



Study on the impacts of the extension of the scope of the Geo- blocking Regulation to audiovisual and non-audiovisual services giving access to copyright protected content

Final report



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Internal identification

Contract number: SMART 0036/2018

VIGIE number:

EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology
Directorate F - Digital Single Market
Unit F2 – E-commerce and platforms

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PDF	ISBN	doi:	Catalogue number:
	978-92-76-19506-1	10.2759/89778	KK-03-20-373-EN-N

Manuscript completed in 04/2020

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Abstract

This study provides the European Commission (Directorate-General for Communications Networks, Content and Technology, DG CONNECT) with an estimation of the impacts of the extension of the scope of the Geo-blocking Regulation to audiovisual and non-audiovisual services giving access to copyright protected content.

This study has been prepared in the context of the activities carried out by the Commission for the review of the Geo-blocking Regulation pursuant to its Article 9, which specifically includes for the first review, an assessment of the scope of the Regulation regarding, in particular, partial exclusion of non-audiovisual electronically supplied services from Article 4, as well as audiovisual services fully excluded from its scope.

This study is based on several data collection tools: desk research, literature review, stakeholder interviews, a consumer survey, a mystery shopping exercise and data analysis and provides integrated conclusions for each of the sectors under scope (audiovisual, music, e-books and software and games).

Executive summary

Geo-blocking is the practice which occurs when online sellers apply barriers and impose restrictions to consumers on the basis of their nationality or place of residence. Although justified reasons might exist for traders not to sell cross-border, unjustified geo-blocking has been a concern for European policymakers for some years now. The Geo-blocking Regulation was adopted and entered into force on 22 March, 2018, in order to ban geo-blocking in specific cases where it is unjustified. It has been applicable since 3 December, 2018.¹

However, certain categories of services are fully or partially out of scope of the Regulation. These include online services giving access to copyright-protected content in the audiovisual sector and, with specific regards to the application of the main non-discrimination provision of Article 4, certain non-audiovisual sectors (i.e. music, e-books and software and games). At the same time, the Regulation includes a review clause in Article 9. This article states that the Regulation is generally subject to an evaluation once every five years and that the first short-term review shall be carried out with a particular view to assessing the scope of the Regulation regarding the audiovisual and non-audiovisual sectors excluded from its scope. This review lies at the basis of this study and forms its main rationale.

Data collection tools

This study has used a range of data collection tools including:

- Desk research in the form of a business model analysis covering 125 operators;
- Literature review of all the main publications on the topic of geo-blocking relating to the sectors under scope of the study;
- Stakeholder interviews with industry stakeholders from each of the sectors under analysis as well as consumer organisations and civil society organisations. In total, 39 face-to-face interviews were conducted, and 41 organisations provided written input;
- A consumer survey targeting 8,000 consumers in eight representative Member States asking them about current access to digital content in the covered sectors, consumer preferences and general levels of satisfaction regarding content availability (local v international), content variety and consumer willingness to pay, and price sensitivity;
- A mystery shopping exercise to analyse the prevalence of geo-blocking at different stages of the consumer journey in each of the sectors covering 125 websites of provider websites; and

¹ European Union (2018), Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 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 and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

- Data analysis based on a wide variety of databases for each of the sectors under the scope of the study.

Methodology and main limitations

The study aims to provide EU-wide conclusions on possible effects stemming from an extension of the Regulation. It builds on comprehensive data instead of theoretical economic modelling. Hence, while our approach provides very specific real-world insights on several services, there are several limitations linked to the universal applicability of its results.

In particular, part of the primary data supporting its analysis is based on a representative sample of countries from different geographical areas in Europe and with potentially different demands for digital services: Belgium, Bulgaria, Estonia, France, Germany, Ireland, Italy and Poland. In addition, the data analysis in the study did not look into the overall universe of providers, but is based on a sample of them subject to more in-depth analysis.

Moreover, as the study focuses on services giving access to copyright-protected content, it is based on certain assumptions concerning the rights that need to be held by service providers in order to serve customers in other Member States. The study takes into account the absence of a general EU definition of criteria to identify the relevant territories for which rights need to be held, except in specific circumstances, and a lack of granular publicly available information on licensing arrangements, upon request of the contracting authority. This study considers two main scenarios as regards the relevant territories for which requisite rights need to be held in view of potential inclusion of these sectors within the scope of the Regulation in the analysis.² Finally, our key quantitative results regarding the potential costs and opportunities of an extension of the Geo-blocking Regulation refer to the expected revenue for an average transaction in each sector. This approach can shed light on the likely effects of an extension of the GBR on major pan-European providers in the selected sectors based on real-world data and actual consumer insights gained by a survey, in particular data availability sets certain limitations for our results. However, major limitations comprise our inability to correctly estimate specific cross-service elasticities for audiovisual and music streaming services as well as cross-item

² Under Scenario 1, the obligations enshrined by the Geo-blocking Regulation would be applicable insofar as the trader has the right (such as from a licence agreement or as original rightsholder) to make the content available in the Member State where the customer who is seeking to buy the service is located (except in the specific situation regulated by Directive (EU) 2019/789 under Article 3, where the principle of country of origin applies, which means that the broadcasters would need to clear the rights for making available certain programmes on their ancillary online services in their Member State of establishment only).

Under Scenario 2, in order to engage in cross-border sales, it would be sufficient for the trader to have the right to the content only in the Member State(s) where he is actively selling/targeting the specific service and not in Member States from which access is sought by an unsolicited user (passive sales), except in the specific situations regulated by Directive (EU) 2019/789 under Article 3, as per above. These two scenarios do not entail any interpretation of the concerned legal concepts by the contracting authority.

elasticities for e-books, software and games. Since we observed only individual large distributors of e-books, software and games, it was furthermore also not possible to make any judgements about if and how consumers would switch between distributors or in the case of games across different types of devices for which games are optimised (e.g. PC, console or mobile games). Consequently, our analysis captures only price-driven switching within the same environment and for identical (or at least very similar) contents under two scenarios of a possible extension of the GBR while keeping everything else equal (*ceteris paribus*). For audiovisual services, we were able to estimate content-driven switching of consumers between services. For this analysis, we assumed content-rich services (i.e. the ones offering the most fresh content) to be more attractive than content-poor ones while largely ignoring the actual quality of the content offered or the likely demand for this content.

Main findings for the audiovisual sector

An extension of the Geo-blocking Regulation could have a significant positive impact on audiovisual content variety under Scenario 2, potentially unlocking many items for consumers, especially in currently underserved Member States (at least in the short term). However, an extension of the Geo-blocking Regulation may also have complex implications for the production of films and audiovisual works by the European audiovisual sector.

We have made an estimate of the impacts on consumers and on the audiovisual sector firms that directly serve them of extending geo-blocking obligations on SVoD services in line with Scenario 1 or Scenario 2. We present the main results here, followed by the numerous limitations to which the estimates are subject.

On the basis of our survey results for eight Member States and additional data for Netflix Prime, Amazon Prime and Mubi, and using the van Westendorp Price Sensitivity Meter (PSM) methodology, we estimate that SVoD average transaction revenues would decline by around 8% (7.5% to 8.6%) for the three services under Scenarios 1 or 2 based solely on consumers switching to less expensive services cross-border, and ignoring new subscribers who seek access to broader or different content.

Based on the survey responses of consumers who do not yet subscribe to SVoD, we anticipate an increase of slightly more than 4% (3.5% to 5.4%) in the number of SVoD subscribers to the sampled services as a response to lower prices for the three services under the same assumptions. This is smaller than we would have expected based on most of the typical estimates of price elasticity and demand for audiovisual services, but it is in line with the lowest and most recent of the estimates of PED; it is thus a conservative estimate.

Under the same conservative assumptions, and not including new users who subscribe in order to gain access to more or different content, we estimate that overall SVoD revenue for the three services is likely to decline by around 4% (3.7%

to 4.7%) under Scenarios 1 and 2. This reflects the combined impact of effectively lower prices achieved cross-border, together with new subscribers who join due to the lower prices.

Under Scenario 2, new users who subscribe to gain access to broader catalogues or catalogues with different content could add up to an additional 8.8% to SVoD sector revenues. The combined effect of these switchers together with the price switchers suggests that implementing Scenario 2 should have a small positive net impact on end-user revenues to the sector.

SVoD sector revenues represented only 3.3% of total audiovisual sector revenues for services to end-users in 2017, although the share of revenues is growing. We have provided plausible projections of SVoD growth that suggest that revenue in 2023 will be nearly twice as great as it was in 2018 (then €5.4 billion). At that point, it might represent some 22% of all audiovisual revenues from end-users.

Dynamic impacts on financing and production of audiovisual content due to reduction of revenues are likely, due in part to the peculiarities of audiovisual investments and pre-sales of rights, but there is room to debate the magnitude of these effects. A previous study³ claimed that any reduction in audiovisual producer revenue would reduce investment in new audiovisual productions far more, by a factor ranging from 3 to 8. It is reasonable to expect the two to move in the same direction, but these large multipliers seem unlikely and also seem to be empirically inconsistent with historical trends over the past few years. Empirically, the actual EU-28 revenues for production and post-production have increased 1.7 times as fast as overall revenues from end-users for audiovisual works from 2014-2017, suggesting that a modest multiplier may be present, but that a multiplier of from 3 to 8 is implausibly high.

These estimates are subject to numerous limitations, including:

- *Relatively simple, static modelling*, meaning that many dynamic effects are not considered. Notably, the reaction of market players in the audiovisual sector to the change would be highly speculative, and has not been modelled.
- *Only SVoD modelled, not TVoD* (which is smaller in revenue terms, and growing more slowly). TVoD might show different properties in some cases, for example as regards demand for high-value works, either because consumers seek a lower price or because these works are not yet available in all Member States.
- *Sports not separately modelled*. Subscriptions to high value sport events may have different demand characteristics, and cross-border price differences can be large. Impacts might consequently be very different from those that we have modelled. Low viewership events, by contrast, might struggle to get air time and

³ Oxera and O&O (2016).

might possibly benefit substantially from greater cross-border visibility, but we have not modelled this.

- *Cross-service substitution effects not quantitatively modelled.* SVoD presumably substitutes for pay-TV, while TVoD presumably substitutes for the declining sales of DVDs and Blu-Ray, and both SVoD and TVoD probably substitute to at least some extent for other forms of audiovisual content distribution. No reliable data on economic cross-elasticities is available to support modelling.
- *Our complete model can provide estimations* of both price and variety effects for eight reasonably representative countries and three major SVoD providers. Since the three represent a substantial fraction of the SVoD market, and likely set effective standards for the rest, extrapolating those results to SVoD in the EU as a whole is probably not too far off the mark as regards average effects on the SVoD market. However, impact on individual SVoD providers, and in individual Member States, might be very different from the average results.
- Our survey data allow us to distinguish among the eight Member States selected, but are not sufficient to enable us to make statements about the impact on consumers and service providers on a Member State by Member State basis. It is not appropriate to do a country-by-country analysis for SVoD due to lack of granular data, but a similar assessment for cinema (Aguiar and Waldfogel, 2019) is indicative. In the event of an elimination of all cross-border barriers (a broader assumption than that which is considered under Scenarios 1 and 2), revenues for EU film producers could be expected to grow by some 11% compared to the current situation, while revenues for US film producers could be expected to decline by some 1.8% due to more effective competition from EU producers. In terms of sector revenues, small EU Member States would tend to achieve high gains because elimination of barriers increases the availability of their works to a greater degree than for larger Member States, in general, but with some exceptions. Producers in some larger or higher production countries such as France and Italy could experience loss of revenues due to increased competition. Consumers in all countries would gain, but consumers in smaller countries would tend to gain more in general.
- The possible impact of language differentiation (and of the appeal of different languages) is not modelled quantitatively in detail, as data on the overlap of different catalogues does not enable us to identify whether different language versions are available, and if so how many. The possible impact on demand of different language choices available in case of cross-border access is however generally captured in the willingness to pay analysed in the consumer survey.
- Smaller SVoD providers, especially any that operate in only a single Member State, might be negatively impacted (even if average revenue impacts are positive or are only slightly negative). The model however does not quantify this.

Main findings for the music sector

The music sector is going through a phase of fundamental change, triggered predominantly by digitalisation and by the increasing use of the internet. While at first pirated digital music surged, the increasing popularity of subscription music

streaming services has recouped some lost revenue. Next to physical distribution, subscription services have become the key distribution channel for music. Transaction-based online services play a very small role. There is a high degree of concentration in the production part of the music publishing sector with three major labels dominating the market.

Our analysis of costs and opportunities of an extension of the Geo-blocking Regulation focused on subscription music streaming services as these are the dominant business model of online distribution that will likely be most affected by an extension of the Geo-blocking Regulation. We find that price differentiation happens according to Member States, but not so much for individual services in individual Member States. Together with a high willingness to switch indicated by the responses to the consumer survey and the substantial overlap in catalogues across services at least concerning popular titles (effectively close to 100% of catalogues are accessible to consumers in all Member States where a particular service is present), extension of the regulation would likely result in consumers gravitating to cheaper versions of the same service should they become available.

Without taking into account possible mitigation measures by providers, price-driven switching in Scenario 1 (in the sample of pan-EU providers analysed) would likely result in a 25% reduction of the average revenue associated with an individual transaction (i.e. a monthly subscription). This reduction also accounts for new consumers subscribing for the first time as cheaper versions of the services become accessible. This accounts only for switching to cheaper versions of the same service. We do not assume that an extension of the Geo-blocking Regulation would have a profound effect on cross-service switching since most services have been available alongside one other in most Member States, where music streaming is available with prices differing only slightly within each Member State. Thus, consumers have made their choice for a certain service or they would switch services for reasons other than an extension of the Geo-blocking Regulation, such as interoperability of the service with their (newly) purchased hardware. Within this *purely static model* and the providers at stake (representing a large share of the market), we would expect a large decrease of prices and overall revenues coupled with a possible increase in consumption. Overall, this would trigger significant welfare transfers and a slightly positive change in deadweight loss.

These results reflect a *static* analysis, assessing the direct effects of a possible change in the Geo-blocking Regulation with a focus on the demand side, but disregarding possible competitive responses that might be taken on the supply side. Notably, we assume that prices remain as they are, and that consumers respond individually in line with their survey responses.

One might by contrast assume under a *dynamic* approach that providers such as Spotify shift to uniform pricing across the EU, such that no individual cross-border

arbitrage is possible because all prices are the same. This could lead to some degree of harmonisation of pricing across Member States verging towards the level of prices currently charged in the large markets in the EU where average incomes are relatively high. This would imply that no response on the part of individual consumers would be necessary (or possible) because the uniform prices that emerge thanks to the supply side change already reflect the change, and no individual cross-border arbitrage is possible when all prices are the same. Waldfogel (2019), which is summarised in Section 6.2, takes this approach. This analysis raises the possibility that welfare effects of price harmonisation might possibly be negative, as small price reductions in high demand countries may well be compensated by large price increases in low demand countries.

Reality might well lie somewhere between these two visions of (1) individual switching to take advantage of price differentiation, versus (2) a tendency towards price convergence such that little differentiation remains.

We do not expect different results in Scenario 2 for the sample of pan-EU service providers modelled, since effectively, already under Scenario 1, services would have to make all their content available to consumers in all Member States. This is because they usually hold sufficient rights for the majority of songs featured in their catalogues.

This result, however, might not correspond to the one of smaller national platforms that usually retain rights only for one or very few countries. Hence, while for these services the impact under Scenario 1 may be limited, it might differ significantly in Scenario 2. We cannot make a specific estimate of how these services would be affected by an extension of the Geo-blocking Regulation in this latter scenario, based on the data that is available.

Main findings for the e-books sector

Our in-depth analysis found significant gaps in product availability for individual e-book titles across certain Member States. While in major markets, typically more than 90% of e-books present in the iTunes catalogues of the UK and Italy are available (based on a random sample of 1,000 e-books), in Bulgaria, the Czech Republic and Poland only around 60% of titles are available. Croatia features virtually none of the titles randomly selected from the iTunes catalogues in the UK, Italy and Poland. An extension of the Geo-blocking Regulation might resolve this issue, with the exception of titles for which distributors/publishers hold limited licenses. Yet this analysis does not look into the accessibility of individual titles through other providers, which in some instances may address the gaps of catalogue of specific providers.

Price differences across Member States in the iTunes' e-books catalogues, however, are mostly minor at around +/- EUR 0.05. While the vast majority of price differences

are within this range, there are some notable outliers which range between EUR 0.19 and EUR 0.99. In particular, countries which do not belong to the Euro area differ the greatest from the average price.

An extension of the Geo-blocking Regulation under Scenario 2 (representing the upper bound of effects in the absence of detailed information on licensing practices, but taking into account anecdotal information about general availability of global and/or regional licenses) would likely reduce the average revenue for an e-book in iTunes by 4%, averaged across both established and new customers, considering the expectation that the average price paid by new consumers purchasing an e-book for the first time is somewhat lower than that of established customers. Scenario 1 would have a smaller effect than Scenario 2, depending on the actual licensing practices. Under Scenario 2, a welfare transfer of around 4% is expected for iTunes. The deadweight loss shrinks by about 3.8%.

However, there is a risk of an asymmetric higher negative impact, especially on smaller booksellers, which will face relatively higher price pressure (not specifically modelled in the study) but above all higher administrative costs (compared to the revenue per transaction, which stakeholders claim to be low) arising from having to serve, via passive sales, customers in Member States other than the ones that the seller already targets. Moreover, application of fixed-price legislation for e-books in different Member States may raise additional compliance costs

Main findings for the software and games sector

The specific services analysed as part of the present study paint a diverse picture in terms of content accessibility. For games, cross-border availability of individual items of content is overall high, but depends on the specific platform considered. For example, for PlayStation Network (PSN), games representing around 18% of total ratings are not available in all Member States' online stores. For PC games on Steam, the same figure is only around 3%, while for mobile software and games on the Google Play Store it is around 5%. This indicator weighted by the reviews or rather downloads appears to be a better measure than the mere share of unavailable games, as it also indicates whether the games which are not accessible cross-border actually matter to consumers.

There is little price differentiation from one Member State to another. Prices differ somewhat for PSN and Google Play Store. A substantial part of this variance is likely explained by currency exchange rates triggering the rounding up of prices. For example, for Steam we cannot identify any noticeable price differences apart from those arising in two countries with currencies other than the Euro. Notably, no groups of particularly cheap or expensive countries emerge in the analysis.

For PSN, we estimate a 7% reduction in the average revenue for the average transaction, accounting for new consumers. For Steam, there is no measurable impact on revenues, while for Google Play Store, the reduction is around 2%.

For the observed distributors of software and games, we find a welfare transfer of up to 10%, depending on the platform. We also anticipate a reduction in deadweight loss of up to 4.7%.

Résumé

Le géoblocage est la pratique qui se produit lorsque les vendeurs en ligne appliquent des barrières et imposent des restrictions aux consommateurs en fonction de leur nationalité ou de leur lieu de résidence. Bien qu'il puisse exister des raisons justifiées pour que les commerçants ne vendent pas au-delà des frontières, le blocage géographique injustifié préoccupe les décideurs européens depuis quelques années. Le règlement sur le blocage géographique a été adopté et est entré en vigueur le 22 mars 2018 afin d'interdire le blocage géographique dans des cas spécifiques où il n'est pas justifié. Il est applicable depuis le 3 décembre 2018.⁴

Cependant, certaines catégories de services sont totalement ou partiellement hors du champ d'application du règlement. Il s'agit notamment des services en ligne donnant accès à des contenus protégés par le droit d'auteur dans le secteur audiovisuel et, en ce qui concerne spécifiquement l'application de la principale disposition de non-discrimination de l'article 4, certains secteurs non audiovisuels (à savoir la musique, les livres électroniques et les logiciels et jeux). Dans le même temps, le règlement comprend une clause de révision à l'article 9. Cet article précise que le règlement fait généralement l'objet d'une évaluation tous les cinq ans et que la première révision à court terme doit être effectuée en vue notamment d'évaluer le champ d'application du règlement concernant les secteurs audiovisuel et non audiovisuel exclus de son champ d'application. Cet examen forme la base de cette étude et constitue sa principale justification.

Outils de collecte de données

Cette étude a utilisé une gamme d'outils de collecte de données, notamment:

- Recherche documentaire sous la forme d'une analyse du modèle économique couvrant 125 opérateurs;
- Analyse de toutes les principales publications sur le thème du géoblocage concernant les secteurs couverts par l'étude;
- Entretiens avec représentants de l'industrie de chacun des secteurs analysés ainsi que des organisations de consommateurs et des organisations de la société civile. Au total, 39 entretiens en face à face ont été menés et 41 organisations ont fourni des commentaires écrits;
- Une enquête auprès des consommateurs, ciblant 8 000 consommateurs dans huit États membres représentatifs, les interrogeant sur l'accès actuel au contenu numérique dans les secteurs couverts, les préférences des consommateurs et les niveaux généraux de satisfaction concernant la disponibilité du contenu (local contre international), la variété du contenu, la volonté de payer des consommateurs, et la sensibilité aux prix;

⁴ Union européenne (2018), règlement (UE) 2018/302 du Parlement européen et du Conseil du 28 février 2018 concernant la lutte contre le blocage géographique injustifié et d'autres formes de discrimination fondée sur la nationalité, le lieu de résidence ou le lieu d'établissement du client dans le marché intérieur et modifiant les règlements (CE) n ° 2006/2004 et (UE) 2017/2394 et la directive 2009/22 / CE.

- Une évaluation mystère pour analyser la prévalence du blocage géographique à différentes étapes du parcours du consommateur dans chacun des secteurs couvrant 125 sites Web des fournisseurs; et
- Analyse des données basée sur une grande variété de bases de données pour chacun des secteurs faisant l'objet de l'étude.

Méthodologie et principales limites

L'étude vise à fournir des conclusions à l'échelle de l'Union Européenne (UE) sur les effets possibles résultant d'une extension du règlement. Elle s'appuie sur des données complètes au lieu d'une modélisation économique théorique. Par conséquent, bien que notre approche fournisse des informations très spécifiques et concrètes sur plusieurs services, il existe plusieurs limites liées à l'applicabilité universelle de ses résultats.

En particulier, une partie des données primaires à l'appui de son analyse est basée sur un échantillon représentatif de pays de différentes zones géographiques en Europe et avec des demandes de services numériques potentiellement différentes: Belgique, Bulgarie, Estonie, France, Allemagne, Irlande, Italie et Pologne. De plus, l'analyse des données de l'étude n'a pas examiné l'ensemble de l'univers des prestataires, mais est basée sur un échantillon d'entre eux soumis à une analyse plus approfondie.

En outre, étant donné que l'étude se concentre sur les services donnant accès à des contenus protégés par le droit d'auteur, elle se fonde sur certaines hypothèses concernant les droits qui doivent être détenus par les prestataires de services afin de servir les clients dans d'autres États membres. Tenant compte de l'absence d'une définition générale Européenne des critères permettant d'identifier les territoires concernés pour lesquels des droits doivent être détenus, sauf dans des circonstances spécifiques, et d'un manque d'informations granulaires accessibles au public sur les accords de licence, à la demande du pouvoir adjudicateur, cette étude considère deux scénarios principaux en ce qui concerne les territoires concernés pour lesquels les droits requis doivent être détenus en vue de l'inclusion potentielle de ces secteurs dans le champ d'application du règlement dans l'analyse.⁵

⁵ Dans le scénario 1, les obligations consacrées par le règlement sur le blocage géographique seraient applicables dans la mesure où le professionnel a le droit (par exemple, d'un accord de licence ou en tant que titulaire des droits d'origine) de rendre le contenu disponible dans l'État membre où le client qui cherche à acheter le service est situé (sauf dans la situation spécifique régie par la directive (UE) 2019/789 en vertu de l'article 3, où le principe du pays d'origine s'applique, ce qui signifie que les radiodiffuseurs devraient effacer les droits de mise à disposition de certains programmes sur leurs services en ligne auxiliaires dans leur État membre d'établissement uniquement).

Dans le scénario 2, pour effectuer des ventes transfrontalières, il suffirait que le professionnel ait droit au contenu uniquement dans le ou les États membres où il vend / cible activement le service spécifique et non dans les États membres dans lesquels l'accès est demandé par un utilisateur non sollicité (ventes passives), sauf dans les situations spécifiques régies par la directive (UE) 2019/789 en vertu de l'article 3, comme indiqué ci-dessus. Ces deux scénarios n'impliquent aucune interprétation des concepts juridiques concernés par le pouvoir adjudicateur.

Enfin, nos principaux résultats quantitatifs concernant les coûts et opportunités potentiels d'une extension du règlement de blocage géographique se réfèrent aux revenus attendus pour une transaction moyenne dans chaque secteur. Cette approche peut mettre en lumière les effets probables d'une extension du GBR sur les principaux fournisseurs paneuropéens dans les secteurs sélectionnés sur la base des données concrètes et des informations réelles des consommateurs acquises par une enquête, en particulier la disponibilité des données pose certaines limites à nos résultats. Cependant, les limitations majeures comprennent notre incapacité à estimer correctement les élasticités interservices spécifiques pour les services de diffusion audiovisuelle et musicale ainsi que les élasticités transversales pour les livres électroniques, les logiciels et les jeux. Étant donné que nous n'avons observé que de grands distributeurs individuels de livres électroniques, de logiciels et de jeux, il n'a en outre pas été possible de juger si et comment les consommateurs basculeraient entre les distributeurs ou, dans le cas de jeux, sur différents types d'appareils pour lesquels des jeux sont optimisés (par exemple PC, console ou jeux mobiles). Par conséquent, notre analyse ne reflète que la commutation basée sur les prix dans le même environnement et pour des contenus identiques (ou au moins très similaires) dans deux scénarios d'une possible extension du GBR tout en gardant tout le reste égal (*ceteris paribus*). Pour les services audiovisuels, nous avons pu estimer la commutation des consommateurs basée sur le contenu entre les services. Pour cette analyse, nous avons supposé que les services riches en contenu (c'est-à-dire ceux offrant le contenu le plus récent) étaient plus attrayants que ceux pauvres en contenu, tout en ignorant largement la qualité réelle du contenu proposé ou la demande probable pour ce contenu.

Principaux résultats pour le secteur audiovisuel

Une extension du règlement sur le blocage géographique pourrait avoir un impact positif significatif sur la variété des contenus audiovisuels dans le scénario 2, ouvrant potentiellement la porte à de nombreux articles pour les consommateurs, en particulier dans les États membres actuellement mal desservis (au moins à court terme). Cependant, une extension du règlement sur le blocage géographique peut également avoir des implications complexes pour la production de films et d'œuvres audiovisuelles par le secteur audiovisuel européen.

Nous avons fait une estimation des impacts sur les consommateurs et sur les entreprises du secteur audiovisuel qui les servent directement, de l'extension des obligations de blocage géographique sur les services de vidéo à la demande (SVAD) conformément au scénario 1 ou au scénario 2. Nous présentons ici les principaux résultats, suivis des nombreuses limitations auxquelles les estimations sont soumises.

Sur la base des résultats de notre enquête pour huit États membres et des données supplémentaires pour Netflix Prime, Amazon Prime et Mubi, et en utilisant la méthodologie *van Westendorp Price Sensitivity Meter* (PSM), nous estimons que les revenus de transaction moyens SVAD diminueraient d'environ 8% (7,5% à 8,6%)

pour les trois services des Scénarios 1 ou 2 basés uniquement sur les consommateurs passant à des services transfrontaliers moins chers et ignorant les nouveaux abonnés qui cherchent à accéder à un contenu plus large ou différent.

Sur la base des réponses à l'enquête des consommateurs qui ne sont pas encore abonnés au SVAD, nous prévoyons une augmentation légèrement supérieure à 4% (3,5% à 5,4%) du nombre d'abonnés SVAD aux services échantillonnés en réponse à la baisse des prix pour les trois services selon les mêmes hypothèses. Ce chiffre est inférieur à ce à quoi nous nous attendions sur la base de la plupart des estimations typiques de l'élasticité-prix et de la demande de services audiovisuels, mais il est conforme aux estimations les plus basses et les plus récentes de l'élasticité-prix de la demande; il s'agit donc d'une estimation prudente.

Dans les mêmes hypothèses prudentes, et sans compter les nouveaux utilisateurs qui s'abonnent pour accéder à un contenu plus important ou différent, nous estimons que le chiffre d'affaires SVAD global pour les trois services devrait diminuer d'environ 4% (3,7% à 4,7%) dans les Scénarios 1 et 2. Cela reflète l'impact combiné de la baisse effective des prix atteints au-delà des frontières, ainsi que des nouveaux abonnés qui adhèrent en raison de la baisse des prix.

Dans le scénario 2, les nouveaux utilisateurs qui s'abonnent pour accéder à des catalogues plus larges ou à des catalogues avec un contenu différent pourraient ajouter jusqu'à 8,8% supplémentaires aux revenus du secteur SVAD. L'effet combiné de ces commutateurs et des commutateurs de prix suggère que la mise en œuvre du scénario 2 devrait avoir un léger impact net positif sur les revenus du secteur au niveau des utilisateurs finaux.

Les revenus du secteur SVAD ne représentaient que 3,3% du total des revenus du secteur audiovisuel pour les services aux utilisateurs finaux en 2017, bien que la part des revenus augmente. Nous avons fourni des projections plausibles de croissance des SVAD qui suggèrent que les revenus en 2023 seront presque deux fois plus élevés qu'en 2018 (alors 5,4 milliards d'euros). À ce stade, il pourrait représenter quelque 22% de tous les revenus audiovisuels au niveau des utilisateurs finaux.

Des impacts dynamiques sur le financement et la production de contenu audiovisuel dus à la réduction des revenus sont probables, en partie à cause des particularités des investissements audiovisuels et des préventes de droits, mais il y a lieu de débattre de l'ampleur de ces effets. Une étude précédente⁶ a affirmé que toute réduction des revenus des producteurs audiovisuels réduirait beaucoup plus l'investissement dans les nouvelles productions audiovisuelles, d'un facteur allant de 3 à 8. Il est raisonnable de s'attendre à ce que les deux évoluent dans la même direction, mais ces grands multiplicateurs semblent peu probables et semblent

⁶ Oxera and O&O (2016).

également empiriquement incompatibles avec les tendances historiques des dernières années. Empiriquement, les revenus réels de l'UE-28 pour la production et la postproduction ont augmenté 1,7 fois plus vite que les revenus globaux des utilisateurs finals pour les œuvres audiovisuelles de 2014-2017, ce qui suggère qu'un multiplicateur modeste peut être présent, mais qu'un multiplicateur de 3 à 8 est invraisemblablement élevé.

Ces estimations sont soumises à de nombreuses limitations, notamment:

- *Une modélisation statique relativement simple*, ce qui signifie que de nombreux effets dynamiques ne sont pas pris en compte. En particulier, la réaction des acteurs du marché dans le secteur audiovisuel au changement serait hautement spéculative et n'a pas été modélisée.
- *Seul le SVaD a été modélisé, et non le TVaD* (qui est plus petit en termes de revenus et dont la croissance est plus lente). Le TVaD pourrait présenter des caractéristiques différentes dans certains cas, par exemple en ce qui concerne la demande d'œuvres de grande valeur, soit parce que les consommateurs recherchent un prix plus bas, soit parce qu'elles ne sont pas encore disponibles dans tous les États membres.
- *Les sports ne sont pas modélisés séparément*. Les abonnements à des manifestations sportives de grande valeur peuvent présenter des caractéristiques de demande différentes, et les différences de prix transfrontalières peuvent être importantes. Les impacts peuvent donc être très différents de ceux que nous avons modélisés. En revanche, les événements à faible audience peuvent avoir du mal à obtenir une diffusion et peuvent bénéficier d'une plus grande visibilité transfrontalière, mais cela n'a pas été modélisé.
- *Les effets de substitution entre services ne sont pas modélisés quantitativement*. Le SVaD se substitue probablement à la télévision payante, tandis que le TVaD se substitue probablement à la baisse des ventes de DVD et de Blu-Ray, et le SVaD et le TVaD se substituent probablement, au moins dans une certaine mesure, à d'autres formes de distribution de contenu audiovisuel. Aucune donnée fiable sur les élasticités croisées économiques n'est disponible pour étayer la modélisation.
- *Notre modèle complet peut fournir des estimations des effets de prix et de variété pour huit pays assez représentatifs et trois grands fournisseurs de SVaD*. Étant donné que ces trois fournisseurs représentent une fraction importante du marché des SVaD et qu'ils établissent probablement des véritables références pour les autres, l'extrapolation de ces résultats aux SVaD dans l'ensemble de l'UE n'est probablement pas très éloignée de la réalité en ce qui concerne les effets moyens sur le marché des SVaD. Cependant, l'impact sur les fournisseurs de SVaD individuels, et dans les différents États membres, pourrait être très différent des résultats moyens.
- Les données de notre enquête nous permettent de faire la distinction entre les huit États membres sélectionnés, mais ne sont pas suffisantes pour nous

donner la possibilité de faire des observations à propos de l'impact sur les consommateurs et les prestataires de services, État membre par État membre. Il n'est pas opportun de faire une analyse pays par pays pour le SVaD en raison du manque de données granulaires, mais une évaluation similaire pour le cinéma (Aguiar et Waldfogel, 2019) permet d'avoir des indications. En cas d'élimination de toutes les barrières transfrontalières (hypothèse plus large que celle qui est envisagée dans les scénarios 1 et 2), les revenus des producteurs de films européens pourraient augmenter de 11 % par rapport à la situation actuelle, tandis que les revenus des producteurs de films américains pourraient diminuer de 1,8 % en raison d'une concurrence plus efficace des producteurs européens. En termes de recettes sectorielles, les petits États membres de l'UE auraient tendance à réaliser des gains élevés parce que l'élimination des obstacles augmente la disponibilité de leurs œuvres dans une plus large mesure que pour les grands États membres, en général, mais avec quelques exceptions. Les producteurs de certains pays à production plus importante ou plus élevée, tels que la France et l'Italie, pourraient subir des pertes de revenus en raison d'une concurrence accrue. Les consommateurs de tous les pays y gagneraient, mais les consommateurs des petits pays auraient tendance à y gagner davantage en général.

- L'impact éventuel de la différenciation linguistique (et de l'attrait des différentes langues) n'est pas modélisé quantitativement en détail, car les données sur le chevauchement des différents catalogues ne nous permettent pas de déterminer si différentes versions linguistiques sont disponibles, et si oui, combien. L'impact éventuel sur la demande des différents choix linguistiques disponibles en cas d'accès transfrontalier est toutefois généralement pris en compte dans le consentement à payer étudié dans l'enquête auprès des consommateurs.
- Les petits fournisseurs de SVaD, en particulier ceux qui n'opèrent que dans un seul État membre, pourraient être affectés négativement (même si l'impact sur les recettes moyennes est positif ou n'est que légèrement négatif). Le modèle ne quantifie cependant pas cela.

Principaux résultats pour le secteur de la musique

Le secteur de la musique traverse une phase de changements fondamentaux, déclenchés principalement par la numérisation et par l'utilisation croissante d'Internet. Si, dans un premier temps, la musique numérique piratée a fait un bond en avant, la popularité croissante des services de diffusion de musique en continu par abonnement a permis de récupérer une partie des revenus perdus. Après la distribution physique, les services d'abonnement sont devenus le principal canal de distribution de la musique. Les services en ligne basés sur les transactions jouent un rôle très limité. Le secteur de l'édition musicale est fortement concentré dans la partie production, avec trois grands labels qui dominent le marché.

Notre analyse des coûts et des opportunités d'une extension du règlement sur le blocage géographique s'est concentrée sur les services de diffusion de musique par

abonnement, car ce sont les modèles commerciaux dominants de la distribution en ligne qui seront probablement les plus touchés par une extension du règlement sur le blocage géographique. Nous constatons que la différenciation des prix se fait en fonction des États membres, mais pas tellement pour les services individuels dans les différents États membres. Conjuguée à une forte disposition à changer indiquée par les réponses à l'enquête auprès des consommateurs et au chevauchement substantiel des catalogues entre les services, au moins en ce qui concerne les titres populaires (près de 100 % des catalogues sont accessibles aux consommateurs dans tous les États membres où un service particulier est présent), l'extension du règlement aurait probablement comme résultat la gravitation des consommateurs vers des versions moins chères du même service si elles devenaient disponibles.

Sans tenir compte des éventuelles mesures d'atténuation prises par les fournisseurs, le changement de fournisseur fondé sur les prix dans le scénario 1 (dans l'échantillon de fournisseurs paneuropéens analysé) entraînerait probablement une réduction de 25 % des recettes moyennes associées à une transaction individuelle (c'est-à-dire un abonnement mensuel). Cette réduction tient également compte des nouveaux consommateurs qui s'abonnent pour la première fois à mesure que des versions moins chères des services deviennent accessibles. Cela ne tient compte que du passage à des versions moins chères du même service. Nous ne supposons pas qu'une extension du règlement sur le blocage géographique aurait un effet profond sur le passage d'un service à l'autre, puisque la plupart des services ont été disponibles en parallèle dans la plupart des États membres, où la musique en streaming est disponible à des prix ne différant que légèrement à l'intérieur de chaque État membre. Ainsi, les consommateurs ont fait leur choix pour un certain service, ou ils changeraient de service, pour des raisons autres qu'une extension du règlement sur le blocage géographique, comme l'interopérabilité du service avec leur matériel (nouvellement) acheté. Dans le cadre de ce *modèle purement statique* et des fournisseurs en jeu (représentant une grande part du marché), on s'attendrait à une forte baisse des prix et des recettes globales, associée à une éventuelle augmentation de la consommation. Dans l'ensemble, cela entraînerait d'importants transferts sociaux et un changement légèrement positif en termes de perte sèche.

Ces résultats reflètent une analyse *statique*, évaluant les effets directs d'une éventuelle modification du règlement sur le blocage géographique en mettant l'accent sur le côté de la demande, mais en négligeant les éventuelles réponses concurrentielles qui pourraient être prises du côté de l'offre. Nous supposons notamment que les prix restent inchangés et que les consommateurs réagissent individuellement en accord avec leurs réponses à l'enquête.

On pourrait en revanche supposer, dans le cadre d'une approche *dynamique*, que des fournisseurs tels que Spotify adoptent une tarification uniforme dans toute l'UE, de sorte qu'aucun arbitrage transfrontalier individuel n'est possible parce que tous les prix sont identiques. Cela pourrait conduire à un certain degré d'harmonisation des prix entre les États membres, se rapprochant du niveau des prix actuellement

pratiqués sur les grands marchés de l'UE où les revenus moyens sont relativement élevés. Cela impliquerait qu'aucune réponse de la part des consommateurs individuels ne serait nécessaire (ou possible) puisque les prix uniformes qui apparaissent grâce au changement du côté de l'offre reflètent déjà ce changement, et qu'aucun arbitrage transfrontalier individuel n'est possible lorsque tous les prix sont identiques. Waldfogel (2019) adopte cette approche et son analyse soulève la possibilité que les effets sociaux de l'harmonisation des prix puissent être négatifs, car de petites réductions de prix dans les pays à forte demande pourraient bien être compensées par de fortes hausses de prix dans les pays à faible demande.

La réalité pourrait bien se situer quelque part entre ces deux visions (1) d'un changement individuel pour tirer profit de la différenciation des prix, et (2) d'une tendance à la convergence des prix telle qu'il reste peu de différenciation.

Nous ne nous attendons pas à des résultats différents dans le Scénario 2 pour l'échantillon de fournisseurs de services paneuropéens modélisé, car, déjà dans le cadre du Scénario 1, les services devraient mettre tous leurs contenus à la disposition des consommateurs dans tous les États membres. En effet, ils détiennent généralement des droits suffisants pour la majorité des chansons figurant dans leurs catalogues.

Toutefois, ce résultat pourrait ne pas correspondre à celui des petites plateformes nationales qui ne conservent généralement les droits que pour un ou quelques pays. Par conséquent, si pour ces services l'impact du Scénario 1 peut être limité, il peut être significativement différent dans le Scénario 2. Nous ne pouvons pas faire d'estimation précise de la manière dont ces services seraient affectés par une extension du règlement sur le blocage géographique dans ce dernier scénario, sur la base des données disponibles.

Principaux résultats pour le secteur des livres électroniques

Notre analyse approfondie a révélé des lacunes importantes dans la disponibilité des produits pour les différents titres de livres électroniques dans certains États membres. Alors que sur les marchés principaux, plus de 90% des livres électroniques présents dans les catalogues iTunes du Royaume-Uni et de l'Italie sont généralement disponibles (sur la base d'un échantillon aléatoire de 1 000 livres électroniques), en Bulgarie, en République Tchèque et en Pologne, seuls 60% environ des titres sont disponibles. La Croatie ne propose pratiquement aucun des titres sélectionnés au hasard dans les catalogues iTunes du Royaume-Uni, de l'Italie et de la Pologne. Une extension du règlement sur le blocage géographique pourrait résoudre ce problème, à l'exception des titres pour lesquels les distributeurs/éditeurs détiennent des licences limitées. Cependant, cette analyse n'examine pas l'accessibilité des titres individuels par l'intermédiaire d'autres fournisseurs, qui dans certains cas peuvent combler les lacunes du catalogue des fournisseurs spécifiques.

Les différences de prix entre les États membres dans les catalogues de livres électroniques d'iTunes sont cependant pour la plupart mineures, aux alentours de +/- EUR 0,05. Si la grande majorité des différences de prix se situent dans cette fourchette, il existe quelques valeurs plus extrêmes notables qui se situent entre 0,19 et 0,99 euros. En particulier, les pays qui n'appartiennent pas à la zone euro sont ceux qui s'écartent le plus du prix moyen.

Une extension du règlement sur le blocage géographique dans le cadre du Scénario 2 (représentant la limite supérieure des effets en l'absence d'informations détaillées sur les pratiques en matière de licences, mais tenant compte d'informations anecdotiques sur la disponibilité générale des licences mondiales et/ou régionales) réduirait probablement de 2 % le revenu moyen d'un livre électronique dans iTunes, en moyenne pour les clients existants et les nouveaux clients, en prenant en compte l'attente selon laquelle le prix moyen payé par les nouveaux consommateurs achetant un livre électronique pour la première fois est légèrement plus élevé que celui des clients existants. Le Scénario 1 aurait un effet plus faible que le Scénario 2, en fonction des pratiques réelles en matière de licences. Selon le Scénario 2, un transfert social d'environ 4 % est attendu pour iTunes. La perte sèche diminue d'environ 3,8 %.

Toutefois, il existe un risque d'impact négatif asymétrique plus élevé, en particulier pour les petites librairies, qui seront confrontées à une pression sur les prix relativement plus importante (non spécifiquement modélisée dans l'étude) mais surtout à des coûts administratifs plus élevés (par rapport aux recettes par transaction, que les parties prenantes affirment être faibles) du fait de devoir servir, via des ventes passives, des clients dans des États membres autres que ceux que le vendeur cible déjà. De plus, l'application d'une législation sur les prix fixes pour les livres électroniques dans différents États membres peut entraîner des coûts de conformité supplémentaires.

Principaux résultats pour le secteur des logiciels et des jeux

Les services spécifiques analysés dans le cadre de la présente étude brossent un tableau diversifié en termes d'accessibilité des contenus. Pour les jeux, la disponibilité transfrontalière des différents éléments de contenu est globalement élevée, mais dépend de la plate-forme spécifique considérée. Par exemple, pour le PlayStation Network (PSN), des jeux représentant environ 18 % des notes totales ne sont pas disponibles dans les magasins en ligne de tous les États membres. Pour les jeux PC sur Steam, le même chiffre n'est que d'environ 3 %, tandis que pour les logiciels et les jeux mobiles sur le Play Store de Google, il est d'environ 5 %. Cet indicateur pondéré par les évaluations ou plutôt les téléchargements semble être une meilleure mesure que la simple part de jeux non disponibles, car il indique également si les jeux qui ne sont pas accessibles au-delà des frontières importent réellement aux consommateurs.

Il y a peu de différences de prix d'un État membre à l'autre. Les prix diffèrent quelque peu pour PSN et Google Play Store. Une part importante de cet écart s'explique probablement par les taux de change qui déclenchent l'arrondi des prix. Par exemple, pour Steam, nous ne pouvons pas identifier de différences de prix notables en dehors de celles qui surviennent dans deux pays ayant des devises autres que l'euro. En particulier, aucun groupe de pays particulièrement bon marché ou chers n'apparaît dans l'analyse.

Pour PSN, nous estimons une réduction de 7% du revenu moyen pour la transaction moyenne, en tenant compte des nouveaux consommateurs. Pour Steam, il n'y a pas d'impact mesurable sur les revenus, tandis que pour Google Play Store, la réduction est d'environ 2 %.

Pour les distributeurs de logiciels et de jeux observés, nous constatons un transfert social allant jusqu'à 10%, selon la plate-forme. Nous prévoyons également une réduction de la perte sèche allant jusqu'à 4,7 %.

Zusammenfassung

Geoblocking ist die Praktik, die eingesetzt wird, wenn Onlineverkäufer Konsumenten gegenüber Barrieren errichten und Einschränkungen auferlegen auf Grundlage der Nationalität oder dem Wohnsitz der Konsumenten. Obwohl es berechtigte Gründe für Händler gibt, nicht über Grenzen hinweg zu verkaufen, ist ungerechtfertigtes Geoblocking politischen Entscheidungsträgern seit einigen Jahren dennoch ein Anliegen. Die Geoblocking-Verordnung wurde verabschiedet und trat am 22. März 2018 in Kraft, um Geoblocking in Fällen zu untersagen, in denen dieses ungerechtfertigt ist. Die Verordnung ist in Anwendung seit dem 3. Dezember 2018.⁷ Gewisse Kategorien sind jedoch gänzlich oder teilweise außerhalb des Geltungsbereichs der Verordnung. Diese umfassen Onlinedienste, die Zugriff auf urheberrechtlich geschützte Inhalte im audiovisuellen Sektor und, besonders hinsichtlich der Anwendung der Hauptvorschrift zur Nichtdiskriminierung in Artikel 4, in gewissen nicht-audiovisuellen Sektoren (z.B. Musik, E-Books und Software und Spiele). Gleichzeitig beinhaltet die Verordnung eine Überprüfungsklausel in Artikel 9. Dieser Artikel besagt, dass die Verordnung generell alle fünf Jahre einer Bewertung unterliegt und dass die erste Bewertung mit besonderem Augenmerk auf die Evaluierung des Umfangs der Verordnung in Bezug auf die Ausschließung des audiovisuellen Sektors und des nicht-audiovisuellen Sektors von dem Geltungsbereich durchgeführt werden soll. Diese Bewertung liegt dieser Studie zugrunde und bildet den Hauptgrund für ihre Durchführung.

Datenerfassungstools

Diese Studie verwendete eine Reihe von Datenerfassungstools, einschließlich:

- Schreibtischrecherche in Form einer Businessmodell-Analyse, die 125 Betreiber umfasst;
- Literaturanalyse der Hauptveröffentlichungen zu dem Thema Geoblocking mit Bezug auf die Sektoren innerhalb des Forschungsbereichs der Studie;
- Befragung von Industrievertretern aus jedem der Sektoren, die zu analysieren sind, sowie Verbraucherorganisationen und Zivilgesellschaften. Insgesamt wurden 39 Befragungen im direkten Gespräch durchgeführt und 41 Organisationen stellten schriftlich Information zur Verfügung;
- Eine Konsumentenumfrage mit einer Zielgruppe von 8,000 Konsumenten in acht repräsentativen Mitgliedsstaaten, welche die Konsumenten über den derzeitigen Zugang zu digitalen Inhalten in den betroffenen Sektoren, Konsumentenpräferenzen und den generellen Zufriedenheitsgrad bezüglich der Verfügbarkeit von Inhalten (lokal vs. International), der Vielfalt an Inhalten und der Zahlungsbereitschaft von Konsumenten sowie der Preissensibilität befragte;

⁷ Europäische Union (2018), Verordnung (EU) 2018/302 des Europäischen Parlaments und des Rates vom 28. Februar 2018 über Maßnahmen gegen ungerechtfertigtes Geoblocking und andere Formen der Diskriminierung aufgrund der Staatsangehörigkeit, des Wohnsitzes oder des Ortes der Niederlassung des Kunden innerhalb des Binnenmarkts und zur Änderung der Verordnungen (EG) Nr. 2006/2004 und (EU) 2017/2394 sowie der Richtlinie 2009/22/EG.

