

# The Circumvention of Geo-Blocking and Copyrights Infringement

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## Abstract

This paper discusses copyrights infringement caused by geo-blocking and the circumvention of geographical restrictions. Geo-blocking advocates and contesters set out the advantages and inconveniences of making available or not online contents based on the geographical position. Though as with other forms of internet censorship, geo-blocking can be circumvented and as such, will be difficult to regulate. Therefore, priority must be given to a multi-stakeholders approach which is better suited for countries when drafting legislation to address the matter. The paper concludes that governments must take on responsibility and enact passing laws that would require entertaining companies to create local content in order to prevent unjustified geo-blocking.

## Keywords

Geo-Blocking, Circumvention, Geo-Location, Infringement

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## 1. Introduction

The Internet is considered an elusive space where restrictions should have no place, but it does occur and very often, users face virtual walls that prevent them from accessing certain desired content.

These virtual walls come either from governments, streaming sites and services like Netflix and Amazon, or from internet service providers.

Netflix which is available in more than 150 countries worldwide, with content varying by location based on local licensing arrangements, cannot offer the same program in two different countries (Brennan, 2018) without violating the terms of contract. Governments use geo-blocking to prevent the dissemination of content deemed illegal in their country, for example pornographic sites or other addictive gambling sites. On one hand, States use geo-blocking to limit access to information available on the Internet for national security purpose and to main-

tain public order; Internet service providers, on the other hand, sometimes block websites to comply either with national legislation or big entertaining companies.

In a geo-blocking scheme, the user's location is calculated using geo-location techniques, such as checking the user's IP address against a list (Abdou et al., 2017); the result is then used to determine whether the system will approve or deny access to the content.

Every computer on the Internet has a unique Protocol or IP address. Every time someone sends a request for a site, the IP number is sent along with the request, so the server knows where it has to send the content back. The IP address reflects the geographic location of a computer. This is how any site can identify someone location and also how geo-blocking may occur in first place. Geo-blocking which is a form of internet censorship, can be circumvented using virtual private network (VPN) and anonymizer services. As a matter of fact, a user can access a website using a different country IP address and gain access to content or services that are not available from outside the country. Video services such as BBC Iplayer, are usually circumvented through these means (Wright, 2015).

In 2014, Netflix established an Australian version of its services in response to circumvention (Healey, 2014). Also, a large number of U.S. viewers, used VPN services to watch coverage of the 2012 Summer Olympics and 2014 Winter Olympics, through British and Canadian media because of the quality of NBC's national coverage, as well as the requirement for viewers to subscribe to a private TV provider (Szklarski, 2014).

A similar feature was introduced in the New Zealand internet service provider Slingshot for travelers to enable access to local websites blocked in New Zealand. Unlike manually-configured VPN services, Global Mode was implemented passively at the ISP level and was automatically activated based on a whitelist, without the user direct intervention (Kirk, 2015).

Members of the entertainment industry, including broadcasters and studios claim that the use of VPNs and similar services to evade geo-blocking by online video services is a violation of copyright laws (Monbrea, 2013) since the Foreign Service does not hold the rights to make their content available in the user's country. Meanwhile, the legality of circumventing geo-blocking to access video services from outside of a country under local copyright laws is unclear and varies from one country to another, thus infringing and undermining the rights held by a local rightholders (Gallagher, 2014). Accessing online video services from outside the country in which they operate is considered a violation of their respective terms of use. In retaliation, some services have implemented measures to block VPN and other proxies' under the assumption that they are using them to evade geographic filtering (Orphanides, 2015).

However, as the Internet is a fast mean of communication that should be accessible to all without restriction, we wonder whether entertaining companies are entitled to use geo-blocking or any other mean to control online content.

Another line of discussion is that States legislation may require big entertaining companies to produce local content in order to find a permanent solution to citizens circumventing geographic restrictions. In this case how will entertaining companies react? This paper discusses all these ongoing issues; focuses on Australia, New Zealand, European Union and United States practice on that matter. Ultimately the paper concludes that States governments must take on their responsibility and come to an agreement with entertaining companies as for them to produce contents for local use and then enact legislation to embed the results of such agreement. That will definitely create a balance between copyrights protection and the welfare of users. Thus, a multistakeholders approach is better suited for countries when drafting law to address the matter. This approach is about bringing at the same table, industry entertainers, VPN services, copyrights holders, consumers and States governments.

## **2. Purposes of Geo-Blocking Adoption**

Should online contents be geographically blocked and therefore grant some countries the privilege of accessing online content over others? It's a topic of ongoing debate and it's not an easy question to answer given the implications. The global nature and the reach of the Internet pose difficulties in controlling content. Some countries already censor parts of the Internet, blocking websites and shutting down social media services like Twitter in times of unrest. At such, geo-blocking is a simple method where Netflix and other providers know your location based on the IP address. When you connect to the internet, your IP address is assigned to you by your Internet Service Provider (ISP). This information allows websites and services to block certain users based on their country location.

