



Copyright and geo-blocking

The main obstacles to a digital single video market?

16 November 2016



Context

Digital Single Market: one of EC top 10 priorities

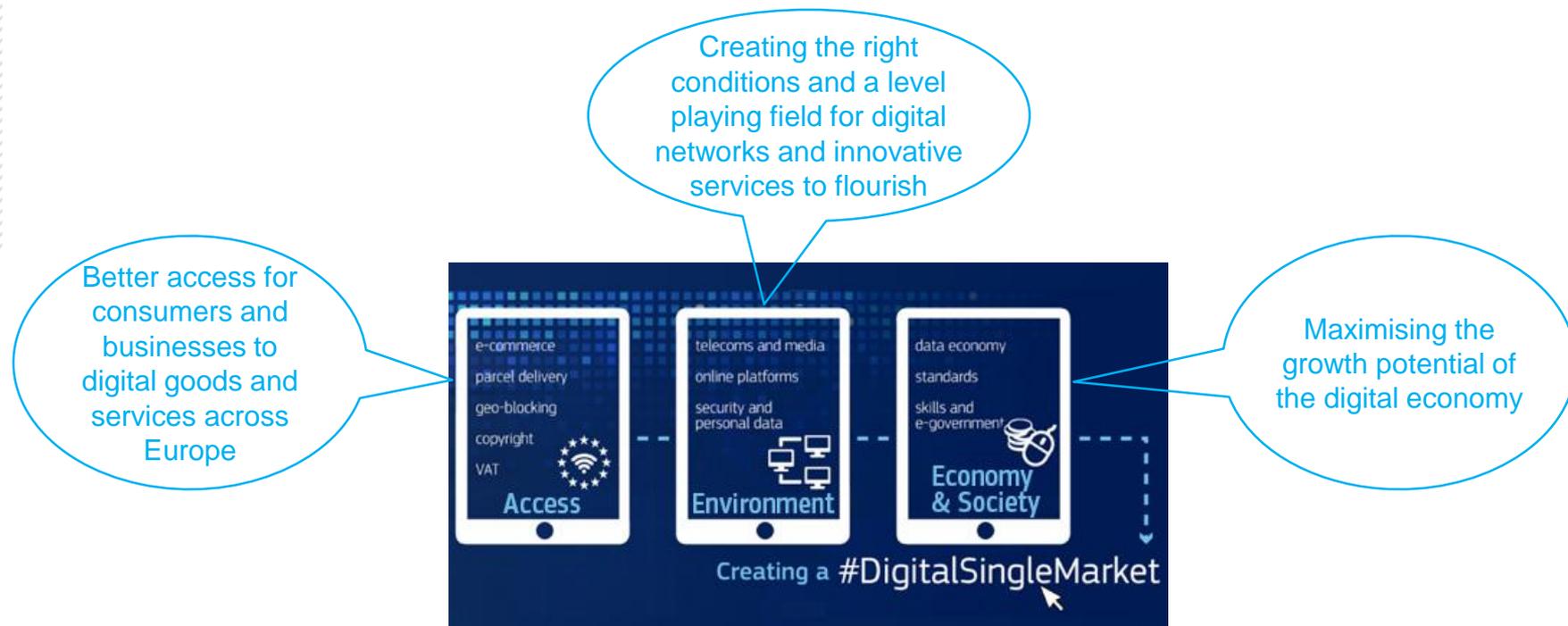
DSM: what is it?

“Bringing down barriers to unlock online opportunities”

“A **Digital Single Market** (DSM) is one in which the free movement of persons, services and capital is ensured and where the **individuals and businesses can seamlessly access and exercise online activities** under conditions of **fair competition**, and a high level of consumer and personal data protection, **irrespective of their nationality or place of residence.**”

DSM: what strategy?