- Eine Testkauf-Übung, um die Verbreitung von Geoblocking auf 125 Internetseiten von Anbieter-Webseiten in unterschiedlichen Phasen der Verbraucherreise in jedem der Sektoren zu analysieren; und
- Datenanalyse basierend auf einer Vielzahl von Datenbanken für jeden der Sektoren innerhalb des Forschungsbereichs der Studie.

Methodologie und Haupteinschränkungen

Ziel der Studie ist es EU-weite Schlussfolgerungen zu möglichen Auswirkungen einer Ausweitung der Verordnung zu liefern. Sie baut auf umfassenden Daten anstatt auf theoretischen Wirtschaftsmodellen auf. Während unser Ansatz sehr spezifische reale Einblicke in verschiedene Dienste bietet, gibt es daher einige Einschränkungen, die mit der universellen Anwendbarkeit der Ergebnisse verbunden sind.

Insbesondere basiert ein Teil der Primärdaten, die ihre Analyse stützen, auf einer repräsentativen Stichprobe von Ländern aus verschiedenen geografischen Gebieten in Europa und mit möglicherweise unterschiedlichen Anforderungen an digitale Dienste: Belgien, Bulgarien, Estland, Frankreich, Deutschland, Irland, Italien und Polen. Darüber hinaus untersuchte die Datenanalyse in der Studie nicht das gesamte Universum der Anbieter, sondern basiert auf einer Stichprobe von Anbietern, die einer eingehenderen Analyse unterzogen wurden.

Da sich die Studie auf Dienste konzentriert, die Zugang zu urheberrechtlich geschützten Inhalten gewähren, basiert sie außerdem auf bestimmten Annahmen bezüglich der Rechte, die Dienstleister besitzen müssen, um Kunden in anderen Mitgliedstaaten bedienen zu können. Diese Studie berücksichtigt das Fehlen einer allgemeinen EU-Definition von Kriterien zur Ermittlung der relevanten Gebiete, für die außer unter bestimmten Umständen Rechte existieren werden müssen, und das Mangel an detaillierter, öffentlich zugänglicher Information zu Lizenzvereinbarungen. Diese Studie betrachtet auf Anfrage des öffentlichen Auftraggebers zwei Hauptszenarien für die relevanten Gebiete, für welche erforderliche Rechte hinsichtlich einer möglichen Einbeziehung dieser Sektoren in den Geltungsbereich der Verordnung in der Analyse notwendig sind.⁸

Zuletzt beziehen sich unsere wichtigsten quantitativen Ergebnisse hinsichtlich der potenziellen Kosten und Chancen einer Erweiterung der Geoblocking-Verordnung

⁸ In Szenario 1 wären die in der Geoblocking-Verordnung verankerten Verpflichtungen insoweit anwendbar, als der Händler das Recht hat (z.B. aus einer Lizenzvereinbarung oder als ursprünglicher Rechteinhaber), den Inhalt in jenem Mitgliedstaat zur Verfügung zu stellen, in dem der Kunde, der den Kauf durchführen möchte, sich befindet (mit Ausnahme der in der Richtlinie (EU) 2019/789 gemäß Artikel 3 geregelten besonderen Situation, in der der Grundsatz des Herkunftslandes gilt, was bedeutet, dass Rundfunksender die Rechte für die Bereitstellung bestimmter Programme nur für ihre zusätzlichen Online-Dienste in ihrem Niederlassungsmitgliedstaat klären müssten).

In Szenario 2 würde es für den Händler ausreichen, um grenzüberschreitende Verkäufe zu tätigen, das Recht auf den Inhalt nur in den Mitgliedstaaten zu haben, in denen er den spezifischen Dienst aktiv verkauft/gezielt anbietet, und nicht in den Mitgliedsstaaten, von denen aus ein unaufgeforderter Benutzer Zugang sucht (passive Verkäufe), außer in den besonderen Situationen, die in der Richtlinie (EU) 2019/789 gemäß Artikel 3 wie oben geregelt sind. Diese beiden Szenarien beinhalten keine Auslegung der betreffenden Rechtsbegriffe durch den öffentlichen Auftraggeber.

(GBV) auf die erwarteten Einnahmen für eine durchschnittliche Transaktion in jedem Sektor. Dieser Ansatz kann Aufschluss über die wahrscheinlichen Auswirkungen einer Ausweitung der GBV auf zentrale, europaweite Anbieter in den ausgewählten Sektoren geben, basierend auf realen Daten und tatsächlichen Erkenntnissen der Verbraucher, die durch eine Umfrage gewonnen wurden; insbesondere die Datenverfügbarkeit setzt unseren Ergebnissen dabei gewisse Einschränkungen. Zu den Hauptbeschränkungen gehört jedoch unser Unvermögen, bestimmte dienstübergreifende Elastizitäten für audiovisuelle und Musik-Streaming-Dienste sowie artikelübergreifende Elastizitäten für E-Books, Software und Spiele korrekt abzuschätzen. Da wir nur einzelne, große Anbieter von E-Books, Software und Spielen beobachteten, war es außerdem auch nicht möglich zu beurteilen, ob und wie Verbraucher zwischen Anbietern wechseln würden oder bei Spielen zwischen verschiedenen Arten von Geräten wechseln würden, für welche die Spiele optimiert wurden (z.B. PC-, Konsolen- oder Handyspiele). Folglich erfasst unsere Analyse nur preisgesteuertes Wechseln innerhalb derselben Umgebung und zwischen identischen (oder zumindest sehr ähnlichen) Inhalten in zwei Szenarien zu einer möglichen Erweiterung der GBV, während alles andere gleich blieb (*ceteris paribus*). Bei audiovisuellen Diensten konnten wir den inhalts gesteuerten Wechsel der Verbraucher zwischen Diensten abschätzen. Für diese Analyse nahmen wir an, dass inhaltsreiche Dienste (sprich diejenigen, die den frischesten Inhalt anbieten) attraktiver als inhaltsarme sind, während die tatsächliche Qualität des angebotenen Inhalts oder die wahrscheinliche Nachfrage nach diesem Inhalt weitgehend ignoriert wurden.

Haupterkenntnisse für die audiovisuelle Branche

Eine Erweiterung der Geoblockierungsverordnung könnte sich nach Szenario 2 erheblich positiv auf die Vielfalt der audiovisuellen Inhalte auswirken und möglicherweise viele Artikel für die Verbraucher zugänglich machen, insbesondere in den derzeit unterversorgten Mitgliedstaaten (zumindest kurzfristig). Eine Verlängerung der Geoblockierungsverordnung kann jedoch auch komplexere Auswirkungen auf die Produktion von Filmen und audiovisuellen Werken durch den europäischen audiovisuellen Sektor haben.

Wir haben eine Schätzung der Auswirkungen einer Ausweitung des Geoblockierungsverpflichtung auf SVoD-Dienste gemäß Szenario 1 oder Szenario 2, auf die Verbraucher und Unternehmen des audiovisuellen Sektors vorgenommen. Wir stellen im Weiteren die wichtigsten Ergebnisse sowie die zahlreichen Einschränkungen der Schätzung vor.

Auf der Grundlage unserer Umfrageergebnisse für acht Mitgliedstaaten und zusätzlicher Daten für Netflix Prime, Amazon Prime und Mubi, schätzen wir die durchschnittlichen Transaktionseinnahmen des SVoD. Wir nutzen dabei die PSM-Methodik (van Westendorp Price Sensitivity Meter). Unsere Schätzung ergibt für die drei Dienste in den Szenarien 1 oder 2 einen Umsatzrückgang um etwa 8% (7,5% bis 8,6%). In dieser Schätzung wurde nur das grenzüberschreitende umsteigen der

Verbraucher auf kostengünstigere Dienste berücksichtigt und mögliche neue Abonnements aufgrund von breiterem Zugang oder neuen Inhalten ausgelassen.

Basierend auf den Antworten von Konsumenten, die noch kein SVoD-Abonnement haben, erwarten wir einen Anstieg der Zahl der SVoD-Abonnenten der untersuchten Dienste um etwas mehr als 4% (3,5% bis 5,4%). Dies ist als Antwort auf die niedrigeren Preise für die drei Dienste zu verstehen. Es ist geringer, als wir auf der Grundlage der meisten typischen Schätzungen der Preiselastizität und der Nachfrage nach audiovisuellen Diensten erwartet hätten, aber es entspricht der niedrigsten und jüngsten Schätzungen der PED; es handelt sich also um eine konservative Schätzung. Unter den gleichen konservativen Annahmen und ohne Berücksichtigung neuer Nutzer, die sich anmelden, um Zugang zu mehr oder anderen Inhalten zu erhalten, schätzen wir, dass die Gesamteinnahmen des SVoD für die drei Dienste unter den Szenarien 1 und 2 wahrscheinlich um etwa 4% (3,7% bis 4,7%) zurückgehen werden. Dies spiegelt die kombinierten Auswirkungen der effektiv niedrigeren Preise wider, die grenzüberschreitend erzielt werden, zusammen mit neuen Abonnenten, die aufgrund der niedrigeren Preise beitreten.

In Szenario 2 könnten neue Nutzer, die sich für den Zugang zu breiteren oder inhaltlich anderen Katalogen anmelden, bis zu 8,8% zu den Einnahmen des SVoD-Sektors beitragen. Die kombinierte Wirkung dieser Wechsler zusammen mit den Preisschaltern lässt vermuten, dass die Umsetzung von Szenario 2 eine kleine positive Nettoauswirkung auf die Endkundeneinnahmen des Sektors haben dürfte. Die Einnahmen des SVoD-Sektors machten 2017 nur 3,3% der Gesamteinnahmen des audiovisuellen Sektors für Dienste an Endnutzer aus, obwohl der Anteil der Einnahmen wächst. Wir haben plausible Projektionen für das Wachstum des SVoD vorgelegt, die darauf hindeuten, dass die Einnahmen im Jahr 2023 fast doppelt so hoch sein werden wie im Jahr 2018 (dann 5,4 Milliarden Euro). Zu diesem Zeitpunkt könnte es etwa 22% aller audiovisuellen Einnahmen durch Endnutzern ausmachen.

Dynamische Auswirkungen auf die Finanzierung und Produktion von audiovisuellen Inhalten aufgrund von Einnahmeverlusten sind wahrscheinlich. Dies ist zum Teil aufgrund der Besonderheiten der audiovisuellen Investitionen und des Vorverkaufs von Rechten. Nichtsdestotrotz es ist aber durchaus möglich, den Ausmaß dieser Auswirkungen zu diskutieren. Eine frühere Studie ist zu dem Schluss gekommen, dass jede Verringerung der Einnahmen der audiovisuellen Produzenten die Investitionen in neue audiovisuelle Produktionen um einen Faktor von 3 bis 8 weitaus stärker reduzieren würde. Man kann davon ausgehen, dass sich beide in die gleiche Richtung bewegen werden, aber diese großen Multiplikatoren scheinen unwahrscheinlich und auch empirisch nicht mit den historischen Trends der letzten Jahre vereinbar zu sein. Empirisch gesehen sind die tatsächlichen Einnahmen der EU-28 für Produktion und Postproduktion im Zeitraum 2014-2017 1,7-mal so schnell gestiegen wie die Gesamteinnahmen der Endnutzer für audiovisuelle Werke, was darauf hindeutet, dass ein bescheidener Multiplikator vorhanden sein mag, ein Multiplikator von 3 bis 8 jedoch unwahrscheinlich ist.

Diese Schätzungen unterliegen zahlreichen Einschränkungen, unter anderem:

- Relativ einfache, statische Modellierung, was bedeutet, dass viele dynamische Effekte nicht berücksichtigt werden. Insbesondere die Reaktion der Marktteilnehmer im audiovisuellen Sektor auf die Veränderung ist höchst spekulativ und wurde nicht modelliert.
- Nur der SVoD wurde modelliert, nicht der TVoD (der in Bezug auf die Einnahmen kleiner ist und langsamer wächst). TVoD könnte in einigen Fällen unterschiedliche Eigenschaften aufweisen, z.B. hinsichtlich der Nachfrage nach hochwertigen Werken, entweder weil die Verbraucher einen niedrigeren Preis wünschen oder weil sie noch nicht in allen Mitgliedstaaten verfügbar sind.
- Sportübertragungen, die nicht gesondert modelliert werden. Abonnements für hochwertige Sportveranstaltungen können unterschiedliche Nachfragemerkmale aufweisen, und die grenzüberschreitenden Preisunterschiede können groß sein. Die Auswirkungen können daher sehr unterschiedlich sein, als die, die wir modelliert haben. Veranstaltungen mit geringer Zuschauerzahl hingegen könnten Schwierigkeiten haben, Sendezeit zu erhalten, und könnten möglicherweise von einer größeren grenzüberschreitenden Sichtbarkeit erheblich profitieren, was aber nicht modelliert wurde.
- Dienstübergreifende Substitutionseffekte, die nicht quantitativ modelliert wurden. Vermutlich ersetzt der SVoD das Pay-TV, während der TVoD vermutlich den rückläufigen Absatz von DVDs und Blu-Ray ersetzt. Sowohl der SVoD als auch der TVoD dürften zumindest in gewissem Umfang andere Formen der Verbreitung audiovisueller Inhalte ersetzen. Es liegen keine zuverlässigen Daten über wirtschaftliche Kreuzelastizitäten zur Unterstützung der Modellierung vor.
- Unser vollständiges Modell kann Schätzungen sowohl der Preis- als auch der Variationseffekte für acht einigermaßen repräsentative Länder und drei große SVoD-Anbieter liefern. Da die drei einen wesentlichen Teil des SVoD-Marktes darstellen und wahrscheinlich effektive Standards für den Rest setzen, ist eine Extrapolation dieser Ergebnisse auf SVoD in der EU insgesamt wahrscheinlich nicht allzu weit von den durchschnittlichen Auswirkungen auf den SVoD-Markt entfernt. Die Auswirkungen auf einzelne SVoD-Anbieter und in einzelnen Mitgliedstaaten könnten jedoch sehr unterschiedlich von den durchschnittlichen Ergebnissen sein.
- Unsere Umfragedaten erlauben uns eine Unterscheidung zwischen den acht ausgewählten Mitgliedstaaten, reichen aber nicht aus, um Aussagen über die Auswirkungen auf Verbraucher und Dienstleister in den einzelnen Mitgliedstaaten zu treffen. Es ist ungelegen, eine länderweise Analyse für SVoD durchzuführen, da es an granularen Daten fehlt, aber eine ähnliche Bewertung für das Kino (Aguiar und Waldfogel, 2019) ist aufschlussreich. Im Falle einer Beseitigung aller grenzüberschreitenden Hemmnisse (eine umfassendere Annahme als die unter den Szenarien 1 und 2 betrachteten) könnte man davon ausgehen, dass die Einnahmen für die Filmproduzenten in der EU im Vergleich zur derzeitigen Situation um etwa 11% steigen, während die Einnahmen für die Filmproduzenten in den USA aufgrund des wirksameren

Wettbewerbs durch die EU-Produzenten um etwa 1,8% zurückgehen könnten. Was die Einnahmen des Sektors betrifft, so würden kleine EU-Mitgliedstaaten tendenziell höhere Gewinne erzielen, da die Beseitigung von Hindernissen die Verfügbarkeit ihrer Werke generell, aber mit einigen Ausnahmen, in größerem Umfang als in größeren Mitgliedstaaten erhöht. Produzenten in einigen größeren oder aktiveren Produktionsländern wie Frankreich und Italien könnten aufgrund des verstärkten Wettbewerbs Einnahmeverluste erleiden. Die Verbraucher in allen Ländern würden gewinnen, aber die Verbraucher in kleineren Ländern würden im Allgemeinen stärker profitieren.

- Die möglichen Auswirkungen der verschiedenen Sprachen (und der Attraktivität verschiedener Sprachen) werden nicht im Detail quantitativ modelliert, da es anhand von Daten über die Überschneidung verschiedener Kataloge nicht möglich ist, zu erkennen, ob und wie viele verschiedene Sprachversionen verfügbar sind. Die möglichen Auswirkungen auf die Nachfrage bei grenzüberschreitendem Zugang durch unterschiedliche Sprachoptionen werden jedoch im Allgemeinen in der in Zahlungsbereitschaftsanalyse der Verbraucherbefragung erfasst.
- Kleinere SVoD-Anbieter, insbesondere solche, die nur in einem einzigen Mitgliedstaat tätig sind, könnten negativ beeinflusst werden (selbst wenn die durchschnittlichen Auswirkungen auf die Einnahmen positiv oder nur leicht negativ sind). Das Modell erfasst dies jedoch nicht.

Haupterkenntnisse für die Musikbranche

Die Musikbranche untergeht eine Phase der grundlegenden Veränderung, die sich vornehmlich in der Digitalisierung und der zunehmenden Nutzung des Internets begründet. Während zunächst die digitale Musikpiraterie anstieg, konnte ein Zuwachs der Popularität von Abo-basierten Musikstreamingdiensten etwas Umsatz zurückgewinnen. Neben dem physischen Vertrieb haben Abo-Dienste eine Schlüsselrolle unter den Vertriebskanälen für Musik eingenommen. Transaktionsbasierte Onlinedienste spielen nur eine sehr kleine Rolle. Mit drei großen Labels, die den Markt beherrschen, liegt ein hoher Konzentrationsgrad auf der Produktseite im Musikverlagwesen vor.

Unsere Untersuchung der Kosten und Chancen einer Ausweitung der Geoblocking-Verordnung konzentrierte sich auf Abo-Musikstreamingdienste, da diese das dominante Geschäftsmodell darstellen, und daher wahrscheinlich am stärksten von einer Ausweitung der Geoblocking-Verordnung betroffen sind. Wir stellen fest, dass es Preisdifferenzierungen zwischen Mitgliedstaaten gibt, jedoch nicht so sehr zwischen einzelnen Diensten innerhalb eines Mitgliedstaates. Zusammen mit einer hohen Bereitschaft zum Wechsel, belegt durch die Konsumentenbefragung, und einer erheblichen Überschneidung der Kataloge der verschiedenen Dienste, zumindest in Bezug auf beliebte Titel (effektiv sind nahezu 100% der Kataloge für Konsumenten in allen Mitgliedsstaaten, in denen ein bestimmter Dienst operiert, verfügbar), würde eine Ausweitung der Verordnung wahrscheinlich bedeuten, dass Konsumenten auf günstigere Angebote des selben Dienstes ausweichen werden, sollten diese verfügbar werden.

Ohne mögliche mindernde Maßnahmen der Anbieter zu berücksichtigen, würde preisbedingtes Wechseln unter Szenario 1 (unter der Auswahl der untersuchten pan-europäischen Anbieter) voraussichtlich einen Rückgang des durchschnittlichen Umsatzes pro einzelner Transaktion (d.h. ein monatliches Abonnement) um 25% zur Folge haben. Dieser Rückgang beinhaltet auch den Zuwachs an Neukunden, die, aufgrund des niedrigeren Preises neu zugänglicher Versionen der Dienste erstmalig einen Dienst nutzen. Dies bezieht sich nur auf einen Wechsel zu günstigeren Versionen desselben Dienstes. Wir gehen nicht davon aus, dass eine Ausweitung der Geoblocking-Verordnung einen erheblichen Einfluss auf das Wechselverhalten zwischen Diensten haben würde, da die meisten Dienste bereits nebeneinander innerhalb der meisten Mitgliedstaaten, in denen Dienste Musikstreaming mit nur kleinen Preisunterschieden innerhalb des Mitgliedstaates anbieten, verfügbar sind. Folglich haben Verbraucher ihre Entscheidung für einen bestimmten Dienst getroffen, oder würden einen Wechsel aus anderen Gründen als der Ausweitung der Geoblocking-Verordnung, wie zum Beispiel die Interoperabilität eines Dienstes mit ihrer (neu-) gekauften Hardware, in Betracht ziehen. Innerhalb dieses *rein statischen Models*, und für die relevanten Anbieter (die einen großen Marktanteil repräsentieren), erwarten wir eine erhebliche Senkung der Preise und Umsätze, verbunden mit einem möglichen Anstieg des Konsums. Insgesamt würde dies erhebliche Wohlfahrtstransfers und eine leicht positive Veränderung des Mitnahmeeffekts auslösen.

Diese Ergebnisse reflektieren eine *statische* Analyse, die die direkten Effekte einer möglichen Veränderung der Geoblocking-Verordnung mit einem Schwerpunkt auf die Nachfrageseite betrachtet, aber mögliche Wettbewerbsreaktionen der Angebotsseite nicht mit einbezieht. Als Folge gehen wir davon aus, dass Preise bleiben wie sie sind, und dass Konsumenten sich individuell ihrer Umfrageantwort entsprechend verhalten.

Gegenüberstellend kann man unter einer *dynamischen* Betrachtungsweise vermuten, dass Anbieter, wie Spotify, einheitliche Preise innerhalb der EU einführen, sodass keine individuelle grenzüberschreitende Arbitrage möglich ist, da die Preise dieselben sind. Dies könnte zu einem gewissen Grad der Harmonisierung der Preise zwischen Mitgliedsstaaten führen, die sich in Richtung der Preisniveaus, die derzeit in den großen Märkten der EU vorliegen, in denen durchschnittliche Einkommen relativ hoch sind. Daraus würde folgen, dass keine Reaktion seitens der individuellen Konsumenten nötig (oder sogar möglich) wäre, da die einheitlichen Preise, die aus der Angebotsreaktion hervorgehen, bereits die Veränderung reflektieren, und keine individuelle grenzüberschreitende Arbitrage möglich ist, wenn die Preise gleich sind. Waldfogel (2019) verwendet diese Herangehensweise, und legt die Möglichkeit eines negativen Wohlfahrtseffektes durch die Preisharmonisierung dar, da niedrige Preissenkungen in Ländern mit hoher Nachfrage durch hohe Preissteigerungen in Ländern mit geringer Nachfrage kompensiert werden.

Die Realität wird wohl zwischen diesen beiden Möglichkeiten, nämlich (1) individuelles Wechselverhalten, um Preisunterschiede zu nutzen, und (2) eine Tendenz zur Preiskonvergenz, die nur kleine Preisunterschiede zulässt, liegen.

Wir erwarten keine unterschiedlichen Ergebnisse für Szenario 2 für die Auswahl modellierter pan-europäischer Anbieter, denn effektiv würden Dienste bereits unter Szenario 1 ihre gesamten Inhalte Konsumenten in allen Mitgliedsstaaten bereitstellen müssen. Dies ist darin begründet, dass sie üblicherweise ausreichende Rechte für die Mehrheit der Titel in ihren Katalogen halten.

Dieses Ergebnis trifft jedoch nicht unbedingt für kleinere nationale Plattformen zu, die üblicherweise nur die Rechte für nur ein oder sehr wenige Länder halten. Darum können sich die Auswirkungen unter Szenario 2 durchaus stark unterscheiden, während sie unter Szenario 1 beschränkt sind. Wir können basierend auf den vorliegenden Daten keine exakte Erwartung formulieren, wie diese Dienste von einer Ausweitung der Geoblocking-Verordnung betroffen wären.

Haupterkenntnisse für die E-Books Branche

Unsere ausführliche Untersuchung stellte erhebliche Angebotslücken bei der Verfügbarkeit individueller E-Book-Titel zwischen bestimmten Mitgliedsstaaten fest. Während in Hauptabsatzmärkten typischerweise mehr als 90% der E-Books, die in den iTunes-Katalogen für das Vereinigte Königreich und Italien enthalten sind verfügbar sind (basierend auf einer zufälligen Auswahl von 100 E-Books), sind in Bulgarien, Tschechien und Polen nur etwa 60% der Titel verfügbar. Kroatien beinhaltet nahezu keine der zufällig ausgewählten Titel der iTunes-Kataloge für das Vereinigte Königreich, Italien und Polen. Eine Erweiterung der Geoblocking-Verordnung könnte dieses Problem lösen, ausgenommen für Titel, für die die Vertriebshändler/Verleger eingeschränkte Lizenzen halten. Diese Untersuchung betrachtet allerdings nicht die Verfügbarkeit bestimmter Titel durch andere Anbieter, welches in manchen Fällen die Lücken in den Katalogen bestimmter Anbieter zu schließen vermag.

Preisunterschiede zwischen Mitgliedsstaaten sind innerhalb der iTunes-E-Book-Kataloge jedoch mit ungefähr +/- EUR 0,05 sehr gering. Während sich die meisten Preisunterschiede innerhalb dieser Spanne bewegen, gibt es einige auffällige Ausreißer, die zwischen EUR 0,19 und EUR 0,99 liegen. Im besonderen Länder, die nicht zum Euroraum gehören, unterscheiden sich am meisten vom Durchschnittspreis.

Eine Ausweitung der Geoblocking-Verordnung unter Szenario 2 (welches die obere Grenze der Effekte in Abwesenheit detaillierter Informationen zu Lizenzierungspraktiken repräsentiert, aber anekdotische Informationen zur allgemeinen Verfügbarkeit globaler und/oder regionaler Lizenzen beinhaltet) würde wahrscheinlich eine Reduzierung des durchschnittlichen Umsatzes eines E-Books auf iTunes um 4% bewirken. Der Durchschnitt umfasst sowohl bestehende als auch neue

Kunden, unter Berücksichtigung der Erwartung, dass der Durchschnittspreis den Neukunden zahlen etwas höher ist als der Durchschnittspreis für bestehende Kunden. Szenario 1 würde einen kleineren Effekt als Szenario 2 haben, abhängig von der tatsächlichen Lizenzierungspraxis. Unter Szenario 2 ist ein Wohlfahrtstransfer von ungefähr 4% für iTunes zu erwarten, der Mitnahmeeffekt würde um circa 3.8% sinken.

Jedoch besteht das Risiko einer asymmetrisch höheren Auswirkung, besonders für kleine Buchhändler, die einem vergleichsweise höheren Preisdruck (welcher in dieser Studie nicht gezielt modelliert wurde), aber vor allem höheren Verwaltungskosten (verglichen mit dem Umsatz pro Transaktion, welcher laut den Akteuren gering ist), die durch die Notwendigkeit, durch passiven Verkauf, Kunden aus anderen Mitgliedsstaaten als die, die der Verkäufer bereits abdeckt, entstehen, ausgesetzt sind. Darüber hinaus kann die Anwendung von Festpreisverordnungen für E-Books in unterschiedlichen Mitgliedsstaaten zusätzliche Einhaltungskosten verursachen.

Haupterkenntnisse für die Software- und Videospielbranche

Bestimmten Dienste, die für diese Studie untersucht wurden, zeichnen ein diverses Bild in Bezug auf die Verfügbarkeit von Inhalten. Für Videospiele ist die grenzüberschreitende Verfügbarkeit einzelner Inhalte im allgemeinen hoch, aber abhängig von der spezifischen Plattform. Zum Beispiel sind bei PlayStation Network (PSN) Videospiele, die ungefähr 18% der gesamten Bewertungen ausmachen, nicht in allen Mitgliedsstaaten in Onlinegeschäften verfügbar. Bei PC Videospiele auf Steam beläuft sich der gleiche Wert auf nur ungefähr 3%, und bei Videospiele auf dem Google Play Store sind es etwa 5%. Dieser Indikator, gewichtet nach Rezensionen oder besser Downloads, scheint ein besseres Maß als der reine Anteil an nicht verfügbaren Titeln zu sein, da er auch darüber Auskunft gibt, ob die Videospiele, die nicht grenzüberschreitend verfügbar sind, für die Konsumenten wichtig sind.

Es gibt nur geringe Preisunterschiede zwischen Mitgliedsstaaten. Preise unterscheiden sich etwas für PSN und Google Play Store. Ein erheblicher Anteil dieser Variation ist wahrscheinlich durch Rundungen, die durch Währungsumtauschraten ausgelöst werden, zu erklären. Zum Beispiel konnten wir bei Steam keine nennenswerte Preisunterschiede feststellen, mit Ausnahme zwischen zwei Ländern, die nicht dem Euroraum angehören. Im Besonderen konnten keine besonders günstigen oder teuren Länder in der Untersuchung herausgestellt werden.

Für PSN schätzen wir eine 7% Reduzierung des durchschnittlichen Umsatzes pro durchschnittlicher Transaktion unter Berücksichtigung von Neukunden. Bei Steam konnte keine messbare Auswirkung auf Umsätze festgestellt werden, während sich die Reduzierung bei Google Play Store auf 2% beläuft.

Wir stellen für die untersuchten Vertriebs Händler von Software und Videospiele einen Wohlfahrtstransfer von bis zu 10% fest, abhängig von der Plattform. Wir erwarten außerdem eine Reduzierung des Mitnahmeeffekts von bis zu 4,7%.

1 Introduction

This document forms the Final Report for the 'Study on the impacts of the extension of the scope of the Geo-blocking Regulation to audiovisual and non-audiovisual services giving access to copyright protected content'. This study was commissioned by the Directorate-General for Communications Networks, Content and Technology (DG CONNECT) of the European Commission and was carried out by VVA Economics & Policy, WIK Consult, Ipsos and Bruegel.

This document is structured as follows:

- Section 2: Background
- Section 3: Description of the legal and regulatory framework
- Section 4: Methodology
- Section 5: Impacts on the audiovisual sector
- Section 6: Impacts on non-audiovisual sectors (music)
- Section 7: Impacts on non-audiovisual sectors (e-books)
- Section 8: Impacts on non-audiovisual sectors (software and games)
- Annex I: List of companies analysed during the business model analysis
- Annex II: List of organisations that provided input through the stakeholder consultation
- Annex III: Overview of covered topics and indicators for the consumer survey
- Annex IV: Full results of the Consumer survey
- Annex V: List of covered websites during the mystery shopping exercise
- Annex VI: Overview of covered topics and indicators for the mystery shopping exercise
- Annex VII: List of sources used for this study

2 Background

This section presents the background of this study, firstly setting out the rationale of the study, and then its objectives, scope, a review of key literature as well as its main limitations.

2.1 Rationale of the study

Geo-blocking occurs when online traders apply barriers and impose discriminatory restrictions to consumers only on the basis of their nationality or place of residence. Some examples include:

- Blocking access to websites cross-border;
- Denying the possibility to complete an order, to purchase goods or to download content when accessing a website from abroad; and
- Providing different prices and conditions depending on nationality, country of residence or location of the customer.⁹

Even though justified reasons might exist for traders not to sell cross-border, (unjustified) geo-blocking has been a concern for European policymakers for some years now for two main reasons:

- Some European consumers are frustrated by the level of geo-blocking, as is clear in the various surveys; and
- Geo-blocking can be viewed as a barrier to the Single Market.

To ban geo-blocking in specific cases where it is unjustified, the Geo-blocking Regulation was adopted and entered into force on 22 March 2018. It has been applicable since 3 December 2018.¹⁰

However, certain categories of services are out of the scope of the Regulation, such as the same categories of services that are excluded by Article 2(2) of the Services Directive. Among these categories are 'audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting'. The exclusion of audiovisual services from the scope of the Geo-blocking Regulation is thus explicit. In addition, Article 4(1b) of the Geo-blocking Regulation excludes from the regime on non-discrimination in access to services certain non-audiovisual services, namely: 'electronically supplied services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form.' In practice, this means that

⁹ <https://ec.europa.eu/digital-single-market/en/policies/geoblocking>

¹⁰ European Union (2018), Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 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 and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

limitations in the provision of these services are not prohibited as such by the Geo-blocking Regulation.¹¹ Consequently, consumers might encounter problems in accessing these services cross-border.

At the same time, the Regulation includes a review clause in Article 9. This article states that the Regulation is subject to regular evaluation, and the first short-term review shall be carried out, in particular, with a view to assessing the scope of the Regulation in general as well as whether it should apply to electronically supplied services giving access to copyright-protected content currently excluded from Article 4, provided that the trader has the requisite rights for the relevant territories. In a statement attached to the Regulation, the Commission took note of the indications of the co-legislators and committed to carry out such an exercise accordingly. This review is central to this study and thus forms its main rationale.

2.2 Objectives of the study

The general objective of this study is to provide an evidence base for the European Commission's assessment to be carried out on the Geo-blocking Regulation as provided for by the Regulation's review clause. In particular, it feeds into the Commission's assessment of the Geo-blocking Regulation regarding the potential inclusion of services giving access to copyright-protected content.

The specific objectives of this study are the following:

1. To identify and gather both quantitative and qualitative data for the audiovisual and non-audiovisual services giving access to copyright-protected content using primary and secondary data sources, covering both the supply side and the demand side; and
2. To undertake an analysis of the costs and opportunities of a potential extension of the Geo-blocking Regulation to the identified sectors, considering the following aspects:
 - Impacts on the sectors concerned;
 - Impacts on all relevant actors depending on the sector, including rightholders and distributors; and
 - Impacts on consumers.

¹¹ Article 20(2) of the Services Directive remains applicable in these cases. This would require a case-by-case assessment on the existence of objective justifications for the lack of access, such as those spelled out in Recital 95 of that Directive.

2.3 Scope

This study considers the following sectors in particular:

- Audiovisual electronically supplied services, as defined in Directive 2010/13/EU,¹² the products of which include films, series and other audiovisual content, as well as the broadcasting of sports events; and
- Non-audiovisual electronically supplied services giving access to copyright-protected content: e-books, music, software and games.

The study aims to provide EU-wide conclusions on possible trends or effects stemming from an extension. However, part of the primary data supporting its analysis is based on a representative sample of countries from different geographical areas in Europe and with potentially different demands for digital services, as well as a sample of providers. Several indicators have been considered as selection criteria, such as GDP, GDP per capita and performance in the 2017 digital scoreboard which measures the performance of Member States in a wide range of areas, from connectivity and digital skills to the digitisation of businesses and public services. In particular, the following indicators have been considered:

- Connectivity (i.e. broadband market developments)
- Human Capital (i.e. digital inclusion and skills)
- Use of internet (i.e. use of internet services by citizens)

Based on these criteria, the following countries have been selected: Belgium, Bulgaria, Estonia, France, Germany, Ireland, Italy and Poland. These countries also offer a balance of geographic location (North, South, East, West) and size of country (small, medium and large Member States).

Regarding the temporal scope, this study mainly aims to present a snapshot of the current situation and to evaluate future developments that could occur were the scope of the Regulation extended. For the sections where past developments are discussed, a time period of the past five years (2013-2018) was employed.

2.4 Review of key literature

The research literature related to geo-blocking is scarce and, in many cases, lacks direct empirical evidence due an absence of data. In this section, we compile the most relevant reference studies in the area. In the first part, we examine points for which there is general agreement in the literature, and we review general reports on

¹² According to Directive 2010/13/EU, an audiovisual service is defined as: 'a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

the status quo and the perception of consumers. Then, we describe the open debates on revenue impacts and consumer welfare connected to a potential lifting of the Geo-blocking Regulation for copyright-protected content. We finally summarise the information that can and has been gathered along with the gaps that still remain and briefly describe the contribution the present study aims to make in this regard.

While geo-blocking is still the subject of intense debate, there are some aspects on which there tends to be general agreement. It is safe to say that geo-blocking reduces the extent of product variety available to consumers at a given point in time. This has been shown in several research studies. Batikas et al. (2015), Alaveras et al. (2015) and Alaveras et al. (2018) calculate limitations that exist under the current legal framework for audiovisual services, Alaveras et al. (2017) shows the same for music, e-books and games while Gomez-Herrera and Martens (2015) focuses on music only. This issue does not go unnoticed by European citizens, who are widely frustrated by technical measures preventing them from accessing culture, service and entertainment on an EU-wide basis (Mazziotti, 2015).

It is also agreed that removing the ability to discriminate on a territorial basis reduces the options for price discrimination (Alaveras et al., 2017, Waldfogel, 2019). However, the consequences of such a development are still unclear. Mazziotti (2015) argues that geo-blocking is still necessary to sustain content production. Waldfogel (2019) builds a similar argument saying that price discrimination in the music streaming sector may increase not only overall revenue, but also overall consumer surplus in the EU. Unsurprisingly, research conducted for the industry comes to similar conclusions. A report conducted for the IFPI stresses that price homogenisation hurts the music industry and restricted accessibility is necessary to protect small distributors (NERA, 2019). A report conducted for members of the audiovisual industry by Oxera & O&O (2016) predicts significant losses, stemming mostly from a loss of content variety, for both consumers and producers alike, especially in lower-income Member States. Both studies will be referenced thoroughly in later chapters of this study when analysing their arguments. Finally, a study conducted by CRA (2014) on behalf of the European Commission emphasises the possible ambiguous effects of prohibiting price-discrimination from an overall welfare perspective and also introduces higher transaction costs as a potential drawback of removing the ability to geo-block.

Nonetheless, the currently prevailing opinion in the literature appears to be much less clear than it seems. Trimble (2019) argues that restricting the ability to geo-block in general promotes the single market agenda and contributes to cohesiveness which outweighs potential negative effects. There is also research that suggests a positive impact of a ban of geo-blocking on both industry and consumer sides. In a study from 2014, Aguiar and Waldfogel find that consumers and producers in the music sector benefit from further trade opening. All in all, it seems that the impact on consumer welfare and producer revenue can be considered ambiguous at best, not least because of a lack of quantitative data, which is mostly held by private

operators. In particular, the main missing evidence is data on consumer demand, which is a crucial part to estimate potential customer switching after a legal framework change effectively preventing geo-blocking. Existing studies are trying to circumvent that by either using rough proxies like consumer demand of film titles (Aguiar & Waldfogel, 2019) or by conducting consumer surveys (Gomez-Herrera et al., 2014). As a consequence, potential mitigation strategies and impacts on production or aspects of the distribution chain are very hard to predict for independent researchers.

The present study tries to identify aspects that are prone to change and close some of the gaps in the literature identified above. In terms of primary data collection, this is done on the basis of a comprehensive consumer survey in conjunction with a mystery shopping exercise. This consumer data is further complemented by qualitative findings from stakeholder interviews and a broad collection of quantitative supply side data across all sectors under the scope of this study.

2.5 Main limitations of this study

As the review of key literature in the preceding section shows, any investigation of the effect of changes to the current legal framework influencing the distribution of copyright-protected content is prone to limitations. First of all, all sectors covered in the present study feature very complex and varied distribution chains. The success of any actor in each of the sectors will furthermore depend on various factors other than solely the legal framework governing the potential to differentiate markets geographically. As a result, it is virtually impossible to devise a model that can account for all potential interactions. Consequently, all studies reviewed in the preceding section have some (and usually quite severe) limitations. Our study is no exception to this; unlike several of the studies mentioned above, our approach was to build on comprehensive data instead of theoretical economic modelling. While our approach provides very specific real-world insights on several services, there are several limitations linked to the universal applicability of its results. As we outline in more detail in Section 4, we mostly draw on popular services for our analysis in order to cover a sufficiently large part of the existing markets. We also note that data for all Member States was unavailable either due to constraints of secondary data sources, non-existence of the service or distribution outlet in some Member States or the fact that our survey covered only eight Member States and could not be extrapolated without making speculative assumptions about the other Member States. Consequently, some of the estimates should be interpreted with care as they may only apply to the specific Member States considered. The effects in other Member States may differ from the estimates reported here.

Our key results regarding the potential costs and opportunities of an extension of the Geo-blocking Regulation refer to the expected revenue for an average transaction in each sector. For audiovisual and music, this refers to the expected new average revenue for an average subscription. For software/games and e-books, our results

refer to the expected new average revenue per item.¹³ While our approach can shed light on the likely effects of an extension of the GBR on major pan-European providers in the selected sectors based on real-world data and actual consumer insights gained in a survey, in particular data availability, it sets certain limitations for our results. Major limitations of our analysis comprise our inability to correctly estimate specific cross-service elasticities for audiovisual and music streaming services as well as cross-item elasticities for e-books, software and games.¹⁴ Since we observed only individual large distributors of e-books, software and games, it was furthermore also not possible to make any judgements about if and how consumers may switch between distributors or in the case of games across different types of devices for which games are optimised, e.g. PC, console or mobile games. Consequently, our analysis captures only price-driven switching within the same environment and for identical (or at least very similar) contents under two scenarios of a possible extension of the GBR while keeping everything else equal (*ceteris paribus*). Keeping everything equal also means that our quantitative estimates do not consider the potential dynamic reactions of the stakeholders involved. When it was possible, we have made substantiated qualitative arguments about the potential dynamic reactions of stakeholders. However, we note that these potential reactions are only possible reactions, but do not necessarily reflect the actual reaction of stakeholder to changes in the GBR and that any such speculative reactions should thus not be modelled.

For audiovisual services, we were able to estimate content-driven switching of consumers between services. For this analysis, we assumed content-rich services, i.e. the ones offering the most new content¹⁵ to be more attractive than content-poor ones, while largely ignoring the actual quality of the content offered or the likely demand for specific content. Also, we have not separately modelled sports as sports content shows different demand characteristics from other content (see survey results), and sometimes more geographically targeted. Impacts might consequently be very different from those that we have modelled for SVoD more generally. On the other hand, events that attract low viewing figures might struggle to get airtime and might possibly benefit substantially from greater cross-border visibility, but we have not modelled this.

¹³ It should be noted that we do not assume that prices of subscriptions or individual items change. Instead, we apply the revenue losses or increases triggered by consumers purchasing their copyright protected content from other countries or other sources to the existing average subscription/item revenue in each analysed Member State. This results in the expected average revenue for the existing (and potentially new) consumers in each analysed Member State.

¹⁴ We note that this also implies that our estimates disregard any potential cross-elasticities with distribution formats and revenue sources of the observed sectors that can be broadly classified as traditional and largely offline and consequently are unlikely to be directly affected by a change in the GBR. Therefore, potential indirect effects such as any change to the presumed substitution of SVoD and TVoD for physical distribution formats such as Blu-ray and DVD discs is not reflected in our estimates. We also have not made estimates about the potential indirect effects on adjacent revenues such as consumer electronics or production equipment which arguably may be affected indirectly by a change to the GBR.

¹⁵ Services were considered more attractive the higher the number of items of content that were not available to a consumer in a specific Member State prior to an extension of the Geo-blocking Regulation.

Finally, the study cannot speculate about the future marketing (or not), and the corresponding conditions, of UK or similar English-versions of content services in the EU or in some Member States following the UK's departure.¹⁶ While this may have an impact on some supply-side assumptions of the study, it may depend on several different factors (such as the future relationship with the EU, or the existence of sufficient demand for English-versioned services in the EU), which cannot be factored in at this stage. In addition, several external sources of data used in the report do take into account the UK within the EU data sets, and data gathering exercises were carried out when UK was a Member State. Hence, the UK is generally factored into the analysis.

To provide a more detailed overview, the main limitations of our approach are summarised in Table 1.

¹⁶ The GBR applies to all services offered in the Union, irrespective of the place of establishment of the provider, see Recital 17 GBR

Table 1: Overview of limitations of the models used in the study

		Audiovisual		Music	Software and games	E-books
		Price	Content			
General	Business model	SVoD ¹⁷	SVoD	Subscription-based services	Transaction-based services	Transaction-based services
	Primary data	Survey	Survey	Survey	Survey	Survey
	Secondary data	JRC data, Global Web Index	JRC data, Global Web Index	Desk research, Global Web Index	42matters, desk research	Web scraping, desk research
Calculations	New cheapest price	Cheapest available service in another Member State		Cheapest available service in another Member State	Cheapest available item in another Member State	Cheapest available item in another Member State
	Potential switchers	Minimum decrease in subscription price to trigger a switch. Source: survey.	Own calculations based on the survey.	Minimum decrease in subscription price to trigger a switch. Source: survey.	Minimum decrease in item price to trigger a switch. Source: survey.	Minimum decrease in item price to trigger a switch. Source: survey.
	Possible alternatives New adopters	Same service, cross-border Van Westendorp price sensitivity for sector. Source: survey.	Same service, cross-border Own calculations based on the survey.	Same service, cross-border Van Westendorp price sensitivity for sector. Source: survey.	Same service, cross-border Van Westendorp price sensitivity for sector. Source: survey.	Same service, cross-border Van Westendorp price sensitivity for sector. Source: survey.
Limitations	Country & service traffic (users, weights)	Global Web Index	Global Web Index	Global Web Index	Desk research	Single service
		Disregards cross-service substitution: switching between services is not comparable to switching between countries in terms of change in content.	Simple utility function (i.e. only considering number of new items, no importance measure for individual items, no actual demand measure).	Disregards cross-service substitution: we observed that services usually cost the same inside a country. There is no effect on overall revenue when consumers are switching. Also, we found that in most countries all popular music streaming services are	Disregards cross-service substitution: the analysis spans three services, one for each platform (PC, console and mobile). Cross-service substitution is likely very limited due to an	Disregards cross-service substitution: only covers iTunes (existence of different and incompatible file formats used by services other than iTunes).

¹⁷ The focus on SVoD for the audiovisual sector implies that the estimates reflect only the likely impacts on selected SVoD services. Therefore, they do not reflect potential effects on TVoD (which is smaller in revenue terms, and growing more slowly than SVoD). TVoD might show different properties in some cases, for example as regards demand for high-value works, either because consumers seek a lower price or because they are not yet available in all Member States. Notably, potential effects on other distribution formats of audiovisual content are equally not reflected.

		Audiovisual		Music	Software and games	E-books
		Price	Content			
				available (and have been available for quite a while) side-by-side, so any cross-service switching has likely either taken place or would likely take place irrespective of an extension of the Geo-blocking Regulation.	apparent lack of interoperability.	
		Disregards transaction-based services: TVoD needs to be analysed on an item level rather than on a service level. This information is not yet available. These services are only covered qualitatively in the report.	No canonical evaluation of utility function (such as price).	Disregards transaction-based services, but transaction-based services are of very limited relevance in the music sector.	Disregards subscription-based services and transaction-based models are by far the more dominant, while additionally, most subscription-based services also offer items via single transactions.	Disregards subscription-based services; only covers iTunes.
		Disregards free-to-air services; these are only addressed qualitatively in the report.	Disregards free-to-air services; these are only addressed qualitatively in the report.	Disregards free-to-air services, because no information available, neither on content that is being omitted due to geo-blocking nor on substitution effects between FTA and other business models.	Disregards open source software.	Disregards free content sources; only covers iTunes
		Disregards mitigation strategies. The model makes a point estimate for two Scenarios under the assumption that nothing else changes for that specific point in time. This constraint is necessary to reduce the number of unsubstantiated assumptions and outcomes, thus preserving interpretability of the results.				

Source: Own elaboration

3 Description of the legal and regulatory framework

This chapter provides an overview of legislation and policy measures related to the online trade of copyright-protected content at EU level. This chapter lists EU rules (primary and secondary) that impact the cross-border availability of digital services as well as the licensing of works protected by copyright and related rights (such as the rights of performers, producers and broadcasting organisations). In addition, the legal description takes stock of the latest EC anti-trust decisions as well as the jurisprudence of the courts of the EU on the matter.

