REPORT

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

Committee on Legal Affairs

Rapporteur: Jean-Marie Cavada

Rapporteurs for the opinion (*): Marco Zullo, Committee on the Internal Market and Consumer Protection
Sabine Verheyen, Committee on Culture and Education

(*) Associated committees – Rule 54 of the Rules of Procedure
Symbols for procedures

- Consultation procedure
- *** Consent procedure
- ****I Ordinary legislative procedure (first reading)
- ****II Ordinary legislative procedure (second reading)
- ****III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in *bold italics* in the left-hand column. Replacements are indicated in *bold italics* in both columns. New text is indicated in *bold italics* in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in *bold italics*. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in *bold italics* and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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(*) Associated committees – Rule 54 of the Rules of Procedure
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2015)0627),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0392/2015),

– having regard to the Charter of Fundamental Rights of the European Union,

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 27 April 2016¹,

– having regard to the opinion of the Committee of the Regions of 8 April 2016²,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education and the Committee on Industry, Research and Energy (A8-0378/2016),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Citation 1

Text proposed by the Commission  Amendment

- having regard to the Treaty on the - having regard to the Treaty on the

¹ OJ C 264, 20.7.2016, p. 86.
² OJ C 240, 1.7.2016, p. 72.
Functioning of the European Union, and in particular Article 114 thereof, in conjunction with Article 169 thereof,

Amendment 2
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) The access of consumers to the cross-border portability of online content services previously legally acquired in their Member State of residence is beneficial for the proper functioning of the internal market and for the effective enforcement of the principles of free movement of persons and services. 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 ensure that consumers can use online content services which offer access to content such as music, games, films, entertainment programmes 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 for leisure, business or study purposes, for instance. Therefore, barriers that hamper access and use of such online content services cross border should be eliminated, as soon as possible, without any additional costs to the user, in particular in sectors in which the portability of online content is still limited.

Amendment 3
Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) The technological development

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 rapidly growing demand on the 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.

Amendment 4

Proposal for a regulation
Recital 3

Text proposed by the Commission

(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.

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 State of the Union often cannot continue to access and use the online content services that they have legally acquired the right to use in their Member State of residence.
Amendment 5

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, entertainment programmes or films which are protected by copyright and/or related rights under Union law. At present, the problems associated with cross-border portability of online content services differ from one sector to another: Directive 2014/26/EU of the European Parliament and of Council\(^{1a}\) addresses the music sector and allows for multi-territorial licenses and pan-European licences, whereas the audiovisual sector, in which the model of exclusive territorial licensing predominates, has not been addressed yet. This Regulation is aimed at solving the difficulties associated with offering portability in the sectors concerned, without affecting the high level of protection guaranteed by copyright and related rights in the Union, in particular without affecting the existing territorial licensing model, which plays a key role in the financing and production of cultural content adapted to suit the different markets in the Union, and thus contributes to the continuation of strong European cultural diversity.

Amendment 6

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) The same applies to other content such as sporting events which is not protected by copyright and/or related rights under Union law but which may be protected by copyright, related rights or by virtue of other specific legislation under national law and which is often also licensed by organisers of such events or offered by online service providers on a territorial basis. Transmissions of such content by broadcasting organisations would be protected by related rights which have been harmonised at Union level. In addition, transmissions of such content often include copyright-protected elements such as music, opening or closing video sequences or graphics. In addition, certain aspects of such transmissions relating to events of major importance for society or events of high interest to the public for the purpose of short news reports, have been harmonised by Directive 2010/13/EU of the European Parliament and of the Council.\(^{22}\) Finally, audiovisual media services within the meaning of Directive 2010/13/EU include services which provide access to content such as sporting events, news or current events.

Amendment

(5) The same applies to other content such as sporting events which is not protected by copyright and/or related rights under Union law but which may be protected by copyright, related rights or by virtue of other specific legislation under national law and which is often also licensed by organisers of such events or offered by online service providers on a territorial basis. Transmissions of such content by broadcasting organisations would be protected by related rights which have been harmonised at Union level. In addition, transmissions of such content often include copyright-protected elements such as music, opening or closing video sequences or graphics. In addition, certain aspects of such transmissions relating to events of major importance for society or events of high interest to the public for the purpose of short news reports, have been harmonised by Directive 2010/13/EU of the European Parliament and of the Council.\(^{22}\) Finally, audiovisual media services within the meaning of Directive 2010/13/EU include services which provide access to content such as sporting events, news or current events. \textbf{Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action under other provisions of the Treaties. Respect for, and access to, cultural diversity, the subject of the Unesco Convention of 20 October 2005 on the Protection and Promotion of the Diversity of Cultural Expressions, should therefore be taken into account under Article 3 of the Treaty on European Union.}

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EN
Recital 7

Proposal for a regulation

Text proposed by the Commission

(7) The rights in works and other

Amendment

(7) The rights in works and other

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Amendment 7

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.

Amendment

(6) Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services during the temporary presence of those consumers in a Member State other than their Member State of residence, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.


**Amendment 9**

**Proposal for a regulation**

**Recital 10**

\textit{Text proposed by the Commission}

(10) The acquisition of a licence for the relevant rights is not always possible, notably when rights in content are licensed on an exclusive basis. In order to ensure the territorial exclusivity, online service providers often undertake, in their licence

\textit{Amendment}

(10) The acquisition of a licence for the relevant rights is not always possible, notably when rights in content are licensed on an exclusive basis. In order to ensure the territorial exclusivity, online service providers often undertake, in their licence
contracts with right holders, including broadcasting organisations or events organisers, to prevent their subscribers from accessing and using their service outside the territory for which the service provider holds the licence. These contractual restrictions imposed on service providers require providers to take measures such as disallowing access to their services from IP addresses located outside the territory concerned. Therefore, one of the obstacles to the cross-border portability of online content services resides in the contracts concluded between the online service providers and their subscribers, which in turn reflect the territorial restriction clauses included in contracts concluded between those service providers and right holders.

Amendment 10
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 judgment of the Court of Justice in Joined cases C-403/08 and C-429/08, Football Association Premier League and Others1a, need to be taken into account.

1a Judgment of the Court of Justice of 4 October 2011, Football Association Premier League and Others, C-403/08 and C-429/08, ECLI:EU:C:2011:631.
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.

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.

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, applications or any other technique which allows use of that content. A registration to receive content alerts, a simple log-in system based on general personal information such as the user's email-address or name, 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.
Amendment 13
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 their Member State of residence without being limited to a specific location, as it is not appropriate to require service providers that do not offer portable services within the Member State of residence of the subscriber to do so across borders.

Amendment 14
Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) This Regulation should apply to online content services which are provided against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another provider.

Amendment

(16) This Regulation should apply to online content services which are provided against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another provider. The payment of a mandatory fee for public broadcasting services should not be regarded as a payment of money to receive access to those online content services on a cross-border portable basis.
Amendment 15
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, should be relied upon, if they enable the provider to have reasonable indicators as to the Member State of residence of its subscribers.

Amendment

(17) At present providers of online content services which are provided without payment of money generally do not verify the Member State of residence of their users with a sufficient degree of certainty. However, some of those providers already verify the Member State of residence of their users or plan to do so in the near future. To encourage this trend, in the interests of consumers and without harming suppliers whose technical and financial resources are limited, those providers should have the option of being included in the scope of this Regulation provided that they comply with the requirements relating to the verification of the Member State of residence of the users of their services in accordance with this Regulation. If such providers exercise the option, they should comply with the same obligations as are provided for in this Regulation for the providers of online content services which are provided in return for payment of money. Service providers should inform users, and also rightholders, of their decision to exercise that option, in a timely manner.

Amendment 16
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

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.

An online service provider should enable its subscribers to use the service in the Member State of their temporary presence by providing them with access in the same manner as in their Member State of residence. 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. However, this provision should not prevent online content service providers from carrying out activities for information purposes to fight against the unauthorised access to, or use of, online content services or against violations of intellectual property rights of content distributed by such providers.

