

20th May 2016

Günther Oettinger
Commissioner, Digital Economy & Society
European Commission
Rue de la loi/Wetstraat 200
1049 Brussels
Belgium

By e-mail to guenther-oettinger-contact@ec.europa.eu

Dear Commissioner Oettinger,

Geo-blocking regulation

The BCC represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights. The BCC has an interest in the effective development and application of the Digital Economy within the EU. It is the means by which the creators, performers, innovators and businesses making up the creative sector in the UK will secure payment for use of their works in the future. A list of BCC members can be found at <http://www.britishcopyright.org/bcc-members/member-list>.

As you will be aware, a draft of a European Commission proposal for a regulation on geo-blocking has been widely circulated on the internet. Though we realise that as it is a draft it may change before it is published by the Commission, we feel compelled to write setting out our concerns.

The Commission's public consultation on geo-blocking last year expressly excluded copyright from its scope, and on that basis the British Copyright Council and other right holders either did not respond, or confined their comments to a brief letter. As a result, they did not provide specific evidence to the Commission in response to the consultation. The leaked draft regulation, however, includes copyright content (excluding audiovisual services and radio broadcasting).

The regulation as drafted would prevent traders from limiting customers' access to websites on the basis of place of residence (Article 3) and prevent traders from applying different general conditions of access to goods or services (including sale prices) for reasons related to place of residence (Article 4).

There are potentially a number of reasons why media services may wish to limit access to websites on the basis of place of residence. For example, they may wish to stagger their launch in different territories for financial or other reasons.

In relation to different conditions of access, we note that the introduction to the proposed regulation states that this proposal does not address pricing and traders remain free to set their prices. However, Article 4 appears to require that a service offered at a certain price in one Member State must also be available at the same price in all Member States. If this were to be required, services would not be able to price-discriminate by territory.

An example of the impact of this in practice is that currently Spotify Premium costs 9.99 per month in many EU Member States, but in others (e.g. Greece, Portugal and Lithuania) it costs 6.99. Clearly, there is a sound economic reason why Spotify is offering its service at a lower price in Member States where GDP per capita is lower. If Spotify could not prevent customers in Germany or France from subscribing to the Portuguese version of Spotify, it would presumably need to raise the price of the Portuguese service to 9.99. Many consumers in Portugal would no longer be able to afford the service. This would drive down Spotify's revenues (and in turn the royalties paid to UK songwriters and record labels), it would reduce the cultural diversity available in Portugal and would drive consumers to access illegal services.

In view of these serious economic market effects and the fact that these impacts were expressly excluded from consultation, we hope and expect that the version of the regulation that is published officially will exclude all copyright content, not only audiovisual and radio broadcasting.

We would be very interested to hear your views.

Yours sincerely



Janet Ibbotson
Chief Executive Officer

c.c. Baroness Neville-Rolfe DBE CMG, Minister for IP & Parliamentary Under Secretary of State, UK
Dr. Ros Lynch, Director of Copyright and IP Enforcement, IPO, UK
Anna Herold, Office of Commission Oettinger, European Commission