



Brussels, 10 October 2017

RE: Creativity Works! urges Member States to stand firm on the scope of the Geo-blocking Regulation

To His Excellency Mr Clyde Kull,

We as Creativity Works!, a leading European coalition of the cultural and creative sectors, are writing to express our strongest support for the Council's established position on the geo-blocking proposal ahead of forthcoming informal trilogues.

**We respectfully urge Member States not to deviate from the General Approach and to oppose:**

- (i) the introduction of all non-audiovisual copyright-protected content such as video games, e-books and music into the material scope of the proposed Regulation and**
- (ii) the introduction of audiovisual services into the review clause.**

Not only will these steps displace well-functioning market mechanisms and have a negative impact on consumer welfare as a result, but they will also reduce the cultural diversity of content offers in Europe and therefore threaten consumer choice. Our diverse membership includes video game developers and publishers, broadcasters, writers, screenwriters, book publishers and retailers, cinema operators, sports organisers, picture agencies, music and film/TV producers, publishers and distributors.

We would like to recall that when preparing the proposed Regulation, the European Commission explicitly excluded copyright-protected content and AV services from the public consultation and from its Impact Assessment. This was done for good reasons. The Council, in its Common Position or General Approach, has rightfully validated this approach – we encourage Member States to maintain this position moving forward.

The inclusion of non-audiovisual copyright-protected content into the scope and AV services into the review clause would go against the Better Regulation Guidelines which the European institutions pledged to uphold. It would have the following consequences:

- 1. Negative impact on consumer welfare**
- 2. Threat to Europe's cultural and creative diversity, and**
- 3. Puts into question an entire eco-system that employs more than 11 million people.**

**The oversimplification of complex market mechanisms, and the desire to hastily reach an outcome despite the lack of impact assessment, will not yield positive results.**

We urge you to take into consideration the far-reaching implications for Europe's video game, e-book and music sectors:

- 1. Threat to cultural diversity:** The inclusion of both non-audiovisual copyright-protected content into the scope and audiovisual services into the review clause risks undermining the EU's long history of measures to promote cultural diversity. A pertinent example are **e-books**, a field where territoriality is

linked to linguistic areas<sup>1</sup>. Initially, European booksellers began to sell e-books as an alternative to offers from major Internet platforms. However, consumer demand for this nascent market is low, especially outside common linguistic areas. The annual Nielsen Book survey “Books and Consumers” revealed that sales of printed books rose by 7% in 2016, while e-book sales declined by 4% in the UK, the strongest and most well-structured European e-book market. What does this mean for other European markets? If booksellers are forced to offer e-books across borders, they will be required to invest in expensive technology upgrades and cybersecurity (i.e. to process payments cross-border). With low e-book demand, many European booksellers would not be able to make the required investments. Doing so would mean hanging a permanent “closed” sign on their doors. Fewer retailers’ means less cultural offers as major Internet platforms on the e-book market are likely to focus on bestselling titles, rather than local authors that enrich our European culture. Moreover, it is essential for the prohibition of geo-blocking not to become a way to circumvent the legislation on fixed book prices currently in force in several Member States, which aims at maintaining a healthy and diverse distribution network.

2. **Weakens consumer welfare:** The Regulation will lead to a forced standardisation of prices for digital products across the EU because companies will no longer be able to target national markets. This will result in **higher costs for consumers in Member States of the EU with less purchasing power**, whose prices would have previously been adjusted to take account of their national circumstances. Consumer purchasing power varies greatly between Member States due to different tax policies and wages (with monthly minimum wages less than €300 in some EU Member States), among others, as confirmed by the latest figures published by Eurostat in February 2017<sup>2</sup>. Consumers from these Member States, unable to reasonably afford the harmonised cost of digital products, such as a new video game for €80, will either have to purchase physical versions of digital products priced at a regional rate or wait until the intangible copy has reduced in price to an affordable amount.
3. **Reduction in consumer choice:** Estimates show that the audiovisual content available to European audiences today, which relies on territorial exclusivity for its funding, production and distribution, would **be harmed and reduced by as much as 48%**<sup>3</sup>. Let’s look also at **music**. If a label is releasing a new album by a band, it will be promoted differently in each territory. For example, they might want to give fans the opportunity to stream the complete album one week before its release, to form an opinion, even before the purchase decision. This stream might be “hosted” in the UK by The Guardian, in France by Liberation and in Germany by RollingStone.de. These partners help the label and the artists achieve much more efficient promotion and marketing campaigns. And these media partnerships rely on geo-blocking to give them a certain level of exclusivity, without which they might not cooperate with the label and the artists. Ending geo-blocking would put an end to an important and meaningful marketing tool for labels and artists.

**In light of the EU’s Better Regulation Guidelines, we respectfully call on the Estonian Presidency and the Member States not to deviate from the general approach and to:**

- (i) **Reject the inclusion of non-audiovisual copyright-protected content, such as e-books, music and video-games, in the material scope of the Regulation (Article 4); and,**
- (ii) **Reject the introduction of audiovisual services into the review clause Regulation (Article 9).**

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<sup>1</sup> In principle, there are no legal restrictions to distribution, since publishers acquire rights to works for a specific language in all territories.

<sup>2</sup> [“National minimum wages in the EU - Monthly minimum wages below €500 in east and well above €1000 in northwest”](#) Eurostat, 10 February 2017.

<sup>3</sup> [“The impact of cross-border access to audiovisual content on EU consumers,”](#) Oxera, May 2016.

We thank you for considering our important concerns. Should you have any questions or comments, we remain at your disposal.

Sincerely yours,  
CW!

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**About Creativity Works!**

Like-minded organisations, federations and associations from the European cultural and creative sectors have formed a coalition: *Creativity Works!*. Its objective is to foster an open and informed dialogue with EU policy-makers about the economic and cultural contribution made by creators and the cultural and creative sectors in the digital age. Members are brought together by a sincere belief in creativity, creative content, cultural diversity and freedom of expression.

**Members include:**



Find out more about the coalition at [www.creativityworks.eu](http://www.creativityworks.eu)  
You can follow us on twitter at [@CreativityW](https://twitter.com/CreativityW)