



Portability Position Paper

European Film Agency Directors (EFADs)

31st May 2016

The EFADs supports the Commission's overall objective in their proposal for a Regulation on the cross-border portability of online content services. EFADs' mission is to support the creation of, and access to, high quality audiovisual works to the benefit of European and global audiences reflecting the diversity of European heritage, cultural identities and artistic strengths.

Providing consumers with a wider access to works they have paid for in their home country is undoubtedly a legitimate objective. Nevertheless, portability must be implemented in full respect for the territoriality of rights which is the foundation of financing and distribution in Europe. There must be a clear divide between portability and cross-border access.

There are seven core principles and safeguards that need to be incorporated into the text on portability:

1. Portability must be restricted to situations when a consumer of a legal service is temporarily mobile such as when they are on a short business trip or holiday. The text should clearly define "temporary" as a **transitory** presence of a subscriber in a Member State other than the Member State of residence **for a limited period of time**. The portability regulation should not apply to those studying abroad such as Erasmus students and should not lead to implementing cross border access.
2. The text should provide clarity on the definition of a subscriber and take into account the duration of the subscription. If a maximum number of days is introduced in the text, it should relate to the duration of the subscription (cases of 1, 2 or 3 months of subscription).
3. "Habitual residence" should be defined as the place where the subscriber **actually resides** and **returns to regularly**. Reliable authentication measures to determine country of residence should be put in place which goes beyond using the IP address or a written statement from a subscriber. This could include bank account, credit card, and/or phone subscription. There should be a closed list of measures which service providers are obligated to introduce in the Regulation.
4. At the same time the authentication measures should not be too burdensome for small platforms. European financial support could be provided to small platforms to help them bear the cost of technical adaptation to portability requirements.
5. Service providers should be obliged to verify that the online content service is provided in conformity with the regulation, in respect to temporary usage.

6. Considering the time needed for technical and legal adjustments, a longer transition period should be foreseen.
7. If the operator obtains extra revenues from offering portability services, the right holders should be fairly remunerated.

About EFADs

The association of the European Film Agency Directors (EFADs) brings together the Directors of European Film Agencies in 31 countries in Europe (EU, Iceland, Norway and Switzerland). We represent government or government associated public bodies, in charge of national funding for the audiovisual sector and with the responsibility to advise or regulate on all aspects of national and European audiovisual policies. In total, the EFADs members and their Governments fund around three billion Euros every year through subsidies and tax reliefs with a view to fostering the creation, production, promotion, distribution, and exhibition of European audiovisual and cinematographic works.

In March the association published a [common paper](#) on the EU copyright reform and in May a [position paper](#) on the creation of a digital single market for the audiovisual industry in Europe.

Samuel Young

Secretary General

European Film Agency Directors

Secretariat@efads.eu