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‘As you know, our (geo)blockade is perfectly legal’ – The European Union, the Geo-Blocking Regulation and the Future of Copyright Law

Marketa Trimble, *The EU Geo-Blocking Regulation. A Commentary*, Edward Elgar Publishing, Cheltenham 2024, ISBN: 978 1 80392 386 4, 2024, 478 pp, £185.00

‘As you know, our blockade is perfectly legal’ – these words are spoken by the fictional character Viceroy Nute Gunray in *Star Wars: Episode I – The Phantom Menace* (1999), directed by George Lucas. While it is possible to access and watch this movie on the subscription video-on-demand (VOD) service Disney+ in all EU Member States, this is not the case with other movies and VOD providers, which are only available in select EU Member States¹. Restricting access to content based on the physical location of the user is commonly known as ‘geo-blocking’². The European Union Geo-Blocking Regulation, which came into force on 22 March 2018, was introduced to eliminate such barriers, aiming to be the Schengen Agreement of the online world³, yet some content can still be restricted within the EU Digital Single Market⁴, as audiovisual services are excluded from the scope of the Regulation⁵. For a long time, media companies have argued that territorial exclusivity is essential to their business models and survival, warning that its removal would threaten the creative and economic sustainability of the film and television sectors in Europe⁶. This concern led the European film industry to sign a letter in 2023 opposing proposed legislation that would ban geo-blocking of

¹ A Broocks, Z Studnicka, ‘Gravity and trade in video on demand services’, (2024) *Review of World Economics* 1, 26.

² M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 2.

³ M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 371.

⁴ Commission, ‘Proposal for a regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market’ COM (2015) 627; Commission, ‘Proposal for a regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes’ COM (2016) 594.

⁵ M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 195.

⁶ P Zahrádka, R Schmücker, ‘‘We are Sorry This Video Is Not Available in Your Country’: An Ethical Analysis of Geo-blocking Audio-Visual Online Content’, (2022) 37 (1) *Journal of Media Ethics* 2, 5.

audiovisual content across the EU, claiming it would drastically reduce the value of most European content and diminish incentives to invest in local language films⁷. Some legal scholars suggest that, given the challenges to territorial exclusivity in EU copyright law, a more effective solution would be to establish film-specific rules on exclusive rights, maintaining the viability of language market exclusivity⁸. In this context, Marketa Trimble's book remains highly relevant, particularly as discussions on the future of the Geo-blocking Regulation in the European Union continue.

Marketa Trimble's 'The EU Geo-Blocking Regulation: A Commentary' is structured systematically, beginning with chapters on an introduction to geo-blocking and the Geo-Blocking Regulation, followed by a detailed article-by-article analysis, and concluding with a summary, bibliography, and index. The commentary is written from the comparative legal perspective and thanks to the unique approach the author took, some parts of it (especially Chapter 1 and Chapter 2) would remain up-to-date even if the Regulation would be revoked or significantly updated in the future. Chapter 1 of the book, titled 'Introduction to Geo-Blocking', provides a comprehensive overview of the phenomenon of geo-blocking and its implications in the digital age. It begins by explaining geo-blocking as a global issue, examining how it is used across different regions and industries. The chapter clarifies key terms such as 'geo-blocking', 'geo-location', and related concepts, emphasising the significance of geographical location and borders in the context of the internet. The chapter further discusses issues related to the technology behind geo-location and geo-blocking, including standards for their effective implementation. Legal concerns are also addressed, with discussions on the legality of territorial restrictions and location-based discrimination. The chapter concludes by discussing public perception and opposition to geo-blocking, offering a broader view of its social and political implications. Chapter 2 of the commentary provides a detailed introduction to the EU Geo-Blocking Regulation, outlining its development, legislative process, and implementation. It begins by tracing the regulation's origins through the EU Digital Agenda and the preparatory work leading to its proposal. Marketa Trimble emphasises that the objective of 'preventing unjustified geo-blocking'⁹ was a central focus of the Commission's 2015 Digital Single Market

⁷ Scott Roxborough, 'Entertainment Sector Unites to Oppose European Law That Would Ban Geo-Blocking', *The Hollywood Reporter* (Hollywood 7 December 2023) <[hollywoodreporter.com/business/business-news/european-geo-blocking-law-entertainment-opposition-1235716640/](https://www.hollywoodreporter.com/business/business-news/european-geo-blocking-law-entertainment-opposition-1235716640/)> accessed 10 March 2025

⁸ PB Hugenholtz, J Poort, 'Film Financing in the Digital Single Market Challenges to Territoriality', (2020) 51 IIC - International Review of Intellectual Property and Competition Law 167, 179-180.