On the same token, some videos on internet can be blocked to users in such a way that it remains a good source of information and a lively social space while protecting those who are most vulnerable to Internet exploitation or businesses in case of intellectual property rights protection. Some contents on internet are geo-blocked for various reasons and under multiple uses. However, there is room for discussion as the internet contributes the free flow of information, should it be censored, even for commercial purpose? While I recognize restrictions exist, and that the free flow of information has raised the call for content regulation including restrict minors' access to potentially harmful information, it is important to discuss the advantages of internet that made the world use it in the first place.

### **2.1. Restrict Access to Online Content Based on Users' Location**

#### **2.1.1. Geo-Location**

Geo-location is the identification of the geographic location of an object, such as a mobile phone or computer terminal. There are different types of geo-location (Gravitate Team, 2020):

- IP geo-location, a technique to identify the subject party's IP address, then determines what country, state, city, ZIP Code, organization, or location the IP address has been assigned to. There are several IP geo-location providers in the industry supplying IP address databases which contain IP address data sometimes used in firewalls, domain name server, mail systems, web sites, and other automated systems where geo-location may be useful.

- W3C geo-location is an effort by the World Wide Web Consortium (W3C) to standardize an interface to retrieve the geographical location information for a client-side device. The most common sources of location information are IP address, Wi-Fi and Bluetooth MAC address, radio-frequency identification (RFID), Wi-Fi connection location, or device Global Positioning System (GPS) and GSM/CDMA cell IDs. The location is returned with a given accuracy depending on the best location information source available.

- Finally geo-coding, which is often related to geo-location, is a process of finding associated geographic coordinates (latitude and longitude) from other geographic data such as city or address. With geographic coordinates, the features can be mapped and entered into Geographic Information Systems.

### **2.1.2. Geo-Blocking**

Geo-blocking is based upon the user's geographical location. In a geo-blocking scheme, the user's location is calculated using geo-location techniques, such as checking the user's IP address against a determined list. The result of this check is used to determine whether the system will approve or deny access to the content. Geo-blocking is a practice used also by companies to show content based on individual's geographic location. To illustrate BBC, the British Broadcasting Corporation is a public service run by the British government and is available to all UK residents (Zhadan, 2022).

Accordingly, BBC service called BBC iPlayer is not available from outside the UK. The access is generally denied by a notification message saying "you cannot access this service in your country". With sites like Netflix and Hulu. Plus, there is price discrimination as EU residents pay more to Netflix to watch fewer shows compare to United States.

Apart from copyright and licensing reasons, there are other uses for geo-blocking, such as blocking malicious traffic or enforce price discrimination, location-aware authentication, fraud prevention, or online gambling.

## **2.2. Satisfy Private Sector Commercial Interests**

The adoption of geo-blocking by private sector may be explained as way to target advertising and delivery of foreign contents and market partitioning.

### **2.2.1. Target Advertising and Delivery of Geographically-Tailored Contents**

The licensing agreements that entertainment big companies enter into with foreign streaming sites restrict what they can stream to different markets (Trimble,

2016b). Indeed, businesses often offer services based on their own region specificities and business model. At such, geo-blocking can be used to stop the diffusion of content or services to region which are not geographically tailored to access these contents. Because the ownership of exclusive territorial rights to content differs one region from another, the providers of determined contents and services block access for users outside of their diffusion territory. For similar reasons, the library of content available on subscription video on demand services may also vary between regions, or the service may not even be available in the user's country at all (Reilly, 2015).

### **2.2.2. Market Partitioning**

The ownership of exclusive territorial rights to content may differ between regions, requiring the providers of the content to disallow access for users outside of their designated region. For example, Hollywood segmentation of the world in different sections (Pattison, 2019). Some movies have local flavor to cater with the local audience. although an online service, HBO now is only available to residents of the United States, and cannot be offered in other countries because its parent company Time Warner had already licensed exclusive rights to HBO programming to different broadcasters (Reilly, 2015) (such as in Canada, where HBO licensed its back-catalogue to Bell Media), which may offer similar service based on their own region specificities and business model.

All this maximizes the effect of promotional campaigns and generate more financial resources for producers. Geo-blocking is an extension of this idea. The licensing agreements that Hollywood producers enter into with foreign streaming sites like BBC iPlayer restrict what they can stream to different markets. To implement this agreement, the streaming websites generally use geo-blocking to meet these arrangements.

### **2.3. The Use of Geo-Blocking for Legal Compliance**

Geo-blocking can be used to stop the diffusion of illegal content or services under national laws and for other purposes as well, such as blocking access from countries that a particular website is not relevant to. Thus, voluntarily blocking access to content or services that are illegal under local laws, or to control malicious traffic. Further, the use of geo-blocking is due to violations of intellectual property rights.

From another perspective, as to create local content to avoid circumvention from local users, it is important to discuss how will entertaining businesses react if the States legislation require they produce local content? A state law may require companies to produce local content so users will no longer have to use VPNs or other alternative means to override the recommendations of large entertainment companies.

