



The Consumer Voice in Europe

## Geoblocking -

# A result of obstacles for consumer or enterprises

Luxembourg Presidency

Consumer and Competition Day

Ursula Pacht

Deputy Director General

# BEUC: the consumer voice

- BEUC is the European Consumer Organisation
- Representing consumer interests towards the EU institutions **since 1962**
- **41 members** from 31 countries
- The “Union Luxembourgeoise des Consommateurs” is our member in Luxembourg

# State of play – Consumers' situation

- Progress in opening national markets through harmonisation of consumer rights e.g. Consumer Rights Directive and market liberalisation.
- However, territoriality across sectors is still the rule, instead of being the exception.
- Discrimination against consumers based on the country of residence, still a common feature.
- Different modalities of “geo-blocking” exist.
- Doubts about the compatibility of some of these practices with article 20.2 Services Directive.
- Difficult cross-border enforcement.

# “Geo-blocking”

Geo-blocking refers to practices used for commercial reasons by (online) sellers that result in the denial of access to traders/products/services from other Member States.

Examples:

- **Refusal to sell:** consumers are able to access the website, but still cannot purchase products or services from it;
- **Rerouting:** consumers may be re-routed to a local website of the same company with different prices or a different product or service;
- **Price discrimination:** different prices are applied on the basis of geographic location.

## Examples - Refusal to sell

- The purchasing process requires a log-in account that refuses registration of consumers residing in a different country.
- Very common in online access to copyrighted content, but also present in e-commerce e.g. Dell DE shop and Apple's T&C.

Rechnungsinformationen

Frau

\* Die von Ihnen eingegebene Adresse scheint nicht gültig zu sein. Bitte geben Sie eine gültige Adresse ein.

Adresse

Brüssel

01060

\* Telefonnummer (tagsüber)

0176

Telefonnummer (abends)

Vorwahl  Nummer

Handy-Nummer

Vorwahl  Nummer

Faxnummer

Vorwahl  Nummer

### Apple's T&C (Luxembourg)

« *Aucun achat intra-communautaire ne pourra être réalisé sur le Site Internet Apple Store* » (clause 4.2) ;

« **L'adresse de facturation** de votre carte de crédit doit être **située au Luxembourg** » (clause 5.3) ;

# Examples - Refusal to deliver (1)

- The consumer can purchase from another country or IP address but the product cannot be delivered to his country of residence (or any another one).

## **Example 1: Apple's T&C - Luxembourg**

*"Lorsque l'adresse fournie (pour la livraison des produits) est située en dehors du Luxembourg, la commande ne sera pas acceptée, et les produits ne seront pas livrés" (clause 6.1).*

# Examples - Refusal to deliver (2)

## Example 2: Levi's

Re: Levis-BE-Store PLACINGORDER (KMM496848V25130L0KM)

Freitag, 3. Juli, 2015 14:06 Uhr

Von: "Levi's® Customer Care" <customerservice@levi.com>

An: [REDACTED]

[Voll-Header Druckansicht](#)

1 Dateien 3KB | [Alle herunterladen](#)

PNG 3KB

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Dear Pascale,

Thank you for your email from 03/07/2015.

Unfortunately we do not ship to Luxembourg. It is only possible to order for countries which have an eShop. We hope we will extend our services soon but for now we sadly have to dissapoint you.

We regret that we cannot give you a more positive answer but wish you all the best.

Your Levis Online Shop Team

Levi's® Online Shop Team  
Postfach 41 01 04  
44271 Dortmund  
Germany

Tel.: 00800 53 847 501 (toll free)  
Fax: 0049 (0)231 966 86291  
E-Mail: [customerservice@levi.com](mailto:customerservice@levi.com)  
URL: <http://www.levi.com>

T&C, point 3: "Country of Residence":

*" You are free to visit and order on our Website. However, due to our logistic processes, please note that by using this Website, we can only deliver products within (...) Should you wish your product to be delivered to another country, then please click here to choose the relevant geographic area".*

## Examples - Re-routing

- Common practice among retailers with different national websites, offering different prices.

### **Examples:**

- Car rental sector: EC investigation of summer 2014;
- Other e-commerce websites;
- In the past, common case among airline carriers.



# Examples – Price discrimination

- Offering a different price according to the country of residence.



