



2015/0284(COD)

15.7.2016

OPINION

of the Committee on Culture and Education

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council
on ensuring the cross-border portability of online content services in the
internal market

(COM(2015)0627 – C8-0392/2015 – 2015/0284(COD))

Rapporteur (*): Sabine Verheyen

(*) Associated committee – Rule 54 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

The purpose of the Commission's proposal is to give consumers the possibility to take their online content to which they have lawful access in their Member State of residence with them when travelling in the EU, on the basis of a "legal fiction". The portability obligation introduced by the proposal does not require service providers to buy a separate licence or to renegotiate existing licenses, but they are deemed to carry out the relevant acts of reproduction, communication to the public, making available of works etc. on the basis of the respective authorisations they already received from the right holders for the country of residence of the subscriber. As such, portability in the sense of this Regulation is a non-waivable consumer right.

From the perspective of the CULT Committee, it is of utmost importance that in the context of online content services all across the Union on a portable basis the protection and the promotion of European cultural and linguistic diversity as well as European works are guaranteed. However, the rapporteur sees the need to clarify that portability does not mean cross-border access, which is not subject-matter of this Regulation. Cross-border portability will not undermine nor abolish the territorial principle, since this principle and the value created by exclusive rights are important elements for the creative and cultural sector to maintain its competitiveness and to ensure the sustainability of its financing, especially in the audio-visual sector. The high level of protection afforded to copyright and related rights under Union law provides an incentive for the creation of content and is the basis for European cultural diversity.

Scope

The rapporteur agrees with the Commission to apply the draft Regulation to online content services that, on a basis of a contract, provide access to services to its subscribers including streaming, downloading or any other technique which allows use of that content. For clarification purposes, the rapporteur believes that the initial Commission proposal should be amended in order to exclude that a simple log in system or the payment of a mandatory fee such as a broadcasting licence fee constitute a contract in the sense of this Regulation. The rapporteur fully supports the Commission's approach to apply the Regulation to online content services which are provided against the payment of money as well as to services that are provided without the payment of money to the extent that the providers verify the Member State of residence of their subscribers. In case the provider of a non-paid service decided to offer portability, the provider must establish a verification system of the subscriber's Member State of residence in conformity with this Regulation.

Definitions

"Member State of residence"

The rapporteur is of the opinion that it is necessary to provide a more precise definition of "Member State of residence" to avoid legal uncertainty and in order to enable service providers to implement the Regulation from an operational point of view. The concept of habitual residence is not clearly defined in EU law. There are different definitions inherent in EU secondary and case law. For the purpose of this opinion, the rapporteur suggests to follow the definition found by the ECJ in case C-452/93-P *Petro Magdalena Fernández v COM* of

the European Communities, which is now used by the EU in rules and regulations applying to its own staff. It provides clear indications on how to assess the member state of residence of an individual.

"Temporary present"

As concerning the definition of "temporary present", the rapporteur fully supports the approach of the Commission not to limit the duration of the stay in another Member State than that of residence to a specific amount of days or weeks since this would undermine the principal purpose of the regulation to give all consumers the possibility to travel with their legally acquired online content within the EU. For instance, an Erasmus student should have the possibility to take his legally acquired content abroad for the length of his stay. The same applies to consumers travelling a lot for work. To limit the days would be to the detriment of those people. Moreover, the rapporteur fully supports the Commission's approach not to allow for constant location tracking. To limit the duration to stay abroad to a specific amount of days would require constant IP tracking, which should be avoided. In addition, when the notion of habitual residence is well defined and verification measures are effective and reasonable, there is no reason to limit the duration to a specific amount of days since the risks of abuse are certainly limited.

Effective verification of the Member State of residence

To ensure swift and successful implementation of the regulation also from an operational point of view, the rapporteur suggests to establish effective residency checks in order to verify the habitual residence of a subscriber at the point the subscriber wishes to use the service and later on an ongoing basis, however not by constant IP tracking but by the sampling of IP addresses, to avoid the risk of abuse.

In order to grant a maximum level of legal certainty, the rapporteur proposes to ask the Commission to develop, by the means of a delegated act and together with the industry, a non-exhaustive list of residency verification means that services may apply for the purpose of effectively verifying the habitual residence of the subscriber at the point a subscriber wishes to use the cross-border portable services. This list may for example include a confirmed installation of a set top box, a local home bank account, a home electoral role, tax paying confirmation etc. The Commission may, after consulting service providers and right holders, amend the list. For the purpose of verifying the habitual residence of the subscriber on an ongoing basis, the sampling of IP addresses might be useful.

