

Brussels, 18 April 2017

Dear Member of Parliament,

Recent developments in the discussions around the proposed Geo-blocking Regulation in the European Parliament committees are a cause for great concern for the book industry. Following the adoption of the JURI Committee's opinion on 23 March, we would like to kindly bring to your attention some very important clarifications regarding the technicalities of e-book sales by booksellers, which so far, seem to have been very often ignored or misunderstood.

For the reasons outlined below, it is essential to carry out a very careful impact assessment before making a decision on the inclusion of our industry in the scope of the Regulation – as confirmed by the study commissioned by the European Parliament on geo-blocking.<sup>1</sup>

### 1. Booksellers are bound by commercial agreements with their suppliers

Aggregators and wholesalers sign commercial agreements with their providers – publishers – and pass them on to their customers – retailers. For each individual title of the catalogue available, the contractual terms of these commercial agreements define, among other obligations:

- The territory on which each specific title is to be sold
- The price of the title (in the case of agency agreements, which is the vast majority of titles in terms of volume sales)
- The fixed price of the title for certain territories (where applicable)
- The reporting obligations of the bookseller to the aggregator or e-wholesaler
- The payment practicalities, including currency in which the title must be sold, in the case of non-Euro territories

It is very important to stress that these contracts are commercial agreements. The background to these contractual terms lies in a number of commercial considerations on the part of suppliers and other actors, among which are the need to respect fixed book prices, the need to respect differing legal contexts, e.g. regarding defamation, as well as the commercial potential of a certain title in the relevant market and language or currency area, or perhaps even an author's personal decision regarding how and where their book is marketed. **Therefore, traders are in a position to supply non-audio visual copyright-protected works or**

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<sup>1</sup> [http://bruegel.org/wp-content/uploads/2017/02/IPOL\\_IDA2017595364\\_EN.pdf](http://bruegel.org/wp-content/uploads/2017/02/IPOL_IDA2017595364_EN.pdf)

**services only as and where the commercial agreements they are bound by permit them to. These conditions vary on a title-by-title basis.**

Imposing a ban on geo-blocking for non-audio-visual copyright-protected works or services where the trader holds a copyright license for those works does not protect retailers, but rather disrupts these carefully calibrated commercial and legal considerations of various players in the book chain. It creates unnecessary legal uncertainty for all parties and should be avoided.

## **2. Booksellers must identify where customers reside at least in order to apply the right VAT rate**

The bookselling industry has welcomed with pleasure the MOSS scheme which makes VAT clearance easier and is looking forward to the new measures announced by the Commission (simplification of the procedure, establishment of a threshold, possibility of applying a reduced VAT on e-books). **However, article 20 of the Council implementation regulation 282/2011 makes it compulsory for all retailers selling services across borders to identify the place of residence of the customer. Retailers are also required to issue a correct invoice with VAT information to the customer at the time of sale.** This requires the implementation of complex and highly costly mechanisms, i.e. the acquisition of geo-localisation tools that only those of the booksellers and aggregators who have decided to invest proactively in cross-border sales can afford to acquire and maintain. Given the nascent phase of the market and the often tiny number of sales into other language areas, forcing retailers to invest in this infrastructure is likely to cause disproportionate costs and make e-book sales unsustainable for SMEs, to the sole benefit of major platforms and GAFA.

## **3. The book industry demands that the proposed regulation respect Article 16 of the Charter of Fundamental Rights of the European Union.**

Freedom to conduct a business is essential for any business and no trader should be forced to sell if it is not his/her choice due to legitimate viability considerations. This is why the book industry reiterates its request that **non-audiovisual copyright-protected content such as video games, e-books and music material must not be included within the scope of the proposed Regulation and that the review clause must be extended to 5 years.**

We call upon legislators to take into account the findings of the study commissioned by the European Parliament on geo-blocking, which state: *“The average online purchase of an e-publication often involves very little money. Consequently, the transaction costs associated with the support of cross-border sales (including verification of the location of the consumer in order to assess the proper VAT, and to conform to any fixed price rules) loom large relative to revenues. Special care may be needed in order to ensure that any rules imposed do not simply force small merchants to exit the e-publications business.”*

We attach to this letter two sets of infographics: booksellers perspectives on e-book sales and the e-book sale chain.

#### 4. Fixed book price regimes should be respected

The previously quoted study also acknowledges that *“If geo-blocking were to be prohibited in general, it would still be necessary to take into account any fixed prices that may be imposed by law. E-books fall within the category of cultural goods, and may be subject to price regulation in the country of consumption [...]”* It is indeed essential to maintain the safeguards proposed by the European Commission (recital 23 and article 4.3), so that this regulation may not be used to circumvent fixed book price regimes.

We are at your disposal for any further information and would be very keen to explain this to you in person.

Yours faithfully,

**Jean-Luc Treutenaere**

*EIBF co-President*

President of SDLC,  
Syndicat des distributeurs de  
loisirs culturels



**Fabian Paagman**

*EIBF co-President*

CEO Paagman Boekhandels



**Henrique Mota**

*FEP President*

Director of the Portuguese  
Publishing House Principia

