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**CONFLICT BETWEEN INTELLECTUAL PROPERTY AND
COMPETITION LAW BY IMPLEMENTING GEO-BLOCKING**

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ABSTRACT

The main objectives of the research include: distinguishing of the most appropriate and reasonable arrangement so as to make the rationale of the Digital Single Market good with the requirement for copyright holders to protect their fundamental securities of subsidising and the compensation related with a specific domain. As well this thesis aims to show reasons why geo-blocking was chosen as a tool to prevent unauthorised access to copyrighted content in the web and respectively author rises question of separation of people from different Member States within the EU and partly on a worldwide basis. In case of geo-blocking for the better understanding, thesis explains what is the principle of territorially, justified and unjustified geo-blocking measures, which are currently in use. In other words author is figuring out is geo-blocking itself a reasonable and legitimate measure to reach harmonisation in the EU market to protect copyright owners and at the same time not to restrict competition law. In addition author aims to explain how European Union provide equal treatment for competition and intellectual property law in case of implementing measures on the subject of geo-blocking? As to the conclusion proposals, it can be stated that European Commission takes right direction in order to balance geo-blocking and make it fare to use not only for intellectual property law, but also for competition law purposes.

Key words: geo-blocking, competition law, intellectual property law.

INTRODUCTION

In the modern world, which is full of technological solutions and different gadgets at least once we all have seen the inscription such as «The content is not available in your region». The author of the work firstly faced particular problem couple of years ago, when tried to buy musical products on e-market web platform, which is operating worldwide. It was confusing to see how sellers divide buyers into regions and decide where they will distribute their products and for what price they will be available for each region. As a reason for selecting the topic, author decided to implement gained knowledge form university courses such as intellectual property and competition law in order to determine the legality of such measures implemented worldwide and as far as it is possible, determine possible solutions for the raised problem.

From a copyright-related perspective, "geo-blocking" insinuates particular measures that handicap access to online works that are presented outside of the country where the content owners have approved distribution of their works. From the perspective of the Digital Single Market and of the related system the Commission revealed toward the start of May 2015, these practices comprehensively disillusion the evidently restrictive benchmarks of European Union to get the opportunity of access to different type of content. Right now the legitimacy is very far and by current proposals using currently available measures it will be comprehensive to find consent. The European Parliament moreover included to the dialog geo-blocking, perceiving the need to find adequate responses for better cross-edge accessibility of imaginative works and declaring that this objective may require unmistakable improvements, both regulatory and on the market itself.

To understand legal importance of particular topic in the cases of Football Association Premier League v QC Leisure and Karen Murphy v. Media Protection Services Limited, the Court of Justice of the European Union (CJEU) chose that EU free movement of services and competition rules limited legitimately restricting courses of action that balance watchers in a solitary EU Member State from acquiring satellite decoder devices from another Member State with the true objective to watch the remote broadcasts. While the FAPL (Football Association Premier League) could in any case allow rights on a regional premise, the important arrangements made

in the FAPL's were against the supply of disentangling gadgets outside the contracted region (for this situation Greece) were falsely making that regional selectiveness 'total,' and accordingly encroached Article 101 TFEU (Treaty on the Functioning of the European Union). It was unrealistic to legitimise the limitations on the premise that they were important to guarantee suitable compensation for the FAPL, as while authorising its rights, the FAPL could mull over the genuine and potential gathering of people of the relevant telecaster, both in its own Member State and in the other States in which its communicates could be gotten.

The aim of the paper is to distinguish the most appropriate and reasonable arrangement so as to make the rationale of the Digital Single Market good with the requirement for copyright holders to protect their fundamental securities of subsidising and the compensation related with a specific domain. As well this thesis aims to show reasons why geo-blocking was chosen as a tool to prevent unauthorised access to copyrighted content in the web and respectively author rises question of separation of people from different Member States within the EU and partly on a worldwide basis. In case of geo-blocking for the better understanding, thesis explains what is the principle of territorially, justified and unjustified geo-blocking measures, which are currently in use. In other words author is figuring out is geo-blocking itself a reasonable and legitimate measure to reach harmonisation in the EU market to protect copyright owners and at the same time not to restrict competition law. Conflict of the thesis is that geo-blocking in a broad sense helps to prevent violation of intellectual property law, but at the same time to some extent it prevents competition.

As to the subject of the research questions, author will try during particular thesis to answer the following question: a) How will European Union provide equal treatment for competition and intellectual property law in case of implemented measures on the subject of geo-blocking? b) Is geo-blocking reasonable and legitimate measure to reach harmonisation in the EU market to protect copyright owners?

Overall thesis includes 3 main themes: geo-blocking, competition law and intellectual property law. In thesis author is trying to explain what is nature of geo-blocking (technical nature, legal nature) and how it affects competition law and intellectual property law worldwide.

In the first chapter of this work, the author will describe the meaning of the geo-blocking from perspectives of different law acts and directives from the view point of the technical features of the system and from the copyright law perspective. In the second chapter, the author will describe territoriality of copyright and exhaustion principle, bringing examples from music and video business sectors including different case law, which allows to see connection to geo-blocking problem. In the third chapter, the author will point out what are the blocking measures and how they are decided into justified and unjustified measures under the perspective of different approaches. In the fourth chapter, the author will explain the legality of territorial licensing and how unjustified geo-blocking is denied on the Digital Single Market. In the fifth chapter, the author will describe competition law affairs and especially question raised by the Commission and relevant solutions to the problem.

1.WHAT IS GEO-BLOCKING?