The Digital Single Market Strategy is built on three pillars:

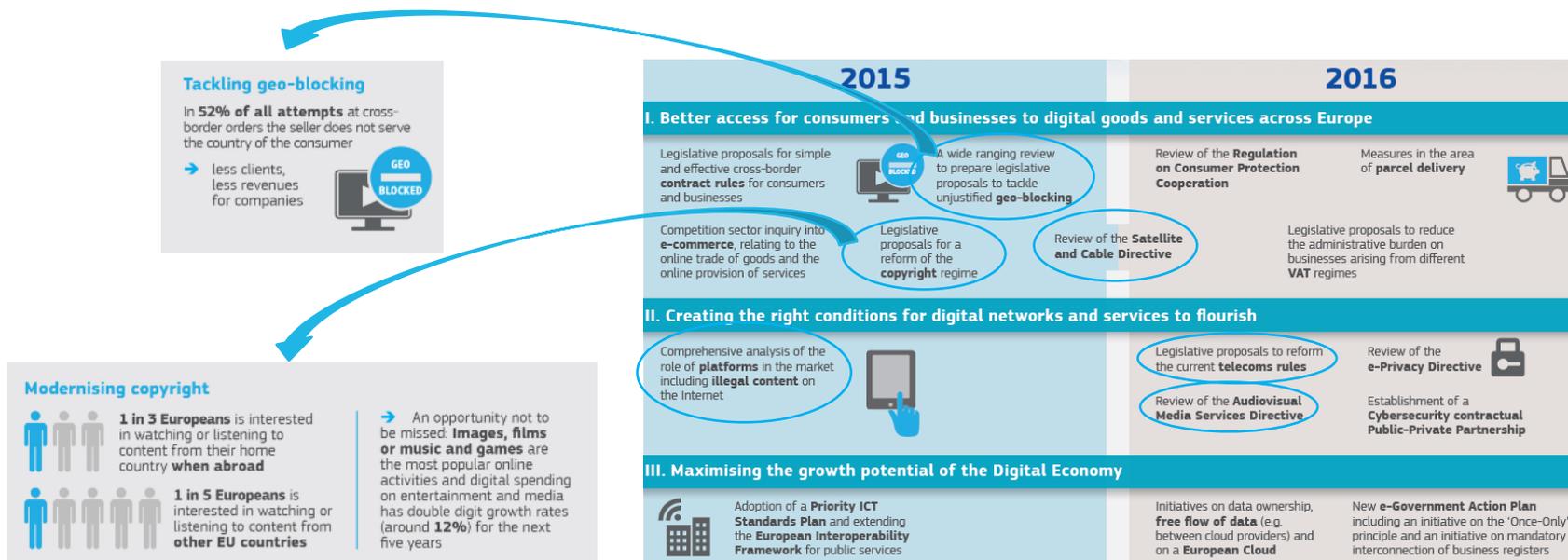


Source: European Commission website

DSM: what obstacles to overcome?

16 initiatives by the end of 2016 to complete a Digital Single Market:

- Of which 6 have direct impacts on the TV & video market



Source: European Commission website

DSM: fight against geo-blocking at the forefront of the discussions

Ending the fragmentation of the European market

- The EC proposes to address geo-blocking from 3 different perspectives

Geo-blocking

Commercial practices that prevent online customers from accessing and purchasing a product or a service from a website based in another Member State, or which automatically re-route them to a local site.

Consumer protection

Legislative proposals to prohibit unjustified geo-blocking.

Competition law

Launch of a **Competition Sector Inquiry** into the e-commerce sector in order to investigate whether geo-blocking restrictions infringe the rules of EU competition law.

Copyright reform

Amendments to the EU copyright legislation to facilitate the licensing of rights for online distribution of audiovisual content on a cross-border scale, not to suppress the principle of the territoriality of rights.



