

Marketa Trimble

**The Future of Cybertravel:
Legal Implications
of the Evasion of Geolocation**

What is this talk about?

- What the law has (or does not have) to say about evasion of geolocation or “**cybertravel**” – about acts by which a user makes geolocation tools believe that he is physically located somewhere other than where he is located.
- Example: I sit in the U.S. but use MyExpatNetwork.co.uk to acquire a U.K. IP address and appear as though I am connected to the internet from the U.K.
- Is this legal? Does the law care? Will the law care in the future?

Disclaimer

- This talk does not cover all the various ways in which geolocation may be evaded.
- Nothing said in this presentation, during the Q&A, or included in these slides is legal advice.
- Nothing in this presentation should be construed as advertising or recommending particular tools or services, or advising or advocating any particular conduct.

Why will this talk be of benefit to you?

- ◉ Learn (or update your knowledge) about what the law says about geolocation and the evasion of geolocation.
- ◉ Begin thinking about any risks you may consider or subject yourself to when you evade geolocation or provide tools to evade geolocation
(= think about what questions you might want to ask your lawyer).
- ◉ Become aware of policy issues that might concern you if you care about the future of the internet.

What will this talk cover?

- 1. Definitions**
- 2. Territoriality of the law and the internet**
- 3. Geolocation tools**
 - 3.1 Current uses
 - 3.2 Current law
- 4. Evasion of geolocation**
- 5. Law and the evasion of geolocation**
 - 5.1 Current law
 - 5.1.1 Liability of an end user
 - 5.1.2 Liability of an evasion tool provider
 - 5.2 Future law

1. Definitions

- ◉ Geolocation
- ◉ Evasion of geolocation = “cybertravel”
- ◉ Cybertravel versus GoToMyPC, LogMeIn
- ◉ Cybertravel versus anonymization

2. Territoriality of the law and the internet

- ◉ A country's law
- ◉ International law
- ◉ Self-regulation

- ◉ Internet beginnings versus “cyberlaw 2.0”
(Michael Geist, University of Ottawa, Canada)

2. Territoriality of the law and the internet

- ◉ *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006)
- ◉ *Sarl Louis Feraud Intl. v. Viewfinder, Inc.*, 489 F.3d 474 (2nd Cir. 2007)
- ◉ *Lucasfilm Limited et al. v. Andrew Ainsworth et al.*, [2009] EWCA Civ 1328 (Eng.), [2011] UKSC 39, July 27, 2011

2. Territoriality of the law and the internet

- Personal jurisdiction of courts
- Territorial partitioning of the internet
 - Filtering by service providers
 - Filtering on users' hardware
 - Employing geolocation by website operators
- Legal challenges to preemptive filtering
 - *Scarlet Extended SA v. Société belge des auteurs compositeurs et éditeurs (Sabam)*, Court of Justice of the European Union, C-70/10, Opinion by Advocate General Pedro Cruz Villalon, April 14, 2011

3. Geolocation tools

3.1 Current uses

- Copyright licenses
- Gaming regulations
- Security – credit cards, bank account access
- A Hong Kong company, <http://www.megaupload.com>

3. Geolocation tools

3.2 Current law

- Italian gaming authority
- Decisions by German courts
 - e.g., Oberverwaltungsgericht Nordrhein-Westfalen, 13 B 646/10, July 2, 2010
- A letter by the U.S. Attorney for the Southern District of New York re United States v. Pokerstars, et. al., 11 Civ. 2564 (LBS), April 19, 2011
- Legislative interest in geolocation – online gaming, taxation

4. Evasion of Geolocation

- ◉ Governments' interest in a territorial partitioning of the internet
- ◉ Campaign by governments / law enforcement for a greater attribution capability on the internet
- ◉ Transition to IPv6



- ◉ Increasing interest of users in evasion

4. Evasion of Geolocation – Types

- Tools for the technically-savvy versus easy-to-use tools
- Dial-up to a foreign internet service provider
- Web proxies (<http://anonymouse.org/anonwww.html>)
- Anonymizer, Tor
- MyExpatNetwork.co.uk, MyExpatNetwork.com

5. Law and the evasion of geolocation

- ◉ Dan Jerker B. Svantesson, Bond University, Gold Coast, Australia
- ◉ Thomas Hoeren, Westfälische Wilhelms-Universität Münster, Germany

- ◉ Place-shifting cases
 - TVCatchUP (ITV v. TV Catch Up [2010] EWHC 3063 (Ch))
 - ManekiTV (Japan, 2011)
 - ivi (WPIX, Inc. v. Ivi, Inc., 765 F.Supp.2d 594 (S.D.N.Y. 2011))
 - Justin.tv (Zuffa, LLC v. Justin.tv, Inc., U.S. District Court for the District of Nevada, 2:11-cv-00114-RLH-LRL)

5. Law and the evasion of geolocation

5.1 Current law

- 1. an end user, and
- 2. an evasion tool provider

- a. the act of cybertravel, and
- b. the associated act that is enabled by cybertravel (e.g., viewing of a video)

5. Law and the evasion of geolocation

5.1 Current law

5.1.1 Liability of an end user

- Localization of the acts

5. Law and the evasion of geolocation

5.1 Current law

5.1.1 Liability of an end user (cont.)

- Copyright law
 - 1996 WIPO Treaties, EU 2001 Info Society Directive
 - DMCA (Digital Millennium Copyright Act, 1998)
 - 17 U.S.C. §1201(a) – 9th Circuit v. Fed. Circuit
 - Cache copies

5. Law and the evasion of geolocation

5.1 Current law

5.1.1 Liability of an end user (cont.)

- Contract law
SAT1: The user must “use the retrieved content only within the use areas permitted by [the media company], and may not in particular alter, circumvent or otherwise disregard technical measures applied by [the media company] to territorially limit the use.”
<http://www.sat1.de/service/content/47202/>
- Anti-hacking laws
Computer Fraud and Abuse Act (18 U.S.C. §1030)

5. Law and the evasion of geolocation

5.1 Current law

5.1.2 Liability of an evasion tool provider

- Direct liability
 - DMCA
 - Computer Fraud and Abuse Act,
EU 1998 Conditional Access Directive
 - Retransmission?

5. Law and the evasion of geolocation

5.1 Current law

5.1.2 Liability of an evasion tool provider (cont.)

- Secondary liability
 - A necessary link between secondary and direct liability
 - Options to strategically locate providers' activities away from the countries from which users cybertravel
(e.g., provider in the U.K., users anywhere but the U.K.)

5. Law and the evasion of geolocation

5.2 Future law

- ◉ If the law begins to rely on geolocation, what does it mean for the evasion of geolocation?
- ◉ Cybertravel as a misrepresentation of one's true location
- ◉ Cybertravel and the right to obscure one's location

5. Law and the evasion of geolocation

5.2 Future law

- ◉ How should evasion be treated in the future?
 - A negligible issue on the margins (de minimis)
 - Equivalent to physical travel, including limited constitutional protection for international travel
- ◉ What would be the conditions for implementation?

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