



**Geo-blocking: Unjustified barrier to the Digital  
Single Market or legitimate commercial practice?**

**The case of copyrighted audiovisual content**

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# Geo-blocking: definition and impacts

## ○ What does geo-blocking mean?

- Technological measure preventing online consumers from accessing a web-site or purchasing content based on location of access; such measure may involve also re-routing to a local web-site

## ○ What are the main impacts of geo-blocking on the functioning of the Internal Market?

- Limited cross-border portability
  - Consumers that lawfully subscribe to online services in a certain Member States are not able to access the same service when moving, even temporarily, to another Member State
- Limited cross-border trade
  - Some EU consumers cannot purchase goods or services that are instead available to other EU consumers
  - Even when the same good or service is provided in several EU Member States, consumers can access only to their “national” offer, at local conditions and prices

# Geo-blocking and copyrighted content

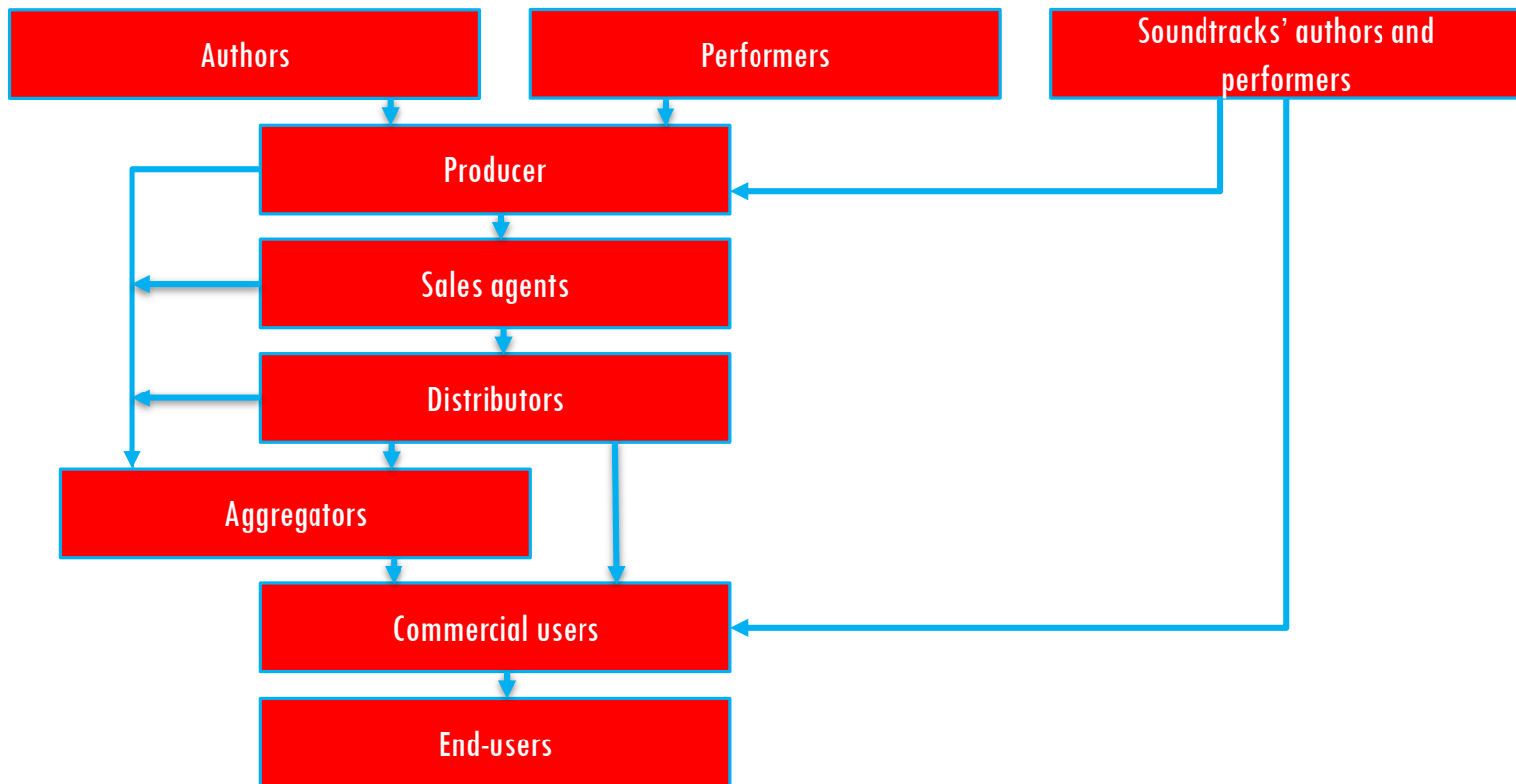
- **Are geo-blocking practices confined to copyrighted content?**
  - Geo-blocking measures are adopted also in e-commerce of non-copyrighted goods
- **What is so special about copyrighted content?**
  - Interplay between competition law and copyright law
    - Agreements between undertakings which may affect trade between Member States are prohibited by EU competition law as incompatible with the Internal Market
    - Absolute territorial exclusivity (active and passive sales) is *per se* forbidden by EU competition law; geo-blocking is at odds with competition law
    - But passive sales might infringe copyright; geo-blocking prevents copyright infringement
  - No/low delivery costs for digital copyrighted content