3.1 The EU Regulatory environment

This section considers the main EU Treaty principles as well as secondary legislation adopted in the field of copyright and related rights in relation to the provision of online content services.

3.1.1 Main EU Treaty Principles impacting the circulation of copyright-protected content

Article 17 of the Charter of Fundamental Rights establishes the right to property. This is a fundamental right common to all national constitutions in the EU. The protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 of Article 17.

However, this right to property is not unlimited. Article 17 notes that 'the use of property may be regulated by law in so far as is necessary for the general interest'. Promotion of the internal market might, for instance, provide such justification. Article 3 of the Treaty on European Union (TEU) states that 'the Union shall establish an internal market' and this constitutes one of the fundamental objectives of the Union. The same article provides that the Internal Market shall respect Europe's rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced. The internal market is defined in Article 26(2) of the Treaty on the functioning of the European Union as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties'. Articles 34 and 35 prohibit restrictions on free movement and measures having an equivalent effect between Member States, while Article 36 provides exceptions for measures justified on various grounds including 'the protection of industrial and commercial property'. The Treaty further establishes the freedom of establishment for nationals of Member States across the Community (Article 49 TFEU) and prohibits restrictions on the freedom to provide services (Article 56 TFEU).

EU competition rules apply to copyright-related markets. Articles 101 TFEU and Article 102 TFEU prohibit, respectively, anti-competitive agreements and concerted practices between undertakings and the abuse of a dominant position. These articles are enforced by the European Commission and national competition authorities, as well as courts.

Creative content can be protected by copyright and related rights which grant rightholders exclusive rights to authorise or prohibit the use of such content on a territorial or multi-territorial basis. Copyright is based on a dynamic philosophy of competition: by granting a monopoly right, it encourages creativity, art and investment in creation. Without copyright, authors and artists would be exposed to the risks of piracy, counterfeiting and free riding (and these risks manifest themselves very differently for material versus immaterial cultural goods). As a result, the incentives for producers to create content would be reduced. Thus, intellectual property rights, including copyright, are considered to promote a competitive economy. On the other hand, both intellectual property rights and competition law share the same basic objective of promoting consumer welfare and an efficient allocation of resources, and they are both necessary to promote innovation and ensure a competitive exploitation thereof. While there is no inherent conflict between intellectual property rights and the competition rules, there may nonetheless be instances in which the exercise of intellectual property rights can also restrict competition and hinder innovation, by raising barriers to entry, creating market power or limiting consumer choice. This tension between intellectual property rules and competition rules is subject to intense regulatory and judicial scrutiny.

Finally, Article 167(4) of the Treaty provides that 'the Union shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures'. Article 167 of the Treaty provides that 'the Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'.

In this context, recent initiatives of the European Commission increasingly emphasise the importance of copyright as a fundamental element of Europe's cultural policy in nurturing individual creation and art, while at the same time enhancing the competitiveness of its cultural and creative industries (e.g. music, film, videogames, publishing, audiovisual, broadcasting).

3.1.2 Overview of secondary EU legislation for copyright and related rights at the EU level

The harmonisation of EU copyright rules has achieved much in removing national disparities in standards of protection to facilitate the distribution of and access to creative content across the EU. Nevertheless, there may be tensions between the territorial exercise of copyright and the principles of the free movement of goods and services across the EU. The EU institutions have therefore taken different steps to try to reconcile internal market objectives with copyright principles. Hence, secondary EU legislation has, for instance, established the 'country of origin' principle in order

to facilitate cross-border satellite transmissions.¹⁸ In parallel, the CJEU has developed the principle of exhaustion of rights to promote parallel imports for physical goods protected by intellectual property.

EU copyright law began to be developed in 1989 and is now contained in 13 directives and two regulations. Of particular importance for online exploitation of copyright-protected content are the following directives and regulations:

- Directive 2001/29/EC of 22 May 2001 on the harmonisation of copyright and related rights in the information society;
- Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- Directive 2014/26 of 26 February 2014 on collective management of copyright and related rights;
- Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market, which has been applied since 1 April 2018 ('the Portability Regulation').
- Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market which, which has to be transposed by Member States by 7 June 2021 ('the new Copyright Directive'); and
- Directive (EU) 2019/789 of 17 April 2019 on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (see Section 3.2.2.2), which has to be transposed by Member States by 7 June 2021 (the 'Online television and radio programmes Directive').

Directive 2001/29/EC (InfoSoc Directive) grants authors and certain related rightholders, such as performers, film and phonograms producers and broadcasters, a number of exclusive rights, some of which are relevant when their works or other protected subject matter are used by online content services. These include:

- The right of reproduction for authors and related rights owners in Article 2;
- The right of communication to the public including the right of making a work available to the public (the interactive/on demand right) for authors in Article 3(1); and
- The right of making a work available to the public for related rightholders in Article 3(2).

Directive 2006/115/EC of 12 December 2006 grants a right of equitable remuneration for broadcasting and communication to the public of commercial phonograms to performers and phonogram producers (Article 8(2)).

In addition, the new Copyright Directive (EU)2019/790 introduced a protection for press publishers (right of reproduction right and making available) for the online use of their press publications by information society service providers. This protection

¹⁸ For aspects not subject to specific EU rules, the general rules laid down in the E-Commerce Directive (2000/31/EC) may apply. Since their applicability to the matters addressed in this study is limited, the E-Commerce Directive is not further discussed in this chapter.

does not apply to acts of hyperlinking, to the use of individual words, or to very short extracts, or to private or non-commercial uses of press publications by individual users.

3.1.3 Overview of secondary EU legislation regulating providers of online content services and affecting cross-border availability of copyright-protected content

A significant amount of EU secondary legislation governs online content services. Some of these rules were substantially revised in the context of the European Commission's Digital Single Market (DSM) initiative, regarding both access to content online and the environment in which online content services operate.

The **Portability Regulation (EU) 2017/1128** allows subscribers from one Member State to access their subscriptions to portable online content services when temporarily present in another Member State. This instrument is described in the section describing rules facilitating cross-border access to copyright protected content (see Section 3.2.2.2).

Directive (2019/770) was adopted on 20 May 2019 with a view to harmonising certain aspects of contracts for the **supply of digital content and digital services**, such as videos, music files, software, e-books, streaming services and similar. The goal of the Directive is to protect consumers vis-à-vis their service providers when digital content and/or services are faulty. The Directive leaves the protection of copyright and related rights as such unaffected. It seeks to increase legal certainty when offering cross-border digital content or digital services, and to increase consumer confidence when accessing such services (to create, to share or to access) by harmonising consumer contract law. It sets obligations and liabilities to digital service providers including in case of breach of intellectual property rights (Article 10). Article 14 harmonises remedies for lack of conformity to the benefit of consumer protection.

Legal rules concerning the environment in which online content services operate have also been updated in order to create a level playing field. The amendments brought by Directive (EU) 2018/1808 of 14 November 2018 to the **Audiovisual Media Services Directive** 2010/13/EU (AVMSD) are of particular interest as the Directive strengthens the obligation to promote European works for VoD services. In doing so, it enhances the rules for promotion of European works by requiring VoD services to reserve a share of at least 30% of European works in their catalogue and to ensure prominence in Article 13(1). The corresponding obligations for linear services are not changed (Article 16 and 17). The Directive recognises also the option for Member States to impose, in line with cultural policy objectives, proportionate and non-discriminatory financial contribution obligations to cross-border VoDs and broadcasters targeting audiences in their territory in Articles 13(2) and 13(3). Criteria to determine if a service is targeting audiences in a specific Member State are suggested in Recital 38 which proposes as indicators: advertisement or other promotional activities aimed at customers in that territory; the main language of the

services; and the existence of content or commercial communications aimed specifically at the audience in the Member State of reception.

The AVMSD is based on the country of origin principle and introduces minimum harmonisation in areas of general public interest. The regulatory framework covers both linear (television) and non-linear (on demand) services such as VoD. The revised Directive, which shall be transposed by 19 September 2020, has extended the scope of the AVMSD to include also video-sharing platforms (VSP).¹⁹ This Directive, which regulates the functioning of online content services falling within its scope, leaves standards of copyright and related rights protection unaffected.

The AVMSD further includes measures recognising that Member States may ensure that broadcasters under their jurisdiction do not exercise exclusive rights in such a way that a substantial proportion of the public is deprived of the possibility to follow events designated by that Member State as being of major importance to society. Under Article 14, the Member State that makes use of this possibility needs to draw up a list of such designated events that should be available on free television (by whole or partial live coverage or whole or partial deferred coverage, where appropriate). Recital 52 of AVMSD (2010/13/EU) states that '[E]vents of major importance for society should, for the purposes of this Directive, meet certain criteria, that is to say be outstanding events which are of interest to the general public in the Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to those events. Some relevant indicators were developed with the Contact Committee and refer in particular to:

- A special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned;
- A generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity;
- Involvement of the national team in the event concerned in the context of a competition or tournament of international importance; or
- The event has traditionally been broadcast on free television and has commanded large television audiences.'

Following approval by the Commission, which verifies that the measures comply with EU law, the other Member States need to ensure that broadcasters under their jurisdiction do not exercise the exclusive rights in such a way that a substantial proportion of the public in the Member State that designated the events is deprived of the possibility to follow those events.²⁰ This is a derogation from the fundamental

¹⁹ Considering their lack of editorial control, the AVMSD requires platforms to put in place measures to protect users from certain illegal and harmful audiovisual content, as well as to comply with certain rules concerning audiovisual commercial communications.

²⁰ See the Member States' lists at: <https://ec.europa.eu/digital-single-market/en/avmsd-list-major-events>.

EU Treaty freedom to provide services based on an overriding reason of public interest, which is intended to ensure wide public access to broadcasts of events of major importance for society and to safeguard the right to information.

Sport events as such are not protected by copyright²¹ or related rights²² in EU law. However, the audiovisual recording of a sporting event can be protected by copyright. Furthermore, some Member States have introduced in their national laws special forms of protection for sport event organisers. In Europe, the licensing of audiovisual rights for sport events is characterised by the joint selling of rights and by exclusivity (exclusivity in a given time frame, on a specific distribution platform or in a given territory). However, as mentioned above, the AVMSD empowers Member States to mandate accessibility of certain designated events on free-to-air broadcasters, including a number of sport events.

The Online Television and Radio Programmes Directive (Directive (EU) 2019/789 of 17 April 2019) covers ancillary online services offered by a broadcasting organisation that have a clear and subordinate relationship with the broadcasting organisation's broadcasts (e.g. simulcasting and catch-up services). In order to facilitate the clearance of rights for the provision of such online services cross-border, the directive introduces the country of origin principle for the exercise of copyright and related rights for all radio programmes and for television news and current affairs programmes as well as broadcasters' fully financed own productions (see Section 3.2.2.2 for more details).

The Directive on Copyright in the Digital Single Market (EU) 2019/790 introduces specific rules (Article 17) for online content-sharing service providers, which store and give access to a large amount of copyright-protected works that have been uploaded by users. Not-for-profit online encyclopaedias, online marketplaces, and electronic messaging services are not covered by the provision (Article 2(6) and Recitals 62 and 63).

Pursuant to Article 17(1), online content-sharing services are performing an act of communication to the public or making content available for which they need an authorisation from the rightholders. Where such authorisation is given, it should also cover the acts carried out by the users who upload the content, provided they are not acting on a commercial basis and their activity does not generate significant

²¹ In the joined cases C-403/08 and C-429/08 *Football Association Premier League Ltd and Others v QC Leisure and Others and Karen Murphy v Media Protection Services Ltd* (2011), the CJEU excluded copyright protection for sport events as such, and in particular football matches. However, the Court left open the possibility for Member States to offer legal protection under national laws.

²² In four cases decided in 2004, the CJEU held that fixtures lists and sports events schedules are not protected by the database sui generis right, as they consist in compilations of created data. See Case C-46/02 *Fixtures Marketing Ltd v Oy Veikkaus Ab* (2004); Case C-203/02 *British Horseracing Board Ltd v William Hill Organization Ltd* (2004); Case C-338/02 *Fixtures Marketing Ltd v Svenska AB* (2004); and Case C-444/02 *Fixtures Marketing Ltd v OPAP* (2004). In *Football Dataco case* (Case C-604/10 *Football Dataco Ltd and Others v Yahoo! UK Ltd and Others*, 2012), the CJEU decided that fixtures lists and sport events schedules are not protected by copyright.

revenues. Where a licence cannot be concluded, online content-sharing service providers are liable for unauthorised content unless they make an effort to obtain an authorisation, to ensure the unavailability of specific works that rightholders have identified in advance, and to remove the works notified by rightholders. The specific rules, which must be complied with, are set out in detail in Article 17 of the Directive. The Directive also provides for the organisation of stakeholder dialogue on best practices for the cooperation between service providers and rightholders. Member States have to transpose the new rules by 7 June 2021.

With this provision, which has generated much controversy during the legislative process, the EU legislator attempts to offer legal certainty to both providers and users of online content-sharing platforms while ensuring rightholders receive a fair return from the use of their creative content by online content-sharing platforms. The liability of providers of online content-sharing services, which store and grant the public access to copyright-protected content that is not uploaded by the service itself but by its users, is thus being addressed.

The European Court of Justice has been asked to establish whether or not such services may be liable for the content uploaded by their users under the currently applicable regime.²³

3.2 Regulatory and judicial developments affecting audiovisual and non-audiovisual services in relation to the exercise of copyright

This section provides a short inventory of the rights relevant for the exploitation of copyright-protected content in the online environment. It then considers EU rules affecting the exercise of such rights, in particular in cross-border activities.

3.2.1 Brief overview of copyright and related rights rules subject to online licencing

Where works are made available on the internet, this usually implicates the reproduction right (Article 2 InfoSoc Directive) and the making available right (Article 3 InfoSoc Directive) in the case of interactive (on-demand) services.²⁴ In the case of non-interactive (linear) services, the exclusive right of communication to the public (Article 3(1) InfoSoc Directive) comes into play with regards to authors, whereas performers and phonogram producers are entitled to an equitable remuneration on the basis of Article 8(2) of Directive 2006/115/EC as a minimum protection.²⁵ Film producers and press publishers do not enjoy their own specific protection with

²³ Cases C-682/18 – YouTube and C-683/18 – Elsevier (pending).

²⁴ Cf. Nils Svensson and Others v Retriever Sverige AB, Case C-466/12, 13 February 2014, ECLI:EU:C:2014:76, para. 19; C More Entertainment AB v Linus Sandberg, Case C-279/13, 26 March 2015, ECLI:EU:C:2015:199, paragraphs 25-27; Land Nordrhein-Westfalen v Dirk Renkhoff, Case C-161/17, 7 August 2018, ECLI:EU:C:2018:279, paragraph 20.

²⁵ ITV Broadcasting Ltd v TVCatchup Ltd, Case C-607/11, 7 March 2013, ECLI:EU:C:2013:147, para. 23; Società Consortile Fonografici (SCF) v Del Corso, Case C-135/10, 15 March 2012, ECLI:EU:C:2012:140, para. 75.

regards to acts of communication to the public at EU level, but in general rely on the rights derived from authors. However, some Member States provide film producers with exclusive rights in respect of communication to the public, which can be relevant when using audiovisual content in online services.²⁶

Online content services which use and grant access to copyright-protected content must be entitled to use such content, otherwise they commit a copyright infringement.²⁷ The entitlement most likely stems from a licence, a transfer or an assignment of the aforementioned exclusive rights and/or the payment of equitable remuneration, as relevant in view of the nature of the service, unless a limitation or exception applies.²⁸ Depending on the circumstances, a licence may be acquired either directly from the rightholder (individual licencing) or via a Collective Management Organisation (CMO).

The exclusive rights provided for by the InfoSoc Directive enable rightholders to authorise or prohibit the use of their works and protected subject-matter. Thus, rightholders may decide grant a licence to an online content service, but they are also in a position to refuse granting a licence. Moreover, by relying on contractual freedom (which is always subject to competition law), rightholders may shape a licence in a particular way, by delimiting its purpose, duration, territory and forms of use. Rightholders have to negotiate the terms of the licence with the licensee. Since copyright arises under national law and is attached to the territory for which the right is granted, rightholders can in principle decide whether to license their rights on a regional, national, linguistic or a multi-territorial basis (if they hold the rights for several territories). The geographical scope of a copyright licence is limited to the territories for which rights have been granted under national law.

When looking at the general regulatory framework for copyright contracts and licences and its interaction with EU competition law, a distinction is made between the *existence* and the *exercise* of rights. EU competition rules may affect the exercise of copyright and related rights.

There is no comprehensive harmonisation or regulation of contracts at EU level. Nevertheless, the relevant directives identify the contractual grant of licences as a vehicle for the exercise of copyright.²⁹ Copyright licences represent the licensee's legal entitlement arising out of the licencing contract. The European legislator has addressed contractual issues in the Directive on Copyright in the Digital Single Market of April 2019, which introduced author-protective provisions with regards to

²⁶ See for instance: Article L.215-1 French Intellectual Property Code; § 94(1) German Copyright Act.

²⁷ Land Nordrhein-Westfalen v Dirk Renkhoff, Case C-161/17, paragraph 16 with further references.

²⁸ Article 5 Directive 2001/29/EC; Article 6 Orphan Works Directive (2012/28/EC); Articles 3-7 DSM Directive.

²⁹ Cf. in particular with relevance to online exploitation, Recital 30 of Directive 2001/29/EC which confirms that the rights protected under the Directive may be transferred, assigned or subject to the grant of contractual licenses without prejudice to the relevant national legislation on copyright and related rights.

remuneration, transparency and revocation of rights (Articles 18-23). These rules, which are still awaiting implementation into national law, will be directly relevant for online content services where they produce and distribute their own content. Where an online content service distributes content as a sub-licencee, only the transparency obligation may apply directly under certain circumstances.

3.2.2 Jurisprudence on territorial exclusivity and recent measures to promote access and ease cross-border licencing

The European Commission (including through its anti-trust enforcement powers) and the European Court of Justice are playing a key role in implementing the EU Treaty's Single Market objectives. Section 3.2.2.1 discusses the territorial nature of copyright. In a second section (3.2.2.2), we explain the exhaustion of the distribution right. In Section 3.2.2.3, we review the case law on territorial exclusivity. In Section 3.2.2.4, we review the definition of passive sales, which is critical to a number of the judicial decisions that have been taken. Finally, in Section 3.2.2.5, measures taken by the EU regulator to facilitate cross-border licencing and consumers' access to services are examined.

3.2.2.1 Territorial Exclusivity, the Single Market and Competition Rules

As explained in the De Wolf and Partners study conducted for the European Commission in 2013: 'the protection of copyright and related rights in the EU is "territorial" in the sense that the recognition and enforcement of rights occurs on a country-by-country basis even if the management of such rights can be exercised on a multi-territorial basis.'³⁰ However, it is understood that a right can be managed and licensed in a given territory only in so far as that right has been granted by national law in the territory. The study adds: 'the territoriality principle is a cornerstone of the international protection offered by the Berne Convention.'

The European Court of Justice has explicitly confirmed the territoriality of copyright (rights being granted by national law) notably in the Lagardère Case (Paragraph 46).³¹ In examining cross-border situations (for broadcasting), the Court concluded that the act triggering the use of copyright-protected content as well as the value of such use should be addressed on a territory-by-territory basis to consider respective audiences.³²

According to the Court of Justice, the exercise of an exclusive intellectual property right limited to a national territory can be a justifiable restriction of the freedom to provide services. However, prerequisite for a justification of such a restriction is that it does not go beyond the protection of the specific subject matter of this right. The

³⁰ Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society, DE Wolf and Partners in collaboration with Crids, European Commission, 20.11.2013, page 45.

³¹ Lagardère Active Broadcast C-192/04 on 14 July 2005 and analysis from De Wolf study for the European Commission 20.11.2013 pages 52-54.

³² Also: CJEU 16 June 2011 case C-462/09 Stichting de Thuiskopie" and Donner, Sportradar.

Court has therefore laid down several principles for reviewing licencing practices that would go beyond what is necessary to protect the specific subject matter of an IP right.

3.2.2.2 Exhaustion of the distribution right

As laid down by the European Court of Justice, the *exhaustion principle* provides that once the ownership of a (tangible) good protected by copyright or a related right has been transmitted by, or with the consent of, the rightholder in a territory of the European Union, further distribution of such good across the internal market cannot be prevented by the rightholder. A rightholder therefore cannot oppose in a given Member State parallel imports of goods coming from another Member State where distribution has occurred with his consent. The exhaustion principle was established by the CJEU to reconcile the territoriality principle of copyright and neighbouring rights with the internal market goals of the Treaty. This principle is now enshrined in Directive 2001/29/EC in relation to the exhaustion of the distribution right (Article 4). Directive 2001/29/EC also provides that the rights of communication to the public and of making available to the public are not exhausted by any act of communication to the public or making available to the public (Article 3(3) of Directive 2001/29/EC).

However, even well before the advent of online services, the Court had the opportunity to assess the specificities of film exploitation and the impact of film versioning (specific to film distribution) in the application of EU law. The CJEU excluded the application of the exhaustion rule to the exhibition of films, broadcasts and other performing rights in the *Coditel I* (or *le Boucher*) decision.³³ This different treatment of rights for distribution and communication to the public, compared to the rights of distribution of copyright-protected tangible goods such as books, CDs or DVDs, was justified by the specificities of the consumption of audiovisual content compared to those goods. The Court recognised that rightholders have a legitimate interest in exploiting the different formats of their works separately and established that the ability of a rightholder to license for any showing of a film is part of the 'substance' of authors' rights in relation to an audiovisual work. In the *Coditel II* case, the CJEU, confirmed the distinction between existence and exercise of an IP right by analysing further the characteristics of audiovisual content exploitation.³⁴

³³ Case 62/79, *SA Compagnie générale pour la diffusion de la télévision, Coditel, and others v Ciné Vog Films and others* ('*Coditel I*'), EU:C:1980:84 Judgment of the Court of 6 October 1982.

The Court distinguishes between, on the one hand, the performance rights and, on the other, the reproduction rights involved in physical distribution (Paragraph 12):

'A cinematographic film belongs to the category of literary and artistic works made available to the public by performance which may be infinitely repeated. In this respect the problems involved in the observance of copyright in relation to the requirements of the Treaty are not the same as those which arise in connection with literary and artistic works the placing of which at the disposal of the public is inseparable from the circulation of the material form of works, as in the case of books or records.'

³⁴ CJEU 6 October 1982, Case 262/81 *Coditel v Ciné Vog Films and others* (*Coditel II*), Paragraph 16:

'The characteristics of the cinematographic industry and of its markets in the community, especially those relating to dubbing and subtitling for the benefit of different language groups, to the possibilities of television broadcasts, and to the system of financing cinematographic production in Europe serve to show that an exclusive exhibition licence is not, in itself, such as to prevent, restrict or distort competition.'

The question of exhaustion in the digital environment was also an issue in the **UsedSoft case** concerning the redistribution of used software by the acquirer by way of downloads. The Court of Justice allowed exhaustion of the distribution right under certain conditions.³⁵ However, this case concerned the specific provision on exhaustion for computer programmes under Article 4(2) of Directive 2009/24/EC, i.e. a *lex specialis*, and not the general rule on exhaustion in Article 4(2) Directive 2001/29/EU. In *UsedSoft*, the CJEU held that the principle of exhaustion concerns both tangible and intangible copies of a computer programme, including copies which, on occasion of their first sale, were downloaded from the internet on the first acquirer's computer. In the view of the CJEU, there is an equivalence from an economic point of view of the sale of a computer programme on CD or DVD and the sale of a computer programme via online download. The CJEU stressed that this finding is justified by the *lex specialis* of the Software Directive,³⁶ which permits an interpretation that deviates from Recital 29 of the Information Society Directive. In **Ranks (C-166/15)**,³⁷ the CJEU limited the scope of *UsedSoft*, ruling out exhaustion in the case of backup and other non-original copies, even if the original support was damaged or destroyed.³⁸ The CJEU held in the **Nintendo case**³⁹ that video games constitute complex matters consisting of not only a computer programme but also of graphic and sound elements, which, although encoded in computer language, have a unique creative value which goes beyond that encoding. This implies that videogames should be treated as an audiovisual software product rather than just a computer programme, hence the aforementioned exhaustion principle drawn from Directive 2009/24/EC would not apply to these services.

Regarding e-books, the CJEU ruled on 19 December 2019 in the **Tom Kabinet case**.⁴⁰ The case was about the possibility to create a second-hand marketplace for e-books on the grounds of digital exhaustion based on the *UsedSoft* precedent. The CJEU found, in line with the conclusion of the Advocate General, that 'supply by downloading, for permanent use, of an e-book is not covered by the right of "distribution to the public" (...) but that it is covered by the right of "communication to the public" (...) ,in which case exhaustion is excluded under the Copyright Directive 2001/29.' The CJEU reasoned that the legislative intent of the Directive was for the 'rule of exhaustion to be reserved for the distribution of tangible objects, such as books on a material medium. By contrast, the application of that rule of exhaustion to e-books would be likely to affect the interests of rightholders in obtaining

³⁵ *UsedSoft GmbH v Oracle International Corp.*, Case C-128/11, 3 July 2012, ECLI:EU:C:2012:407.

³⁶ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) (Text with EEA relevance) OJ L 111, 5.5.2009, p. 16–22.

³⁷ *Ranks and Vasiljevičs*, Judgment of the Court (Third Chamber) of 12 October 2016.

³⁸ Caterina Sganga, *Waiting for Tom Kabinet, a.k.a. why EU copyright needs digital exhaustion, and how the CJEU can help with this* – Part 1, April 15, 2019, Kluwer Copyright Blog, at: <http://copyrightblog.kluweriplaw.com/2019/04/15/waiting-for-tom-kabinet-a-k-a-why-eu-copyright-needs-digital-exhaustion-and-how-the-cjeu-can-help-with-this-part-1/>.

³⁹ CJEU, Judgment of 23 January 2014, *Nintendo Co Ltd v PC Box Srl.*, C-355/12, EU:C:2014:25.

⁴⁰ CJEU, Judgment of 19 December 2019, *Nederlands Uitgeversverbond, Groep Algemene Uitgevers v Tom Kabinet Internet BV et others*, C-263/18, EU:C:2019:697.

appropriate reward much more than in the case of books on a material medium, since dematerialised digital copies of e-books do not deteriorate with use and are, therefore, perfect substitutes for new copies on any second-hand market.’

The preliminary ruling may have the effect, when applied by national courts in the cases before them, of preventing e-merchants from relying on exhaustion of the distribution right under the InfoSoc Directive to resell the e-books they have acquired to multiple consumers.

3.2.2.3 Case law regarding territorial exclusivity

While the Treaty provides for the establishment of an internal market, it also sets up a system ensuring that competition in that internal market is not distorted. The exercise of exclusive rights can also be restrictive, and therefore not permitted under EU competition law. According to case law of the Court of Justice, while it is possible to reserve a given territory to a single distributor by granting an exclusive right to such a single distributor in such a given territory⁴¹, absolute territorial exclusivity, which partitions national markets and eliminates competition between distributors, on the contrary is not permitted and constitutes a violation of Article 101(1) TFEU.⁴²

Restrictions on territorial licencing in the broadcasting sector were addressed in the CJEU ruling in the joint cases C-403/08 and C-429/08 (**‘Murphy Ruling’**).⁴³ In these cases, the CJEU ruled that agreements, which aim to partition national markets according to national borders or to make the interpenetration of national markets more difficult, must be regarded in principle as agreements whose object is to restrict competition within the meaning of Article 101(1) TFEU.⁴⁴ The CJEU confirmed this in relation to a licence agreement (including restrictions on cross-border sales of satellite decoders for viewing broadcasts of Premier League football matches) designed to prohibit or limit the cross-border provision of broadcasting services. The CJEU further specified that other circumstances falling within its legal and economic context may, as the case may be, justify a finding that such an agreement is not liable to impair competition.⁴⁵

More in detail, in the licence agreement of broadcasters with the **Football Association Premier League (FAPL)**, several clauses restricting the receiving of the broadcasts by the public outside the area for which the broadcasters held the licence were examined. Each broadcaster was granted by FAPL an exclusive right to broadcast live Premier League matches in a certain territory. As a rule, this territory

⁴¹ See, for instance: *Coditel SA, Compagnie générale pour la diffusion de la télévision, and others v Ciné-Vog Films SA and others*, C-262/81, 6 October 1982, ECLI:EU:C:1982:334, referred to as ‘Coditel No. 2’.

⁴² FAPL, paras 137, 139-146.

⁴³ Judgment of the Court (Grand Chamber) of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08) and *Karen Murphy v Media Protection Services Ltd* (C-429/08). See: <http://curia.europa.eu/juris/liste.jsf?num=C-403/08&language=en>.

⁴⁴ See *Murphy*, point 139.

⁴⁵ *Murphy*, point 140.

was national and there was only a limited demand from bidders for global or pan-European TV rights.

It should be stressed that territorial exclusivity as such was not rejected by the ruling. The Court recalled that it is apparent from its case law that the fact that the rightholder has granted to a sole licensee the exclusive right to broadcast protected subject matter from a Member State, and consequently to prohibit its transmission by others during a specified period, is not in and of itself contrary to EU law. National licences continue to be permitted within the EU. However, the CJEU made it clear that it is necessary to remove from the relevant licencing agreements those provisions restricting the freedom of broadcasters to respond to unsolicited requests from users located in other EU Member States outside the distributors' licensed territories (passive sales), because such provisions lead to absolute territorial protection contrary to EU competition law.

Sports content is subject to EU rules governing the broadcast, communication to the public or online transmission of audiovisual content. Rights in audiovisual programmes need to be cleared in each country in which the online communication takes place. For satellite broadcasting of sporting events, the country of origin principle applies according to Directive 93/83/EEC, without prejudice to the contractual freedom of the rightholders and broadcasting organisations, in compliance with EU law. In that context, however, the Murphy judgement establishes that it is anticompetitive to oblige a broadcaster to prevent the sale and use of decryption devices outside the licensed territory in case of unsolicited requests from consumers generally considered as a passive sale.

The next significant step in the examination of territorial restrictions and geo-blocking (as a means to effectively comply with contractual restrictions) has been made in the European Commissions' investigation in the **Cross-border access to pay-TV case** (referred to elsewhere in this chapter as the **pay-TV case**) and the Judgment of the General Court in Case T-873/16 (December 2018, '**Canal+ Ruling**').

Two decisions have been adopted by the European Commission in the framework of the pay-TV (Sky UK) investigation:

- **Decision of 26 July 2016** making binding the commitments offered by Paramount Pictures; and
- **Decision of 7 March 2019** making binding the commitments offered by Disney, NBC Universal, Sony Pictures, Warner Bros and Sky.

In both cases, the Commission was concerned about contractual clauses included in the licencing agreements between film studios and Sky, whereby the studios granted Sky exclusive pay-TV and subscription VoD rights with regard to certain films in the UK and Ireland. In addition to granting Sky an exclusive right to exhibit the licenced content to subscribers in the UK and Ireland, each agreement contained clauses that

prohibited or limited Sky from making available its retail pay-TV services via internet and/or satellite transmission in response to unsolicited requests from consumers located in the European Economic Area but outside the UK and Ireland. Moreover, certain agreements contained clauses that required the studios to prohibit or limit pay-TV broadcasters located in the EEA but outside the UK and Ireland from responding to unsolicited requests from consumers residing or located in the UK and Ireland.

In the Statement of Objections and the Supplementary Statement of Objections, the Commission reached the preliminary conclusion that the contested clauses were liable to impair competition and had an anti-competitive objective, because they were designed to prohibit or limit cross-border passive sales of retail pay-TV services and granted absolute territorial exclusivity in relation to the content of the studios. In the Commission's preliminary view, the contested clauses restrict Sky UK's ability to accept unsolicited requests for its pay-TV services from consumers located abroad (i.e. from consumers located in Member States where Sky UK is not actively promoting or advertising its services, so-called passive sales, see Section 3.2.2.4). Some agreements also contained clauses requiring studios to ensure that, in their licencing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the UK and Ireland. As a result, those clauses granted 'absolute territorial exclusivity' to Sky UK and/or other broadcasters. They eliminated cross-border competition between pay-TV broadcasters and partitioned the internal market along national borders. The Commission's preliminary conclusion was that, in the absence of convincing justification, the clauses constituted a serious violation of EU rules that prohibit anti-competitive agreements (Article 101 TFEU).⁴⁶

In April 2016, Paramount offered commitments to respond to the Commission's competition concerns covering both satellite broadcasting and online transmissions. In October 2018, Disney also offered commitments to the European Commission in response to the Pay-TV investigation. The remaining studios and Sky UK proposed commitments in December 2018, just after the judgment of the General Court in the case **Groupe Canal+ v. European Commission**,⁴⁷ where the Court dismissed the appeal of the French Pay-TV broadcaster Canal+ against the decision of the Commission that made Paramount's commitments binding.

More precisely, in the Canal+ Ruling, the General Court upheld the Commission decision which made the commitments given by Paramount Pictures International and Viacom in the context of the licencing agreements on audiovisual content which

⁴⁶ European Commission - Press release, Antitrust: Commission sends Statement of Objections on cross-border provision of pay-TV services available in UK and Ireland Brussels, 23 July 2015, http://europa.eu/rapid/press-release_IP-15-5432_en.htm.

⁴⁷ See: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=86C890859A56FA03C38F312CE634BD84?text=&docid=208860&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7839490>.

they concluded with Sky legally binding.⁴⁸ The General Court also held that contractual clauses preventing a broadcaster from responding to unsolicited requests of pay-TV services (including copyright-protected works) via satellite or online from consumers outside the licensed territory (passive sales) and clauses requiring a film studio to prohibit broadcasters outside the territories for which a broadcaster has exclusive rights from responding to unsolicited requests from consumers residing in those territories could be considered as restrictions of competition by object. Importantly, contractual provisions that provide for absolute territorial exclusivity are prohibited. Canal+ has lodged an appeal to the judgment with the European Court of Justice.⁴⁹

On the basis of the commitment decisions mentioned above, pay-TV broadcasters should now be contractually free to decide whether to respond to unsolicited requests from customers located outside the licenced territory. This might encourage more competition between broadcasters operating in different territories. However, the commitments do not modify the broadcasters' obligation to comply with the relevant applicable rules, including copyright.

These recent rulings and Commission decisions confirm that restrictions on passive sales can lead to absolute territorial protection and are designed to prohibit or limit any cross-border distribution⁵⁰. Nonetheless, the facts of the Murphy case and Canal+ Ruling are different: the ruling in Murphy concerned contractual restrictions on the cross-border sale of digital decoders whereby content providers prevented satellite broadcasting subscribers from accessing a service outside the licensed territory; the Canal+ ruling concerned contractual provisions restricting the ability of broadcasters to accept unsolicited requests (passive sales) for their pay-TV content via satellite or online streaming from consumers located outside their licensed territory.

Regarding the PC video games sector, the European Commission sent in April 2019 Statements of Objections to one videogame distribution platform (Valve's Steam) and to five PC videogame publishers. The Commission's preliminary view, outlined in the Statements of Objections, is that Valve and the PC video game publishers entered into bilateral agreements to prevent consumers from purchasing and using PC video games acquired elsewhere than in their country of residence, in particular through the use of activation keys (which are necessary to activate and play the PC video games in the platform) which were geo-blocked to certain Member States. The use of such geo-blocked activation keys prevented cross-border sales, including in response to unsolicited consumer requests (passive sales) of PC video games from several Member States. According to the Commission's preliminary view, these

⁴⁸ See:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=86C890859A56FA03C38F312CE634BD84?text=&docid=208860&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7839490>.

⁴⁹ Groupe Canal + v Commission, Case C-132/19 P, (Appeal Case before the General Court T-873/16).

⁵⁰ See Groupe Canal + v Commission, T-873/16, point 45.

business practices aimed to partition markets according to national borders and to restrict passive sales to consumers.⁵¹

3.2.2.4 Definition of “passive sales”

It is clear that the distinction between active sales and passive sales plays an important role in the discussion on how to facilitate cross-border access to content. As a starting point, the European Commission’s *Guidelines on Vertical Restraints* define active and passive sales in Paragraphs 51 and 52 as follows:⁵²

(51) ... ‘Active’ sales mean actively approaching individual customers by for instance direct mail, including the sending of unsolicited e-mails, or visits; or actively approaching a specific customer group or customers in a specific territory through advertisement in media, on the internet or other promotions specifically targeted at that customer group or targeted at customers in that territory. Advertisement or promotion that is only attractive for the buyer if it (also) reaches a specific group of customers or customers in a specific territory, is considered active selling to that customer group or customers in that territory.

‘Passive’ sales mean responding to unsolicited requests from individual customers including delivery of goods or services to such customers. General advertising or promotion that reaches customers or customer groups in other distributors’ (exclusive) territories, but which is a reasonable way to reach customers outside those territories or customer groups, for instance to reach customers in one’s own territory, are considered passive selling.

(52) General advertising or promotion is considered a reasonable way to reach such customers if it would be attractive for the buyer to undertake these investments also if they would not reach customers in other distributors’ (exclusive) territories or customer groups. (...) In general, where a distributor uses a website to sell products that is considered a form of passive selling, since it is a reasonable way to allow customers to reach the distributor. The use of a website may have effects that extend beyond the distributor’s own territory and customer group; however, such effects result from the technology allowing easy access from everywhere. If a customer visits the website of a distributor and contacts the distributor and if such contact leads to a sale, including delivery, then that is considered passive selling. The same is true if a customer opts to be kept (automatically) informed by the distributor and it leads to a sale. Offering different language options on the website does not, of itself, change the passive character of such selling.

Notably, the Vertical Block Exemption Regulation⁵³ and its guidelines (which expire in May 2022) are currently under review: the evaluation phase was launched in October 2018 and this exercise looks closely at new market developments since the adoption of the Regulation in 2010. In particular, the increased importance of online

⁵¹ European Commission Press Release on 5 April 2019.

⁵² European Commission (2010), *Guidelines on Vertical Restraints* of the European Commission, (51), (52).

⁵³ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. OJ L 102, 23.4.2010

sales and the emergence of new market players (such as online platforms) represent a core aspect of this evaluation process.

A parallel might be drawn from what is contained in recital 38 of AVMSD (2018/1808/EC), while keeping in mind that the indicators suggested are applicable in a different context. That recital mentions that 'a Member State, when assessing, on a case-by-case basis, whether an on-demand audiovisual media service established in another Member State is targeting audiences in its territory, should refer to indicators such as advertisement or other promotions specifically aiming at customers in its territory, the main language of the service or the existence of content or commercial communications aiming specifically at the audience in the Member State of reception.'

In the course of the fieldwork for this study, especially when conducting the stakeholder interviews, multiple industry stakeholders from the audiovisual sector expressed concerns that passive sales either were not adequately defined, or that preventing territorial restrictions of passive sales would prove to be unduly broad, leading to problems for the sector. This concern is shared by industry interviewees from non-audiovisual sectors, but the concern is most prevalent for audiovisual sectors, especially coming from the distributors. Given the strong stakeholder interest in the topic, we will review a few key issues.

As far as the definition, several stakeholders pointed to a study on passive sales by the French *Conseil supérieur de la propriété littéraire et artistique* that makes several claims in regards to the definition of passive sales.⁵⁴

Firstly, regarding the definition, the study argues that the 'concept of "sale" seems inappropriate' for the distribution of copyright-protected content and that it is very difficult to establish a distinction between active and passive sales in the digital environment. There is reason to doubt calling the sale passive because it is done over 'the facilities offered by digital networks that allow satisfaction, dematerialised, immediate (...) The legitimacy of passive selling that can be evoked in the analogue universe is questioned in the digital universe.'

However, the study points out that this argument is not supported by the Commission or the General Court. As the Commission has observed in its decision on the pay-TV case: 'the case law treats restrictions on the cross-border provision of physical goods and restrictions on the cross-border provision of intangible, copyright protected, audiovisual content such as films in the same manner.'

⁵⁴ Sirinelli, Dormons (2019). Mission sur les ventes passives – Rapport. Available at: <http://www.culture.gouv.fr/Thematiques/Propriete-litteraire-et-artistique/Conseil-superieur-de-la-propriete-litteraire-et-artistique/Travaux/Missions/Mission-du-CSPLA-sur-les-ventes-passives>

Moreover, the study argues that the definition of passive sales in the online environment is ambiguous to the extent that it is overly broad. According to the study, there is a risk that all sales will become passive, while passive sales should be, by nature, marginal and aimed at satisfying the requests of individual consumers. Distributors might make efforts to make all sales appear to be passive. For instance, social networks might advertise works even if distributors do not. The net effect would be, according to the study, to turn all licences de facto into EU-wide licences, to the detriment of smaller e-merchants and of competition generally.

This is, in the end, not an argument about ambiguous definition, but rather an argument about the *effect* of the definition. At the same time, one of the interviewees argued the exact opposite case, opining that a film in a language other than English, starring locally/nationally famous actors rather than international celebrities, would not be very attractive to consumers unless distributors actively market it. For example, a Lithuanian movie might require a targeted promotional campaign (by movie distributors) in France if it is to generate interest among French consumers. The fact that this title could be available for cross-border access on a VoD Lithuanian service does not imply that consumers in other countries will automatically be aware of this movie or seek it out.

The Sirinelli report then shifts to arguments about the expected consequences of the passive sales definition.

Since these arguments go beyond the mere definition of the concept of passive sales as discussed here, they are treated in Section 5.3.1 that assesses the interview results for the audiovisual sector.

It must also be emphasised, however, that the General Court in the Canal+ Ruling addressed both the applicability of the definition of passive sales in the online environment as well as its potential effect:

"30 Second, supported by the French Republic, the applicant claims that the protection of intellectual property rights justifies, under the rules of the Treaty, the imposition of geographic limits such as those at issue. In that regard, UPC claims that the distinctions between 'absolute' and 'relative' territorial exclusivity, on the one hand, and 'active' and 'passive' sales, on the other, cannot be applied in a digital context with practically no frontiers. [...]

55 [...] it must be held that, in the context of a system of licences without clauses intended to partition the markets according to national borders, there is nothing to prevent the holder of the rights from negotiating an amount that takes account of the potential audience both in the Member State for which the exclusive licence is granted and in any other Member State in which the broadcasts forming the subject matter of the distribution agreement are also received. In fact, the technology necessary to receive the works covered by the rights in question makes it possible to

determine the actual and potential audience, by breaking down that audience by country of origin of the purchase request (see, to that effect, judgment of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraphs 112 and 113). The same technology also makes it possible to regulate active promotion activities in order to limit them to the territory for which an exclusive licence is granted. [...]

58 It follows that the arguments whereby the applicant, the French Republic, EFADs, UPC and C More Entertainment allege that the relevant clauses are lawful by reference to Article 101(1) TFEU (see paragraphs 29 to 32 above) must be rejected. For the reasons set out in paragraph 55 above, the same applies to the alleged impossibility of distinguishing between active and passive sales outside the exclusive territory in a digital context (see paragraph 30 above)."

3.2.2.5 *Specific EU rules facilitating access to copyright-protected content and cross-border licencing*

The Digital Single Market (DSM) initiative brought a number of measures with a view to facilitating wider access to copyright-protected content across the EU through licencing. Apart from the Portability Regulation (which has been applicable since April 2018), these new rules will only be applied when transposed into national laws so that their practical effect on cross-border licencing cannot as yet be assessed.

The **Portability Regulation** (EU) 2017/1128 allows subscribers (i.e. consumers who access and use online content services in their Member State of residence on the basis of a contract) to access their subscriptions to portable online content services when temporarily present in another Member State. The concept of an online content service is broad and encompasses audiovisual media services as well as services which provide access to content protected by copyright and related rights, whether in a linear or on-demand manner according to Article 2(5).⁵⁵ The Regulation introduces in Article 3(1) an obligation for paying portable online content services to provide cross-border portability for their subscribers. Providers of free online content services may opt for cross-border portability, subject to complying with the conditions set out in the Regulation (Article 6.).

According to Article 4, 'the provision of an online content service to, as well as the access to and the use of this service by, a subscriber, in accordance with Article 3(1), shall be deemed to occur solely in the Member State of residence including for the purposes of Directive 96/9/EC, Directive 2001/29/EC, Directive 2006/115/EC, Directive 2009/24 and Directive 2010/13/EU.' Consequently, the acts of

⁵⁵ According to the Commission's press release it covers video-on-demand platforms (Netflix, HBO Go, Amazon Prime, Mubi, Chili TV), online TV services (Viasat's Viaplay, Sky's Now TV, Voyo), music streaming services (Spotify, Deezer, Google Music) or game online marketplaces (Steam, Origin), see European Commission Press Release of 7 February 2017, available at: http://europa.eu/rapid/press-release_IP-17-225_en.htm (accessed 12 June 2019).

reproduction, communication to the public and making available are deemed to occur solely in the Member State of the subscriber's residence and not in the place where they physically occur (the Member State where the consumer is temporarily present).

The Portability Regulation thus achieves cross-border portability by combining two main steps: firstly, it introduces a legal fictive scenario by localising the access and the use of the service by the subscriber solely in the Member State in which the subscriber is resident, thus ruling out a copyright-relevant act in the other Member States (Article 4). Secondly, the Regulation imposes an obligation on providers of paid portable online content services to enable subscribers who are temporarily present in another EU Member State to access and use the online content service in the same manner as in the EU Member State of residence (i.e. under the same conditions and without any additional charges based on Articles 2(1) and (2), subject to verification of the Member State of residence (Article 5)).

Thus, providers of paid online content services may no longer prohibit or limit the cross-border portability of their service. Any contractual provisions to the contrary, including between providers of online content services and rightholders, are rendered unenforceable (Article 7). Rightholders are obliged to allow portability in their licencing contracts with paid online content services.

The development of satellite broadcasting led to the introduction of a strictly limited exception to licencing based on territoriality in the **Satellite & Cable (SatCab) Directive** 93/83/EEC. The Directive applies the country-of-origin principle to communications to the public by satellite in Article 1(2)(b). Thus, a licence for an EU-wide satellite broadcast only needs to be obtained in the country of origin (i.e. the place of uplink). The SatCab Directive did not apply the country-of-origin principle to internet transmissions.

The Online Television and Radio Programmes Directive (Directive (EU) 2019/789 "laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes") extends the country-of-origin principle to certain online transmissions. It is intended to simplify the clearance of rights and to encourage the cross-border distribution of online radio and television programmes. It applies to the clearance of rights for certain programmes made available through broadcasters' ancillary online services. The ancillary services covered by the country-of-origin principle include simulcasting, catch-up services and other services that complement the main broadcast, such as previews. Within such services, the country-of-origin principle applies to all radio programmes, and television programmes which are news and current affairs programmes, or fully financed own productions of the broadcasting organisations.

In order to be able to make such programmes available online in other EU Member States, broadcasters will need to clear the rights only in the country in which they

are established. However, all the aspects of the broadcasters' ancillary online services, including the audience and language versions of the programmes, will need to be considered in determining the licensing fees. The new rules will apply as from 7 June 2021 (transposition deadline) for new contracts between rightholders and broadcasters, and as from 7 June 2023 (end of the transitional period) for existing contracts. The Directive will facilitate the clearance of rights across borders, but it does not include any obligation for broadcasters to make their programmes available in several Member States.

3.2.2.6 Specific EU rules on the management of rights.

As a general principle, rightholders are free to decide whether to license their rights individually or collectively through a collective management organisation (CMO). There are two main exceptions to this principle: firstly, mandatory collective management which means that the rights can only be exercised through a CMO; and secondly, collective licensing with an extended effect (CLEE) schemes covering several legal mechanisms. Such mechanisms can include extended collective licensing (ECL), where an existing licence is extended to outsiders under certain conditions, or presumptions of representation, where a mandate of a CMO is extended. CLEE mechanisms include an opt-out option for the rightholders concerned.