Circulation of European content and access to cross-border services within the Internal Market

State of the Art

The digital paradox: a very limited cross-border access

Territoriality of copyright and difficulties to clear the rights are pointed out

Lack of portability

Barely no access to online copyright-protected content from another Member States



Less than 4% of all video on demand content in the EU is accessible cross-border

→ **45% of companies** considering selling digital services online to individuals stated that **copyright restrictions** preventing them from selling abroad **are a problem**

Source: European Commission

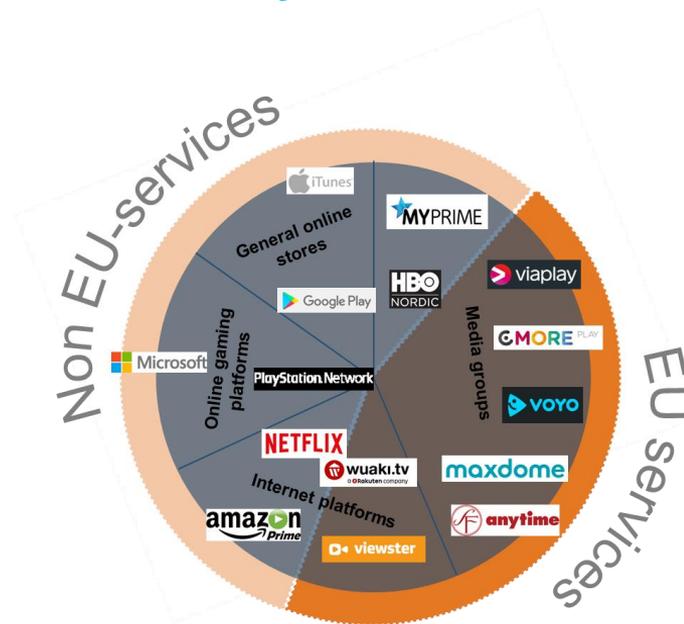
A poor offer of cross-border OTT services in Europe

Cross-border brands...

