



CALL FOR VIEWS ON THE EUROPEAN COMMISSION'S PROPOSAL FOR LEGISLATION

PRS for Music¹ welcomes the opportunity to contribute to the IPO's call for views on the European Commission's proposed Portability Regulation.

PRS for Music represents 115,000 songwriter, composer and publisher members. We license a wide range of online music providers, such as Spotify and Deezer, who already offer their users portability. In many instances this portability is not restricted to the EU and often for an unlimited duration.

The proposed Regulation was intended to address a perceived consumer demand for greater portability of online audiovisual services, demand which was not being met by the market. However, despite the identified problem being specific to the audiovisual sector, the proposed Regulation would apply broadly across all rights and content services. We question this approach and are concerned about the potential unintended consequences which this might have on music, a well-developed market, which is already providing portability, supported by multi-territory licensing. This is even more concerning as the Commission's own impact assessment provides no tangible justification for the Regulation's extension to music services or what the impact might be to the functionality which consumers already enjoy. Therefore, we believe the IPO should look closely at whether the proposed Portability Regulation should explicitly exclude online music services.

We set out below our comments on specific elements of the Regulation.

- 1. Consumer Value:** We recognise the potential consumer benefits of offering greater portability of services which consumers have subscribed to in the UK. However, we would stress the extent to which there is a consumer demand for greater portability is not in itself sufficiently evidenced in the Commission's impact assessment, which falls well short of their own commitment to better regulation.
- 2. Temporary access:** We believe it is desirable that the determination of 'temporarily' be established as a matter of agreement between rightsholders and content services, subject again to it being "reasonable" and proportionate. This principle has allowed a wide range of portability in the online music sector and we see no evidence to suggest it will not do so for our sectors. In fact, an overly

¹ PRS for Music Limited is a wholly owned subsidiary of PRS that provides operational services to PRS and also to MCPS through a services agreement

prescriptive approach might actually interfere with established systems and create uncertainty and additional costs for all parties.

3. **Limitation to subscription services:** The Regulations should only apply to subscription services which have robust mechanisms in place to allow verification of the subscriber's country of residence. It would not be appropriate or desirable for the legal fiction, established in Article 4, to apply outside of such robust mechanisms. For non-subscription services they of course retain the possibility of securing portability through contractual agreement with rightsholders.
4. **Definitions:** We support the Commission's approach of setting high level definitions of subscriber, consumer and member state of residence. If these different categories were defined in too greater a detail it could have an adverse impact on consumers by preventing platforms and rightsholders from agreeing different levels of portability specific to user's needs.
5. **Verification:** As set out in points 2 and 3 the terms of verification should be established by rightsholders and limited only to subscription services which can robustly verify the subscriber's country of residence.
6. **Localisation of copyright relevant acts:** As previously stated we see no reason why the legal fiction should be applied to markets which are already operating effectively within the existing legal framework. However, in so far as the Commission believes the 'legal fiction' is necessary Article 4 of the Regulations will be sufficient to support the introduction of greater portability. However, it is essential that the localisation of copyright acts in the Regulation do not set a precedent for other types of exploitation.
7. **Application to existing contracts:** As a matter of principle we do not believe it appropriate to apply Regulations which over-ride existing contracts and retrospective application is dangerous because it does not take account of the conditions of the contractual agreement. Therefore, any contractual override should be very narrowly defined so as not to harm the value of rights.
8. **Delivery timescale:** We understand the political drivers for a swift implementation of the proposed Portability Regulation. However, this must be balanced against the practicalities of the technical changes necessary to secure robust determination of 'temporarily present'.

If you have any question about this submission please contact: policy@prsformusic.com