At EU level, mandatory collective management of rights has been applied since 1995 in the area of simultaneous, unaltered and unabridged cable retransmission (Article 9(1) of the SatCab Directive). This scheme has been extended by the Online Television and Radio Programmes Directive to retransmissions carried out by means other than cable, such as satellite, digital terrestrial, IPTV and online (in managed environments), in order to facilitate rights clearance for all types of retransmission services (Article 4).

CLEE is one of the means to facilitate access to creative content. At EU level, ECL has so far been allowed in the area of satellite broadcasting (Articles 3(2) and (3) Directive 93/83/EEC). The Directive on Copyright in the Digital Single Market has expanded the use of CLEE in two respects: first, a specific scheme of CLEE (e.g. ECL, presumption of representation) with regard to out-of-commerce works was introduced for the benefit of cultural heritage institutions (Article 8); and second, Article 12 introduced a general legal framework for national CLEE schemes as a measure to facilitate collective licensing in specific cases. It established conditions and safeguards that must be respected when Member States opt for CLEE schemes. The provisions on out-of-commerce works must be implemented in all Member States by 7 June 2021, while Article 12 is optional for Member States to apply.

Specific rules exist for multi-territorial licensing by CMOs managing online rights in musical works (Articles 24-31 of **Directive 2014/26/EU**). These rules were adopted with a view to setting common standards for such CMOs to facilitate, among other things, rights clearance for cross-border online music services. In a nutshell, CMOs

dealing with authors' rights in musical works for online use must comply with certain requirements in order to be able to offer cross-border licences. If they lack the required infrastructure necessary to comply with the rules on multi-territorial licencing, they can outsource the operations or aggregate their repertoire with that of a compliant society. If a CMO does not offer multi-territorial licensing or does not allow another CMO to represent those online rights for such purposes, rightholders must be able to withdraw these rights from the CMO for the purposes of multi-territorial licencing.

3.3 Summary

The bullet points below present an overall summary of this legal chapter:

- Creative content can be protected by copyright and related rights which grant rightholders exclusive rights to authorise or prohibit the use of such content on a territorial or multi-territorial basis. The rights which are relevant for the use of creative content by online content services are, in essence, the reproduction and the communication to the public/making available rights under Articles 2 and 3 of the Copyright Directive, respectively. In addition, performers and phonogram producers may claim an equitable remuneration when phonograms are used by non-interactive services (Article 8(2) Directive 2006/115/EC).
- These rights may be transferred, assigned or licensed (Recital 30 of Directive 2001/29/EC). The legal regime which applies to copyright licences is mostly governed by both the national law of the Member States (subject to compliance with EU Law and jurisprudence) and the recently adopted Directive on Copyright in the Digital Single Market. This Directive includes new rules governing contractual relationships between authors/performers and their counterparts (producers, publishers, etc.).
- An exclusive right can be licensed individually by the rightholder or collectively through a CMO. Collective management is mandatory in the area of cable retransmission and, as of 7 June 2021, for retransmissions of radio and television programmes provided by other means (Article 9(1) Directive 93/83/EEC for cable retransmission, Article 4 Directive (EU) 2019/789 for other means). Collective licences may also be extended, under certain conditions, to non-represented rightholders in the case of satellite broadcasting under Directive 93/83/EEC and more generally under Article 12 of Directive (EU) 2019/789 once the Directive becomes applicable. Online rights in musical works may be acquired on the basis of special rules for multi-territorial licencing from CMOs (Articles 24-31 Directive 2016/24/EC).
- The principle of contractual freedom allows rightholders to shape the licence in various ways, and rightholders can in principle decide whether to license their rights on a regional, national, linguistic or a multi-territorial basis (if they hold the rights for several territories). However, this is not without limits.
- The exercise of the rights protected by copyright has been subject to a number of specific measures adopted at EU level that aim to facilitate rights clearance and remove barriers in the internal market. Such measures include the

application of the country-of-origin principle in certain specific cases (satellite broadcasting and certain programmes in broadcasters' ancillary online services) and the exhaustion of the distribution right (material exploitation). Article 3(3) of Directive 2001/29/EC rules out exhaustion in the case of acts of communication to the public and making available.

- The exercise of exclusive rights must not be contrary to EU Treaty principles, namely the free movement of services (Article 56 TFEU), as well as the rules on competition (Articles 101, 102 TFEU). According to the case law of the European Court of Justice in Coditel No.1 and 2, as well as Murphy and Canal+ more recently, to grant an exclusive right to a single distributor in a given country can represent a justifiable restriction of the freedom to provide services and could also be allowed under Article 101(1) TFEU. However, absolute territorial exclusivity which partitions national markets and eliminates competition between distributors would normally constitute a violation of Article 101(1) TFEU. This is also problematic where passive sales are restricted through licencing agreements as discussed in the pay-TV case.
- Further restrictions to granting territorially limited rights have been brought by the Portability Regulation (EU) 2017/1128. Rightholders and providers of paid online content services are now obliged to enable consumers to access online content services to which they have subscribed in their Member State of residence when traveling temporarily to another Member State. For the purposes of that Regulation, access and use by the subscriber is deemed to occur only in the Member State of residence.
- Following the example of satellite broadcasting, Directive (EU) 2019/789 has introduced the country-of-origin principle for so-called broadcasters' ancillary online services which are related to the broadcast, such as catch-up services, simulcasts and services that complement the original broadcast. This applies to all radio programmes, and television programmes which are news and current affairs programmes, or fully financed own productions of the broadcasting organisation.
- The AVMSD in Article 14 lays down limits concerning the exercise by broadcasters of exclusive rights in a Member State by allowing free-to-air coverage of certain events that have been designated as being of major importance in that state on the basis of an overriding reason of public interest. This is to ensure wide public access to broadcasts of events of major importance for society, a large proportion of which are sports events.

4 Methodology

This chapter presents the overall methodological background to this study. It firstly focuses on the overall methodology and the two possible Scenarios for the potential inclusion of the services analysed in this study within the Geo-blocking Regulation; and then presents the methodology for each of the data collection tools.

4.1 Overall methodology

This study builds on comprehensive data instead of theoretical economic modelling; this approach provides very specific real-world insights on several services. This way, the potential costs and opportunities of an extension of the Geo-blocking Regulation refer to the expected revenue for an average transaction in each sector. This approach can shed light on the likely effects of an extension of the GBR on major pan-European providers in the selected sectors based on real-world data and actual consumer insights gained in a survey. However, data availability sets certain limitations for our results.

When assessing the impacts of a possible extension of the Geo-blocking Regulation to online services giving access to copyright-protected content, it is necessary to consider whether the services have the required rights to serve customers in other Member States, in particular in a situation of passive sales.

Taking into account the absence of a general EU definition of criteria to identify the relevant territories for which rights need to be held, except in specific circumstances⁵⁶, as well as lack of granular publicly available information on the scope of licencing arrangements, for the purpose of the analysis carried out in this study, the contracting authority suggested examining two possible Scenarios for the inclusion of these services within the Geo-blocking Regulation. These scenarios, which reflect different possible interpretations of the criterion to localise the copyright-relevant acts⁵⁷, are referred to throughout the entire analysis of this study (see Sections 4.1.1 and 4.1.2).

In both Scenarios, e-merchants would not be permitted to discriminate for reasons related to nationality or residence against consumers making passive requests to purchase copyright-protected content. This effectively means that the non-discrimination provisions of the Geo-blocking Regulation (Article 4) would be extended to include services giving access to different non-audiovisual copyright-protected content. In addition, audiovisual services would no longer be excluded from the general scope of the Regulation.

⁵⁶ See De Wolf et al (2014) and, as regards specific situations where EU law applies, the provisions included in Portability Regulation (EU) 2017/1128 and Directive (EU) 2019/789.

⁵⁷ See De Wolf et al as well as CRA (2014). These two Scenarios do not entail any interpretation of the concerned legal concepts from the Commission.

4.1.1 Scenario 1

Under **Scenario 1**, the obligations enshrined in the Geo-blocking Regulation would be applicable insofar as the trader has the right (e.g. under a licence agreement or as an original rightsholder) to make the content available in the Member State where the customer who is seeking to buy the service is located (except in the specific situation regulated by the new Online Television and Radio Programmes Directive under Article 3, where the principle of country of origin applies, which means that the broadcasters need to clear the rights for making available certain programmes on their ancillary online services in their Member State of establishment only).⁵⁸ The country-of-origin principle introduced by this directive implies that broadcasters will be deemed to have the rights for other Member States and will therefore have to make the programmes covered available to unsolicited users in other Member States, through their ancillary online services.

For the merchant to be obliged to make a cross-border sale, the merchant would need to possess the relevant rights to sell to the Member State in which the customer is located, regardless of the active or passive status of the sale.

In this way, **Scenario 1** obliges merchants to actually make the content available, in response to consumers' unsolicited requests, in those countries for which they have the rights. They would also have to adhere to the non-discrimination clauses and apply the same conditions (with the exceptions as mentioned in the Regulation, such as in case of legal obligations). This corresponds to the 'Status Quo' Scenario described in paragraph 16 of the 2014 CRA study. However, the impact of developments since then, such as the new Online television and radio programmes Directive, is considered on top of this.

The current trend to subscription models for digital content has significant implications for the potential interpretation of Scenario 1 under the current or any future implementation of the Geo-blocking Regulation. Catalogues – even those provided by the same provider – tend to differ across Member States for several reasons: (i) insufficient rights to distribute specific items of content across all Member States where the provider is active; (ii) legal restraints to distribute specific items of content in some Member States where the provider is active⁵⁹; and (iii) voluntary territorial differentiation by the provider despite sufficient rights.

⁵⁸ Directive of the European Parliament and of the Council Laying Down Rules on the Exercise of Copyright and Related Rights Applicable to Certain Online Transmissions of Broadcasting Organisations and Retransmissions of Television and Radio Programmes and Amending Council Directive 93/83/EEC. <https://data.consilium.europa.eu/doc/document/PE-7-2019-REV-1/en/pdf>

⁵⁹ Some books, films or songs may not be permitted to be distributed in some Member States while they are legal to distribute in others. Even in the case of an extension of the Geo-blocking Regulation, traders may be required under certain circumstances to respect these national restraints. Distributors will have to plan to prevent the distribution of such items to citizens who are not meant to have access to them.

As outlined in the above, under Scenario 1, a distributor would have to give access to items of content to consumers residing in Member States for which the distributor holds sufficient rights. Arguably, and depending on the type of content and on the licencing practices, this will concern only a certain number of items within a subscription service.⁶⁰ For some or all of the items made available under the terms and conditions of the subscription service, the distributor is likely to not have sufficient rights to distribute them to consumers residing in Member States other than the Member States at which the subscription service is targeted.

In these latter cases, there is some ambiguity as regards Scenario 1 that would need to be resolved in a potential implementation of an extension of Geo-blocking Regulation in line with Scenario 1. Specifically, the question may emerge whether a distributor would be able to restrict access to a specific subscription targeted at one Member State beyond the borders of this targeted Member State on the grounds that *at least one item of content* in the correspondingly offered catalogue is not licenced for distribution beyond the borders of the Member State, or whether the distributor would have to make available all items of content for which he holds sufficient rights to consumers residing in Member States not targeted by the specific subscription. While we do not seek to speculate about the specific implementation of a potential extension of the Geo-blocking Regulation, this may require a specific consideration about the scope of application of the Regulation to the subscription as a whole and/or to the individual items of the bundle, taking into account that by definition Scenario 1 applies only in those countries for which a distributor has the rights (hence whether individual items of the bundle for which the requisite rights in the Member State of the consumer are not held can be lawfully provided therein would remain subject to copyright law and a trader could not be obliged to violate it by the Geo-blocking Regulation).

This is crucial factor for the impact of Scenario 1 on consumer prices, the range of products offered to consumers as well as ultimately the revenue stemming from such subscription offers after the implementation of a potential extension of the Geo-blocking Regulation. If a subscription was treated as a coherent individual service that would not have to be offered to consumers residing in Member States other than the one to which it is targeted, if the distributor does not hold sufficient rights at least for one item on the catalogue, then Scenario 1 would likely be of negligible impact since distributors could easily add such items to their catalogues. If, on the other hand, subscription services were considered bundles in a meaning similar to that clarified in Recital 10⁶¹ of the current Geo-blocking Regulation and distributors could

⁶⁰ Subscription services are thought of here as services that enable their users to access a catalogue of content for a given period of time.

⁶¹ Recital 10 of the current Geo-blocking Regulation states the following: "Where a trader offers a bundle that combines several services or a bundle of goods combined with services, and one or more of those services would, if offered on an individual basis, fall within the scope of this Regulation while another

have the choice to limit access only to items for which the distributor has the rights to do so, several outcomes are conceivable depending somewhat on the current use of such rights by distributors. If distributors currently made available all items of content for which they hold sufficient rights in curating the individual country catalogues for their subscription services, consumers would not benefit from an increased product range under this scenario as regards such subscription services.

If a logic similar to that of Recital 10 of the current Geo-blocking Regulation applied to the bundle, a distributor could choose to make available individual items but would also be free to set the price for such individual items as long as there was no discrimination. This could lead to all kind of possible marketing policy options being available to traders (such as the possibility to provide individual items under a transaction-based model and/or a downgraded subscription service including only services for which rights are held) with undefined possible price options.

Whether and how to clarify these issues may be a policy choice to be made in the case of an extension, but it can already be noted that if traders were allowed to fully refuse cross-border access in case of lack of requisite rights for even one single item of the subscription, then the effects of any extension of the Regulation could be easily circumvented in case of subscription-based services. For the sake of simplicity and effectiveness, therefore, the modelling in this study assumes a Scenario 1 where individual items of content can be made available cross-border if the distributor has sufficient rights to do so either in an individual (transactional) manner or as a subscription service containing a reduced number of items for the same price as the original subscription – which can also result in potentially attractive new choices for price-driven consumers. Impact on content accessibility, on the contrary, could take place in more limited cases, such as when an SVoD service that is currently not present in a specific Member State but holds sufficient rights to distribute in the country (some of the) items of content which currently only feature on catalogues in other Member States. As such offers become accessible to consumers under Scenario 1, there would be a positive impact on the volume of content available to consumers in that Member State unless the rightholders have already otherwise licenced the respective content to other distributors. It is unclear, however, whether SVoD services would follow a transactional or reduced subscription business model and their specific pricing strategy for such an offer.

service or services would not, that trader should either comply with the prohibitions set in this Regulation as regards the whole bundle, or at least offer, on an individual basis, services that fall within the scope of this Regulation, if those services are offered to customers by the same trader on an individual basis. Where a trader provides a service or a good on an individual basis outside a bundle, the trader should remain free to decide the price to be applied to such a service or a good outside a bundle in so far as the trader does not apply different pricing for reasons related to nationality, place of residence or place of establishment.” (Regulation (EU) 2018/302

4.1.2 Scenario 2

Under **Scenario 2**, in order to engage in cross-border passive sales, it would be sufficient for the trader to have the right for the content only in the Member State(s) where it is actively selling and not in Member States from which access is sought by an unsolicited user (passive sales), except in the specific situations regulated by the Online television and radio programmes Directive under Article 3, as per above. The country-of-origin principle enshrined in this Directive will supersede any interpretation about the relevant territory, as broadcasters would only need to clear the rights (for the programmes and services covered by the country-of-origin principle) for the Member State in which they are established.

Under this Scenario, the question of whether the trader possesses the relevant rights for active sales would not be altered by the revised Regulation.

Any geographic restrictions on targeting, such as for instance localising content or advertising its accessibility, that the rightsholder licensor and the trader licensee may have agreed would continue to govern their relationship, and they can be enforced in all Member States. However, with regards to passive sales, the mere act of making content available would only take place in the targeted country(-ies). Hence, assuming that the trader licensee has rights to actively sell/provide the service in at least one Member State, the mere act of making available this specific localised version to unsolicited users located in other Member States could not be considered an act exceeding the territorial scope of the licence.

Accordingly, in the case of an application of the Geo-blocking Regulation, the use of technical measures to prevent these same cross-border passive sales would likewise be prohibited. In short, this Scenario, unlike **Scenario 1**, prevents traders from refusing passive sales from unsolicited consumers in any other Member State, regardless of whether the trader holds a right to actively provide the service in these Member States. This Scenario corresponds to the 'Targeting Approach' Scenario as described in paragraph 17 of the 2014 CRA study. Unlike Scenario 1, moreover, this scenario does not pose specific issues regarding the need to assess the extent of rights held for each individual items in a subscription service targeting a given market in case of unsolicited passive access.

4.2 Desk research

The desk research presents an analysis of how the different sectors function in practice. This assessment is based on a business model analysis and extensive desk research including a literature review, mostly targeting previous consultancy studies, EU and Member State legislative texts, trade press, academic literature and internet research. For each of the sectors, the following three parts were covered in the desk research:

I. The economic importance and business models used in the different sectors

The first part of the desk research provides an overview of the economic importance and complexity of the different sectors. In particular, the following variables have been considered as these are the most relevant, among those collected, to show economic importance:

- Number of enterprises (and change over time)
- Persons employed (and change over time)
- Turnover (and change over time)
- Value Added (and change over time)

These variables are mainly based on Eurostat's structural business statistics and Statista's Digital Market Outlook. Additional sources, such as yearbooks of sector organisations and further publications of, for example, the European Audiovisual Observatory have been used to describe the sectors in a more detailed way, also providing a dynamic and ecosystem perspective.

Moreover, this section describes the different business models of the enterprises active in the various sectors informing, among other things, the distribution and sales channels and pricing models per sector. This research is largely based on the business model analysis that has been conducted and the following categories of companies have been mapped in the eight Member States of focus:

- 54 companies active in the audiovisual sector (content creators, rightholders, distributors, broadcasters and other industry associations), 11 of which are small enterprises, seven are medium sized and 36 are large companies. These companies cover 66% of domestic traffic and 33% of non-domestic EU traffic;⁶²
- 19 companies active in the e-book sector (either publishers, distributors or both), eight of which are small enterprises, six are medium sized and five are large companies. These companies cover 65% of domestic traffic and 35% of non-domestic EU traffic;⁶³
- 17 companies active in the music sector (either publishers, distributors or both), nine of which are small enterprises, three are medium sized and five are large companies. These companies cover 66% of domestic traffic and 38% of non-domestic EU traffic; and ⁶⁴
- 35 companies active in the software and games sector (either publishers, distributors or both), nine of which are small enterprises, 16 are medium sized

⁶² Estimation based on SimilarWeb traffic data.

⁶³ Estimation based on SimilarWeb traffic data.

⁶⁴ Estimation based on SimilarWeb traffic data.

and 10 are large companies. These companies cover 52% of domestic traffic and 50% of non-domestic EU traffic.⁶⁵

The full list of analysed companies is presented in Annex I.

II. Main licensing models in the sector

The second part of the desk research highlights the most widespread contractual structure, geographical extension and territorial restrictions of the main copyright licensing arrangements and contractual agreements for each sector. This analysis is aimed at existing contractual relationships between the various stakeholders in the audiovisual and non-audiovisual industries. The focus here is on relationships all along the respective value chains on the industry side, since these arrangements might well constrain what can be accomplished with a potential extension of the Geo-blocking Regulation. The contractual relationships with consumers are addressed elsewhere, including through the consumer survey.

Licensing models and contractual agreements vary substantially according to the sector where the operator is active, the type of services that the operator provides and the business models that the operator uses. The following indicators have been identified as the most relevant for the analysis of the contractual relationships:

- **Nonexclusive v exclusive rights;**
- **Geographical dimension** (worldwide v a defined territory, which can be formed by one country, several countries or the entire EU);
- **Temporal dimension** (perpetual v a specified time period in years, months or days); and
- **Unrestricted rights v rights for a specific platform of use.**

Further, these rights can be classified in the following categories:

- **Technology and usage rights:** includes the technologies that the digital content providers may legally use to transmit the licensed content and to allow the user to receive it – including the modalities of access;
- **Release and duration rights:** refers to the release window or windows (i.e. the period of time during which the digital content provider is legally entitled to offer the licenced product); and
- **Geographic rights:** relate to the geographic area(s) in which the digital content provider may legally offer the licenced product.⁶⁶

Rights may be licenced using any combination of the abovementioned indicators and categories and this analysis aims to discuss the most prevalent approaches to this in the various sectors.

⁶⁵ Estimation based on SimilarWeb traffic data.

⁶⁶ Source: Commission Staff Working Document accompanying the document report from the Commission to the Council and the European Parliament final report on the E-commerce Sector Inquiry, pp. 189-199.

Finally, it is important to note that this analysis covers the sectors fully, both vertically (i.e. all the different actors within the value chains) and horizontally (i.e. different services such as free v paid, transaction-based v subscription-based, etc.).

The findings from the desk research are discussed for each sector in Section 5-8 under the first paragraph (analysis of the sector).

4.3 Interviews

The aim of the interviews was to gather views from different types of stakeholders that would be affected (directly or indirectly) by changes in the Geo-blocking Regulation. The input from these interviews is crucial (to the extent that it is backed by supporting data) to evaluate the magnitude of the potential changes that may be introduced by a revised Geo-blocking Regulation from a practical perspective. In this sense, the interviewees add a qualitative perspective alongside the more quantitative analysis of the other data collection tools, even though the interviews also aim to gather quantitative data from individual operators to the extent possible. In addition to formal interviews, stakeholders based on membership have been requested to disseminate the questionnaire with their individual members in order to gather more granular input. Their contributions have been considered in written form.

Interviewees have been selected to ensure a full coverage of all relevant categories of stakeholders, both from the industry side and the non-industry side. Regarding the stakeholders from the industry side, the interviewees have been selected to cover different kinds of stakeholders, considering the following characteristics:

- **Position in the value chain** of the different subsectors. In particular, there has been a distinction between **rightholders** (i.e. authors, creators, producers, etc.) and **distributors** (broadcasters, platforms, etc.); and
- **Size** of the operator and status as **independent** or **major**.

Table 2 presents an overview of the different categories of stakeholders from which input has been gathered during the stakeholder interviews. Annex II presents the full list of organisations that provided input through stakeholder interviews.

Table 2: Overview of input gathered through stakeholder interviews

Category	Number of interviews
Audiovisual	22 Interviews 26 Written inputs
E-books	4 Interviews 8 Written inputs
Games/software	2 Interviews
Music	5 Interviews 1 Written input
Collective Management Organisations	1 Interview 6 Written inputs
Consumer/civil society	5 Interviews

Source: Own elaboration

The current list of interviewees indicates that a representative overview of the different kinds of organisations active in the sectors has been covered and, therefore, the input from the fieldwork provides a good overview of the main issues at play. However, it should be noted that the majority of the interviewees reached represent the audiovisual sector and are EU-level players.

4.4 Consumer survey

This section presents the methodology adopted for the consumer survey including data collection and analysis approach.

4.4.1 Data collection approach

The aim of the consumer survey was to collect data on consumer attitudes and behaviour linked to their cross-border access of audiovisual and non-audiovisual services giving access to copyright-protected content. In designing the questionnaire, it was a priority to avoid overlaps between the present survey and the recent Eurobarometer (FL477b) investigating 'Cross-border access to content online'. Consumer experiences are a key factor to consider when investigating the demand side and the survey provides key primary (quantitative) evidence to feed into the final analysis. The specific objectives of the survey on consumer experiences focus on the following topics, which represent the basic structure of the questionnaire:

1. Access, usage and purchasing patterns of consumers (domestic and cross-border);
2. Consumer satisfaction, preferences and motivations when consuming digital content;
3. Consumer illegal/grey knowledge and behaviour; and
4. Consumer willingness to pay and preferences for local v international content and language accessibility.

By gathering consumer data on these topics, complementary to the extensive data available through the Eurobarometer FL477b, the objective is to estimate actual cross-border demand for content, accounting for potential barriers to accessing the content (geo-blocking). The consumer survey was conducted using online interviewing methodology (i.e. Computer Assisted Web Interviewing, CAWI) as this is the most cost-efficient approach and provides benefits in terms of avoiding measurement errors. The survey covered a selection of eight Member States with a balanced inclusion of Member States from the four main EU regions (North, East, South and West) thus ensuring a solid geographical spread. Furthermore, since the scope of this study focuses on audiovisual and non-audiovisual services giving access to copyright-protected content, only respondents with recent experience (i.e. during the last 12 months) in any of these markets were eligible to take part in the survey. The target sample sizes consisted of 1,000 respondents in each country. While a lower number of respondents would already give statistical representativeness in the smaller countries, a large portion of the questionnaire is sector specific, which makes it important to have a balanced sample and sufficient responses per sector. Due to

the length of the questionnaire, it was only possible to ask each respondent questions related to one specific sector. These sample sizes ($n=1,000$) ensures a minimum of 150 to 170 respondents per sector in each country and allow for robust cross-sector comparisons.

Six sectors have been defined and agreed to target within the scope of the consumer survey, as described below⁶⁷:

- E-books, audiobooks, digital magazines or digital newspapers
- Music
- Software or apps
- Games or gaming apps
- Audiovisual content, including films, series and other online video content excluding sports
- Audiovisual content related to live sports events

In order to obtain a large enough sample size per sector, the aim is to reach a balanced sample per sector in each country as only one sector is covered in detail per respondent. However, as the incidence rates vary to some extent between the different sectors, the target sample size per sector was obtained on a best effort approach. Soft quota was implemented per sector and monitored continuously to ensure the feasibility and efficiency of the fieldwork. To account for sector variability, the aim was to reach a final sample ranging between 150 respondents (minimum) and 175 respondents (maximum) per sector. The strategy to achieve sufficient coverage of sectors with lower incidence rates was to prioritise them by assigning respondents with experience in multiple sectors, not at random but based on the sector where the current achieved sample size is lowest. For example, if someone had experience in four of the six sectors investigated, they were assigned to the sector out of the four for which the current sample was lowest. With this approach the aim was to obtain sample sizes per sector that are sufficient to allow robust cross-sector comparisons.

The sampling also considered the incidence rate of usage (both paid and free⁶⁸) for each of these sectors. Considering that there might be differences between paid and free services concerning the research questions of this study (e.g. consumers might have different expectations when using paid services), the sampling approach ensured that a sufficiently large subsample of responses was obtained from paid users. As such, a minimum target of 20% of the total sample per country (i.e. $N=200$ across the five sectors) consisting of paid users was adopted.

⁶⁷ The analysis considers these sectors but is structured in four broader sector groups, combining software and games and the two types of audiovisual content.

⁶⁸ Please note that the incidence rate of illegal usage of copyright-protected content has not been considered in the sampling. On the other hand, questions about illegal usage are included in the consumer survey.

The survey was conducted in all the national or majority languages. A soft launch was conducted first (10% of all survey responses in all countries) to ensure the survey was set up correctly. A dedicated tool updated automatically via a central data collection software was used for real-time field monitoring of all aspects of the fieldwork. After the fieldwork was completed, the data was checked, cleaned and validated. A post-stratification weighting accounting for differences in age and gender was applied, using the latest Eurostat data available. In addition, a population factor was applied for each country to derive the total. The final output was prepared for further analysis in an SPSS database. An extensive Excel file with tabulations of all questions broken down by sector, relevant socio-demographic and regional factors was created that would facilitate the analysis.

4.4.2 Data analysis approach

The key consumer survey findings are presented in this report for each of the broad sector groupings, considering each market surveyed. Furthermore, the data collected feeds into the integrated analysis, where it provides a subjective estimate of consumer demand, willingness to pay and propensity to switch in order to help estimate the impact on rightholders and distributors, distribution models, licences and compliance costs. While these questions cannot be fully tackled by analysing data obtained via this survey, it is crucial to consider consumer perceptions and behaviour when answering these questions. It is important to note that the consumer survey provided data is relevant to assess demand for content services as a whole, rather than for individual items/piece of content; hence it is particularly relevant for subscription-based services services. A detailed summary of the topics and specific indicators covered by the consumer survey can be consulted in Annex III.

The full consumer survey results based on sector comparisons are presented in Annex IV, while the most relevant results are discussed in dedicated sections in Sections 0 through 8.

4.5 Mystery shopping exercise

This section presents the data collection methodology and analysis approach for the mystery shopping exercise.

4.5.1 Data collection approach

The objective of the mystery shopping exercise was to determine the prevalence of geo-blocking at different stages of the consumer journey by focusing exclusively on the five sectors covered by the study. The focus of this task was to measure general accessibility of services complemented by evidence obtained by actual catalogue comparisons. It aimed to tackle this objectively by performing an audit (an objective evaluation) of key providers in these sectors across the EU. As such, while the consumer survey provides a more subjective view of consumer experiences when it comes to geo-blocking of digital content, the mystery shopping covers this from a purely objective perspective. The exercise was focused on different stages of the consumption process by simulating a realistic consumption scenario for each of the

sectors covered. Aside from accessibility and geo-blocking, the exercise aims to highlight potential differences in pricing and generalised changes of access to content offered (catalogue) within the limits of the scope of this exercise.

A sample of providers that operate only within the studied sectors was analysed to ensure that results are relevant and useful within the scope of this study. In determining the sample, the basis was formed by the same selection of providers (n=125) selected for the business model analysis. This selection of providers was balanced across the studied sectors, as well as in terms of provider size (small, medium and large)⁶⁹ incorporating both local providers (operating only nationally) and international providers in each sector. Using this selection as a starting point ensured maximum consistency across the different tasks. As a second step, each provider was checked manually to ensure that the website was feasible to study in the mystery shopping exercise. Some of the providers were discarded as a result and substituted with others more relevant to the exercise and/or more representative of the sector dynamics, in agreement with the contracting authority. A detailed overview of selected providers is provided together with the datafile in SPSS and Excel formats, this list is also provided in Annex V. Finally, the provider selection was balanced also across the eight countries selected to be covered by the consumer survey with 14 providers selected per country and 13 global providers that operate across the EU.

Using this selection, a total of 250 mystery shopping exercises were conducted, balanced across the six sectors covered. To ensure the quality of the obtained results, two mystery shopping exercises were conducted per website/provider, using two different shoppers seemingly located in two different Member States. The two exercises conducted per provider allowed the incidence of geo-blocking during the analysis phase to be verified by comparing the two attempts also across two different Member States. The shoppers' perceived location was changed via VPN as they were part of the research team located in Belgium. All mystery shoppers spoke the language of the country where the provider is based (provider country as defined below). This strategy is preferred to assigning shoppers in the actual countries as it ensured the quality of the briefing, close monitoring of the fieldwork and the quick resolution of issues. In addition, to be able to check for price differences and differences in the scope of the offering (catalogue), shoppers were instructed to switch between their own (the consumer) country and the provider country (see definitions below); these different exercises were conducted at different times. Nonetheless, while shoppers are seemingly located in different countries, the provider country of the two exercises is the same to allow comparisons.

Country selection criteria

Country selection in this exercise had two components as geo-blocking can only be investigated by considering the following two locations:

⁶⁹ Categorisation based on SimilarWeb data on yearly online traffic.

1. **The consumer country** – the country where a consumer is based; and
2. **The provider country** - the country where the service or service provider is based (i.e. the country towards which the service is targeted/tailored).

Some basic selection criteria for both the consumer countries and provider countries were identified and applied to ensure a robust country selection given the relatively limited sample size. The approach to country selection was twofold. For the first shopping attempt covering all providers (n=125), a consumer country was selected at random from the EU-28 Member States. For the second shopping attempt (also n=125), the top three most connected countries to the provider country (when it comes to cross-border access to digital content) were selected.⁷⁰ A table with an overview of the top three countries for each provider country is presented below. The inclusion of the top three consumer countries was balanced by assigning them per sector.

Table 3: Overview of the top three consumer countries used based on the highest proportion of access to digital content

Provider Country	Consumer country (based on % cross-border digital access)		
	Top 1	Top 2	Top 3
Belgium	Luxemburg	The Netherlands	France
Bulgaria	UK	Romania	France
Estonia	Latvia	Finland	Lithuania
France	Belgium	Luxemburg	Spain
Germany	Luxemburg	Austria	Croatia
Ireland	UK	Italy	Poland
Italy	Malta	Romania	Greece
Poland	Lithuania	Czech Republic	Latvia

Source: Digital Single Market Study (2015)

With respect to the provider countries (where the service/provider or the audience it is targeted to are located), the eight countries targeted by the consumer survey were used as the majority of providers selected can be assigned to a specific country to which the service is targeted. For the 13 EU providers, one of the eight target countries was assigned at random. As half of the countries targeted by the consumer survey represent some of the largest Member States in terms of population (France, Germany, Italy and Poland), these are consistent with data showing where cross-border e-commerce is highest (i.e. where consumers are most likely to try to access content from).⁷¹ The remaining four countries (Belgium, Bulgaria, Estonia and Ireland) are significantly smaller (and less likely to be the target of consumers trying

⁷⁰ The data was obtained from the Study on the Obstacles to the Digital Single Market conducted in 2015 for DG JUST.

⁷¹ http://ec.europa.eu/consumers/consumer_evidence/market_studies/obstacles_dsm/docs/21.09_dsm_final_report.pdf

to access content cross-border), which allowed for a balanced final sample and contributed to the representativeness of the comparative analysis.

The exercise was conducted using a simplified questionnaire based on the one from the previous large-scale study.⁷² The questionnaire was tailored to the present context and accounted for observable differences between the previous study and the present one. In arriving at a more tailored approach and based on the changes introduced to the methodology of this task, it was necessary to reduce the complexity of the questionnaire (measurement instrument). A clear briefing (face to face) ensured that shoppers could follow the protocol and perform the necessary research and actions to complete the questionnaire correctly (e.g. changing VPN from one country to another). In addition, the project manager from Ipsos was available to answer questions from mystery shoppers as they arose to keep the methodology consistent across shoppers. Issues faced and steps to follow in resolving them were communicated daily by and to all mystery shoppers. This approach ensured that the mystery shopping task brought added value to addressing the overall objectives of the project and made it easier to analyse the results and triangulate them with results from other data collection tasks.

4.5.2 Data analysis approach

Data from the mystery shopping exercise is used in combination with other data collected over the course of the project to estimate the current sector conditions and how they may evolve under the different scenarios envisaged by a potential extension. This section outlines the specific topics covered by the exercise and the indicators derived from the obtained data.

A detailed summary of the topics and specific indicators covered by the mystery shopping can be consulted in Annex VI.

4.5.3 Limitations

It is key to note that while this exercise was meant to help estimate the cross-border accessibility of content to support the overall analysis, some issues were encountered during the exercise, which when combined with the relatively low target sample of providers, do not allow us to draw robust conclusions regarding the key concepts measured. Below we provide an overview of the issues and limitations faced during the completion of this exercise.

As a first limitation, from the onset it was not possible to explore differences in catalogue across the surveyed providers, due to the amount of manual checking this task would require and the fact that it is not possible to automate it without setting up a complex web-scraping protocol. In addition, the suitability of specific providers was difficult to estimate with a simple review of their website, which resulted in

⁷² https://ec.europa.eu/info/sites/info/files/geo-blocking-final-report_en.pdf

multiple sample updates. The set up was further complicated by the need to integrate apps into the process, which required the use of mobile devices, while the survey the mystery shopping was based on was originally designed to test the consumer journey for web-based providers. For the same reason, the integration of websites that offer free content was challenging as the original survey only covered paid goods. In some cases, it was difficult to get past providers' security measures (e.g. phone or ID verification). Finally, unlike traditional e-commerce sectors, digital content sectors are characterised by a high level of variability (across sectors) or the different stages of the consumers journey. This resulted in issues with the flow of the survey, which had to be resolved on a case-by-case basis and often required a subjective judgment from the mystery shopper.

As a result of these limitations, this report only presents the results from the mystery shopping exercise in narrative form, without reporting concrete figures. These rough estimates, however, provide a good indication of the variation of geo-blocking practices and the likelihood of issues across the different sectors.

4.6 Data analysis

For the model used to estimate the quantitative effects of a potential extension of the Geo-blocking Regulation, different data sources were employed depending on the availability of relevant data in each of the sectors investigated as part of the present study. In all sectors, we drew on the data collected in the survey (described in the above) as well as desk research of actual prices and content offered by individual services. Thus, we were able to estimate likely actual consumer behaviour as a reaction to a potential extension of the Geo-blocking Regulation. This approach differs somewhat from other approaches to geo-blocking presented in the literature.⁷³ Specifically, we drew on the survey data as regards the willingness to switch from one's existing service(s) to service(s) provided to consumers in a Member States that is not the Member States where the respondent resides. Furthermore, we employed the results of a van Westendorp analysis for willingness to pay to estimate the price points, at which consumers who currently do not subscribe to an online service would be inclined to become users of such a service or rather to purchase digital content in transactional business models such as games or e-books.

Before the present report details the methodologies for data collection and analysis in each of the sectors, the following paragraphs provide a brief overview of the basic

⁷³ Overall data related to geo-blocking is scarce. As a consequence, the majority of research literature either focuses on specific aspects or sectors for which there is enough information available or argues from a theoretical perspective. Alaveras et al. (2018) for example examine multilateral trade in films by analysing annual cinema screening data from 1996 to 2014. Aguiar and Waldfogel (2019) use box office revenue data from 2002 to 2014 to fit a structural model of demand for films. Batikas et al. (2015) focus on market segmentation, but only consider Netflix in 11 Member States. Alaveras et al. (2015) compare cross-border availability of services and films in all 28 Member States. A study conducted by Oxera and O&O consultants in 2016 calculates welfare estimates with limited empirical information. A similar phenomenon can be observed for the music sector. Both the software and e-book sectors lack fundamental research efforts.

concept of data collection adhered to beyond the survey utilisation as described above. In general, our objective also for the data collection, using data that by and large was collected in desk research, was the same as with the utilisation of survey data: to remain as close to the real-world data as possible and thus reduce the number and importance of assumptions within the estimation of effects of a potential extension of the Geo-blocking Regulation. Furthermore, we aimed to establish datasets that represent the complete set of available data instead of data samples.

A key component to the quantitative analysis is the collection of various datasets covering all sectors of interest. These datasets contribute to four different aspects of the demand side. First and foremost, they contain information about the general availability of content through either catalogue information or service availability. In the context of this study, an item of interest is available if it can be found in at least one Member State. Items that are available only outside of the EU are generally left out. The second indicator assigns importance – in the sense of likely actual demand for a specific item – to each item in the catalogues for which this information is available to us. This is necessary to put differences between Member States or items into perspective and weigh results. Accessibility is the third and arguably most important indicator. It contains information about which service or item from all available services and items is actually accessible and can differ between Member States. The fourth and last indicator provides information about price differences between countries and individual items and services. An overview of available datasets can be found in the table below.

Table 4: Datasets available for the assessment of opportunities and costs of an extension of the Geo-blocking Regulation

	Price	Availability	Importance	Accessibility
Audiovisual Streaming Services ⁷⁴	x	x	x	x
E-books on iTunes ⁷⁵	x		x	x
PSN	x	x	x	x
Steam	x	x	x	x
Google Play	x	x	x	x
Music Streaming Services	x	x	x	x

Source: Own elaboration

⁷⁴ Our data collection covered a selection of popular SVoD services. Specifically, we covered the following services: Netflix, Amazon Prime Video, HBO, viaplay (films and series), c more (films and series), YouTube Premium, Mubi, Paramount+, Eurosport, hayu, Maxdome, Moviestar+, IPLA and Time Vision. We consider this a broad set of services comprising major contenders as well as local and niche options catering to specific interests among consumers such as sports. Notably, new entrants such as Apple TV+, Disney+ or Joyn may alter the SVoD landscape in the future. Our estimate of the effects of a potential extension of Geo-blocking Regulation cannot account for these likely changes. Furthermore, it should be noted that the calculation of the revenue impact of such extension focused only services that could arguably act as substitutes, i.e. niche services such as Eurosport or YouTube Premium were not considered further than the pricing differentiation analysis featured in the following analyses.

⁷⁵ The data collection focussed on iTunes as this is on the one hand a significant player in the e-book market in Europe as indicated by the background analysis on the e-book market and on the other hand enabled comprehensive data access via an application programming interface (API) to its catalogue data. Other e-book stores such as Amazon, Google Play store e-books or Rakuten (Kobo) were not as fully accessible. The same is true for national offers such as Fnac (France, Belgium, Portugal, Spain, Switzerland, Luxembourg and Netherlands) or Thalia (Austria, Germany, Switzerland (Orellfüssli)).

The following paragraphs provide a detailed description of the quantitative data that has been collected as well as the approach to the data analysis followed to arrive at the results presented in Chapter 6 of this report.

4.6.1 Audiovisual sector

First, the data captured for the audiovisual sector is described followed by the quantitative data analysis methodology applied.

4.6.1.1 *Audiovisual data capture*

For the audiovisual sector, the focus lies on subscription-based business models. The project team collected availability, accessibility and price information about major video streaming services in all 28 Member States in a non-automated way. To ensure good data quality, the browser settings have been anonymised and a VPN-service has been employed to avoid redirection measures. In contrast to the music sector, catalogue sizes play a significant role in the analysis.

In addition to collected data from desk research exercises, the project team has used other structured data sources about catalogue sizes and content variety. These information sources are complemented by additional desk research and openly available information on specific subtopics like financing strategies. Specifically, some data were supplied by JRC to the contractor. We also drew on Lumière VoD data that are openly available. A summary of the data is presented in Section 6.3.

4.6.1.2 *Quantitative analysis for the audiovisual sector*

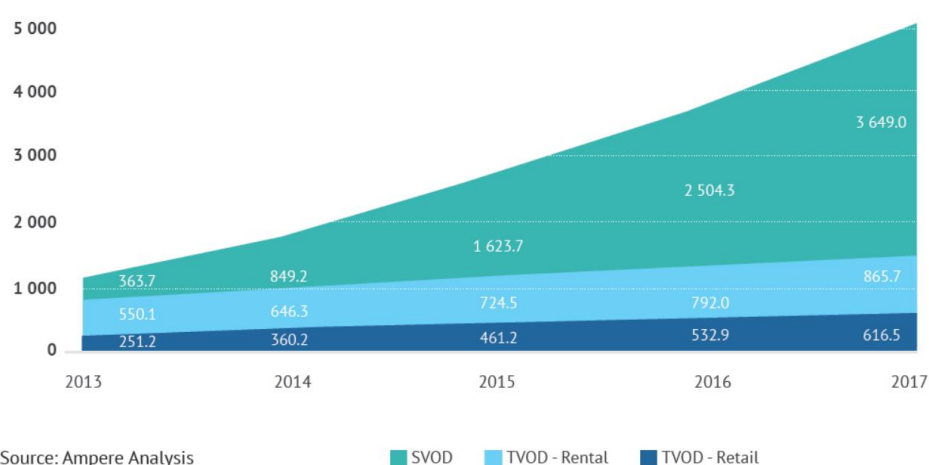
In this section, the quantitative analysis approach for the audiovisual sector⁷⁶ is outlined to address the key research questions revolving around a possible extension of the Geo-blocking Regulation. In this analysis, the focus lies on subscription video on demand (SVoD) services for audiovisual content.⁷⁷ It should be noted that this level of analysis reduces the complexity of foreseeable opportunities and costs stemming from an extension of the Geo-blocking Regulation for audiovisual content somewhat. For more details on the limitations, see Section 2.5. This reduction of complexity was needed as there is no granular and consistent data available for all audiovisual services potentially affected by an extension of the Geo-blocking Regulation. Even for SVoD services both the granularity and consistency of data are limited. We furthermore favoured SVoD since it is becoming increasingly important as a means for consumers to view audiovisual content. This is underscored by the

⁷⁶ The analysis of opportunities and costs for the remaining sectors is conducted according to the modelling approach outlined in Section 5.1.1.4. This is in line with the aim to follow an approach that is as consistent as possible across the four non-audiovisual sectors covered in the project in order to find a balance between accounting for the existing differences across sectors and presenting coherent and comparable results.

⁷⁷ As noted in the above, we have considered a much wider range of SVoD service for the analysis than the ones mentioned here as examples in the text. Examples of such services include but are not limited to the following in alphabetical order: Amazon Prime Video, c more, Canal+, Eurosport, hayu, HBO, IPLA, Maxdome, Moviestar+, Mubi, Netflix, Paramount+, Shudder, Time Vision, viaplay, Voyo. Notably, the MAVISE database lists 618 services they classify as SVoD. See <http://mavise.obs.coe.int/>.

data on consumer revenues in SVoD and TVoD retail/rental as reproduced in Figure 1 below. While SVoD revenues grew 10 times from 2013 to 2017, TVoD revenues stagnated both referring to retail and rental. With more and more actors providing SVoD services, it seems likely that the relevance of this business will further increase in the near future. The actual market situation in the audiovisual sector is notably more complex and not limited to SVoD and TVoD only, but also includes a variety of other business models and services outlined in the section on business models in the audiovisual sector in this report. Our model also cannot account for the potential effects on and originating from FTA online libraries, fully advertising-funded VoD content as well as video-sharing platforms and other forms of user-generated audiovisual content that is made available otherwise.

