

Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC (Text with EEA relevance)

CHAPTER II

Ancillary online services of broadcasting organisations

Article 3

Application of the country of origin principle to ancillary online services

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

- a radio programmes; and
- b television programmes which are:
 - (i) news and current affairs programmes; or
 - (ii) fully financed own productions of the broadcasting organisation,

in an ancillary online service by or under the control and responsibility of a broadcasting organisation, as well as the acts of reproduction of such works or other protected subject matter which are necessary for the provision of, the access to or the use of such online service for the same programmes shall, for the purposes of exercising copyright and related rights relevant for those acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Point (b) of the first subparagraph shall not apply to the broadcasts of sports events and works and other protected subject matter included in them.

2 Member States shall ensure that, when setting the amount of the payment to be made for the rights to which the country of origin principle, as set out in paragraph 1, applies, the parties take into account all aspects of the ancillary online service, such as features of the service, including the duration of online availability of the programmes provided in that service, the audience, and the language versions provided.

The first subparagraph shall not preclude calculation of the amount of the payment on the basis of the broadcasting organisation's revenues.

3 The country of origin principle set out in paragraph 1 shall be without prejudice to the contractual freedom of the rightholders and broadcasting organisations to agree, in compliance with Union law, to limit the exploitation of such rights, including those under Directive 2001/29/EC.