Amendment 17
Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the

Amendment

(19) Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the
provider of an online content service take measures to ensure quality of delivery of such services beyond the quality available via the local online access chosen by a subscriber while temporarily present in another Member State. In such cases the provider shall not be liable if the quality of delivery of the service is lower. Nevertheless, if the provider expressly agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement.

Nevertheless, if the provider expressly agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement. Online content service providers should ensure that their subscribers are properly informed of the conditions of use of online content services in Member States other than their Member State of residence, including the fact that it is possible those conditions vary from those applicable in their Member State of residence.

Amendment 18

Proposal for a regulation
Recital 20

Text proposed by the Commission

(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 they are temporarily present in another Member State. This should be achieved by

Amendment

(20) In order to ensure that providers of online content services provided in return for payment of money and providers of online content services provided without payment of money which have opted to be included within the scope of this Regulation 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 providers are always entitled to provide such services to those subscribers when they are
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 Regulation and in particular the legal mechanism localising the provision of, the access to and the use of an online content service in the Member State of residence of the subscriber should be without prejudice to the possibility for a service provider to enable the subscriber to additionally access and use the content licensed to the service provider in the Member State where the subscriber is temporarily present, provided that the necessary licences have been acquired in accordance with Directives 2001/29/EC and 2014/26/EU and that the service providers have authorisation from the rightholders to use their content. However, it is important to note that this legal mechanism should apply for the sole purpose of promoting the portability of online content services.

Amendment 19

Proposal for a regulation

Recital 21

Text proposed by the Commission

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 subscriber’s Member State of residence.

Amendment

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 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 20

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) Service providers should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary residence.

Amendment

(22) Providers of online content services provided in return for payment of money and providers of online content services provided without payment of money which have opted to be included
presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable. 

within the scope of this Regulation should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable, unless such clauses prohibit the cross-border portability of online content services to subscribers who fail to provide the necessary information required under this Regulation for the verification of their Member State of residence. Online content service providers and rightholders should not be allowed to circumvent the application of this Regulation by opting for the law of a non-EU country as the law applicable to contracts which they conclude. The same should apply to contracts concluded between online content service providers and subscribers.

Amendment 21

Proposal for a regulation

Recital 22 a (new)

Text proposed by the Commission

(22a) This Regulation defines several concepts which are necessary for its application, including that of Member State of residence. The Member State of residence should be determined, taking into account the objectives of this Regulation and the need to ensure its uniform application within the Union. The concept of Member State of residence should be defined to mean the Member State in which the subscriber habitually resides. A provider who has determined the Member State of residence of a subscriber in accordance with this Regulation should be able to assume, for the purpose of this Regulation, that the Member State of residence as verified is
the only Member State of residence of the subscriber. Regarding current and future arrangements related to online content services, providing portability to subscribers temporarily present in another Member State should not be able to give rise to any special contractual provisions.

Amendment 22

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 rights-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

(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. This Regulation should oblige providers providing online content services in return for payment of money to subscribers temporarily present in a Member State other than their Member State of residence to make use of effective and reasonable means in order to verify the Member State of residence of their subscribers. It is for the service provider to decide which means of verification to apply. Online content service providers should be free to choose between the means of verification listed in Article 3a in order to verify the subscriber's Member State of residence. The use of such means of verification should not go beyond what is necessary in order to verify the subscriber's Member State of residence.
Amendment 23
Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

(23a) For the purpose of this Regulation, subscribers should only be eligible for cross-border portability of online content services if their habitual residence is in a Member State of the European Union. Providers of an online content service should be required to request their subscribers to provide information necessary in order to sufficiently verify their Member State of residence. If a subscriber fails to provide that information and as a consequence, the provider is unable to verify that subscriber’s Member State of residence as required under this Regulation, the provider should not provide cross-border portability of the online content service concerned to that subscriber under this Regulation.

Amendment 24
Proposal for a regulation
Recital 23 b (new)

Text proposed by the Commission

(23b) The provider of an online content service should be allowed to perform random checks on the IP address of a subscriber during his or her contract, subject to compliance with Directives of the European Parliament and of the Council No 95/46/EC\(^a\) and 2002/58/EC\(^b\) and Regulation (EU) No 2016/679\(^c\) of the European Parliament and of the Council, in so far as that is strictly necessary for the purpose of establishing the Member State from which
a subscriber is assessing the online content service. Considering that for the purposes of that check what matters is not the precise location, but rather from which Member State the subscriber is accessing the service, data on precise location or any other personal data should not be collected and processed for that purpose. The sole aim of IP checks should be to establish whether a subscriber is accessing the online content service within or outside his or her Member State of residence. Therefore, the data resulting from such random checks should be collected in binary format. The service provider should under no circumstances go beyond this level of information. Where an online content service provider chooses to rely on such means of verification, it should inform the subscriber thereof in advance, in accordance with Directives 95/46/EC and 2002/58/EC and Regulation (EU) No 2016/679.


1c 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

Amendment 25
Proposal for a regulation
Recital 23 c (new)

Text proposed by the Commission

(23c) A service provider that has reasonable doubts about a subscriber’s Member State of residence should be able to request the subscriber to provide verifying documents again. However, such requests should be limited to once per year.

Amendment 26
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 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/EC and 2002/58/EC. In particular, service providers must ensure

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.

2002/58/EC and with Regulation (EU) 2016/679. 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. The necessary technical and organisational measures could include the provision of transparent information to subscribers regarding the methods used for verification, its purpose and the necessary security measures.

Amendment 27
Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.

Amendment

(25) The application of this Regulation will improve competitiveness by fostering innovation in online content services and by making it more attractive for consumers to use those services cross-border. This Regulation should not affect the application of competition rules, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.

Amendment 28
Proposal for a regulation
Recital 25 a (new)

Text proposed by the Commission

(25a) This Regulation should not affect the application of Directive 2014/26/EU and in particular Title III thereof relating to multi-territorial licensing of online rights. This Regulation is fully consistent with the objective of facilitating the lawful
Amendment 29

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) Contracts under which content is licensed are usually concluded for a relatively long duration. Consequently, and in order to ensure that all consumers residing in the Union can enjoy the cross-border portability feature of online content services on an equal basis in time and without any undue delay, this Regulation should also apply to contracts concluded and rights acquired before the date of its application if they are relevant for the cross-border portability of an online content service provided after that date. This is also necessary in order to ensure a level playing field for service providers operating in the internal market, by enabling providers who concluded contracts with right holders for a long duration to offer cross-border portability to their subscribers, independently of the provider's possibility to renegotiate such contracts. Moreover, this provision should ensure that when service providers make arrangements necessary for the cross-border portability of their services, they will be able to offer such portability with regard to the entirety of their online content. Finally, it should also allow right holders not having to renegotiate their existing licensing contracts in order to enable the offering of the cross-border portability of services by providers.

Amendment

(26) Contracts under which content is licensed are usually concluded for a relatively long duration. Consequently, and in order to ensure that all consumers residing in the Union can enjoy the cross-border portability feature of online content services on an equal basis in time and without any undue delay, this Regulation should also apply to contracts concluded and rights acquired before the date of its application if they are relevant for the cross-border portability of an online content service provided after that date. This is also necessary in order to ensure a level playing field for service providers operating in the internal market, particularly for SMEs, by enabling providers who concluded contracts with right holders for a long duration to offer cross-border portability to their subscribers, independently of the provider's possibility to renegotiate such contracts. Moreover, this provision should ensure that when service providers make arrangements necessary for the cross-border portability of their services, they will be able to offer such portability with regard to the entirety of their online content. This provision should also apply to providers of online content services offered in packages combining electronic communications services and online content services. Finally, it should also allow right holders not having to renegotiate their existing licensing contracts in order to enable the
offering of the cross-border portability of services by providers.

