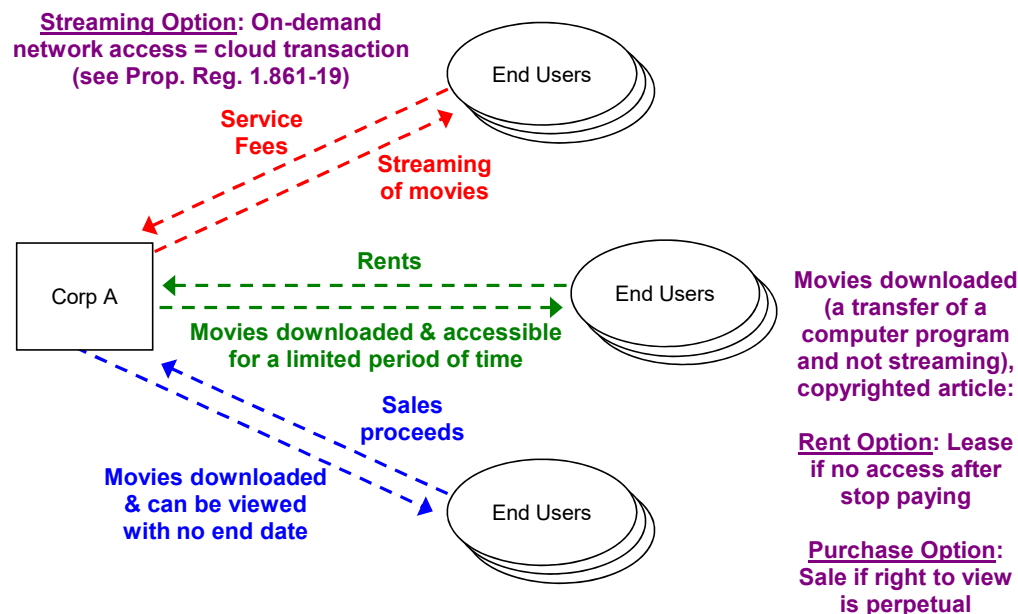


Prop. Reg. 1.861-18(h), Example 21

Movie Streaming is a Cloud Transaction, Movie Downloading is a Lease or a Sale

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Corp A offers a catalog of movies and TV shows, all of which are subject to copyright protection. Corp A gives end-users several options for viewing the content, each of which has a separate price. A “streaming” option allows an end-user to view the video, which is hosted on Corp A’s servers, while connected to the internet for as many times as the end-user wants during a limited period. A “rent” option allows an end-user to download the video to its computer or other electronic device (which does not need to be connected to the internet for viewing) and watch the video as many times as the end-user wants for a limited period, after which an electronic lock is activated and the end-user may no longer view the content. A “purchase” option allows an end-user to download the video and view it as many times as the end-user chooses with no end date. Under all three options, the end-user may view the video but may not reproduce or distribute copies of it. Under the “rent” and “purchase” options, the end-user may download the video onto a limited number of its devices.



(A) With respect to the “rent” and “purchase” options, the end-user receives none of the copyright rights described in Reg. 1.861-18(c)(2) but, rather, receives only copies of the digital content. Therefore, transactions under those two options are transfers of copyrighted articles. Transactions for which the end-user chooses the “purchase” option are classified as sales of copyrighted articles under the benefits and burdens test of Reg. 1.861-18(f)(2) because the end-user receives the right to view the videos in perpetuity. Transactions under the “rent” option are classified as leases of copyrighted articles under Reg. 1.861-18(f)(2) because the end-user’s right to view the videos is for a limited period.

(B) For transactions under the “streaming” option, there is no transfer of any copyright rights described in Reg. 1.861-18(c)(2). There is also no transfer of a copyrighted article, because the content is not downloaded by an end-user, but rather is accessed through an on-demand network. The transaction also does not constitute the provision of services for the development of digital content or the provision of know-how under Reg. 1.861-18(b)(1). Therefore, Reg. 1.861-18(b)(1) of this section does not apply to such transaction. Instead, the transaction is a cloud transaction that is classified under Reg. 1.861-19. See Reg. 1.861-19(d)(9).