By the nature geo-blocking can be described as a way for copyrights owners, licensors and licensees to impact on the effect on works posted on the Internet. It is done by prohibiting unauthorised users' access due to the above mentioned technical solution. Particular implementation led to the separation of advertising and services into different regions. Clients in this situation are not aware of the reasons for this separation and want to see general accessibility on a regular basis. As one of the technical solutions to which users began to resort, is a system called VPN (Virtual Private Network). Using this service it became possible to bypass the blocking by geolocation and get access to previously blocked content, but this caused a negative reaction from copyright proprietors, especially talking about film industry. The question of whether the measures envisaged by geo-blocking are really suitable for protecting the copyright will be considered in this paper. In addition, this topic implies reflections on whether such strict prohibition measures are applicable, which have recently become available in the EU, Singapore, America and Australia, as well as in other countries of the world, with a clear focus on specialised methods such as "intermediaries" and "systems" or "redirectors" with respect to the VPN. Such system is used in order to restrict access to specialised measures in order to prevent its customers from using bypass systems and gaining access to content that is prohibited in their region, by bypassing geo-blocking measures.¹

From the position of copyright, the term "geo-blocking" means special measures of influence, through the application of which it becomes possible to limit the access of users from different regions or specific states to certain content, goods or services. In such regions, right holders issue a license to use their creations, usually at a specific price.² At the beginning of May 2015, the European Commission published a document titled "The Single Digital Market". Based on this document and the announced strategy, a definite conclusion can be made that the citizens of the European Union are more and more actively expressing the position of general accessibility of a context devoted to various kinds of services, entertainment topics, as well as content aimed at

¹ Roy, A., & Marsoof, A. (2017). Geo-blocking, VPNs and injunctions. *European Intellectual Property Review* , 39(11), 672-680

² Tambiama, M. (2015) "Digital Single Market and geo-blocking", European Parliamentary Research Service

cultural aspects. However, the proposed strategy did not provide for any specific improvements aimed at the possibility of easier access on this aspect. A serious contribution to the discussion on the need to select and apply suitable solutions for this area to improve the inter-territorial accessibility of creative works was made by EU parliament. The parliament stated that a kind of need for achieving success in this matter will most likely require various kinds of measures, both regulatory and on the market itself.³

The topic of geo-blocking is the most disclosed and elaborated in Singapore Copyright Act 1987 (CA87), which characterises geo-blocking as an “innovation measure”, which includes such concept as “gaining control”, as well as “guarantee measures”. These measures are made up of input control for any innovation, gadget, or detail that, in the course of its normal activities, reasonably "controls access to a duplicate" of the work, other subject, service or performance. On the other hand, “mechanical insurance measure” means any innovation, gadget or segment that, in a typical course of its activity, “successfully anticipates or limits the performance of any demonstration related to copyright” in a work or topic.⁴ As in Singapore, in Australia, the characteristic expression “mechanical security measure” in the Copyright Act 1968 (CA68) distinguishes between technical measures that restrict access to works and measures that restrict or hinder the performance of actions that are directly area of copyright. CA 68 describes “gaining control over an innovative insurance measure” by designating a gadget, item, innovation, or segment that is used in relation to activities related to copyright, and in the course of the usual task “controls access” to a work or other topic. On the other hand, a mechanical security measure also includes any gadget, object, innovation or segment in the course of normal activities, “opposes, impedes or limits the conduct of a demonstration included in copyright law”.⁵ In the European Union is also given a description of what “successful innovation measures” truly means, despite the fact that the main sentence of Article 6 (3) of the Info-Soc Directive does not explicitly recognise the possibility of gaining control and other related issues. On the other hand, when describing technological measures, immediately the following sentence of the same provision refers to “access control” and “protection measures”, which suggests the assumption

³ In accordance with Directive 2006/123 on services in the internal market [2006] OJ L 376 (Services Directive)

⁴ In accordance with Singapore Copyright Act 1987 (CA87) [1987]

⁵ In accordance with Australia Copyright Act 1968 (CA68) [1068]

that the Info-Soc Directive actually logically recognizes the possibility of obtaining duplicate control by geo-blocking.⁶

⁶ Michael, H. (2002), The Copyright in the Information Society Directive: An Overview, 24 E.I.P.R. 2

2.TERRITORIALITY OF COPYRIGHT AND EXHAUSTION PRINCIPLE

In the area of access to creative materials, the European Commission, step by step, assesses all online restrictions that depend directly on the territoriality of the business sectors. Separation was made due to indecision or the potential inability of numerous inventive enterprises to change and adapt their action plans according to the current situation. For example, many producers of arrangements know how, regardless of topographical restrictions, content producers can impose on their customers. On the other hand, modern buyers can easily access any interesting product that they like at any speed, using virtual private systems or retreating in document exchange systems or in places of illegal “pirate” distributions. Despite the fact that geo-blocking is still one of the most widespread practices of copyright protection in Europe, not only in the usual telecommunications part, but in addition of terms upon request that users enter into networks. What is more that popularity is significant in the completely electronic markets for obtaining things of interest to buyers, where downloads and abuse of copyright rights on the network are still created on the basis of human factors.⁷

Despite the fact that the measures that imply geo-blocking affect the restriction of the openness of a wide range of copyrighted works in the network, the reasons that make online abuse of various media works, in particular films, are invariably unique to each region. The reasons are different compared to those that influenced the field of computerised music. Considering that different media producers have all rights to their works in each EU member state. They are currently in a situation where they view the European Union as a developed single zone. Nevertheless they allow such measures as geo-blocking for the whole European Union area. Despite this, content owners still do not find cross-authorisation to use their work in collaboration with various media resources useful for them. As a result they cannot fill their economic interests through the authorised use of work. It respectively brings massive and truly inter-state client request. Regarding the authorisation of music rights on the Internet, in any case, until 2005, multi-regional permits were virtually inconceivable. The reason was that due to the