Following the Commission's suggestion, the rapporteur proposes that service providers are responsible for the verification of a subscriber's Member State of residence. Moreover, in order to strengthen the position of the right holders, they may withhold the rights licensed to a service provider if the provider cannot demonstrate upon request that it is carrying out the residency verifications in conformity with this Regulation.

Date of application

Right holders and service providers will still be likely to negotiate and exchange best practices on the residency verification measures with the European Commission. Such discussions will presumably take longer than only 6 months to be concluded. The rapporteur would however like to call upon the right holders, service providers and the Commission to

develop a list of effective residency verification means as soon as possible so that this Regulation can enter into force not later than 12 months following the date of its publication.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 1

Text proposed by the Commission

(1) Since the internal market comprises an area without internal frontiers relying, inter alia, on the free movement of services and persons, it is necessary to provide that consumers can use online content services which offer access to content such as music, games, films or sporting events not only in their Member State of residence but also when they are temporarily present in other Member States of the Union. Therefore, barriers that hamper access and use of such online content services cross border should be eliminated.

Amendment

(1) Since the internal market comprises an area without internal frontiers relying, inter alia, on the free movement of services and persons, it is necessary to provide that consumers can use online content services which **legally** offer access to content such as music, games, films or sporting events not only in their Member State of residence but also when they are temporarily present in other Member States of the Union. Therefore, barriers that hamper **temporary** access and use of **legally acquired** online content services cross border should be eliminated.

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) The technological development leading to a proliferation of portable devices such as tablets and smartphones increasingly facilitates the use of online content services by providing access to them regardless of the consumers' location. There is a **rapidly** growing demand on the

Amendment

(2) The technological development leading to a proliferation of portable devices such as tablets and smartphones increasingly facilitates the use of online content services by providing access to them regardless of the consumers' location. There is a growing demand on the part of

part of consumers for access to content and innovative online services not only in their **home country** but also when they are temporarily present in another Member State of the Union.

consumers for access to content and innovative online services not only in their **Member State of residence** but also when they are temporarily present in another Member State of the Union.

Amendment 3

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) In the case of online content services that are provided across the Union on a portable basis, it is of utmost importance to guarantee the protection and the promotion of European cultural and linguistic diversity as well as European audiovisual works.

Amendment 4

Proposal for a regulation

Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) The high level of protection afforded to copyright and related rights under Union law provides an incentive for the creation of content and is the basis for European cultural diversity.

Amendment 5

Proposal for a regulation

Recital 3

Text proposed by the Commission

Amendment

(3) Consumers increasingly enter into contractual arrangements with service providers for the provision of online content services. However, consumers that are temporarily present in another Member

(3) Consumers increasingly enter into contractual arrangements with service providers for the provision of online content services. However, consumers that are temporarily present in another Member

State of the Union often cannot access and use the online content services that they have acquired the right to use in their *home country*.

State of the Union often cannot access and use the online content services that they have *legally* acquired the right to use in their *Member State of residence*.

Amendment 6

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) There are a number of barriers which hinder the provision of these services to consumers temporarily present in another Member State. Certain online services include content such as music, games or films which are protected by copyright and/or related rights under Union law. In particular, the obstacles to cross-border portability of online content services stem from the fact that the rights for the transmission of content protected by copyright and/or related rights such as audiovisual works are *often licensed on a territorial basis* as well as from the fact that online service providers may choose to serve specific markets only.

Amendment

(4) There are a number of barriers which hinder the provision of these services to consumers temporarily present in another Member State. Certain online services include content such as music, games or films which are protected by copyright and/or related rights under Union law. In particular, the obstacles to cross-border portability of online content services stem from the fact that the rights for the transmission of content protected by copyright and/or related rights such as audiovisual works are *not always licensed on a multi-territorial basis or are already sold on an exclusive basis within one territory* as well as from the fact that online service providers may choose to serve specific markets only. *These practices play a strong role in the financing of European cultural content and respond to the needs of European markets. While such practices should not hamper the legitimate access to and use of online content services by consumers when they are temporarily present in another Member State, the territorial licencing system remains vital for the continuation of a strong European cultural diversity.*

Amendment 7

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) In addition, the Court held in Joined cases C-403/08 and C-429/08, Football Association Premier League and Others, EU:C:2011:631, that ***certain restrictions*** to the provision of services cannot be justified in light of the objective of protecting intellectual property rights.

