

Swedish implementation of Online Broadcasting Directive (SatCab II)

Nordic Entertainment Group Position Dnr Ju2020/04028

Who are we?

Nordic Entertainment Group AB (NENT Group) has established itself as the Nordic region's leading entertainment provider with a portfolio of world class platforms and brands as well as a unique content ecosystem. We are now aiming to become the European streaming champion and to launch our streaming service, Viaplay, in 10 new markets by the end of 2023, including Estonia, Latvia, Lithuania, Poland and the US in 2021. In short, NENT Group is a homegrown company aiming to compete with international players in the very competitive and fast-growing streaming field.

NENT Group is grateful to the Ministry for Justice for the opportunity to comment on the implementation of EU Directive 2019/789¹ (the "**Online Broadcasters' Directive**") into Swedish legislation by amending the Copyright Act and the Act on Mediation in Certain Copyright Disputes. NENT Group has, and continues, to invest heavily in high quality original Nordic content, therefore it is vital that any implementation takes "into account the financing and production of creative content, and, in particular, of audiovisual works"².

Scope of "ancillary online services"

NENT Group would emphasise that an "online ancillary service" must always be interpreted as having a *clear and subordinate relationship with* the broadcasting organisation's broadcasts³. Therefore, certain types of online ancillary services that can be assimilated to VOD (e.g. AVOD) must be explicitly excluded from scope.

Article 3.1: Scope of the "country of origin principle"

We support the proposed provision of Article 3.1 of the Copyright Act, which we note is very close to the wording in Directive. Since the Directive aims to be a maximum harmonisation instrument, and, in order to provide broadcasters with certainty, all definitions within this Article (such as "new and current affairs" and "public funds") should be interpreted as narrowly as possible and not go beyond the intention of the Directive.

¹ of 17 April 2019 establishing provisions for the exercise of copyright and related rights applicable to some of the broadcasters' online broadcasts and retransmissions of radio and television programmes and of amending Council Directive 93/83 EEC.

² Recital 7 of the Online Broadcasters' Directive

³ Recital 8 of the Online Broadcasters' Directive

Scope of services covered by the retransmission regime

NENT Group notes that the Directive extends the mandatory collective management of rights to certain new technologies such as mobile or closed circuit IP-based or similar networks and to internet access services subject to certain conditions being met.

NENT Group submits that any extension of the retransmission regime to providers of services over the internet (i.e. OTT providers) should not mean that the prices/tariffs set for retransmission via OTT in a managed environment are the same as for cable retransmission.

Direct Injection

NENT Group notes the proposed provision at Chapter 6, section 49b, implementing Article 8 of the Directive on “direct injection” into the Swedish Copyright Act. NENT Group would like to clarify that the participation of a broadcasting organisation and a signal distributor in a single act of communication to the public triggered by direct injection does not automatically give rise to joint liability for that act of communication to the public.