



TELEVISION

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SIMULTANEOUS BROADCAST: TV ON MOBILE DEVICES

INTRODUCTION

While simultaneous broadcast has been a feature of the television agreements with the BBC, ITV and PACT since the late 1980s, the term has been traditionally used to refer to the process of broadcasting a programme to different regions of the United Kingdom.

However, as technology has developed the meaning of the phrase has changed somewhat and it has now come to mean the broadcasting of material across different technological platforms (such as analogue or digital television standards, terrestrial or satellite transmission and DAB or FM radio transmissions).

With the proliferation of means of distribution of material such as television programmes the definition between what current agreements encompass within their permission for simultaneous broadcast has become an area for controversy and debate.

It is Equity's view that simultaneous transmission rights in the existing agreements do not extend to the distribution of television on non-traditional platforms such as mobile phones.

In negotiating new agreements suitable for the digital era there should be an acknowledgement of these rights in distribution of material on these platforms.

INSIDE

This document sets out the history of the term simultaneous broadcast, looking at how it is defined in existing agreements with producers and broadcasters and setting out how the regulatory body Ofcom defines the phrase. It then looks at the current status of negotiations on the issue and sets out Equity's position with regard to the rights of performers to be rewarded for the use of their performances.

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SIMULTANEOUS BROADCASTING IN EXISTING AGREEMENTS

Equity currently has four major television agreements with the BBC, ITV, PACT and TAC.

All the agreements are broadly terrestrial based with fees acquiring one UK network transmission with all other uses treated as ancillary with artists engaged under their terms enjoying a residual and/or royalty based system for payment. The agreements have, over the years, been extended to incorporate various additional wording to accommodate an ever changing industry specifically relating to ancillary exploitation.

Simultaneous transmission or broadcasting first entered the agreements in the late 1980s, though in this context it related to the simultaneous transmission of programmes in the different regions of the United Kingdom.

As they now stand the television agreements contain the following wording relating to simultaneous transmissions:

A. BBC/Equity Agreement

Section 1:100 of the agreement states: "Payment of the engagement fee will entitle the BBC to transmit or permit the transmission of the artist's performance in the relevant programme, whether live or recorded i) once on both analogue and digital forms on all platforms (terrestrial, satellite and cable) on the relevant BBC channel either simultaneously or at different times in different BBC regions"

B. ITV/Equity Agreement

Clause 41 on Transmission Areas states: "The simultaneous transmission of a programme in both analogue and digital format will be regarded as a single transmission for the purposes of this agreement"

Clause 45 on Additional Uses states: "In the event that in accordance with the use provisions of this agreement an artist's performance is included in a programme broadcast simultaneously in both analogue and digital format then the simultaneous broadcasts shall be considered to be a single transmission for the purposes of this agreement "

C. PACT/Equity Agreement

Clause T(6) states: "a UK network shall be a transmission by a UK terrestrial broadcaster i.e. ITV1, BBC1, BBC2, Channel 4, & 5 which can be transmitted simultaneously or simultaneously on one channel and clause T(23) 1 The simultaneous transmission of a programme in both analogue and digital form will be regarded as single transmission for the purposes of this agreement"

Clause T (23) 9 states: "Payment of the regional Engagement fee (s) and production day payment(s), where applicable shall entitle the producer to transmit the production once simultaneously or non-simultaneously in any combination of transmission areas totalling up to 25% of National Television Household (NTH)"

D. D.TAC/Equity Agreement

Clause 14.1 states: "Payment of the Artist's Engagement Fees(s) and the Programme Supplement(s) shall entitle the Producer:
14.1.1 Presentation, Publicity and Promotion to use the recorded material for traditional presentational, promotions (including trailers for genre promotions), publicity and other promotional purposes in all media: AND
14.1.2 First transmission to one S4C Broadcast of the material recorded.

Appendix 5. Definitions & Interpretations states: "Clause 14 S4C Broadcast and S4C Digital: S4C Broadcast shall mean a simulcast of the Programme(s) on S4C Analogue and S4C Digital. S4C Analogue is the service referred to in section 57 of the Broadcasting Act 1990. S4C Digital is the service referred to in section 29 and 84 (3) of the Broadcasting Act 1996 whether such service is delivered by digital terrestrial television, digital cable, digital satellite, telephone line or any other digital medium now known or hereinafter invented and where the method of delivery is via unencrypted digital satellite signal, the parties acknowledge that the territory in which the signal is capable of being received is not limited to the UK."

