

# GEOBLOCKING IN THE DIGITAL SINGLE MARKET

Klaus Müller, Executive Director of the Federation of German Consumer Organisations - Verbraucherzentrale Bundesverbands (vzbv), at vzbv's conference "Geoblocking in the Digital Single Market", delivered 1st June 2016 in Brussels

*Check against delivery*

Dear Members of the European Parliament, dear representatives of the European Commission, ladies and gentlemen,

I am happy to see that you turned up in such a respectable number – and that after lunch. That tells me the topic we would like to discuss with you must have hit the spot.

When talking about the regime that governs the cross-border access of digital media services we have to talk about a lot of money that is at stake. This is why the traditional film industry fears that their long established business model - based on absolute regional monopolies - is in danger.

On the other hand, new innovative business models like Netflix see their chance to enter the market and cut out a big slice of the media cake. But above all – we are talking about the potential improvements that these developments offer to consumers and film makers. The chance to participate in a truly single European media market and the possibility to follow closely the same news, ideas and debates as our fellow Europeans in Spain, France and the UK.

But let me start with the status quo.

And that – unfortunately - looks rather different than a true Single Market. In fact, European media users live in a highly fragmented market:

Let me give you an example: Online subscription services to access films, sports broadcasts or music become increasingly popular with European consumers. Since 2010, the European revenues of subscription-based video-on-demand services like Netflix nearly doubled from year-to-year to €844 million in 2014.

Netflix alone has over 81 million subscribers in over 190 countries worldwide and this number is expected to increase in the years to come. But at present, when consumers travel abroad within the EU, they are often cut off from these online services. Even when they have paid for them. The reason is that access to these services is often restricted to the consumers' home country. Therefore, a user from the UK may find that her favourite Netflix series is not available any longer, as soon as she leaves the UK.

And this is a real problem for consumers as our recent consumer surveys show:

1. The vast majority of 72% of German consumers want to be able to use their paid-subscriptions when they are abroad in the EU.
2. Three quarters or 73% of German consumers feel they should be able to buy online media subscriptions for pay-TV or video-on-demand services from other EU countries.

Ladies and gentlemen - and why should they be denied this right? When consumers are willing to pay for a service they should be given the opportunity to do so. This is the core idea of the Digital Single Market.

And above all, this is in the interest of content providers and right holders, too: The film and music industry has complained about piracy for nearly two decades. Now platforms such as Spotify provide an easy way to legally access music and as a result, piracy rates have dropped significantly. For Example: Music piracy has been 'virtually eliminated' in Norway: In 2009, 80% of the Norwegians under the age of 30 downloaded music illegally. In 2014, it was a mere 4%. Now 80% of people under 30 use streaming services as their primary source of music. The same can be expected to happen with films.

We are convinced that if you want to tackle piracy, you have to give consumers an easy option to legally buy the latest content across borders.

And piracy is not the only issue here: We live in the age of mobility. Millions of EU citizens live and work outside their home country. What is obvious: many want to follow the media content from home and stay up to date with the debates in home country. But in order to cultivate a true European public dialogue and debate all EU citizens should be able to access media from other Member States. Ladies and gentlemen, we cannot break up national communication silos if we are not able to access audio visual media from other Member States.

It seems that to some extent the European Commission has identified these problems and has started various initiatives and actions to promote the Digital Single Market:

1. The regulation on cross-border portability of online content services. Its objective is to give EU consumers access to their paid for content when travelling in the EU.
2. And the next steps have been announced:
3. The proposal for a revision of the Cable-Satellite Directive is expected to be published this summer.
4. DG Competition currently conducts a sector analysis on e-commerce. In March, the initial findings have been published and show that geo-blocking of online digital content is widespread in the EU. We are looking forward to the interim results expected this year and the final results, expected in 2017.
5. At the same time, DG Competition investigates whether certain contractual agreements between pay-TV providers and major US film studios are a breach of EU competition law.

Ladies and gentlemen, let me speak about some of these issues in more detail.

The Proposal for a Regulation of cross-border portability of online content services is a first step in the right direction. And the Commission's proposal contained two important and right approaches:

The first one is the absence of a time limit: The Commission did not include a specific time limit to define what it means that users are "temporarily" be present in another Member State. Instead, the approach is to assume someone is temporality abroad, when she leaves her "Member State of residence" where she habitually resides. So there is simply no need for a time limit. This approach gives the Regulation enough flexibility to reflect different consumer situations.

The other move in the right direction of the Commission was to include free services in those cases where the subscriber's residence is being verified. These "free" services are actually paid for by users with their personal data. So it is really appropriate to include them in the scope.