⁷ Gomez and Martens, (2015) Language, Copyright and Geographic Segmentation in the EU Digital Single Market for Music and Film

supportive restrictions imposed by sampling rights, which combined the rights of various associations that made dialog together with the creators and distributors of music, allowing distribution based on the ethics.⁸ Based on these agreements, which included online rights, each unifying society ultimately controlled all rights to a worldwide music collection in its own state, where it has a legitimate or truly impressive business model. In the very last decade, the various approaches and administrative requests were raised by the EU, which ended with the assignment of a far-reaching mandate in 2014. This led to a critical change in this situation. It has been preparing for the emergence of new multi-regional plans for the use of authorisations. By the meaning of mandate such authorisations has expanded the openness and transportability of online music administrations around the world.⁹ Due to the specificity and unpredictability of the development of the musical sphere, this article does not provide any global further reflection on this aspect.

One of the fundamental standards used for copyright security is Territoriality. On a global scale it is dependent on the CJEU court decisions that directly affect the course of its development. The principle of territoriality implies that the copyright and rights associated with the copyright law are transferred and implemented in the national dimension on the basis of the law, where protection of these rights is directly granted. This means that copyright is provided by national laws and geologically limited in the scope of a given state. Even taking into account the widespread efforts to organise harmonisation, which consequently consisted of numerous European Union legal acts in recent times, there are still aspects of copyright that are regulated separately. As one of examples, these are the ethical rights of the work creators. The idea of the “creator” in cinematographic works and the idea of “ancillary works” are still mostly represented by national copyright laws. Attributed to the copyright standard as a territorial basis, any part of copyright that does not meet the EU level is thus governed by the law in each individual country of the European Union. Thus, right holders have the full right to exercise and allow 28 separate

⁸ Jacklyn, H. (2016) Crossing borders in the digital market: A proposal to end copyright territoriality and geo-blocking in the European Union

⁹ In accordance with Directive 2014/26 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market [2014] OJ L84

national rights packages independently. It can be done to an extent that even without the use of remedial measures, these rights can be used to counteract parallel imports and counteractions.¹⁰

The term "exhaustion" of licensed innovation rights was the corrective measure through which, the EU settled the contention between national assurance of protected innovation and the guideline of free development of goods in the Common Market. Exhaustion rule was characterised and actualised without precedent for *Deutsche Grammophon v. Metro-SB-Grossmärkte*, where the Court of Justice found that, in spite of the fact that the EC Treaty saved the creation and meaning of the topic of a protected innovation right to national law, the activity of such a privilege ought to have been made subject to EU law. Specifically it concerns the standard of free development of goods. The ECJ called attention to that, if a copyright-holder practiced his or her selective right of dissemination by putting a copyright product at the market out of the blue, his or her privilege ought to have been 'exhausted'. Such right-holder could never again utilise his or her licensed innovation appropriate to parallel imports and confine EU-wide trade.¹¹

With regards to cutting of obstructions in the Digital Single Market, one may genuinely consider whether the exhaustion standard can be reached out from the domain of physical products to that of imperceptible goods. On a basic level, if this precept were connected in the advanced condition, geo-blocking measures could promptly be prohibited. In addition such measures could be considered as the counterparts of unlawful confinements put on parallel imports in the flow of physical goods.¹² At the beginning period, before the appropriation of copyright orders that went for directing utilisation of data products or innovative works in advanced configurations, the ECJ had made significant decision in a situation concerning a cross-outskirt re-transmission of a movie in the case law of *Coditel v. Cine Vog. Films* that by the standard of EU-wide weariness connected just to the physical scattering of copyrighted goods, without extending it to elusive types of business misuse, for example, TV telecasters. All things considered, the court dismissed that the rule of free development of products and enterprises could permit a Belgian trans-

¹⁰ Hitsevich, N. (2015). Intellectual property rights infringement on the internet: an analysis of the private international law implications. (Unpublished Doctoral thesis, City, University of London)

¹¹ Court decision, 8 June 1971, *Deutsche Grammophon v Metro* (78/70) [1971] E.C.R. 487; [1971] C.M.L.R. 631

¹² Petteri, G. (2016) The plan for a digital Single Market in Europe and reforming EU copyright rules to develop a market-oriented approach to reduce infringement on the internet, E.I.P.R. 2016

outsider link re-transmission of a copyrighted film, to telecast it in Germany, without the authorisation of the copyright proprietor of the film.¹³

With the developing of the web and, all the more comprehensively, of computerised systems, the purported Information Society Directive classified the end of *Coditel*. It was definitely limiting the extent of the exhaustion rule to the sole transmission right, which concerns simply physical media. A correlative authoritative measure, which was taken likewise to actualise art.8 of the 1996 WIPO Copyright Treaty, was the expansion of the privilege of correspondence under art.3 of the Information Society Directive . It was done through the formation of an explicit and appropriate document to make copyright works accessible through advanced systems.¹⁴

Regardless of the clearness of the arrangements of the InfoSoc Directive that keep the pertinence of exhaustion to physical media, an ongoing judgment of the CJEU offered to rise question of the appropriateness of this standard to the online conveyance of PC programs. According to the CJEU, if clients, have obtained a PC program under a permit conceded for a boundless timeframe, download a duplicate of the program, the agreement being referred to ought to be viewed as a sale. In such way the copyright owners cannot longer control and block a second-hand closeout of those duplicates. This implies, under the previously mentioned conditions, customers are qualified for procure programming licenses from the first clients and to move them. While exchanging additionally the related possibilities to download refreshed duplicates of the PC program to their own clients without encroaching the privilege of dissemination of the copyright proprietor. In *UsedSoft* the CJEU cleared up that, for the appropriate conveyance to be exhausted, the primary buyer has to erase or make the first duplicate of the PC program downloaded on to his/her PC unusable at the season of resale.¹⁵