Amendment 30
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 this 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, thereby allowing right holders and providers of online content services 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 that are made strictly in order to comply with the requirements of this Regulation should not lead to less protection for either subscribers or holders of copyright and related rights.

Amendment 31
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 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

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.
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.

Amendment 32

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border portability of online content services is provided in the Union, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. Therefore, this Regulation does not substantially affect the way the rights are licensed and does not oblige right holders and service providers to renegotiate contracts. Moreover, this Regulation does not require that the provider takes measures to ensure the quality of delivery of online content services outside the Member State of residence of the subscriber. Finally, this Regulation does not apply to service providers who offer services without payment of money and who do not verify the subscriber's Member State of residence. Therefore, it does not impose

Amendment

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border portability of online content services is provided in the Union, cannot be sufficiently achieved by Member States but can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, while adhering to the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as last amended on 28 September 1979, and the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both adopted in Geneva on 20 December 1996. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. Therefore, this Regulation does not substantially affect the way the rights are licensed and does not oblige right holders and service providers to renegotiate contracts. Moreover, this Regulation does not require that the provider takes measures to ensure the
any disproportionate costs, quality of delivery of online content services outside the Member State of residence of the subscriber.

Amendment 33
Proposal for a regulation
Article 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 in the Union to ensuring that subscribers to legally acquired online content services in their Member State of residence can access and use those services without any additional charges, while temporarily present in a Member State other than the Member State of residence. Such access and use shall be subject to effective prior verification of the subscriber’s Member State of residence in accordance with Article 3a.

Amendment 34
Proposal for a regulation
Article 2 – paragraph 1 – point a

Text proposed by the Commission
(a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider, may access and use such service in the Member State of residence;

Amendment
(a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider, can access and use such service in the Member State of residence;

Amendment 35
Proposal for a regulation
Article 2 – paragraph 1 – point c

Text proposed by the Commission
(c) "Member State of residence" means the Member State where the subscriber is

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

Amendment 36
Proposal for a regulation
Article 2 – paragraph 1 – 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 a non-permanent presence of a subscriber in a Member State other than his or her Member State of residence;

Amendment 37
Proposal for a regulation
Article 2 – paragraph 1 – 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 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;

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

(1) In return for payment of money; and/or

(2) without payment of money provided that the online content service provider decides to offer portable access and use of its online content services to its users who are temporarily present in a
Member State other than their Member State of residence and that the user’s Member State of residence is verified by that provider in accordance with Article 3a;

Amendment 38
Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

(I) The provider of an online content service shall enable a subscriber who is temporarily present in a Member State to access and use the online content service.

Amendment

I. The provider of an online content service in return for payment of money shall enable a subscriber who is temporarily present in a Member State other than his or her Member State of residence to access and use the online content service available to him or her in his or her Member State of residence without imposing additional charges.

Amendment 39
Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

1a. Paragraph 1 shall be without prejudice to the possibility for a service provider to enable a subscriber also to access and use the content licensed to the service provider for the Member State in which the subscriber is temporarily present.

Amendment

Amendment 40
Proposal for a regulation
Article 3 – paragraph 2
Text proposed by the Commission

(2) The obligation set out in paragraph 1 shall not extend to any quality requirements applicable to the delivery of an online content service that the provider is subject to when providing this service in the Member State of residence, unless otherwise expressly agreed by the provider.

Amendment

2. The obligation set out in paragraph 1 shall not extend to any quality requirements applicable to the delivery of an online content service that the provider is subject to when providing this service in the Member State of residence, unless otherwise expressly agreed between the online content service provider and the subscriber. The provider shall however ensure that the quality provided is not below the standard of that provided in the Member State where the subscriber is temporarily present.

Amendment 41

Proposal for a regulation
Article 3 – paragraph 3

Text proposed by the Commission

(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.

Amendment

3. The provider of an online content service shall, on the basis of the data available, inform the subscriber of potential variations in the quality of delivery of the online content service provided in accordance with paragraph 1. That information shall be provided through appropriate and proportional means.

Justification

It is uncertain whether information would be available to the provider of an online content about the quality of delivery of the online content service provided in accordance with paragraph 1.

Amendment 42

Proposal for a regulation
Article 3 – paragraph 3 a (new)
3a. The provider of online content services shall ensure that the portability of its services as referred to in paragraph 1 is available on the same range and number of devices as is the case in the Member State of residence of the subscriber.

Amendment 43

Proposal for a regulation
Article 3 – paragraph 3b (new)

3b. Clauses in contracts designed to prohibit or limit the cross-border portability of online content services shall be unenforceable under this Regulation.

Amendment 44

Proposal for a regulation
Article 3 – paragraph 3c (new)

3c. Contractual provisions limiting the portability to a specific time period shall be unenforceable under this Regulation.

Amendment 45

Proposal for a regulation
Article 3a (new)

Verification of the Member State of residence
1. The providers of online content services referred to in Article 3(1) and Article 3b shall use reasonable and effective means of verification to check the Member State of residence of their subscribers.

2. In order to comply with the obligation laid down in paragraph 1, online content service providers shall use a combination of two of the means of verification listed below. If providers consider that a subscriber’s Member State of residence can be identified reliably using just one of those means of verification, the online content service provider may rely on a single means of verification among those listed below:

(a) an identity card, electronic means of identification, in particular notified eIDs in accordance with Regulation (EU) No 910/2014, or any other valid identity document;

(b) bank details such as the bank account or credit or debit card number of the subscriber;

(c) the place of installation of a decoder or any similar piece of equipment used by the subscriber to access the services concerned;

(d) an internet or telephone service supply contract or any similar type of contract linking the subscriber to a Member State;

(e) evidence of the payment by the subscriber of a license fee for other services provided in a Member State, such as public service broadcasting;

(f) the payment of local taxes, if the information concerned is publicly available;

(g) a public utility bill of the subscriber confirming the subscriber’s address;

(h) random checking of the subscriber’s Internet Protocol (IP)
address to identify whether the subscriber accesses the online content service inside or outside his or her Member State of residence, in a binary scheme and without geolocating or tracking of the subscriber.

The use of the means of verification referred to in the first subparagraph shall not go beyond what is necessary for the purposes of the verification set out in paragraph 1, while taking account of new technological developments.

3. The provider of an online content service shall be entitled to request that a subscriber provides the information needed to verify his or her Member State of residence in accordance with paragraph 2. If the subscriber fails to provide such information, the provider shall not offer him or her portability of its online content services as provided for in Article 3(1) and Article 3b, until such time as it is able to verify the subscriber’s Member State of residence in accordance with paragraph 2.

4. In cases where on the basis of the means of verification applied the provider has reasonable doubts about a subscriber’s current Member State of residence, it shall be entitled to request the subscriber to provide the information required to verify their Member State of residence again, relying on the same means of verification as those applied initially.

5. The holders of copyright and related rights or those holding any other rights in the content of an online content service shall be informed of the verification process used by a service provider to verify its subscribers’ Member State of residence.

6. Data provided pursuant to paragraphs 2 to 4 shall be held by the provider of online content services until the verification of the subscriber’s Member State of residence has been completed. Those data shall be used solely
for the purpose of verifying the subscriber's Member State of residence. They shall not be communicated, transferred, shared, licensed or otherwise transmitted to holders of copyright or related rights or any other third parties.

Amendment 46
Proposal for a regulation
Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b
Cross-border portability of online content services provided without payment of money

The provider of an online content service provided without payment of money may choose to enable its users who are temporarily present in a Member State to access and use an online content service on the condition that the provider verifies effectively the user’s Member State of residence in accordance with this Regulation.

The service provider shall inform users, the relevant holders of copyright and related rights and those holding any other rights in the content of an online content service of its decision to provide the online content service in accordance with the first paragraph prior to providing that service. The information shall be provided by means which are adequate and proportionate.

Amendment 47
Proposal for a regulation
Article 4
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 a subscriber temporarily present in a Member State other than his or her Member State of residence, 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 solely for the purpose of the application of this Regulation.