⁹ Commission, 'Digital Single Market Strategy' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions)' COM (2015) 192 final.

Strategy, significantly shaping the evolution of the regulatory framework. The chapter then examines the legislative process, focusing on the regulation's territorial scope and the changes introduced post-adoption. A particularly detailed discussion is dedicated to the implementation and evaluation of the regulation, analysing its practical impact and enforcement challenges. Notably, it also examines the decision to keep the audiovisual industry out of the regulation's scope¹⁰, a choice that has been the subject of ongoing debate regarding access to digital content across borders¹¹. Finally, the chapter situates the Geo-Blocking Regulation within the broader framework of EU law, particularly in relation to copyright and competition law, analysing its impact on existing legislation and regulatory approaches. This section is particularly interesting from the perspective of the future of copyright law in the European Union, as the increasingly debated relationship between competition law and copyright law remains unresolved, even after the Regulation took effect. Within the debates discussed in this section the importance of copyright law measures in improving cross-border access to content and the need for further reforms are clearly highlighted.

After Chapter 1 and Chapter 2, the following chapters focus on each specific article of the Geo-blocking Regulation, with each article being explored in a separate chapter. In each chapter, the text of the relevant article from the Regulation is first presented, followed by a detailed commentary on its meaning, implications, and practical application. Chapter 3 discusses Article 1: Objective and Scope, analysing the Regulation's overarching goals, its intended impact on geo-blocking, and the territorial and material scope it covers. The author provides a detailed analysis of key aspects defining the Regulation's purpose and reach. The discussion begins with the title of the Regulation, reflecting its focus on addressing geo-blocking within the EU. The author then explores geo-blocking itself, highlighting its definition and the Regulation's role in eliminating unjustified restrictions based on geographic location. The commentary also covers other forms of discrimination, extending the scope beyond geo-blocking to include any location-based restrictions that limit access to goods and services. The author emphasises the concept of unjustified geo-blocking and its legal implications, as well as the territorial scope of the Regulation, clarifying which areas it governs within the EU. The commentary addresses key exclusions from the scope, such as purely internal situations, activities under the Services Directive, and areas like taxation and copyright that are governed by separate regulations.

¹⁰ M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 91.

¹¹ See: M Trimble, 'Copyright and Geoblocking: The Consequences of Eliminating Geoblocking', (2019) 25(2) Boston University Journal of Science & Technology Law 476, 496-501.

Additionally, the author examines the effects of the Regulation, its interaction with private international law, and its alignment with EU principles of subsidiarity and proportionality. Finally, the author discusses the Regulation's balance with fundamental rights and the importance of a review clause to periodically assess and adjust its scope as necessary. Chapter 4 focuses on Article 2: Definitions of the Geo-blocking Regulation, providing a detailed analysis of key terms essential for understanding the Regulation's scope and application. The article defines 18 terms, with eight directly defined within the Regulation and ten referred to from other EU legislation. Chapter 5 examines Article 3: Access to Online Interfaces, providing a detailed review of how the Regulation ensures consumers' rights to access online platforms without unjustified restrictions. Chapter 6 explores Article 4: Access to Goods or Services, focusing into the conditions under which consumers must be allowed to access goods and services from cross-border providers. Chapter 7 covers Article 5: Non-Discrimination for Reasons Related to Payment. Chapter 8 discusses Article 6: Agreements on Passive Sales, providing a critical look at how the Regulation deals with agreements that restrict passive sales, such as limitations on offering goods or services to consumers in different countries. Chapter 9 analyses Article 7: Enforcement, which outlines the enforcement mechanisms and responsibilities of national authorities in ensuring compliance with the Regulation. Chapter 10 covers Article 8: Assistance to Consumers, which concerns the assistance that member states must provide to consumers in disputes with traders, introducing the designated consumer assistance bodies, highlighting their national and cross-border activities, explaining the role of the European Consumer Centre Network in implementing the Regulation, and summarising the findings of the Network's 2019 and 2023 position papers. Chapter 11 discusses Article 9: Review Clause, examining the review process that allows the European Commission to evaluate the effectiveness and impact of the Regulation. In that chapter, Trimble also discusses the first evaluation report of the Regulation from November 2020, which, however, is summarised in detail in Chapter 3¹². Chapter 12 focuses on Article 10: Amendments to Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, explaining how the Regulation integrates with and updates existing consumer protection and enforcement laws, such as the Regulation in the Consumer Protection Cooperation Regulation and the Consumer Interest Protection Directive. Chapter 13 concludes with a discussion of Article 11: Final Provisions,

¹² M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 166-168.

which sets out the procedural aspects of the Regulation, including its entry into force, and the applicability of the Article 6 provisions concerning vertical agreements.

