



THE END OF GEO-BLOCKING: MOVING TOWARDS A DIGITAL SINGLE MARKET

BY G. BEAUMIER

On December 3rd 2018, the European Union will move one step closer towards completing its digital single market with the entry into force of the Geo-blocking regulation ([2018/302](#)). Following new rules for privacy, roaming and cross-border portability of audiovisual content, this regulation will aim at ensuring that citizens and businesses reap the full benefits of the European single market in the digital era by limiting discrimination based on the geolocation of buyers. The exclusion of audio-visual services from the application of the regulation will however still leave the digital single market partially fragmented.

Digital technologies allow European citizens and businesses to interact to an extent that early thinkers of the European single market could not dream of. At the same time, they enable new forms of discrimination which, if left unchecked, can undermine any prospect of having a fair and truly integrated single market. The Digital Single Market (DSM) initiative launched in 2015 by the European Commission aims at ensuring that this does not happen by promoting regulatory actions on a wide range of topics, including geo-blocking.

Geo-blocking refers to a wide range of practices used by Internet sellers and providers to limit their offers or change their prices based on the location (i.e. the IP address) of the consumer. This can notably be done by restricting the access to a website's content, automatically redirecting a consumer to a local website (e.g. Amazon.fr, Amazon.uk, etc.) or limiting payment methods to credit or debit cards from a certain country. In practice, this means that consumers based in two different European countries might not be offered the same choices or prices when shopping online.

While good reasons can sometimes explain why private businesses use geo-blocking practices, it can unfortunately be used for price discrimination purposes. An infamous example of such practice was given by Disneyland Paris, which came under scrutiny by the European Commission in 2016 for charging differently consumers based in different European countries. According to pricing data gathered by consumer organizations at the time, a premium package for the popular theme park was sold for €2,447 on its German website, €1,870 on the UK website and €1,346 on the French website.

Few cases are obviously as shocking as the one of Disneyland, yet the use of geo-blocking practices was widespread in Europe. According to a [Commission geo-blocking study from 2016](#), as much as 63% of websites were not allowing European consumers to do cross-border online shopping. While price discrimination practices do not always ensue from these territorial restrictions, they clearly limited the growth potential of the EU digital single market as the same survey showed that only 19% of consumers and 9% of companies were involved in online cross-border transactions.

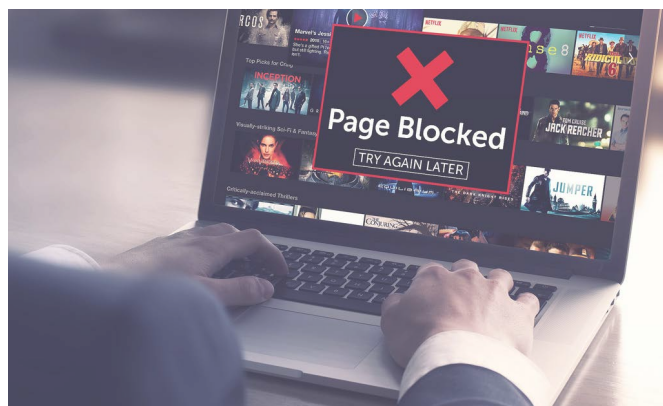


To both protect European consumers from potential discriminatory practices and promote greater growth in e-commerce, the geo-blocking regulation bans territorial restrictions in three ways. First, it prohibits sellers from blocking their customers' access to their website or rerouting them to a local website without their prior consent. Second, it requires sellers to offer the same general conditions of access to their goods and services, regardless from where the consumer is placing their order. Third, it impedes sellers from refusing means of payment based on the consumer's country of origin (e.g. only accepting Belgian credit cards).

Importantly, these new rules do not mean that online sellers will be forced to uniformly provide their goods and services in all European countries. They will still be allowed to operate local websites in each country where they are active and charge different prices for the same goods and services across them. The end of geo-blocking will thus not necessarily lead online sellers to adopt uniform pricing. It should however put pressure on them to do so as the geo-blocking regulation will allow European consumers to shop across all websites and decide from which they want to buy.

Despite the entry into force of the geo-blocking regulation, European consumers will finally still face territorial restrictions in the one sector where they probably see them most often: audiovisual services. The media sector effectively convinced the European Commission to exclude them from the scope of the new regulation because of the importance of territorial licensing for their current business models. Netflix users will thus still receive different services depending on the country where they are located.

While it can be argued that new European copyright rules could resolve this issue, the impact of removing territorial restrictions in the audiovisual sector on the protection of cultural diversity is much less clear. On the one hand, some argue that removing all geographical barriers will ease the diffusion of



cultural products throughout the European market and thereby help local cultural products reach new audiences. On the other hand, some fear that it could push audiovisual providers to homogenize their catalogue and reduce their investment in local productions.

Rules recently adopted by the European Parliament, and awaiting approval by the EU Council, will however require audiovisual providers, like Netflix, to reserve 30% of their catalogue for European cultural products. Moving forward such type of quota measures will most certainly be challenged in trade negotiations (e.g. with the United States), but they should for now alleviate some fears of people afraid that digitization could cause a loss of cultural diversity.

Guillaume Beaumier's (GEM-STONES) research explores how the issues of data protection arising from the development of e-commerce are being governed. Guillaume will complete his PhD within the framework of a European Joint Doctorate between the University of Warwick (UK) and Université Laval (CA).



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