Despite the fact that the *UsedSoft* judgment calls attention to irregularity under EU copyright runs, this judgment isn't relied only to affect adversely on the online dissemination of imaginative works that don't fall partly or don't fall completely. Lets consider video games or cell

¹³ Court decision, 6 October 1982 *Coditel v Cince Vog Films* (262/81) E.C.R. 3381; [1983] 1 C.M.L.R. 49.

¹⁴ In accordance with Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L167 (InfoSoc Directive).

¹⁵ Christophe, G. (2015) The Resolution of the European Parliament of July 9, 2015: paving the way for a copyright reform in the European Union?, E.I.P.R. 37(11)

phone application under the meaning of "PC program". The fundamental motivation behind why the CJEU found the exhaustion standard pertinent in that specific case is not normal for the InfoSoc Directive. The Software Directive gives the proprietor of a PC program with a simple right of circulation of their works that, as per the CJEU, applies in both offline and online conditions similarly.¹⁶ By the time when online conditions did not exist and dissemination happened solely through physical organisations, explicit order for this area does not oblige Member States to concede a privilege of making PC programs accessible on the web, as given by art.3 of the InfoSoc Directive with respect to the simplification of copyright works. In some formalistic manner, the CJEU focused on that, to stay away from an alternate a legitimate treatment that was not reflected in the wording of the Software Directive. The limit presented by exhaustion to the dispersion right ought to be similarly connected independently of whether PC programs are disseminated through substantial organisations. In that explicit case, this implied that the copyright proprietor couldn't truly control and confine second-hand offers of her projects, to the burden of a reseller.¹⁷

In the end, it is unlikely that the exhaustion principle can unconditionally limit regional restrictions due to the resolution of advanced copyrights, which allows you to take a picture in a purely national context and prepare for a boycott of geolocation blocking measures. A special case with the principle of territoriality in copyright activity, which includes the principle of exhaustion, is likely to remain in the field of physical activities additionally at a later period of time.

¹⁶ Court Decision, 3 July 2012, *UsedSoft GmbH v Oracle International Corp* (C-128/11) EU:C:2012:407

¹⁷ Emma, L. (2014), *UsedSoft and the Big Bang Theory: Is the e-Exhaustion Meteor about to Strike?* 5 J.I.P.I.T.E.C.

3.BLOCKING MEASURES

In reality as we know where nations can't concede to a solitary arrangement of laws that would apply consistently around the world, most national laws should be regionally kept. Without regional points of confinement, laws have extraterritorial impacts that frequently, despite the fact that not generally, encroach upon attempts' and opportunity to set their very own implementations and approaches. For instance, what may fill in as law in the United States probably won't work in France. Respectively in this manner French law may not be the same as U.S. law. Some lawful rights and duties exist just inside nations' jurisdictional breaking points. Along these lines people and elements of the system must appreciate the rights and should satisfy the obligations inside the characterised region. For instance, copyright at some point of time was regionally constrained. Somebody who claimed copyright to a work in the United States under U.S. law probably won't be the proprietor of copyright to that equivalent work in France under French law.¹⁸ As long as the world was based on national laws, there was need to reproduce national fringes on the web to conform to these comparing physical limitations. Geo-blocking is being implemented with expanding reparation to accomplish this compliance.¹⁹

The possibility that geo-blocking can be utilised as an apparatus for consistency and interconnection is one of the conceivable outcomes for building up the connection among geo-blocking and legitimate consistency. This part follows geo-blocking as an apparatus or proportion method of control with regards to the blocking itself. From the perspective of this chapter, geo-blocking will be perceived as an instrument of control and execution. In spite of the fact that the affirmation has recently happened in a few regions in certain conditions, this affirmation has not yet been executed.

The principal phase of the advancement of the connection between geo-blocking and legitimate consistency is the way toward representing geo-blocking as an apparatus of control and implementation. Here, three explicit advancements are remarkable. First, private contracts

¹⁸ Marketa, T. (2015), *The Multiplicity of Copyright Laws on the Internet*, Fordham Intellectual Property, Media & Entertainment Law Journal

¹⁹ Jack, G., and Tim W. (2006), *Who Controls the Internet?: Illusions of A Borderless World*, New York: Oxford University Press

include geo-blocking to make stronger regional obstacles on violation of authoritative rights. Second, controllers have switched to geo-blocking as it became one of their favourite methods for accomplishing consistence with regionally restricted administrative necessities. Additionally, the researches on the subject of legitimacy is investigating the potential for geo-blocking as the it main substantial intends to comply to laws that make regionally constrained rights and duties.²⁰

Unfortunately the certain number of the cases in which it was necessary to apply geo-blocking for different reasons, are not comparative with lawful requirements. Geo-blocking might be utilised to tweak limited procedures through supply of works in a specific manner, socially delicate works, and by restriction of promotion. Geo-blocking might be likewise used to uphold value separation in different markets. It can result in the situation, when people from countries with higher life level will have to pay more than people from countries with medium or low life level. Officially recommended geo-blocking measure not pursue only national outskirts. Restrictions may characterise totally extraordinary regional cutoff points if it wish, for example, just the one part of the US, or the hole France. Moreover, parties incorporate geo-blocking in their agreements so as to conform to norms identified with regional restrictions required by law. For instance, when a work supplier possesses copyright to content in just a few regions or countries and licenses that content just for a portion of them where he claims copyright safety, his permit may be necessary for the licensee who use geo-blocking in order to permit access for clients who are located outside the specific regions where the permit is issued.²¹ For example, when Estonian ETV gets a permit from Marvel to telecast one of their films, Marvel may constrain the permit only to the to the region of the Estonia with the outcome that the Estonian ETV must use geo-blocking measures in order to prevent clients from outside of Estonia from possibility to see the show on the Estonian web pages.

