

European Commission

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Virke - The Federation of Norwegian Enterprises' Position on Geoblocking

Hovedorganisasjonen Virke – The Enterprise Federation of Norway – is the employer federation and interest organisation of 20 000 member companies with more than 230 000 employees. Virke offers services to employers related to employment legislation, commercial and policy issues.

Changes in the geoblocking rules and principles will have direct and considerable effects on comparative and competitive advantages in the internal market. Changes in the geoblocking regime are also closely linked to the possible changes in the copyright rules. These two are big questions in the Internal Market and should be addressed simultaneously. They should be addressed only after through evidence based approach. It is particularly important to do a deeper economic analysis and cost benefit analysis of any changes. It is further of key importance to define what geoblocking is and when it might be justified or unjustified. Reference is also made to the comments from EuroCommere and Ecommerce Europe on the matter.

Key points:

- Geoblocking must be clearly defined before any new policies or rules are devised. Any decision to ban geoblocking should be based on evidence and market realities. Only on the basis of clear definition can geoblocking be banned or permitted.
- It is particularly important to provide descriptive evidence how geoblocking will affect trade and production in services, good and digital content. More clarity and a nuanced approach is needed because there are both justified and unjustified reasons for limitations in cross-border supply of digital content, goods or services. Different copyright regimes and variations in production costs and the reasons for these variations are two examples.
- The geoblocking issue is closely related to possible changes in the copyright rules. Both are big questions and should be addressed in a coordinated process.

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- Geoblocking should be limited to technical blocking access to websites and not be confused with other situations. Mere blocking access to websites is unjustified. There is an issue with websites that block access. There is little objective justification of why this takes place, unless for a legal reason or because a business believes if consumers cannot buy from the site and have the product delivered to them at home, it would be frustrating and pointless to view what they cannot buy.
- There are legal and commercial reasons preventing businesses from selling cross-border, and commercial reasons for not setting up a store or a business in every town in their home state. As long as companies face differences while operating cross border some will decide to sell only in some markets. Equally, as long as there is no liberalised and competitive market for cross-border deliveries or services, companies might decide not to do business everywhere to avoid disproportionate costs and consumer frustration.
- Geoblocking and also copyright issues are of significant importance for film- and television producers in the EEA. Under current rules and principles it is not possible to sell the same production to more than one television broadcaster in each EEA Member State. Should the EEA become a single Geo Area, it is highly unlikely that producers will be able to sell the same production to two or more players in the entire European market simultaneously. This will in turn have severe consequences on the basic conditions for film- and TV productions in the individual EEA-Members. It will have negative consequences for commercial revenues and for rising funding for productions. This has so far not been addressed in this process, and must be dealt with based on evidence.
- Rerouting is not discriminatory per se and should not be prohibited. There are often legitimate reasons behind it, including consumer convenience or a specific business model. Consumers should be free to browse whatever website they want. It should always be clear to consumers if there are any limitations when they insist on buying from a chosen website. Automatic rerouting is generally unjustified and is in nature the same as blocking access.
- Companies should be encouraged to sell to all consumers irrespective of their location. It is not always justified to refuse a purchase because of consumer's location. However, imposing an obligation to sell is not the best approach. A case-by-case approach would be better.
- Virke supports a white list of practices where totally blocking the access to a website, rerouting the consumer to another website or restriction of delivery to certain geographical areas are allowed and justified. This would increase legal certainty for online merchants. On the other hand, Virke does not support a black list of forbidden geo-blocking practices, because of differences and complexity of online business models across the EU. The latter points to the need for a more evidence approach than what is currently there.
- There is a difference between selling and delivering. Forcing traders to deliver everywhere would be counter-productive.

- There should be no duplication of existing laws having the same effect. Companies that do not deliver to certain countries must inform about it the consumers. Instead of duplicating the existing law, it would be better to have guidance on how this information could be best provided to consumers. There should be no excessive burdens on providing complicated explanations as to why they do not deliver everywhere.
- There is no justification for EEA-wide price controls. We oppose any policies and legislation aimed at fixing or harmonising prices.

Kind regards

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