

End Geoblocking

Revision 4



What is geoblocking?

Digital borders, e.g. **"This content is not available in your country"** – a problem that stops millions of Europeans every day from ordering goods, downloading digital products, signing up to VoD services or watching ad- or publicly funded video content.

- ▶ **FACT** >80% of consumer respondents to the EU's public consultation reported that they have experienced geo-blocking (EC, 2016)¹
- ▶ **FACT** The majority of digital content providers in the EU geoblock (EC, 2016)²

Why is it unfair?

Geoblocking is un-European: Freedom of movement and a single market are tenets of the EU. Yet we lack a freedom of access to information and culture. This problem can only be solved at the EU level, and action on it would be immensely popular among Europeans.

- ▶ **FACT** >90% of consumer respondents to the EU's public consultation agree that everyone should be able to purchase and access services everywhere in the EU

Geoblocking is discrimination: In an increasingly digital world, geoblocking means that leaving your country effectively forces you to leave your culture behind – especially affecting linguistic minorities and long-term migrants, but also short-term migrants, exchange students, etc.

- ▶ **FACT** About **55 million** people in the EU – **1 in 10 Europeans** – speak a language that is a minority in their country (ELEN) – and thus depend on cross-border access³

Geoblocking locks in creators: Cultural works are denied a large, pan-European audience, money is refused from people ready to pay. Geoblocking forces people to seek alternative ways: Money that ought to be going to creators ends up at VPN services used to circumvent the blocks, and platforms that infringe copyright outright are made more popular.

Geoblocking locks out audiences: In addition to linguistic minorities, cross-border access is in demand by foreign language learners, foreign sports league fans etc. (110M+ people)

- ▶ **FACT** 82% of young Germans want to access content from other EU countries (VZBV, 2016)⁴

Geoblocking is bad for the economy: An estimated billion Euros and more worth of cross-border demand is kept from EU VoD platforms, EU startups and creators.

- ▶ **FACT** Potential demand for subscription-based cross-border services among intra-EU migrants alone is estimated in the area of **€750 million – 1,600 million** per year (Plum Consulting, 2012)⁵

Geoblocking most benefits few corporations, who have made a business out of enforcing regional monopolies to maximize profits on a minority of works: Blockbusters with global appeal.

¹ <https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-geo-blocking-and-other-geographically-based>

² http://europa.eu/rapid/press-release_IP-16-922_en.htm

³ <http://www.cracking-the-language-barrier.eu/organisations/elen/>

⁴ <http://www.vzbv.de/pressemitteilung/umfrage-verbraucher-wollen-digitale-inhalte-grenzueberschreitend-nutzen>

⁵ http://ec.europa.eu/internal_market/media/docs/elecpay/plum_tns_final_en.pdf pg. 157

Why does it happen?

Unfair contracts: e.g. Hollywood studios splitting up the European market, establishing regional monopolies and maximizing profits.⁶

- ▶ **FACT** 59% of digital content distributors who responded to the European Commission's sector inquiry indicated that they were contractually required to geoblock by the suppliers of digital content. (EC, 2016)⁷
- ▶ **FACT** The Commission is currently investigating six major studios for unfair competition practices.⁸

Fragmented laws: e.g. *Copyright*: Showing copyrighted content to all Europeans requires buying 28 separate rights. *Streaming*: Up until recently, YouTube did not stream live video to customers in Germany because of special local media law requirements.

Legacy business models: Some systems of film financing, movie releasing etc. have come to rely on regional monopolies. But it doesn't have to be this way. Compare to the UK, Belgium, Switzerland, etc. where multiple languages are spoken, but internal geoblocking is not common yet films still get funded.

Example: In order to boost DVD sales in the UK, rights holders delayed the streaming of Doctor Who on the UK market, while it was already available in other EU countries.

What must the EU do?

Stop forcing services to refuse business from foreign customers: Right now, services may not provide audiovisual content online to users in countries where the service has not purchased a specific license. Extending the "*country of origin*" principle that is already in place for cable/satellite broadcasters to VoD services of all kinds would stop forcing them to turn away consumers who find the offers without targeted marketing efforts (allowing "*passive sales*"). Contractual clauses that force services to block passive sales should be made null and void.

Enforce anti-discrimination law: Clarify that the common reasons to geoblock aren't justified exceptions of the anti-discrimination principle set out in the *Services Directive*⁹.

Allow "roaming" for subscription services: When crossing a border, consumers must be able to take their content subscriptions with them. This important, but small, step has already been proposed by the European Commission in the *Portability Regulation*.

- ▶ **FACT** The proposed regulation is expected to affect some 900,000 Europeans per day in 2015 – 0.2% of the EU population (CEPS, 2016)¹⁰

▶ <http://endgeoblocking.eu>

⁶ Contractual restrictions affecting cross border provision of pay TV services have been subject to an antitrust investigation by the European Commission since 2014: http://europa.eu/rapid/press-release_IP-14-15_en.htm

⁷ http://europa.eu/rapid/press-release_IP-16-922_en.htm

⁸ http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023

⁹ Services Directive 2006/123/EC – Article 20 (2): *Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.*

¹⁰ <https://www.ceps.eu/publications/regulation-%E2%80%98cross-border-portability%E2%80%99-online-content-services-roaming-netflix-or-end>

Appendix: Common counter-arguments refuted

“Getting rid of geoblocking would benefit only large US players”

In fact, it is the complexity of 28 markets that only benefits large players. Netflix can handle navigating it – on the other hand, no European VoD platform (and there are many) is available across all of the EU today. If we want to have any chance of ever having EU players of significant enough market size to compete with large US players, we need to make it easier for them to provide their services in all of Europe.

- ▶ **FACT** Only 5% of VoD services available in the UK today are based in another EU country (European Audiovisual Observatory, 2015)

“Getting rid of geoblocking would harm cultural diversity”

In fact, it is denying cultural minorities access to content in their language that harms cultural diversity. Our cultural works don't benefit from "protection" from a diverse audience.

Geoblocking allows films with wide popular appeal (e.g. Hollywood blockbusters) to slightly maximize profits by making 28 lucrative exclusive deals. For local independent productions that never make it to 28 distribution deals, the main effect is blocking most Europeans from purchasing access.

“Getting rid of geoblocking would harm film financing”

Maximizing the audience of European cultural works will strengthen creators and the film industry.

Today's system of pre-selling exclusive territorial rights to contribute to the financing of films may be what some players have become used to, but the fact that the vast majority of European films – including even the most critically lauded ones – are not available for access in most other EU countries demonstrate clear market failure.

Regional licensing will still be possible: The release window system (release in cinemas first, then DVD/online) would remain in place, leaving untouched regional licensing for a cinema release, localisations/dubbings, etc.

Languages provide a natural way to segment the EU market. The wider Estonian public won't stop going to the cinema just because a movie has already theoretically been available to them on an Catalan VoD site. It is a much more likely case that members of the Catalan diaspora in Estonia and elsewhere are geoblocked from paying for that movie on the Catalan VoD site, with no legal alternative available.

In addition, a significant share of the financing for films comes from public sources, including EU funds – that these films are then denied the widest possible audience is unacceptable.

- ▶ **FACT** Depending on the EU member state, an average of **42–60%** of the funding of significant films is direct public funding – with additional value provided by the public through tax breaks etc. (European Audiovisual Observatory, 2004)

Certainly, should abolishing geoblocking prove to in fact have sustained negative effects on film financing, this would need to be counteracted by additional measures. But we cannot accept hesitation to adapt business models to a digital age as blanket justification to indefinitely uphold a system of online borders within the common market.