I, CATHERINE MARTIN, Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019¹ and of giving further effect to Council Directive 93/83/EEC of 27 September 1993², hereby make the following regulations:

1. These Regulations may be cited as the European Union (Copyright and Related Rights applicable to certain Online Transmissions and Retransmissions) Regulations 2022.

2. (1) In these Regulations -

“Act of 2000” means the Copyright and Related Rights Act 2000 (No. 28 of 2000);

“Directive” means Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC¹.

(2) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

3. The Act of 2000 is amended by the insertion, in section 2(1), of the following definition after the definition of “broadcast”:

“ ‘broadcasting organisation’ means –

- (a) in the State, an authorised broadcaster, or
- (b) in another Member State, a broadcasting organisation for the purposes of Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019¹;

4. The Act of 2000 is amended by the insertion of the following section after section 6 -

¹ OJ No. L130, 17.5.2019, p.82.

² OJ No. L248, 6.10.1993, p.15.

“Ancillary online services

6A. (1) An ancillary online service provided by wire or wireless means that contains works, as well as the acts of reproduction of such works which are necessary for the provision of, the access to or the use of the ancillary online service, shall be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment for the purposes of exercising the copyright and related rights required for that service.

(2) Subject to subsection (3), when setting the charges to be paid for the rights referred to in subsection (1), the rightholder and the broadcasting organisation shall take into account all aspects of the ancillary online service, including –

- (a) the duration of online availability of the programmes provided in that service,
- (b) the audience, and
- (c) the language versions provided.

(3) The charges to be paid for the rights referred to in subsection (1) may be calculated on the basis of the revenues of the broadcasting organisation.

(4) The principle set out in subsection (1) shall not affect the right of the rightholder and the broadcasting organisation to limit the exploitation of such rights in accordance with the law of the European Union.

(5) If an agreement on the exercise of copyright and related rights concerning an ancillary online service and for any acts of reproduction which are necessary for such a service is in force on 7 June 2021, this section shall not apply to that agreement until 7 June 2023.

(6) In this section –

‘ancillary online service’ means an online broadcast, by or under the control and responsibility of a broadcasting organisation, of programmes simultaneously with or for a defined period of time after their broadcast by the broadcasting organisation and any material which is ancillary to such broadcast, where a member of the public can access the programme from a place and at a time chosen by them;

‘programmes’ means –

- (a) radio programmes, or
- (b) television programmes (other than the broadcast of sports events and works included in them) which are –
 - (i) news and current affairs programmes, or
 - (ii) fully financed own productions of the broadcasting organisation.”.

5. The Act of 2000 is amended by the insertion of the following section after section 103 –

“Transmission of programmes by direct injection

103AA. (1) This section applies when a broadcasting organisation transmits by direct injection its programme-carrying signals to a network operator where –

- (a) the broadcasting organisation does not make the broadcast, and
- (b) the network operator makes the broadcast.

(2) Subject to subsection (3), the broadcasting organisation and the network operator referred to in subsection (1) shall be deemed to be participating in a single act of communication to the public and the parties shall only undertake that communication with the authorisation of the rightholder.

(3) If an authorisation concerning a transmission by direct injection, to which this section would apply, is in force on 7 June 2021, this section shall not apply to that authorisation until 7 June 2025.

(4) In this section –

‘direct injection’ means a technical process by which a broadcasting organisation transmits its programme-carrying signals in such a way that the programme-carrying signals are not accessible to the public during that transmission;

‘network operator’ means the operator of an electronic communications network (within the meaning of the Communications Regulation Act 2002).”.

6. Section 174 of the Act of 2000 is amended –

(a) by the substitution of the following subsection for subsection (1):

“(1) The owner of the copyright or the owner of a related right in a literary, dramatic, musical or artistic work, an original database, a sound recording or a film contained in a television or radio programme shall have the right to grant or refuse authorisation for cable retransmission (in this section referred to as the ‘cable retransmission right’).”.

(b) by the insertion of the following subsection after subsection (1):

“(1A) The owner of the copyright or the owner of a related right in a work contained in a television or radio programme shall have the right to grant or refuse the authorisation for non-cable retransmission (in this section referred to as the ‘non-cable retransmission right’).”.