Amendment 48

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 provision, including between holders of copyright and related rights and online content service providers, as well as those between providers and subscribers, which is in breach of Article 3(1), 3(1a), 3(3a), 3a, 3b or 4 or which prohibits or limits the cross-border portability of online content services shall be unenforceable.

Amendment 49

Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

1a. The application of this Regulation shall not be circumvented by virtue of the choice of the law of a non-EU country as the law applicable to contracts signed between service providers and rightholders or to contracts between service providers and subscribers.
Proposal for a regulation
Article 6

Text proposed by the Commission

The processing of personal data carried out within the framework of this Regulation including, in particular, for purposes of verification under Article 5(2), shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

Amendment

The processing of personal data carried out within the framework of this Regulation including, in particular, for purposes of verification under Article 3a, shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC and Regulation (EU) 2016/679. In particular, providers of online content services shall ensure that any processing of personal data under this Regulation is necessary and proportionate in order to achieve the relevant purpose.

Proposal for a regulation
Article 7

Text proposed by the Commission

This Regulation shall apply also to contracts concluded and rights acquired before the date of its application if they are relevant for the provision, the access to and the use of an online content service in accordance with Article 3 after that date.

Amendment

This Regulation shall apply also to contracts concluded and rights acquired before the date of its application if they are relevant for the provision, the access to and the use of an online content service in accordance with Articles 3(1) and 3b after that date.

Proposal for a regulation
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Evaluation
By ... [OJ: three years after the entry into force of this Regulation], and at three-year intervals thereafter, the Commission shall assess the application of this Regulation and submit to the European Parliament and to the Council a report thereon.

The report referred to in the first paragraph shall include, inter alia, an assessment of the effectiveness of the verification means of the Member State of residence, including newly developed industry standards and practices, and consider the need for a review. The report shall assess, in particular, whether or not there has been a significant variation in the revenues of rightholders and an increase in prices charged to consumers, and shall pay special attention to the impact of this Regulation on SMEs and the protection of personal data. It shall be accompanied, if appropriate, by a legislative proposal or a non-legislative instrument.

Amendment 53

Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

(2) It shall apply from [date: 6 months after the date of its publication].

Amendment

2. It shall apply from ... [OJ: date: 12 months after the date of its publication]. Service providers may, notwithstanding that date of application, choose to offer portability as soon as they are able to do so in a manner that is in line with this Regulation. .
EXPLANATORY STATEMENT

The purpose of the Commission proposal is to define and regulate portability, so as to enable consumers who subscribe to online content services acquired legally in their Member State of habitual residence to continue to access the service when they are temporarily in another Member State.

The proposal requires providers of online content services to ensure portability for subscribers on the basis of a legal fiction. Thanks to this principle of a legal fiction, cross-border portability of online content services does not encroach upon territoriality and does not affect copyright rules in the other Member States.

The regulation must remain proportionate to the reality of the market in online content services and to the number of potential users of these services, who are thought to comprise some 5.7% of European consumers.

The rapporteur considers that consumer access to cross-border portability of online content services will promote the proper functioning of the internal market, based in particular on the free movement of services and persons.

However, the rapporteur stresses that this regulation has the aim of promoting European cultural diversity and should therefore on no account endanger the continued financing of the European audiovisual and cinema industries, which is mainly based on the territoriality of those rights. In this regard, the regulation favours a clear distinction between portability and cross-border access, and should not even be regarded as a step towards cross-border access.

Scope

The rapporteur stresses that the services covered are specifically online content services provided legally in the Member State of residence.

He agrees with the Commission, which considers that a subscriber's stay in a Member State other than that of residence should not be limited to a specific number of days. He believes that the regulation should not be hampered by contingent factors which place too heavy a burden on the consumer. The regulation must remain simple to apply if it is to benefit the greatest possible number of people in Europe moving for shorter or longer periods within the Union, particularly for reasons of leisure, business or study.

However, the rapporteur considers that the most important element in the regulation is prior, effective and robust authentication of the Member State of residence, both to prevent evasion of the provisions of the regulation and to ensure the permanence of the link maintained by the subscriber with his place of residence.

He is in favour of excluding providers of free online content services from the scope of the regulation, because he considers that at present the majority of these providers do not verify the Member State of residence of their users with absolute certainty, as required in order to comply with the requirements of this regulation.

However, he considers that online content service providers should be permitted inclusion in the scope of the regulation on condition that they take all necessary measures to permit verification of the Member State of residence of their users in accordance with Article 3.

**Definitions**

The proposal for a regulation is based on two key concepts, which need to be defined: Member State of residence and temporary presence.

The definition of 'Member State of habitual residence' is a vital provision. The rapporteur understands 'Member State of residence' as being the Member State in which the subscriber habitually and actually resides and to which he regularly returns.

Temporary presence outside the country of residence is part of the legal fiction. It therefore comprises transient stays outside the subscriber's Member State of residence for personal, professional or university reasons.

**Verification of the Member State of residence**

The criteria for verification of the Member State of residence of the subscriber should be indicated in a semi-open list.

This compromise is doubly virtuous because it makes it possible to provide sufficient legal certainty to rights-holders without preventing suppliers from choosing the verification criteria best suited to their market, on condition that they provide the same level of security as the criteria listed.

This will also make it possible to adapt the list in future to cater for potential innovations with regard to verification criteria.

Lastly, your rapporteur considers it necessary that, once the subscriber's Member State of residence has been verified at the time of subscription, the supplier should be able to check his IP address on a random sampling basis in order to identify recurrent use of the online content service in a Member State other than the subscriber's Member State of residence.

**Application of the regulation**

The retroactivity of the regulation proposed by the Commission, which would entail application to contracts concluded before the date of application, seems, in the view of the rapporteur, to be the right approach.
However, the introduction of the verification measures and of actual verification of the movements of subscribers giving rise to portability is likely to take more than six months, and the same applies to bringing into line the contracts signed before the adoption of the regulation. For that reason, the rapporteur advocates a period of 12 months for the application of the regulation.
30.9.2016

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION (*)

for the Committee on Legal Affairs


Rapporteur (*): Marco Zullo


SHORT JUSTIFICATION

The Commission proposal establishes an obligation for providers of online content to ensure portability for consumers, enabling them to take with them, when moving around within the EU, any digital content which they have lawfully purchased in their Member State of residence. The regulation provides for a 'legal fiction', which enables this to be done without it constituting an infringement of existing rights.

For the IMCO Committee, any proposals which strengthen the internal market and remove unjustified barriers are vital.

It is, however, necessary to take into account the financial sustainability of the European audiovisual industry, whose diversity of cultural activities should be safeguarded, the protection afforded to copyright and other related rights, and the underlying principle of territoriality.

Your rapporteur therefore considers it important for portability not to jeopardise these prerequisites by becoming a form of European cross-border access.

Scope

The Commission stipulates that the regulation should apply to providers who offer access to subscribers against payment of money.

Your rapporteur agrees with this approach and welcomes the exclusion from the scope of the regulation of providers of content for which no payment of money is required. The fact that the service is free, indeed, appears to be insufficient to warrant the obligation to verify residence and thus to meet the requirements for applying the 'legal fiction'.

Your rapporteur also considers it helpful to clarify that the payment of a mandatory fee, which is charged in some countries for radio and TV services, should not be regarded as a contract...
for the purposes of this regulation.

Definitions

Your rapporteur considers it necessary to define more clearly the concept of 'Member State of residence', in order to leave no room for legal uncertainty.
He takes the view that the regulation should encompass criteria that are sufficient for determining residence unequivocally, for the purpose of implementing portability.
He also believes that the determination of a Member State of residence should be unambiguous and thus prevent an individual from claiming residence in more than one Member State.

