

By email to: [copyrightpolicy@ipo.gov.uk](mailto:copyrightpolicy@ipo.gov.uk)

12 February 2016

Dear Sirs,

## **A response to call for views on the European Commission's proposal for legislation on cross-border portability**

DACS is the representative for rights holders of visual works in the UK and welcomes the opportunity to contribute to this call for views on the European Commission's proposals for portability. DACS will be responding predominantly in respect of:

- Consumer values
- Temporary access
- Localisation of copyright relevant acts

DACS is a member of the Alliance for Intellectual Property (the Alliance) and the British Copyright Council (the BCC) and supports the views shared in their respective consultation responses.

### **About DACS**

Established by artists for artists, DACS is a not-for-profit visual artists' rights management organisation. Passionate about transforming the financial landscape for visual artists through innovative new products and services, DACS acts as a trusted broker for 90,000 artists worldwide. Founded over 30 years ago, DACS is a flagship organisation that has and continues to campaign for artists' rights, championing their sustained and vital contribution to the creative economy. In its support of artists and their work, DACS collects and distributes royalties to visual artists and their estates through Artist's Resale Right, Copyright Licensing, Artimage, and Payback. More information can be found on the [DACS website](#), in particular our latest annual review [here](#).

### **Consumer values**

DACS supports the Alliance and BCC's response to this question.

DACS acknowledges consumers' desires to be able to access the creative content they wish to access and are used to access in their home territory whilst visiting different EU Member States; and that the draft Regulation currently seeks to address this limited to subscription services. However, this somewhat overlooks the fact that an immeasurable amount of creative content is readily available across borders. DACS operates in the visual sector and has longstanding, well established licensing relationships with licensing customers in different Member States through a network of sister societies with whom DACS has entered into reciprocal agreements. Through OLA (Online Art – a binding agreement to license online uses\*) this network is in a position to operate on a multi-territorial basis. This benefits consumers as well as commercial users of copyright material online, who are free to choose which society of the network they would like to license the use of the members' works. Most

importantly this system also ensures that rights holders receive the remuneration they are entitled to. This echoes the point made by the Alliance that services delivering online content to consumers across the EU already exist and more innovative services are being developed which will give consumers access to the content they want without undermining existing territorial licensing arrangements. Additionally, we agree with the point raised by the BCC that the Regulation in any case must not allow unauthorised access to services by those who are not legitimately entitled to access them “at home”.

## **Temporary Access**

DACS considers that the definition of ‘temporarily present’ in the Regulations is particularly important to determine the scope of portability. However, the definition is insubstantial as it does not give any clarity as to what ‘temporarily’ would mean. Additionally, there is little clarity on what would constitute ‘habitually residing’. DACS believes that these definitions should be clear and unambiguous as well as seeking to take into account the mechanisms of authenticating temporary presence in a Member State. DACS agrees with the Alliance that words such as ‘authentication’ and ‘verification’ must also be elaborated on to provide robust requirements that users can determine if they fulfil them or not: rights holders are concerned that any ambiguities in the Regulations could be easily abused and that it pushes the responsibility of establishing the true scope of the provisions onto rights holders having to enforce their rights in court.

## **Localisation of copyright relevant acts**

DACS agrees with the Alliance and the BCC that the contract override provision creates uncertainty over the scope of existing contracts. If the Regulations deem provisions in contracts that prevent access across all Member States to be unenforceable, then there would be an automated extension of the application of the contract without any obligation to renegotiate terms. This would be detrimental to rights holders who would then not receive the appropriate remuneration for the increased territorial scope of the licence.

## **For further information please contact**

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