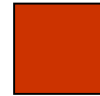




Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät

Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)

Prof. Dr. Malte Stieper

Portability or Online Access – What's in it for Consumers and Competition?

Geoblocking in the Digital Single Market
Verbraucherzentrale Bundesverband
1st June 2016



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

I. Introduction

Portability as a problem of cross-border availability of content

DSMS

Proposal for a Regulation on ensuring the portability of
online content services, COM(2015) 627 final

Stellungnahme des Deutschen Bundesrates vom
22.4.2016, BR-Drs. 167/16 (B)

Council Presidency compromise proposal of 18 May
2016; General approach of 26 May 2016

Proposal for a Regulation on addressing geo-blocking
and other forms of discrimination, COM(2016) 289 final



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

Portability or Online Access?

I. Introduction

II. Legal Background

III. Solutions

1. Restricting Territorial Restrictions
2. Country-of-Origin Principle
3. The Proposed Regulation on Portability

IV. Conclusion



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

II. Legal Background

Portability of lawfully acquired
content

=

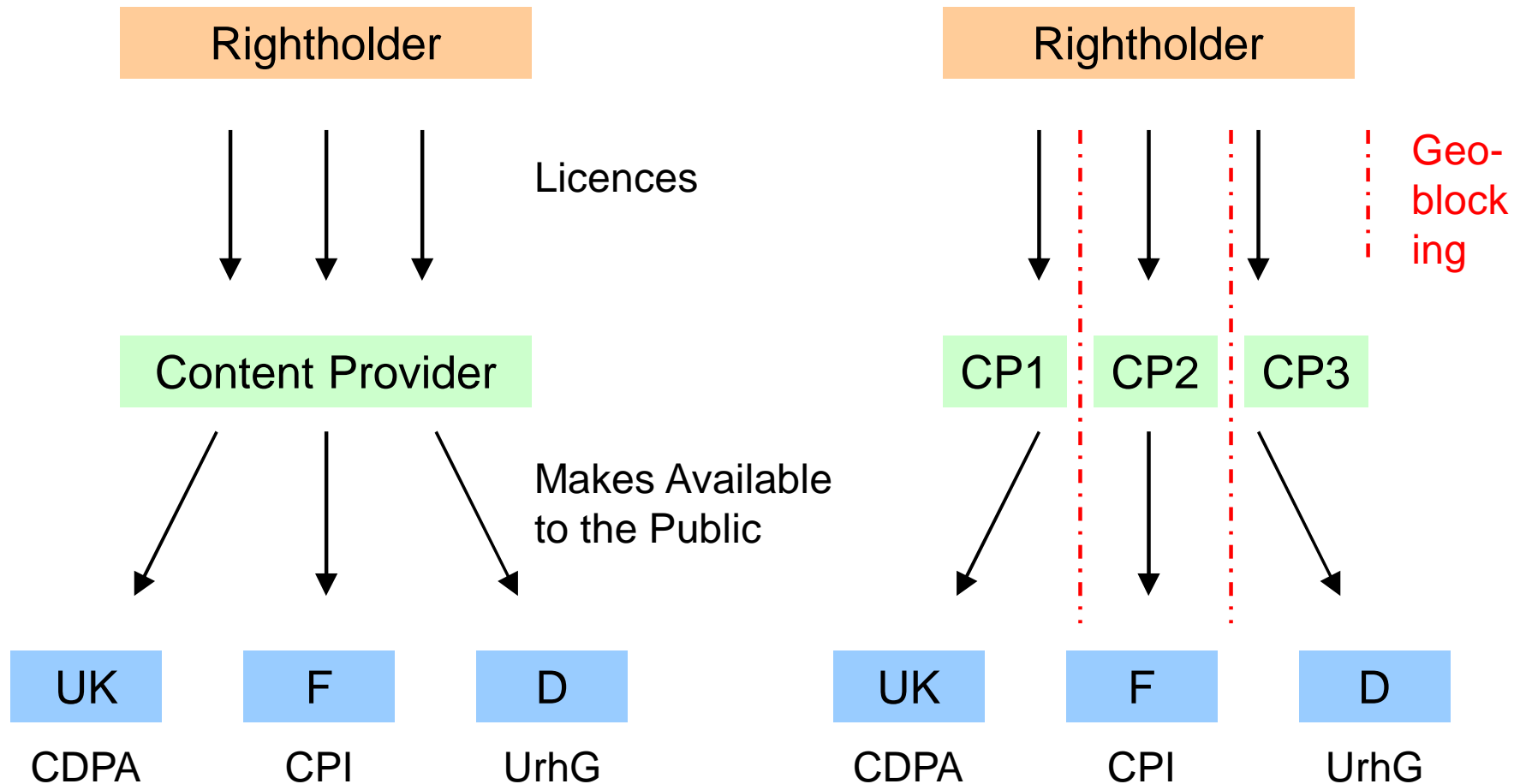
cross-border access to online content
services

