

**Working Party on Satellite Broadcasting**  
**Main points of the meeting of 6 May 2003**

➤ Second Working Party meeting

As part of continuing efforts to improve access for European citizens to television services provided in other Member States, the 6 May meeting focused on the satellite retransmission of television programmes to another Member State.

The aim of the meeting was to ensure that all interested parties agreed on (a) the basic concepts of cross-frontier retransmission procedures and (b) the possibility of extending the collective-management regime laid down by Directive 93/83/EEC to satellite retransmission.

➤ Basic concepts of satellite retransmission to another Member State

Satellite platforms operators must be clearly distinguished from broadcasting organisations insofar as the former are concerned with the constitution of a cluster of services from a Member State. In this respect, the Commission recalled that only activities involving a cross-frontier dimension could be taken into account within the framework of Directive 93/83/EEC and that the retransmission of national channels by the aforementioned satellite operators for public reception within national frontiers could not fall within the scope of that Directive, which was based on Articles 43 and 49 of the EC Treaty covering freedom of establishment and the freedom to provide services.

As regards the concept of retransmission, it was made clear that, insofar as this is simultaneous, unaltered and unabridged, it must not be confused with the concept of rebroadcasting which implied a time lag. Some participants pointed out that only a small proportion of the different channels making up a satellite cluster are actually retransmitted, since the cluster is largely made up of the operator's own channels and thematic channels from which programmes have not previously been broadcast.

Retransmission at Community level essentially involves the inclusion in a cluster of:

- free, non-encrypted foreign channels which are broadcast by satellite from a Member State and can be received throughout the Community,
- free, non-encrypted foreign channels broadcast terrestrially or by cable to another Member State;
- pay-to-view foreign channels broadcast directly by satellite and by cable to another Member State.

Clarification was provided with regard to the status of foreign free-to-air channels which are broadcast by satellite from another Member State but which can be received in all Member States and which are, therefore, accessible via a cluster.

Apart from unintentional inclusion in a cluster, which does not constitute rebroadcasting, a satellite operator and a rebroadcaster can conclude a contract providing for integration of the channel in question into the cluster (greater visibility in the cluster through its position in the electronic programme guide). The majority of participants thought that such an agreement represented an authorisation on the part of the broadcaster implying remuneration of the right holders.

- Transposition of the collective-management regime introduced by the Directive to satellite retransmission.

A large majority of participants were in favour of transposing the cable retransmission system to the retransmission of satellite programmes, since this would make it easier for broadcasters to persuade satellite cluster operators established in other Member States to provide retransmission of their channels through a collective-management company representing all collective-management enterprises (which assumes a collective agreement on the Scandinavian model) and constituting an indispensable intermediary both for satellite platform operators and all collective-management enterprises.

It was also noted that such a transposition would make it possible to eliminate distortions of competition between satellite cluster operators and cable operators. At the same time, it was recognised that the retransmission of foreign channels as part of a cluster was of relatively minor importance by comparison with the retransmission of national broadcasts.

Some broadcasters thought that, by contrast with other entitlement categories, they should retain the right to refuse retransmission of their programmes.

As regards the organisation of negotiations, there appeared to be a general preference for discussions to be conducted in the country of retransmission or, more precisely, in the country of public reception of the retransmission. This would allow the special features of each national market (purchasing power, subscription conditions) to be taken into account at contract level.