Amendment

(11) In addition, the Court held in Joined cases C-403/08 and C-429/08, Football Association Premier League and Others, EU:C:2011:631, that ***a restriction*** to the provision of services, ***consisting of the prohibition of the use of foreign decoding devices in the context of an encrypted satellite broadcasting service of live sporting events***, cannot be justified in light of the objective of protecting intellectual property rights.

Amendment 8

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Therefore, the objective of this Regulation is to adapt the legal framework in order to ***ensure that the licensing of rights no longer presents barriers to cross-border portability of online content services in the Union and that the cross-border portability can be ensured.***

Amendment

(12) Therefore, the objective of this Regulation is to adapt the legal framework ***to provide a common approach to the provision of online content services by establishing a strictly interpretable legal fiction*** in order to ***permit cross-border portability of online content services in the case of consumers that have legally acquired content and are temporarily present in a Member State other than that of their Member State of residence, and, with regard to the audiovisual sector, without undermining or abolishing the territorial principle as that would lead to a disproportionate loss to the detriment of the right holders and to a significant distortion of the market for audiovisual content. This Regulation does not aim to change and should not affect the existing system of territorial licensing, which is key in the financing, production and distribution of European audiovisual works.***

Amendment 9

Proposal for a regulation

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Portability should, in any case, be distinguished from the concept of cross-border access, which does not fall within the scope of this Regulation. The enhancement of portability of legally available and legally acquired content services could be an important step to end unjustified geoblocking.

Amendment 10

Proposal for a regulation

Recital 13

Text proposed by the Commission

Amendment

(13) This Regulation should, therefore, apply to online content services that a service provider, after having obtained the relevant rights from right holders in a given territory, provides to its subscribers on the basis of a contract, by any means including streaming, downloading or any other technique which allows use of that content. A registration to receive content alerts **or** a mere acceptance of HTML cookies should not be regarded as a contract for the provision of online content service for the purposes of this Regulation.

(13) This Regulation should, therefore, apply to online content services that a service provider, after having obtained the relevant rights from right holders in a given territory, provides to its subscribers on the basis of a contract, by any means including streaming, downloading or any other technique which allows use of that content. A registration to receive content alerts, a mere acceptance of HTML cookies, ***a simple log-in system such as one designed primarily for programme recommendation or personalised advertising services, a payment of a universal mandatory fee such as a broadcasting licence fee or the exchange or transfer of data*** should not be regarded as a contract for the provision of online content service for the purposes of this Regulation.

Amendment 11

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) This Regulation should apply only to online content services which subscribers can effectively access and use in the Member State in which they habitually reside without being limited to a specific location, as it is not appropriate to require service providers that do not offer portable services ***in their home country*** to do so across borders.

Amendment

(15) This Regulation should apply only to online content services which subscribers can effectively access and use in the Member State ***of residence*** in which they habitually reside without being limited to a specific location ***in that Member State***, as it is not appropriate to require service providers that do not offer portable services ***within the subscriber's Member State of residence*** to do so across borders.

Amendment 12

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) Online content services which are provided without payment of money are also included in the scope of this Regulation to the extent ***that providers verify the Member State of residence of their subscribers***. Online content services which are provided without the payment of money ***and whose providers do not verify the Member State of residence of their subscribers*** should be outside the scope of this Regulation as their inclusion would involve a major change to the way these services are delivered and involve disproportionate costs. ***As concerns verification of the subscriber's Member State of residence, information such as a payment of a licence fee for other services provided in the Member State of residence, the existence of a contract for internet or telephone connection, IP address or other means of authentication,***

Amendment

(17) Online content services which are provided without payment of money are also included in the scope of this Regulation to the extent ***that the providers already have a verification system in place that verifies the Member State of residence of their subscribers to the same degree of certainty as services which are provided against payment of money***. Online content services which are provided without the payment of money ***and whose providers do not have a verification system in place can choose freely to allow the access and use of their service to their subscribers in accordance with this Regulation***. ***Online content services which are provided without the payment of money and whose providers do not already have a verification system in place to verify their subscribers' Member State of residence to the same degree of***

should be relied upon, if they enable the provider to have reasonable indicators as to the Member State of residence of its subscribers.

certainty as services which are provided against payment of money should be outside the scope of this Regulation as their mandatory inclusion would involve a major change to the way these services are delivered and involve disproportionate costs. As online content services which are provided without the payment of money are nevertheless important actors on the market, it should remain possible for them to offer cross-border portability to their subscribers when they possess the means to allow the verification of their subscribers' Member State of residence to the same degree of certainty as services which are provided against payment of money. If providers of online content services which are provided without payment of money wish to exercise that option, they should be obliged to comply with the provisions of this Regulation in the same way as providers of online content services which are provided against payment of money.