Figure 1: Consumer revenues in SVoD, TVoD retail and rental in the EU



Source: European Audiovisual Observatory. 2019. Yearbook 2018/2019 - Key Trends, European Audiovisual Observatory, Strasbourg, p. 51

In light of the difficulty of obtaining consistent and granular data, a small set of SVoD services within the large number of SVoD services available across Member States was selected. In order to assess the degree to which this selection represents the actual media consumption behaviour in the selected eight Member States, we have calculated the share of the selected services relative to the number of services used on average by consumers in the respective countries. The results are tabulated in Table 5 and Table 6 for the price-driven and content-driven analysis of the likely effect of an extension of the Geo-blocking Regulation. The tables show all services observed for the respective analyses. In order to be usable in the analyses, services had to be represented in the JRC data as well as the GlobalWebIndex data. Concretely, the tables provide the penetration rate of various services across different Member States. The penetration rate referred to current subscriptions held by consumers in the respective Member States. In both analyses, our model covers

between 19% and 45% of the total TV engagement in the country.⁷⁸ On the other hand, the sub-set sample of providers for the quantitative analysis, covering both content and price driven effects, is composed of pan-EU services only.⁷⁹

Table 5: Fraction of TV Engagement covered - price analysis

	Total	Belgium	France	Germany	Ireland	Italy	Poland
Netflix	39.80%	40.30%	41.00%	39.00%	69.20%	44.70%	51.00%
Amazon Prime Video	15.60%	3.90%	10.10%	35.00%	12.20%	29.90%	4.40%
MUBI	2.00%	0.20%	0.30%	0.70%	1.00%	0.70%	0.30%
Sum included	57.40%	44.40%	51.40%	74.70%	82.40%	75.30%	55.70%
Sum total⁸⁰	286%	122%	208%	189%	188%	214%	294%
Fraction of TV-Engagement	20.07%	36.45%	24.69%	39.46%	43.81%	35.15%	18.93%

Source, GWI, calculations by WIK-Consult

Table 6: Fraction of TV Engagement covered - content analysis

	Total	Belgium	France	Germany	Ireland	Italy	Poland
Amazon Prime Video	15.60%	3.90%	10.10%	35.00%	12.20%	29.90%	4.40%
HBO	1.90%	-	-	-	-	-	-
Netflix	39.80%	40.30%	41.00%	39.00%	69.20%	44.70%	51.00%
AcornTV	-	-	-	-	-	-	-
Anime on Demand	-	-	-	-	-	-	-
CMore	-	-	-	-	-	-	-
Canal+	0.20%	-	10.70%	-	-	-	-
Crunchyroll	-	-	-	-	-	-	-
DisneyLife	0.10%	-	-	-	2.10%	-	-
Hayu	-	-	-	-	-	-	-
Maxdome	0.10%	-	-	5.10%	-	-	-
Mediaset Infinity	-	-	-	-	-	-	-
Moviestar+	-	-	-	-	-	-	-
NowTV	0.30%	-	-	-	-	6.60%	-
OCS	0.10%	-	5.30%	-	-	-	-
Ruutu	-	-	-	-	-	-	-
SFR Play	-	-	-	-	-	-	-
Shudder	-	-	-	-	-	-	-
Sky Ticket	0.20%	-	-	6.20%	-	-	-
TIM Vision	0.20%	-	-	-	-	12.60%	-
Viaplay	0.10%	-	-	-	-	-	-
Videoland	0.10%	0.20%	-	-	-	-	-
Sum included	58.70%	44.40%	67.10%	85.30%	83.50%	93.80%	55.40%
Sum total⁸¹	286%	122%	208%	189%	188%	214%	294%
Fraction of TV-Engagement	20.52%	36.45%	32.23%	45.06%	44.39%	43.79%	18.83%

Source: GWI, calculations by WIK-Consult

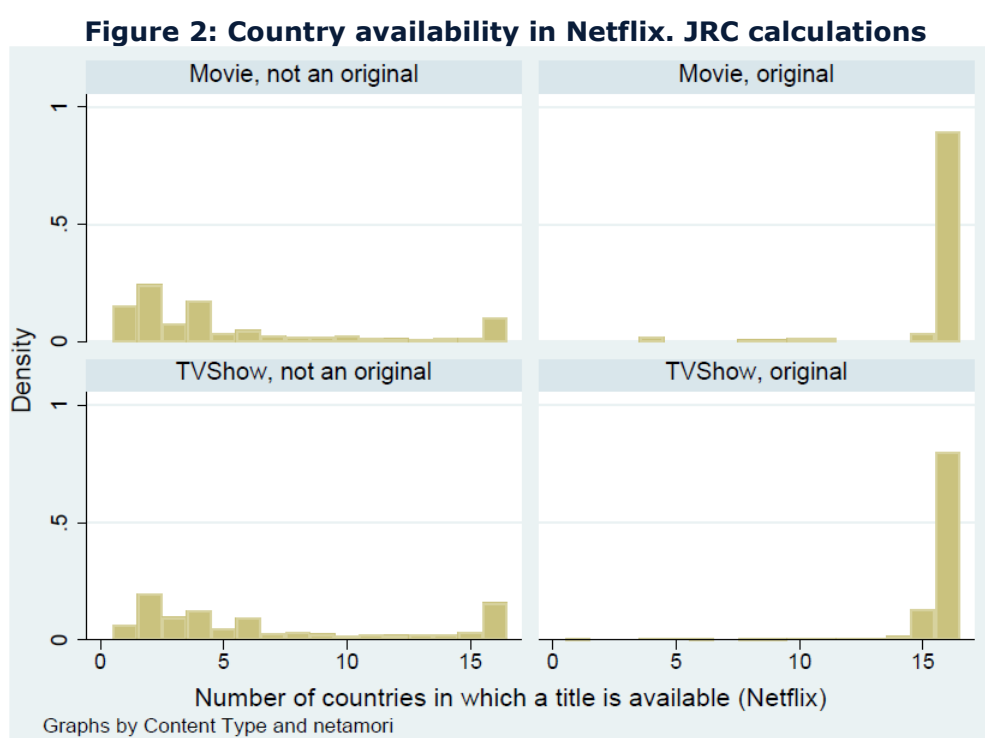
⁷⁸ The figures include linear TV channels, but exclude video-sharing platforms, TVoD, cinema and other forms of audiovisual entertainment.

⁷⁹ This applies only to the analysis of price-driven switching and combined analysis of price and content-driven switching. For the analysis of content-driven switching also smaller, i.e. non-pan-European services were considered. The services considered are listed in Table 5 and Table 6.

⁸⁰ The sum may exceed 100% due to multihoming.

⁸¹ The sum may exceed 100% due to multihoming.

In **Scenario 1**, it is assumed that switching services due to content is unlikely for several reasons. Under the very strict assumption that every store offers its items in every country where it holds the rights to do so, switching to a different country's catalogue inside the same service restricts accessibility because the service provider does not have the right to distribute some of its content cross-border. Otherwise it would already be in the domestic catalogue. This very strict assumption can be relaxed to also cover the case where a service does not offer a certain amount of content in a specific country although it holds the rights to do so. While this information is hard to gather reliably, an analysis carried out by JRC and outlined below indicated that such cases are limited to global providers' own productions. In the case of Netflix, it can be observed that own productions, for which Netflix is expected to hold the rights for, are in most cases available across all Member States. The results can be found in the figure below.



A very similar point can be made for the accessibility gain when switching to a different service. The service was either not available in the country of origin of the consumer who would now have the possibility to switch and thus the accessible content in another country would be limited to actively withheld content, which is arguably not a great amount or it was available in the country of origin in which case, and under Scenario 1, a switch inside the country is usually the better option when the main driver is content variety.

To reach the ultimate objective of estimating the revenue stemming from SVoD services under **Scenario 1 and 2** within the project, the effect of additional consumer utility (in the form of additional content becoming available) has to be accounted for

as well as potential substitution among SVoD services when new ones become available. This effect adds to the price effects and leads to consumers shifting to a cheaper version of the same SVoD service available to them in a country other than their current country of residence. This is further complicated by the fact that catalogue sizes of the same SVoD service differ substantially across Member States.⁸² Finally, and in addition to existing SVoD users, new consumers deciding to purchase a subscription to an SVoD service for the first time as cheaper or content-rich variants with novel content become available to them by an extension of the Geo-blocking Regulation has to be accounted for.

As such, a predominantly revenue-focussed perspective has been taken, which is in spirit similar to the Oxera study.⁸³ However, the present study's approach seeks to consider more complex interactions of effects than the Oxera report. It does not rule out a possible increase in revenues for SVoD services in total due to the extension of the Geo-blocking Regulation. Furthermore, the present study takes into account the possibility that new consumers enter the market and/or additional demand for newly available content emerges. As a result of this, consumers may even switch to higher priced SVoD alternatives becoming available in other Member States that offer more content than their current ones. It is expected that these effects may, at least to some extent, cancel out potential negative effects as consumers may seek out the cheapest country version of their current service. Even the latter price-driven effect is mitigated in this study's model by the fact that catalogue size and therefore the utility for a given SVoD service differs across Member States.⁸⁴ Consequently, a consumer now subscribing to an SVoD service in a country where this SVoD service is relatively expensive may not be inclined to switch to a subscription for the same SVoD service offered in another Member States at a cheaper price. This is due to the fact that the catalogue offered in another Member State may be smaller and thus of less utility to the consumer. It may equally be less attractive because less content in the consumers' mother tongue is available at all. It should be noted, however, that particular items of content may draw consumers to a certain SVoD service in a specific country as consumers preferences likely revolve around a rather small selection of items of content instead of a holistic rational assessment of the quantity and quality of the whole catalogue available.

⁸² It should be noted that catalogue items differ from one month to the other as specific items become available in specific Member States while other items are no longer available. Consequently, even a fully informative collection of all titles available at a certain point in time would be outdated quickly.

⁸³ Oxera & Oliver & Ohlbaum (2016). The impact of cross-border access to audiovisual content on EU consumers. We would like to point out that this is not a follow-up study of the Oxera & Oliver & Ohlbaum cited here. We only benchmark our approach against the approach taken in the cited study.

⁸⁴ Hence, a cheaper version of the same SVoD service may not be as attractive to consumers as the version available in their country of residence at a higher price. As the data collected for the present project indicate, price differentiation for SVoD services is driven more strongly by the specific service than the Member State where the service is being offered. As the analysis of content overlap for major SVoD services suggests, there is furthermore substantial overlap of catalogues across Member States in particular for the major SVoD services and their original content. Ultimately, it remains difficult to foresee actual content-driven consumer demand for specific catalogues of an individual SVoD services since consumer preferences are likely driven by individual items of content rather than a holistic (and rational) appreciation of the whole catalogue.

The approach to estimate the opportunities and costs of an extension of the Geo-blocking Regulation starts by exploring potential changes in consumer consumption under **Scenarios 1 and 2** as defined in the above. The estimate of changes in consumer choices is based on the observed actual accessibility and prices of individual SVoD services for the observed services in the dataset. Thus, under **Scenario 1** the focus lies on like-for-like purchase choices referring to an SVoD service that is already available in the country of residence of the consumer and which he or she may purchase from a foreign country if the price is below a threshold defined by the average price elasticity for a sufficiently similar SVoD service under the condition that this "is not meant for consumers in the country of residence" of the observed consumer.

In line with this approach, let $C = \{c \mid c \text{ is a country in EU}\}$ be the set of all Member States. Further let $S = \{s \mid s \text{ is SVoD service}\}$ be the set of SVoD services investigated. Then, $p(c, s) \in \mathbb{R}^+$ describes the price of service s in country c . The relative importance is evaluated based on the relative number of users of a specific service in a given country drawn from the GlobalWebIndex data on SVoD services in the countries wherever this is available to us. The relative change in revenue for service $s \in S$ in country $c \in C$, that can be linked to lower prices cross-border is calculated as follows:

$$CR^p(c, s) = (1 - \alpha_{c,s}) \cdot p(c, s) + \alpha_{c,s} \cdot p_{\min}(s)$$

With $\alpha_{c,s}$ describing the fraction of people that are likely to switch given a service, a country and a potentially cheap offer. At this point we utilise the Van Westendorp approach to estimate what it means for a price to be sufficiently low. $p_{\min}(s)$ describes the least expensive option that can be calculated directly from the descriptive data of the services under an arbitrary restriction introduced by one of the scenarios. If, under those specific circumstances, no such option can be found, $p_{\min}(s)$ equals $p(c, s)$. This is the case if and only if the price difference between the original subscription and the new cheapest subscription is too small to justify a switch. This approximation has been further improved by also taking new adopters into account. Since a rough price elasticity can be calculated from the survey, an equally rough estimate for price adopters can be calculated. This potentially offsets some of the loss introduced by a de facto decrease in price for some customers who are willing to switch.

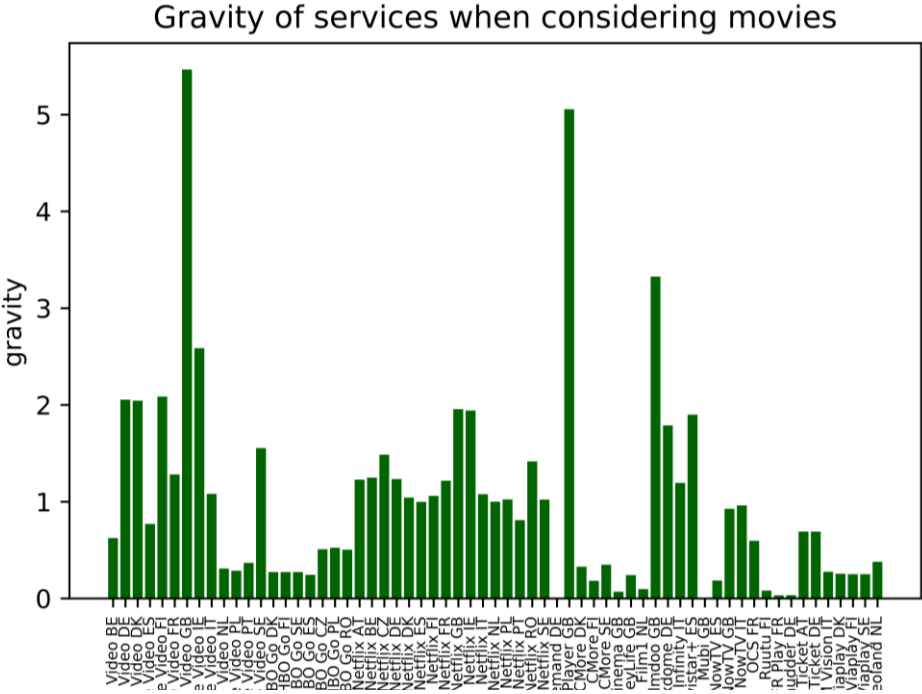
As introduced in the above, due to catalogue sizes and contents differing even for one and the same SVoD service across Member States where the service is offered, it is expected that a service that is not meant for residents in specific Member States triggers demand from them not because of its cheaper price, but because of its higher utility offered by additional content. For this exercise we interpret utility as the additional content that becomes available when switching to another service in relation to the amount of content that was previously available. We disregard the fact that a switching customer might lose a certain amount of content by switching and argue that the already available content has no use for someone who is already willing to switch. This interpretation has the benefit that identifying potential

customers that are willing to switch from the survey and reassigning them to new services based on the utility are two independent tasks that can be carried out separately. It could also be considered using only the absolute difference in items between two catalogues as proxy for utility gain, but such an approach cannot detect overlap and penalises small catalogues with very exclusive and unique content, which is counterintuitive. Finally, one could consider various combinations of intersections and conjunctions between catalogues, but we argue that the percentage increase in relation to the old catalogue size is the most reasonable proxy for utility. For hypothetical services A and B, the utility from switching from A to B is thus equal to:

$$U(A,B) = \frac{|A \cap B|}{|A|} \cdot \frac{|B \setminus A|}{|A \cap B|} = \frac{|B \setminus A|}{|A|}$$

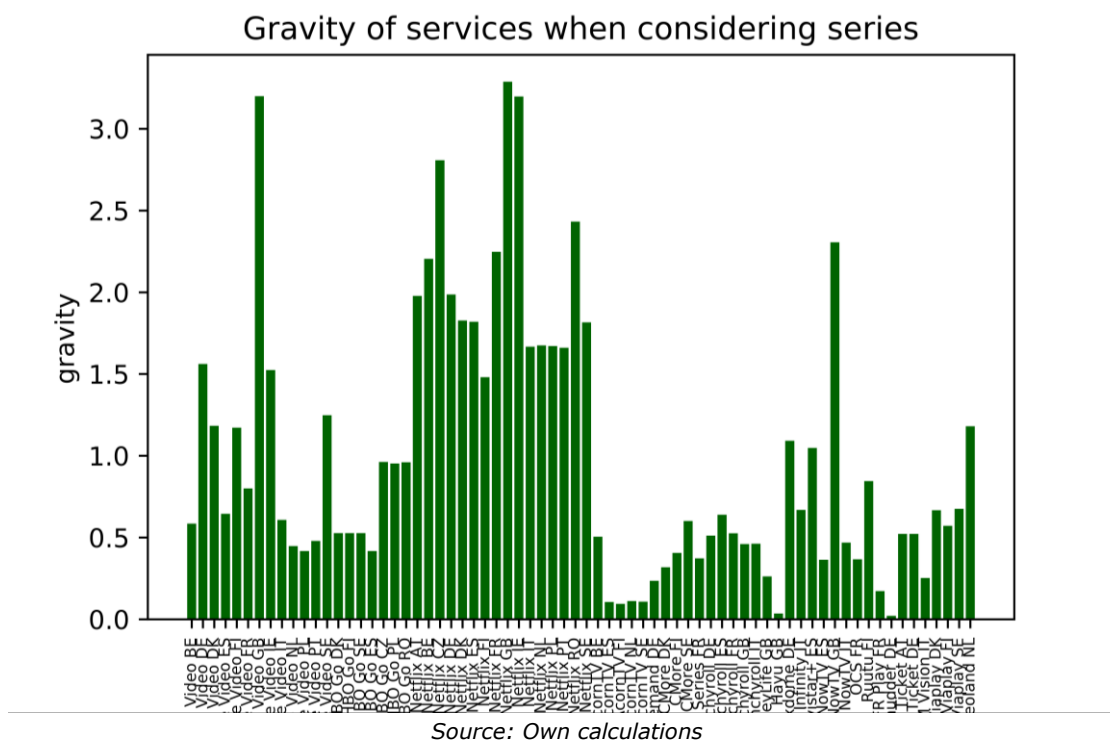
Based on data from JRC (Brooks et al, 2020), this function was evaluated for each pair of SVoD services, including identical services from different countries as well as different services across and within countries. After scaling up, these evaluations can be used as weights in a gravitation model, indicating to which service users would switch given their current service. Since the data distinguishes between films and series, two gravitation models were calculated. The results can be found below. They are generally in line with the expectation based on the initial research conducted by JRC (Brooks et al, 2020) of Lumière and Ampère data that indicates the largest volume of individual items across all SVoD catalogues being available in the UK.

Figure 3: Gravity for each SVoD service in the sample as regards featured movies



Source: Own calculations

Figure 4: Gravity for each SVoD service in the sample as regards featured series



While the gravity does not sum up to one, the figures can be interpreted the same way one would interpret histograms. The values on the gravity axis indicate how well a service performs after reallocating the content switchers.⁸⁵ A high level means that the service accumulates a large share of those switchers. Especially for movies, we find that SVoD services in the UK hold the most probability mass⁸⁶. This is in line with the general expectation based on the initial research conducted by JRC of Lumière and Ampère data (Broocks et al, 2020) that indicates that the largest volume of individual items across all SVoD catalogues is available in the UK.

While such a gravity model already tells a lot about the attractiveness of certain services when other services are also available, the gravitation weights can also be used as a distribution scheme for service switchers. Market share data from GWI and

⁸⁵ This indicates only the gains of the services observed relative to each other. The absolute value has no meaning and should not be further interpreted.

⁸⁶ Under scenario one, we expect no change related to Brexit. The UK is not among the eight countries this study focuses on. Additionally, UK services are not the cheapest offer, making them irrelevant for switcher and new adopters motivated by price. Under Scenario 2, however, we find that especially UK services offer the most diverse content, making them attractive for switcher and new adopters motivated by new content they could not access before. Recalculating the impact on revenue results in a revenue loss of 2% (considering ampère data about movies; 4% for series data) solely due to the fact that UK services are excluded from the gravitational model. However, it is hard to speculate whether no UK and/or similar English-speaking services will be offered in the Union or, on the contrary, it may nevertheless still be offered in one or more Member States in the Union after Brexit (hence becoming subject to the Regulation), and on which conditions.

the previously mentioned proxies for the fraction of switchers and new adopters due to an increase in content accessibility⁸⁷ are enough additional information to approximate a content-driven redistribution of market share and thus, in conjunction with current subscription prices, a change in revenue. But such a switch is independent of the state of the Geo-blocking Regulation since it does not involve cross-border purchases.

Finally, and after an investigation of alternative routes, price switches to different services for price reasons are excluded from the analysis. As can be seen in the table below, each service distinguishes itself from others through content curation. Especially smaller services vary a lot in catalogue size and based on calculations from JRC (Broocks et al, 2020), the overall overlap is small. This makes it impossible to separate price effects from content variety and it is not trivial to draw a line between substitution and the decision to move to another service, which in turn questions the role of impacts directly linked to the restriction of geo-blocking. It is not realistic that a significant fraction of subscribers would gravitate to a niche service because it is cheaper.

Table 7: Cross-country overlaps for selected SVoD services in EU27, 2020⁸⁸

Platforms:	Film title overlaps	TV series title overlaps	Comparison
Netflix	0.63	0.80	Across countries
HBO	0.44	0.59	Across countries
Amazon	0.41	0.62	Across countries
Between the Big 3	0.19	0.12	Across platforms
Between all others	0.07	0.08	Across platforms, simplified
Between Big 3 and others	0.20	0.13	Across countries and platforms
Between others and Big 3	0.22	0.21	Across platforms, simplified

Source: JRC analysis of Ampère data

⁸⁷ A lower bound for the amount of content driven switchers can be calculated from the fraction of participants (in the survey) that already have a subscription and still use grey sources for reasons related to content variety. This is true for 11% of participants in this category. We estimate the number of new adopters by calculating the fraction of participants that do not have a subscription yet and use grey sources for content reasons. This is true for less than 10%.

⁸⁸ The results from Table 5 are part of an analysis conducted by JRC (Broocks et al, 2020). In general, the overlap between two catalogues consists of the items that are present in both catalogues individually. If these catalogues happen to be the same size, the fraction of the overlap, as denoted in Table 5, is equal for both catalogues. However, since this is usually not the case, the overlap noted in Table 5 refers to the mean over both catalogues' overlaps. This potential bias gets exaggerated when averaging over groups of more than two services ("Big 3", "others"). Problems can arise especially when comparing small to large catalogues, since the fractal overlap for one is potentially high while it is usually low for the other, resulting in a bias towards values below 50%. Consequently, the data depicted in this table should be interpreted with great caution.

Overall, annual survey data from Germany that WIK-Consult has collected since 2015 indicate that multihoming across SVoD is uncommon. So, while this does not rule out that consumers with existing subscriptions add another service while holding on to the first one, it suggests that this will not happen very often. Given short cancellation times and the fact that one can realistically watch only so many films within a month a rational consumer would under any scenario become a serial switcher, optimising for new attractive content on individual services. This implies that over time the price for the average is equal to the average price across the cheapest variants of the individual SVoD services offered featuring the individually relevant content. The following table presents the timeline of services multihoming in Germany for 2015 to 2018.

Table 8: Number of VoD serviced used on average by VoD users in Germany

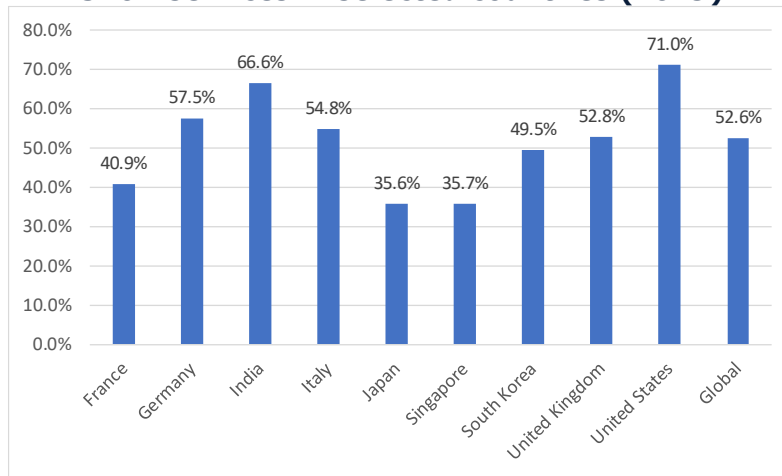
Year	All VoD	SVoD	FTA on demand	AVoD	TVoD
2015	2.26	0.72	0.81	0.37	0.36
2016	2.46	0.88	0.84	0.34	0.40
2017	2.37	0.95	0.92	0.25	0.24
2018	2.37	1.08	0.86	0.23	0.19

Source: WIK-Consult annual surveys

Survey data just released by Limelight⁸⁹, however, call this assumption into question. The average number of SVoD services per online viewer in this survey is between 1.1 and 1.3 for France, Germany, Italy and the UK (consistent with the WIK results), but not every online viewer subscribes to at least one service. In every country that was surveyed, more than 35% of those online viewers who subscribe to at least one SVoD service subscribe to two or more (see Figure 5); for the model this data has been too recent to consider, but it is mentioned here as possible refinement for future research. A histogram of the number of subscriptions per online viewers is given in Figure 6.

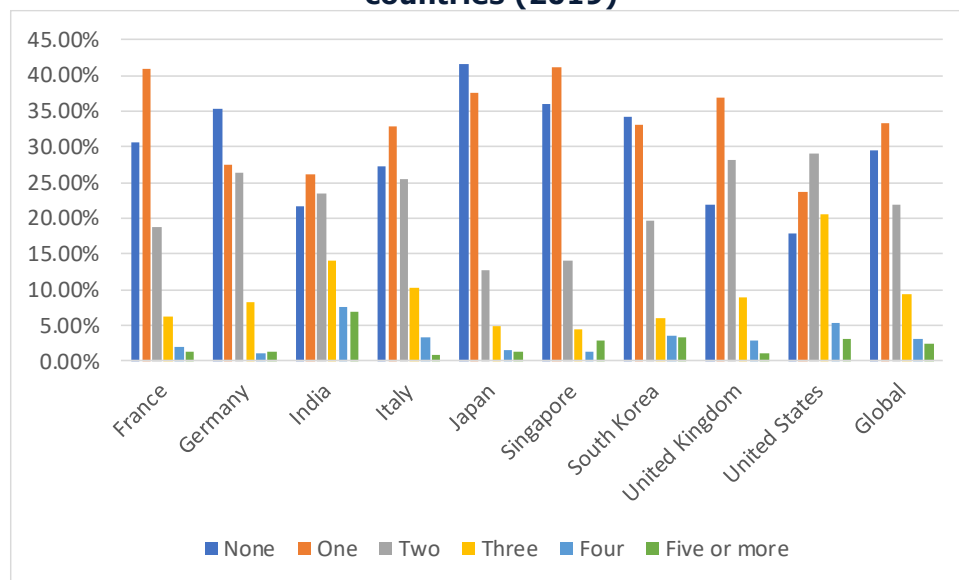
⁸⁹ Limelight Networks (2019), "Market Research: The State of Online Video 2019". The document states: "This survey was fielded by a third-party company with access to consumer panels in France, Germany, India, Italy, Japan, Singapore, South Korea, the UK, and the US". Approximately 500 responses were collected from each country for a total of 5,000 global responses. Survey responses were collected between August 1-12, 2019.

Figure 5: Percentage of SVoD subscribers who subscribe to two or more SVoD services in selected countries (2019)



Source: Limelight Networks (2019), "Market Research: The State of Online Video 2019"

Figure 6: Number of services to which online viewers subscribe, selected countries (2019)



Source: Limelight Networks (2019), "Market Research: The State of Online Video 2019"

Irrespective of the typical number of services subscribed, it can be concluded that most decisions to switch under Scenario 1 are motivated by cheaper offers becoming available for the same or sufficiently similar services (catalogues), which is also reflected in the questionnaire. Under this assumption, we only consider parts of the model to be relevant – i.e. the estimate of potential price switcher, potential adopters to the new price who previously did not have any subscription, and information about the new best offer inside a service. This also suggests that under Scenario 1 services that are currently only available in one Member State would unlikely be accessed cross-border, and therefore this effect is not modelled. Furthermore, it is likely that these services only hold sufficient rights to distribute licenced content within their

original territory. This is, however, not true for content produced by these services themselves. Thus, some content by such national services would become available across all Member States. Arguably, the demand for such content likely targeted at local audiences will mostly stem from consumers who have moved from their home country to another Member State and who still want to access the content they used to access when they were in their home country. This effect is far too granular to be modelled as part of the present study.

Notably, this neglects cases in which original productions of an SVoD service would have to become available for consumers even in Member States where the services were previously unavailable. Since the two most popular services already tend to offer the better part of their original productions in most catalogues they offer, the only obvious service for which many original productions that is not available broadly across Europe is HBO. The overall impact of new subscribers for HBO due to parts of its catalogue becoming more widely available than they currently are is likely to have a relatively small overall effect since consumers may likely not gravitate to a new paid service when they already can watch the content in question on an FTA channel (or via pay-TV services which they might already have).⁹⁰ It is furthermore unclear how such a service offer would be presented, i.e. as TVoD or SVoD, and at what price. While either variation of these factors does not greatly change the overall size of the effect, it makes it even more difficult to foresee. Since we do not have any data to substantiate the effect, we refrain from pursuing this any further.

For Scenario 1, we disregard the gravitation model but want to emphasise the fact that we still fully evaluate it for Scenario 2. If our assumption about absence of actively withheld content turns out to be false, Scenario 1 converges to Scenario 2 which in turn means that the two scenarios function as lower and upper bounds. Nonetheless, at this point such information is impossible to access.

In **Scenario 2**, a potential increase in accessible content is observed in each country as additional services become accessible in the form of passive sales, which have formerly been blocked to residents in the respective country. This may lead to additional transactions when important services, i.e. services for which there is demand, become unlocked.

Notably, under **Scenario 2** there is no specific assumption made about what constitutes passive sales other than the assumption that any service offered in one Member State will likely be found by consumers in other Member States if it is sufficiently interesting due to the internet reducing search costs for consumers.

⁹⁰ Notably, depending on the overlap of catalogues and language versioning available, there may be some price-driven switching from current pay-TV or SVOD subscriptions to services in other Member States becoming available under an extension of the GBR.

Finally, the model distinguishes two different cases. First, it estimates the effect of content-driven switching between countries within a service and between countries and different services. This analysis draws on data from JRC (Broocks et al, 2020) and does both steps simultaneously. Second, the model estimates price-driven switching in the same way as in Scenario 1.

As a cross check, the results implicit in the output of the model are compared to various estimates in the literature of the price elasticity of demand (PED) for audiovisual services.

The model directly generates estimates of societal welfare gains in line with the familiar Harberger Triangle methodology (as described in Section 5.4.5.3), which deals with both the welfare transfer from producers to consumers and with the reduction in deadweight loss (consumption that should have happened but did not due to market impediments) that would result from implementation of Scenario 1 or Scenario 2.

The model only covers the step change that may happen due to preventing geo-blocking under Scenario 1 or Scenario 2, disregarding potential mitigation strategies from the supply side as well as adaptation strategies from consumers. It has to be expected that larger distributors are capable of similar and even more sophisticated analysis, which in turn means that mitigation strategies are difficult to foresee. While such possible mitigation strategies should and will be part of a thorough discussion in the closing sections, they are excluded from the raw model. The aim of the model is not to extrapolate correctly over the long term, but rather to identify potential areas that are likely to be affected by a change in the Geo-blocking Regulation. However, as more and more content becomes available to consumers and given that terms and conditions to terminate one's subscription do not change substantially, a rational consumer would likely become a 'serial switcher' between SVoD services optimising and recalibrating subscriptions continuously according to current preferences. This would lead to consumers paying the average monthly price for a series of SVoD packages while they have access to the sum of all titles in these packages over a year. Notably, consumers would have to face increased transaction costs to switch SVoD services every month. It may be speculated that third party services would emerge allowing consumers in an almost electronic programme guide (EPG) like fashion to optimise their subscriptions over a year depending on their most preferred content becoming available on various SVoD services.⁹¹ As items made available in TVoD business models would also become more widely available with an extension of the Geo-blocking Regulation than they are currently, consumers could furthermore easily complement their subscriptions with additional items of content.

⁹¹ As a matter of fact, the latest version of the Apple TV device and its Apple TV app takes a large step in this direction. It integrates various different subscriptions, enables the purchase of new subscriptions or TVoD content immediately within the app and allows its users to search content across all available services.

On the other hand, it is not clear if such an effect would indeed be notably accelerated by a lifting of the Geo-blocking Regulation, since arguably much content today is already available through transaction-based business models when also considering physical copies, renting of films, etc. which are all reasonable options to complement existing SVoD catalogues.

It is assumed that the results from this analysis are representative for the sector and the business model observed in the dataset. Based on the background information gathered in each sector about the other existing business models and their relative impact on the sector as a whole, an estimation is made of the overall effect on the sector under **Scenario 1 and 2** respectively.

Since the impact on the remuneration of creators and other actors critically depends on the revenue impact, this has not been modelled, but analysed qualitatively based on the insight produced in the background information on the sectors.

Our analysis does not speculate about the potential reaction of distributors and producers under the given Scenarios 1 and 2. Consequently, only a qualitative analysis of such dynamic reactions will be performed.

4.6.2 Non-audiovisual sectors

This section is structured as follows. First, the data captured is presented for each of the non-audiovisual sectors addressed in this project. Then, the methodology for the quantitative data analysis applied to these sectors is presented.

4.6.2.1 *Music data capture*

For the music sector, the focus lies on subscription-based business models. The project team collected availability, accessibility and price information about major music streaming services in all 28 Member States in a non-automated way. To ensure good data quality, the browser settings were anonymised, and a VPN-service has been employed to avoid redirection measures. The focus was not on catalogue sizes since this information is usually impossible to come by and earlier research by the JRC⁹² revealed that, in contrast to the audio visual sector, there is not much catalogue difference between countries inside the same service with respect to the overall size, which is usually in the millions. A summary of the data is presented in Section 7.2.

4.6.2.2 *E-books data capture*

The project team built a database containing 2,697,194 individual e-book titles extracted from iTunes in Italy, the UK and Poland. Since there is no deterministic approach to scan the whole iTunes database, the task was divided into two steps to gather as much information as possible while remaining unbiased. In a first step, a

⁹² Estrella Gomez Herrera and Bertin Martens (2018) Language, Copyright and Geographic Segmentation in the EU Digital, Single Market for Music and Film, Review of Economic Research on Copyright Issues, 2018, 15(1), 20-37

preliminary selection of 250,000 search terms was created from WordNet⁹³, a lexical database for words. To avoid redundant queries, only words that differ significantly in meaning have been used. In a next step, multiple asynchronous agents looked up all search terms on iTunes and extracted information on each detected e-book. While the underlying database remains a black box, it is still possible to estimate the overall progress. With an increasing number of items in the database, the fraction of new e-books slowly diminishes. When we reached the end of the search term list, the redundancy rate was above 80%. Since we looked into each and every thematic category the three languages have to offer, we expect the majority of remaining book titles to be in languages other than English, Italian or Polish.

The table below shows the number of e-books available in each of the stores as well as the number of titles which are available across at least two stores. Since the procedure was non-deterministic, the data only approximates the true size of the iTunes catalogues available in the respective stores for the languages used for the data extraction. The estimates undershoot more for countries with larger catalogues like Italy and UK than for Poland where the iTunes stores feature significantly fewer titles. Importance measures approximating actual demand for each title are currently not available.

Table 9: Number of extracted e-book titles in Poland, Italy and the UK (including overlapping titles among these stores)

	Poland	Italy	United Kingdom
Poland	1,616,663	1,354,002	1,241,570
Italy	1,354,002	2,274,052	1,959,475
United Kingdom	1,241,570	1,959,475	2,169,088

Source: Own calculations

To overcome the problem of not having full information when assessing the accessibility for each country, a pairwise intersection is first initiated. Thus, books that are available in one store but not in another are identified. Since it is not possible to ensure whether these e-books were just overlooked by the scraping methodology, 1,000 e-books from the largest store (Italy) were sampled and look-up queries were sent to each country store for the same sample of books. As a sanity check this was done again for a different random sample without detecting a significant difference in the results. This way subsamples for all EU countries were found relatively quickly while maintaining an unbiased sampling approach.

As shown in the market overview for e-books in Section 7.1.1, the Apple iTunes e-books store is used by between 7% and 17% of e-book readers in three major markets in Europe (France, Germany and Italy). The vast majority, however, purchase on Amazon which is used by around two thirds (up to three quarters) of consumers in the respective Member States. Poland appears to be an outlier featuring almost exclusively national e-book services among its top ten used e-book sellers.

⁹³ Princeton University "About WordNet." WordNet. Princeton University. 2010.

This may explain why we find only a relatively small catalogue of e-books offered on the Polish iTunes store. Overall, we chose iTunes as it represents an e-bookstore of average popularity that also offers the possibility for self-publishing. Thus, it offers both global and local bestsellers as well as niche e-books for limited audiences. Furthermore, our choice was driven by the fact that there is an API available that allowed us to automatically retrieve a very large sample of e-books. As described in the above, our sample consists of close to 2.7 million e-books for three Member States as well as a random sample of 1,000 e-books for all iTunes stores available in Member States. This is substantially larger than the sample for Amazon covered by Batikas et al (2015)⁹⁴ who collected data on the Top100 books in the six available EU Amazon online stores as well as the US Amazon online store (total sample equalled 696 titles). Smaller e-bookstores were not covered in this report due to the technical difficulty of retrieving data from them. This limits the insights of the present report somewhat as regards to whether smaller sellers follow pricing strategies different from large sellers or whether the titles offered by them differ from the ones offered on large e-bookstores.⁹⁵

4.6.2.3 Software and games data capture

In addition to availability, accessibility and price information, the data sources for software and games also provide information about each item's importance. In contrast to the music sector, transaction-based business models are more dominant which in turn makes importance measures a lot more interesting. As outlined below, the importance across items is far from uniformly distributed.

For both console (PlayStation Network, short PSN) and PC (Steam) games, the total number of ratings is assessed as proxy for importance. For mobile apps in general (Google Play store) the minimum number of downloads is assessed, which is the best metric provided by the platform.

Figure 7 covers the importance distribution for the three platforms. As suspected, importance is exponentially distributed for all the platforms with increasing rate parameter for larger catalogues, leading to extreme conditions for the Google Play store. This is crucial information and factors significantly into the economic impact.

⁹⁴ Batikas M, Gomez-Herrera E, Martens B. 2015. Geographic Fragmentation in the EU Market for e-Books: The case of Amazon - Institute for Prospective Technological Studies Digital Economy Working Paper 2015/13

⁹⁵ There is at least some indication that popular e-books feature on both national and global stores. See <https://allese-book.de/e-book-stores/>

Figure 7: Distribution of number of ratings for PSN, Steam and Google Play store

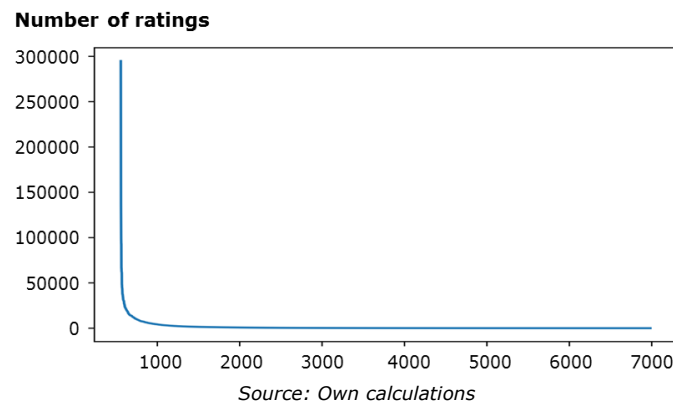


Figure 8: Distribution of number of ratings for Steam and Google Play store

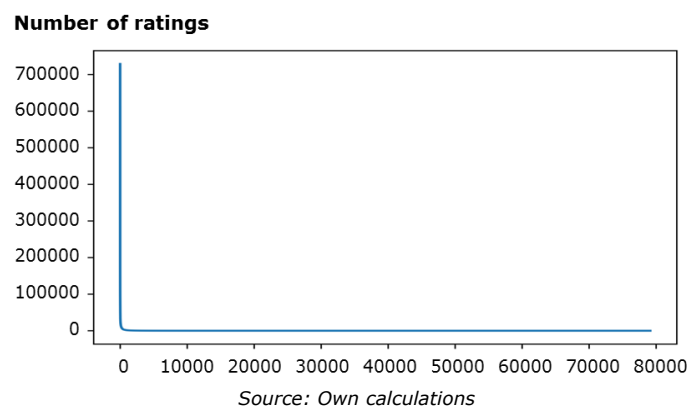
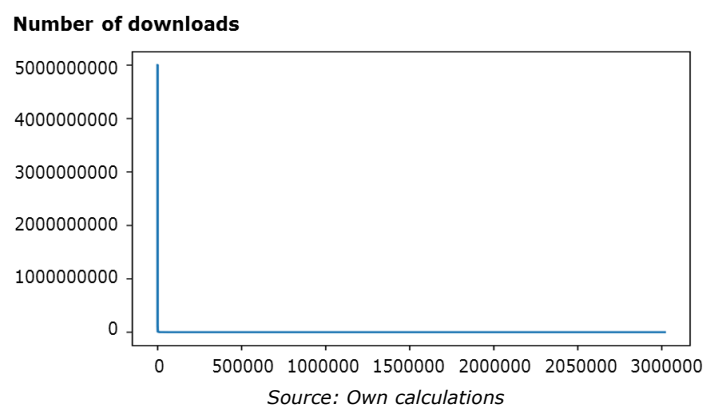


Figure 9: Distribution of number of downloads Google Play store



As briefly mentioned before, the catalogues differ in size and thus in raw accessibility. There are 6,985 distinct items for console, 79,138 distinct items for PC and 3,017,319 distinct items for mobile devices running on Android. The accessibility distribution does not follow the same pattern as the importance measures and is independent of catalogue size.

4.6.2.4 Quantitative analysis approach for non-audiovisual sectors

In this section, the modelling approach is presented to address the key research questions revolving around a possible extension of the Geo-blocking Regulation as outlined in the Tender Specifications. The aim was to develop an approach that is as consistent as possible across the three sectors in order to find a balance between accounting for the existing differences across sectors and presenting coherent and comparable results.

To this end, potential changes in consumer consumption under Scenarios 1 and 2 are explored. No assumptions about the utility of specific content to consumers has been set out as the analysis is exclusively based on the real-world data collected and described in some detail above. Instead, the estimate of changes in consumer choices is based on the observed actual accessibility and prices of individual items of content (or subscriptions for music streaming) for the observed services in the dataset. Thus, under **Scenario 1** the focus lies on like-for-like purchase choices referring to an item (or a subscription) that is already available in the country of residence of the consumer and which she may purchase from a foreign country if the price is below a threshold defined by the average price elasticity for the same item/sufficiently similar subscription under the condition that this “is not meant for consumers in the country of residence” of the observed consumer. To arrive at the impact on the revenues for distributors of content, this information was integrated with the price data for each item as well as an importance measure for each item.

In line with this approach, let $C = \{c \mid c \text{ is a country in EU28}\}$ be the set of all Member States. Further let $S = \{s \mid s \text{ is store}\}$ be the set of stores investigated. Then N_s^c describes the number of items in country c and store s , $p(i, c, s) \in \mathbb{R}^+$ describes the price of item i in country c in store s and $r(i, c, s) \in \mathbb{R}^+$ its relative importance. Due to data accessibility the importance values are mostly the same for each store across countries. The maximum price difference $pd(i, c, s)$ for an item i in a country c in an overserved store over all country specific stores it is available in is defined as:

$$pd(i, c, s) = \max_{c' \in C} |p(i, c, s) - p(i, c', s)|$$

If $c' = c$ item i is already the least expensive item across all countries.

A threshold is also defined $t_s^c \in \mathbb{R}^+$ which makes that $pd(i, c, s)$ needs to exceed in order to make a transaction in a foreign country likely. This happens based on the average price reduction necessary for consumers to switch to a service/item not meant for users in their country taken from the survey results. For a given store s and country c the mean change in revenue for each transaction is calculated under the assumption of no territorial restrictions as sum over maximum price reductions weighted with their corresponding importance values $I_{pd(i, c, s) > t_s^c}$ as

$$CR(c, s) = \frac{1}{N_s^c} \sum_{i=1}^{N_s^c} r(i, c, s) \cdot |p(i, c, s) - pd(i, c, s)| \cdot I_{pd(i, c, s) > t_s^c}$$

The change in revenue for an item was set to zero if the maximum price reduction doesn't exceed t_s^c . With correct estimates for transactions per country and store $T_{c,s}$ and new transactions $T_{c,s}^{new}$ due to de facto price reductions the overall change in revenue for country c in s can be estimated as $T_{c,s} \cdot CR(c, s) + T_{c,s}^{new} \cdot CR(c, s')$ with the subset $s \subseteq s'$ denoting the subset of store s that holds only items which change in revenue exceeds t_s^c for the corresponding country.

In **Scenario 1**, it is assumed that every store offers its items in every country where it holds the rights to do so. It is further assumed that this does not change in light of the extension of the Geo-blocking Regulation as outlined in **Scenario 1**. This assumption entails that currently a negligible share of distributors is not using their rights to distribute specific items in specific countries.⁹⁶ **Scenario 1** does not imply that a full catalogue of a music streaming service such as Spotify would have to be made available beyond a country's borders if one item of the catalogue of a specific country is licenced only there, since the subscription to this catalogue in mind represents a fixed bundle of content that cannot be changed depending on the country of residence of an individual user. For Scenario 1 the general elaboration of possible interpretations outlined in the above can also be applied to music streaming services. However, the consequences of either interpretation appear to be less severe than for SVoD services since music streaming service catalogues overlap across countries and across services at least for the most popular titles quite substantially. We find also that in most Member States where music streaming services are available in general, most major services are offered side by side. Thus, it can be assumed that consumers have already made their choice for the most preferred option and this is likely less affected by an extension of the Geo-blocking Regulation.

In **Scenario 2**, a potential increase in accessible content was observed in each country as additional items/services become accessible in the form of passive sales which have formerly been blocked to residents in the respective country. This may lead to additional transactions when important items, i.e. items for which there is demand, become unlocked. This was incorporated in the model as a factor $R_{c,s}$ corresponding to the relative increase in cumulative importance units (number of ratings, downloads, users, etc.) when getting access to all countries stores with

$$R_{c,s} = \frac{\sum_{i=1}^{N^{all}} \max_{c' \in C} r(i, c', s)}{\sum_{i=1}^{N_s^c} r(i, c, s)}$$

Scenario 1: $T_{c,s} \cdot CR(c, s) + T_{c,s}^{new} \cdot CR(c, s')$

Scenario 2: $R_{c,s} \cdot [T_{c,s} \cdot CR(c, s) + T_{c,s}^{new} \cdot CR(c, s')]$

Notably, under **Scenario 2** no specific assumption has been made about what constitutes a passive sale other than the assumption that any item offered in any

⁹⁶ This assumption does not likely apply to small e-book distributors. In the present report, we focus on large e-book platforms. Our results cannot be applied to small e-book distributors.

Member States will likely be found by consumers in any other Member State if it is sufficiently interesting due the internet reducing search costs for consumers. Concretely, third party services similar to digital comparison tools existing today are expected to emerge quickly if geo-blocking were lifted. Thus, consumers could compare items and services across all Member States quickly and conveniently. It is assumed that the results retrieved from this analysis are representative for the sector and the business model observed in the dataset. Based on the background information gathered in each sector about the other existing business models and their relative impact on the sector as a whole, the overall effect on the sector of **Scenario 1 and 2** respectively is estimated.

Since the assessment is based on the cost and opportunities (in terms of revenue in each sector) on the average item, the analysis builds on the general probability of within country and cross-border purchases within each sector, which is estimated by IPSOS based on the survey conducted for this project as well as (to the extent to which the data allows) on the Eurobarometer survey data available. This analysis draws on a multiple regression analysis of socio-demographic factors such as age, gender, education, financial situation, language skills, country of origin, etc. which are likely to drive or thwart cross-border demand for specific content in each surveyed sector, focusing on switching behaviour and willingness to pay but also other relevant dimensions of consumer utility such as language availability and the availability of local content. The analysis considers all potential factors with the aim of identifying the ones that have the highest impact on consumer behaviour and preferences. Specific variables to be included in the analysis as predictors, covariates and dependent variables in the model are aligned with the main model described above. The key objective is to further nuance the findings from the general model by incorporating additional information about consumer characteristics and preferences available via the quantitative data gathered during this project.

Since the impact on the remuneration of creators and other actors critically depends on the revenue impact, this has not been modelled, but analysed qualitatively based on the insight produced in the background information on the sectors.

As with audiovisual services, an analysis of the change to societal welfare flows directly from the results of the model, following the well-known Harberger Triangle methodology (which is described in Section 5.4.5.3).

5 Impacts on the audiovisual sector

This section addresses the impacts of the potential expansion of the scope of the Geo-blocking Regulation to include online services giving access to copyright-protected content in the audiovisual sector. Firstly, a static analysis of the sector and its current characteristics is presented, followed by a summary of findings from the literature on geo-blocking and audiovisual content, findings from the fieldwork and findings from the dynamic analysis of expected impacts. In addition, a dedicated section on the expected impacts on the production of audiovisual works is presented as well as a section on estimated impact on societal welfare.

5.1 Analysis of the sector

This section presents a static analysis of the audiovisual sector at present to act as a background for the impact analysis in the next sections. Firstly, the economic importance and business models used in the sector are discussed, followed by the financing models and licensing models.

5.1.1 Economic importance and business models used in the sector

Table 10 presents an overview of the key characteristics of the audiovisual sector on the EU level.