Most of these companies are commercial companies. They exchange their services for money and are able to make large profit. On one hand, it will be beneficial for State to enact laws that provides for a pricing of this content at the local

level that is less compared to the pricing of content accessible abroad. On the other hand, online sellers use geo-blocking for commercial reasons. While doing so, they deny access to websites and content based outside their country, redirect traffic to local websites, or apply different prices. Doing so, they limit consumer opportunities and choice. Geo-blocking is a major cause of consumer dissatisfaction and the fragmentation of the internal market.

### **2.3.1. Geo-Blocking to Enforce Price Discrimination**

Geo-blocking may be used to enforce price discrimination by private companies within online stores, forcing users to buy products online from a foreign version of a site where prices may be unnecessarily higher than those of their domestic version (Angove-Plumb, 2020). The “Australia Tax” has been cited as an example of this phenomenon, which has led to governmental pressure to restrict overpriced internet content through geo-blocking example may be taken from Apple that sells its AC/DC’s complete collection on iTunes for \$229.99 in Australia and just for \$149 in the U.S. (McDonald, 2013). Adobe, Amazon.com, Nintendo and Lenovo have also come under scrutiny by Australian authorities for price discrimination practice (Ibid).

### **2.3.2. Geo-Blocking to Avoid Copyright Infringements**

Artists, movies makers, authors are experiencing the consequences of an uncensored Internet. Every year, pirates get cleverer about override national and international laws and distributing intellectual content illegally. Piracy and copyrights infringements hurt big companies; movie studios and individuals alike. Many on the other side of this issue such as privacy advocates claim that information should be free but freedom on the internet is an abstract concept as far as it hurts the work of number of people and deny them the right to be recognized and be paid for the production of their mind as any other occupation in the real world does. Advocate online copyrights protection is same as claiming that the right of people to have a free and open Internet does not take precedence over the right of creators to own and distribute their creations. Even so a balance needs to be found to address the issue in the way to assign to each party his rights and what is due based on.

## **3. Privacy and Free Speech Issues Related to Geo-Blocking Adoption**

### **3.1. Privacy Issues**

#### **3.1.1. Information about User’s Current Location**

Based on IP addresses and on a combination of information using cellular phone, Wi-Fi and GPS signals, user’s physical location are found easily. The information collected may be used to link particular acts on the Internet to a particular user; what in fact constitute a violation of user’s privacy. Geo-location is the identification of the geographic location of an object, such as a mobile phone or computer terminal. At such, they are different ways of finding a geo-location

(Gravitate Team, 2020):

- IP geo-location, a technique to identify the subject party's IP address, then determines what country, state, city, ZIP Code, organization, or location the IP address has been assigned to.

- W3C geo-location is an effort by the World Wide Web Consortium (W3C) to standardize an interface to retrieve the geographical location information for a client-side device. The most common sources of location information are IP address, Wi-Fi and Bluetooth MAC address, radio-frequency identification (RFID), Wi-Fi connection location, or device Global Positioning System (GPS) and GSM/CDMA cell IDs. The location of the user is provided with a given accuracy depending on the best location information source available.

- With geographic coordinates the features can be mapped and entered into Geographic Information Systems. Reverse geo-coding is the way of finding an associated textual location such as an address, from geographic coordinates.

### **3.1.2. Tracking User's Location over Time**

Privacy issues also stem from tracking users' location with the purpose to restrict the access of foreign contents from their location. Big entertainment companies restrict locally what they stream to different markets (Reilly, 2015). Indeed, businesses offer services based on their own region specificities and business model. Tracking users' location is a strategy to stop the diffusion of content or services to region which are not geographically tailored to access these contents. However, users do not always agree with methods employed and try to circumvent the blocking. Because the ownership of exclusive territorial rights to content also differs between regions, the providers of determined contents and services block access to users outside their diffusion territory. For similar reasons, the library of content available on subscription video on demand services may also vary between regions, or the service may not even be available in the user's country at all. Hence, the use of VPN and other proxies to circumvent the situation which may appear as a response to a violation of users' privacy rights to access and watch content on the internet.

## **3.2. Free Speech Issues**

### **3.2.1. Limitation to Free Speech on the Internet Due to Geo-Blocking**

Jo Glanville, editor of the Index on Censorship, states that "the Internet has been a revolution for censorship as much as for free speech (Glanville, 2008)". According to geo-blocking circumvention advocates, circumvention is used to secure free speech (Trimble, 2017). Freedom of speech is the right to articulate one's opinions and ideas without fear retaliation, censorship or societal sanction (Ten Cate, 2010) which is not the case nowadays given the practice of geographically blocked online content. The term freedom of expression includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. International, national and regional standards recognize that freedom of speech, as one form of freedom of expression, applies to any medium,

including Internet (Puddephatt, 2005). Freedom of information is an extension of freedom of speech where the medium of expression is the Internet. Freedom of information may also refer to the right to privacy in the context of the Internet. It is protected by legal texts such as the Freedom of Information and Protection of Privacy Act of Ontario, in Canada (Martin & Adam, 1994).