The acknowledgment of geo-blocking as a device of control is another critical step. For instance, web based betting platforms in some regions require their licensees to implement geo-blocking

²⁰ CEPS & Economist Association, (2015) Ex-Post Impact Assessment on the implementation, application and effects of Directive 2001/29/EC in Review of the EU Copyright Framework: European Implementation Assessment

²¹ Plum Consulting, (2012) The economic potential of cross-border pay-to-view and listen audiovisual media services.

instruments to enable clients to get access to content just inside the countries where internet betting is lawful. In some regions, when arise questions concerning whether geo-blocking is an adequately suitable way to meet the regional requirements set by law for internet betting, courts affirm that geo-blocking is adequately solid for that purpose.²²

As mentioned below statements propose, geo-blocking may in the end be perceived by courts as the fundamental consistency instrument. This improvement is vital in light of the fact that it could result in geo-blocking being acknowledged as standard practice on the web. Potential direction of that measure can be that each organisation on the web would be relied upon it, to full-fill a commitment to regionally limit access to content on the web.

Commonly, the law anticipates that people should exercise measures that are sensible to conform to the law, including its regional restrictions. A case of delivery of printed books could be illustrative enough to show how determination of relevant measures work. When salesman acquires a permit to delivery of printed versions books within one specific region, the law requires that the salesman must take reason-capable measures in order to enforce distribution in one country. The salesman takes a sensible measures, for instance, when he checks the location of a buyer before it delivers a duplicate of the book to the buyer. The law itself does not require the salesman to connect a tracking sensor to each duplicate of the book, because it will make the hole process more troublesome and does not prescribe to develop tracking software for deliveries or observation framework in order to achieve proof that any single copy will not go beyond a certain region. This measure is actually achievable, but yet is plainly not sensible. An agreement could potentially include such provision in a situation, when the distributor agreed to use such abnormal measures. Be that as it may, for missing such provision in contract or missing of such expression by law, nobody would peruse for instance in copyright law in the present precedent to use such extraordinary measures.²³

²² CEPS & Economist Association, (2015) Ex-Post Impact Assessment on the implementation, application and effects of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

²³ Boldrin, M.,& Levine, D. (2008), Against intellectual monopoly, Cambridge: Cambridge University

On the off chance that geo-blocking is increasingly similar to checking buyers' locations and is a sensible measure, at that point any regional restrictions ordered by law ought to ensnare the required utilisation of geo-blocking. In the event that geo-blocking will become increasingly similar to a tracking software or radio tag, it become more likely an abnormal measure and won't ordinarily be required by law. The relevant question including video content made accessible on the web features the issue that should be cleared up.²⁴

As an illustrative case for determination whether geo-blocking is suitable measure happened, when the Spanski Enterprises case arose out of a debate between the company of Polish language TV programming and its licensee, who has permission for sole distribution of polish programmes in the United States. The respondent is Poland's administration, who has possession over the national TV station that produces and actually is the copyright proprietor of a great part of the programming broadcast over its system in Poland. The offended party is the selective supplier for different TV programs in the United States. Notwithstanding broadcasting these projects in Poland, the respondent additionally runs a video-on-demand service in Poland that enables watchers to stream the offended party projects to their PCs. By the demand of Spanski Enterprises, TV Polska was liable to use geo-blocking as a tool to prevent customers from the US region to actually see licensed TV programmes on their website. After several years of broadcasting by the Spanski Enterprises in the US, they accidentally realised that TV Polska did not actually used any geo-blocking measures in order to restrict access to the web platform to the US viewers. Potentially US viewers without any obstacles could get access to the polish TV programmes, without paying anything. The result of the case could be of general significance for the fate of geo-blocking in light of the fact that it ought to illuminate whether geo-blocking is the sensible measure the standard implies that web performers must utilise to meet regional constraints on rights and duties forced by law.²⁵

²⁴ Pieter, C. (2017), The European Commission's Geo-blocking proposals and the future of EU e-commerce regulations, Masaryk University Journal of Law and Technology

²⁵ Court Decision, 11 June 2012 Spanski Enterprises, Inc. v. Telewizja Polska, S.A., D.D.C., 1:12-cv-00957-TSC

4.LEGALITY OF TERRITORIAL LICENSING

As it was discovered, one of the key needs of Digital Single Market procedure, that it must necessarily deny unjustified geo-blocking practices and advancements. Those measures obstruct access to online sources situated in other Member States. For example, massive amount of broad media content. In connection to broad media benefits from geo-blocking, this arrangement which content suppliers dread, could potentially undermine their plans of action of regional authorisation and successful content placement on the market of various regions. Current legal perspective decisions may limit the space for promotion.²⁶

Copyright as territoriality and the mono-region permitting plans that have been produced so far are in some way or another legitimised by reasons that are not identified with copyright as national measurement. Regardless of such centralisation of rights, regional permitting plans and on-request benefits depending on geo-blocking measures are as yet the common and presumably most productive method for abusing copyright in this sphere.²⁷

