

## Liite 5 Vertailu EU-jäsenmaiden tavoista saattaa voimaan verkkolähetydirektiivin 2 artiklan 2 a-kohta ja johdantokappale 20

Kyselyssä taustoitettiin Suomessa käynnissä olevan verkkolähetydirektiivin voimansaattamista ja sen yhteydessä syntynyttä kiistaa siitä, miten direktiiviä tulisi tulkita, kun sidosryhmät arvioivat asiaa ristiriitaisesti. Ennen kaikkea teleoperaattorit olivat huolissaan siitä, että kaapelioperaattoreita pidettäisiin väärin perustein edelleenlähettäjinä eikä alkuperäisinä lähettäjinä, jotka vain tarjosivat lähettäjäyrittäjälle jakelutavan sen lähetyksille, jonka toimesta, valvonnassa ja vastuulla lähetys tehtiin.

Kyselyllä pyrittiin selvittämään, miltä osin eri jäsenvaltioissa on saatettu kansallisesti voimaan direktiivin 2 artiklan 2a-kohdassa mainittu edelleenlähettämisen määritelmä ja erityisesti 2a –kohta: ”edelleenlähetys suoritetaan muun osapuolen kuin sen lähetystoimintaa harjoittavan organisaation toimesta, jonka toimesta tai jonka valvonnassa ja vastuulla kyseinen alkuperäinen lähetys tehtiin”.

Lisäksi kysyttiin, oliko kyseisissä maissa saatettu voimaan johdantokappaleessa 20 tarkoitettu poikkeus, jossa signaalin jakelijaa ei tietyssä tilanteessa pidetä vastuussa yleisön saataviin saattamisesta, kun se ainoastaan tarjoaa lähettäjäyrittäjälle ”teknistä apua”.

Suomessa on myös osaa kanavista koskeva jakeluvuotesäätely (*must carry*).

## Kysymykset jäsenvaltioille (käännettynä suomeksi tässä)

(käännettynä suomeksi kursivilla)

- **Have you included the definition in Article 2(2a) in your law?**

*(Oletteko sisällyttäneet edelleenlähetyksestä koskevan määritelmän 2 artiklan 2 a kohdan lakiinne?)*

- **In this or any previous context, have you applied a definition related to "merely technical means" (as in recital 20) in this area (non-online environment)?**

*(Oletteko tässä tai aiemmassa yhteydessä soveltaneet "vain teknisen tavan" (johdantokappale 20) tälle alueelle(ei-online ympäristö?)*

Vastausten perusteella on selvää, että jäsenvaltioissa lainsäädännölliset ratkaisut tässä asiassa jakautuvat kahtia. Pohjois-Euroopan maissa ei tekijänoikeuslaissa ole määritelmää edelleenlähettämiseksi verkkolähetydirektiivin tai sitä edeltävän satelliitti – ja kaapelidirektiivin (83/93/EY) perusteella. Näissä maissa direktiivin tavoite on toteutettu sopeuttamalla se voimassa olevaan kansalliseen lainsäädäntöön (dualistiset maat). Etelä-Euroopan maissa ja anglosaksisissa maissa direktiivin säännökset on saatettu pääsääntöisesti suoraan sellaisenaan voimaan erillisellä päätöksellä. Tietoa mahdollisesta tällaisista ongelmista eikä *must carry*- säätelystä ei sisältynyt yhteenkään vastaukseen, joten yhteisvaikutukset ovat vaikeita tehdä.

