

## Working Group on Satellite Broadcasting

### Main points discussed at the meeting of 28 November 2002

#### Ø A newly established group

Consultation of the economic operators concerned on difficulties encountered by certain members of the public when trying to receive satellite broadcasts from a different Member State from the one in which they live was announced in the report on the application of Directive 93/83/EEC.

The purpose of this first meeting of the Working Party was to examine in greater depth the difficulties arising from the contractual relations between representatives of rightholders and broadcasters in connection with the transfer of copyright and related rights on films for digital broadcasting over more than one territory.

#### Ø The specific features of digital broadcasting

Certain misgivings were expressed regarding the encryption that digital technology permits, which might, given the presence of vertically integrated operators, lead to the development of a new economic model more like the "pay per view" system than "free to air".

The fact that, with digital formats, more than one language version can be available on the same medium should not affect the economic reality already prevailing in the analog domain, since it would appear that this technical possibility will not be exploited both for reasons of price (which rises as the number of language versions increases) and because of the low level of demand for programmes in languages other than the national language.

#### Ø Contractual relations

The scope of the exclusivity for the broadcasting of a film and hence the royalties payable vary depending on the type or types of broadcasting concerned (terrestrial, satellite, cable), the language versions used and the territories covered (this is where the potential audience on the basis of the language version chosen becomes relevant).

In addition to these criteria there is the decisive parameter of the commercial value of the film in question (i.e. whether it has been successful or not) and the relative strengths of the various parties in the exclusivity negotiations.

In theory, it is possible to transfer rights to the pan-European level, but in practice broadcasters are not able to negotiate intellectual property rights on a film for more than one territory.

#### Ø Acquisition of intellectual property rights: one of the factors affecting the organisation of cross-border broadcasting

The costs of obtaining rights are not the only extra costs that need to be taken into account when organising encrypted cross-border digital broadcasting. Broadcasters also have to organise the promotion of their channels, the provision and maintenance of decoders and the sale of smart cards. A commercial enterprise of this kind is possible only if there is sufficient demand to generate a profit.

Some participants have pointed out that the conditions governing the transfer of rights in connection with sporting events is a major source of difficulties for cross-border broadcasting.

Ø Outline of a partial solution permitting access to a larger number of programmes

The organisation of negotiations on satellite programmes broadcast in clusters (i.e. the legalisation of collective management of rights along the lines set out in Directive 93/83/EEC for rediffusion by cable) would, according to some, provide a partial solution to the difficulties encountered by certain members of the public that should be exploited.

Ø Follow-up

Another meeting could be held at the end of February or the beginning of March in order to take the analysis further and to extend it to cover questions of rights in connection with sporting events and satellite programmes broadcast in clusters.