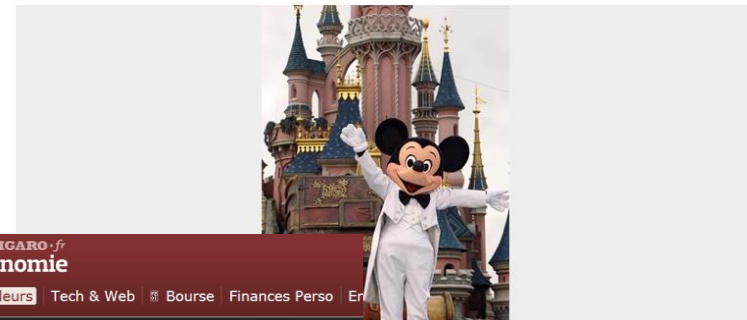
## Disneyland Paris: pays magique de la discrimination de la clientèle?



Disneyland Paris aime beaucoup les Belges et les Français, mais moins les Italiens et les Allemands. - © MIGUEL MEDINA - AFP

## CONSUMMATION Disneyland Paris moins cher pour un Belge que pour un Italien

Accueil > Life > Evasion > Loisirs - mercredi 20 mai 2015 06h00 - Jean-Christophe HERMINAIRE - L'Avenir



## Chez Disney, le prix des séjours serait fixé à la tête du client

ECONOMIE > CONSOMMATION Par lefigaro.fr | Publié le 25/05/2015 à 11:48



# Geo-blocking in the audio-visual sector

- Most common case of online geo-blocking.
- Generally based on the localisation of the consumers IP address, but not exclusively: also off-line e.g. Premier League case.
- Critical sectors: sports and fictional productions.



# How to solve the problem of geo-blocking ?

- 1. Services directive Article 20.2.**
- 2. Copyright reform**
- 3. Competition law**
- 4. Consumer information**
- 5. Enforcement**

## **Services directive Article 20.2.**

- The right to participate in the Internal Market;
- Equal treatment of citizens who conclude service contracts;
- Arbitrary discrimination is prohibited;
- But: Different treatment of consumers which is directly justified by objective criteria is allowed

### Problem:

- Recital 95: the list of objective reasons which justify discrimination is very long and probably covers any refusal to sell?
- No sanctions specified – sanctions in national law?

# Services directive (2)

## Services directive Article 20.2.

- Clarification of objective reasons.
- Unjustified discrimination - unfair /misleading commercial practice ?
- Legal consequences on contractual relationship - consumers redress ?

# Geoblocking of on-line content - Copyright Law

- In the audiovisual sector, exclusive territorial licensing is the main problem - contractual freedom used to restrict cross-border access.
- Additionally, national copyright rules are fragmented - further harmonisation of EU copyright laws is needed.
- Clarify rights between content providers and distributors while ensuring creators are appropriately remunerated.
- Potential Regulatory solution: inclusion of online distribution in the scope of the Cable and Satellite Directive by extending country of origin principle - once the content is made accessible online in one EU country, territorial licenses cannot restrict passive sales.

# Competition Law

- Consumer discrimination by online shops which are in a dominant position or apply exclusive/selective distribution agreements.
- EC's e-commerce sector enquiry - identify bottlenecks preventing consumers to benefit from the Single Market.
- Enforcement of EU antitrust rules is key - Good initiative from DG COMP to investigate exclusive licensing between Sky and Hollywood studios.
- Problem: EU Competition Law applies on a case-by-case basis.

# Consumer information about geoblocking

- Consumer Rights Directive includes the obligation to inform on delivery restrictions.
- Consumers should also be informed about why a company doesn't sell or deliver cross-border.
- But: more transparency for consumers can only be complementary and is not a substitute to structural regulatory measures as mentioned.



# Geoblocking – another challenge for enforcement

- The missing element in the Better Regulation package: Legislation should be enforceable and actually enforced as well as civil law sanctions/consumer redress options included.
- National enforcement systems and their cooperation on infringements must be improved.
- Enforcement should be linked to individual redress.
- Integrated approach: Cooperation of all stakeholders and with consumer organisations - see CEER – energy regulators.

## Conclusion

For a real Digital Single Market, breaking down artificial barriers caused by geo-blocking is a must.

It is time for a paradigm change, time to adapt the rules, time to provide the benefits of the Single Market to consumers.

Thank you very much for  
your attention.

[ursula.pachl@beuc.eu](mailto:ursula.pachl@beuc.eu)

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