



**Call for Views on the European Commission's proposal for  
Legislation on cross-border portability**

The UK Music Publishers Association is grateful for the opportunity to provide a few observations to the IPO call for views on the European Commission's proposal for legislation on cross-border portability.

The UK Music Publishers Association (MPA) is the trade association representing and safeguarding the interests of UK music publishing companies.

These Regulations are aimed at the audio visual sector as evidenced by the examples given by the Commission justifying the Regulations which exclusively relate to audio – visual services. We are however concerned about potential unintended consequences which the Regulations might have on music publishing. The Question and Answers of the Commission publications accompanying the publication of the draft Regulations state that “(t)here are less significant problems or restrictions concerning the portability of subscriptions to online music services (like Spotify or Deezer) or e-books. But restrictions in the future cannot be excluded, that is why today's rules are also important for such services.” We note that not only are the problems and restrictions less significant as regards the music sector; they are in fact non-existent given established licensing practices within the music industry. We equally challenge the unsubstantiated statement that restrictions in the future “cannot be excluded” which seemingly is the justification for the Regulations also applying to the music sector. We would be interested on which evidence the Commission based its decision to include music in the scope of the Regulations.

1. **Consumer value:** Music online services such as Spotify already are portable enabling people from the UK and other EU states to access the same services they have subscribed to at home when they are travelling elsewhere in the EU. The relevant licensing structures are readily available as has been recognised by the European Commission

Given that the music industry already provides portability we don't expect the Regulations to trigger changes but we are mindful that certain limitations in the Regulations such as the ones on temporary access might actually reduce the value of portable music services to consumers. A too narrow definition of temporary residence might have the unintended consequence to reduce the consumer value of unrestricted portability, in particular if applied in connection with the ban on contractual overrides Article 5 of the Regulations; this would not make sense and would run counter to the objective of the Regulations.

2. **Temporary access:** Given that music services are already portable, the question of temporary access is not relevant for the music industry. However, any limitation on temporary access due to a too narrow definition of temporary residency should not be applied factually to restrict the portability of music services; this is notwithstanding the question whether a definition would be crucial for the AV sector. The scope of the Regulations is too widely drafted, different creative sectors have different requirements. It might be worthwhile to clarify the special situation of the music industry in a Recital.

3. **Limitation to subscription services:** We agree that the Regulations should only apply to paid subscription services and other subscription services which have mechanisms in place to allow verification of the subscriber's country of residence (for example, via a television licence). A wider scope would not be administrable and would lead to insurmountable problems regarding services which are not yet licensed in all member states in the European Union. The objective of the Digital Single Market is that subscribers to online content services in the Union, when temporarily present in a Member State can access and use these if they travel within the European Union. It is sufficient to cover the subscription services as specified.
4. **Definitions:** We agree with the Commission approach to introduce high level definitions of subscriber, consumer and member state of residence in the Regulations and leave the details to individual member states; this is appropriate given the different national approaches.
5. **Verification:** We suggest that required verification measures should be agreed between right holders and online content services. Such measures have been dealt with in existing contracts and there is no need to re- invent the wheel by law; a more prescriptive approach might interfere with established systems and create uncertainty and additional costs for all parties including the consumer; we agree with the general observation that the Regulations should not lead to further costs (c.f. impact assessment). A negotiated approach will also ensure that the measures have been proven to be workable in practice.
6. **Localisation of copyright relevant acts:** The Regulations are sufficient to support the introduction of portability describing clearly the acts which are taking place in the home Member State
7. **Application to existing contracts:** It is generally not appropriate to apply Regulations to existing contracts and acquired rights. Retrospective application is unwarranted because it does not consider the circumstances of the time when the contract was agreed.
8. **Quality of service:** Not for the MPA to comment
9. **Delivery timescale:** Given that music services currently are already portable we don't expect any issues (e.g. technical concerns) with the Commission's proposal that the Regulations would come into force 6 months after agreement (predicted to be in 2017).

We are at the disposal of the IPO to discuss further if considered useful.

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