- Mainly US or regional players

... but locally adapted to the country of destination

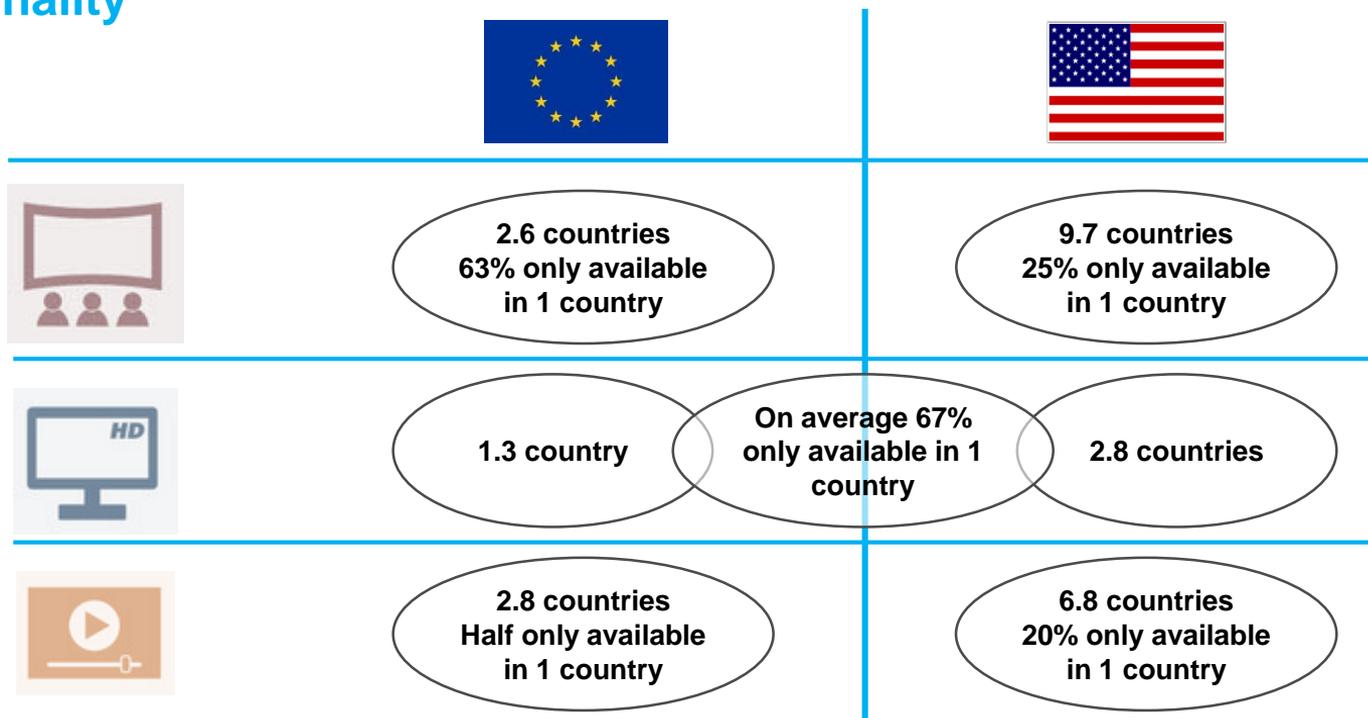
- Language, price, content



Source: IDATE

Theatres, TV channels, VOD services: a limited circulation of EU content

Average numbers of EU countries in which a film is distributed according to its nationality



Source: according to European Audiovisual Observatory reports, *Films on Television – Origin, Age and Circulation*, October 2016, *How do films circulate on VOD services and in cinemas in the European Union?*, June 2016



EC proposals

The European legislation already provides measures on geo-blocking

But split into different texts:

Directive on services in the internal market:

Forbids discrimination based on the nationality or place of residence of the recipient of the services

Directive on electronic commerce:

Establishes the country of origin principle for information society services

Directive on consumer rights:

Requires online commerce sites to clearly and legibly indicate any delivery restrictions

European competition law:

Forbids certain practices, like agreements limited passive sales, as well as anticompetitive practices from companies in a dominant position

The new EC proposal (COM(2016) 289 final) of 25th May 2016 specifically addresses geo-blocking:

- It reaffirms the EC will to fight against unjustified geo-blocking
- And recognises that territorial exclusivity in the audiovisual sector cannot be considered as unjustified geo-blocking

Main changes: portability and copyright

First step: ensuring cross-border portability of online services to subscribers temporarily present in another Member State (09/12/15)

Proposal
COM(2015) 627
final on cross-
border portability

- **Subscriber** = any consumer who, on the basis of a contract for the provision of an online content service with a provider, may access and use such service in the Member State of residence
- **Member State of residence** = the Member State where the subscriber is habitually residing
- **Temporarily present** = a presence of a subscriber in a MS other than the MS of residence
- Service which is provided to a subscriber on agreed terms either against payment of money or without payment of money provided that the subscriber's Member State of residence is verified by the provider

Second step: facilitating online distribution in the 28 Member States of audiovisual content for which rights have been cleared in one country (14/09/16)

Proposal
COM(2016) 593
final on copyright
in the DSM + other
texts

- **For broadcasters**: proposal of a legal mechanism to obtain more easily authorisations they need from right holders to transmit programmes online in other EU Member States (live and catch-up services)
- **For package distributors**: ability to get the licenses from collective management organisations representing right holders instead of having to negotiate individually with every right holder
- **To support the development of VOD services**: MS asked to set up negotiation bodies to help reach licensing deals, including for cross-border services, between audiovisual right holders and VOD platforms
- **To support the circulation of creative content**: more funding for subtitling and dubbing; a new catalogue of European audiovisual works directly usable for VOD programming; online tools to improve the digital distribution of European audiovisual works and make them easier to find and view online.



Geo-blocking and copyright:

The only limits to the development of cross-border services?

The tree that hides the forest?

Some factors pointed out in the responses to the Commission' consultation on copyright...

absence of technical standards for content distribution

regulatory differences between countries in terms of private copying, protection of consumers and minors, taxation, operating windows, etc.

expenses for adapting marketing plans to each country (local advertising campaigns)

lack of equipment and/or high speed access in certain countries

subtitling and dubbing expenses

costs and constraints related to the need to employ multilingual personnel for customer service

low demand for cross-border services



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THANK YOU!



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