<http://www.maxdome.de>





II. Legal Background





Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

Portability or Online Access?

I. Introduction

II. Legal Background

III. Solutions

1. Restricting Territorial Restrictions
2. Country-of-Origin Principle
3. The Proposed Regulation on Portability

IV. Conclusion



III. Solutions

„The limited cross-border availability of online content services is largely influenced by the territorial dimension of copyright.“

DSMS, Commission Staff Working Document, p.27



Territorial restrictions in licences for making works and other protected subject matter available to the public

vs.

Competition law (Art. 101 TFEU)
(EuGH FAPL/Murphy)



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

III. Solutions: Restricting Territorial Restrictions

[A]n agreement which might tend to restore the divisions between national markets is liable to frustrate the Treaty's objective of achieving the integration of those markets through the establishment of a single market. Thus, agreements **which are aimed at partitioning national markets according to national borders** or make the interpenetration of national markets more difficult must be regarded, in principle, as agreements whose object is to **restrict competition** within the meaning of Article 101(1) TFEU.

*European Court of Justice, Judgment of 4 October 2011,
ECLI:EU:C:2011:631*



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

III. Solutions: Restricting Territorial Restrictions



Editions: U.S

SIGN IN

Search

Subscribe Today!

FILM +

TV +

DIGITAL +

CONTENDERS +

VIDEO +

DIRT +

JOBS +

MORE +

HOME | DIGITAL | NEWS

How Netflix's Deals for Foreign Movie Rights Are Changing the Global Film Business

By John Hopewell, Elsa Keslassy



FEBRUARY 24, 2016 | 10:00AM PT

COURTESY OF SUNDANCE FILM FESTIVAL

MOST POPULAR

1/



FILM 12:16AM PT
Roman Polanski
Faces Fresh Attempt
to Extradite Him to
U.S.

2/



Source: *variety.com*



III. Solutions

„The limited cross-border availability of online content services is largely influenced by the territorial dimension of copyright.“

DSMS, Commission Staff Working Document, p.27



Territorial restrictions in licences for making works and other protected subject matter available to the public

vs.

Competition law (Art. 101 TFEU)
(EuGH FAPL/Murphy)

Country-of-Origin Principle
(Model: Directive 93/83/EEC)