### 3.2.2. Free Speech on Internet in Close Connection with Freedom of Information

The concept of freedom of information has emerged in response to state sponsored censorship, monitoring and surveillance of the internet. Internet censorship includes the control or suppression of the publishing or accessing of information on the Internet (Deibert et al., 2008). The Global Internet Freedom Consortium (GIFC) claims to remove blocks to the “free flow of information” for what they term “closed societies”. According to the Reporters without Borders (RWB) “internet enemy list” the following states engage in pervasive internet censorship: Cuba, Iran, Myanmar/Burma, China, North Korea, Saudi Arabia, Syria, Turkmenistan, Uzbekistan, and Vietnam. A widely publicized example of internet censorship is the “Great Firewall of China” (in reference to both its role as a network firewall and to the ancient Great Wall of China). The system blocks’ content by preventing IP addresses from being routed through and consists of standard firewall and proxy servers at the Internet gateways. The system also selectively engages in DNS scope limiting when particular sites are requested. Internet censorship in the People’s Republic of China and many other countries is conducted under a wide variety of laws and administrative regulations. Besides Censorship systems in the world are vigorously implemented by provincial branches of state-owned ISPs, business companies, and organizations trying to disregard users’ rights to be forgotten<sup>2</sup>.

## 4. Circumvention of Geo-Blocking

Circumvention is used to evade geo-blocking and access information that is inaccessible because of a user’s location. Circumvention is generally said to have four main purposes: allow a user to access information that is inaccessible because of his location, protect privacy, secure free speech and test the networks (Trimble, 2016a). There are ways to circumvent geo-blocking; through VPN in order to access TV, movies and media and DNS as alternative for geo-blocking circumvention.

<sup>2</sup>The right to be forgotten is a concept that has been discussed and put into practice in both the European Union (EU), and Argentina since 2006. The issue has arisen from desires of individuals to “determine the development of their life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past.” There has been controversy about the practicality of establishing a right to be forgotten to the status of an international human right in respect to access to information, due in part to the vagueness of current rulings attempting to implement such a right. Furthermore, there are concerns about its impact on the right to freedom of expression, its interaction with the right to privacy, and whether creating a right to be forgotten would decrease the quality of the Internet through censorship and a rewriting of history.



#### 4.1. Circumvention by VPN

VPN is a Virtual Private Network; plays as a shield between the one who uses it and the rest of the internet. Not only does it provide a high level of encryption but it also allows people to access geo-blocked content. Most VPNs have servers located all over the world because of the increasing number of people using proxies to access blocked internet videos, films and other contents. This tricks websites into thinking that people are located in a country where this content is available and gives full access. Indeed, VPN can give a new IP address that says you are overseas instead of your true location. VPNs work by encrypting and tunnelling all of the internet traffic through a server located overseas. However Smart TVs and Blu-ray players can't use VPNs. Netflix, one of the most popular content viewing sites in the world, has extensive geo-blocking controls in place (Rathnam, 2017). From a consumer's perspective, Netflix offers a much smaller content library to users outside of the U.S. due to its existing licensing arrangements (Ibid). For years, Netflix subscribers have been using VPNs or web proxies to hide their IP address, so they can access more content (Ibid). For instance, BBC iPlayer which allows users to stream British content, is not available for those residing out of the United Kingdom. Even for a British resident traveling abroad or an expat living in another country, he can't access its content. VPN allows users to override the firewall, so they can continue watching content, regardless their geographic stance. According to a report published on the BBC site, more than 60 million people outside the UK are watching BBC iPlayer for free, using VPNs or proxy servers (Ibid).

It is estimated that in China, more than 38.5 million people access the BBC iPlayer app. The remaining come from countries like the U.S., Australia, Ireland, India, Brazil, France and Germany (That's, 2017). A great number of them use VPNs to watch their favorite TV shows.

#### 4.2. Other Means of Circumvention: DNS Trick

An alternative to VPN is US-based Domain Name System (DNS) server. Rerouting the internet connection through a DNS can also trick a website into believing that the user is effectively in another country.

#### 4.3. Combined VPN-DNS Package

The best VPN and DNS can also be provided. Service providers generally may offer smart DNS and VPN packages even at a cheap cost; for less than US\$10 per month (Ibid).

Even though it is possible through certain means, to bypass geo-blocking, existing restrictions alters the nature of the Internet which is supposed to be a sphere for communication. Not just that, but a sphere of free communication. The Internet is opened in the sense that there is no single entity, who administers it. Technically, there should be no possible checkpoint for a single entity to control it. The Internet allows any person with access to a computer and modem

to exchange communication. These communications can occur almost instantaneously and be directed to a group of people, specific individuals, or the world as a whole (Jorgensen, 2001). For entertaining companies, to be able to convert a free communication environment to a restricted zone where business is king, and any kind of profit allowed, may open the way to a lot of deviations. States governments must take on their responsibility, so that the only restrictions that may occur involving the internet would be coming from the law.

