

## Digital Single Market and geo-blocking

On 6 May 2015 the European Commission unveiled its Digital Single Market Strategy with which, inter alia, it intends to remove barriers to e-commerce across Europe. One such barrier is 'geo-blocking', that is commercial practices that prevent or restrict customers from accessing or purchasing a product or a service online, thereby adversely affecting cross-border e-commerce in the EU.

### Background

[Geo-blocking](#) refers to commercial practices that prevent online customers from accessing and purchasing a product or a service from a website based in another Member State, or which automatically re-route them to a local site. As a result, consumers are often charged more for products or services purchased online on the basis of their IP address, their postal address or the country of issue of their credit card. Geo-blocking also restricts customers' access to online services purchased in their home country (e.g. TV channels over internet) when abroad. [According](#) to the European Commission, 74% of the complaints received by the European Consumer Centres Network regarding price differences or other geographical discrimination faced by consumers relate to online cross-border purchases.

In its 2015 [work programme](#), the Juncker Commission has committed itself to adapting EU legislation to the digital era and completing the [Digital Single Market](#). Accordingly, one of the main objectives of the [Digital Single Market Strategy](#) announced by the Commission on 6 May 2015 is to ensure better access for consumers and businesses to digital goods and services across Europe. The Commission [proposes](#) to address geo-blocking and its undesirable effects on cross border e-commerce in the EU from three different perspectives: with legislative proposals, through the instruments of competition law and within the context of the copyright law reform.

### Geo-blocking and consumer protection

[Vice-President, Andrus Ansip](#) and [Commissioner Günther Oettinger](#) have both expressed their discontent about unjustified geo-blocking practices which lead to fragmentation in the Internal Market. The Commission's [concerns](#) relate to geo-blocking practices that amount to the refusal to sell, or measures which discriminate between online shoppers and result in markets segmented along national borders (territorial restrictions) without a valid justification provided by national legislation (e.g. consumer law) or by acceptable business practices (e.g. higher delivery costs). The Commission's initiative therefore calls for such practices to be prohibited under EU law in order to foster cross-border e-commerce. To that end, the applicable EU legislation (in particular the [e-Commerce Directive](#) and the [Services Directive](#)) could be amended. The Commission plans to make legislative proposals in the first half of 2016 to end unjustified geo-blocking.

### Geo-blocking and competition law

In parallel to preparing these legislative proposals, the Commission has launched a [Competition Sector Inquiry](#) into the e-commerce sector in order to investigate, inter alia, whether geo-blocking restrictions infringe the rules of EU competition law ([Articles 101](#) and [102 TFEU](#)). Such restrictions are often enclosed in contractual and distribution agreements for on-line trade of tangible goods and also in the licensing of audiovisual and on-line content services. Commissioner Margrethe Vestager has [indicated](#) that the investigation will assess whether these practices constitute undue barriers to cross-border online shopping. Competition rules, such as the [Block Exemption Regulation](#) and the [Guidelines on Vertical Restraints](#) may need to be amended in this regard.

In order to define concerns about geo-blocking practices and differentiate between restrictions which need to be prohibited and discriminatory practices which can be acceptable some lessons should be drawn from the [on-going investigations](#) into the cross-border provision of pay-TV services and the related CJEU case law on copyright territorial restrictions.

A leading case on the topic is the judgment in the so-called **Murphy Case** ([Joined Cases C-403/08 and C-429/08](#)), where the Court of Justice of the European Union (CJEU) ruled that, while exclusive territorial licensing was not a competition law infringement per se, prohibiting the importation, sale and/or use of satellite decoder cards in another Member State was in breach of EU competition law. Absolute territorial protection granted to licensees would therefore rarely be found compatible with the [Internal Market objective](#). The ruling concerns broadcasting of sport content but could more broadly trigger a [reform](#) of the current system of cross-border distribution of audiovisual and media content – including geo-blocking practices – in order to better strike a balance between the principle of free movement of services and the exercise of intellectual property rights.

## Geo-blocking and copyright law reform

Finally, the Commission will also address the issue of geo-blocking in the context of the long-awaited [copyright modernisation package](#). Consumers are often prevented from using content services (e.g. video services) when they travel from one Member State to another, or are denied the possibility to purchase content online because of the territorial dimension of copyright, which is commonly granted and protected for the territory of individual Member States (territoriality of rights). While the Commission did not propose to change this principle, one of the aims of the forthcoming amendments to the EU copyright legislation will be to facilitate the [licensing of rights](#) for online distribution of audiovisual content on a cross-border scale. Consumers who have legally paid for an online service would then be able to access it in any another EU country (i.e. full portability of legally acquired content).

## Views of stakeholders and political groups

### *Stakeholders*

EDiMA, an EU-wide trade association representing online platforms supports the Commission's approach but [warns](#) that a balanced approach to geo-blocking is required and the fundamental principles that guarantee the freedom to conduct business must be observed. BEUC, the European Consumer Organisation, [regrets](#) that the Commission's proposal omits the reform of Europe's copyright-levying systems which do not correspond to the requirements of modern online distribution and use of content. In their view, geo-blocking contradicts the very notion of a single market and therefore must be removed to build a modern European online marketplace. In addition, the International Federation of Film Distributors' Associations (FIAD) has [pointed out](#) the implications of the legislative proposal for the audiovisual sector, the financing of which (both for paid services and for public broadcasting) depends very much on setting distribution agreements and broadcast rights separately for different European territories.

### *Political groups*

The Commission's legislative proposals on geo-blocking have been welcomed by the political groups [ALDE](#) and [EPP](#) which have long been calling for appropriate measures to address consumers' discrimination based on their geographic location. While they support the measures against detrimental geo-blocking practices, S&D [asks](#) for a more ambitious reform including a fair EU-level solution to geo-blocking, while the ECR [calls](#) for measures to reduce illegal content and make sure creators and innovators are fairly paid. The fact that the Commission falls short of proposing the comprehensive reform of copyright laws [required](#) to tackle the current fragmentation of regimes in the EU – which gives rise to lawful geo-blocking practices – has been strongly criticised by [the Greens/EFA](#).

## Parliamentary advice

The European Parliamentary Research Service (EPRS) Ex-Post Impact Assessment Unit is preparing a European Implementation Assessment on EU Copyright for the [Legal Affairs Committee](#), covering geo-blocking amongst other issues, and this is expected to be published in July 2015.