These two useful approaches are currently under threat of being watered down by the Member States. They are trying to change two key provisions that are potentially harmful for consumers. The first one is that Member States try to integrate a time limit to define what "temporarily abroad" means. And the second one is that free services that have a verification mechanism shall not be obliged to offer portability.

I would like to warn about going down that road. I would like to propose that the Commission, the Parliament and the Member States, consider the following three points when drafting the Regulation:

1. First of all, a specific time limit is not appropriate to define "temporarily abroad". Consumers are temporarily abroad for various reasons and lengths of time: Business trips may last two days, but happen several times a year. A family may be on holidays for two weeks. An Erasmus student may be abroad for a few months. Ladies and gentlemen – all of them are still temporarily abroad. And a narrow time limit fails to capture this reality and would make the Regulation inflexible.
2. The second reason is: Users most of the time pay for services. Maybe not with money, but with their personal data and attention, that companies monetize. So often the services are not for "free" at all and portability should be guaranteed in those cases where there is a verification mechanism in place.
3. And the third reason is a new point: The verification mechanism to define the consumers' habitual place of residence must be as simple as possible and respect consumers' privacy.

The second initiative of the Commission that has been announced is the revision of the Cable-Satellite Directive. This an important step to achieve the Digital Single Market.

A core issue is the possible extension of the scope of the Cable Satellite Directive to online distribution of digital content. You are probably aware of this: The

country-of origin principle in the Directive currently governs the copyright regime for cable- and satellite distribution.

In practice, this means that a broadcaster who broadcasts a piece of content, say a film, only has to obtain the copyright license for the country from which he sends the signal. If consumers in other Member States can catch the signal and watch the film, too, this is covered by the license that the broadcaster acquired for his country of origin. This system is well established and has proven effective and efficient in practice. Ladies and gentlemen, if this principle applied to online content services, too, every online content service provider would be able to serve consumers in all Member States. This means that online distribution of digital content would be put on an equal footing with traditional cable and satellite broadcasting. The consumption patterns of users show that this is the way reality will go. But not in the legal sphere that is lagging fifteen years behind the digital reality of consumer behaviour. To ensure that copyright catches up with reality it is important that the extension of the country-of-origin principle applies not only to public broadcasters and their online services but to all online content service providers. The full extension of the scope of the Directive to online services could correct one of the biggest flaws in copyright law and make it fit for the reality of digitization. Therefore we are looking forward to the proposal of the European Commission this summer and are keen to join the debate.

Finally, we will discuss another topic today which in our opinion is an important facet in the whole discussion. Ladies and gentlemen, I mean the competition case that the European Commission is conducting against SKY UK and six US film studios.

In this case, DG Competition investigates whether contractual agreements between the pay-TV providers Sky UK and six major US film studios violate EU competition law. Via this investigation, competition law enters the playground of copyright law. More precisely: The case boils down to the question whether content providers, like pay-TV websites, can be contractually prevented from serving consumers from other Member States. A possible outcome of the case could be that so-called passive sales to consumers in other Member States cannot be contractually prohibited. In this case, competition law would factually forbid hard core geo-blocking of digital content.

Before I come to the end, I would like to offer you a brief vision of the future in the form of three hypotheses: What would happen if we made cross-border access for audio-visual services a reality?

I think we will all benefit from this - as individual consumers, Europeans and creatives in the audio-visual industries:

1. We will have access to a larger variety of content and ideas as compared to now, as we make the cultural diversity of Europe readily accessible.
2. In total, consumption of of films, music and other audio-visual content will increase.

3. Unfortunately, today, particularly small art works are often hardly known outside their national home markets. New innovative business models that provide access to audio-visual content will continue to flourish. They will increase the diffusion and consumption of small art works in particular.

I am very happy that we could win representatives from the European Commission, the European Parliament, science and the media industry for today's discussion. In particular, I am looking forward to discuss these issues together with you. As you can see from the programme, we would like to leave some room to allow you, as an audience, to ask questions and get involved in the debate.

Probably today we will not deliver the final answers but I am sure we can contribute to the ongoing debate and make some small steps forward.

But now I would like to give the floor to Maria Martin-Prat who will deliver the Key Note: I am happy we could win her for today. She heads the Copyright Unit at the Directorate-General for Communications Networks, Content & Technology (DG CONNECT), where she works on the development and enforcement of EU rules in the area of copyright – an area in which she has long-standing experience. As an expert on copyright and the internal market she can give us the Commission's perspective on core issues that will be discussed during the day.

Please welcome Mrs Maria Martin-Prat.

## Kontakt

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