A decision that was made by the Court of Justice of the European Union (CJEU) in October 2011 has essential ramifications for the permitting of broad media content rights. In the court proceedings concerned Football Association Premier League v QC Leisure and Karen Murphy v. Media Protection Services Limited, concerning the importation of satellite decoder cards between Member States, the CJEU decided that confinements in permit between content suppliers and telecasters are forcing regional restrictiveness. As to the main argument, this actions is direct opposition to EU competition law. This implies the licensor can't require the telecaster to deny supply of its decoder cards for use outside the authorised region. Essentially, national enactment is forbidding the importation, deal and utilisation of such gadgets from another Member State. As a result it was observed to be an infringement of the free development and movement of goods. The decision additionally tended to various inquiries concerning the use of copyright laws to handover of games coordinates. Territory of licensed innovation law keeps

²⁶ Simonelli, F. (2015), "Geo-blocking: Unjustified barrier to the Digital Single Market or legitimate commercial practice? The case of copyrighted audiovisual content", CEPS Digital Forum.

²⁷ European Commission, (2011) Green Paper on the Online Distribution of Audiovisual Works in the European Union: Opportunities and Challenges towards a Digital Single Market. COM(2011)427final.

on developing in this area. The Murphy administrative process does not venture to such an extreme decision as to elimination of the regional authorising of AV rights. Content suppliers may keep on contracting with an alternate telecaster in every Member State, and on different terms, in the event that they wish.²⁸ Be that as it may, licensors and telecasters must not at any circumstances limit or disturbing the importation, deal or potentially utilisation of satellite decoder cards in another Member State. Following this decision, people who wish to buy satellite decoder in their original place of residence while living in another Member State ought to have the capacity to do so, and parallel exchange decoders can't be confined by the wish of content providers.²⁹

While the Murphy procedure was concerned about games content, its standards seem prone to be stretched out to different types of broad media content. European Commission examination concerning the multi-regional arrangement of pay TV cases, was opened in January 2014. The investigation is stuck with question about whether the standards set out by the CJEU in Murphy procedure ought to be connected to other types of content, for example, Hollywood pictures. This examination additionally focuses around regional selectiveness of procedure for distribution. It is not raising doubt about the likelihood to give away licenses on a regional premise, or endeavouring to oblige studios to move rights on a European premise.

On more potential theme of examination is case, when EU resident travels to another country and still has a wish to get access to some sort of content, but unfortunately access to the current particular country is already restricted.³⁰

A specific issue often emerges in connection to open content supporters. So as to accomplish their different open source targets, open telecom companies normally require that the content has to be accessible to the people in the Member State. The arrangement of open administration

²⁸ Court decision, 4 October 2011, *Football Association Premier League v QC Leisure (C-403/08)* and *Karen Murphy v Media Protection Services Ltd (C-429/08)* (Premier League) E.C.R. I-9083; [2012] 1 C.M.L.R. 29.

²⁹ Mazziotti, G., and Simonelli F. (2016) Regulation on across-border portability of online content services: Roaming for Netflix of the end of copyright territoriality?

³⁰ Pablo, C. (2016), Copyright licensing and the EU digital single market strategy. In: Blair, Roger D. and Sokol, Daniel, (eds.) *Handbook of Antitrust, Intellectual Property and High Technology*. Cambridge University Press, New York, USA.

content is financed from national expenses. Charges are often done through taxes, which citizens pay.³¹ Open telecasters frequently limit access to their programmes for the people located outside the Member State. For instances, such content from open sources can be subject to geo-blocking, as a preventing measure. From one side it would be reasonable to anticipate that open content supporters should make their sources accessible to people in other Member States, especially taking into account that those population are not expose to the national permit expenses or tax collection that accommodate the expenses of the administration. Additionally, open telecasters which create their very own specific way of tackling particular situation obtain huge incomes from making content available internationally. It would be abnormal measure for them to use geo-blocking, because it might result in financial losses. Surprisingly, The Digital Single Market system is quiet on such sensitive issues. The spotlight of the particular topic seems to be basically on paid sources, in accordance with the Murphy procedure and on-going EC examination.³²

³¹ Dr Benjamin, F. (2016) The EU Portability Regulation: one small step for cross-border access, one giant leap for Commission copyright policy?, E.I.P.R. 2016, 38(6)

³²Mazziotti, G. (2013) Copyright in the EU Digital Single Market

5.COMPETITION LAW AFFAIRS

The statistics published by the Commission showed following tendency: “53% of EU citizens buy online, but only 16% do so in a cross-border way.” The clear interest of the Commission is expressed in the improvement of legislation regarding cross-border procurement. At the moment, the vector of development is aimed at abandoning the strategies to divide the market. In the current situation, the most important aspect is the need to take control of agreements aimed at restricting territoriality and sales outside the distributors’ region. One of the key aspects of Block Exemption Regulations is prohibition of "hardcore restrictions". In particular that means that agreements that tends to limit territoriality are invalid by their nature and must be excluded. As one exception exclusive distribution agreements must be taken into account. In case of particular type of agreements, manufacturer can assign certain region for sole distribution for his contractual partner. On the other hand, even in these agreements passive sales to other regions are not prohibited. From the Commission's' Guidelines it is clearly understandable how the distinction between active and passive sales is done. The Commission classifies distribution through the internet as a certain type of passive sales and respectively there must be no limitations in case of access to other countries. Therefore re-routing, which identifies customers' location or foreign credit card is a restriction of passive sales. In spite that, there are some cert of active sales, which can be geo-blocked. For example advertising in case of cross-border sales is considered to be a type of active sale and respectively can be blocked in some regions. In current court procedures arose significant dispute over the division of distribution channels to physical and online platforms. French court has found that the requirement to sell only through physical stores, without using internet as a distribution channel could be over restrictive. In case of Commission it can be stated that it is more on a side of on-line sales and therefore requirements must be equal to both ways of distribution. In addition, in Germany competent authority was investigating cases, when companies under the selective distribution agreements tried to unlawfully prevent distribution of their goods on such platforms as eBay and Amazon.³³