Amendment 13

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) In order to ensure the cross-border portability of online content services it is necessary to require that online service providers enable their subscribers to use the service in the Member State of their temporary presence by providing them access to the same content on the same range and number of devices, for the same number of users and with the same range of functionalities as those offered in their Member State of residence. This obligation is mandatory and therefore the parties may not exclude it, derogate from it or vary its effect. Any action by a service provider which would prevent the subscriber from accessing or using the service while

Amendment

(18) In order to ensure the cross-border portability of online content services it is necessary to require that online service providers enable their subscribers to use the service in the Member State of their temporary presence by providing them access to the same content on the same range and number of devices, for the same number of users and with the same range of functionalities as those offered in their Member State of residence. This obligation is mandatory and therefore the parties may not exclude it, derogate from it or vary its effect. Any action by a service provider which would prevent the subscriber from accessing or using the service while

temporarily present in a Member State, for example restrictions to the functionalities of the service or to the quality of its delivery, would amount to a circumvention of the obligation to enable cross-border portability of online content services and therefore would be contrary to this Regulation.

temporarily present in a Member State **and would not infringe this Regulation**, for example restrictions to the functionalities of the service or to the quality of its delivery, would amount to a circumvention of the obligation to enable cross-border portability of online content services and therefore would be contrary to this Regulation.

Amendment 14

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) A derogation from the obligation to offer cross-border portability on certain non-portable devices may be allowed in very limited circumstances where guaranteeing access for a subscriber would require the online service provider to enter into a separate contractual agreement with a third party device manufacturer or platform controller, as this may be technologically unfeasible or legally challenging.

Amendment 15

Proposal for a regulation Recital 20

Text proposed by the Commission

Amendment

(20) In order to ensure that providers of online content services comply with the obligation to provide cross-border portability of their services without ***acquiring the relevant rights in another Member State***, it is necessary to stipulate that those service providers which lawfully provide portable online content services in the Member State of residence of subscribers are always entitled to provide such services to those subscribers when

(20) In order to ensure that providers of online content services comply with the obligation to provide cross-border portability of their services without ***infringing the territorial exclusivity***, it is necessary to stipulate that those service providers which lawfully provide portable online content services in the Member State of residence of subscribers are always entitled to provide such services to those subscribers when they are temporarily

they are temporarily present in another Member State. This should be achieved by establishing that the provision, the access to and the use of such online content service should be deemed to occur in the Member State of the subscriber's residence.

present in another Member State. This should be achieved by establishing that the provision, the access to and the use of such online content service should be deemed to occur in the Member State of the subscriber's residence. ***This legal fiction should not prevent the provider from offering its subscriber, who is temporarily present in another Member State, online content that the provider lawfully provides in that Member State. It should moreover not be interpreted as restricting a service provider from offering its services to a subscriber permanently located in another Member State, provided that the necessary licences have been acquired in accordance with Directive 2001/29/EC and Directive 2014/26/EU of the European Parliament and of the Council^{1a} and that they have authorisation from the right holders to use their content.***

^{1a} Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

Amendment 16

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) For the licensing of copyright and related rights, this means that relevant acts of reproduction, communication to the public and making available of works and other protected subject-matter, as well as the acts of extraction or re-utilization in relation to databases protected by sui generis rights, which occur when the service is provided to subscribers when

Amendment

(21) For the licensing of copyright and related rights, this means that relevant acts of reproduction, communication to the public and making available of works and other protected subject-matter, as well as the acts of extraction or re-utilization in relation to databases protected by sui generis rights, which occur when the service is provided to subscribers when

they are temporarily present in a Member State other than their Member State of residence, should be deemed to occur in the subscribers' Member State of residence. The service providers, therefore, should be deemed to carry out such acts on the basis of the respective authorisations from the right holders concerned for the Member State of residence of these subscribers. Whenever service providers can carry out acts of communication to the public or reproduction in the Member State of the subscriber on the basis of an authorisation from the right holders concerned, a subscriber who is temporarily present in a Member State other than his Member State of residence should be able to access and use the service and where necessary carry out any relevant acts of reproduction such as downloading which he would be entitled to do in his own Member State of residence. The provision of an online content service by a service provider to a subscriber temporarily present in a Member State other than his or her Member State of residence and the use of the service by such a subscriber in accordance with this Regulation should not constitute a breach of copyright and related rights or any other rights relevant for the use of the content in the service.