## YHTEENVETO

|                 | Koko määritelmä  | Ei määritelmää    | ”toimesta, valvonnassa ja vastuussa” | ”teknisen avun”           |
|-----------------|------------------|-------------------|--------------------------------------|---------------------------|
| <b>Hollanti</b> |                  | x                 | ei                                   | ei                        |
| <b>Belgia</b>   | x                |                   |                                      |                           |
| <b>Ruotsi</b>   |                  | x                 | ei                                   | ei                        |
| <b>Tanska</b>   |                  | x                 | ei                                   | ei (ei vielä direktiiviä) |
| <b>Slovenia</b> |                  | (vain ”muu kuin”) | ei                                   | ei                        |
| <b>Slovakia</b> | x                |                   | x                                    | x (direct injection)      |
| <b>Latvia</b>   |                  | x                 |                                      |                           |
| <b>Italia</b>   | x                |                   | x                                    | x (direct injection)      |
| <b>Unkari</b>   | x (jo SatCabDir) |                   |                                      | x (direct injection)      |
| <b>Espanja</b>  | x                |                   | ei                                   |                           |
| <b>Malta</b>    | x                |                   |                                      | x                         |
| <b>Irlanti</b>  | oma määritelmä   |                   | ei                                   | ei                        |
| <b>Itävalta</b> |                  | x                 | ei                                   | epäselvä                  |

## Myös EU:n komission epävirallinen kanta (19.12.2022):

*In our view, the definition of retransmission in Article 2(2) of Directive 2019/789 refers to the fact that it 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” in order to cover retransmissions of satellite transmissions, where the signals are transmitted under the control and responsibility of the broadcasters. (The terminology used is the same as that in the Sat Cab I definition of communication to the public by satellite.)*

**Opetus- ja kulttuuriministeriö:** Tämä merkitsee sitä, että ”toimesta” ja ”valvonnassa ja vastuulla” perustuu satelliittivälitykseen eikä kaapelilähetykseen. Direktiivi ei tunnista tilannetta, jossa yleisradiointiyritys (broadcaster), joka jakelee vapaasti vastaanotettavia maanpäällisiä lähetyksiä (free to air), lähettäisi kaapeleitse tai että tämä tapahtuisi tämän toimesta, valvonnassa ja vastuulla. Kaapelilähetyksen lähettäjä on itse vastuussa lähettämistään kanavissa. Jos kyse on olemassa oleva lähetyks, on muun kuin alkuperäisen lähettäjäryhtyksen lähetyks edelleenlähetyks.

*Recital 20 covers the situation of direct injection, which constitutes a single act of communication, with two actors (broadcasters and signal distributors). Last part of recital 20 clarifies that, in certain circumstances, signal distributors might not be participating to the act of communication to the public, in case they merely provide technical means. This aims to reflect the relevant case law, such as the judgements in Sabam (par 32), in Football Association Premier League and Others, C 403/08 and C 429/08, paragraph 194 and Airfield and Canal Digitaal, C 431/09 and C 432/09, paragraphs 74 and 79.*

**Opetus- ja kulttuuriministeriö:** Aivan kuten komission vahvistaa, suoran siirron kautta tapahtuvasta lähettämisestä kumpikin toimija on vastuussa yhteisesti omien osuuksien osalta, paitsi, jos kyse on tilanteesta, jossa signaalin jakelija vain tarjoaa lähettäjäyritykselle ”tekniset keinot” lähettää lähetys yleisölle. Tilanne koskee vain suoran siirron tilannetta, ei kaapelilähetystä.

*In addition, recital 21 describes a different situation, i.e where direct injection is used as a technical process to transmit the signals to distributors for retransmission purposes. This takes place when the broadcasters transmit their programme-carrying signals directly to the public and simultaneously transmit those signals to other organisations through direct injection. In such case the transmissions by those other organisations constitute a separate act of communication to the public from the one carried out by the broadcasting organisation, and the rules on retransmissions apply.*

**Opetus- ja kulttuuriministeriö:** Tämä tilanne on suoraa siirtoa koskeva tilanne, josta direktiivin 8 artiklassa säädetään ja jonka jäsenvaltioiden on saatettava kansallisesti voimaan. Direktiivi ei edellytä sitä mutta selventää, että tuossa tilanteessa luvat on kuitenkin hankittava. Jäsenvaltiot voivat säätää pakollisesta kollektiivisesta lisensioinnista 8 artiklan 2 kohdan kansallisen liikkumavaraan perustuen.