## 5. A Complex Legal Landscape

The legality of getting around geo-blocking is a bit of a grey area. Some copyright experts claim that anyone who promotes devices or programs such as the use of VPN and other proxies that encourage people to infringe copyright are breaking the law. However, some companies believe that consumers who bypass measures employed to geographically restrict copyrighted content should be exempt because they are only accessing products and services that are being provided knowingly and willingly by the copyright holder. Further if you get caught using VPN in Chongqing, you will face a fine up to 15,000 Yuan (That's, 2017). Based on the regulation, First-time offenders caught accessing international networks via "illegal channels" in the municipality would be warned and banned from connecting to the network again. If caught breaking the rules again or found profiting up to 10,000 Yuan from illegal internet networks, then violators could be fined between 10,000 to 15,000 Yuan and have their illegal assets forfeited (Ibid). Moreover, the Australian Competition and Consumer Commission states that consumers' rights, using overseas-based companies to buy products may not be protected by Australian Consumer Law. While some companies like Apple have international warranties, others like Canon and Nintendo refuse to recognize products bought internationally under domestic consumer law.

Members of the entertainment industry (including broadcasters and studios) have contended that the use of VPNs and similar services to evade geo-blocking by online video services is a violation of copyright laws, as the foreign service does not hold the rights to make their content available in the user's country, thus infringing and undermining the rights held by a local rightsholder (Gallagher, 2014). Accessing online video services from outside the country in which they operate is typically considered a violation of their respective terms of use; some services have implemented measures to block VPN users as well, under the assumption that they are used to evade geographic filtering (Fingas, 2014).

Leaked e-mails from the Sony Pictures Entertainment hack revealed statements by Keith LeGoy, Sony Pictures Television's president of international distribution, describing the international usage of Netflix over VPN services as being "semi-sanctioned" piracy that helped to illicitly increase its market share, and criticizing the company for not taking further steps to prevent usage of the service outside of regions where they have licenses to their content, such as detecting ineligible users via their payment method (Gallagher, 2014). In January

14, 2016, Netflix announced its intent to strengthen measures to prevent subscribers from accessing regional versions of the service that they are not authorized to use (Welch, 2016). It is a fact; the legality of circumventing geo-blocking to access foreign video services under local copyright laws is unclear and varies by country (Gravitate Team, 2020). This section discusses the matter in Australia, within EU system, in New Zealand and United States.

### **5.1. Circumvention of Geo-Blocking, Not Illegal under Australia Copyright Act**

In Australia, a policy published by the Federal Minister for Communications Malcolm Turnbull, states that users violating an “international commercial arrangement to protect copyright in different countries or regions” are not illegal under Australian copyright law (Tan, 2015). However, an amendment to Australian copyright law allows courts to order the blocking of websites that primarily engage in “facilitating” copyright infringement a definition which could include VPN services that markets offer themselves specifically for the purpose of evading geo-blocking (Reilly, 2015). Prior to the passing of this amendment in June 2015, the Minister for Communications acknowledged that VPN services have a wide range of legitimate uses, not least the preservation of privacy, something every citizen is entitled to secure for themselves and VPN providers have no oversight, control or influence over their customers’ activities (Moody, 2015).

People living in Australia, take comfort from these communications who clearly advocate geo-blocking circumvention: Many Australians use a VPN to access Netflix in the US. And it is a major discovery the Copyright Act does not make it illegal to use a VPN to access overseas content. While content providers often have in place international commercial arrangements to protect copyright in different countries or regions, which can result in geo-blocking circumventing, this is not illegal under the Copyright Act. First, if you live outside the United States, which is by far the biggest content producer, you are prevented from accessing the vast online movie and television libraries streamed by the US version of Netflix and Hulu for very affordable prices (starting from only US\$7.99).

Secondly, if you want to access the better movies and television programmes being broadcast overseas, you have to subscribe to Australia’s super expensive Foxtel cable network or enduring the ad-hoc and delayed timetables of free to air broadcasters. Foxtel has recently reduced its prices given the threat of online streaming providers making its business model and cable network redundant<sup>3</sup>. The Australian version of Netflix has only a tiny proportion of the shows and movies available on the US and UK versions of Netflix.

The reason is video steaming providers have signed copyright agreements with studios that:

- First limit the geographic region to which they are licenced to stream televi-

<sup>3</sup>Foxtel and their political partners oppose the NBN which would bring superfast video streaming in Ultra-High Definition without using Foxtel’s cable network.

sion and movies, and second.

- Require them to take steps to prevent viewers from outside that region from accessing the service. Studios have sold exclusive agreements to other overseas broadcasters, such as Australia's Foxtel cable television, which means they can't allow United States services like the US version of Netflix and Hulu to stream that content to Australians. Geo-blocking circumvention is not illegal based on the law, however for business purposes, the private sector represented by parent companies and services providers are doing their best to restrict the access of videos, music streaming to foreign users. The law tells one thing, and the practice shows something else; thus leaving consumers in the middle of a battle that risk to last.