The conclusions of the commentary highlight both ambitions and limitations of the EU Geo-Blocking Regulation in creating a truly borderless digital market. While intended to enhance consumer access to goods and services online, its effectiveness remains uncertain, particularly given persistent geo-discrimination in areas like copyright-protected content¹³. This commentary will undoubtedly serve as a primary reference in its field for scholars, lawmakers, practitioners, students and other stakeholders from the relevant industries. It offers a thoroughly researched analysis, effectively integrating case law, and legislation from various jurisdictions and legal disciplines. With its clear structure, the work provides valuable insights into the broader non-legal implications of the Regulation while emphasising the importance of navigating the interplay between key legal areas such as copyright and competition law.

In the conclusions of the commentary, Trimble reiterates the Regulation's current limitations in areas like audiovisual services and opposes any potential reforms of copyright law through the Geo-Blocking Regulation¹⁴, cautioning against using the elimination of geo-blocking as a backdoor to EU copyright law reform and emphasising that any changes to copyright law should be addressed directly rather than through indirect measures¹⁵. While this argument definitely has its merit, with the exception of audiovisual content, the Geo-blocking Regulation remains a missed opportunity. Despite Giuseppe Mazziotti prediction in 2015 that the EU Commission's ambition to remove geo-blocking for copyright works in Europe would be a very difficult task¹⁶, from the perspective of the Digital Single Market, addressing this issue will be inevitable sooner or later. It is also worth noting that Trimble mentions in the conclusions that the Regulation has increased enforcement demands on member states¹⁷. These demands add regulatory strain alongside other Digital Single Market laws, such as the General Data Protection Regulation, the Digital Markets Act, the Digital Services Act, and the newest, the AI Act. From that

¹³ M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 371.

¹⁴ M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 373.

¹⁵ Marketa Trimble, 'Re: Call for evidence Ref. Ares(2025)1054581 – 11/02/2025—an evaluation of the Geo-blocking Regulation', <media.licdn.com/dms/document/media/v2/D561FAQGe50bJ3Q1UhQ/feedshare-document-pdf-analyzed/B56ZVlxcudGoA8-/0/1741169219613?e=1743033600&v=beta&t=hT54hn-v0UdRXFyg96ACfOia2o3naIGHTL8p45wu-6Q> accessed 10 March 2025

¹⁶ G Mazziotti, 'Is geo-blocking a real cause for concern in Europe?', (2016) 38 (6) European Intellectual Property Review, 365, 365–366.

¹⁷ M Trimble, *The EU Geo-Blocking Regulation. A Commentary*, (Edward Elgar Publishing, Cheltenham 2024) 372.

perspective it seems reasonable, that if audiovisual services were included within the scope of the Geo-Blocking Regulation, it could become a useful tool to address the challenges posed by generative Artificial Intelligence service providers at the national level. Generative AI services like SunoAI¹⁸, which provide interactive AI-generated music and video content online, could fall under the scope of the Geo-Blocking Regulation, as many of these models offer their services to consumers across different EU member states. As an analysis of generative AI service providers' terms and conditions has identified an ongoing 'platformisation paradigm', in which providers of generative AI attempt to position themselves as neutral intermediaries to avoid potential liability¹⁹, the Geo-Blocking Regulation could help member states control these providers at the national level. One example is the proactive implementation of geo-blocking by OpenAI in Italy, where, out of fear of potential investigations by national regulatory bodies, generative AI service providers may restrict access to their services within a specific EU member state²⁰. In such cases, the EU Geo-Blocking Regulation anti-blocking rules could help mitigate these situations. By extending the Regulation's reach to cover such services, the EU could create a more uniform and equitable framework for access to digital content, ensuring that consumers are not unjustly restricted based on their geographical location, while also addressing the legal and economic implications of AI-driven services.

¹⁸ Suno, <<https://suno.com/>> accessed 10 March 2025

¹⁹ L Edwards and others, 'Private Ordering, Generative AI and the 'Platformisation Paradigm': What Can We Learn from Comparative Analysis of Models Terms and Conditions?', (2025) 1 (e2) Cambridge Forum on AI: Law and Governance, 11.

²⁰ See: A Cordella, F Gualdi, 'Regulating generative AI: The limits of technology-neutral regulatory frameworks. Insights from Italy's intervention on ChatGPT', (2024) 41 Government Information Quarterly, 1, 1-15.