*We hope this is of help. Of course, this information is subject to the usual caveat that it does not constitute an official interpretation.*

## KOONTI VASTAUKSISTA

### Alankomaat:

**- Have you included the definition in Article 2(2a) in your law?**

The answer to this is negative for the Netherlands twice. In definitions of transmission via cable and by means other than via cable, we have nothing about or under whose control and responsibility that initial transmission was made. It just says regardless of how it obtains signals from the broadcaster. The same applies to direct injection.

**- In this or any previous context, have you applied a definition related to "merely technical means" in this area (non-online environment)?**

Furthermore, we have not included anything in the Dutch Copyright Act about when there is direct injection (publication by distributor) and when there is 'merely providing technical means' within the meaning of the directive. It's for the ECJ to decide in the end.

### Tanska

Tanska ei ole vielä saattanut verkkolähetysdirektiiviä voimaan. Vastaukset koskevat voimassaolevaa lakia.

**- Have you included the definition in article 2 subpara 2a in your law?**

We have not included the definition in 2.2 (a) directly into the law text. The definition from the directive is included in our explanatory remarks.

**- Have you implemented in this or a previous context a definition relating "to mere technical means" as regards this area (not online environment)?**

We did not implement a definition of "mere technical means" - I'm unaware if this has ever been defined in Denmark but it has not found its way into the law text - it would have to have been in previous explanatory remarks but it would take more time for me to examine this. Lähde: <https://www.retsinformation.dk/eli/lt/2014/1144>

### Ruotsi

**Vad gäller dina frågor har jag samma svar som Jesper.** Du hittar den svenska propositionen med lagtext och motiv här: [Gränsöverskridande tillgång till radio- och tv-program, prop. 2020/21:153 \(regeringen.se\)](https://www.regeringen.se/prop/2020/21/153)

#### **Opetus- ja kulttuuriministeriö:**

Eli Ruotsissa säännökseen ei otettu määritelmää, vaan se on sen perusteluissa.

Ruotsissa ei ole säädetty, koskeeko sääntely vain ETA-maasta peräisin olevia lähetyksiä, vaan "jokaisella" on mahdollisuus soveltaa sopimuslisenssiä. Se kertoo sen joustavuudesta. Perusteluissa on

selvennetty, ettei ole väliä, miten edelleenlähettäjä on saanut signaalin lähettäjäyritykseltä. Pykälä ei sisällä mitään niistä uusista kriteereistä, jotka direktiivin 2 artiklan 2a kohdan määritelmään sisältyy: 1) muu kuin---ja valvonnassa ja vastuulla ja 2) ei väliä, miten yritys saa signaalinsa.

Se ei siten selvennä asiaa suhteessa alkuperäiseen lähettämiseen, eikä tämä ole ollut ongelma.

### **Belgia:**

- **Have you included the definition in article 2 subpara 2a in your law?**

In Belgium, we indeed included the definition in article 2 subpara 2a in our law.

- **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

However, we didn’t implemented a definition of “mere technical means”. We indicated in our explanatory remarks that the mere provision of such technical means shouldn’t in itself amount to communication, in accordance with Recital 27 of the Directive 2001/29 and with the agreed statements concerning Article 8 of the WIPO Copyright Treaty. We also mentioned that the appreciation of “mere technical means” must be done by the judge depending on the factual elements of the case.

**Opetus- ja kulttuuriministeriö:** tältä osin olemme samaa mieltä, että johdantokappaleeseen 20 ei sisällä viittausta muuhun kuin suoraan siirtoon. Se ei ole velvoittava osa direktiiviä, toisin kuin johdantokappaletta 21 vastaava 8 artikla. Se, onko jossain tilanteessa katsottava, että jakelija vain tarjoaa teknisen keinon lähettämiseksi, eikä itse lähetä teosten alkuperäisenä lähetyksenä tai edelleenlähetyksenä, on arvioitava tuomioistuimessa.

### **Slovenia**

- **Have you included the definition in article 2 subpara 2a in your law?**

In the definition of retransmission we included the definition of Article 2(2a), but only partially: we included the first part ("a party other than the broadcasting organisation which made the initial transmission") but not the second part ("or under whose control and responsibility that the initial transmission was made").

**Opetus- ja kulttuuriministeriö:** Tämä malli vastaisi sitä, mihin voisi olla mahdollista mennä, jos halutaan selventää alkuperäisen ja edelleenlähettämisen eroa.

