

# The EU Anti-Geoblocking Regulation Becomes Effective Today (Guest Blog Post)

December 3, 2018 · by [Eric Goldman](#) · in [Copyright](#), [E-Commerce](#)

by guest blogger [Marketa Trimble](#)

On December 3, 2018, the European Union's [Anti-Geoblocking Regulation](#) enters into force. Its effects should be confined to the European Union's internal market, yet the Regulation will also affect U.S. businesses serving customers in the European Union. As always, what the Regulation does not achieve will be as interesting as what it does.

The Regulation applies to businesses, including U.S. businesses, that offer goods and services to customers in the European Union. As the Regulation's title indicates, the Regulation "address[es] unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment" inside the EU market. Geoblocking used to discriminate according to these characteristics of the customers is prohibited as to (a) access to online interfaces, (b) access to goods and services, and (c) conditions for payment transactions.

In practice, businesses may still operate different national versions of their websites, but they must obtain customers' explicit consent before customers may be redirected to the customer's national version and, when the customers are redirected, the businesses must make it easy for customers to undo the redirection by selecting from among the differing national versions of a given website. Also, goods and services must be offered without geoblocking if a business offers physical or electronic delivery to a location in a member state.

Although the Regulation will eliminate most online market partitioning within the European Union that is employed for purely economic reasons, the Regulation includes an important limitation on the prohibition of geoblocking: Businesses may continue to geoblock if they are employing geoblocking in order to comply with EU law and/or a member state's law.

Note that the exception is for compliance with EU and EU member states' laws only; if the compliance would be with non-EU and/or non-member state law, geoblocking is prohibited. So if, for example, a U.S. law were to prohibit the sale of certain goods to customers in one EU member state, a seller would not be permitted to sell those goods in any other state in the European Union; were the seller to sell those goods online to customers in *any* EU member state, it would be required to sell the goods to customers throughout the entire European Union.

Significantly, the exception for geoblocking that is employed to comply with EU and/or member state law allows businesses to continue to use geoblocking for purposes of compliance with copyright laws; also excepted from the Regulation are "services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form."

The initial push to eliminate copyright-related geoblocking (see for example [here](#)) created considerable controversy. The general public seems to dislike geoblocking, particularly when it is used for this purpose, perhaps because geoblocking for copyright reasons is usually visible when a website tells users that they cannot access content from their location because of copyright

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limitations (see for example [here](#)). Eliminating copyright-related geoblocking, if it ever happens, would score much needed points for EU politicians among the general EU public. The EU [Cross-Border Portability Regulation](#) (effective March 20, 2018) solved the “Netflix problem” by making subscribed content portable within the European Union, but it did not address geoblocking in general (more on the EU Cross-Border Portability Regulation [here](#)).

In the end, EU legislators decided for now to continue to permit geoblocking for copyright reasons. But the Regulation indicates that the fight by the copyright-heavy industries to maintain geoblocking is not over. What was once an ambitious proposal to limit the use of geoblocking – even in copyright-related situations – is addressed in the Regulation’s Review Clause, under which the Commission will conduct regular reviews, and its very first review, due within the first two years after the Regulation takes effect, should assess whether the prohibition of geoblocking should be extended to apply in cases where a business “has the requisite rights for the relevant territories.” This could mean that a business that holds copyright for the entire European Union could be prohibited from partitioning the online market for the copyrighted work.

The possible elimination of geoblocking in the future – the elimination of effective online market partitioning – would have a profound effect on copyright practices and copyright law within the European Union. This direction would be consistent with other steps that the European Commission has taken: its initiatives concerning [EU unitary copyright](#) and [multi-territorial copyright licensing](#), its proposal to extend the emission principle to include online services in the [SatCab Regulation](#) proposal, and its position in [antitrust proceedings](#) against some motion picture studios for including an obligation to geoblock in their licensing agreements (the proceedings are [ongoing](#) against some studios; more on this topic [here](#)). The elimination, or at least a significant limitation, of geoblocking in the copyright context would be consistent also with the interests of various stakeholders inside and outside the European Union in facilitating easier cross-border access to copyrighted works.

A provision in the Regulation that might not look important—but could be crucial for the future of geoblocking—provides that when businesses do geoblock in order to be compliant with EU and/or member states’ laws, they must explain to their customers why the customers are being geoblocked. This transparency should ensure that customers are aware that they are being geoblocked (which they might have not known previously) and why they are being geoblocked. Such an awareness could generate pressure from the public for legislative changes that would contribute to further limitations on geoblocking within the European Union. And a greater interest in broader harmonization of EU member states’ laws is an interest that seems to be otherwise missing among the general EU public at present.

- Patents (85)
- Privacy/Security (529)
- Publicity/Privacy Rights (215)
- Search Engines (547)
- Spam (204)
- Trade Secrets (80)
- Trademark (648)
- Trespass to Chattels (91)
- Virtual Worlds (50)

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