³³ Giorgio, M., & Goncalo H. (2017), Geo-Blocking Between Competition Law And Regulation

In the last report, the Commission has disclosed the improvement inside online spread of e-shops' goods. In addition Commission has recognised legally binding limitations utilised by various partners. The report features themes such as expanded value of straightforwardness, which has prompted requirement for more prominent control through particular method of distribution. In a way of specific dissemination, retailers must satisfy certain criteria to make at least part of the network more free. The distinctive disclosers, in particular certain patterns of frameworks using such measures as geo-blocking are the focus point of a large number of the Commission's fundamental challenge concerns. Among the worries raised by the Commission are: the implementation of geo-blocking in critical amount, limitations on the utilisation of commercial centres, and certain confinements on the utilisation of value examination devices. Market research showed the main trends and directions of development of the modern e-commerce market. Also, due to research, it was possible to establish that different problems often concern different market segments and regions. Geo-blocking additionally to restrictive measures comprises a limitation on the free development of products. In addition, the CJEU has stated that assertions or concrete practices that are used for implementation of dividing tools becoming increasingly difficult to apply and increasingly beginning to restrict competition.³⁴ Generally it can be assumed, that geo-blocking could not make significant profit by its implementation, except the inclusion it by Block Exemption Regulation.

Be that as it may, geo-blocking just raises competition law concerns where it is involved through practices between at least two sides, for example a content provider and its salesman. Without a predominant market position, the EU competition rules are not worried about methods used by geo-blocking in the one-sided business strategies taken by organisations. It is obvious, that in some cases reasons for usage of geo-blocking as justifiable. Some number of salesmen statements to excuse legitimisation of those restriction are connected to the expensive price for transportation of certain goods, deals that are made with clients from different region or even need to comply with state law. In any case, it is as yet controversial when these actions of geo-blocking are in actuality reasonable. European Commission proposed strategy, in order to prevent usage of certain number of measures, which are not to some extent reasonable,

³⁴ European Commission, (2017) Final report on the E-commerce Sector Inquiry

justifiable and therefore violate national and international laws. As a key aspect was included separation of people by different regions of their residence.³⁵

The primary goal of the Commission proposal is to forestall separation of clients' when purchasing for items and services in another EU member State. Under the draft, it will become impossible for content or service providers to divide people by their habitual place of residence or by their citizenship. Practically it must be done at least in two following cases:³⁶

- Where the provider or salesman sell goods that are moving to state to which they previously did not delivered goods, the delivery and picking up will be organised by client himself. As a result provider is not liable for transportation and respectively will not have additional expenses for transportation.
- In case where some sort of electronic services are provided. In particular cloud services, different information storages etc. The reason is that there is no aspects that are connected to the copyrighted works and respectively reasons for geo-blocking are not justifiable in that particular case.

The proposed control additionally disallows unjustified separation of clients according to the methods for payment that client choose. Salesmen won't be permitted to apply distinctive conditions for clients by the reasons of their citizenship, or by place of habitual residence. Moreover, it would be restricted to permit to access to store web resources by reasons mentioned above. Be that as it may, distributors still will be able to define prices for consumers from different regions.

In conclusion, geo-blocking has raised new worries from a competition law viewpoint. The European Commission has set up the need for the Digital Single Market, which is clearly not

³⁵ European Commission, (2018) Proposal for a Regulation of the European Parliament and of the Council 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

³⁶ European Commission, (2018) Proposal for a Regulation of the European Parliament and of the Council 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 Directive 2009/22/EC ("Proposed Regulation on unjustified geo-blocking").

perfect in case of using unjustified geo-blocking. In any case, the use of competition principles to geo-blocking cases might be troublesome. In order to sufficiently explore all aspects to improve unjustified geo-blocking, the European institutions creating up a direction on unjustified geo-blocking that sets a lawful system for breaking down the diverse sorts of cases in regards to geo-blocking. It will be important to focus on the most relevant stages received by the EU establishments to find as far as possible relevant solution for the sphere of implementation of geo-blocking.

CONCLUSION

In order to answer research questions, Author can propose statement that in any case, geo-blocking must be seen as a complex tool. It would not be rational to perceive geo-blocking as an exclusively technical or legal tool. This method should be primarily considered as a kind of combination of technological and legal solutions. From the point of view of technology, geo-blocking is perhaps the most optimal and innovative solution to limit access to certain web resources for various users from around the world. No extra effort is required here, except for the pre-configured web site code. However, it is worth noting that many people in the aftermath began to apply geo-blocking of their own accord. If we consider geo-blocking in conjunction with intellectual property rights, then it will be quite rational solution of copyright protection in the network. Thus, copyright holders will be able to protect their work from unauthorised downloads, as well as it will allow them not to lose a substantial share of the profits. On the other hand, one should also not forget about the problems that arise between intellectual property law and competition law. If we do not take into account such a technical solution as geo-blocking, we still notice how many disputes arise between these two legal aspects. From the very beginning, geo-blocking was presented as a tool to protect copyright, including from the point of view of the law. The problem was that the law itself did not provide for a kind of balance between competition law and intellectual property law, which is already difficult to achieve. Thus, the use of geo-blocking has become a significant advantage of intellectual property rights and at the same time has not contributed to the development of competitive competition on the world market, due to the fact that access to content, goods or services has become very easy to limit. Over time, the aggravated situation in the European market and growing customer dissatisfaction led the European Commission to take sensible measures. The Commission banned the use of unjustified geo-blocking, and the request to divide clients into different regions was also settled. As it was said by the Author at the very beginning of this chapter, geo-blocking should be considered first of all as a complex solution, and therefore in the matter of its settlement on legal grounds, various aspects not only of market relations but also legal aspects should be taken into account. It can be concluded that initially such an unfavourable situation has arisen from the part due to the fact that technologies in the modern world are developing much faster than new and related legal norms are developed.