Table 10: Key characteristics of the audiovisual sector (NACE code J591)⁹⁷ in 2016

	EU-28	EU-27_2020
Number of enterprises	123,430	100,730
Persons employed	432,852	315,527
Turnover (EUR million)	77,660	49,270
Value added (EUR million)	31,036	18,942
Ratio value added/turnover	0.40	0.38
Average company size (employees)	3.4	3.1
Average turnover per company (EUR)	629,183	489,129
Average value added per company (EUR)	251,446	183,580
Average turnover per person employed (EUR)	179,415	156,151
Average value added per person employed (EUR)	71,701	60,033

Source: Eurostat [sbs_na_1a_se_r2]

The audiovisual market is the largest sector covered by this study in terms of all indicators. The most recent figures which are comparable across all indicators and countries on Eurostat are from 2016. In terms of turnover, the sector is comparable to, for instance, postal and courier activities and comprises 0.31% of the total services economy.⁹⁸ In terms of size of the companies active in the sector, as shown in Table 10, 3.1 persons are employed on average. This information is consistent with

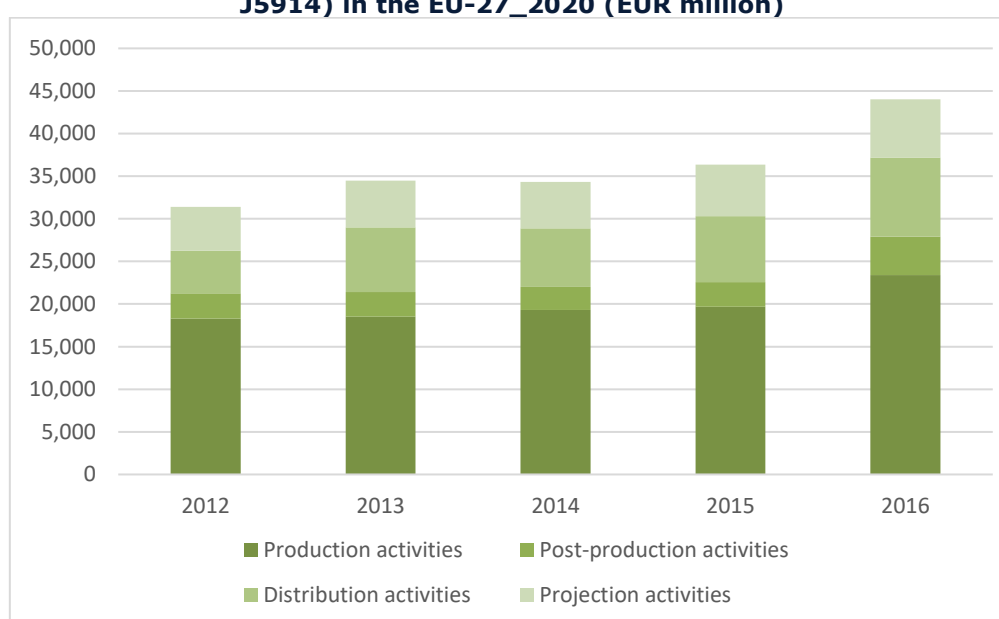
⁹⁷ This NACE code includes the following sub codes: motion picture, video and television programme activities (production, post-production activities, distribution activities and picture projection activities). Data is not available for Luxembourg, except for the number of enterprises. Not included are: (1) television programming and broadcasting activities; (2) wholesale of recorded audio and video tapes, CDs, DVDs; (3) retail sale of video tapes and DVDs in specialised stores and in market stalls; and more.

⁹⁸ Compared to numbers from Eurostat [sbs_na_1a_se_r2].

the findings from a 2016 ICG study which found that a common feature across the Member States is the small size of the companies: around 90% (with peaks of 99% in Spain) have 0 to 10 employees. In general, this is the case in the entire Cultural and Creative Industries (CCI).⁹⁹

Going into more detail, the figure below presents the development of the total turnover of the European audiovisual services between 2012 and 2017, split-out for several actors within the value chain: production, post-production, distribution and projection activities. According to this data, the audiovisual sector expanded during this period, especially, between 2014 and 2016. Going into more detail, the biggest part of the revenues in the sector is generated by production activities.

Figure 10: Share of turnover of the production, post-production, distribution and projection activities in the audiovisual sector (NACE code J5911, J5912, J5913, J5914) in the EU-27_2020 (EUR million)



Source: Eurostat [sbs_na_1a_se_r2].

In comparison, and to present more recent figures, according to data from the European Audiovisual Observatory, the total audiovisual market in the European Union grew by 1.5% in 2017, to EUR 111.6 billion. The annual average growth rate between 2012 and 2017 was 1.7% (0.9% excluding all on-demand revenues).¹⁰⁰ However, the various EU Member States experienced very different market growth

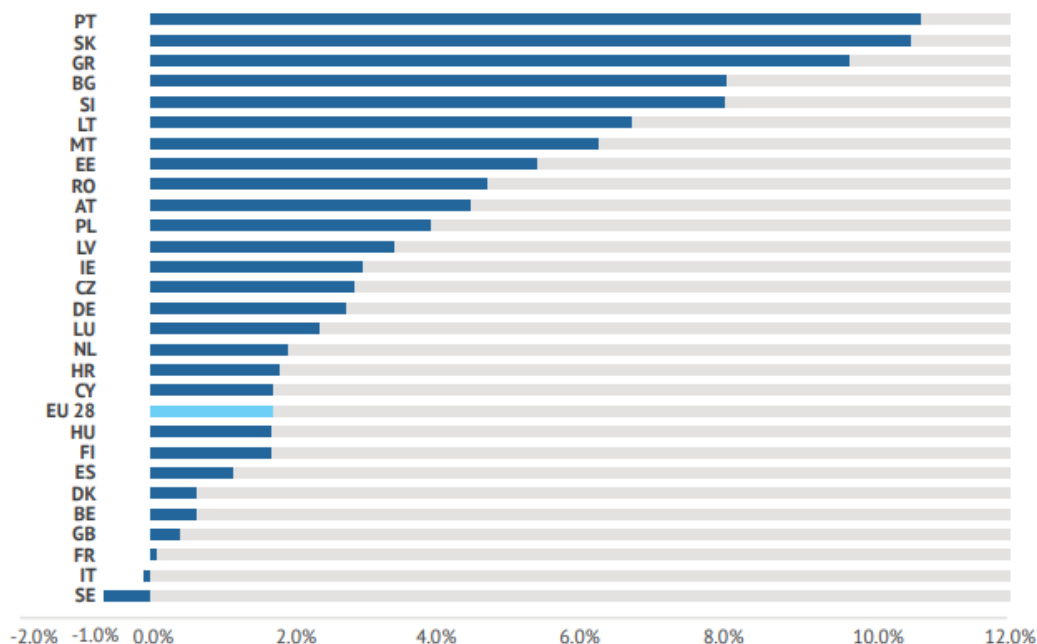
⁹⁹ ICF (2016). Analysis of the EU audiovisual sector labour market and of changing forms of employment and work arrangements. Available at: https://www.fim-musicians.org/wp-content/uploads/audiovisual_EU_labour_market_analysis_report_EN.pdf

¹⁰⁰ European Audiovisual Observatory (2019): Yearbook 2018/2019. Key Trends. Available at: <https://rm.coe.int/yearbook-keytrends-2018-2019-en/1680938f8e>.

The total audiovisual market includes audiovisual services (e.g. free television, linear television, pay-TV and on-demand subscription services such as SVoD) and the direct sale or renting to the consumer of audiovisual programmes (e.g. cinema, box-office, physical and digital home videos). This broader definition of the audiovisual market explains the larger numbers compared to Eurostat data.

rates. Specifically, the audiovisual market grew faster than the EU average in 2017 in 19 countries. The countries with the largest growth rates were Portugal, Slovakia, Greece, Bulgaria and Slovenia. At the same time, the growth was rather modest in Belgium, the UK and France, while there was even a decline in Italy and Sweden, see Figure 11.

Figure 11: Average annual growth rate of the EU-28 countries' audiovisual market 2012-2017



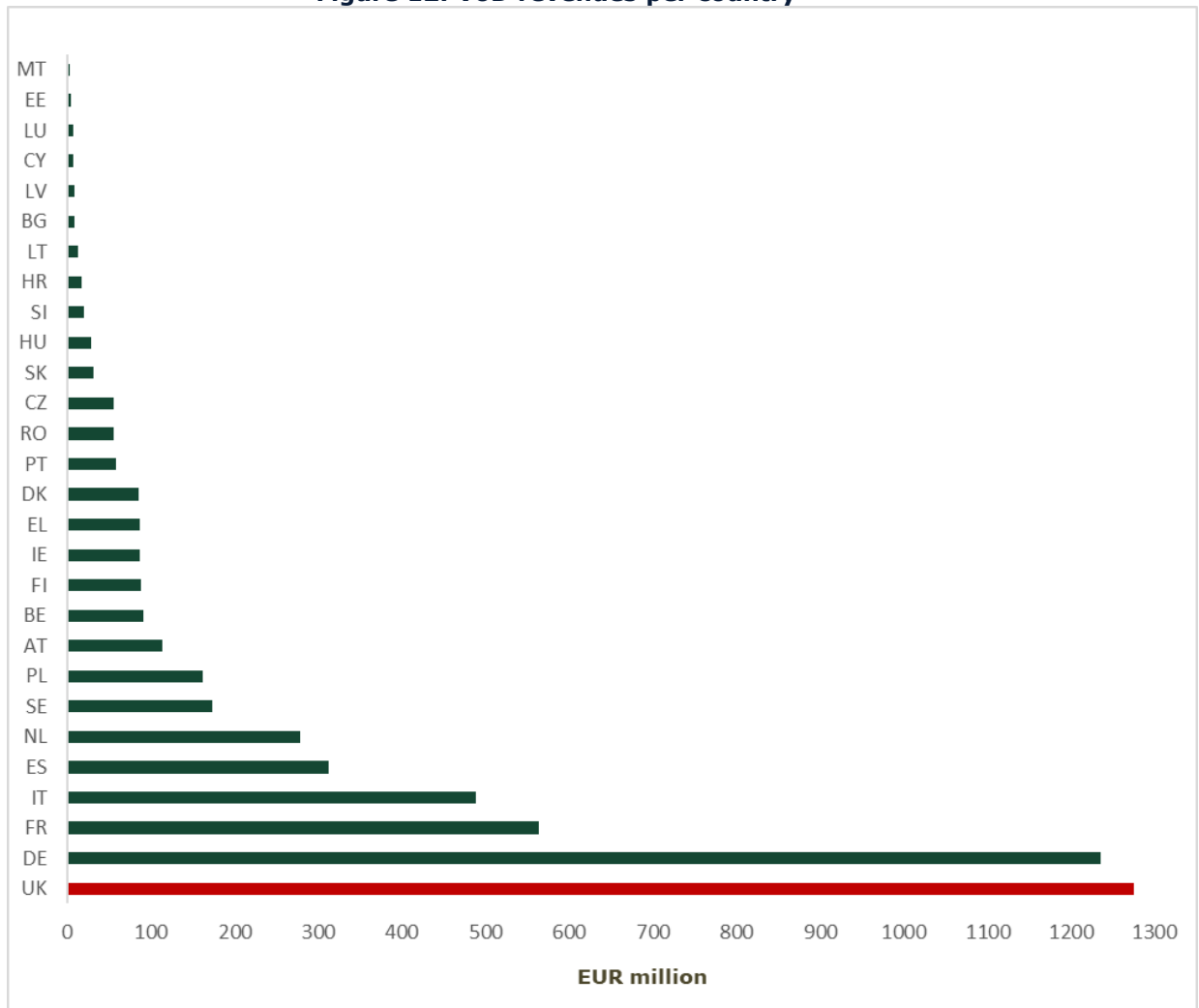
Source: European Audiovisual Observatory (2019).

Regarding the most important market trends, paid VoD (including both pay-per-item and SVoD services) has grown faster than the total market, with a growth rate of 34% between 2016 and 2017, and 44% on average since 2012 (to recall, the total market has grown 1.5% and 1.7% respectively). In 2017, on-demand services and programmes accounted for 77% of total market revenue growth, with SVoD services accounting for the largest share (67%).¹⁰¹ This development is clearly bringing new dynamics to the market which also has its impacts on the overall business models as described below.

Data from Statista's Digital Market Outlook shows the weight of the different Member States in the total forecasted revenues for 2019 in the digital VoD segment.

¹⁰¹ European Audiovisual Observatory (2019): Yearbook 2018/2019. Key Trends. Available at: <https://rm.coe.int/yearbook-keytrends-2018-2019-en/1680938f8e>.

Figure 12: VoD revenues per country



Source: Statista's Digital Market Outlook.

Considering the various business models, audiovisual content available online in the European market can be categorised into four main business models:

1. *Free-to-air and pay-TV catch up services*: several public and commercial broadcasters, which air for free or on an FTA or pay-TV basis have their own online service accessible from laptops, tablets and smartphones (either via web browsers or specific apps). These platforms may show live channels and on-demand content (i.e. a catch-up service which includes replays of programmes aired live in the previous days).
2. *TVoD – Transactional Video on Demand or pay-per-view*: represents rentals as a single transaction which usually allows time-limited access to premium video content (e.g. films, series, sports events, etc.). TVoD services act as a digital store where consumers can pay for their purchase or rental. TVoD services are widely used by many pay-TV operators, broadcasters,

- telecommunication's operators, retail chains, online retailers and others, mostly to offer premium content such as films, series or sports events.¹⁰²
3. *SVoD – Subscription Video on Demand or streaming*: these services offer unlimited access to a broad selection of different titles from various genres on a subscription-fee basis. Through this method, premium content such as films, series and sports events can be streamed on various devices. There are several large global SVoD platforms, but there are many other players as well, including initiatives on a smaller scale active on one or a few national markets.
 4. *Electronic-Sell-Through (EST) or download to own*: allows users to purchase unlimited usage rights to a specific video file, accessible through both cloud-based and offline storage. Through EST, the video content can be purchased in a one-time transaction and remains permanently accessible after the purchase.

Only a limited number of companies in the audiovisual sector are active in more than one Member State, although this does not mean that all content is available in all countries, even though these companies generally have the practice of buying the rights for all the countries where they are active at the same time (if possible). Besides the larger SVoD platforms from the United States, cross-border activity and accessibility is still limited. Some players offer their contents in the same language area (e.g. France's TF1 offers its online services also in the other French speaking European countries such as Belgium, Luxembourg and Switzerland, although they still have to buy the rights for all the programmes offered on a national basis which makes that not necessarily all content is available in all countries), while some bigger players might have production facilities in foreign Member States. Two other examples of companies which do have highly independent cross-border operations are Eurosport (Discovery Group), which airs in all Member States with different content, and Sky, which is active in various Member States (the UK, Germany and Italy), with a high degree of independence for each of the national subsidiaries. However, most companies are still mainly national in terms of operational activities.

¹⁰² European Audiovisual Observatory (2016d) "VoD, platforms and OTT: which promotion obligations for European works?". pp. 17-18. Available at: <http://www.obs.coe.int/documents/205595/8351541/IRIS+plus+2016-3+VOD%2C%20platforms+and+OTT+which+promotion+obligations+for+European+works.pdf/417220b-b-eeed3-4d82-94ce-da818a447ae7>

Box 1: Economic importance and business models of sports broadcasting

Considering the sports broadcasting market specifically, the global market for broadcasting rights was worth EUR 45.1 billion in 2018 and has grown from EUR 42.6 billion in 2017. With a CAGR of 5.6% it is expected to grow to EUR 48.5 billion in 2021. The five biggest EU markets (United Kingdom, Germany, Spain, Italy and France) represent together 26.5% of that amount, while the United States is by far the biggest market with a share of 44.2% of that amount.¹⁰³

Regarding the sports broadcasting market especially, the business models fundamentally altered in recent decades due to major developments in the global television market. In brief, broadcasting, and sports broadcasting in particular, has largely evolved into a globally distributed and privatised good, largely due to deregulation which opened up the market enhancing competition in sports broadcasting as well as due to technological progress that broke a long period of stagnation in evolution. These developments have contributed to the sports business expanding into a global industry. National media markets in the EU show many similarities such as a mixed public-private broadcasting system, involvement of legislators in the area of media policy on grounds of public interest and an important role played by European Union institutions in coordinating access, diversity, pluriform and harmonisation. However, the EU is not a homogeneous broadcasting market and there is fragmentation in terms of market conditions and public policies, price developments, profitability of rights deals and distribution of rights among channels across Member States.¹⁰⁴

This has led to the fact that, while in the past sports events used to be broadcasted by the major, general interest television channels, sports events have now moved more and more to premium sports channels. Moreover, recently SVoD platforms have started to explore the sports broadcasting markets; this is the case for both traditional platforms such as Amazon which bought some Premier League games and the European football association, UEFA, which created its own platform. This development to sports content becoming available with premium channels is especially the case for the most valuable of sport rights, football. In several countries, a pay-package of several sports channels has been built around the broadcast of the national football championship enhanced with additional sport events. In addition to the television broadcasting of sports events, several operators also launched a dedicated online player to broaden the reach of their programming beyond the TV channels and the networks where they are available (e.g. Eurosport Player).¹⁰⁵ Free-to-air television broadcasters (both public and private) still offer other appealing live sport events, building on the possibility to offer sports events of “major importance” over free television (for a detailed discussion of this mechanism, see Section 3.1.3).

Statista’s Global Consumer Survey provides a proxy of the market shares of the main providers in the audiovisual sector, based on a number of respondents which varies

¹⁰³ SportBusiness Consulting Global Media Report 2018.

¹⁰⁴ The sports broadcasting rights market. in Tom Evens, Petros Iosifidis, Paul Smith (2013) “The Political Economy of Sports Rights: Between Culture and Commerce”, Palgrave Macmillan. Available at: https://www.researchgate.net/publication/304854227_The_Sports_Broadcasting_Market.

¹⁰⁵ <https://rm.coe.int/0900001680788a5d>

per country.¹⁰⁶ Among the eight Member States of focus, Statista data is available for France, Germany, Italy and Poland. Table 11 shows the providers with the highest number of purchased items in these four countries, based on the answers to the question: *"Which of these video-on-demand providers have you used in the past 12 months as a paying customer?"* These "market shares" are not turnover based (i.e. the sum of the shares does not add up to 100%), they have to be rather considered as "market positions": the percentages presented below only reflects the consumers' answers to the survey, in which multiple choices were possible.

Table 11: Market position of digital video purchases in Germany and Poland

Germany	Market Positions	Poland	Market Positions
Amazon Prime Video	68%	Netflix	66%
Netflix	57%	HBO GO	45%
YouTube	23%	Player	35%
Sky Go	15%	Ipla	33%
Maxdome	12%	VoD.pl	26%
Google Play store	10%	CDA Premium	21%
Sky Ticket	10%	TVP VoD	17%
iTunes	9%	Cyfrowy Polsat GO	15%
Telekom Entertain TV	8%	NC+ GO	13%
PlayStation Store	7%	other	6%
Unitymedia	7%	Horizon Go	5%
other	5%	WP Video	5%
DAZN	4%		
Chili	3%		
Pantaflix	2%		
Videoload	2%		
Xbox Games Store / Microsoft Store	2%		
Videociety	1%		

Source: Statista, based on a sample of n=4928 Digital video purchasers for Germany and n=3012 Digital video purchasers for Poland

¹⁰⁶ <https://surveys.statista.com/surveys/7680848/150119>

Table 12: Market position of digital video purchases in Italy and France

Italy	Market Positions	France	Market Positions
Netflix	66%	Netflix	65%
Amazon Prime Video	57%	YouTube	35%
YouTube	48%	Amazon Prime Video	29%
Google Play store	20%	Canal Play	23%
Infinitytv	20%	Google Play store	14%
TIMVision	15%	Orange	14%
Now TV	14%	Canal VoD	12%
Chili	13%	iTunes	11%
iTunes	11%	MyTF1 VoD	11%
PlayStation Store	9%	OCS	11%
Xbox Games Store / Microsoft Store	5%	PlayStation Store	10%
other	5%	Cinéma(s) à la Demande	9%
Premiumonline	4%	SFR Play	8%
VVVVID	4%	France TV Pluzz V&D	7%
Mubi	2%	Fnac Play	6%
Mymovieslive	2%	other	6%
PopCorn TV	2%	FilmoTV	5%
Rakuten TV	2%	SFR Club Vidéo	5%
		Xbox Games Store / Microsoft Store	4%
		Blackpills	3%
		Anime Digital Network	2%
		UniversCiné	1%

Source: Statista, based on a sample of n=3284 Digital video purchasers for France and n=4577 Digital video purchasers for Italy

5.1.2 Financing models

This section discusses the financing models for production of audiovisual works as these play a central role in the argument of industry stakeholders on why the audiovisual sector should not be included in the scope of the Regulation.

A study published in 2018 by the European Audiovisual Observatory provides great insights on the role played by the various sources of funding in the European audiovisual production.¹⁰⁷ On a sample of 445 fiction films released in cinema in 2016, the two most important financing sources were direct public funding and broadcaster investments, which accounted for 29% and 25% of total financing, respectively. The third and fourth most important financing sources were pre-sales (excluding national broadcasting rights) and producer investments, which both accounted for 15% of

¹⁰⁷ European Audiovisual Observatory (2018). Fiction film financing in Europe: A sample analysis of films released in 2016. Available at: <https://rm.coe.int/fiction-film-financing-in-europe-2018/1680902fd9>. The study on the other hand does not provide figures for other AV content not released in cinema, such as TV series.

total financing, respectively as detailed also in Table 13: Breakdown of cumulative financing volume by source (2016) .¹⁰⁸

Table 13: Breakdown of cumulative financing volume by source (2016)

Ranked by percentage share. Based on all 445 sample films.

Rank	Financing sources	Amount in MEUR	% share
1	Direct public funding	407.7	29%
2	Broadcaster investments	357.9	25%
3	Pre-sales (excl. broadcasters)	222.4	16%
4	Producer investments (excl. broadcasters)	215.7	15%
5	Fiscal incentives	144.1	10%
6	Debt financing	23.4	2%
7	Other financing sources	18.0	1%
8	Private equity cash investments	16.2	1%
9	In-kind investments	6.3	0%
Total sample		1 411.7	100%

Source: European Audiovisual Observatory

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7	Other financing sources	18.0	1%
8	Private equity cash investments	16.2	1%
9	In-kind investments	6.3	0%
Total sample		1 411.7	100%

Source: European Audiovisual Observatory

Source: Kanzler (2018)

However, pre-sales have an even higher share compared to the percentages shown in Table 13. As explained in the methodological notes of the study, broadcaster investments are defined as *'the cumulative amount of two different types of broadcaster investments: pre-sales to broadcasters as well as direct producer equity cash investments undertaken by broadcasters both in the main country of origin as well as in minority co-producing/-financing countries.'* Hence, the amount of pre-sales which are counted as "broadcaster investments" (around EUR 282 million as shown in Table 14) can be added to the EUR 222.4 million of pre-sales (excluding broadcasters) in Table 13. This total figure would make pre-sales the first financing source with a 36% share.¹⁰⁹ As we explain in detail in Section 5.5.1, however, pre-sales funding plays a large role for large films, but only a tiny role for small films.

¹⁰⁸ Because France represents a large fraction of total film funding in the sample, and is atypical in its funding patterns, Kanzler (2018) provides separate tabulations with and without France. In this section, we include France. When we consider the possible impact of changes in sector profitability on pre-sales funding later in this chapter, we break them out separately.

¹⁰⁹ It should be noted that pre-sales to the commissioning broadcaster could be protected in ways other than geo-blocking (e.g. by delaying the ex-territorial exhibition through holdbacks).

Table 14: Breakdown of cumulative financing volume by source (2016)

Σ BROADCASTER INVESTMENTS	357 926 982	25%
- Σ Broadcaster investments from country of origin	354 595 062	25%
- Co-production investments	72 981 795	5%
- Pre-sales	281 613 267	20%
- Σ Broadcaster investments from minority financing countries	3 331 920	0%
- Co-production investments	1 465 676	0%
- Pre-sales	1 866 244	0%
Σ PRE-SALES (excl. broadcasters)	222 352 727	16%
- Σ Pre-sales in country of origin	201 342 547	14%
- Outright sales	29 743 396	2%
- Minimum guarantees	171 599 151	12%
- Σ Pre-sales in minority financing countries	12 326 235	1%
- Outright sales	12 326 235	1%
- Minimum guarantees	6 988 377	0%
Σ BROADCASTER INVESTMENTS	357 926 982	25%
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- Σ Pre-sales in minority financing countries	12 326 235	1%
- Outright sales	12 326 235	1%
- Minimum guarantees	6 988 377	0%

Source: Kanzler (2018)

Table 15: National and international coproduction of European feature films, 2016-2017

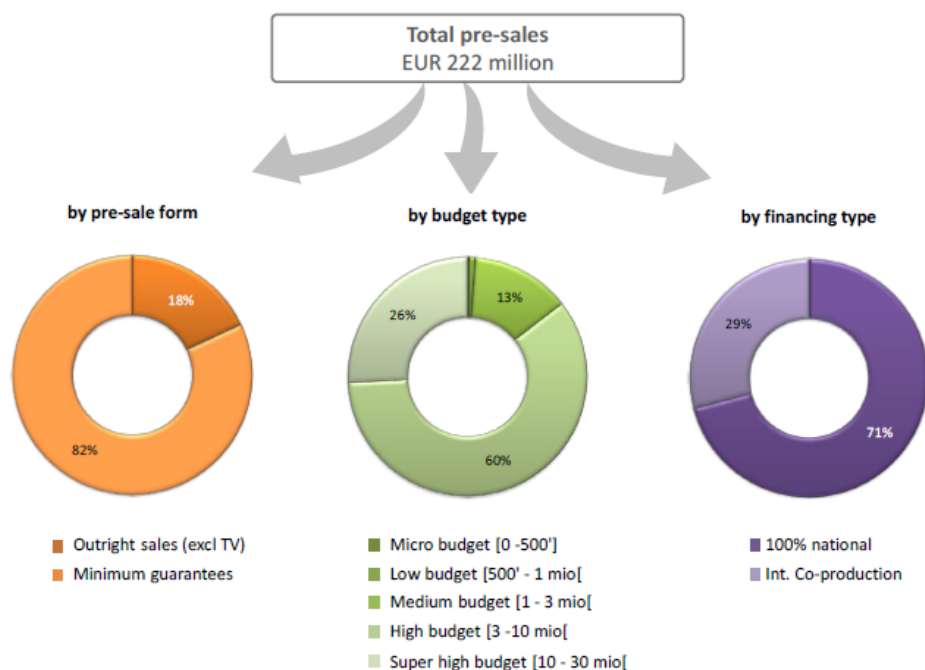
Member State	Number of feature films, 100% national	Number of feature films, majority co-production	Number of feature films, minority co-production
Belgium	30	43	66
Estonia	10	5	8
France	272	93	131
Germany	162	68	77
Ireland	6	10	4
Latvia	5	4	4
Lithuania	14	6	1
Poland	75	7	19
Spain	113	103	45
Sweden	34	13	20
The Netherlands	38	20	46
United Kingdom	251	14	23
Average	84	32	37
Average without UK	69	34	38

Source: Hugenholtz et al. (2019)

Considering co-productions and national productions in the context of pre-sales, data from the European Audiovisual Observatory shows that pre-sales financing appears mostly allocated to 100% national films: as these accounted for 65% of the sampled films capturing 71% of the total value of pre-sales, while international co-productions (accounting for 35% of the sampled films) captured 29% of pre-sales. As displayed in Figure 13, the preferred form of pre-sale across fiction movies in 2016 has been minimum guarantee (defined in Kanzler (2018) as an arrangement where a distributor agrees to pay a fee for the right to distribute the copyrighted audiovisual material exclusively in their territory in the specified formats for a specified period of

time) and 60% of the pre-sales has been granted to high budget films (between EUR 3 million and EUR 10 million of production costs).

Figure 13: Breakdown of cumulative pre-sales by pre-sale form, budget and financing type of films (2016)

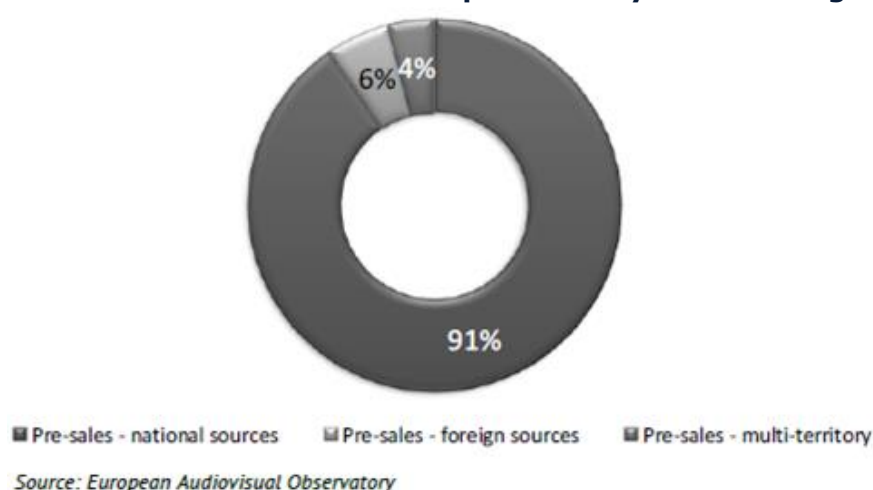


Source: European Audiovisual Observatory

Source: Kanzler (2018)

Notably, the sampled films suggest that pre-sales financing (excluding direct investments of broadcasters) is raised mostly on the national market (i.e. pre-sales for the main country of origin), as 91% of the total sample pre-sales financing volume came from the national market and only 4% from multi-territorial pre-sales (see Figure 14).

Figure 14: Breakdown of cumulative pre-sales by national origin (2016)



Source: Kanzler (2018)

In comparison, data for French cinema show that pre-sales on average represent around 50% of financing (considering all types of pre-sales: TV pre-sales and sales of rights for theatre and home entertainment to the domestic and to foreign markets). In 2016, television channels (pay and free) financed 165 films (58.3% of approved films), including 150 French-initiative ones (67.9% of French-initiative films approved). 32 French-initiative films were funded by a single TV channel in 2016 (39 in 2015).¹¹⁰

As expressed by most of the industry stakeholders, the strong dependence of pre-sales on national sources might also be linked to a general consideration on licensing practices. Most providers engage in either single territory licenses or licenses for several territories (if they are active in several territories, usually ranging between two and five territories). Even the providers that are active on a pan-EU level still buy licenses on a territory-by-territory basis and there is a significant difference in availability of titles across territories.

5.1.3 Licensing models

First of all, it should be noted that contractual arrangements are highly individualised, based, among other factors, on the individual project, its budget requirements, its future market potential and the risk assessment by the different business partners involved in the project. Thus, this section merely provides an overview of the most widely employed arrangements in this area. The audiovisual value chain is complicated and can be separated into several different stages: development/creation, pre-production, production, post-production, rights management, distribution and related tasks and, finally, exhibition/transmission. The

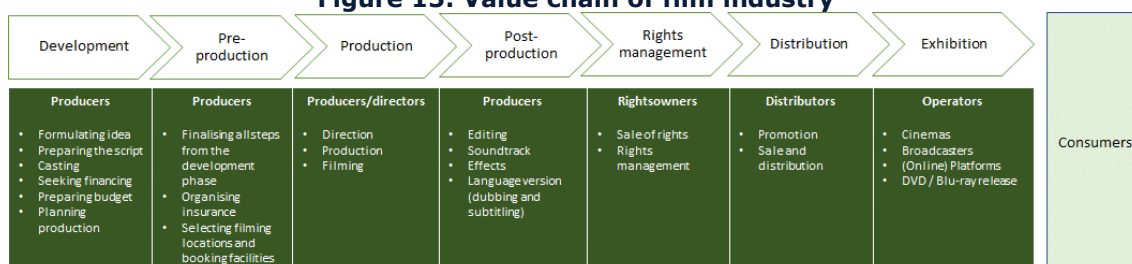
¹¹⁰ CNC, "Results 2016: Film, television programmes, production, distribution, exhibition, exports, video, new media", p. 97.

value chain also includes many different actors which can be divided into two main categories:

- Content creators (producers, directors, authors, etc.)
- Distributors (broadcasters, (online) service providers, cinemas, etc.)

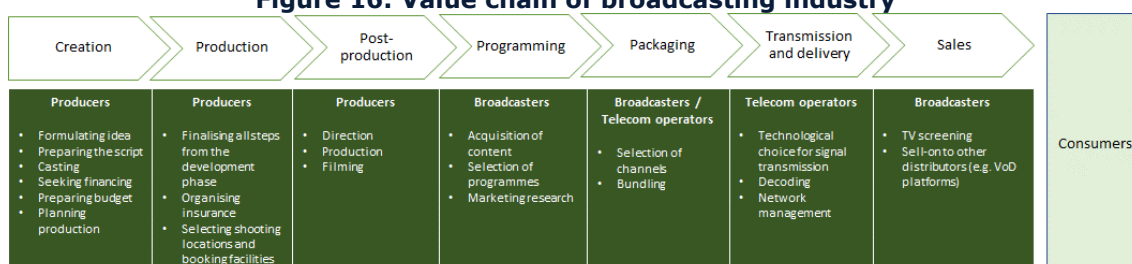
The two figures below present the value chains of two of the most important industries of the audiovisual sector: the film industry and the broadcasting industry. Together these two figures present an approximated overview of all the different actors active in the audiovisual sector.

Figure 15: Value chain of film industry



Source: own elaboration based on: EIB, *The European Audiovisual Industry: an Overview*, 2001

Figure 16: Value chain of broadcasting industry

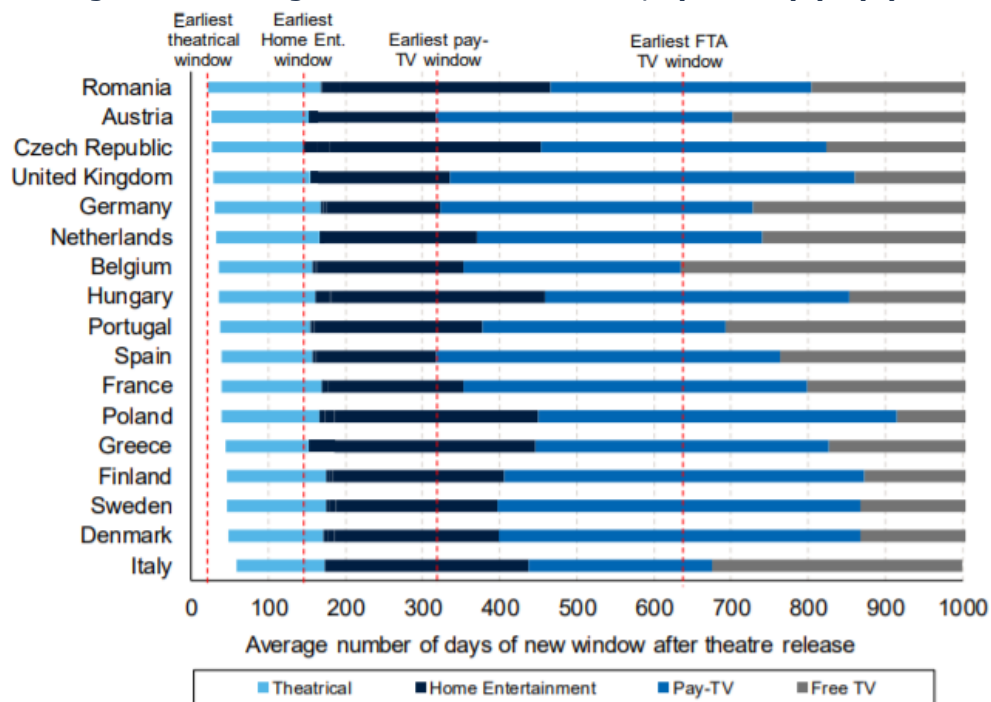


Source: own elaboration based on: EIB, *The European Audiovisual Industry: an Overview*, 2001

One apparent particularity of audiovisual services is that exhibition/transmission (and thus the licenses granting the rights to do so) are usually provided in a windowed way. This means that the same audiovisual content is licensed in different time windows to different kinds of platforms, either exclusively or not. Rules and practices regarding windowing systems vary from Member State to Member State (both regarding rigidity and number/length of windows).¹¹¹ For an overview of windowing per country, see Figure 17.

¹¹¹ For example, France has a long-standing tradition with regulation defining in a precise and fixed way how the windowing system should be organised, see: <https://www.audiovisualcatl-en.com/single-post/2019/01/15/New-Windowing-Regulation-for-the-French-Film-Industry>.

Figure 17: Average time between windows, by country (days)¹¹²



Source: Oxera (2016).

The approach to contractual relationships varies between TV and film content. Large film productions are usually first licensed to cinema theatres. It depends per film how long this first window is and there might also be sub-windows where for the first few weeks the films are shown only in certain cinemas (e.g. those that pay more for their rights, usually the larger operators). One EU-level audiovisual association provided input showing that the theatrical windows in the Member States vary substantially: for the film used as an example, it ranged from a minimum of 2.5 months to a maximum of 6 months.¹¹³ This windowing leads in practice to large differences in the release date of content from country to country, based on country-specific cultural practices and habits, school holidays, national holidays, etc. For instance, the input from an EU-level association shows that one major production has been released in the EU-28 between June 2018 and January 2019. In all but three Member States, the film was released to theatres within a period of three months. On the other hand, major productions (often coming from the United States) tend to be released based on the so-called day-and-date strategy, which means that the productions are released at the same time and in the same manner all over the world. Lastly, there

¹¹² This figure is based on current practices of windowing. In some Member States, national legislation regulates the windowing system, but this is certainly not the case everywhere. The only country with very hard legislative requirements in France, in a few other countries public funding is only granted to films that comply with the suggested windowing in legislation (Austria, Denmark, Germany and Italy).

¹¹³ This observation has been confirmed by a recent publication by the Observatory on windowing reporting approx. 5 months average across selected countries, see: https://www.obs.coe.int/en/web/observatoire/home/-/asset_publisher/9iKCxBYqiO6S/content/average-release-window-between-cinema-and-vod-is-19-4-weeks.

are also straight-to-video releases, often for films that are expected to be smaller box-office draws.

The second window is usually formed by transactional TV (pay-TV or TVoD). The agreements underlying this release window tend to be on an exclusive basis, within a specified territory, across all media. The third window is usually formed by SVoD and/or FTA. The underlying agreements may also be exclusive in one territory, but this is often limited to a particular media (for example, one FTA service may have exclusivity against other FTA services, but not against SVoD services). Lastly, productions are released for EST/download and physical copies (DVD, Blu-ray, etc.). DVD and Blu-ray distribution tends to be on an exclusive basis with a specified distributor in a given territory, but on a non-exclusive basis between retailers (as this does not relate to digital distribution, it is outside the scope of this study).

For content originally produced for TV, the first window depends on the terms of the financing agreements and the rights mutually agreed between the involved partners. For premium content (such as popular TV series), usually, the first window is formed by some form of transactional TV (pay-TV or TVoD). The medium for the first release window further tends to depend on the relative strength of different media in a given market. The underlying agreements tend to be on an exclusive basis, within a specified territory, across all media. For non-premium content, the first window can also be FTA television, usually for the broadcaster who (co-)produced the content. Subsequent windows are usually formed by SVoD and other FTA television channels. The sequence among the windows may differ a bit from one Member State to the next in light of the structure of the national market, and in response to any market power among distribution channels in the Member State. The underlying agreements may be exclusive in one territory, but this is often limited to a particular medium (for example one FTA service may have exclusivity against other FTA services, but not against SVoD services). Lastly, premium content may be released for EST/download and physical copies (DVD, Blu-ray, and so on) in the same manner as for film productions as discussed before.

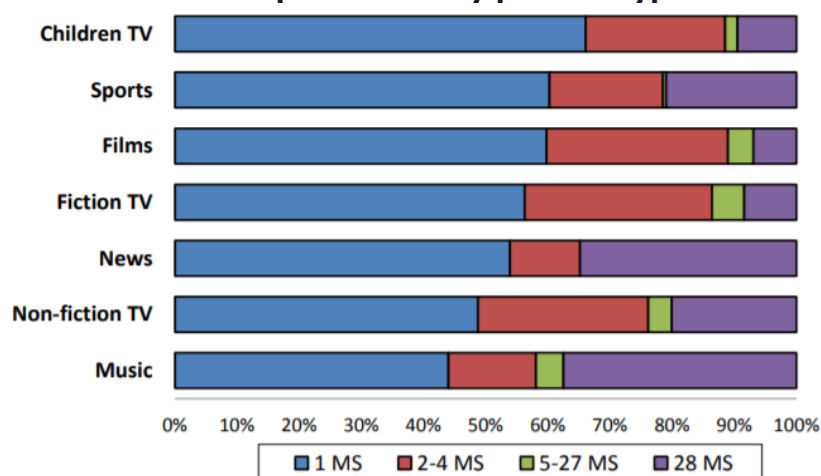
Based on input from interviewees conducted with industry stakeholders from the audiovisual sector as well as the information collected during the business model analysis, it can be established that distribution and showcase of audiovisual content are currently largely carried out by local operators, which seek licenses to content on a territory-by-territory basis. Because of this, the ability to sell the rights on a territorial basis plays a very important role in the audiovisual sector in its current set-up. These licenses are usually based on pre-sales and often consist of a minimum guarantee in the form of an advance as well as paying the technical and promotional costs (P&A, prints and advertisement, including, for example, prints, subtitling/dubbing, posters, trailers, marketing campaign, events, etc.). After the pre-sales, the rights in other territories are usually sold by an international sales agent (so-called world sales) either during the production process (especially for well-known directors) or after the film is made (e.g. after a screening during a major

festival). The distributor tries to recoup its costs with the earnings from the exploitation of the audiovisual content. After recoupment of the costs, the remaining part of the earnings is split between the content creator and the local distributor according to certain percentages, which form part of the contract between both parties. Distributors usually exploit certain rights themselves, such as the theatrical and Home Entertainment releases and then sublicense certain other rights (such as VoD and TV) to other operators such as platforms and broadcasters. They may also work with aggregators, especially when dealing with the big platforms. For instance, they then sublicense their VoD rights to an aggregator who sub-licences to the big platforms against a provision fee which is deducted from the distributor's share. In addition, distributors usually only acquire the rights to use the subtitles or dubbing for the geographical territory and particular length of time and form of distribution (different platforms), for which they have acquired the right to distribute the content. Therefore, they are not allowed to convey the right of use of the subtitles or dubbing to third parties for a use beyond said territory, time period and platform.

It is important to note that the bundling of rights is a widespread practice in the audiovisual sector. The DG COMP Sector Inquiry has found that in 79% of the licensing agreements submitted by digital content providers and in 89% of the agreements submitted by rightholders, online rights are licensed together with rights in other transmission technologies.¹¹⁴ Moreover, it showed that for all defined content types, 45% or more of the rights covered by the licensing agreements submitted by digital content providers were licensed for the territory of one Member State only. This confirms the prevalence of territorial licensing described in this study. Licensing of rights on a national basis is particularly prevalent in relation to content types that may contain premium products, such as sports (60%), films (60%) and fiction TV (56%), see also Figure 18.

¹¹⁴ European Commission Staff Working Document Accompanying the document Report from the Commission to the Council and the European Parliament Final report on the E-commerce Sector Inquiry, p. 221.

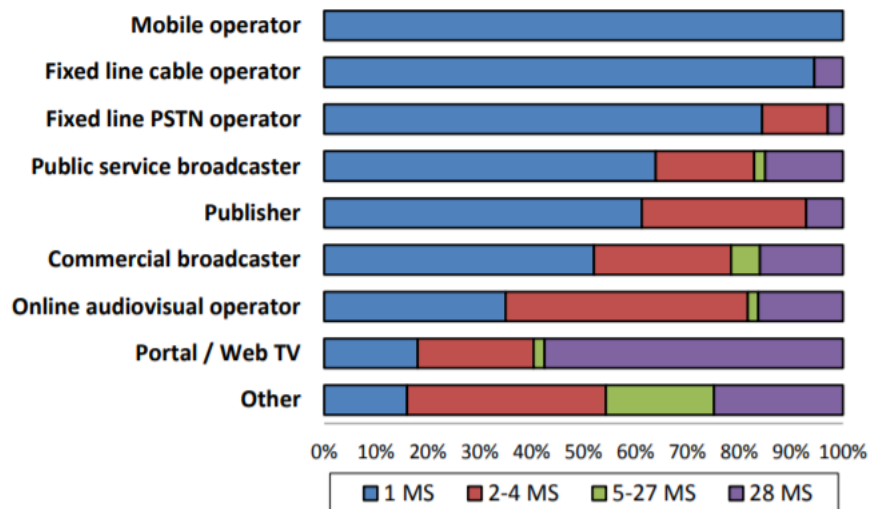
Figure 18: Territorial scope of rights agreements submitted by digital content providers - By product type



Source: DG COMP Sector Inquiry (2017), p. 226

Taking all categories of content together, Figure 19 taken from the Sector Inquiry shows that online audiovisual operators predominantly obtain online rights on a regional level: for the territories of two to four Member States (47%), but also to a rather large extent for the territory of one Member State (35%). A smaller percentage of the agreements with online audiovisual operators (16%) includes rights with a pan-EU scope. Public service broadcasters to a large extent obtain the rights in digital content on a Member State basis (64% of the agreements submitted by public service broadcasters cover the territory of one Member State only) and commercial broadcasters mainly obtain online rights on a national basis (52%) and to some extent also for the territories of two to four Member States (26%). Interestingly, operators that obtain online rights the most often on a pan-EU level (58%) are the portal/web TV operators that only have online activities (e.g. YouTube).

Figure 19: Territorial scope of rights agreements submitted by digital content providers - By type of operator



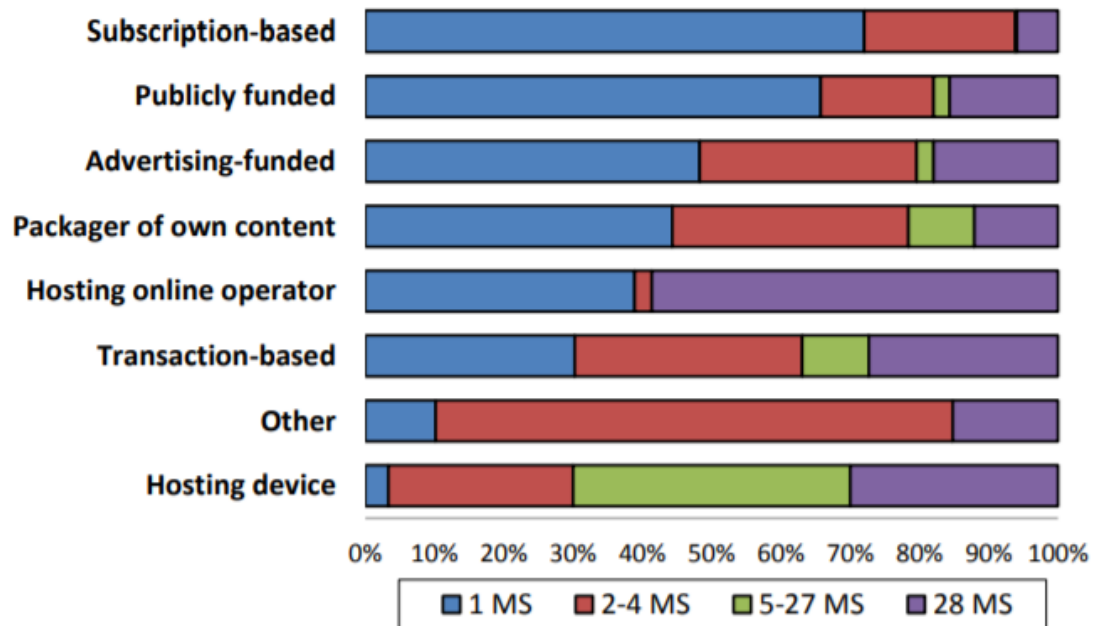
Source: DG COMP Sector Inquiry (2017), p. 228

Figure 20 from the Sector Inquiry shows that online rights are licensed mainly on a national basis to content providers operating on the basis of a subscription-based business model (72%), while packagers of own content is another category of distributors that mainly obtain rights on a per Member State basis.¹¹⁵ The business model "hosting online operator" is by far the largest category in relation to which most of the online rights are licensed on a pan-EU basis (59%)¹¹⁶ followed by "hosting devices" (30%) and transaction-based business models (including OTT operators, 27%).

