

# **Geoblocking, Circumvention of Geoblocking, and Intellectual Property**

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**Issues on International and Comparative Intellectual Property  
Indiana University Maurer School of Law  
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- ◎ **Geoblocking**
  - What is geoblocking?
  - How is geoblocking used?
  - Is geoblocking legal?
  - Is geoblocking mandatory? Required by law?
  
- ◎ **Circumvention of Geoblocking**
  - Can geoblocking be circumvented?
  - How is the circumvention of geoblocking used?
  - Is circumvention of geoblocking legal?
  
- ◎ **Opposition to geoblocking**
- ◎ **Geoblocking serving positive ends**
- ◎ **The EU anti-geoblocking campaign**

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## ⦿ How is geoblocking used?

- Restriction of access to content on the internet based on user's location
  - (1) Geolocation
  - (2) Geoblocking
- Adoption of geoblocking by the private sector
  - Targeted advertising and delivery of other geographically-tailored content
  - Market partitioning
  - Security
- The use of geoblocking for regulation and for the enforcement of laws

## ◎ Is geoblocking legal?

- Int'l: WTO/GATT rules
- EU: EU single market
- US: Dormant Commerce Clause
  - Flo & Eddie, Inc. v. Sirius XM Radio, Inc., 821 F.3d 265 (2d Cir. 2016) (pre-1972 sound recordings and satellite radio)
  - Direct Marketing Ass'n v. Brohl, 814 F.3d 1129 (10th Cir. 2016), *cert. filed Sept. 1, 2016* (state online sales tax)
- Privacy issues
  - Information about user's current location
  - Tracking user's location over time
- Free speech issues

## ⊙ Is geoblocking mandatory? Required by law?

- Regulation of online gambling
- Limitation of personal jurisdiction
- EU: Right to be forgotten
- Canada: Injunction on the internet
  - Equustek Solutions Inc. v. Google Inc., [2015] BCCA 265, June 11, 2015, appeal pending to the Supreme Court of Canada
- Territorially-limited licenses
  - Spanski Enterprises, Inc. v. Telewizja Polska, S.A., D.D.C., 1:12-cv-00957-TSC

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## ⦿ **How is the circumvention of geoblocking used?**

- To access information that is inaccessible because of a user's location
- To protect privacy
- To secure free speech
- To test the networks



## ⦿ **Is circumvention of geoblocking legal?**

- Anti-hacking provisions
- Violation of laws against access to certain content
  - Online gambling
  - Child pornography
  - Other content prohibited by national laws
- Protection for digital rights management (DMCA)
- Contract/license/terms of service conditions

## ⊙ Opposition to geoblocking

- Objections to geoblocking *per se*:

### Geoblocking

- is contrary to the original architecture of the internet
  - is imperfect, and spillover is more than negligible
  - has uncertain legality
    - e.g., *GlobalMode* in New Zealand
  - is associated with not insignificant implementation costs
  - may have an impact on free speech
- 
- Objections concerning the underlying reasons for geoblocking

## ⦿ Geoblocking serving positive ends

- Diversity of content on the internet
  - From a global perspective, the diversity of content accessible to users around the world will be enhanced by geoblocking
  - Geoblocking allows for content to be made available where it is legal
  - Geoblocking allows for territorially-limited (i.e. lower-priced) licensing
- Other reasons for geoblocking
  - A territorial partitioning of the internet is inevitable as long as countries have strong national public policies that shape at least some of their laws
  - Online gambling and other sensitive areas of regulation will provoke countries' strong policy stances, for which geoblocking on the internet offers a workable *modus operandi*

## ⊙ The EU anti-geoblocking campaign

- Proposal for a Regulation on ensuring cross-border portability of online content services in the internal market
- The effects of the cross-border portability proposal
  - The Proposal legislates an acceptable level of cross-border spillover
  - The Proposal requires tracking and authentication (i.e. impact on privacy)
- Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence, or place of establishment within the internal market

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