## 5.2. Problem Unresolved in New Zealand

New Zealand case differs of that of Australia. When it comes to the legality of geo-blocking circumvention, the question remains unresolved. A tool to watch regionally restricted video content will no longer be offered in New Zealand, ending a lawsuit that could have clarified the legality of such services in the country. Indeed In April 2015, a group of media companies in New Zealand, including Media Works, Spark, Sky Network Television, and TVNZ to name a few, jointly sent cease and desist notices to several ISPs offering VPN services for the purpose of evading geo-blocking, demanding that they pledge to discontinue the operation of these services and to inform their customers that such services are "unlawful" (Henderson, 2015). Companies accused the ISPs of facilitating copyright infringement by violating their exclusive territorial rights to content in the country, and misrepresenting the alleged legality of the services in promotional material. In particular, Spark argued that the use of VPNs to access foreign video on demand services was cannibalizing its own domestic service Lightbox (Ibid). Following the complaint of the group of media companies, at least two smaller providers announced that they would pull their VPN services in response to the legal concerns. However, CallPlus, the parent company of two VPN service providers objected to the claims, arguing the legality of the Global Mode service and accused the broadcasters of displaying protectionism (Kirk, 2015). In 24 June 2015, the media companies reached an out-of-court settlement, in which ByPass Network Services, who operates the service, would discontinue it effective 1 September 2015. The case could have clarified once for all the use of VPN and other proxies in the country. However, with an out-of-court settlement, the situation remains very much unclear.

## 5.3. Unilateral Geo-Blocking Not Illegal in European Union

EU competition law does not prevent a non-dominant supplier or content provider from unilaterally geo-filtering access to its content or services, something EU Competition Commissioner Margrethe Vestager reiterated in her statement accompanying the publication of the Issues Paper. Unilateral geo-blocking is the

target of separate proposed legislation as part of the Commission's Digital Single Market initiative. Geo-blocking is widely used in e-commerce across the EU. As a matter of fact, as far as consumer products are concerned, more than a third of online retailers collect information on the location of users for geo-blocking purposes (Batchelor, 2016). Geo-blocking can take the form of: refusal to deliver abroad; refusal to accept payment and rerouting and website access blocks. Further, concerning online digital content, the vast majority of respondents blocked access to services to users in other Member States: 68% of retailers implement at least one type of geo-blocking measure mostly through denial of access based on IP address. Other 59 percent are rather contractually required by rights holders to use geo-block.

On 6 May 2015, the European Union announced the adoption of its "Digital Single Market" strategy, which would amongst other changes, aim to end the use of "unjustified" geo-blocking between EU countries, arguing that too many Europeans cannot use online services that are available in other EU countries, often without any justification; or they are re-routed to a local store with different prices (Moody, 2015). The practice shown as discriminatory according to EU parliament cannot exist in a single market. Even if this is an open declaration in favor of dodging geo-blocking, draft EU geo-blocking regulation published on 25 May 2016 excluded the territorial licensing of copyrighted audiovisual works (Baker, 2016). On 8 February 2017, the EU announced a proposed regulation to require local streaming services to "roam" when their users are travelling outside their home country (Trenholm, 2017).

In addition, EU has been leading anti-geo-blocking Campaign through:

- Proposal for a Regulation on ensuring cross-border portability of online content services in the internal market (Marketa Trimble). The effects of the cross-border portability proposal are that the proposal legislates an acceptable level of cross-border spillover. The Proposal requires tracking and authentication which however impacts on privacy. Plus, the localization fiction enounced in Article 4 states that the provision of an online content service to, as well as the access to and the use of this service by, a subscriber, shall be deemed to occur solely in the Member State of residence. Also, as part of EU anti geo-blocking campaign, there is a 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. Ultimately European Union stance on geo-blocking is motivated by the fulfillment of the single market since geo-blocking practice limit access to online content; it could be potential hurdle in the way of single market expansion.

#### **5.4. US Digital Millennium Copyright Act (DMCA) Anti-Circumvention Exemptions**

In order to facilitate the development of electronic commerce in the digital age, US Congress implemented the World Intellectual Property Organization WIPO treaties by enacting legislation to address those treaty obligations that were not

adequately addressed under existing U.S. law. Legal prohibitions against circumvention of technological protection measures employed by copyright owners to protect their works, and against the removal or alteration of copyright management information, were required in order to implement U.S. treaty obligations. **The Digital Millennium Copyright Act (DMCA)** is a United States copyright law that implements two 1996 treaties of the (WIPO). It criminalizes production and dissemination of technology, devices, or services intended to circumvent measures (commonly known as digital rights management or DRM) that control access to copyrighted works. It also criminalizes the act of circumventing an access control, whether or not there is actual infringement of copyright itself. In addition, the DMCA heightens the penalties for copyright infringement on the Internet<sup>4</sup>. However, the congressional determination to promote e-trade and the distribution of digital works by providing copyright owners with legal tools to prevent widespread piracy was tempered with statutory limitations on the exclusive rights of copyright owners. In addition to the safe harbors and exemptions the statute explicitly provides, 17 U.S.C. 1201(a) (1) requires that the Librarian of Congress issue exemptions from the prohibition against circumvention of access-control technology. Exemptions are granted when it is shown that access-control technology has had a substantial adverse effect on the ability of people to make non-infringing uses of copyrighted works. A list of exemptions to anti-circumvention is issued every three years and granted when it is shown that access-control technology has had a substantial adverse effect on the ability of people to make non-infringing uses of copyrighted works. That is a speaking illustration that basic rights need to be protected.