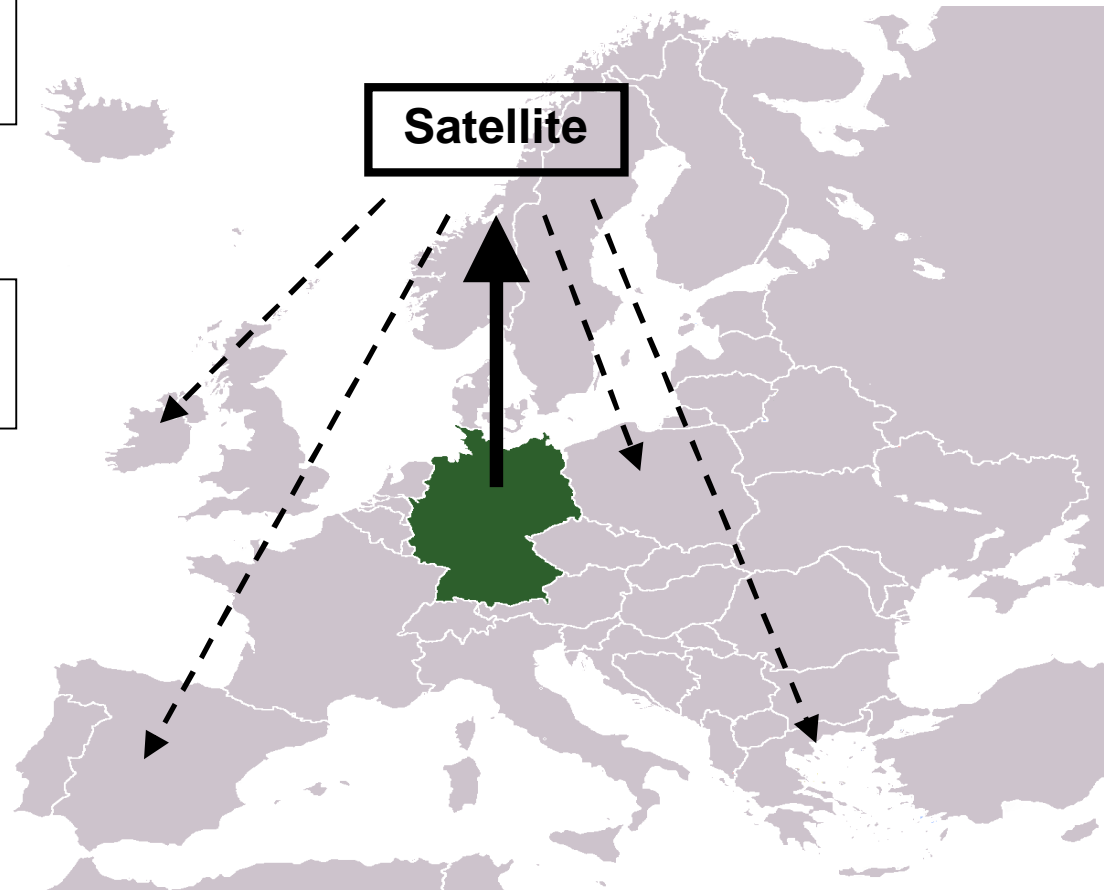


III. Solutions: Country-of-Origin Principle

Country-of-Origin Principle
(Model: Directive 93/83/EEC)