they are temporarily present in a Member State other than their Member State of residence, should be deemed to occur in the subscribers' Member State of residence. The service providers, therefore, should be deemed to carry out such acts on the basis of the respective authorisations from the right holders concerned for the Member State of residence of these subscribers. Whenever service providers can carry out acts of communication to the public or reproduction in the Member State of the subscriber on the basis of an authorisation from the right holders concerned, a subscriber who is temporarily present in a Member State other than his Member State of residence should be able to access and use the service and where necessary carry out any relevant acts of reproduction such as downloading which he would be entitled to do in his own Member State of residence. ***Provided that the subscriber's Member State of residence has been effectively verified in accordance with this Regulation,*** the provision of an online content service by a service provider to a subscriber temporarily present in a Member State other than his or her Member State of residence and the use of the service by such a subscriber in accordance with this Regulation should not constitute a breach of copyright and related rights or any other rights relevant for the use of the content in the service.

Amendment 17

Proposal for a regulation Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) To safeguard cultural and linguistic diversity, the production, marketing and distribution of creative content across the Union, particularly with regard to the audiovisual sector and the rights of authors and creators that are

protected by copyright, this Regulation should be limited to cross-border portability of legally acquired content and should in no case extend to cross-border access to online content services in Member States where the provider of the online content service has no authorisation from the creators and right holders to make use of that content.

Amendment 18

Proposal for a regulation Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) The providers and holders of rights relevant for the provision of online content services should not be allowed to circumvent the application of this Regulation by choosing the law of a third country as the law applicable to contracts between them or to contracts between providers and subscribers.

Amendment 19

Proposal for a regulation Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) Should a subscriber fail to provide the necessary information and the provider is unable to verify the Member State of residence as required under this Regulation as a result, the provider should not provide cross-border portability of the online content service to such a subscriber under this Regulation.

Amendment 20

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) Service providers should ensure that their subscribers are properly informed about the conditions of enjoyment of online content services in Member States other than the Member State of residence of the subscribers. The Regulation **enables** right holders to require that the service provider make use of effective means in order to verify that the online content service is provided in conformity with this Regulation. ***It is necessary, however, to ensure that the required means are reasonable and do not go beyond what is necessary in order to achieve this purpose. Examples of the necessary technical and organisational measures may include sampling of IP address instead of constant monitoring of location, transparent information to the individuals about the methods used for the verification and its purposes, and appropriate security measures. Considering that for purposes of the verification what matters is not the location, but rather, in which Member State the subscriber is accessing the service, precise location data should not be collected and processed for this purpose. Similarly, where authentication of a subscriber is sufficient in order to deliver the service provided, identification of the subscriber should not be required.***

Amendment 21

**Proposal for a regulation
Recital 23 a (new)**

Text proposed by the Commission

Amendment

(23) Service providers should ensure that their subscribers are properly informed about the conditions of enjoyment of online content services in Member States other than the Member State of residence of the subscribers. The Regulation **obliges** the service provider to make use of effective means in order to verify that the online content service is provided in conformity with this Regulation. ***The list of verification means, provided for in this Regulation, aims to provide legal certainty as to the verification means to be used by service providers, while providing the sufficient and flexible means by which service providers can authenticate and verify subscribers' access and Member State of residence.***

(23 a) Right holders may withhold the rights licenced to a service provider if the provider cannot demonstrate that it is complying with the obligation to effectively verify the Member State of

residence of the subscriber in accordance with this Regulation. It is necessary, however, to ensure that the required means of authentication and verification are effective, adapted to the nature of the online content service concerned, while also being reasonable and not going beyond what is necessary in order to achieve this purpose. In each case, account should be taken of a particular verification means in the given Member State and of the given type of online content service. In order to ensure legal certainty, service providers should rely on a combination of at least two of the verification means provided for in this Regulation, to be agreed between the right holders and service providers. Examples of the necessary technical and organisational measures may include sampling of IP address instead of constant monitoring of location, the provision of transparent information to individuals about the methods used for the verification and its purposes, and appropriate security measures. Considering that for the purposes of the verification what matters is not the specific location or country, but rather, whether the individual is accessing the service in his or her Member State of residence or not, precise location data, beyond an original verification of residence, should not be collected and processed for this purpose. Similarly, where authentication of a subscriber is sufficient in order to deliver the service provided, identification of the subscriber should not be required.