## 6. Recommendations for Regulating Geo-Blocking

Geo-blocking is all about content which are available in a country and not accessible to another country user. As the law wants to satisfy rights holders and meanwhile preserve users privacy and right to be forgotten and watch whatever they want, whenever it suits them, the solution is for States legislation to require big entertaining companies to produce local content. For instance, EU in its proposal could require Netflix, Amazon Prime Video to produce local content for consumers of Europe and the other way around, allowed Europeans content to be accessible to users outside the continent. Of course the idea will not be without challenges as any country can ask streaming services to invest in local

<sup>4</sup>Ibid, see also United States Code (2010) Title 17 CHAPTER 5, COPYRIGHT INFRINGEMENT AND REMEDIES, Sec. 506—Criminal offense, ww.gpo.gov. Assessed September 21, 2017: 1) Criminal Infringement: a) In general. Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed. i) for purposes of commercial advantage or private financial gain; ii) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1000; or iii) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

productions. Meanwhile, streaming companies may offer streaming video for rent and purchase in addition to a separate, smaller catalog of streaming video which will take into account consumers' taste and interests.

## 7. Conclusion

As conclusion, banning geo-blocking could have possible effects as far as investment in the audiovisual sector is concerned. Geo-blocking put barrier to the digital market or is just a representation of legitimate commercial practice. Either way, one important point is the side effects that geo-blocking may have on content creation and distribution and the welfare of consumers. The balance between economic interests of companies and consumer welfare could be found through legislative proposals. Geo-blocking is a significant cause of consumer dissatisfaction and at such should be address properly. As new issues arise, geo-blocking regulatory framework is shaping. A VPN can be lawfully used to access a content that is not protected by copyright, or use material protected by copyright in a way that is not exclusively controlled by the copyright owner. Large entertainment companies like Netflix, Hulu, and Youku and BBC iPlayer use geo-blocking tactics to ensure that their content is not viewed across countries for business and economic purposes. While this is justifiable to some extent, it's not fair from a user's point of view since there is a subscription fee upfront to access the service. Indeed, people should get to watch what they have paid for.

Is geo-blocking still relevant in today's world? We guess not, hence, the general use of VPNs and other proxies given to mask the user' IP address to companies in order to avoid being located. However, more and more, VPN service providers are coming up with ways to circumvent these blocks and so do entertaining companies. Based on this circumstance, VPNs cannot be considered as a standing solution.

Facing consumers' dissatisfaction, States governments must take on their responsibility in enacting laws to efficiently address the issue of copyrights infringement; not least, consumers' privacy and free speech.

The idea that geo-blocking could be used as a compliance tool is one part of the development of the relationship between geo-blocking and legal compliance. The scholar Marketa Trimble outlines the three stages through which this development will proceed (Trimble, 2016b). In the first stage, geo-blocking will be accepted as a tool of regulation and enforcement. While acceptance has already occurred in some countries in some contexts, this acceptance is certainly not yet widespread. In the second stage, minimum standards for geo-blocking will be promulgated because the use of geo-blocking for purposes of legal compliance necessarily calls for minimum technological standards that geo-blocking tools must meet in order to create virtual borders sufficiently precise and impermeable to satisfy the law. In the third stage, circumvention of geo-blocking and the tools that facilitate circumvention will be targeted by countries' regulation. The

three stages will likely begin at different times in different countries, industries, and contexts, but will eventually overlap and thereafter develop concurrently as they will help preventing unjustified geo-blocking.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

## References

- Abdou, A., Matrawy, A., & van Oorschot, P. C. (2017). CPV: Delay-Based Location Verification for the Internet. *IEEE Transactions on Dependable and Secure Computing*, 14, 130-144. <https://doi.org/10.1109/TDSC.2015.2451614>
- Angove-Plumb, A. (2020). *How to Bypass Geo-Blocking for Online Shopping and Streaming*. <https://www.choice.com.au/shopping/online-shopping/buying-online/articles/bypass-geo-blocking>
- Baker, J. (2016). *Netflix, Amazon Given Quotas for EU-Produced Video, Face New Tax*. <https://arstechnica.com/>
- Batchelor, B. (2016). *Digital Single Market and Geo-Blocking* (p. 20). Institute of European and Comparative Law, University of Oxford.
- Brennan, L. (2018). *How Netflix Expanded to 190 Countries in 7 Years*. <https://hbr.org/2018/10/how-netflix-expanded-to-190-countries-in-7-years>
- Deibert, R., Palfrey, J. G., Rohozinski, R., & Zittrain, J. (2008). *Access Denied: The Practice and Policy of Global Internet Filtering*. MIT Press. <https://doi.org/10.7551/mitpress/7617.001.0001>
- Fingas, J. (2014). *Hulu Attempts to Block International Viewers Who Use VPNs*. <https://www.engadget.com/2014-04-26-hulu-blocks-vpns.html>
- Gallagher, S. (2014). *Sony Pictures Mad at Netflix' Failure to Block Overseas VPN Users*. <https://arstechnica.com/tech-policy/2014/12/sony-pictures-mad-at-netflixs-failure-to-block-overseas-vpn-users/>
- Glanville, J. (2008). *The Big Business of Net Censorship*. <https://theguardian.com/>
- Gravitate Team (2020). *What Is Geolocation?* <https://www.gravitatedesign.com/blog/what-is-geolocation/>
- Healey, N. (2014). *New Zealand ISP's 'Global Mode' Gives Users Access to Netflix and More*. <https://www.cnet.com/>
- Henderson, J. (2015). *INSIGHT: Why CallPlus Should Stand Its Ground as Global Mode D-Day Arrives*. <https://www2.computerworld.co.nz/article/572683/insight-why-callplus-should-stand-its-ground-global-mode-d-day-arrives/>
- Jorgensen, R. F. (2001). *Internet and Freedom of Expression*. European Master Degree in Human Rights and Democratisation 2000-2001 Raoul Wallenberg Institute.
- Kirk, J. (2015). *Geoblocking Question Unresolved after New Zealand Lawsuit Ends*. <https://www.computerworld.com/article/2939974/geoblocking-question-unresolved-after-new-zealand-lawsuit-ends.html>
- Martin, R., & Adam, G. S. (1994). *A Sourcebook of Canadian Media Law* (pp. 232-234). McGill-Queen's Press.