- **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

We have not included the "mere technical means" in the wording of the Articles, but have included it in our explanatory remarks that refer to direct injection.

**Opetus- ja kulttuuriministeriö:** Tämä vastaa HE 43/2022:n mallia, jossa johdantokappaleen 20 sisältö on kuvattu (s. 110).

## **Slovakia**

### **- Have you included the definition in Article 2 subparagraph 2a in your law?**

Yes, partially. In Slovakia, the retransmission is defined in Article 29 of the Act No. 185/2015 Coll. on Copyright, as amended.

The definition is as follows:

(1) Retransmission of work means simultaneous, unaltered and unabridged dissemination (transmission) of broadcasted work carried out by a party other than the broadcasting organisation or a party technically arranging/securing broadcasting pursuant to Article 28 („operator of retransmission“), which may be accessible to the public through electronic communication network, except through the public network in the environment, which is not a managed environment.

(2) Cable retransmission means retransmission which may be accessible to the public through cable, satellite or microwave system.

Article 28 of the Slovak Copyright Act defines the broadcasting as follows:

- Broadcasting of work means public dissemination (transmission) of a work made by a party within the scope of programme service, which may be received by the public through electronic communication network, even in case it is technically arranged/secured/provided by other party under an agreement with broadcaster in its name and on its behalf, including dissemination (transmission) of work through satellite.

The second part in bold in definition of retransmission (a party technically arranging/securing broadcasting pursuant to Article 28) can be interpreted also as encompassing the part from Article 2 subparagraph 2 of the 2019/789 referring to “under whose control and responsibility that initial transmission was made”.

### **- Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

Yes, you can reach such conclusion according to the interpretation of our definition of broadcasting.

Following our definition of broadcasting and especially the part “even in case it (broadcasting) is technically arranged/secured/provided by other party under an agreement with broadcaster in its name and on its behalf”, this refers to cases when third party provides the broadcaster with merely technical means or carries out the activities purely of technical nature for broadcaster, so the third party has to have the agreement with broadcaster and is exercising these technical activities in broadcaster’s name and on broadcaster’s behalf. Therefore, if e.g. the signal distributor in Slovakia merely provides broadcaster/broadcasting organisation with technical means to ensure that the broadcast is received or to improve the reception of that broadcast, this will be considered as a broadcasting. But such signal distributor providing just technical means will not be considered as participating in act of communication to the public or broadcasting, nor carrying out separate act of communication to the public or separate act of broadcasting.

...further (from Finland)

Please find below the replies to your additional questions 1, 2 and 3.

1. You have defined also broadcasting. Do you know why this definition was proposed in the copyright act? Have you received claims from teleoperators that they have been falsely considered as retransmitters according to the online transmissions directive when they in fact are merely assisting technically the original broadcaster?

The definition of broadcasting is not new in our Copyright Act, it’s historically set. Similar definition of broadcasting has been in Slovak Copyright Acts since 1997. Of course, based on the EU legislation, the definition is regularly updated to be in compliance with EU acquis. In particular, the part "even in case it (broadcasting) is technically arranged/secured/provided by other party under an agreement with broadcaster in its name and on its behalf" was added during the preparation of new Copyright Act in 2015. During these consultations in 2015, the stakeholders made us aware of few entities that are providing broadcasters with merely technical assistance in order to strengthen or better receive the signal in some territories and that it would be useful to not consider them as broadcasters. However, there has never been specific complaints of considering them as false retransmitters according the online CabSat directive.

2. Are these operators (if as above) also providing services to consumers based on retransmission?

Yes, sometimes. But then they are considered as retransmitters or entities involved in direct injection; then this technical part/technical assistance they are providing to broadcasters is not taken into account.

3. Do you have a “must carry” obligation for cable operators to carry certain public service channels to their households?

Yes, but "must carry" obligation is regulated by new Act on Media Services (Act No. 264/2022), where also other obligations of operators (retransmitters) are named.

