



STUDIO  
LEGALE E TRIBUTARIO

# **HOW TO ACHIEVE A DIGITAL SINGLE MARKET?**

**2 main obstacles to overcome**

*Barbara  
Sartori*

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## 1° OBSTACLE: GEO-BLOCKING

**Definition:** the practice of restricting access to content based upon the user's geographical location, through:

- unilateral decision by market players
- agreements among competitors to share the market
- vertical agreements for distribution rights

## 2 examples:

- **Refusal to sell** (international sports content)



- **Geo-filtering** – conditioning of sales or rerouting of services (Netflix)



This is the message users get when they try to use VPN or Smart DNS to circumvent Netflix geo-filtering:

You seem to be using an unblocker or proxy. Please turn off any of these services and try again. For more help, visit [netflix.com/proxy](https://netflix.com/proxy).

OK

- Special nexus between the necessity of fostering cross border access to on line digital contents and the removal of geo-blocking measures.
  
- 3 problems:
  1. use of electronic means for preventing access to on line contents from another Member State;
  2. barriers to cross-border distribution of digital copyrighted works;
  3. barriers to portability of audiovisual services (**Proposal for a Regulation** on ensuring the cross-border portability of on-line content services in the internal market)

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Can we avoid unjustified geo-blocking by extending or applying by analogy the «country of origin» rule?

Satellite and Cable Directive (93/83/EEC):

- Article 1(2)(b): «*The act of communication to the public by satellite occurs solely in the Member State where (...) the programme-carrying signals are introduced*»



A broadcasting organization needs to acquire the relevant license only from the right holders in the Member State of the origin signal.

**NO!**



The definition of «communication to the public by satellite» is highly technology-specific, so it cannot include web transmission.

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## «DRAFT REGULATION» ON PORTABILITY CONTENTS:

- **Ban of geo-blocking tools**  preventing cross-border portability of content already authorized in the country of residence of the user
  - Not a broader concept of cross-border access!

Article 4  legal fiction:

- *«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 (...)»*

Cross-border access = structured as a consumer right:

- the provider is obliged to allow cross-border access to their contents on line;
- higher costs in the clearance of rights.

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## 2° OBSTACLE: FRAGMENTATION OF COPYRIGHT FRAMEWORK

- Need for a EUROPEAN COPYRIGHT FRAMEWORK;
- the fragmentation is particularly visible in the area of EXCEPTIONS:
  - in most cases, such EU laws are optional for Member States.

**Mandatory exceptions**  a step forward to the Digital Single Market

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## EUROPEAN COMMISSION INITIATIVES:

1. «*Proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmission of broadcasting organizations and retransmission of television and radio programmes*» **COM(2016) 594**
2. «*Proposal for a Regulation on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled*» – **COM(2016) 595**
3. «*Proposal for a Directive on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*» – **COM(2016) 596**
4. «*Proposal for a Directive on copyright in the Digital Single Market*» – **COM(2016) - 593**

**THANK YOU  
FOR  
YOUR  
ATTENTION!  
ANY QUESTIONS?**



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**Avv. Barbara Sartori**

[Barbara.Sartori@cbalex.com](mailto:Barbara.Sartori@cbalex.com)

[www.cbalex.com](http://www.cbalex.com)

**20122 MILANO**

Galleria San Carlo, 6  
Tel. +39 02 778061  
Fax +39 02 76021816  
Email: milano@cbalex.com

**00198 ROMA**

Via Guido D'Arezzo, 18  
Tel. +39 06 89262900  
Fax +39 06 89262921  
Email: roma@cbalex.com

**35137 PADOVA**

Galleria dei Borromeo, 3  
Tel. +39 049 0979500  
Fax +39 049 0979521  
Email: padova@cbalex.com

**30135 VENEZIA**

Santa Croce, 251  
Tel. +39 041 2440266  
Fax +39 041 2448469  
Email: venezia@cbalex.com

**D-80539 MÜNCHEN**

Ludwigstrasse 10  
Tel. +49 (0)89 9901 6090  
Fax +49 (0)89 9901 60999  
Email: muenchen@cbalex.com