¹¹⁵ This category refers to operators which earn most of their revenues on the basis of licensing fees from channels or otherwise packaged content to other digital content providers (e.g. thematic channels).

¹¹⁶ These two categories refer to operators which offer online content through agreements whereby such operators host service providers within a hosting environment with a specific set of characteristics, either via software ("hosting online operator" e.g. YouTube) or via hardware ("hosting device" e.g. Roku).

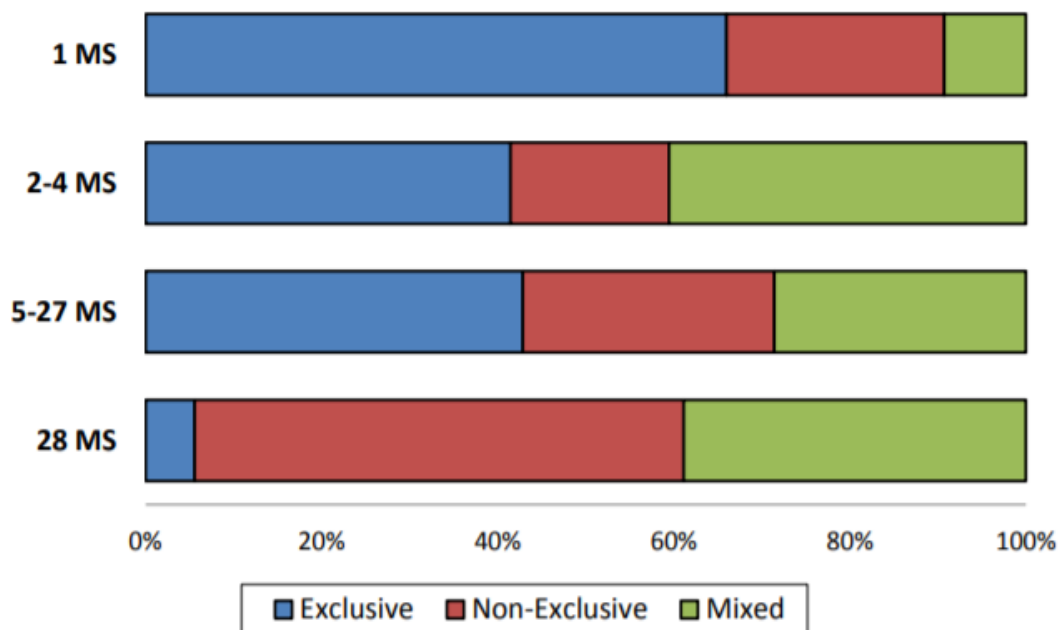
Figure 20: Territorial scope of rights agreements submitted by digital content providers - By business model



Source: DG COMP Sector Inquiry (2017), p. 229

Lastly, exclusivity of rights in terms of technology is often used in association with a territorial scope of the licensing agreement, Figure 21 shows this relation.

Figure 21: Exclusivity in terms of technology and territorial scope of rights agreements submitted by rightholders



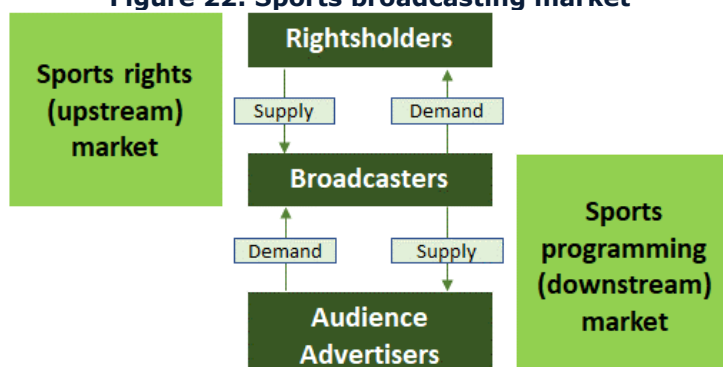
Source: DG COMP Sector Inquiry (2017), p. 231

Box 2: Licensing models of sports broadcasting

Considering the broadcasting of live sport events specifically, this type of content has, as also highlighted above, become an important piece of premium content for pay-TV operators, and more recently also for online players. At the same time, the selling of audiovisual rights for live broadcasting has become one of the main pillars of the revenue stream for professional sport. However, sport events are not protected by copyright and might be covered by different regulatory treatment in the various Member States; this is described in Section 3. Sport content may therefore be impacted in a different way by a potential extension of the Geo-blocking Regulation compared to other audiovisual works. Notable specificities of sports rights are the short duration of the rights, the importance of immediacy, its scarcity and its lack of substitutability.

The economic structure of sports broadcasting can be divided in two separate markets. Downstream (the primary market for sports programmes), broadcasters connect advertisers to audiences. The secondary (upstream) market brings broadcasters and sports organisations together where the latter sells the rights they hold to the former after a process of negotiation, see Figure 22 for a visual representation.¹¹⁷

Figure 22: Sports broadcasting market



Source: *The sports broadcasting rights market*. in Tom Evens, Petros Iosifidis, Paul Smith (2013) "The Political Economy of Sports Rights: Between Culture and Commerce", Palgrave Macmillan

Regarding the upstream market, usually, rights to broadcast live sports are negotiated by the organiser of the sports event with media content providers. In most professional team sports, these rights are exploited by the league. For individual sporting competitions, the event organisers usually promote and exploit the audiovisual rights. The seller usually offers TV rights collectively at a certain minimum price. If several parties are interested in buying these rights, a (usually blind) bidding process is typically started selling the rights to the highest bidder. Rights are often made available to at least two operators, among others, because of competition reasons. In addition, for major sport competitions and events that also create interest abroad, the rights are sold to operators in other countries on a territorial, and usually exclusive, basis. The rights may be negotiated as a single bundle or may be divided across platforms (e.g. TV, mobile, internet, etc.). Key

¹¹⁷ The sports broadcasting rights market. in Tom Evens, Petros Iosifidis, Paul Smith (2013) "The Political Economy of Sports Rights: Between Culture and Commerce", Palgrave Macmillan. Available at: https://www.researchgate.net/publication/304854227_The_Sports_Broadcasting_Market.

terms in the licensing agreements include the length of the deal, the number of games to be broadcasted, the process for selecting particular games for broadcasting, if relevant copyright ownership, and sponsorship rights. Lastly, it should be noted that in addition to live broadcast rights, there is also a large market for highlights and bundles of highlights. These highlights are usually sold to the same player(s) who hold the live broadcasting rights and several other players in addition to that. For important sports events (often nationally popular sports, national sports competitions and the major international sports events), usually a national broadcaster has these rights to ensure the widest dissemination possible among the population.

5.2 Findings from the literature on geo-blocking and audiovisual content¹¹⁸

The literature on the effects of geo-blocking or its prevention is relatively scarce. This might be partly due to the lack of publically available data, at least in certain segments. In the following, we provide a short overview of key papers referring to the issue in the audiovisual sector. Given that data on films is typically better available than on TV series or TV shows, many authors use the data available and focus correspondingly on films instead of TV content.

The market for films is somewhat different from other copyright protected products. The film industry faces high fixed costs but benefits from economies of scale in sales. It tends to be more competitive when located in large home markets. In this respect, a unified single market could entail a number of positive advantages for this sector. We distinguish between research based on proxies from offline film distribution through cinemas and those directly looking to online distribution through VoD platforms.

Film distribution in cinemas

Available studies provide evidence of market fragmentation for film distribution through the cinema circuit. For instance, Ferreira et al. (2013) develop a model of the global movie market and show that importing consumers benefit from access to a wider variety of products, while exporting sellers experience higher profits by selling their products to a larger population of consumers.¹¹⁹

However, evidence for the EU territory is scarce. In a recent study, Alaveras et al. (2018) explore new data sources on multilateral trade in films among EU countries and with the USA in offline cinema.¹²⁰ They take annual cinema screening data at the film title level for the period 1996–2014 in EU Member States from the Lumière database, collected by the European Audiovisual Observatory. Their results show that

¹¹⁸ The project team gratefully acknowledges the support of JRC who contributed this literature review.

¹¹⁹ Ferreira F, Petrin A, Waldfogel J. 2012. Trade, endogenous quality, and welfare in motion pictures (Working Paper).

¹²⁰ Alaveras G, Gomez-Herrera E, Martens B. 2018. Cross-border circulation of films and cultural diversity in the EU. *Journal of Cultural Economics* 42: 645-76.

the EU film market is highly fragmented and cross-border film availability in cinema is low. Cultural distance, success in the home market and the size of the film budget influence trade of films between countries. US films show a higher propensity to get into export markets, relative to their success in the home market. Consumer demand for imported films is relatively smaller in large EU economies, except for films imported from the USA that are only marginally affected. Overall, the study finds that common language across two or more countries can be driver of film trade.

Aguiar and Waldfogel (2019) use box-office revenue data for 21,000 films released in theatres in 52 countries during the years 2002-2014. They develop a structural model of demand for films which allows them to obtain the economic surplus for consumers in each destination country as well as the revenue collected for producers in each origin country. Their model allows them to simulate the effect of a European single market for films, by comparing the current status quo on cross-border availability with a fully open European market in which every film is available everywhere in the EU. Their analysis shows that increasing availability of films across Europe would mostly benefit European film producers at the expense of US film producers. In particular, they find an increase in the revenues to European producers by an average of 0.46 euro per capita as compared to status quo, however with significant differences by country, with for example negative impacts on the revenues of Italian and French producers. By contrast, US producers would lose about EUR 0.78 per capita compared to the status quo. The underlying intuition for this decrease is the fact that most US films are already available in most EU countries under the status quo, while European films are much less available prior to opening borders. The main effect of opening borders for films is that ubiquitously available US films face more competition from EU films that were previously less widely available.¹²¹

VoD distribution

The rapid growth in the bandwidth of internet infrastructure and household access to fast broadband services has made online distribution of video content on a commercial scale increasingly more feasible. As a result, the number of VoD or film streaming and downloading services is growing rapidly as consumers are gradually shifting film consumption from traditional cinema and TV distribution to online services that offer more choice and flexibility at lower cost. They combine a back catalogue and the absence of fixed time schedules with easy access.

Alaveras et al. (2015) measure the extent of market segmentation for VoD services in the EU. They look at two dimensions of market segmentation. First, they check if catalogues in other countries are accessible to consumers in their home country, irrespective of the content of the catalogues. Secondly, they check availability (i.e. they compare the content of film catalogues across countries). They find that cross-border access to VoD services in the EU-28 is extremely limited, between 0.4 and

¹²¹ Aguiar L, Waldfogel J. 2019. Digitization and the welfare effects of motion picture trade.

3.8% of available services. Cross-border availability of film titles is somewhat higher at 16.8%. Netflix performs better with 31% cross-border availability. Cross-border availability in VoD catalogues remains far below the 40% availability observed in digital film downloads, 80% in digital music downloads and 93% in e-books catalogues. Even within EU Member States, the VoD market is very fragmented with catalogue overlaps between local VoD providers in the order of 30-50% only.¹²² Consumers incur high switching costs to access a wider variety of products in this segmented market. A variety of factors play a role in this market segmentation including heterogeneous consumer preferences across countries, commercial strategies by film producers and distributors, legal obstacles related to the segmented rights and regulatory measures that give preferential treatment to local products.¹²³

In a similar exercise, Batikas et al. (2015) focus on geographical market segmentation in Netflix, a subscription VoD platform with relatively wide geographical coverage in the EU. In 2015, Netflix offered streaming services for film and TV series in 22 countries, including 11 Member States.¹²⁴ The study compared film catalogues among the 11 Netflix country stores in the EU that provide film streaming services to consumers on the basis of an SVoD business model. They estimate cross-border availability of films in Netflix in the EU at 31% by 2015. Their findings also show that availability patterns are to a large extent driven by consumer preferences and geographical and linguistic proximity. The average delay in availability between theatre and Netflix release ("windowing") in the EU-11 is 326 days, with wide variations across countries, compared to only 112 days delay in the US. However, windowing delays are getting shorter for more recent films.¹²⁵

A study by Oxera and O&O consultants (2016), prepared for a group of firms in the international audiovisual industry, estimates the potential impact of lifting cross-border geo-blocking restrictions and allowing consumers to switch between subscription VoD services in EU member states. It starts from the observation that larger and richer countries tend to have larger film catalogues and earlier release dates, while poorer and smaller countries tend to have smaller catalogues and later release dates. While it does not have empirical observations on cross-border demand, it assumes random switching of consumers between subscriptions in different countries and estimates the impact on consumer welfare through prices and catalogue contents. The estimation model assumes that domestic offerings are necessarily of higher quality to the consumer than foreign offerings (see page 80).

¹²² In this context, overlap refers to the mean over pairwise overlaps between providers. Cross-border availability on the other hand refers to the fraction of content that is available in all Member States. The calculations exclude Netflix but generally including SVoD-services.

¹²³ Alaveras G, Gomez-Herrera E, Martens B. 2015. Market fragmentation in Video-on-Demand Services in the EU-28, Institute for Prospective Technological Studies Digital Economy Working Paper.

¹²⁴ Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, Netherlands, Sweden and United Kingdom.

¹²⁵ Batikas M, Gomez-Herrera E, Martens B. 2015. Film availability in Netflix country stores in the EU, Institute for Prospective Technological Studies Digital Economy Working Paper.

This implies that consumers have no incentive to switch to a foreign provider. If they do, as forced by the model, they necessarily lose welfare. The study finds that opening up audiovisual services markets in the EU to cross-border trade would expose consumers and the industry to significant losses (up to EUR 9.3 billion annual consumer welfare loss, up to EUR 8.2 billion annual producer revenue loss and up to 48% less content made). The analysis suggests that there will still be significant consumer losses in the long run, of up to EUR 4.5 billion per annum. Less content would be produced, less mainstream content would be dropped, locally targeted content would be particularly affected, threatening cultural/language diversity and while some consumers would pay a higher price and/or be left with a lower-quality offering, others would be priced out of the market altogether. The impact would vary by territory. Consumers in the lower-income EU Member States (mostly Eastern Europe and the Balkans) would be disproportionately negatively affected.¹²⁶

5.3 Results from the field work

This section presents the evidence on the audiovisual sector collected from the fieldwork. Firstly, the interview results are discussed, followed by the consumer survey results and the results of the mystery shopping exercise.

5.3.1 Feedback from the interviews

Firstly, as a general remark which applies to all the interview chapters of this report, the answers provided by civil society and consumer organisations during interviews present an observable pattern which is consistent across the sectors. These two categories of stakeholders provided views mostly based on consumers' expectations. However, as they often don't have access to the necessary data and information on supply and financing affecting the complexity of the relationships along the value chains, they are at a clear information disadvantage compared to the industry stakeholders in this regard (e.g. book publishers, music labels and distributors, audiovisual companies, videogame developers and publishers).

The main argument used by industry stakeholders to express their opposition to an inclusion of the audiovisual sector within the scope of the Geo-blocking Regulation relates to the **financing model for production**. This aspect is generally analysed in detail in Section 5.1. on the basis of different sources and inputs.

In this regard the industry stakeholders stressed in particular that pre-sales currently play an important role when securing funding for the production of audiovisual content in the EU. They explained that the logical counterpart of funding through pre-sales in the current system is territorial licensing, including exclusive territorial licensing. These exclusive territorial licenses would be used to guarantee the recoupment of the investment made by the various national distributors through pre-sales. This model is often, but not exclusively, also used for (cross-border) co-

¹²⁶ Oxera and O&O. 2016. The impact of cross-border access to audiovisual content on EU consumers.

productions in order to share the burden of the investment between several operators in multiple territories.

However, it would be possible to envisage a model where territorial exclusivity plays a more limited role during the licensing process (as with, for instance, the music industry). Most industry stakeholders took issue with this possibility, noting the specificities of the audiovisual sector as opposed to the music sector. Still, while it is clear that under the current licensing system and with the current business models licensing without territorial exclusivity would be problematic, it remains to be demonstrated whether different licensing approaches might be possible in the audiovisual sector in the future. Under Scenario 2, there could be a possibility to maintain territorial exclusivity for active sales (versioning), while for passive sales there would no longer be absolute territorial exclusivity. In this way, rightholders could continue to licence their rights on a territorial basis and could obtain additional revenues from passive sales in other territories. In this regard, however, industry interviewees opined that the loss of exclusivity in their own territory would not be made up for by the additional requests from consumers in other territories, to which they would be able to respond if the Regulation were extended.

The main arguments for keeping this system in place, as expressed by industry stakeholders during interviews, relate to the high up-front investments required to make audiovisual content (specifically, high-end series and large films) and the large uncertainty about the commercial success before a production is out. In addition, they mentioned the problem that a small number of productions, which do well, need to make up for the investment in a larger number of other productions, which not do so well. In this sense, producing audiovisual content can be seen as a “hit and miss” kind of process. For instance, 69% of TV dramas aired between 2006 and 2010 were not re-commissioned after their first series.¹²⁷ In this sense, pre-sales agreements and pre-sales funding are seen as crucial ways to finance a significant part of a film budget ensuring sufficient content creation. To recoup the investments on the side of the distributors, these agreements usually grant exclusive distribution rights for a certain distribution channel, time window and territory. Distributors are also predominantly interested in exclusive rights within the national market on which they are active. Moreover, they also argued that exclusive territorial licenses ensure that, in each territory, efficient and targeted distribution strategies are adapted to the various local audiences and the local market situation. Local distributors acquire the rights, and make their investments in marketing, dubbing, or subtitling on the basis of secured exclusivity for their respective territory. The argument of the industry stakeholders, especially distributors, based on the situation described above is that if distributors would lose the territorial exclusivity to distribute a piece of audiovisual content (especially films), they would likely also lose interest in participating in the pre-sales funding of those pieces of content, leading to the impacts described below.

¹²⁷ Oxera and O&O. May 2016. “The impact of cross-border access to audiovisual content on EU consumers.” P.23.

According to interviewed stakeholders from the industry side, the decrease in content being produced as described above would in turn lead to less work for players from along the entire audiovisual value chain (actors involved in creation, production and distribution of audiovisual content, including rightholders and distributors, described in detail in Figure 15 and Figure 16). Ultimately, in their eyes this would lead to European players, especially the smaller ones, going out of business leading to ancillary effects for both companies and consumers as described later in this chapter.

On the other hand, interviewees from civil society and consumer organisations pointed towards two potential solutions to overcome the potential impact on the funding through pre-sales. Firstly, to secure pre-sale funding from distributors by assigning differentiated licenses to them based on other means than territorial exclusivity. One example that has been mentioned by the interviewees is the same as proposed by Professor Hugenholtz and others, namely, to move to a system of language exclusivity.¹²⁸ In their opinion, the extension of a country of origin rule (as proposed in the new Online television and radio programmes Directive for certain types of audiovisual content) to forms of online broadcasting does not affect market partitioning and price discrimination based on language versions. However, it should be noted that industry stakeholders in their interviews also objected to this solution, mostly referring to a potential challenge to language exclusivity (which is already mentioned in the Hugenholtz study itself as well) formed by recent technological developments such as automatic captioning, subtitling and dubbing tools, a development which is already visible, but which will only continue to develop.¹²⁹

The second solution proposed by interviewees from civil society and consumer organisations is to secure funding from sources other than pre-sales. Examples that have been mentioned by stakeholders in their interviews are crowdfunding, private equity investment and funding from the EU and national governments. Industry stakeholders in their interviews mentioned that this would be hard without turning the whole industry upside down, as currently all other means of funding are explored as well as supplement territorial pre-sales. This finds support also in recent studies quoted by the stakeholders: in relation to crowdfunding, changes in funding models are mostly gradual; crowdfunding and product placement are thus interesting developments but of limited importance in financial terms and are likely to remain so.¹³⁰

Among individual companies, interview findings also pointed to a large perceived fear of unfair competition from large operators, especially from outside of the EU. Interviewed representatives of these companies argued that, even though it is already getting increasingly difficult, including audiovisual services within the scope

¹²⁸ Institute for Information Law (2019). Film financing and the Digital Single Market: its future, the role of territoriality and new models of financing.

¹²⁹ However, it should be noted that this could be at least dubious from a copyright point of view (in particular if it entails a modification of the work).

¹³⁰ See for instance: Idea Consult (2017), "Crowdfunding –reshaping the crowd engagement in Culture."

of the Geo-blocking Regulation would certainly make it very difficult for European players, especially SMEs, to compete with these larger operators under a system of pan-European licensing (which they see arising as a result of the inclusion of the audiovisual sector within the scope of the Regulation, as discussed in the previous section). These concerns were mainly expressed by distributors, as producers would still be able to work with the larger non-European players albeit under different circumstances about which they did express concerns.

This concern was echoed by interviewees from several Collective Management Organisations (CMOs) who mentioned that, in their eyes, the extension of the scope of the regulation might have a profound impact on small businesses and start-ups. Currently, many start-ups launch their services in a single territory (or at least a very limited number of territories) in order to minimise their costs and to focus on their promotion. The expansion into new territories only takes place as their user base grows domestically. According to the interviewees from the CMOs, the expansion of the scope of the Regulation, would make this impossible because of the increased competition from all across the EU in each country.

Interviewees from civil society and consumer organisations expressed their opinion on the matter as they downplayed the industry's concern about the potential harmful impact of the extension of the scope on SMEs, noting that the international big players are already significantly omnipresent and dominant in the various sub-sectors and that this situation would not change significantly with the inclusion of the audiovisual sector within the Geo-blocking Regulation. The first part of their statement (i.e. that the international big players are already dominant) is supported by the business model analysis conducted for this study, see for instance Table 11. The second part argues in a more subjective way that the effects of the entry into the market of pan-EU/large VoD providers have not been as disastrous for the industry as predicted by the industry and that similarly this would probably be the same with an extension of the Geo-blocking Regulation (i.e. that the effects would also not be as disastrous as predicted by industry stakeholders).

In addition to all the arguments mentioned above, a main impact as reported by industry stakeholders during interviews specific to the area of serving consumers in other countries is the so-called cannibalisation of content; this phenomenon is especially related to the windowing systems. As shown in Figure 17, there are large differences between Member States regarding when a specific piece of content is being released. The argument of the industry stakeholders revolves around the fact that if a production is released in one Member State and there would be no geo-blocking anymore, consumers from all 28 Member States could access this piece of content. This would lead to less revenue in Member States where the windows open later, as consumers would have already had the opportunity to see the content from somewhere else. Moreover, if one Member State very quickly released a production to a next window, for instance VoD platforms, this could hurt revenues for other operators (for instance, cinemas or broadcasters) in other Member States.

Interviewees from civil society and consumer organisations pointed out that preferences of consumers for audiovisual content still differ very much from one Member State to another. Therefore, they do not acknowledge cannibalisation as a big danger. Industry stakeholders actually specified that on the level of language preferences, this issue is indeed especially pressing for English-language productions as increasing numbers of European citizens are able to consume this content in its original form, as English as a spoken language becomes ever more common. English-language productions are first of all formed by the large productions, often coming from Hollywood. On the other hand, smaller productions coming from the EU can also be made in the English language, even if it comes from a country where this is not the native language. In addition, even for non-English productions, they still expected a similar effect as growing parts of the European population speak more than one language, especially more widely spoken languages such as French, German and Spanish.

Industry stakeholders further argued that the impact on consumers of the inclusion of the audiovisual sector in the scope of the Geo-blocking Regulation would largely be a negative one. These predicted impacts were largely seen as the logical consequences of the predicted impacts on the industry side, as described above, and can be summarised in several main arguments:

- **Higher prices:** distributors argued that an inclusion of the audiovisual sector in the scope of the Geo-blocking Regulation would de facto lead to a system of pan-European licensing, as content producers, in their eyes, would want to protect exclusive licensing as is currently the case. These pan-European licenses would be much more expensive for distributors and operators in the exhibition of audiovisual content to buy. They also predicted this would have an effect on the diversity of distribution sources as only a small number of big operators would be able to afford these pan-EU licenses. At the same time content producers argued that, this would also mean less revenues for them as they would only be able to sell one pan-EU license rather than individual licenses in each Member State. Distributors predicted that these higher costs would be directly shifted on to the consumers leading to higher prices for audiovisual content, especially platform subscriptions and packages of live sports broadcasting;
- **Less consumer choice:** industry stakeholders also argued that the loss of funding of audiovisual content through the current system of pre-sales based on territorial licensing (as set out above) would lead to less audiovisual content, specifically European content, becoming available to consumers. This would in turn lead to less consumer choice than is currently the case;
- **Less tailored content:** at the same time, industry stakeholders put forward the case that the content that would still be available would become less tailored towards consumers from individual countries. This would especially be an issue for smaller and lower-income countries. In these countries, there would be fewer incentives for operators to distribute and exhibit tailored

content as there would be fewer opportunities to recover the costs for these because of the smaller markets. This could lead to a dominance of English language content tailored to the tastes of consumers from the more dominant EU countries; and

- **Less cultural diversity:** lastly, in line with the previous argument, industry stakeholders argued that an inclusion of the audiovisual sector in the scope of the Geo-blocking Regulation would lead to less cultural diversity as the productions that are at particular risk of not being produced anymore would be the small-scale and local productions that do not travel well cross-border. In this sense, they ultimately characterised a potential inclusion also being contrary to European values and the Treaties underlying the EU.

Finally, industry stakeholders mentioned that they only perceived a limited increase in cross-border consumption of audiovisual content after the implementation of the Portability Regulation. However, no precise estimates of the exact impact of the Portability Regulation were presented and industry stakeholders only provided qualitative inputs. Namely, they reported a minor increase even considering travel intensive periods such as the summer holidays. In general, none of the interviewees saw a significant positive impact in terms of use by consumers¹³¹ and thus no benefit in terms of increased revenues for themselves. However, it has to be mentioned that cross-border consumption under the Portability Regulation differs significantly from the cross-border consumption that would be possible with the potential extension of the Geo-blocking Regulation, namely with portability consumers are not given the opportunity to access new content, rather they are given the possibility to travel cross-border with the content they had access to while at home and which they actually bought at home. In addition, the Portability Regulation obliges paid online services to provide cross-border portability to their subscribers without extra charge. However, this has still been used as an argument by the industry stakeholders to show a low interest in actual cross-border consumption of audiovisual content (compared to the potential cross-border consumption of audiovisual content as, for instance, reported in surveys).

Interviewees from Collective Management Organisations from the audiovisual sector mirrored one of the arguments from the industry stakeholders as they also noted that changes in the scope of the Regulation would potentially result in a situation where subscription to online audiovisual services might apply parity in consumer pricing, most likely upwards rather than downwards because of the already tight economic margins: this would mean that these services would uniformly put their price level on that of the Member State with the highest monthly fee. This would possibly lead to consumers in countries with a less developed economy and lower

¹³¹ This opinion contrasts with the results of the Flash Eurobarometer 477a. According to that survey, about a third of consumers having a subscription with online content services have benefited from the new rules introduced in the Portability Regulation. Considering only those who have travelled in the EU since April 2018, nearly half of those respondents (49%) who have tried to access online content through their subscriptions when visiting another EU country have benefitted.

wages not being able to watch all content anymore and the ensuing increased piracy in those countries as mentioned above. At the same time, those price increases could increase the value of royalties in the short term but in so far as this would lead to either an immediate decrease in the number of subscribers or the future take-up rate this would likely lead to a decrease in value or royalties in the longer term. In sum, the consequence for Collective Management Organisations would be that their members would receive lower remuneration as the content service providers would generate lower turnovers due to lower demand. In general, CMOs observed that their licensees cannot see the benefits of the extension of the scope, instead they fear diminishing revenues: hence, this might lower royalty rates and it might trigger the change in licensing policy described above.

On the contrary, according to the perspective of interviewees from consumer organisations, in an internal market where borders are progressively disappearing, consumers are frustrated by the territorial restrictions imposed on them by audiovisual services. Stakeholders from these organisations also reported that, according to data from Germany, more than 17% of surveyed consumers are interested in cross-border access to copyright-protected content and they also showed a considerable willingness to pay for this content.¹³² These data are aligned, if not underestimated, to the 15% of consumers at EU level that tried to access content cross-border and much more that are potentially interested. A detailed comparison to the survey data from this study as well as those from the Eurobarometer is discussed in the next paragraph.

Regarding the **distribution models** used by industry players, industry interviewees from the audiovisual sector did not report any significant expected changes in distribution models that would result from the potential inclusion of the audiovisual sector within the scope of the Geo-blocking Regulation. Their contributions mainly focused on a change in the (types of) actors that would be involved in distribution. According to them, this would shift from many smaller European-based players to only several large international players. To complement these qualitative views with quantitative evidence, one distributor of audiovisual content provided figures showing how the revenues coming from the different exploitation windows vary significantly. Comparing the box-office revenues of its best-selling titles with the revenues from EST and TVoD, this latter source of income does not even amount to 1% of the turnover at the box-office for almost all the titles. This result seems to be aligned with the evidence gathered through desk research, presented in Figure 31, showing that SVoD is by far the most profitable business model for the online consumption of audiovisual content and is expected to grow even more. Therefore, stakeholders expressed that they did not think that the scenario of a wide à la carte choice of titles made available cross-border via a TVoD model will be of sufficient value for the industry to offer and they also expressed that they did not think that this would fully

¹³² Verbraucherzentrale Bundesverband, VZBV (2017), Geo-blocking – Digitale Inhalte Grenzüberschreitend Nutzen? Eine Untersuchung Der Verbraucherzentralen.

match the consumers' needs. Even though, this might indirectly also change something about the distribution models, as each different player has its own unique approach to this, but they did not specify what the concrete consequences of this would be.

Lastly, regarding **compliance costs**, stakeholders did not mention compliance costs as one of their major concerns. Even though they did mention that there would be some additional efforts (and accompanying costs) necessary because of different VAT-related and other rules in the various Member States, this poses less issues than for other sectors, for instance the e-books sector (as argued below).

Some stakeholders from civil society and consumer organisations noted that the extension of the scope of the Geo-blocking Regulation would trigger significant overlaps with copyright legislation, implying efforts should be made in terms of enforcement and clearance with the national laws in each Member State. Moreover, given the very recent update of the Copyright Directive, it has been argued that re-opening the debate about copyright and territoriality just a few months after its conclusion, might be very problematic as Member States are transposing the new legislation and both consumers and the industry will need to adjust to the new rules.¹³³

Another possible pathway suggested by representatives of consumers to further extend cross-border access might be represented by the Online television and radio programmes Directive which facilitates the clearance of rights for "online services ancillary to broadcasts."¹³⁴ This allows broadcasting organisations to make their radio programmes, and for television, news and current affairs programmes and fully financed own-produced content, available cross-border on their ancillary online services.

¹³³ May 2019.

<https://ec.europa.eu/digital-single-market/en/modernisation-eu-copyright-rules>

¹³⁴ April 2019.

<https://data.consilium.europa.eu/doc/document/PE-7-2019-REV-1/en/pdf>

Box 3: Interview input for sports

For sport licenses specifically, interviewees who represent sports organisations foresee that EU-wide licenses would become the norm and that these would be much more expensive.¹³⁵ For instance, licenses for national sports competitions (such as football leagues) would only be sold to one distributor to be exploited in all Member States. To recoup these higher costs, the subscriptions for consumers to watch these competitions would likely also become more expensive (in fact, the prediction of the industry stakeholders is that the price throughout Europe would be the same, namely that of the home country of the sports competition). At the same time, this would lead to a decrease in quality and less tailored content as, for instance, national commentators and analysts would disappear because these would become too expensive to maintain and impossible to recoup.

Moreover, the specificity of the “listed events” mechanism which is explained in detail in Section 3.1.3 and which grants the broadcasting rights of sport events which are considered of major public interest to national free-to-air broadcasters in each European country, would be impacted very negatively by the removal of geo-blocking according to interviewees from sports organisations. This would be the case as the extension of the scope of the Regulation to sport broadcasting would have as a consequence that a free-to-air transmission having been licensed in one country (e.g. for the national team), would be also available (even though not licensed) in all Member States as long as the broadcaster in the country where the event is licensed as a listed event also offers its content live online.

Another element linked to the value of sport licenses is that pan-EU rights are already made available by sports organisations, without meeting any interest from broadcasters to buy these rights: this can be explained by the fact that many sports events are of major interest in single Member States while these are not of interest to a broader pan-EU audience. As an example, the value of the broadcasting rights for the French football league outside France amounts to 0.7% of the value paid for the domestic exploitation of the rights.

The main line of argument of interviewees from the industry is that proponents of an inclusion of the audiovisual sector in the scope of the Geo-blocking Regulation focus too much on the impacts and effects at the end of the audiovisual value chain, arguing that there would be more consumer choice as consumers would also be allowed to access content cross-border. However, their central argument focuses on the fact that, according to them, there would be no (or at least much less and of poorer quality) content to access as there would be less content produced.

¹³⁵ For a detailed discussion of the underlying arguments, see: Oliver & Ohlbaum (2019), “The impact of potential changes to geo-blocking regulation on sport: A report for SROC: that ‘All rights licences would essentially be pan-European, so broadcasters currently offering low access costs to consumers (and typically paying relatively little for rights) would face competition for pan-European licences from international players.’ The study thus sees a generalised move to pan-EU licensing and consequently the emerging of pan-EU broadcasters to take over the market. The study only makes a distinction between exclusive pan-European licensing and non-exclusive pan-European licensing.

5.3.2 Findings from the consumer survey¹³⁶

This section focuses on the most important findings from the consumer survey on key factors that impact consumer attitudes and behaviour. A more detailed overview of results is provided in Annex IV. It should be noted that results from this survey when it comes to cross-border access may differ from those reported in the most recent Eurobarometer Survey¹³⁷ on this topic. In fact, the figures of general cross-border usage presented here slightly overestimate the ones reported in the Eurobarometer Survey. This is likely due to the different target populations surveyed. While the Eurobarometer Survey focused on all internet users in general, the survey presented here targeted consumers who are active users in at least one of the target sectors. Therefore, all results presented here refer to a proportion of users in the specific sectors rather than the entire population of potential users (including non-users).

Usage and spending

The audiovisual content sector (excluding sports content) has the highest proportion of paying consumers: more than half (51%) have paid to access this type of content during the past 12 months. For sports content, this proportion is considerably lower (30%). Online subscriptions are a very popular way to access general audiovisual content: 37% of consumers paid for an online subscription compared to 16% that used an individual purchase. This is also the sector where online subscriptions are used most widely, which is likely related to the large number of international providers offering such content. While there are no sizable differences between the average expenditure on subscription and individual purchases, it stands out that the average amount that is spent on sports content (for both subscriptions and pay-per-item access) is the highest among all sectors (EUR 32 per month).

Table 16: Average monthly spending on online purchases

	Films, series and other online video content (excl. sports)		Live sport events	
Base size	653		370	
Paid subscription(s)	€	19	€	33
Paid per item	€	17	€	29
Subscription(s) and cost per item	€	20	€	32

Questions asked: On average, how much money do you spend per month on online purchases in this sector?

¹³⁶ All tables in this section have our own survey as a source, unless otherwise indicated.

¹³⁷ Flash Eurobarometer 477b: "Cross-border access to online content".
https://data.europa.eu/euodp/en/data/dataset/S2221_477_ENG

Cross-border access and geo-blocking issues

The proportion of consumers accessing cross-border content in this sector (defined as “services NOT meant for users in your country”) is limited to approximately one in five consumers (21% for general audiovisual content and 20% for sports content).

Table 17: The type of content or service that consumers accessed or attempted to access (for free or via a purchase) in the past 12 months

	Films, series and other online video content (excl. sports)	Live sport events
Base size	6629	4727
Specific content or service meant for users living in the country of residence	87%	86%
Specific content or service <u>not</u> meant for users living in the country of residence	21%	20%

Question: asked Over the past 12 months, please indicate the type of content or services you accessed or attempted to access (for free or via a purchase)?

Of the consumers who do engage (or attempt to engage) in cross-border access to audiovisual content, approximately half experienced problems, which translates to one in ten consumers of audiovisual content, overall. Geo-blocking is slightly more prevalent for sports content (54% reports have experienced issues) compared to general audiovisual content (44%). Some of the issues relate to price discrimination in the form of extra charges (13% for general content and 17% for sports content), while others are more standard forms of geo-blocking, such as rerouting or blocked access (21% and 22%, respectively). A substantial proportion of consumers experienced issues (19% for general audiovisual content and 23% for sports content) but were able to resolve them and gain access to the content by using extra tools such as VPN.

Table 18: Consumers' experience when attempting to access specific content or service not meant for users residing in the respective country

	Films, series and other online video content (excl. sports)	Live sport events
Base size	1537	1132
It worked without a problem and without using extra tools (e.g. Virtual Private Network)	56%	46%
I experienced some problems but found a way to access the content (e.g. via Virtual Private Network)	19%	23%
I was charged extra to access the content	13%	17%
It did not work (e.g. no access, redirected, refused payment)	21%	22%

Question asked: What happened when you tried to access specific content or service NOT meant for users residing in your country?

Content availability

Consumers indicate that it happened often that content they wanted to access was not available through their current subscription (58% for audiovisual content and 66% for sports content) or through individual purchases (55% for audiovisual content and 72% for sports content). As a result, between 7% (sports content) and 10% (general content) of consumers having a subscription accessed the content via illegal channels while 28% and 23% gave up trying to access it. Results are similar for individual content.

Consumer satisfaction

Overall, the majority of consumers are satisfied with the language availability (82%) and the choice and quality of content (80%), and the number and variety of providers (80%) in the audiovisual sector (excluding sports). For sports content, the figures are slightly lower with roughly 3 in 4 consumers reporting overall satisfaction. Where consumers seem to be less in agreement is when it comes to prices with roughly one in two disagreeing that the current prices of subscriptions and individual content are justifiable. The disagreement with the level of current prices of subscriptions is slightly higher for sports content (55%) than for general content (42%) and similar differences are observed for individual pieces of content. These figures correspond well with the fact that 48% of consumers find price a very important factor in their purchase decisions, while another 46% find it at least somewhat important.

Current switching behaviour

When examining consumers' switching behaviour, about one in four consumers who access general audiovisual content make changes to their subscription by switching

(13%) or adding a new subscription (11%). Switching is even higher for sports content subscriptions with one is three (31%) switching within the same provider or to a different one. These results indicate that a sizable percentage of consumers engage in switching behaviour in the audiovisual sector.

Drivers of hypothetical switching behaviour: price, language accessibility and local content

While consumers clearly find price important, other factors such as content availability and language accessibility are rated just as highly in importance. However, when it comes to factors that drive consumer behaviour,¹³⁸ price and language accessibility stand out most.

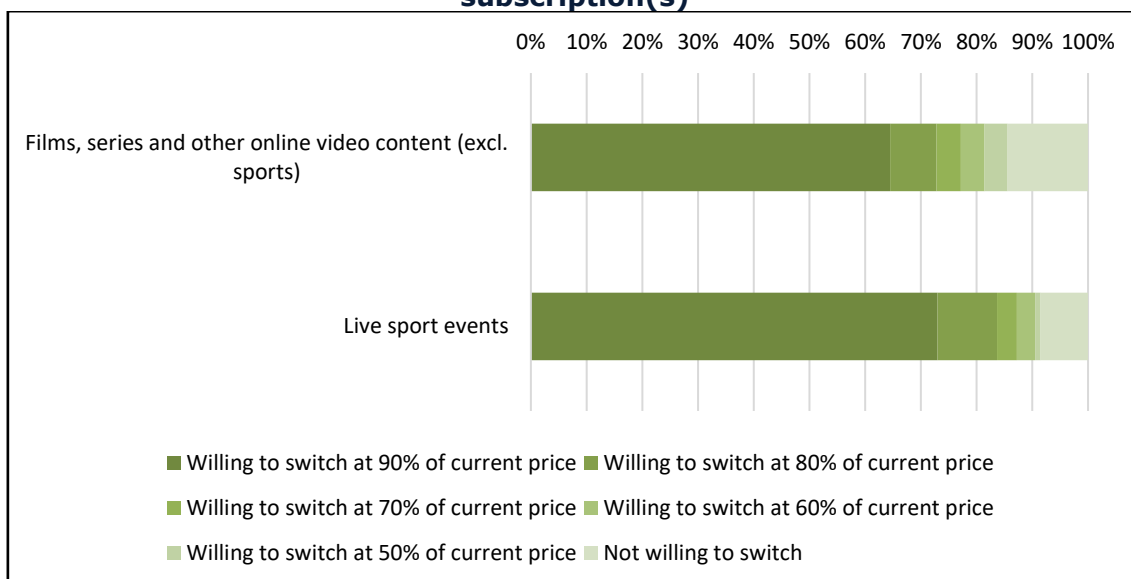
We asked consumers to imagine three specific switching examples:

- Example 1: the offer remains exactly the same but only the price varies;
- Example 2: the offer provides similar content/catalogue but is meant for users in other countries and may not include consumers' preferred language, and the price also varies; and
- Example 3: the offer is meant for users in other countries and may not include consumers' preferred language but may also feature limited local/national content, and the price also varies.

In the first example, we estimated the price sensitivity should the offer remain the same. Not surprisingly, 64% (73% for sports content) of consumers would switch their audiovisual subscription if the price drops by merely 10% but the offer remains the same. An additional 21% (19% for sports content) would switch if bigger discounts are offered. These figures show that if all conditions remain equal, roughly 9 in 10 consumers should switch, with the majority showing very high price sensitivity.

¹³⁸ With respect to consumer behaviour, the survey compared directly the importance of price, language accessibility and local content. As opposed to the ranking reported above, content availability (in general) was not taken into account in this comparison. As such, these rankings may differ.

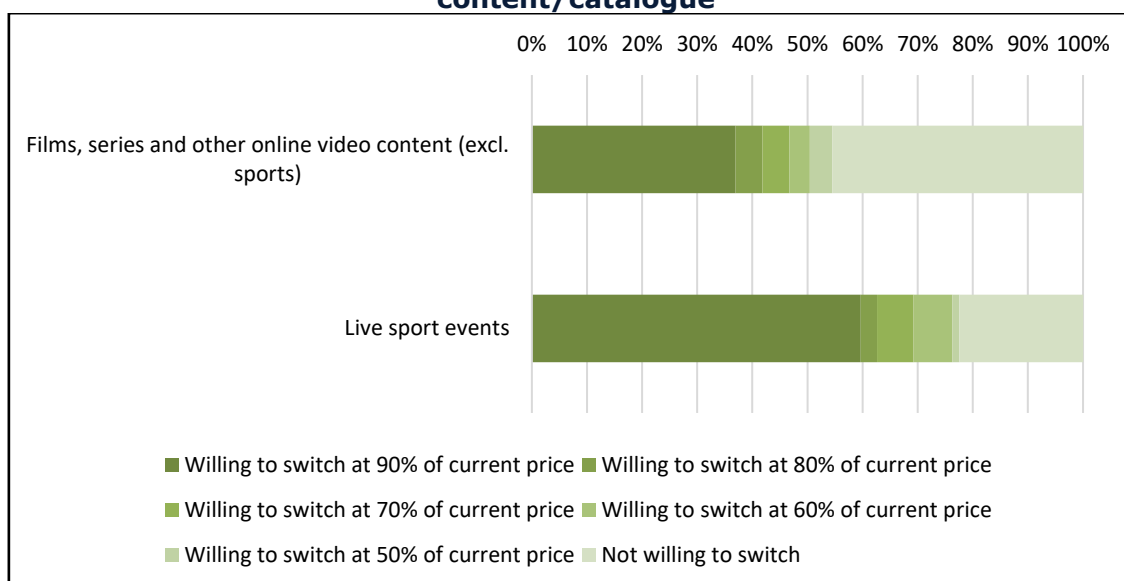
Figure 23: Consumers' willingness to switch providers or service if the content and language options are broadly the same as for their current subscription(s)



Question: asked: Would you switch to another service provider or service, offering you broadly the same content and same language options as your current subscription?

In the second example, we simulated consumer price discounts for an offer which offers similar content/catalogue but it is not meant for users in consumers' country of residence and may not feature their preferred language options. Hypothetical switching behaviour differed significantly for this example, with only 37% willing to switch for a 10% price discount and an additional 18% when offered higher discounts. This is still a sizable portion of consumers who are price sensitive (55%) but language options do make a difference. Almost half (46%) of consumers in the general audiovisual sector are not willing to switch at any price discount if their preferred language is not available. Interestingly, language plays a smaller role for sports content, where only 22% of consumers are not willing to switch if their preferred language is not available.

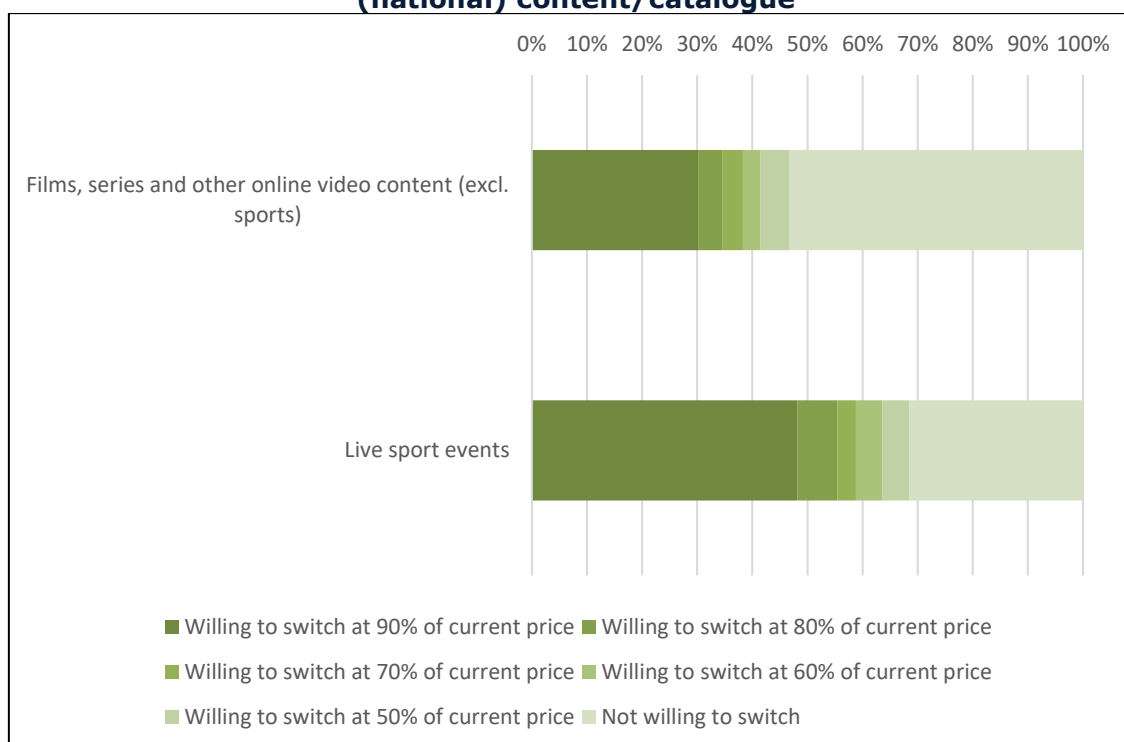
Figure 24: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence but offers a similar content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence BUT offering you similar content/catalogue?