The Commission takes the view that the stay in a Member State other than that of residence should not be limited to a specific number of days. Your rapporteur shares this view, because otherwise those categories of citizen to whom the directive is primarily addressed would be adversely affected. The provision of clear criteria for determining residence is sufficient for preventing misuse and avoidance of the legislation.

Your rapporteur therefore believes it is useful to specify that the stay in a different Member State may take place for purposes of leisure, work (such as cross-border workers) or study (such as Erasmus students).

In order to avoid excessive control and a violation of privacy, your rapporteur agrees that constant monitoring of users' locations should not be permitted.

Verification of residence

A prerequisite for the proper functioning of portability is to determine clearly the user's habitual residence, otherwise the system would be open to abuse and to opportunities to circumvent existing copyright law.

In order to have a set of clear and effective instruments, your rapporteur proposes several criteria for determining residence. He also proposes that the Commission identify a more exhaustive list through delegated acts and following consultations with representatives of consumers and industry. The verification means and instruments must be effective but proportionate to their aim, so as not to collect information that is not strictly necessary for the purpose, and they should not place an excessive burden on users.

Verification of residence will take place at the time of subscription to the service, but also subsequently, to check there have been no changes, and on an ongoing, but not constant, basis, to avoid the risk of excessively invasive monitoring.

Option for free services

Those who provide services without requesting the payment of money should be excluded from the scope of this legislation.
However, your rapporteur takes the view that they should have the option, should they request it, of being included in the scope of the regulation, and thus of being able to provide their users with portability, by using the 'legal fiction' provided for.
In this case, they should apply all the provisions of the regulation and prepare a system to verify the residence of the user with the same clarity and certainty as that required of
providers who are paid money. This is a fundamental requirement in order to prevent the occurrence of abuse and financial damage to digital content right holders.
AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on 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) Guaranteeing seamless access to online content services for consumers throughout the European Union based on subscriptions contracted in the Member State of residence is an important element for the completion of the Single Market and the effective enforcement of the principles of free movement of persons and services and therefore for the development of a European identity and citizenship. Consumers should be able to 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 for purposes such as business or leisure travel, or periods of study. Therefore, barriers that hamper access and use of such online content services cross border in such cases 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

Amendment

(2) The development of technology and innovative services leading to a
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 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.

Amendment 3
Proposal for a regulation
Recital 3

Text proposed by the Commission

(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.

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 State of the Union often cannot continue accessing and using the online content services that they have acquired the right to use in their Member State of residence, which limits the right to access online services and is potentially prejudicial.

Amendment 4
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-

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 often licensed on a territorial basis as well as from the fact that online service providers may choose to serve specific markets only.

Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.

Amendment 5

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.

Amendment

(6) Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services during the temporary presence of the consumer in a Member State other than the Member State of residence, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.
Amendment 6
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 on the basis of a robust mechanism 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 without additional cost to the subscriber. Cross-border portability should be clearly distinguished from open cross-border access.

Amendment 7
Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission

(12a) In order to avoid both inconsistency with the current rules in the field of taxation and disproportionate administrative burdens, this Regulation should not affect the application of any provision related to taxation.

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

Amendment 8
Proposal for a regulation
Recital 13

Text proposed by the Commission

(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.

Amendment 9

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 their Member State of residence without being limited to a specific location, as it is not appropriate to require service providers that do not offer portable services within the Member State of residence of the subscriber to do so across borders.

Amendment 10

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) This Regulation should apply to online content services which are provided against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another

Amendment

(16) This Regulation should apply to online content services which are provided against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another
provider. The payment of a universal mandatory fee such as a broadcasting license fee should not be regarded as a payment of money to receive an online content service.

Amendment 11

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

Amendment

(17) Providers of online content services which are provided without payment of money should have the option to be 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. In order for these providers to exercise that option, they must comply with the same obligations as those that are provided for by this Regulation for the providers of online content services which are provided against payment of money. Furthermore, they should inform subscribers, the relevant holders of copyright and related rights and those holding any other rights in the content of online content service of their decision to exercise that option. Such information might be provided on the provider's website.

Amendment 12

Proposal for a regulation
Recital 18
(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.

Amendment

Proposal for a regulation
Recital 19

(19) Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the provider of an online content

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 subscriber.

Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same
service take measures to ensure quality of delivery of such services beyond the quality available via the local online access chosen by a subscriber while temporarily present in another Member State. In such cases the provider shall not be liable if the quality of delivery of the service is lower. Nevertheless, if the provider expressly agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement.

quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, although this Regulation does not impose disproportionate requirements to guarantee the same quality of delivery of such services beyond the quality available via the local online access chosen by a subscriber while temporarily present in another Member State, providers of online content services should provide subscribers advance notification concerning any potential variation in the quality that may be delivered or experienced when accessing content in a Member State other than the Member State of residence. Such information could be provided on the provider’s website. In such cases the provider shall not be liable if the quality of delivery of the service is lower where the reasons for this are attributable to objective issues, such as the inadequacy of national infrastructure. Moreover, if the provider expressly agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement.

Amendment 14

Proposal for a regulation
Recital 20

Text proposed by the Commission

(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

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 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. 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 Regulation, and in particular the legal mechanism localising the provision of, the access to and the use of an online content service in the Member State of residence of the subscriber, does not prevent a service provider from offering a subscriber who is temporarily present in another Member State an online content service that the provider provides in that other Member State.

Amendment 15
Proposal for a regulation
Recital 22

Text proposed by the Commission (22) Service providers should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable.

Amendment
(22) Providers of online content services should not be liable for breach of any contractual provisions that run counter to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts which are designed to prohibit or limit the portability of such online content services across the Union should be unenforceable. Providers of online content services and holders of rights relevant for the provision of those services should not be allowed to circumvent the application of this Regulation by choosing the law of a third country to be the law which is to apply to contracts between them or to contracts between providers and subscribers.

Amendment 16
Proposal for a regulation

PE585.465v02-00 54/123 RR\1112327EN.docx
Recital 22 a (new)

Text proposed by the Commission

(22a) Member State of residence implies that the subscriber has actual and stable residence in the Member State to which he or she returns regularly. For the purposes of this Regulation, a subscriber has only one Member State of residence. Service providers of online content should consider that the Member State of residence, verified and authenticated by the said provider pursuant to this Regulation, is the sole Member State of residence. Providers should not be obliged to verify whether their subscribers are also subscribers to an online content service in another Member State.

Amendment 17

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

Amendment

(23) It is essential that service providers 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 requires 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. It is necessary, however, to ensure that the required means of verification are reasonable, unintrusive, proportionate, and do not go beyond what is strictly necessary in order to achieve this purpose. Those means should also not constitute an excessive burden for subscribers. It is for the service provider to decide which verification means to apply on the basis of the list set out in
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.

**Article 3b.** Examples of the necessary technical and organisational measures may include 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 specific location or the specific Member State, but rather, whether access of the content is within the Member State of residence or not, 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. *The service provider should not track the precise location of a subscriber in a Member State by means of Internet Protocol (IP) sampling or by other means of geolocation.*

**Amendment 18**

Proposal for a regulation
Recital 23 a (new)

*Text proposed by the Commission*

(23a) The subscriber should be able to access the information on the Member State of residence verified and registered at the time of subscription.

**Amendment**

(23a) The subscriber should be able to access the information on the Member State of residence verified and registered at the time of subscription.

**Amendment 19**

Proposal for a regulation
Recital 23 b (new)

*Text proposed by the Commission*

(23b) For the purposes of this Regulation, a consumer cannot claim his or her habitual residence in more than
one Member State.

Amendment 20
Proposal for a regulation
Recital 23 c (new)

Text proposed by the Commission
Amendment

(23c) A provider who has established the Member State of residence in accordance with this Regulation should be able to assume, for the purposes of this Regulation, that the verified Member State of residence is the only Member State of residence of the subscriber.