Amendment 22

Proposal for a regulation Recital 23b (new)

(23b) In order to enable cross-border portability of online content services, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the list of means for the verification of the subscriber's Member State of residence, prepared and drawn up in consultation with the industry, including small right holders. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States' experts, and their experts have systematic access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Amendment 23

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles, in particular the right to respect for private and family life, the right to protection of personal data, the freedom of expression and the freedom to conduct a

Amendment

(24) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles, in particular the right to respect for private and family life, the right to protection of personal data, ***the right to property, including intellectual property***

business. Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directives 95/46/EC²⁷ and 2002/58/EC²⁸. In particular, service providers must ensure that any processing of personal data under this Regulation must be necessary and proportionate in order to achieve the relevant purpose.

²⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281, 23.11.1995, p. 31–50.

²⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.07.2002, p 37), called, as amended by Directives 2006/24/EC and 2009/136/EC, the "e-Privacy Directive".

rights, the freedom of expression and the freedom to conduct a business. Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directives 95/46/EC²⁷ and 2002/58/EC²⁸. In particular, service providers must ensure that any processing of personal data under this Regulation must be necessary and proportionate in order to achieve the relevant purpose.

²⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

²⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.07.2002, p 37).

Amendment 24

Proposal for a regulation Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) This Regulation should respect the obligations to which the Union is subject under international treaties protecting copyright and related rights, including the Berne Convention for the Protection of Literary and Artistic Works, the World

Amendment 25

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) As the Regulation will therefore apply to some contracts and rights acquired before the date of its application, it is also appropriate to provide for a reasonable period between the date of entry into force of this Regulation and the date of its application allowing right holders and service providers to make the arrangements necessary to adapt to the new situation, as well as allowing service providers to amend the terms of use of their services.

Amendment

(27) As the Regulation will therefore apply to some contracts and rights acquired before the date of its application, it is also appropriate to provide for a reasonable period between the date of entry into force of this Regulation and the date of its application allowing right holders and service providers to make the arrangements necessary to adapt to the new situation, as well as allowing service providers to amend the terms of use of their services.
Changes to the terms of use of online content services offered in packages combining an electronic communications service and an online content service made strictly in order to comply with this Regulation should not trigger any right for subscribers under national laws transposing the regulatory framework for electronic communications networks and services to withdraw from contracts for the provision of such electronic communications services.

Amendment 26

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) In order to achieve the objective of ensuring cross-border portability of online content services in the Union, it is appropriate to adopt a regulation, which directly applies in Member States. This is

Amendment

(28) In order to achieve the objective of ensuring cross-border portability of online content services in the Union, it is appropriate to adopt a regulation, which directly applies in Member States. This is

necessary in order to guarantee a uniform application of the cross-border portability rules across Member States and their entering into force at the same time with regard to all online content services. Only a regulation ensures the degree of legal certainty which is necessary in order to enable consumers to fully benefit from cross-border portability across the Union.

necessary in order to guarantee a uniform application of the cross-border portability rules across Member States and their entering into force at the same time with regard to all online content services. Only a regulation ensures the degree of legal certainty which is necessary in order to enable consumers to fully benefit from cross-border portability across the Union; ***the choice of this kind of legal act reflects the special objectives of the cross-border portability rules and the unique circumstances underlying them, and thus it should by no means be regarded as setting a precedent for any later legal act of the Union in the field of copyright.***

Amendment 27

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

This Regulation introduces a common approach to ensuring that subscribers to online content services ***in the Union***, when temporarily present in a Member State, can access and use these services.

Amendment

This Regulation introduces a common approach to ensuring that subscribers to ***legally acquired*** online content services in ***their Member State of residence***, when temporarily present in a Member State ***other than that of their Member State of residence*** can access and use these services ***whilst respecting all the relevant copyright and related rights of the content accessed and used and on the condition that the provider of online content services has verified the subscriber's Member State of residence in accordance with Article 3b new.***

Amendment 28

Proposal for a regulation Article 2 –point c

Text proposed by the Commission

(c) "Member State of residence" means the Member State where the subscriber is habitually residing;

Amendment

(c) "Member State of residence" means the Member State where the subscriber is habitually residing, ***defined as the place where one has established a permanent centre of interest with the intention of giving it a lasting character, a place where an individual routinely returns and with which he or she has a continuous connection, as established on the basis of verification means in accordance with this Regulation;***

Amendment 29

Proposal for a regulation

Article 2 – point d

Text proposed by the Commission

(d) "Temporarily present" means a presence of a subscriber in a Member State other than the Member State of residence;