(c) by the deletion of subsection (2),

(d) by the insertion of the following subsection after subsection (3):

“(3A) The non-cable retransmission right may be exercised against the operator of the retransmission service only through a licensing body.”,

- (e) by the substitution of the following subsection for subsection (4):

“(4) Where the owner of the copyright or the owner of a related right in a work has not transferred his or her cable retransmission right or non-cable retransmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be permitted to manage his or her right.”,

- (f) by the substitution, in subsection (5), of “the owner of the copyright or the owner of a related right” for “the owner of the copyright”,

- (g) by the insertion of the following subsections after subsection (5):

“(5A) Where the owner of the copyright or the owner of a related right in a work has not transferred his or her non-cable retransmission right to a licensing body and more than one licensing body manages non-cable retransmission rights of that category, the operator of a retransmission service shall make an application to the Controller and the Controller shall determine which licensing body shall have the right to grant or refuse the non-cable retransmission right.

(5B) An application under subsection (5A) shall be in writing and in such form as may be determined by the Controller from time to time.

(5C) Where the identity of the owner of the non-cable retransmission right is known, the Controller shall, at least 28 days prior to making a determination under subsection (5E), give notice in writing to him or her of an application under subsection (5A) and the Controller shall invite him or her to make observations in writing, in relation to that application, not later than 14 days after the date of the notice.

(5D) For the purposes of making a determination under subsection (5E), the Controller may by notice in writing to the applicant or to the owner of the non-cable retransmission right, require him or her to provide to the Controller, not later than 28 days after the date of the notice, such information relating to the proposed non-cable retransmission or to the non-cable retransmission right as the Controller may reasonably require.

(5E) The Controller shall, having considered any observations received under subsection (5C) and any information provided under subsection (5D), determine which licensing body has the right to grant or refuse the non-cable retransmission right in the State.”,

and

- (h) by the substitution of the following subsections for subsections (6) to (9):

“(6) The owner of the copyright or the owner of a related right in a work to whom subsection (4), (5) or (5A) applies has the same rights and obligations resulting from any relevant agreement between the cable programme service provider or the operator of a retransmission service, as the case may be, and the licensing body, as an owner who has transferred their cable retransmission right or their non-cable retransmission right, as the case may be, to that licensing body.

(7) Any rights to which the owner of the copyright or the owner of a related right in a work may be entitled under subsection (6) shall be exercised within the period of 3 years commencing on the date of the cable retransmission or the non-cable retransmission concerned.

(8) This section shall not apply to any cable retransmission right or non-cable retransmission right exercisable by a broadcasting organisation in respect of its own transmission, including where the rights concerned are owned by the broadcasting organisation or have otherwise been transferred to it by other rightholders.

(8A) A broadcasting organisation and an operator of a retransmission service shall conduct negotiations for the authorisation of a non-cable retransmission in good faith.

(8B) Where no agreement is concluded between a broadcasting organisation and an operator of a retransmission service or between a licensing body and an operator of a retransmission service regarding the cable retransmission right or the non-cable retransmission right, as the case may be, the parties may engage in mediation within the meaning of the Mediation Act 2017 and that Act shall apply to any such mediation subject to the modification referred to in subsection (8C) and any other necessary modifications.

(8C) The modification mentioned in subsection (8B) is the substitution of the following subsection for subsection (4) of section 8 of the Mediation Act 2017:

‘(4) The mediator may make proposals to the parties to resolve the dispute and any such proposals shall be deemed to have been accepted if the parties do not object to the proposals within 3 months after the date of the proposals.’

- (9) (a) In this section –

‘cable retransmission’ means the simultaneous, unaltered and unabridged retransmission by way of a cable programme service 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, regardless of how the operator of a cable retransmission service obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission;

‘non-cable retransmission’ means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission, intended for reception by the public, of an initial transmission from another Member State, by wire or over the air, including that by satellite, but not by online transmission, of television or radio programmes intended for reception by the public provided -

- (i) the retransmission is carried out by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility that initial transmission was made, regardless of how the party carrying out the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission, and
- (ii) where the retransmission is over an internet access service (within the meaning of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015³), it is

³ OJ No. L310, 26.11.2015, p.1

carried out in an environment in which the operator of the retransmission service provides a secure retransmission to authorised users.

- (b) In this section, a reference to a licensing body shall be construed as including a reference to a collective management organisation.”.



GIVEN under my Official Seal,
14 July, 2022.

CATHERINE MARTIN,
Minister for Tourism, Culture, Arts,
Gaeltacht, Sport and Media.

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