Amendment 21
Proposal for a regulation
Recital 23 d (new)

Text proposed by the Commission
Amendment

(23d) In order to take due account of technological developments and, in particular, the needs of industry and consumers, 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 amendment of the list of means for the verification of the subscriber's Member State of residence. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹a. 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 systematically have access to meetings of
Amendment 22

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 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/EC and 2002/58/EC. 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.

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, 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/EC and 2002/58/EC.


Amendment 23
Proposal for a regulation
Article 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 legal framework that ensures that subscribers to online content services in the Union, when temporarily present in a Member State other than that of their Member State of residence can access and use these services, and that respects all the relevant copyright and related rights of the content accessed and used. This access should be subject to effective prior verification of their Member State of residence.

Amendment 24
Proposal for a regulation
Article 2 – paragraph 1 – 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 has his or her residence, as determined on the basis of Article 3b;

Amendment 25
Proposal for a regulation
Article 2 – paragraph 1 – point d
(d) "Temporarily present" means a presence of a subscriber in a Member State other than the Member State of residence;

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

Amendment 26

Proposal for a regulation
Article 2 – paragraph 1 – 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 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;

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 access to and use of works, other protected subject matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner, which is provided to a subscriber on agreed terms;

Amendment 27

Proposal for a regulation
Article 3 – paragraph 1
Text proposed by the Commission

(1) The provider of an online content service shall enable a subscriber who is temporarily present in a Member State to access and use the online content service.

Amendment

(1) The provider of an online content service provided against payment of money shall enable a subscriber who is temporarily present in a Member State to access and use the online content service available in his or her Member State of residence.

Amendment 28

Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

(1a) Paragraph 1 is without prejudice to the right of the provider to decide to enable a subscriber to additionally access the local repertoire that has been licenced to the service provider in the Member State where the subscriber is temporarily present.

Amendment

(1a) Paragraph 1 is without prejudice to the right of the provider to decide to enable a subscriber to additionally access the local repertoire that has been licenced to the service provider in the Member State where the subscriber is temporarily present.

Amendment 29

Proposal for a regulation
Article 3 – paragraph 3

Text proposed by the Commission

(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.

Amendment

(3) However, the provider of an online content service shall, where possible on the basis of the data available to it, duly inform the subscriber, before the conclusion of the contract or, for contracts concluded before the date of application of this Regulation, in due time before that date, of any potential variation in the quality of delivery of the online content service provided in accordance with paragraph 1 and in the conditions of portability set out in accordance with this Regulation.
Amendment 30
Proposal for a regulation
Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a
Option to enable cross-border portability
1. The provider of an online content service provided without payment of money may choose to enable those of its subscribers who are temporarily present in a Member State to access and use the online content service on the condition that the provider verifies effectively the subscriber's Member State of residence in accordance with this Regulation.

2. The service provider shall inform subscribers, the relevant holders of copyright and related rights and those holding any other rights in the content of an online content service of its decision to provide the online content service in accordance with paragraph 1 prior to providing that service. When informing subscribers, service providers shall use means which are adequate and proportionate.

Amendment 31
Proposal for a regulation
Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b
Means of verification of the Member State of residence

1. The provider of an online content service provided against payment of money shall use effective means in order to verify the Member State of residence of
its subscribers. In doing so, it shall use verification means which are proportionate and reasonable and which do not go beyond what is necessary to achieve the purpose of this Regulation. Those means shall not constitute an excessive burden for subscribers.

2. In order to comply with the obligation set out in paragraph 1 of this Article, the provider shall use the following verification means:
   (a) the billing address or the postal address of the subscriber;
   (b) an identity card or any other valid document confirming the subscriber's Member State of residence, including the use of e-identification services where possible;
   (c) bank details such as bank account, credit or debit card of the subscriber;
   (d) proof that the subscriber is a party to a contract for an internet or telephone connection in the Member State;
   (e) proof that the subscriber is paying a licence fee for other services provided in the Member State, such as public service broadcasting;
   (f) proof of the place of installation of a set-top box or similar device used for the supply of services to the subscriber;
   (g) proof of registration on national, regional or local electoral rolls, if publicly available.

3. The provider shall choose which of the verification means referred to in paragraph 2 to use.

4. Where the Member State of residence cannot be sufficiently verified on the basis of a single verification means, the provider shall use a combination of no more than two means. The Member State of residence shall not be repeatedly verified without grounds.

5. The Commission is empowered to
adopt delegated acts in accordance with Article 7b concerning the amendment of the list of means for the verification of the subscriber’s Member State of residence referred to in paragraph 2 of this Article in order to update it to take account of technological developments. When adopting those delegated acts, the Commission shall consult with experts and representatives from industry and consumers in order to ensure that the principles set out in paragraph 1 of this Article are respected.

Amendment 32

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 which are contrary to this Regulation, including those contained in contracts between holders of copyright and related rights, those holding any other rights relevant for access to, and the use of, content in online content services and providers of online content services, as well as those contained in contracts between such providers and their subscribers, shall be unenforceable.

Amendment 33

Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

(1a) Compliance with the obligations imposed by this Regulation shall not constitute a justifiable reason for the adjustment of charges, fees or rates, or for any other modification of the financial relations between the subscriber, the
provider or any right holder.

Amendment 34

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 35

Proposal for a regulation
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

(2a) The provisions of this Regulation shall apply irrespective of the law applicable to contracts concluded between providers of online content services and holders of copyright and related rights or those holding any other rights relevant for access to, and the use of, content in online content services or to contracts between such providers and their subscribers.

Amendment 36

Proposal for a regulation
Article 6
The processing of personal data carried out within the framework of this Regulation including, in particular, for purposes of verification under Article 5(2), shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC. 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.

Amendment 37
Proposal for a regulation
Article 7

This Regulation shall apply also to contracts concluded and rights acquired before the date of its application if they are relevant for the provision, the access to and the use of an online content service in accordance with Article 3 after that date.

Amendment 38
Proposal for a regulation
Article 7 a (new)

Article 7a
Assessment
1. Three years after the entry into force of this Regulation, and at three-yearly intervals thereafter, the Commission shall assess the application of this Regulation and submit to the European Parliament and to the Council a report thereon.
2. The report referred to in paragraph 2 shall include, inter alia, an
assessment of the effectiveness of the verification means of the Member State of residence, including newly developed industry standards and practices, and, if necessary, of the need for a review. The report shall assess, in particular, whether or not there has been a significant variation in the revenues of right holders and an increase in prices charged to consumers. The Commission's report shall be accompanied, if appropriate, by a legislative proposal or a non-legislative instrument.

Amendment 39
Proposal for a regulation
Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b
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 power to adopt delegated acts referred to in Article 3b(5) shall be conferred on the Commission for an indeterminate period of time from...*. 

3. The delegation of power referred to in Article 3b(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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
according to 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(5) 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 of the Council.

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* Date of entry into force of this Regulation
**PROCEDURE – COMMITTEE ASKED FOR OPINION**

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<tr>
<td>Rapporteur</td>
<td>Marco Zullo 2.2.2016</td>
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<td>Pascal Arimont, Kaja Kallas, Morten Løkkegaard, Emma McClarkin, Julia Reda, Marc Tarabella, Sabine Verheyen</td>
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15.7.2016

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION (*)

for the Committee on Legal Affairs


Rapporteur (*): Sabine Verheyen

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

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.

*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.

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Therefore, barriers that hamper access and use of such online content services cross border should be eliminated.

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 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.

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 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

(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

Amendment 4
Proposal for a regulation
Recital 2 b (new)
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

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.

Amendment 6
Proposal for a regulation
Recital 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 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
that online service providers may choose to serve specific markets only.

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-

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

(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

(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.

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

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

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 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 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.

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 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

(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

(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 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.

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 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 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\(^a\) and that they have authorisation from the right holders to use their content.

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 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.

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. 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
rights or any other rights relevant for the use of the content in the service.

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*  
(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 of residence.*
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

(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)

Text proposed by the Commission

(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.
(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 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/EC\textsuperscript{27} and 2002/58/EC\textsuperscript{28}. 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.