Amendment

(d) "Temporarily present" means ***the transitory*** presence of a subscriber in a Member State other than the Member State of residence, ***provided that the subscriber does not move his or her centre of interests there;***

Amendment 30

Proposal for a regulation

Article 2 – point e

Text proposed by the Commission

(e) "Online content service" means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union that a service provider is lawfully providing online in the Member State of residence on a portable basis and which is an audiovisual media service within the meaning of Directive 2010/13/EU or a service the main feature of which is the provision of access to and use of works, other protected subject

Amendment

(e) "Online content service" means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union that a service provider is lawfully providing online in the Member State of residence on a portable basis and which is an audiovisual media service within the meaning of Directive 2010/13/EU or a service the main feature of which is the provision of ***lawful*** access to and use of works ***and*** other protected

matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner, ***which is provided to a subscriber on agreed terms either:***

- (1) against payment of money; or***
- (2) without payment of money provided that the subscriber's Member State of residence is verified by the provider;***

subject matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner.

Amendment 31

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The obligation set out in paragraph 1 shall not extend to cross-border access of online content for which the service provider has not acquired authorisation for use from the right holder.

Amendment 32

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

Amendment

(3) The provider of an online content service shall inform the subscriber of the quality of delivery of the online content service provided in accordance with paragraph 1.

(3) The provider of an online content service, ***where possible on the basis of the data available to the provider***, shall inform the subscriber, ***in advance***, of the quality of delivery of the online content service provided in accordance with paragraph 1.

Amendment 33

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Opt-in

The provider of an online content service provided without payment of money and which does not already have a verification system in place that verifies the Member State of residence of the subscriber to the same degree of certainty as services which are provided against payment of money may choose to enable a subscriber who is temporarily present in a Member State to access and use the online content service provided that:

(a) it verifies the Member State of residence of its subscribers in accordance with this Regulation;

(b) it informs the relevant holders of copyright and related rights or those holding any other rights in the content of an online content service, as well as its subscribers, within a reasonable time period before enabling such access and use; and

(c) it applies the provisions of this Regulation from the moment it enables the cross-border portability for its subscribers.

Amendment 34

Proposal for a regulation

Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b

Obligation to verify the Member State of residence

1. The provider of an online content service that enables a subscriber who is temporarily present in a Member State to

access and use the online content service shall effectively verify the Member State of residence of the subscriber.

2. To comply with the obligation set out in paragraph 1, the provider shall rely on a combination of at least two of the following verification means:

(a) an identity card or any other valid document confirming subscriber's Member State of residence, which shall include electronic identification means;

(b) the billing address or the postal address of the subscriber;

(c) payment details such as the bank account or local credit or debit card of the subscriber;

(d) the place of installation of a set top box or a similar device used for the supply of services to the subscriber;

(e) the subscriber being a party to a contract for internet, telephone connection or equivalent, in the Member State;

(f) the subscriber paying a licence fee for other services provided in the Member State, such as public service broadcasting;

(g) sampling of the Internet Protocol (IP) address to identify the Member State where the subscriber accesses and uses the online content service or identifying that Member State by other means of geolocation;

(h) registration on local electoral rolls, if publicly available;

(i) the payment of local or poll taxes, if publicly available.

3. The verification means shall take into account the nature of the service, be reasonable and not go beyond what is necessary to achieve the purpose of verifying the Member State of residence of the subscriber.

4. The provider and the holders of copyright and related rights or those

holding any other rights in the content of an online content service may agree on the combination and number of the verification means referred to in paragraph 2 to verify the Member State of residence.

5. The processing of personal data pursuant to the verification shall be carried out in compliance with Regulation 2016/679/EU of the European Parliament and of the Council^{1a} and Directive 2002/58/EC of the European Parliament and of the Council^{1b}.

6. The provider shall be entitled to request the subscriber to provide the information necessary for the verification of the Member State of residence. If the subscriber fails to provide that information and consequently the provider is unable to effectively verify the Member State of residence, as required by this Regulation, the provider shall not, on the basis of this Regulation, enable the subscriber to access the online content service when he or she is temporarily present in a Member State.

7. To ensure that the list of verification means is in line with relevant technological developments the Commission is empowered to adopt delegated acts in accordance with Article 7a to amend this list and add innovative means of verification in accordance with paragraph 3, provided that the list of verification means in paragraph 2 proves to be outdated before the three year evaluation period of this Regulation.

^{1a} Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119,

4.5.2016, p. 1).

