

www.jusletter-it.eu

Daniel Ronzani

Geo-Blocking – Did It Disappear?

Category of articles: TechLawNews by Ronzani Schlauri Attorneys

Region: Switzerland

Field of law: LegalTech

Citation: Daniel Ronzani, Geo-Blocking – Did It Disappear?, in: Jusletter IT 31. Mai 2022

[1] Geo-blocking is a technology that restricts access to Internet content based upon a user's geographical location¹. Such location is quite easy to determine given that public internet protocol (IP) ranges are sorted by country². The new Swiss law limiting geo-blocking³ came into force on 1.1.2022. It is similar to the EU legislation on geo-blocking⁴ introduced in 2018, but less detailed.

[2] Art. 3a para. 1 of the Unfair Competition Act (UCA) stipulates that price discrimination, online geo-blocking, or consentless redirection to online portals on the basis of a customer's (i) nationality, (ii) place of residence, (iii) place of establishment, or (iv) the place of business of a customer's payment service provider or (v) the place of issue of a customer's payment instrument, without objective justification is considered unfair and therefore unlawful.⁵ But the list of exceptions is quite long, allowing, e.g., geo-blocking for governmental activities, non-commercial services, financial services, or audiovisual services (art. 3a para. 2 UCA).

[3] A test of three examples yields the following results when accessing foreign websites from *within Switzerland* (i.e. with a Swiss IP address):

- 1) The website ebookers.de opens correctly – there is *no re-direction* to ebookers.ch.
- 2) The website apple.de *re-directs* to apple.com/de, albeit with an *option* to select Switzerland as country for the online shop (apple.com/chde/). It is also possible to select other countries, e.g., Canada, as website destination, in which case apple.com/ca opens. The Canadian purchase order form works also with a Swiss IP address.
- 3) The website spotify.de *redirects* to the Swiss website spotify.com/ch-de. It stays neither on the German website nor does it offer any country options.

[4] All three examples are legal: In the first example there is direct access to the German website; in the second example, whereas there is an option and consent requirement for redirecting to the Swiss (or any other country) website, it is possible to purchase from the foreign e-shop; in the last example, redirecting is permitted without consent because the website offers audiovisual content (see list of exceptions in art. 3a para. 2 UCA).

[5] The initiative⁶ leading to the Swiss Federal Council's indirect counter-proposal⁷ for the law on geo-blocking aimed, among others, against high (online) prices in Switzerland. Whether or not the online prices for goods and services will decrease has yet to be seen. In any case, the hurdles to enforce lower prices seem high: First, price discrimination based on *objective justifications* remains legal. Second, foreign suppliers are *not* required to deliver merchandise purchased online

¹ Wikipedia: Geo-blocking, tinyurl.com/39kb77v4.

² IP2location, IP address ranges by country, tinyurl.com/4sj6tj7v.

³ Bundesgesetz über Kartelle und andere Wettbewerbsbeschränkungen, 19.3.2021, tinyurl.com/99d79z49.

⁴ Regulation (EU) 2018/302 of 28.2.2018 on Addressing Unjustified Geo-blocking and other Forms of Discrimination based on Customers' Nationality, Place of Residence or Place of Establishment within the Internal Market, tinyurl.com/3zzshhz2.

⁵ Federal Law against Unfair Competition (UCA; SR 241), tinyurl.com/2b5zxd6r.

⁶ Fair-Preis-Initiative, tinyurl.com/ycxfs4fb.

⁷ The Federal Council, Indirect Counter-proposal to the Fair Prices Initiative Enacted, 17.9.2021, tinyurl.com/3uya4km2.

to Switzerland.⁸ And lastly, notifications of geo-blocking violations to government authorities⁹ (e.g., consumer protection, price surveillance, or competition commission) remain possible, but due to lack of direct sanctions and the generally insignificant economic impact, violations will likely need to be resolved primarily through *civil* courts¹⁰ which can be costly and lengthy.

[6] So no, geo-blocking has *not disappeared* entirely. But then disappearance was not foreseen by the new law anyhow. The law allows customers to access, with exceptions, foreign websites under the same conditions as foreign customers in their home countries. Enforcing price discrimination is likely to remain a challenge for Swiss customers. In particular, the new law does not only affect end customers, but also business customers. It might support Swiss businesses in obtaining better international prices to overcome the «Swiss price uplift» when competing with foreign competitors benefiting from lower procurement prices.

⁸ Consumer Protection, Wie wird die Fair-Preis-Initiative (Geoblocking-Verbot) umgesetzt?, tinyurl.com/2p8d8spu.

⁹ Consumer Protection, tinyurl.com/upxpt9v9; Price Surveillance, tinyurl.com/rk7djw65; Competition Commission, tinyurl.com/yc4exp8e.

¹⁰ Botschaft zur Volksinitiative «Stop der Hochpreisinsel – für faire Preise (Fair-Preis-Initiative)» und zum indirekten Gegenvorschlag (Änderung des Kartellgesetzes) of 29.5.2019 (19.037), BBl 2019 4877 (p. 4937), tinyurl.com/2p8hkckx.