Public Consultation on the
review of the Directive 2015





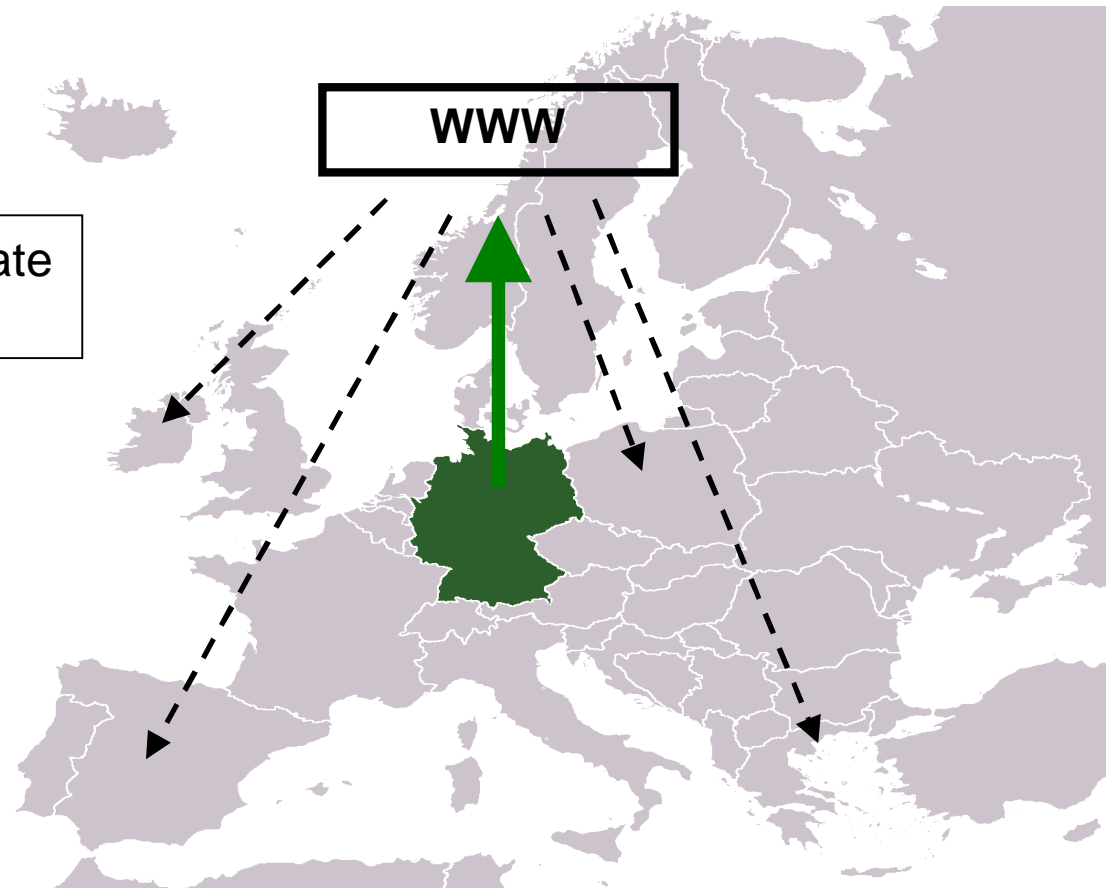
Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

III. Solutions: Country-of-Origin Principle

pro: Content Providers can operate
under their own jurisdiction





Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

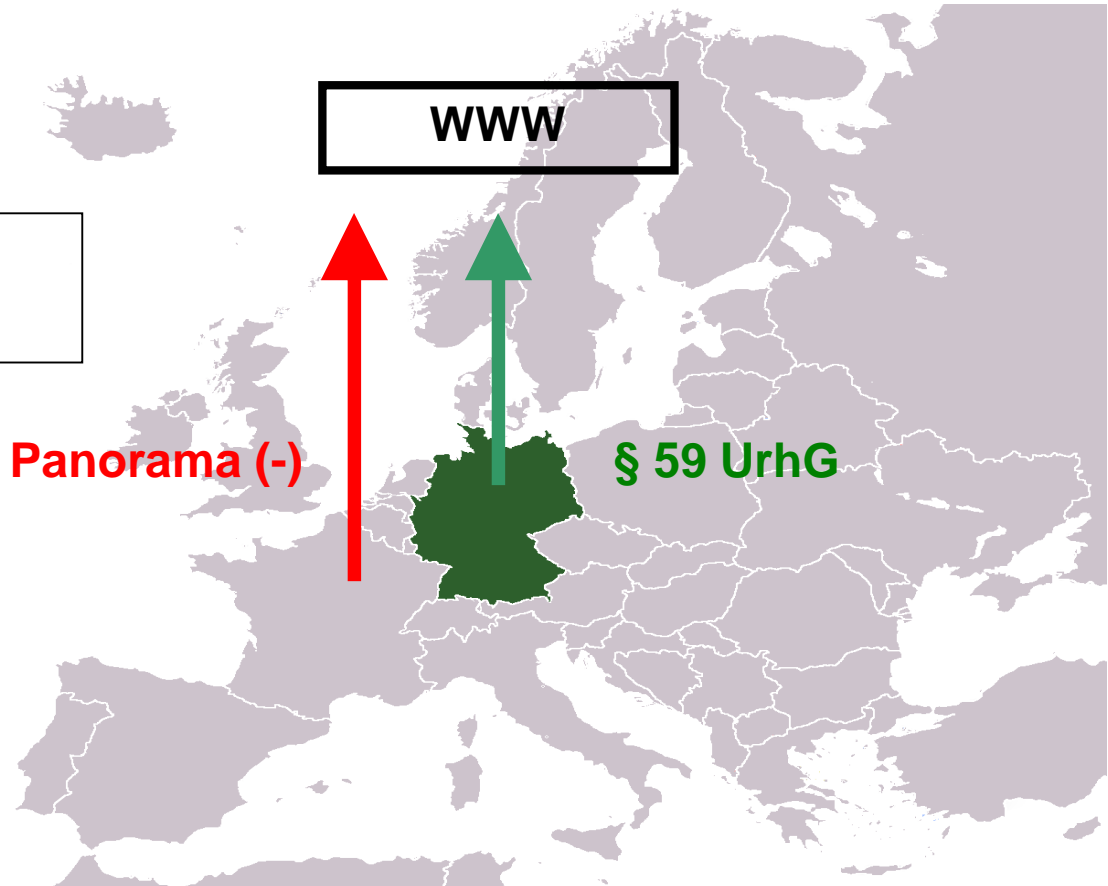
III. Solutions: Country-of-Origin Principle