^{1b} *Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).*

Amendment 35

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

The provision of an online content service to, as well as the access to and the use of this service by, a subscriber, in accordance with Article 3(1), shall be deemed to occur solely in the Member State of residence including for the purposes of Directive 96/9/EC, Directive 2001/29/EC, Directive 2006/115/EC, Directive 2009/24 *and Directive 2010/13/EU*.

Amendment

The provision of an online content service to, as well as the access to and the use of this service by, a subscriber, in accordance with Article 3(1), shall be deemed to occur solely in the Member State of residence including for the purposes of Directive 96/9/EC, Directive 2001/29/EC, Directive 2006/115/EC *and* Directive 2009/24.

Amendment 36

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

(1) Any contractual provisions including those between holders of copyright and related rights, those holding any other rights relevant for the use of content in online content services and service providers, as well as between service providers and subscribers which are contrary to *Articles 3(1) and 4* shall be unenforceable.

Amendment

(1) Any contractual provisions including those between holders of copyright and related rights, those holding any other rights relevant for the use of *and access to* content in online content services and service providers, as well as between service providers and subscribers which are contrary to *this Regulation* shall be unenforceable. *Contractual changes arising from the application of this Regulation shall not confer any right to*

withdraw from any contract or agreement, either between the subscriber and the provider or between the provider and the right holder. Amendments, adjustments or other contractual changes arising from the implementation of this Regulation shall not constitute a justifiable reason for the adjustment of charges, fees or rates, or of any other financial relations between the subscriber, the provider or the holder of rights.

Amendment 37

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

(2) *Notwithstanding paragraph 1, holders of copyright and related rights or those holding any other rights in the content of online content services may require that the service provider make use of effective means in order to verify that the online content service is provided in conformity with Article 3(1), provided that the required means are reasonable and do not go beyond what is necessary in order to achieve their purpose.*

Amendment

(2) *Service providers of online content shall make use of effective means in order to verify that the online content service is provided in conformity with this Regulation and in line with Article 3b new. If reasonable and strictly necessary, right holders can require the implementation of further measures provided that the required measures are reasonable and do not go beyond what is necessary in order to achieve their purpose or require any change in contracts concluded between right holders and service providers. Holders of copyright and related rights or those holding any other rights to the content of online content services may withdraw the provider's licence to use the content on which they have rights, should the provider fail to act in accordance with Article 3b new.*

Amendment 38

Proposal for a regulation

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Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The holders of copyright and related rights or those holding any other rights in the context of an online content service may authorise service providers holding multi-territorial licenses in accordance with Title III of Directive 2014/26/EU of the European Parliament and of the Council^{1a} to access and use their content under this Regulation without verification of the Member State of residence.

^{1a} Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

Amendment 39

Proposal for a regulation Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The delegation of power referred to in Article 3b new shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of the basic legislative act or any other date set by the co-legislators].***
- 3. The delegation of power referred to in Article 3b new may be revoked at***

any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making .

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3b new shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or the Council.

Amendment 40

Proposal for a regulation Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

Evaluation

Three years after the entry into force of this Regulation the Commission shall

assess the application of this Regulation and shall submit a report thereon to the European Parliament and to the Council. The report shall include an assessment of the use of cross-border portability and the verification of the Member State of residence and, if necessary, on the need for a review. The report shall be accompanied by proposals designed to improve the implementation of this Regulation.

Amendment 41

Proposal for a regulation Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

It shall apply from [date: **6** months following the day of its publication].

Amendment

It shall apply from [date: **12** months following the day of its publication].

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Cross-border portability of online content services in the internal market
References	COM(2015)0627 – C8-0392/2015 – 2015/0284(COD)
Committee responsible Date announced in plenary	JURI 12.5.2016
Opinion by Date announced in plenary	CULT 21.1.2016
Associated committees - date announced in plenary	28.4.2016
Rapporteur Date appointed	Sabine Verheyen 16.2.2016
Date adopted	21.6.2016
Result of final vote	+: 25 -: 3 0: 2
Members present for the final vote	Isabella Adinolfi, Dominique Bilde, Andrea Bocskor, Nikolaos Chountis, Silvia Costa, Mircea Diaconu, Angel Dzhambazki, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Curzio Maltese, Stefano Maullu, Luigi Morgano, Momchil Nekov, Michaela Šojdrová, Yana Toom, Helga Trüpel, Sabine Verheyen, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
Substitutes present for the final vote	Rosa D'Amato, Santiago Fisas Aixelà, Eider Gardiazabal Rubial, Zdzisław Krasnodębski, Ernest Maragall, Emma McClarkin, Liliana Rodrigues