



TECHNOLOGY

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# New Geo-Blocking Regulations - What Are The Implications?

by **lk-shields**

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The new geoblocking regulation in EU, introduced last month, does not currently apply to audiovisual content at least for the first two years, but this could be a ticking time bomb.

Aideen Burke in LK Shields, is an expert in the legal framework around broadcasting and production, and she has a particular interest in the new geoblocking ban that has just been handed down from the European Parliament. She views this legislation as having a very significant impact on producers' revenue streams in the future and potentially changing the whole distribution landscape. Here, Aideen gives IFTN an insight into the Regulations.

## The Geoblocking Regulation - the beginning of the end for geoblocking of film and TV services?

On 2 March 2018, the 'Geoblocking Regulation' (Regulation (EU) 2018/302 on addressing unjustified geoblocking and other forms of discrimination based on customers' nationality, place or residence or place of establishment) was published in the Official Journal. The Geoblocking Regulation will prohibit the practice of geoblocking consumers' online access to goods and services. Audiovisual services are currently exempt from the Geoblocking Regulation, which means that online audiovisual service providers can, after the Geoblocking Regulation comes into force on 3 December 2018, continue to restrict access to online content on a territory-by-territory basis within the EU.

In the lead-up to the Geoblocking Regulation, there was much debate as to whether the geoblocking ban should extend to audiovisual services. After strong lobbying from the film and TV industries, it was agreed that audiovisual services would be exempt from the Geoblocking Regulation.... for now, at least. However, by 23 March 2020 and every five years after that, the Commission will have to evaluate and report on the operation of the Geoblocking Regulation, which leaves open the possibility that a ban on geoblocking of online audiovisual services may well be revisited in the not-so-distant future.

With this in mind, we consider below the potential effects which a geoblocking ban may have for the film and TV distribution landscape.

## Current landscape

In the context of film and TV content, geoblocking is used to restrict access to online audiovisual services (such as VOD) to a particular country in the EU, so that consumers outside of that country cannot access those services. This approach facilitates the current distribution model for film and TV content, where distribution rights are typically carved up on a territory-by-territory basis within the EU. For example, a French distributor will distribute in France (and, usually, in other French-speaking countries), an Italian distributor will distribute in Italy etc. This approach means that producers have an increased number of potential revenue streams for their content and, in addition, distribution tends to be more streamlined as local distributors can focus on their individual markets. Indeed, most distribution agreements will include an obligation on distributors to take steps to prevent the distribution of content to other territories outside the territory/s in respect of which they are granted distribution rights, which steps will often include applying

geoblocking to the online distribution of that content.

## Potential effect of a geoblocking ban on film and TV industry

From a consumer perspective, a geoblocking ban could lead to greater choice, both of audiovisual content and of service providers, thereby stimulating competition and reducing the price payable for access to that content or service. However, such a measure could also have serious adverse effects on the film and TV industries. A ban on geoblocking would significantly impact the current financing model for film production. If a French distributor is no longer guaranteed territorial exclusivity in respect of online sales of a film in France, then this may result in that distributor attaching less commercial value to a film. As a result, that distributor could seek to either reduce the amount of any minimum guarantee payable and/or increase their percentage share of receipts from the film, to make up for a perceived risk of reduced sales. Potential co-producers or financiers may have less of a commercial incentive to invest in films and TV projects at development stage, if pre sales cannot be guaranteed or are likely to be reduced. Many critics also suggest that cross-border distribution of audiovisual works will benefit large players who can afford to buy works on a pan-European basis.

## The future for geoblocking

By 23 March 2020 and every five years after that, the Commission will have to evaluate and report on the operation of the Geoblocking Regulation. It is very possible that the Commission may once again raise the issue of banning geoblocking of online audiovisual services at that time. However, it is unlikely that a geoblocking ban would be applied to VOD services such as RTE Player and BBC iPlayer; the EU Commission has noted that funding in some audiovisual sectors (such as television) relied on “territorial exclusivity” and, accordingly, geoblocking in such instances may be justified.

The separate, Online Portability Regulation, which will apply from 1 April 2018 (which enables consumers to access their portable online content services when they travel in the EU in the same way they access them at home) may be indicative of the shape of things to come. Indeed, the current Vice President for the Digital Single Market, Andrus Ansip, has voiced his dislike of geoblocking on a number of occasions. As such, the film and TV industry is by no means out of the woods when it comes to online geoblocking.

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## About the Author