## Latvia

- **Have you included the definition in article 2 subpara 2a in your law?**

No, we have not included the respective subpara 2a of Article 2 in our law as we did not include the definition of retransmission at all.

- **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

*No, we have not implemented a definition relating “to mere technical means” in the context of direct injection.*

## Italia

- **Have you included the definition in article 2 subpara 2a in your law?**

In relation to the transposition of directive (EU) 2019/789 which took place in Italy with the legislative decree 181/2021, the following should be noted:

1) the decree transposing the directive reported literally the provisions of article 2, subpara 2a, of the directive. In this regard, see article 16-ter, paragraph 1, of the Italian copyright law (attached).

- **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

2) Likewise the reference to "technical means" has been inserted in the Italian law reporting the same expression of the recital 20 of the directive without further specifications. In this regard, see article 16-quinquies, paragraph 3, of the Italian copyright law (attached).

## Espanja

- **Have you included the definition in article 2 subpara 2a in your law? Yes, the definition is included by means of article 66.8 of Royal Decree-Law 24/2001 which implements the (EU)2019/789 Directive.**

- **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)? We did not implement a definition of "mere technical means".**

When a broadcaster transmits by direct injection carrying signals to a signal distributor (without the broadcaster itself simultaneously transmitting those program-carrying signals directly to the public) and the signal distributor transmits these program-carrying signals programs to the public, it will be considered that the broadcasting organization and the signal distributor participate in a single act of communication to the public for which they will obtain authorization from the right holders.

## Unkari

### **- Have you included the definition in article 2 subpara 2a in your law?**

We did not include the definition of 2.2 (a) directly into the text of the Act LXXVI of 1999 on Copyright (CA). Thanks to the already existing Section 28 of the CA the implementation was not necessary. According to this provision on the right of retransmission, the wording “another organisation other than the original [broadcasting] one” was already a part of our legislation prior to the implementation of the 2019/789 Directive.

### **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

We have implemented the “technical means” only in relation of direct injection, by the following text:

“In the case where the organisation reaching the public provides merely the technical means for such use, (only) the radio or television organisation [broadcasting organisations] must obtain a license.”

## Malta

### **Have you included the definition in article 2 subpara 2a in your law?**

Yes, such definition has been included in Article 2 of SL 415.07 (<https://legislation.mt/eli/sl/415.7/eng>).

### **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

No, we have not implemented a definition relating to ‘mere technical means’.

## Irlanti

### **Have you included the definition in article 2 subpara 2a in your law?**

Yes, in Irish legislation the definition is provided for in Section 174 (9) of the Copyright and Related Rights Act 2000, as amended by S.I. No. 357/2022 - European Union (Copyright and Related Rights Applicable to Certain Online Transmissions and Retransmissions) Regulations 2022.

*(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 2015), it is carried out in an environment in which the operator of the retransmission service provides a secure retransmission to authorised users.*

*‘broadcast’ means an electronic transmission of sounds, images or data, or any combination or representation thereof, for direct public reception or for presentation to members of the public; ‘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 2019*

- **Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?**

Yes, please see the second paragraph above, i.e., the definition of ‘non-cable retransmission’.

### **Itävalta**

- Have you included the definition in article 2 subpara 2a in your law?  
No, we did not include the definition of “retransmission” in the Austrian Copyright Act (Amendment 2021).

- Have you implemented in this or a previous context a definition relating “to mere technical means” as regards this area (not online environment)?  
No, we have not implemented a definition relating to “to mere technical means” in this area. We only refer to it in the context of direct injection, see below:

Article 17 (4) Austrian Copyright Act

“If a broadcasting organization transmits a work by means of a technical process to an entity which which is not a broadcaster organization (signal distributor) without making it available

to the public during this transmission (direct feed), and if the signal distributor makes the work directly perceptible to the public, the broadcasting organisation and the signal distributor shall be deemed to be participants in a single broadcast in which they are involved through their respective contributions and for which they must each obtain permission from the author. This does not apply if the broadcasting organisation also broadcasts the work itself. The right to make a work directly perceptible to the public as a signal distributor can only be asserted by collecting societies. Articles 59a and 59b shall apply.”