As to the main aims of distinguishing the most appropriate and reasonable arrangement so as to make the rationale of the Digital Single Market with the requirement for copyright proprietors to protect their fundamental securities of financing and the compensation possibilities, related with a specific domain, author can state the following decision: The primary contemplations of the author were ambiguous – the thought of proportionality in regulatory acts and that of case law is controversial itself. So far as the Commission pressed together to limit geo-blocking by methods for extra lawful measures, the proportionality in proposed acts was investigated with respect to the subject of geo-blocking Regulation. The fundamental point of the control is to deny geo-blocking estimates that are forced upon the retailer and apply to the market in a unfair way. In any case, since the non-separation concerns had just been tended to in earlier enactment (the Services Directive) and on the grounds that the Final Report disclosed, that just a little piece of the market had been influenced by the sort of geo-blocking, the Commission could and tried to examine the proportionality of the proposed geo-blocking Regulation. Could the Commission be over-administrative? To the point of examination, for example appropriateness, the methods for handling mentioned problems as proposed by the Commission as to the geo-blocking concerns is a direction, which by its very nature and impact is sufficient to accomplish the objective sought after thereof and full fills the principal condition. The second report it was discussed, if such a measure is vital and whether there are less prohibitive implies that could accomplish a similar outcome. The Final Report demonstrated that the removal of geo-blocking provisions from legal acts can influence approximately 12% of all organisations. Accordingly, making a wonder of whether it is important to authorise extra enactment that would just determination a minor issue. The author can state that this could be done, if such measure would be properly explained and justified. Further, the authors tends to the issue of less prohibitive methods. Regardless of whether this is a situation that couldn't be settled by the utilisation of an order or delicate law measure there must be different options of solution. In any case, in this example, practice demonstrated that such less prohibitive methods frequently show to be insufficient, in this way demonstrating a direction, by its temperament and impact. This was reflected in the way that the non-separation arrangement was set out in the before instituted Services Directive bolstered by Guidelines from the Commission on its execution. Be that as it may, in any case not having the conceived impact available. It is obvious that defining strategies that secure IPRs give, while ensuring pursue on advancement and competition just as cross-fringe exchange, is perplexing.

The European Commission is right now examining the case of requiring the web sales of copyright-secured materials to utilise geo-blocking. This may unlawfully limit inter-state competition between competitors working in various EU states. This makes odds of assessment of the EU antitrust law pretty high since, despite the fact that geo-blocking necessities may limit competition by counteracting deals and limit access to other parts, their probability to do as such depends essentially on the dangers of violation of copyright. There is a critical possibility, that companies working in unauthorised regions will be simply removed from the market.

Where required geo-blocking broadens more distant than what a salesman could manage without encroaching copyright, for example by staying inside the regional extent of a permission. In this case competition is hypothetically confined when deals with other states are constrained. Paradoxically, requiring geo-blocking while permitting copyright-secured works for online spread circulation is probably not going to limit competition when copyright law as of now keeps sellers from legally moving and offering their products or services in a region where geo-blocking measures are required. For this situation, nonappearance of competition comes from the restricted extent of a copyright permit, but not from a mandatory prescription to actually keep access available for different domains. Discovered was just the exclusion of sellers' opportunity to pick whether to implement geo-blocking measures, as upheld by the European Commission. Prohibition of competition might be dangerous in that it case if it is incorrectly distinguish limitations where none as a general rule emerge this may encroach copyright.

Consequently, EU antitrust law can't, by focusing on just geo-blocking, improve competition much. Be that as it may, in uncommon conditions, competition law can provide prerequisites to utilise geo-blocking notwithstanding when they concern access to buys from non-authorised domains. The free development of services can block copyright assurance in cross-regional circumstances especially while permitting courses of action to make total regional insurance. That enables online providers to offer different kind of services in non-authorised domains without encroaching copyright and such permitting plans are additionally possibly prohibitive of competition and hard to legitimise with efficiencies. This methodology would, practically imply that, on account of selective authorising of copyright, deals to different regions of the EU in any case should be allowed and the copyright holder couldn't expect them to be blocked.

Notwithstanding, the criteria for building up that cross-regional copyright insurance on online platforms is blocked based on free development of services, they may be excessively misty. With the end goal for it to be reasonable to set up in an antitrust cases, that online providers could contend in non-authorised domains were not for geo-blocking prerequisites. Besides, an antitrust encroachment might be dodged out, where regional insurance is made by an authorised access.

At long last, the European Commission has proposed a few bits of enactment that may fundamentally influence geo-blocking and its opposition law status. Specifically, a proposed direction enabling providers to give access to certain online platforms for communication without requiring a permit in all EU states would render geo-blocking prerequisites which limit that possibility to fit for this challenge. As a result of such recommendations, copyright holders may never again be allowed under antitrust law to expect providers to keep access to online platforms from non-authorised EU states, even on account of restrictive permitting.

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