OFCOM'S DEFINITION

Ofcom defines simulcasting as the broadcasting of television or radio programme service on more than one transmission technology (e.g. FM and MW, DAB and FM, analogue and digital television, digital terrestrial and satellite). It is important to look to the definition of analogue and digital as a format to deliver audio/visual material:

- Analogue television: encodes television pictures and sound information as an analogue signal, that is, by varying the amplitude and/or frequencies of the broadcast signal
- Digital television: is a telecommunication system for broadcasting and receiving moving pictures and sound by means of digital signals, in contrast to analogue TV

it uses digital modulation data, which is digitally compressed and requires decoding by a specially designed television set or a standard receiver with a set top box

Ofcom clearly identifies the differences between analogue and digital transmission via the method by which a signal is delivered and in the terms of our TV agreements enables a television channel/service to be delivered simultaneously via analogue, digital terrestrial, digital satellite and digital cable. Therefore the term simultaneous/non-simultaneous has developed from a point where the channel can be viewed in different ITV regions simultaneously to facilitating channel delivery via analogue or digital format.

THE CURRENT STATUS OF PAN-INDUSTRY DISCUSSIONS

It is clear that the existing television agreements grant the right to transmit a production via the channels set out above simultaneously via both analogue or digital broadcasting or, in some circumstances, to broadcast a programme to different audience non-simultaneously.

However, the agreements clearly did not envisage a situation where advances in technology could see programmes broadcast across a much wider range of technologies. The current agreement therefore require complete overhaul, and Equity has been in pan-industry discussions to address the elements not covered by existing provisions.

We already know, for example, that the BBC believes it can stretch the language of the existing agreement to allow it to broadcast material simultaneously via any delivery platform, including mobile devices.

ITV, by contrast, has accepted that simultaneous delivery via mobile devices and

broadband is a separate use and has agreed separate packages of remuneration for both systems.

Channel 4 has agreed that simultaneous use of its service via mobile devices requires a payment based on the application of a royalty and it will soon make a payment for services delivered via broadband including video on demand (VOD) and simultaneous use.

PACT recently tabled a proposal, which was rejected by Equity, seeking to include simulcast rights without additional payment to the artist where there is no requirement for the viewer to make a payment to access material on different formats. While their suggestion was unacceptable, it did make clear that PACT believes that such uses are not provided for within the terms of the current agreement

EQUITY'S POSITION

Equity's contention is that the distribution of an artist's performance via simultaneous transmission to non-traditional platforms such as mobile phones falls outside the terms of the agreement under which the artists were contracted and, therefore, represents an additional use in terms of both the existing BBC and PACT television agreements – whether or not the individual end user is required to pay a fee to access the broadcast. We believe that such additional usages should, therefore, involve an additional payment to the artists, as enshrined in the deals we have reached with both ITV and Channel 4.

Recent legal advances on the topic of intellectual property rights, particularly on the topic of the application of copyright laws in relation to the re-use of material in electronic contexts has clarified the situation in the United Kingdom. The result of this process has been that copyright holders now have the right to authorise or prohibit the broadcasting or other

communication to the public of their material by electronic transmission. These rights include the power to prevent the placing of copyrighted materials on an intranet or using it in an on-demand service where members of the public choose the time that the work is sent to them. Such an extension is an exclusive right and therefore is only transferable subject to an agreement.

Equity believes that this clarification strengthens our position in regard to negotiations with organisations such as the BBC. In addition, this new legal framework may have important implications for the simultaneous broadcast of feature films which were made under current and predecessor PACT agreements, which did not include provision for the dissemination of material on new technologies and so the contracts may not contain clauses that permit the distribution of this material on these new media.

TELEVISION IS CHANGING

This paper is part of Equity's *TV is Changing* campaign. It is intended as a companion to *The Future of Television Agreements* published by Equity in 2006 and the updated *The Future of Television* published in August 2007. Copies of these publications are available from Equity or can be downloaded from www.tvischanging.com.

Equity has produced a range of briefings designed to update members on recent developments and to provide a deeper insight into the issues at stake as television moves towards its digital future. These briefings illustrate the work Equity has done over the past year and highlight the important issues still to be resolved.

Briefing papers in this range include:

Paying for the Future: Collective Licences

Deductions in a Digital Age: Do they add up?

Broadcasters & Producers: Terms of Trade

Simultaneous Transmissions: TV on Mobile Devices

Working Conditions: Fees and payments

Terms and Definitions: What it all means

Equity has also produced a range of factsheets designed to answer the most frequently asked questions about how all this will affect our members.

This material is available free of charge to any Equity member. If you would like to receive a copy or would like to take part in the debate within Equity regarding the future of television, please do not hesitate to contact us - details are below.



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