contra: No harmonization of
Copyright Limitations

Freedom of Panorama (-)

WWW

§ 59 UrhG





Martin-Luther Universität
Halle-Wittenberg

Juristische und Wirtschaftswissenschaftliche
Fakultät

Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)

Prof. Dr. Malte Stieper

Portability or Online Access?

I. Introduction

II. Legal Background

III. Solutions

1. Restricting Territorial Restrictions
2. Country-of-Origin Principle
- 3. The Proposed Regulation on Portability**

IV. Conclusion



III. Solutions: The proposed Regulation on Portability

Proposal for a Regulation on ensuring the cross-border portability of online content services in the internal market, COM(2015) 627 final

Article 4

The provision of an online content service under this Regulation to a subscriber who is temporarily present in a Member State, as well as the access to and the use of this service by that subscriber, **shall be deemed to occur solely in their Member State of residence.**

Article 5

Any **contractual provisions, including those between holders of copyright and related rights ...** and providers of online content services, as well as those between such providers and their subscribers, which are contrary to this Regulation, shall be **unenforceable.**



III. Solutions: The proposed Regulation on Portability

Proposal for a Regulation on ensuring the cross-border portability of online content services in the internal market, COM(2015) 627 final

Article 2

(c) “Member State of residence” means the Member State where the subscriber is **habitually residing**;

(d) “Temporarily present” means a presence of a subscriber in a Member State other than the Member State of residence;

Presidency compromise proposal of 18 May 2016

(c) "Member State of residence" means the Member State, established on the basis of Article 3B, where the subscriber has his or her **actual and stable residence to which he or she returns regularly**;



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät

Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)

Prof. Dr. Malte Stieper

Portability or Online Access?

I. Introduction

II. Legal Background

III. Solutions

1. Restricting Territorial Restrictions
2. Country-of-Origin Principle
3. The Proposed Regulation on Portability

IV. Conclusion

Portability or Online Access?



Martin-Luther Universität
Halle-Wittenberg



Juristische und Wirtschaftswissenschaftliche
Fakultät
Gundling-Professur für Bürgerliches Recht,
Recht des geistigen Eigentums und
Wettbewerbsrecht (GRUR-Stiftungsprofessur)
Prof. Dr. Malte Stieper

Thank you for your
attention!