

Comments on Geo-blocking triologue negotiations



Brussels, 25 October 2017

Your Excellency,

The undersigned organisations work across the audiovisual sector in Europe. We represent film and TV producers, distributors and publishers of film and television content, cinema operators, commercial broadcasters, and sports rights owners.

As the inter-institutional negotiations on the proposed Regulation on Geo-blocking¹ advance, we write to you to express our joint concern regarding certain elements in the Presidency's draft compromise proposal of 6 October which seek to extend the scope of the Regulation, and in particular have the effect of integrating audiovisual services into this instrument via a review clause.

In line with the primary provisions of the EU Treaty on cultural diversity (Article 3), we urge you to maintain the position adopted by the Council in its General Approach of November 2016, and not to support any reference to future “assessment of scope of the Regulation” in the review clause (art. 9.2), thus preserving the complete exclusion of the services mentioned in Article 1.3 from the Regulation. This is also in line with the text published by the European Commission and the existing Services Directive (Directive 2006/123).

The specificities of the audiovisual sector have long been recognised by European lawmakers. This has resulted in specific legislation to address our sector and ensure its exclusion from broad instruments such as the Services Directive, the scope of which is mirrored by the Commission's proposal for the Regulation on Geo-blocking.

The clear and objective motives for the exclusion of audiovisual services from the scope of the 2006 Services Directive remain valid today: commercial freedom to license continues to be a crucial factor in determining the audiovisual sector's ability to secure financing for new audiovisual content; it is a prerequisite for Europe's original audiovisual production to remain competitive at home and in world markets and a key catalyst for cultural diversity.

By aligning the scope of the proposed Regulation on Geo-blocking with that of the Services Directive, the Commission and Council chose to uphold regulatory consistency and legal certainty, and also to respect the principles that determined the elaboration of the scope of the Services Directive, i.e. the desire to take into account the specificities of certain sectors and, in the case of audiovisual services, to foster and preserve cultural diversity and secure the sector's access to finance for new original content.

The suggestion that the measures of the Geo-blocking Regulation could, in future, be applied to activities mentioned in Article 2.2 of the Services Directive through a review of Art. 1 of the Regulation, including to our sector, jeopardises this consistency and the legal certainty on which we depend for financing new content. Investments are sought and made early in the development phase for new works, and very often several years before a work is completed and reaches the audience. **The future “assessment of scope of the Regulation” (and therefore implicitly the Services Directive)” would therefore create harmful business and legal uncertainties by weakening the ability to guarantee territorial exclusivity to investors**

¹ 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 and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, [COM \(2016\) 289 final](#).

in new content. This would immediately affect future investments in our sector in a negative manner to the detriment of cultural diversity and the economic sustainability of Europe's original content production and distribution.

Moreover, there is no legislative support for such an extension. The public consultation carried out by the European Commission in advance of its legislative proposal on geo-blocking explicitly excluded geo-blocking related to copyright and content licensing practices. In addition, **the impact assessment which accompanied the proposed Regulation did not consider the possible inclusion of audiovisual services (or other services excluded from the scope of the Services Directive) in the scope of the Regulation in any respect.**

We recall that legislative initiatives have already been adopted or are under consideration which aim to address the specificities of cross-border access to content. These include the adopted Regulation on the Portability of Online Content Services, as well as the very problematic proposed Regulation on certain online transmissions of broadcasting services and retransmissions of television and radio programmes.

In conclusion, we respectfully urge you to maintain the Council's positions as approved in its General Approach of November 2016, which rightfully excludes "audiovisual services" from its scope and the review clause, in line with the Services Directive. We call upon you to oppose any call for their inclusion, as this could jeopardise the future sustainability of the audiovisual sector and its ability to finance, produce and distribute new audiovisual works in Europe. Such an inclusion would also negatively impact cultural diversity and ultimately reduce the consumers' ability to access diverse audiovisual content.

Sincerely yours,

Signatories

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