# EU copyright law and cross-border trade

- **Is there any EU copyright title?**
  - Copyright and related rights are conferred by national laws and are limited to the territory of the granting State (principle of territoriality)
- **Can copyright territoriality prevent cross-border trade?**
  - Once a copyrighted good has been sold by the right-holder, or with his/her consent, in a territory of the EU, further distribution of that good cannot be prevented (principle of exhaustion)
  - Article 4 of the InfoSoc Directive confines the scope of the exhaustion principle to the distribution right, which concerns only physical media embodying copyrighted works
  - Territorial licensing of intangible copyrighted works is a lawful business strategy and parallel imports can be prevented by relying on copyright territoriality

# Geo-blocking and territorial licensing in the audiovisual sector

- What are the actors of the “licensing chain” in the film sector?



Source: Authors' own elaboration on Charles River Associates (2014)

# Geo-blocking and territorial licensing in the audiovisual sector

- **What are the main drivers of territorial licensing in the audiovisual sector?**
  - **EU copyright law**
    - Facilitating tool for market fragmentation (territoriality + exhaustion + freedom of business)
    - Cost barrier for market integration (two rights to clear + different right-holders)
  - **Cultural and linguistic diversity**
    - Diverging consumer preferences (needs for national adaptations, limited cross-border demand for European films, absence of a pan-European demand)
  - **Socio-economic diversity**
    - Differences in net earnings and purchasing power (from some €8,000 in Bulgaria to more than €80,000 in Luxembourg; EUROSTAT)
  - **Business decisions**
    - Financing scheme (upfront payment in exchange of exclusive exploitation, lock-up effect)
    - Distribution strategies ('release windows')

# Geo-blocking and territorial licensing in the audiovisual sector

Country	Main language transfer practices	Admissions (% over EU total)	National films (%)	Other EU films (%)	US films (%)
<b>Czech Republic</b>	Subtitling	1 %	24 %	11 %	65 %
<b>France</b>	Dubbing and subtitling	21 %	34 %	7 %	54 %
<b>Germany</b>	Dubbing and subtitling	14 %	26 %	6 %	65 %
<b>Hungary</b>	Subtitling	1 %	2 %	10 %	87 %
<b>Italy</b>	Dubbing	12 %	30 %	10 %	54 %
<b>Poland</b>	Subtitling	4 %	20 %	16 %	64 %
<b>Spain</b>	Dubbing	9 %	14 %	10%	70 %
<b>UK</b>	Subtitling	18 %	22 %	3 %	73 %

Source: Authors' own elaboration on European Audiovisual Observatory (2014) and on Media Consulting Group (2007).

# Geo-blocking and territorial licensing in the audiovisual sector

- **Are EU consumers affected by territorial licensing and geo-blocking in the audiovisual sector?**
  - Limited cross-border portability
    - Short term migrants and travellers (about 5 million Europeans per day)
  - Limited cross-border trade
    - Long-term migrants (about 13 million Europeans)
    - Potential demand for subscription-based cross-border services in the area of €750 million to €1,600 million per year
    - People with foreign language skills or interests (about 110 million Europeans)
  - Versioning (content adaptation)
  - Pricing strategies accounting for national purchasing power

Data source: Plum Consulting (2012)



# Geo-blocking, what's next?

- **What are the options to circumvent geo-blocking?**
  - Virtual Private Networks
    - Increased portability; cross-border trade requires additional technologies/services
    - Copyright infringement; lack of transparency on copyright territoriality
    - Willingness to pay
- **Is a reform of the EU copyright framework necessary?**
  - Balancing copyright law and competition law
    - Work in progress: ex post evaluation + impact assessment



THANK YOU FOR YOUR ATTENTION

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