

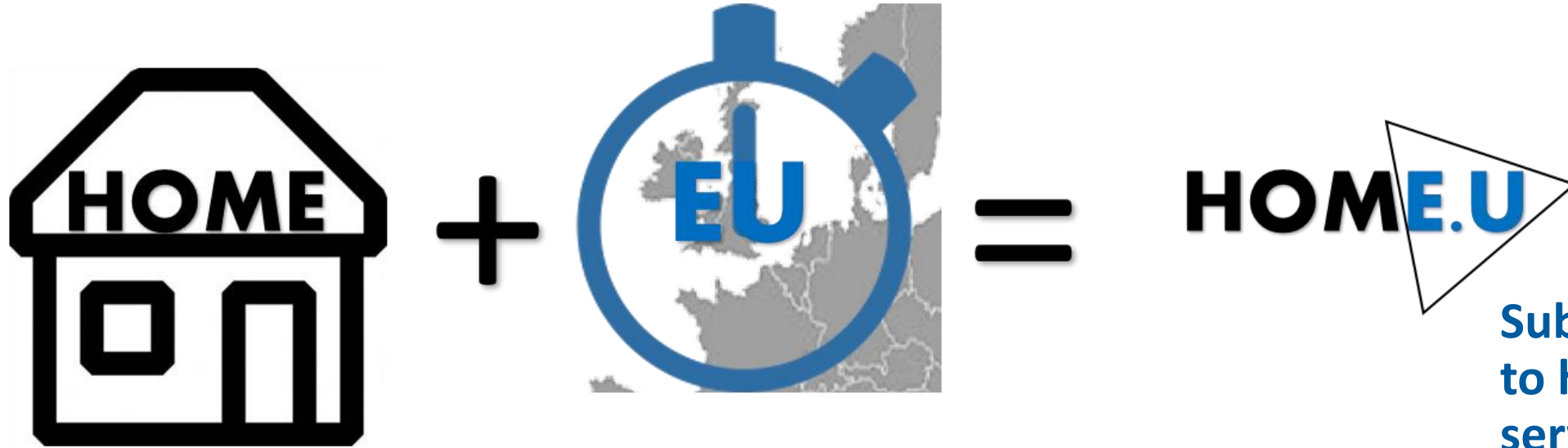


HOW TO MAKE PORTABILITY WORK



APRIL 2016

What is portability about?



Consumers legitimately subscribing to a service in their **Member State of 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

**... Meet
subscriber
expectations and
uphold the
drivers of
Europe's creative
economy**

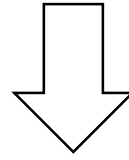
Who is concerned? What needs clarification?

Subscribers

Scope limited to subscribers of online services

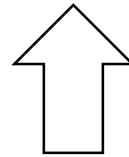


Expect MSPs to provide portability



Media Service Providers (MSPs)

Large scope. For commercial broadcasters concerns pay & free players



Expect MSPs to effectively verify



Temporary presence



Verification & Level playing field



Member State of Residence



Scope of application



Range of devices



Contracts under EU law



Workable transition



Need for legal certainty on 7 levels to ensure respect of expectations, rights and obligations of all parties concerned



Rightholders (RHs)

All holders of rights for online portable use

How to make it work : Temporary Presence



Temporary presence



Verification &
Level playing field



Member State of
Residence



Scope of application



Range of devices



Contracts under
EU law



Workable transition

Situation

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

Complication

- No limitation
- 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

How to make it work : Verification & Level Playing Field



Temporary presence



**Verification &
Level playing field**



Member State of
Residence



Scope of application



Range of devices



Contracts under
EU law



Workable transition

Situation

- Regulation doesn't impose verification requirements on service providers
- Allows RH to require effective but reasonable means of verification

Complication

- Legal uncertainty as to what effective but reasonable means are
- If some MSP's not verifying leads to an imbalanced competitive environment and damages value of exclusivity

Solution

- **Obligation:** Impose verification on AV service providers
- **Means:** Add an article with a closed list of effective and reasonable means of verification
- **Compliance:** RH play active role in ensuring compliance of their licensees

How to make it work : MS of Residence



Temporary presence



Verification &
Level playing field



**Member State of
Residence**



Scope of application



Range of devices



Contracts under
EU law



Workable transition

Situation

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

Complication

- No clear definition in Regulation
- Impossible for service providers to apply

Solution

Reword Article 2 (c) definition of Member State of Residence as the place where « the subscriber has his or her actual and stable residence to which he or she returns to regularly after visiting other places »

How to make it work : Scope of application



Temporary presence



Verification &
Level playing field



Member State of
Residence



Scope of application



Range of devices



Contracts under
EU law



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

Make portability
explicitly optional for
free services by
introducing new Article
3A

How to make it work : Range of devices



Temporary presence



Verification &
Level playing field



Member State of
Residence



Scope of application



Range of devices



Contracts under
EU law



Workable transition

Situation

- MSPs are under obligation to provide portability on same range/number of devices and functionalities

Complication

- MSPs do not exercise control over 3rd party platforms and devices, e.g.; apps on connected TV

Solution

Exception for MSPs required to ensure they sign up to obligations they have the power to deliver on. Recommend amending recital 18.

How to make it work : Contracts under EU law



Temporary presence



Verification &
Level playing field



Member State of
Residence



Scope of application



Range of devices



**Contracts under
EU law**



Workable transition

Situation

- Contracts often subject to non-EU law e.g. California law

Complication

- In case of conflict, non-EU courts may not recognise the primacy of the Regulation
- MSPs can be challenged on overstepping the territorial scope of the license

Solution

Need to make explicit the primacy of the Regulation over contracts subject to non-EU jurisdiction. Recommend making explicit in Article 5 (2).

How to make it work : Workable transition



Temporary presence



Verification &
Level playing field



Member State of
Residence



Scope of application



Range of devices



Contracts under
EU law



Workable transition

Situation

- Regulation currently foresees 6 months

Complication

- Any new service feature usually requires more than a year to launch
- Platform architecture and software solutions will need to be adapted

Solution

Extend transition period

Recap & Contacts



Temporary presence



Verification &
Level playing field



Member State of
Residence



Scope of application



Range of devices



Contracts under
EU law



Workable transition



7 Levels of clarity

Questions &
Comments Emilie
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CENTRAL TO THE LIVES OF EUROPE'S CITIZENS

- Our TV channels reach over 200 million European households in 28 EU member states and beyond

200 million
households reached

- Our online TV services are available in over 150 million European homes connected to the internet and are central to Europe's broadband story

150 million
EU homes connected

- Our member companies deliver content to a range of devices and platforms in response to consumer demand