- McDonald, S. (2013). *IT Pricing: DBCDE (The Department of Broadband, Communications and the Digital Economy) Tells Inquiry Geoblocking Legislation Problematic*. Computerworld.
- Monbrea, M. (2013). *How to Block Traffic from Other Countries in Linux*. <https://www.computerworld.com/article/2833357/how-to-block-traffic-from-other-countries-in-linux.html>
- Moody, G. (2015). *EU Announces Plans to Banish Geo-Blocking, Modernize Copyrights Law*. <https://arstechnica.com/>
- Orphanides, K. G. (2015). *BBC Blocks International iPlayer Viewers Ahead of US Launch*. <https://www.wired.co.uk/article/bbc-iplayer-vpn-access>
- Pattison, S. (2019). *Geoblocking Guide: What Is It and How Do You Get around It in 2022?* <https://www.cloudwards.net/geoblocking-guide/>
- Puddephatt, A. (2005). *Freedom of Expression, the Essentials of Human Rights* (p. 128). Hodder Arnold.
- Rathnam, L. (2017). *Geoblocking Guide: What Is It and How Do You Get around It?* <https://cloudwards.net/> (see also You Can Now Get Fined for Using a VPN in China by That's, March 30, 2017)
- Reilly, C. (2015). *Netflix VPN Access Locked Down for Overseas*. <https://www.cnet.com/news/netflix-vpn-access-lock-down-overseas-users-geoblock/>
- Szklarski, C. (2014). *Some U.S. Viewers Turn to CBC amid Complaints about NBC's Olympic Coverage*. The Canadian Press. <https://www.theglobeandmail.com/sports/olympics/some-us-viewers-turn-to-cbc-amid-complaints-about-nbcs-olympic-coverage/article16790846/>
- Tan, M. (2015). *New Zealand ISPs May Be Sued for Letting Users Bypass Geoblocks*. <https://www.theguardian.com/world/2015/apr/20/new-zealand-internet-service-providers-face-legal-action-over-copyright-breach>
- Ten Cate, I. (2010). Speech, Truth, and Freedom: An Examination of John Stuart Mill's and Justice Oliver Wendell Holmes's Free Speech Defenses. *Yale Journal of Law & the Humanities*, 22, 35.
- That's (2017). *You Can Now Get Fined for Using a VPN in China*. <https://www.thatsmags.com/china/post/18329/you-can-now-get-fined-for-using-a-vpn-in-this-chinese-city>
- The Digital Millennium Copyright Act (December 1998). U.S. <https://www.copyright.gov/legislation/dmca.pdf>
- Trenholm, R. (2017). *EU Plans to Let You Stream Your Movies, TV and Sport Abroad*. <https://www.cnet.com/>
- Trimble, M. (2016a). *Geoblocking, Circumvention of Geoblocking, and Intellectual Property* (p. 4). Issues on International and Comparative Intellectual Property, Indiana University Maurer School of Law.
- Trimble, M. (2016b). *Geoblocking, Technical Standards and the Law*. University of Nevada. <http://scholars.law.unlv.edu/facpub/947>
- Trimble, M. (2017). *Geolocation, Geoblocking, and The Law* (pp. 8-10). Issues on International and Comparative Intellectual Property, Indiana University Maurer School of Law.
- Welch, C. (2016). *Netflix dit qu'il fera plus pour empêcher les clients de contourner les restrictions nationales*. <https://www.theverge.com/2016/1/14/10767982/netflix-blocking-proxies-vpn-country-restrictions>

- Wright, H. (2015). *Global Mode Spat: We've Got the Legal Paperwork*.  
<https://itbrief.co.nz/story/Global-mode-spat-weve-got-the-legal-paperwork/>
- Zhadan, A. (2022). *Best VPNs for BBC iPlayer in 2022*.  
<https://cybernews.com/best-vpn/vpn-for-bbc-iplayer/>