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(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, \textit{the right to property, including intellectual property 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/EC\textsuperscript{27} and 2002/58/EC\textsuperscript{28}. 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.

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\textsuperscript{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).

2006/24/EC and 2009/136/EC, the "e-
Privacy Directive".

Amendment 24
Proposal for a regulation
Recital 24 a (new)

Text proposed by the Commission

(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 Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

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.

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 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.

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; 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.
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 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.

Amendment

31

Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

(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
(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.

Amendment 33
Proposal for a regulation
Article 3a (new)

Text proposed by the Commission

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\(^a\) and Directive 2002/58/EC of the European Parliament and of the Council\(^b\).

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.


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

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
not go beyond what is necessary in order to achieve their purpose.

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
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

(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 Council1a to access and use their content under this Regulation without verification of the Member State of residence.

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

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<td>Members present for the final vote</td>
<td>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 Lybacka</td>
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<td>Substitutes present for the final vote</td>
<td>Rosa D’Amato, Santiago Fisas Ayxelá, Eider Gardiazabal Rubial, Zdzisław Krasnodębski, Ernest Maragall, Emma McClarkin, Liliana Rodrigues</td>
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OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Legal Affairs


Rapporteur: Carlos Zorrinho

SHORT JUSTIFICATION

The regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market is an essential component in ensuring the effective creation of the digital single market and laying solid foundations for a digital union in the European Union.

As a regulation, it will impose a binding obligation on all the Member States, from the date of its entry into force, to harmonise procedures in the area for which they are responsible, giving users cross-border access in the whole of the EU to content services for which they have signed contracts in their Member State of residence. It also extends suppliers’ ability to provide services for which they were contracted in one Member State across the whole of the EU.

In addition to defining the procedures to be followed in the process of ensuring portability, the regulation also establishes fundamental definitions both for this process and for the development of the digital union.

The present opinion aims to make improvements and clarifications to a number of points as set out below.

Content covered

The content covered by this regulation comprises online content and services such as music, games, films, entertainment programmes and sporting events, that should be accessible not only in subscribers’ Member State of residence but also when they are temporarily present in other Member States of the Union. The addition of entertainment games as a target of the regulation aims to strengthen the basis for its implementation.
Differentiation between payment for services and payment of licence fees

Some Member States have a system of fees for access to online content services of general interest. The payment of fees, in particular television licence fees, should not be regarded as payment of money.

Guarantee that providers will be bound by the contractual conditions laid down as from the date of entry into force of this regulation

In order to ensure that portability as provided for by this regulation cannot be subject to modifications resulting from unilateral contractual changes, the obligation to ensure portability will be mandatory, which means that the parties may not exclude it, derogate from it or vary its effect, either by contract or unilaterally by the service provider. Moreover, the providers and holders of rights relevant for the provision of the online content services should not be allowed to circumvent the application of the Regulation by virtue of the choice of the law of a non-member country as the law applicable to contracts signed between them or to contracts between providers and subscribers.

Obligation to provide information on service quality

Where the quality of the online access chosen by a subscriber while temporarily present in another Member State does not allow the provider to guarantee the same service quality, the provider should not be liable for this situation but should inform the consumer of the possible decline in service quality. If there is an agreement concerning the guaranteed reference quality, the provider will be bound by that agreement and cannot charge the subscriber more for it.

Definition of subscriber

A clarification is made to the effect that the payment of money is not a determining factor in the definition of subscriber.

Definition of consumer

The definition of consumer is expanded to cover legal persons, on condition that they are acting for purposes which are outside their trade, business, craft or profession.

Definition of Member State of residence

The definition of Member State of residence is strengthened to the effect that it means the State where the subscriber habitually resides, or to which he or she regularly returns after spending time in another country.

Definition of temporarily present

The non-permanent feature associated with this definition is strengthened.

Verification of the subscriber's Member State of residence

It is proposed that the effective verification by the provider of the subscriber’s place of residence, where no payment of money is made, should be done on the basis of the place of
residence for tax purposes, identity card or other valid document confirming the subscriber’s residence.

**Technological neutrality**

In order to ensure technological neutrality, consumers should have the freedom to choose the type of device or technology from among those available on the market in order to access online content.

**Date of application**

As a reasonable time frame, it is proposed that the regulation should apply from 12 months from the day of its publication, which does not preclude service providers from ensuring portability as soon as they are able to do so pursuant to the regulation published.

**AMENDMENTS**

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

**Amendment 1**

Proposal for a regulation

Citation 1 a (new)

*Text proposed by the Commission*  
Amendment

- having regard to the Charter of Fundamental Rights of the European Union,

*Justification*

The Charter is our essential, highest-level legal reference for personal data protection and privacy, which in turn are a basic issue for this Regulation, and accordingly it must be quoted in the “having regards”.

**Amendment 2**

Proposal for a regulation

Recital 1

*Text proposed by the Commission*  
Amendment

(1) Since the internal market comprises an area without internal frontiers relying, inter alia, on the free movement of services

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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 3

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 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.

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 rapidly growing demand on the part of 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 4

Proposal for a regulation
Recital 3

Text proposed by the Commission

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

Amendment

(3) Consumers increasingly enter into paid as well as unpaid contractual arrangements with service providers for the provision of online content services.
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. 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 Member State of residence, which is against the objective of the Single Market and smooth, efficient development of the EU Digital economy.

Amendment 5
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, entertainment programmes 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 6
Proposal for a regulation
Recital 6 a (new)

Text proposed by the Commission

(6a) The provision of online content services for consumers temporarily present in another Member State should not be hampered by the lack of infrastructure, which could create
artificial barriers, particularly for small or isolated communities.

In this context, the commitment given by the Member States to achieve the targets for minimum download speeds of 30 Mbps for all by 2020 is crucial in order to meet the conditions relating to high connectivity for all.

In order to achieve this goal and due to the fact that rapidly growing wireless broadband traffic makes enhanced wireless network capacity a necessity, it will be of the outmost importance to achieve a stronger pan European approach for spectrum management across the Union.

Amendment 7

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, one of the objectives of the Digital Single Market Strategy and 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 cross-border portability can be ensured without additional costs.

Amendment 8

Proposal for a regulation
Recital 13

Text proposed by the Commission

(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

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.

Online content services provided on the basis of pan-European licences under Directive 2014/26/EU shall also be excluded from the scope of this Regulation.

Amendment 9

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 in which they habitually reside without being limited to a specific location, as it is not appropriate to require service providers that are not able to offer portable services in the subscriber’s Member State of residence to do so across borders. Nevertheless, in order for this Regulation to have a meaningful and practical impact on the life of end-users, it is important that rights holders are increasingly encouraged to allow service providers to offer portable services at national level.

Amendment 10

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) This Regulation should apply to online content services which are provided

Amendment

(16) This Regulation should apply to online content services which are provided
against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another provider. The payment of fees, in particular television or other broadcasting licence fees, should not be regarded as payment of money for the purposes of this Regulation.

Amendment 11
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, should be relied upon, if they enable the provider to have reasonable indicators as

Amendment

(17) Online content services which are provided without payment of money or with the payment of a mandatory fee such as a broadcasting fee will have the option to be included in the scope of this Regulation if the providers so decide, and provided that they comply with the requirements on the verification of the Member State of residence set out in this Regulation, in the same way as providers of online content services which are provided against payment of money. If they so decide, they should inform subscribers and the holders of copyright and related rights of their decision to exercise that option.
to the Member State of residence of its subscribers.

Amendment 12
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 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.

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 with 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 without prejudice to the possibility to access the local version of the content available in the Member State of temporary presence. This obligation is mandatory and therefore parties may not exclude it, derogate from it or vary its effect, either by contract or unilaterally by the service provider. Any action by a service provider or a right holder which would prevent the subscriber from accessing or using the service while temporarily present in a Member State other than the Member State of residence, 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 13
Proposal for a regulation
Recital 19

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(19) Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the provider of an online content service take measures to ensure quality of delivery of such services beyond the quality available via the local online access chosen by a subscriber while temporarily present in another Member State. In such cases the provider shall not be liable if the quality of delivery of the service is lower. Nevertheless, if the provider expressly agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement.

