

## HOW TO MAKE PORTABILITY WORK

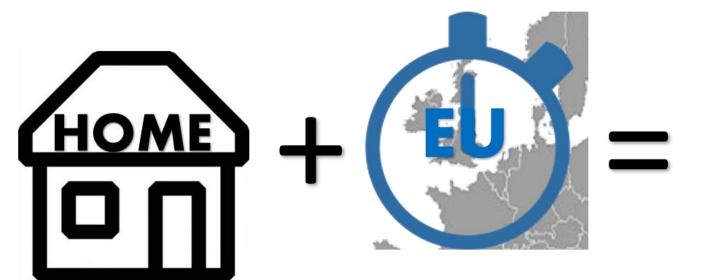


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# What is portability about?





Consumers
legitimately
subscribing to a
service in their
Member State of
habitual residence

When **temporarily present** in another Member State



Subscribers continue to have access to the service as if they were still at home

# Our vision – portability should...





Meet consumers' expectations in the digital age



Further encourage and enable innovation and investment in the audiovisual industry





Assure a level playing field between media service providers

## Who is concerned? What needs clarification?



#### **Subscribers**

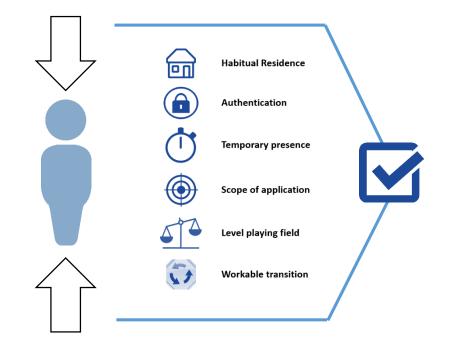
Scope limited to subscribers of online services



Expect MSPs to provide portability

### **Media Service Providers (MSPs)**

Large scope. For commercial broadcasters concerns pay & free players



Need for legal certainty on 6 levels to ensure respect of expectations, rights and obligations of all parties concerned

## Rightholders (RHs)

All holders of rights for online portable use



Expect MSPs to effectively verify

# How to make it work: Habitual residence





#### **Habitual Residence**



Authentication



**Temporary presence** 



Scope of application



Level playing field



**Workable transition** 

#### **Situation**

- Cornerstone of Regulation
- Establishes whether a consumer is entitled to gain portable access
- Establishes whether subscriber is temporarily present

## **Complication**

- No definition in Regulation
- No clarity in EU law
- Impossible for service providers to apply

#### **Solution**

For the purposes of this Regulation « habitual residence » shall be the place where an individual ordinarily resides and routinely returns to after visiting other places



## How to make it work: Authentication





**Habitual Residence** 







#### **Authentication**

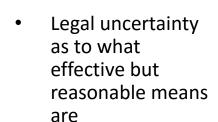






Workable transition

Regulation doesn't impose authentication requirements on service providers, but allows RH to require effective but reasonable means of verification



**Complication** 

- What if service providers don't verify?
- What if RHs don't require effective means of authentication?
- What if different RHs require different means?

- Add a Recital and an Annex to the Regulation with a non-exhaustive list of effective and reasonable means of verification
- Impose verification on service providers





# How to make it work: Temporary Presence





**Habitual Residence** 



Authentication



**Temporary presence** 



**Scope of application** 



Level playing field



Workable transition

#### **Situation**

Current definition is very open: presence outside of Member State of residence

### **Complication**

- No limitation in time
- Risk of abuse for cross-border access

#### **Solution**

"Temporarily present"
means a transitory
presence of a subscriber
in a Member State other
than the Member State
of residence for a short
and limited time period



# How to make it work: Scope of Application





**Habitual Residence** 



Authentication



**Temporary presence** 



Scope of application



Level playing field



**Workable transition** 

#### **Situation**

Applies to subscription services where these are provided:

- In exchange of payment
- For free on basis subscriber residence is verified

### **Complication**

- "Verified" can be interpreted in different ways by subscriber and right holder
- Service provider is caught by legal uncertainty

#### Solution

« Verified » means the effective authentication of the subscriber's Member State of residence to a reasonable level of certainty in relation to each user



# How to make it work: Level playing field





**Habitual Residence** 





**Authentication** 

 No sanctions for service providers who don't apply effective verification measures  Risk of crossborder access

**Complication** 

 Lack of level playing field between those service providers who comply and those who don't

Scope of application

**Temporary presence** 



Level playing field



Workable transition

### Solution

RH are best placed for ensuring that the service providers apply effective means of verification



# How to make it work: Workable transition





**Habitual Residence** 

Authentication

### **Situation**

Regulation currently foresees 6 months



- Service providers and right holders may need to renegotiate
- Platform
   architecture and
   software solutions
   to be adapted

Solution

Extend transition period



**Temporary presence** 



**Scope of application** 



Level playing field



**Workable transition** 



# Recap & Contacts









**Authentication** 



**Temporary presence** 



**Scope of application** 



Level playing field



**Workable transition** 



**6 Levels of clarity** 

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