



MARKENVERBAND



**Geo-Blocking restrictions and their
implications for brand owners**

**14th Oxford Symposium
Trends in Retail Competition
University of Oxford | June 15th, 2018**

Cornerstones

1. Geo-Blocking regulation in a nutshell
2. A commercial brand perspective
3. Some legal thoughts and concerns

Cornerstones

- 1. Geo-Blocking regulation in a nutshell**
2. A commercial brand perspective
3. Some legal thoughts and concerns

The regulation's overriding principle: be treated as a local by the acting legal entity

Effort to transfer current off-line reality into on-line (and off-line) obligations

Access to Web-sites	Sales of goods	Payment
<ul style="list-style-type: none">• No limitation of access• No Rerouting to different TLDs• Unless prior consent• Unless Requirement by law	<ul style="list-style-type: none">• Not applicable to goods for resale• Obligation to contract across borders• No obligation to deliver beyond normal area of distribution• Cross border contract w/o impact on „Rome I“ evaluation• No legal requirement for European Pricing, but• No different terms & conditions• Limitation to agreements on passive sales, exceeding Art. 101 III TFEU	<ul style="list-style-type: none">• No differentiation in electronic payment method• Withholding delivery for objective reasons until confirmation of payment initiation

Regulation leaves open some very difficult question

- ? How does the rerouting prohibition apply to TLDs w/o geographical reference (.shop, .tv etc.) and what does this mean for targeting
- ? How can goods for resales be distinguished from goods for use e.g. if Staples buys pencils or paper
- ? Does the requirement for uniform terms & conditions also apply to objectively justified (e.g. cost based) differentiation in after sales services
- ? Does the prohibition of differentiation also apply where reasons for differentiation exist exactly parallel to member-state borders

Cornerstones

1. Geo-Blocking regulation in a nutshell
- 2. A commercial brand perspective**
3. Some legal thoughts

Brands are not blocking but targeting to improve brand experience

Brands are perceptions in the minds of consumers, built on a specific positioning



Brand X is the best choice in product category Y to fulfil the promise Z made to consumers because of the reasons and evidence given by the manufacturer (and the community)

Brands are not blocking but targeting to improve brand experience

Reality shows that even within a Single Market, consumer needs, expectations and perceptions differ regionally

Detergents



Promising to be the best detergent may require different formulation, adapted to most common stains.

Brands are not blocking but targeting to improve brand experience

Reality shows that even within a Single Market, consumer needs, expectations and perceptions differ regionally

Bedding and Bedcover



Europe is diverse in standard sizes for blankets and tradition of bed spreads which requires differentiation in bed-linen

Brands are not blocking but targeting to improve brand experience

Reality shows that even within a **Single Market**, costs of services (pre- and after sales differ significantly

After Sales Services



Cost coverage for after sales services requires a close link to local business

Cornerstones

1. Geo-Blocking regulation in a nutshell
2. A commercial brand perspective
- 3. Some legal thoughts and concerns**

What does the TFEU say about non-discrimination addressed by the Geoblocking Regulation

The regulation addresses discrimination based on nationality, place of residence or place of establishment

Art. 18 TFEU

- Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.
- The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

✓ Prohibiting discrimination not only by member states but also by private persons. (ECJ in Wouters, Angonese et.al.)

Art. 102 TFEU

- Any abuse by one or more undertakings of a dominant position within the internal market ... shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
- Such abuse may, in particular, consist in ... (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; ...

➤ Specific regulation on discrimination should block reference to Art. 18 (EGC in Thermenhotel Stoiser Franz)

Geo-Blocking Regulation is intended to amend the Services Directive

It will not be able to change economic reality

1

- Art. 20 sec.2 Services Directive has proven inefficient to fight geoblocking

2

- Services Directive does not cover sales of goods, neither off- nor on-line

3

- Legislator should have abstained from interfering with a well balanced distinction between unilateral and agreed restrictions

4

- Personal expectation: we will see workarounds both on customer and supplier side to address commercial needs



MARKENVERBAND

Vielen Dank für Ihre Aufmerksamkeit!

The German Brands' Association
Unter den Linden 42 | D-10117 Berlin

Dr. Andreas Gayk
Director Marketing Policy/Trade Relations
Compliance Officer
Phone +49 (0)30 206 168 30
Fax +49 (0)30 206 168 730
a.gayk@markenverband.de
<http://www.markenverband.de>