Amendment 14

Proposal for a regulation
Recital 20

Text proposed by the Commission

(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

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 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. This Regulation does not prevent a provider from offering its subscriber, who is temporarily present in another Member State, an online content service that the provider lawfully provides in that Member State.

Amendment 15

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 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 those 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

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.

Amendment 16
Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) Service providers should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable.

Amendment

(22) Service providers should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable. The service 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 virtue of the choice of law of a non-member country as the law applicable to contracts signed between them or to contracts between providers.
(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 17
Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Service providers should ensure that, as far as possible, their subscribers are properly informed about the conditions and the extent of enjoyment of online content services in Member States other than the Member State of residence of the subscribers. The Regulation requires 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 leave room for service providers to innovate, are reasonable, non-intrusive, respectful of the privacy rights and do not go beyond what is necessary in order to achieve this purpose. Examples of the necessary technical and organisational measures should be based on electronic means of identification at the time of the subscription instead of constant monitoring of location, on 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. The verification process should be carried out simply and non-cumulatively so as to ensure privacy and data protection, using as far as possible information already

and subscribers.
lawfully available to the provider, and the lightest and simplest methods available.

Amendment 18
Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

(23a) For the purposes of this Regulation, consumers may not state that they are habitually resident in more than one Member State.

Amendment 19
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 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/EC and 2002/58/EC. 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.


Amendment 20
Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.

Amendment

(25) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty. Nor should this Regulation apply to online content services for which pan-European licences already exist under Directive 2014/26/EU.

Amendment 21
Proposal for a regulation
Recital 26
(26) Contracts under which content is licensed are usually concluded for a relatively long duration. Consequently, and in order to ensure that all consumers residing in the Union can enjoy the cross-border portability feature of online content services on an equal basis in time and without any undue delay, this Regulation should also apply to contracts concluded and rights acquired before the date of its application if they are relevant for the cross-border portability of an online content service provided after that date. This is also necessary in order to ensure a level playing field for service providers operating in the internal market, by enabling providers who concluded contracts with right holders for a long duration to offer cross-border portability to their subscribers, independently of the provider's possibility to renegotiate such contracts. Moreover, this provision should ensure that when service providers make arrangements necessary for the cross-border portability of their services, they will be able to offer such portability with regard to the entirety of their online content. Finally, it should also allow right holders not having to renegotiate their existing licensing contracts in order to enable the offering of the cross-border portability of services by providers.

Amendment 22

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border

Amendment

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border
portability of online content services is provided in the Union, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. Therefore, this Regulation does not substantially affect the way the rights are licensed and does not oblige right holders and service providers to renegotiate contracts. Moreover, this Regulation does not require that the provider takes measures to ensure the quality of delivery of online content services outside the Member State of residence of the subscriber. Finally, this Regulation does not apply to service providers who offer services without payment of money and who do not verify the subscriber's Member State of residence. Therefore, it does not impose any disproportionate costs, 

Amendment 23

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 online content services in the Union, when temporarily present in a Member State other than the Member State of residence, can access and use these services, without additional costs, in the same manner as when they are present in their Member State of residence.
Amendment 24
Proposal for a regulation
Article 2 – paragraph 1 – point a

Text proposed by the Commission
(a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider, may access and use such service in the Member State of residence;

Amendment
(a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider, may access and use such service in the Member State of residence, against payment of money or without such payment, if the service provider concerned voluntarily decides to comply with the requirements in relation to verifying the Member State of residence;

Amendment 25
Proposal for a regulation
Article 2 – paragraph 1 – 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 habitually resides, as determined and previously verified during the subscription process;

Amendment 26
Proposal for a regulation
Article 2 – paragraph 1 – 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 a non-permanent presence of a subscriber in a Member State other than the Member State of residence whatever the effective duration of such limited presence, provided that the Member State of residence was verified in accordance with
Amendment 27
Proposal for a regulation
Article 2 – paragraph 1 – point e – subparagraph 2 – point 2

Text proposed by the Commission
(2) without payment of money provided that the subscriber's Member State of residence is verified by the provider;

Amendment
(2) without payment of money provided that the subscriber's Member State of residence is **effectively** verified by the provider **based on online declaration by the subscriber on their Member State of residence, on the basis of the subscriber's place of residence for tax purposes, identity card, electronic identification means, in particular notified eIDs in accordance with Regulation (EU) n° 910/2014 or other online document confirming the subscriber's residence;**

Amendment 28
Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission
(1) The provider of an online content service shall enable a subscriber who is temporarily present in a Member State to access and use the online content service.

Amendment
(1) The provider of an online content service **subject to payment or without payment of money but subject to prior and proportionate verification of the subscriber's Member State of residence** shall enable a subscriber who is temporarily present in a Member State to access and use the online content service, **for which the user has a legal subscription, without additional costs.**

Amendment 29
Proposal for a regulation
Article 3 – paragraph 3
(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.

Amendment 30
Proposal for a regulation
Article 5 – paragraph 1

(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 31
Proposal for a regulation
Article 5 – paragraph 2

(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
(3) The provider of an online content service shall provide the subscriber with information concerning the quality of delivery of the online content service provided and its possible limitations, in accordance with paragraph 1, prior to providing that service.
Amendment 32

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

The processing of personal data carried out within the framework of this Regulation including, in particular, for purposes of verification under Article 5(2), shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

Amendment

The processing of personal data carried out within the framework of this Regulation shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

Amendment 33

Proposal for a regulation
Article 7 a (new)

Text proposed by the Commission

Article 7a

Principle of technology neutrality
Consumers shall have the freedom to choose the type of device or technology from those available on the market in order to access online content, and to change freely between them. The provision of portable services should not be conditioned by additional technical requirements and shall be done under technologically neutral and interoperable hardware and software environment;

Amendment 34

Proposal for a regulation
Article 7 b (new)

Text proposed by the Commission

Article 7b

Evaluation
No later than three years after the entry into force of this Regulation, the Commission shall evaluate its implementation and submit a report setting out its conclusions to the European Parliament and the Council.

The report shall include an assessment of the use made of cross-border portability and of verification means, pay particular attention to whether the solutions created and implemented have a positive or a negative impact on the development of the Digital Single Market and, if necessary, shall assess the need for a review. The Commission report shall be accompanied, if necessary, by a legislative proposal.

Amendment 35

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], which does not preclude service providers from ensuring portability as soon as they are able to do so pursuant to this Regulation.
## PROCEDURE – COMMITTEE ASKED FOR OPINION

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<th>Title</th>
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<td>JURI 12.5.2016</td>
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<tr>
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<td>ITRE 25.2.2016</td>
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<td>Rapporteur</td>
<td>Carlos Zorrinho 1.3.2016</td>
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<td>Discussed in committee</td>
<td>4.7.2016</td>
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<tr>
<td>Date adopted</td>
<td>26.9.2016</td>
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| Result of final vote | +: 48  
| | -: 1  
| | 0: 0 |
| Substitutes present for the final vote | Michał Boni, Soledad Cabezón Ruiz, David Coburn, Cornelia Ernst, Eugen Freund, Françoise Grossetête, Massimiliano Salini, Maria Spyrači |
| Substitutes under Rule 200(2) present for the final vote | Isabella Adinolfi, Andor Deli, Salvatore Domenico Pogliese |
PROCEDURE – COMMITTEE RESPONSIBLE

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<th>Cross-border portability of online content services in the internal market</th>
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<td>9.12.2015</td>
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<td>Rapporteurs</td>
<td>Jean-Marie Cavada 14.3.2016</td>
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<td>Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Dietmar Köster, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka</td>
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