

European Parliament: Regulation on addressing unjustified geo-blocking

IRIS 2018-4:1/7

*Ellen Coogan
Institute for Information Law (IViR), University of Amsterdam*

On 28 February 2018, a new Regulation on addressing unjustified geo-blocking was published in the Official Journal of the European Union, following a European Parliament vote on 6 February 2018. The Regulation requires retailers to give access to goods and services on the same terms throughout the EU (however, copyright-protected works are exempted).

Under Article 3 of the Regulation, geo-blocking includes “block[ing] or limit[ing] a customer's access to the trader's online interface for reasons related to the customer's nationality, place of residence or place of establishment.” For example, a trader may not (for the above-mentioned reasons) redirect customers to a different online interface to that which the customer initially sought. The definition also covers “apply[ing] different general conditions of access” for location-related reasons, and the Regulation necessitates acceptance of payment (regardless of customer location), so long as the payment is made through an electronic transaction within the same payment brand and category, authentication requirements are fulfilled, and the transactions are concluded in a currency that the trader accepts.

While the new Regulation applies to a wide range of goods and services, materials protected under copyright, such as e-books and audiovisual products, are excluded from the Regulation. In this regard, Recital 8 states that audiovisual services, including services the principle purpose of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licences, are excluded from the scope of this Regulation. Further, Article 1(5) provides that the Regulation shall not affect the rules applicable in the field of copyright and neighbouring rights, notably the rules provided for the Copyright Directive (2001/29/EC).

However, the Regulation also includes a Review clause under Article 9, which provides that by 23 March 2020 and every five years thereafter, the European Commission must report on the evaluation of the Regulation, taking into account the “overall impact ... on the internal market and cross-border impact, including in particular, the potential additional administrative and financial burden for traders stemming from the existence of different applicable regulatory consumer contract law regimes.” Notably, the first evaluation will assess whether the Regulation

“should also apply to electronically supplied services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form.”

Lastly, it should also be noted that there is another proposed Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (see IRIS 2018-10), which is currently before the European Parliament.

The Geo-Blocking Regulation enters into force on 23 March 2018, and will apply from 3 December 2018.

Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0302&from=EN>

European Parliament, Parliament votes to end barriers to cross-border online shopping, 6 February 2018

<http://www.europarl.europa.eu/news/en/press-room/20180202IPR97022/parliament-votes-to-end-barriers-to-cross-border-online-shopping>