In the third example, we introduced local content in addition to limited language availability. Here, we can identify that 53% of consumers would not be willing to switch if local audiovisual content is limited (32% for sports content). Still, in this most taxing example, 47% of consumers are still willing to switch based on varying price discounts, with 30% being extremely price sensitive and switching already at a 10% discount. For sports events, this proportion is even higher with 68% of consumers willing to switch for the right price and 48% claiming they would switch for a 10% discount.

Figure 25: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence and offers no or limited local (national) content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence AND offering you no or limited local (national) content/catalogue?

These figures reveal that consumers can be segmented into groups based on what drives their switching behaviour in the audiovisual sectors (excluding sport). While roughly half (47%) appear to be exclusively sensitive to price (regardless of other changes in the offer), 31% are clearly most sensitive to language availability. An additional 8% are most sensitive to the availability of national or local content. The remaining 14% seem to be unwilling to switch under any circumstances related to price, language or local content. For sports content, price appears to carry even more weight as a decisive factor (68%), while language availability matters less (14%).

In an additional question probing the importance of language accessibility, we asked explicitly whether consumers would switch provider if their favourite languages were not available. Roughly one in four (23%) stated that they would not switch their provider of general audiovisual content if their preferred language were not available, regardless of the price. For sports content, this was true for only 10% of consumers. In a follow-up question, 55% stated that they would give up access to their favourite audiovisual content in such a situation.¹³⁹ This finding confirms that language

¹³⁹ The sample size for sports events is too low to report robust figures.

accessibility is a pre-requisite for consumer access to content in this sector for a substantial proportion of the market.

5.3.3 Findings from mystery shopping exercise

Based on the Mystery Shopping Exercise, the audiovisual services sectors are characterised by the highest level of geo-blocking compared to the other sectors, at all stages of the consumer journey.

Access

The majority of blocked attempts to access on-line interfaces can be attributed to the audiovisual services sector excluding sports content, where the observed proportion of blocked cross-border access was 11%. Overall, compared to the other surveyed sectors, audiovisual services and audiovisual sports content were the only sectors where issues with accessibility were observed. In some cases, access was blocked by displaying a concrete message explaining the existing restrictions due to copyright, while in others no specific communication was given.

Availability

Some differences in the availability of offers per sector were observed. In particular, audiovisual services were characterised by most issues when it comes to this indicator. For subscriptions, price differences between domestic and cross-border offers were observed for audiovisual service (excluding sports content), while for sports content, subscriptions were most likely to be unavailable cross-border compared to the other sectors. The cross-border availability of one-off purchases of audiovisual services (excluding sports content) was also limited compared to the other sectors. The most common practice identified for subscription-based services was locking-in consumers based on automatically detected location (or provided address) and changing the offer (content and price) accordingly.

Registration

The highest proportion of issues during the registration stage were observed for the audiovisual sectors, for both general content and sports content. Approximately half of all shopping attempts ended during the registration stage in these sectors. Most commonly, registration is simply not possible using a cross-border billing address, phone number or other means of verification. As such, large providers seem to restrict access by only allowing registrations on a country-by-country basis with the location being picked up automatically (i.e. through the usage of a geo-location tool). In some cases, especially for subscriptions, providers use re-routing at this later stage of the purchasing process by switching their offering (including content availability and pricing options) to match the country of the shopper. Often this switch is fixed based on location and the shopper is unable to change the country. Another big issue when it comes to registration was linked to some national providers of broadcasting services, who also offer extra subscription packages to premium audiovisual content (films, series, live sports, etc.). In these cases, shoppers were inevitably geo-blocked when trying to become a client of one of these providers as

residence in the specific Member State needs to be verified first by means of a national ID or a physical visit.

Payment

While the obtained sample is not large enough to draw definitive conclusions per sector, the data indicates that inaccessibility of cross-border offers due to payment restrictions is most likely to be observed for the audiovisual services sectors. This is likely linked to the previous stage as payment and registration often happen simultaneously and shoppers were frequently asked to enter a valid payment method before they could register, particularly for subscription-based services.

5.4 Expected impact on consumers and on industry

This section presents the expected impacts of a potential extension of the Geo-blocking Regulation to include audiovisual services. After a general introduction, the impacts under Scenario 1 and Scenario 2 will be discussed.

For this section, which presents the results of our data collection and analysis, it is important to bear in mind that our focus within the audiovisual sector was on SVoD services. Because SVoD plays such an important role in our analysis, the relative importance of SVoD in overall audiovisual sector revenues is an important question to consider.

5.4.1 The growth of streamed video (SVoD and TVoD)

At first sight, SVoD represents only a small fraction of sector revenue (see Figure 26). The 2017 European market for audiovisual services provided to end users¹⁴⁰ is estimated to have been some EUR 112 billion, of which EUR 3,649 million was SVoD, EUR 866 million was TVoD rental, and EUR 617 million was TVoD retail (see Figure 26).¹⁴¹ In comparison, according to the European Audiovisual Observatory's Yearbook 2018/2019, cinema box-office revenues amounted to somewhat less than EUR 10 billion.¹⁴²

In Figure 29 and thereafter, we expand on this breakdown by showing trends in consumer spending within the broader European home entertainment sector, including pay-TV and the rental and sale of DVDs and Blu-ray.¹⁴³

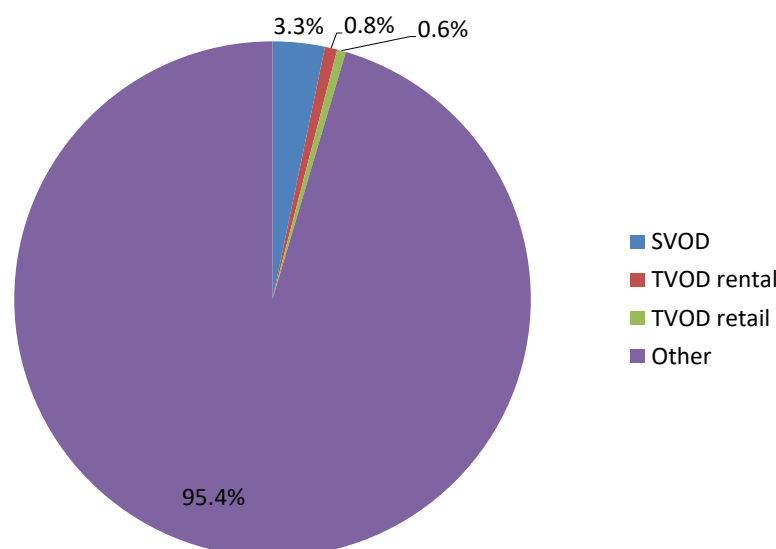
¹⁴⁰ Revenues provided for upstream services, including production and post-production of audiovisual works, are not included in these numbers.

¹⁴¹ European Audiovisual Observatory (2019), "Yearbook 2018/2019: Key Trends", pp. 6 and 51. They define sector revenues as comprising audiovisual services (e.g. free television, linear television, pay-TV and on-demand subscription services such as SVoD) and the direct sale or renting to the consumer of audiovisual programmes (e.g. cinema, box-office, physical and digital home videos).

¹⁴² European Audiovisual Observatory (2019). Yearbook 2018/2019 – Key Trends. Available at: <https://rm.coe.int/yearbook-keytrends-2018-2019-en/1680938f8e>

¹⁴³ The data here are not directly cross-comparable to those in Figure 29.

Figure 26: SVoD and TVoD revenues as a percentage of European audiovisual sector revenues from end-users,¹⁴⁴ 2017



Source: European Audiovisual Observatory (2019), "Yearbook 2018/2019: Key Trends", Bruegel calculations

However, in order to understand the potential impacts of SVoD services on audiovisual sector revenues, it is necessary to also consider the fraction of revenues that SVoD services are likely to represent in the future. Sale and rental of physical audiovisual media, for instance, have steadily declined over the years 2012 – 2018, while OTT, SVoD and TVoD services (both rental and EST/DTO) have steadily grown. The Grece and Fontaine (2017) study provides estimates of SVoD users and revenues for the years 2011 through 2016 (see Table 19).

Table 19: SVoD users and revenues, EU-28 minus Latvia,¹⁴⁵ 2011-2016

	EU-28 minus LV Subs (m)	EU-28 minus LV Revenues (m€)	EU-28 minus LV Subs YoY	EU-28 minus LV Revenues YoY
2011	0.6	41		
2012	2.8	121	367%	195%
2013	6.6	370	136%	206%
2014	15.2	844	130%	128%
2015	24.9	1621	64%	92%
2016	38.7	2525	55%	56%

Source: Grece and Fontaine (2017), own calculations.

We do not have the full range of data for the UK, which is no longer an EU Member State, but Greve and Fontaine (2017) reports that 2016 revenues were EUR 804

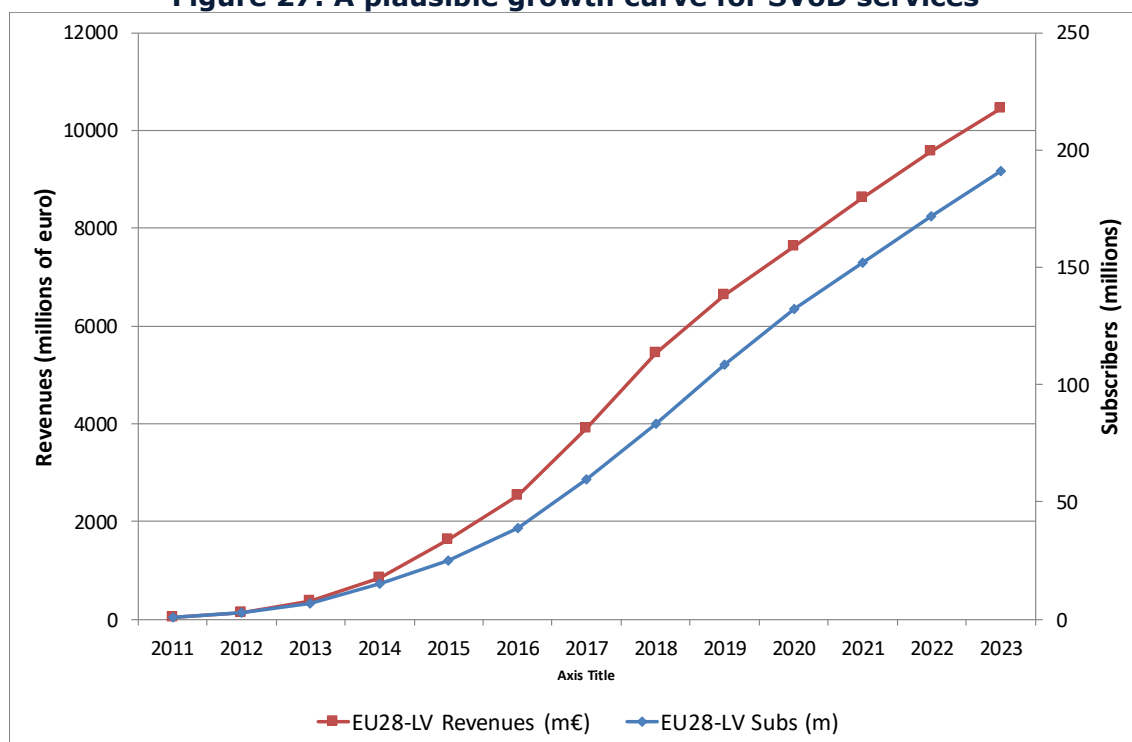
¹⁴⁴ The European Audiovisual Observatory defines sector revenues as comprising audiovisual services (e.g. free television, linear television, pay-TV and on-demand subscription services such as SVoD) and the direct sale or renting to the consumer of audiovisual programmes (e.g. cinema, box-office, physical and digital home videos).

¹⁴⁵ No data were available for Latvia.

million, representing an impressive 32% of EU-28 (minus Latvia) revenues for the year.

Extrapolating this data forward (taking into account a typical logistics curve, and adjusting to fit other estimates of SVoD growth in Europe that appear in the literature), Figure 27 presents a plausible estimated growth curve. The use of a logistics curve as a thought model is consistent with a growth rate that declines over time, as is typical for a new service and as is abundantly clear in Figure 28. Any forward looking projections of this fast-moving sector are somewhat speculative, especially as regards the rate of subscriber growth relative to the rate of revenue growth (assumed here to be roughly equal).

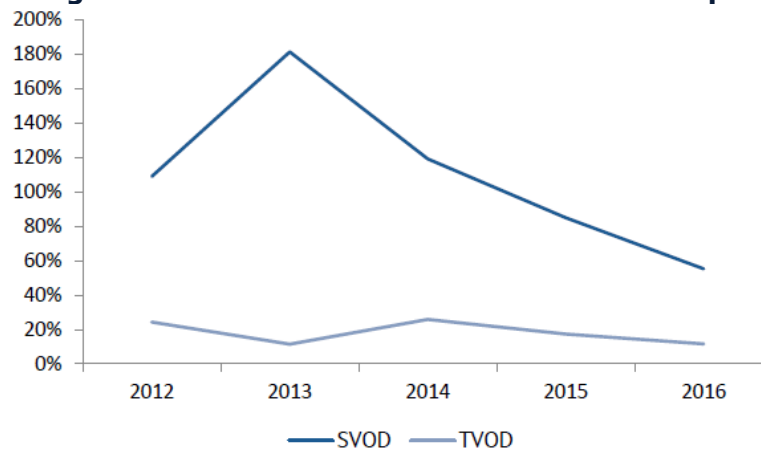
Figure 27: A plausible growth curve for SVoD services



Source: Grece and Fontaine (2017) data, own calculations

Revenues for SVoD have shown growth that is very strong, but uneven. TVoD has, by contrast, shown slower but more steady growth (see Figure 28).

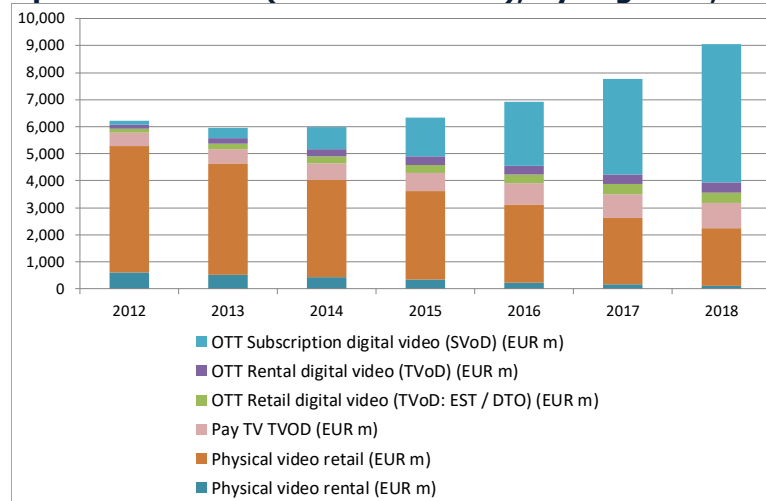
Figure 28: Growth of TVoD and SVoD in Europe.



Source: Grece and Fontaine (2017)

The broader trends in consumer spending in the home entertainment market, of which TVoD and SVoD are only a part, are visible in Figure 29. The growth in TVoD and SVoD takes place at the same time as a marked decline in retail sales and rental of DVDs and Blu-ray, strongly suggesting substitution effects (see also Section 5.4.5.1). The rental of film and TV content on a transactional (VoD, NVoD/PPV) basis via cable, satellite and IPTV services grows over the same time period despite competition from internet VoD.

Figure 29: Evolution of consumer spending on home entertainment in selected European countries (without the UK), by segment, 2012-2018¹⁴⁶

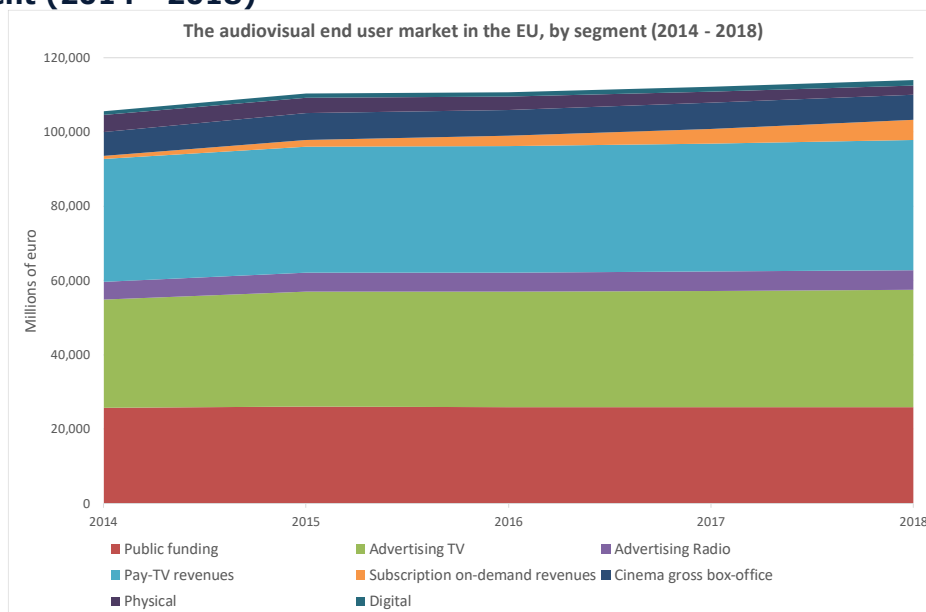


Source: International Video Federation (2019), "Video market: Total Europe" and "Video Market: UK", based on data provided by their members and compiled by IHS Markit, own calculations

¹⁴⁶ The data in this figure are not directly comparable to other figures in this chapter because the selection of countries is different, the years are different, and the definitions of categories are different. **Definitions:**

Expanding on this view to take a broader look at end-user revenues for the entire sector, see Figure 30, which is based on data provided by the European Audiovisual Observatory (see Table 20).¹⁴⁷ The data include a number of elements that we do not normally think of as constituting a market, such as public funding to the broadcasters, but it is correct to reflect them here in order to have a proper and full understanding of the flows of revenues into the sector.

Figure 30: The audiovisual end-user market in the EU-28, by market segment (2014 - 2018)



Source: European Audiovisual Observatory data, own calculations¹⁴⁸

The purchase or rental of films and TV series delivered over the open internet through transactional models (also known as EST, DTO, Internet VOD) or on a subscription basis. This category specifically excludes sports, live events and adult content to ensure it is comparable to physical video data. The rental of film and TV content on a transactional (VoD, NVoD/PPV) basis via cable/satellite/IPTV services. These, paid for at the point of consumption, transactions occur only on set-top-boxes or through online services provided as part of a wider pay TV package to which consumers must subscribe prior to purchase. This category specifically excludes sports, live events and adult content to ensure it is comparable to physical video data.

Notes: 1) Consumer level digital video (OTT) and pay TV transactional VOD figures may differ from locally published figures due to the application of different definitions. 2) Historical numbers in this section may differ from those published in previous years owing to changes in IHS Markit methodology. 3) The current online figures are a snapshot of the market in March 2019. Figures are updated regularly and so it may not be possible to compare directly to figures published after this date. 4) In these data, "Total Europe" includes Austria, Belgium, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russia, Slovakia, Spain, Sweden, Switzerland, and the UK. We subtracted out the UK data in order to provide an estimate that more closely corresponds roughly to the EU-27 2020, but it was not possible to subtract data for Russia, Switzerland or Iceland, nor to add data for missing EU Member States. 5) OTT Subscriptions are subscriptions to online channels and virtual pay TV operators. Figures exclude multiscreen services of pay TV operators.

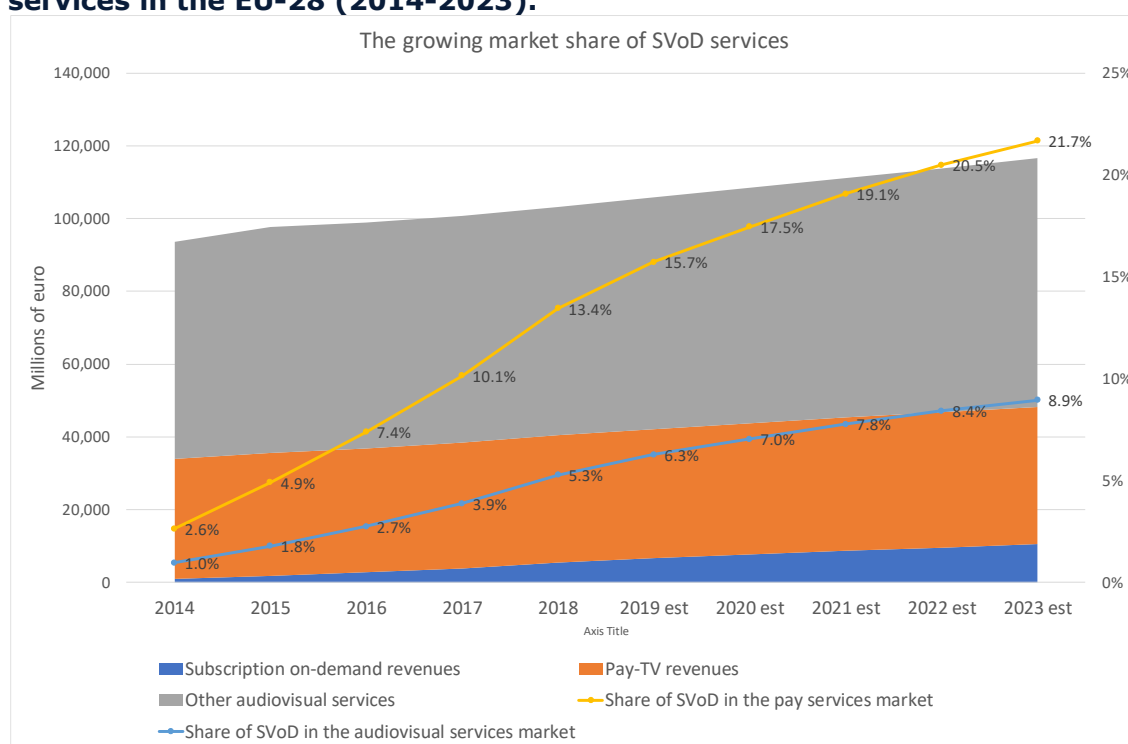
¹⁴⁷ The European Audiovisual Observatory kindly provided the underlying data on which they based results that appear on pages 6 and 44 of European Audiovisual Observatory (2019), "Yearbook 2018/2019: Key Trends".

¹⁴⁸ The European Audiovisual Observatory kindly provided the underlying data on which they based results that appear on pages 6 and 44 of European Audiovisual Observatory (2019), "Yearbook 2018/2019: Key Trends".

Finally, we have extrapolated the share of the end-user market that SVoD represents, based again on end-user market data provided by the European Audiovisual Observatory (EAO). As in Figure 27, the projection going forward represent a logistics curve based on the historical data, but also reflecting some “eyeball interpolation” to align the data with other known facts. As previously noted, for a fairly new service such as SVoD, it is not appropriate to simply take current growth rates and extrapolate them forward. New services generally experience an initial burst of rapid or exponential growth, but then a gradual slowing to the well known logistics curve (S curve), as is already visible in Figure 28. For the other relevant services, however, we take their 2014-2018 CAGR and use it to extrapolate their growth forward, since we assume that their growth is fairly stable. As always, these forward looking projections are somewhat speculative.

In Figure 31, we compute two percentages to reflect the growth of SVoD. The first is the percentage that SVoD represents of a market that is comprised only of pay-TV (with which SVoD directly competes) and SVoD itself. The second is the percentage that SVoD represents of all audiovisual services, but thus still excluding retail sales of DVDs, Blu-ray, and digital equivalents (which tend to compete instead with TVoD).

Figure 31: A plausible projection of the end-user market share of SVoD services in the EU-28 (2014-2023).



Source: European Audiovisual Observatory data, own calculations¹⁴⁹

¹⁴⁹ The European Audiovisual Observatory kindly provided the underlying data on which they based results that appear on pages 6 and 44 of European Audiovisual Observatory (2019), “Yearbook 2018/2019: Key Trends”.

Table 20: The audiovisual market in the EU-28, by segment (2014-2018)

	2014	2015	2016	2017	2018	2018/2017	CAGR (2018/2014)	Sources
Audiovisual services	93,563	97,793	98,918	100,785	103,212	2.41%	2.48%	
Public funding	25,753	26,109	25,853	25,831	25,818	-0.05%	0.06%	EBU/MIS and company/public reports
Advertising TV	29,091	30,947	31,088	31,267	31,682	1.33%	2.16%	Warc
Advertising Radio	4,811	5,058	5,164	5,260	5,233	-0.52%	2.13%	Warc
Pay-TV revenues	33,013	33,932	34,099	34,528	35,036	1.47%	1.50%	Ampere Analysis OBS/Ampere Analysis
Subscription on-demand revenues	895	1,749	2,715	3,900	5,443	39.56%	57.03%	Ampere Analysis OBS/Ampere Analysis
Cinema gross box-office	6,322	7,207	7,039	7,024	6,768	-3.64%	1.72%	OBS
Video	5,751	5,365	4,773	4,349	4,047	-6.93%	-8.41%	
Physical	4,736	4,171	3,473	2,945	2,518	-14.49%	-14.61%	Ampere Analysis
Digital	1,015	1,194	1,300	1,404	1,529	8.92%	10.78%	Ampere Analysis
TOTAL	105,636	110,365	110,731	112,158	114,028	1.67%	1.93%	
Growth		4.48%	0.33%	1.29%	1.67%			

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Yearbook 2019 / Annuaire 2019 / Jahrbuch 2019

Share of SVOD in the Pay-services market

2.6%	4.9%	7.4%	10.1%	13.4%

Source: European Audiovisual Observatory data, own calculations¹⁵⁰

¹⁵⁰ The European Audiovisual Observatory kindly provided the underlying data on which they based results that appear on pages 6 and 44 of European Audiovisual Observatory (2019), "Yearbook 2018/2019: Key Trends".

5.4.2 Language, discoverability, and availability

It might well be the case that SVoD services are impacted more than other audiovisual services by a potential extension of the Geo-blocking Regulation; however, the impact is different for Scenario 1 than for Scenario 2, and also as a function within Scenario 1 of whether the issue of rights applies to the entire catalogue or only to individual items. This impact will on the one hand come in the form of new competition from SVoD services becoming available in the absence of geo-blocking in Member States where they were not targeted. On the other hand, online libraries of *free-to-air* (hereinafter, FTA) broadcasters (both publicly and privately funded)¹⁵¹ as well as TVoD retail and rental services would likely become available beyond the borders of the Member States for which they are originally meant with an extension of the Geo-blocking Regulation. Our quantitative estimates described in this section focuses on SVoD effects, largely disregarding the potential impact of FTA and TVoD online offers becoming available for the following reasons.

The overall average effects of TVoD on the broader audiovisual end-user sector are likely to be small in comparison to those relevant to SVoD because TVoD revenues are so much smaller than those of SVoD, and growing more slowly (see Section 5.4.1); however, the impact on a potential extension of the Geo-blocking Regulation on individual high value works including “blockbuster” hits might be higher. Some consumers might be highly motivated to reach across borders, either because content is available that could not be accessed in their country of residence due for example to windowing practices (see Section 5.1.1) or because the price is better. This “blockbuster” effect may, however, be mitigated by the relative ease with which high value content can be accessed through grey or very dark routes online, and often in good quality. Further reflections on TVoD are qualitatively presented in Section 5.4.5.6.

The impacts on FTA are largely ignored in this analysis because they are difficult to establish owing to a lack of data on the content that may become available for consumers outside of the targeted territory of the individual FTA online offer.

The attractiveness of audiovisual services to consumers outside the intended territory due to the absence of geo-blocking will furthermore hinge on the availability of language versioning of these services. It may be expected that language versioning is not as comprehensive on online FTA libraries as on global or pan-European SVoD services due to the largely national focus of the original broadcasting offers and the main purpose of their online libraries which often provide an opportunity for consumers to “catch-up” films, series or shows they missed in the linear programme.

Beyond language barriers, discoverability may curb the potential impact of such FTA online libraries on the SVoD services’ landscape in the absence of geo-blocking. More

¹⁵¹ The MAVISE database currently lists 205 Free on Demand online services, of which 147 are private, 52 are public and five are mixed statutes.

concretely, two factors may somewhat curb the actual cross-border access of FTA online libraries. Firstly, potentially limited cross-border discoverability for consumers who have little or no awareness of the TV channel brands offered in other Member States and secondly, the limited time period during which online content on these online libraries may be made available. Both factors have to be discussed in some detail as they may differ substantially depending on the specific audiovisual service and the Member State.

Arguably, there are some large (and internationally active) broadcasters of which consumers will likely be aware even in Member States that the broadcaster does not list under its main target markets. The BBC is an example of such a globally renowned broadcaster. This is fostered by the BBC World Service and BBC World News. Other broadcaster brands likely transcend national borders but may be less known to consumers who were born and raised in countries outside of the corresponding common language territory. Examples include the German-speaking countries featuring broadcasters like ARD, ZDF, SF, ORF, RTL and ProSiebenSat.1 or the French-speaking countries with France 2, RTBF and RTL. National broadcasters from Member States that do not share a language with other Member States, and which do not benefit from an international presence will likely be less or not known to consumers who were not born and raised in the respective country. At least for these latter services, discoverability may curb the actual interest in online library content unless an easy way to access such libraries emerges through third parties aggregators/EPG as outlined in the above; this solution would be most interesting for Free to Air (FTA) players.

Also, the time limit associated to catch-up TV services and imposed on audiovisual content made available on such FTA online libraries differs depending on the specific service as well as on the type of content made available. As the 2017 Fontaine report shows, based on a sample of the online offers of 21 TV channels in six countries, there are two major approaches identifiable: firstly, a time limit of 7 to 30 days after which content is withdrawn from the online library or secondly, content is made available for a long (often indefinite) period of time. Thus, time limits may be a hurdle to consumers for accessing some FTA online content, but not for others.¹⁵²

Effectively, it will be very cumbersome to individually keep track of which content becomes available where, when, for how long and in which languages. Search costs for consumers may thus likely outweigh the monthly subscription fee for an SVoD service that typically offers limitless availability of content (as long as licenses for individual items last) that is provided in various languages both dubbed and subtitled.

In essence, it is questionable whether all FTA online libraries in their current form would be a serious competition to SVoD services. The degree of competition posed

¹⁵² Fontaine G. 2017. Broadcasters' online video services. An overview, Strasbourg.

by these FTA services also depends on language barriers and limited time availability of content. Notably, consumers who are long- or short-term intra-EU migrants or travellers represent around 21 million citizens in the EU.¹⁵³ This group appears the most obviously interested in accessing content on the online libraries they are used to.

Moreover, it can be noted that enabling access to such FTA online offers can support cultural diversity. As a positive example, the European Parliamentary Research Service (EPRS) mentions a pilot project initiated by the European Parliament to extend the subtitling available at the France-German TV Channel ARTE: 'subtitling in Spanish and English, since November 2015, in Polish, since November 2016, and in Italian, since 2017, has increased the potential audiences from an initial 32% to 70%.¹⁵⁴ According to a press release by ARTE, this resulted in 900,000 video views in English, Spanish, Polish and Italian, which represents approximately 2% of the total 55 million monthly videos views on their ARTE online library.¹⁵⁵

The potential increase in cultural diversity fostered by preventing geo-blocking is closely linked to the variety of audiovisual content available to consumers in the Member States. The more content becomes accessible, the more likely it is that among this content, minority or marginalised groups feature with their voices. In particular, advertising-based video on demand (AVoD) services such as YouTube, Dailymotion and Vimeo play an instrumental role in enabling a new wave of proto-media industry building on non-traditional concepts of ownership and unique content innovation.¹⁵⁶

To go into the analysis as described above, the variety of items of audiovisual content that could become available to consumers in the EU by an extension of the Geo-blocking Regulation is very substantial according to an initial analysis performed by JRC (Broocks et al., 2020) based on Lumière and Ampère data: the individual catalogues of VoD services offered in Member States feature >35,000 (Lumière) and >102,000 (Ampère) individual items of audiovisual content. Catalogues offered in individual Member States feature only a fraction of these items (ranging between 0.3% and 72.2% of all items available). Notably, there is a substantial overlap of country catalogues within services active across different Member States. For Netflix, the JRC finds that this overlap is 63% for films and 79% for series. HBO and Amazon show somewhat smaller overlaps of 44% and 33% respectively for films and 61% (both) for series. The overlap between services is consistently much smaller as the JRC finds that between the "Big 3" services, it is 22% for films and 28% for series;

¹⁵³ Marcus JS, Petropoulos G. 2017. Extending the Scope of the Geo-Blocking Prohibition: An Economic Assessment, Brussels.

¹⁵⁴ Pasikowska-Schnass M. 2019. Promoting European culture - PE 623.555 – June 2019, p. 6.

¹⁵⁵ Notably, a video view is counted when at least 10 seconds of a video have been streamed. See: <http://servicepresse.arte.tv/strong2018nbsp-record-historique-daudience-pour-arte-strongbr-stronga-lantenne-sur-le-numerique-et-en-europestrong>

¹⁵⁶ Cunningham S, Craig D. 2016. Online entertainment: A new wave of media globalization? International Journal of Communication 10: 5409-25.

between the “Big 3” and other small services as well as among the smaller services themselves the overlap is below 10%. Thus, an extension of the Geo-blocking Regulation could have a significant positive impact on the variety of audiovisual content available, potentially unlocking many items for consumers, especially in currently underserved Member States (at least in the short term). However, an extension of the Geo-blocking Regulation may also have an impact on the production volume of the European audiovisual sector as discussed in detail in Section 5.5.

In line with the study by Cunningham and Craig cited above, it should, however, also be noted that the potential effect of an extension of the Geo-blocking Regulation on the variety of audiovisual content available to consumers online should be put into perspective as the wide variety of content already available on video sharing platforms such as YouTube, Dailymotion and Vimeo should be considered. It should however be noted that the content on these Video Sharing Platforms does not predominantly consist of films and series.^{157,158}

In line with the focus of the present analysis on SVoD services, we compiled data on the accessibility of SVoD service across the EU Member States. For audiovisual services, the desk research on the accessibility and prices of content reveals that in the category that could be understood as typical SVoD services, only Amazon Prime Video and Netflix are widely available to consumers in most Member States albeit with largely differing catalogues. YouTube Premium is accessible on an equally widespread basis for consumers across Member States; however, it is hardly comparable to the offering of the other two given that it has a completely different main purpose, namely, to exclude advertisements in YouTube videos and get access to YouTube Music Premium (offered as bundle). Finally, Eurosport as a dedicated sports entertainment on-demand service is also accessible to consumers in various Member States. Besides these, the accessibility of other SVoD services’ is scattered and for many services is limited to just one country. The results are presented in detail in Table 21.¹⁵⁹

¹⁵⁷ Ibid.

¹⁵⁸ According to Cabrera Blázquez et al. (2018), the content offered by these platforms typically consists of four major types: user-generated content which is either created by a user or by a third-party, but then uploaded by a user, “creators”, i.e., producers (who may or may not have started out as “users” creating and uploading content) having achieved a certain level of acclaim, who then supply specific original content on an on-going basis and may have entered into general agreements with the platforms, programmes produced by traditional media players which may or may not include films and series, and purely promotional content. The authors further assert that ‘given the limited data available, it is impossible to determine the volume of these different types of content as a proportion of the platform catalogues or their share of total usage (p. 2).’ Insofar, it is clear that the content and in particular its breadth and variety differ substantially from traditional audiovisual services. However, it is unclear which content users of these Video Sharing Platforms prefer to watch and whether these contents, user-generated or not, constitute a substitute to films and series. For more details, see: Cabrera Blázquez F, Cappello M, Fontaine G, IRabie I, Valais S. 2018. The legal framework for video-sharing platforms, IRIS Plus and European Audiovisual Observatory, Strasbourg.

¹⁵⁹ Notably, several other services not shown in the table were identified which are only active in one Member State but excluded from the analysis precisely because of that reason, which means the Geo-blocking Regulation is not relevant for them as these don’t have any cross-border activities.

The table below also shows that average prices for SVoD services appear to follow a clear country pattern, where there are relatively cheap countries clustered in Eastern Europe averaging around a EUR 7 monthly subscription fee, and relatively expensive countries averaging around EUR 8 to EUR 10, with Denmark being the most expensive country with an average monthly subscription of close to EUR 12. Moreover, the preliminary analysis as part of the data collection suggested that there is a positive correlation between price and number of titles in a specific catalogue.

In comparison, Table 22 presents prices of audiovisual services included a dataset provided by the JRC (Alaveras et al., 2017) pointing to similar findings as shown in the above.

Table 21: Accessibility and prices of audiovisual streaming services

Country	Currency	Service														Avg. Price for SVoD services in each country
		Netflix (Basic)	Amazon Prime Video	HBO	viaplay (films and series)	c more (films and series)	YouTube Premium	Mubi	Paramount+	Eurosport	hayu	Maxdome	Moviestar+	IPLA	Time Vision	
AT	EUR	7.99	7.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	0	s. u.**	s. u.**	s. u.**	s. u.**	8.99
BE	EUR	7.99	5.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	5.99	s. u.**	s. u.**	s. u.**	s. u.**	8.16
BG	EUR	7.99	s. u.**	2.88	s. u.**	s. u.**	10.99	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.71
CY	EUR	7.99	s. u.**	s. u.**	s. u.**	s. u.**	8.49	s. u.**	s. u.**	6.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	7.82
CZ	EUR	7.99	s. u.**	5.031*	s. u.**	s. u.**	6.98*	7.761*	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.55
DE	EUR	7.99	7.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	s. u.**	7.99	s. u.**	s. u.**	s. u.**	8.82
DK	EUR	10.27*	5.99	12.87*	12.87*	12.87*	15.47*	11.57*	s. u.**	16.77*	6.37*	s. u.**	s. u.**	s. u.**	s. u.**	11.67
EE	EUR	s. u.**	5.99	s. u.**	s. u.**	s. u.**	2.79*	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	4.59
EL	EUR	7.99	s. u.**	s. u.**	s. u.**	s. u.**	8.49	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	7.16
ES	EUR	7.99	7.99	7.99	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	s. u.**	s. u.**	8	s. u.**	s. u.**	8.71
FI	EUR	7.99	5.99	9.95	s. u.**	12.95	11.99	9.99	7,95	6.99	5.99	s. u.**	s. u.**	s. u.**	s. u.**	8.87
FR	EUR	7.99	5.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	8.59
HR	EUR	7.99	s. u.**	4.99	s. u.**	s. u.**	9.36*	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.83
HU	EUR	7.99	5.99	4.47*	s. u.**	s. u.**	5.37*	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	5.76
IE	EUR	7.99	5.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	s. u.**	5.99	s. u.**	s. u.**	s. u.**	s. u.**	8.39
IT	EUR	7.99	4.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	s. u.**	s. u.**	s. u.**	s. u.**	5	7.83
LT	EUR	s. u.**	5.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	5.99
LU	EUR	7.99	5.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	5.99	s. u.**	s. u.**	s. u.**	s. u.**	8.16
LV	EUR	s. u.**	5.99	s. u.**	s. u.**	s. u.**	8.49	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.49
MT	EUR	7.99	s. u.**	s. u.**	s. u.**	s. u.**	6.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	7.49
NL	EUR	7.99	5.99	s. u.**	s. u.**	s. u.**	11.99	9.99	s. u.**	6.99	5.99	s. u.**	s. u.**	s. u.**	s. u.**	8.16
PL	EUR	7.14*	5.99	4.18	s. u.**	s. u.**	5.04	s. u.**	s. u.**	15	s. u.**	s. u.**	s. u.**	15	s. u.**	8.72
PT	EUR	7.99	5.99	s. u.**	s. u.**	s. u.**	8.49	s. u.**	s. u.**	6.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	7.37
RO	EUR	8.99	5.99	2.99	s. u.**	s. u.**	26	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	9.79
SE	EUR	8.99*	5.99*	9.21*	s. u.**	12.93*	11.07*	8.84*	s. u.**	12*	4.56*	s. u.**	s. u.**	s. u.**	s. u.**	9.20
SI	EUR	7.99	5.99	4.99	s. u.**	s. u.**	7.19	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.23
SK	EUR	7.99	5.99	4.99	s. u.**	s. u.**	7.19	s. u.**	s. u.**	4.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.23
UK	EUR	6.95	6.95	s. u.**	s. u.**	s. u.**	13.91	11.59	s. u.**	8.11	5.79	s. u.**	s. u.**	s. u.**	s. u.**	8.88
Average Price per Service		8.09	6.26	6.21	12.87	12.92	10.45	9.98	7.95	7.15	5.83	7.99	8.00	15.00	5.00	
Average excluding UK		8,13	6,23	6,21	12,87	12,92	10,32	9,92	7,95	7,11	5,83	7,99	8,00	15,00	5,00	

*Currency converted

**s. u. = service unavailable

Source: Own calculations

Table 22: Prices of audiovisual services included in JRC data

Countries	Services												
	AcornTV	Amazon Prime	Anime on Der	BFI Player	Canal+ Series	CMore	Crunchyroll	CurzonHome	CDisneyLife	Film1	Hayu	HBO Go	Maxdome
BE	4,99	5,99											
FI	4,99	5,99				12,95						9,95	
NL	4,99	5,99								9,99			
ES	4,99	7,99					7,99					7,99	
SE	4,99	5,99				12,92						9,2	
DK		5,99				13,25						12,87	
FR		5,99			20		7,99						
DE		7,99	9,95				7,99						7,99
IE		5,99											
IT		4,99					7,99						
PL		5,99										4,179	
PT		5,99											
UK		6,94		5,84			7,99	9,99	5,84		5,79	5,03	
CZ													
RO												2,99	
AT													
	Mediaset Infir	Movistar+	Mubi	Netflix	NowTV	OCS	Ruutu	SFR Play	Shudder	Sky Ticket	TIM Vision	Viaplay	Videoland
BE				7,99									
FI				7,99			9,03					34,99	
NL				7,99									8,99
ES		8		7,99	9,99								
SE				8,99								42,99	
DK				10,27								29,99	
FR				7,99		9,99		18					
DE				7,99					4,99	9,99			
IE				7,99									
IT	7,99			7,99	7,99						5		
PL				7,14									
PT				7,99									
UK			11,59	6,94	10,53								
CZ				7,99									
RO				8,99									
AT				7,99						19,99			

Source: Alaveras, Gomez and Martens (2017)

In comparison, Table 23 presents the monthly fees of selected national SVoD services in each of the countries of focus.

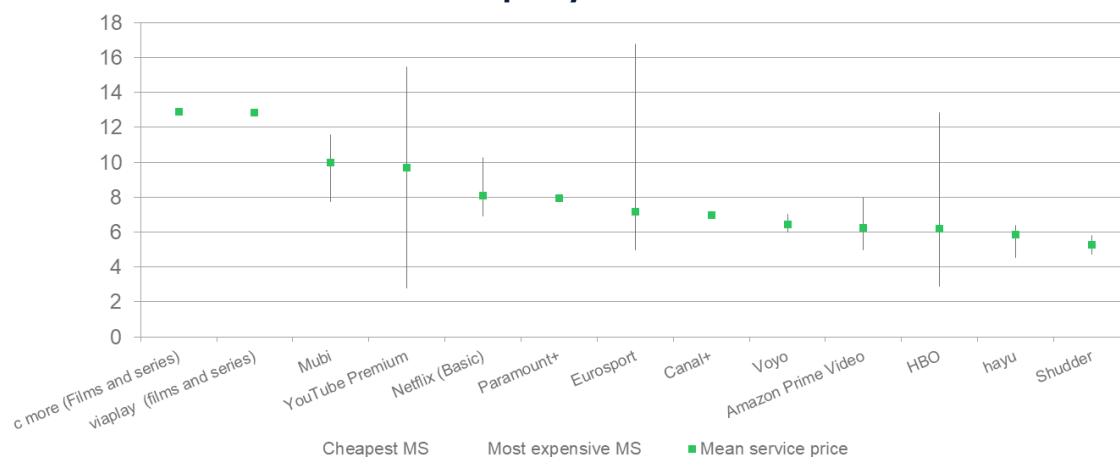
Table 23: Monthly fees of selected national SVoD services

Country	Service	Monthly price ¹⁶⁰
Belgium	Proximus TV	EUR 10.99
Bulgaria	Vivacom TV	EUR 4.55
Estonia	TVPlay Premium	EUR 6.99
France	Canal+ Series	EUR 6.99
Germany	Maxdome	EUR 7.99
Ireland	aerTV	EUR 5.99
Italy	TIMVISION Plus	EUR 5.99
Poland	CDA Premium	EUR 4.65 ¹⁶¹

Source: Own calculations based on services' websites

Moreover, our research reflects apparent differences in accessibility of SVoD services as well as territorial differences in prices both for the same service if it is offered in more than one Member State or between services offered across Member States. However, it appears that price differentiation is better explained by differentiation between services, in line with the apparent product differentiation, rather than by specific territorial differentiation (see Figure 32). Apart from the exceptions of Eurosport and YouTube Premium as well as (to a smaller extent) HBO, all other services show very little price differentiation across the Member States where they are offered.

Figure 32: Overview of price differentiation of SVoD services offered in Europe by service



Source: Own calculations

¹⁶⁰ The prices listed in the table are representative of the standard bundle offering TV series and movies for each of the various services. The only two exceptions are "Canal+ Series" which only offers TV series (but not movies) and "CDA Premium" which is a broader package including also sports content.

¹⁶¹ Price converted from PLN (Polish zloty) at the exchange rate of 29 July 2019 using the ECB currency converter tool available at: <https://sdw.ecb.europa.eu/curConverter.do>

5.4.3 An overview of expected impacts under Scenario 1

First of all, the implications of Scenario 1 can be quite different depending on the definition of bundles. So, if one were to assume that a catalogue of a subscription cannot be made available to consumers from other countries if at least one content item within the catalogue is only licensed for the specific country for which the catalogue is meant originally, then the likely effect of an extension of the Geo-blocking Regulation under Scenario 1 would be small, if not existing, since catalogues of SVoD services almost always include at least some local content items which are likely only licensed for a specific country. Under this assumption, it is expected that under Scenario 1 there would thus be little or no added accessibility for consumers.

If instead, we assume that SVoD services would have to make available all the content for which they hold the rights in the Member State where the consumer is located, which is another way to interpret Scenario 1, then the impact could be different. There would be no change in accessibility for consumers regarding the items of audiovisual content featured in the respective catalogues of the service for which sufficient rights were available and which were used already in both countries. In addition, if a consumer (in country A) would chose to switch to the catalogue of the same provider in a Member State other than the one in which he/she currently lives (country B), the number of available items to this consumer might well be significantly reduced – the titles for which the service provider holds rights only in the consumer’s country of residence (which would often include local content produced by parties other than the service provider itself for country A) would no longer be available to this consumer. In exchange, items of audiovisual content may become newly accessible to such a consumer if the service provider offers content in country B (but not in country A) for which it has acquired licenses that also permit distribution in country A. In addition, the service provider will tend to have rights to works that it itself has produced (consider Netflix, for example) in both country A and country B, except in cases where it has sold exclusive rights to a third party. In many cases, these works already appear in the service provider’s catalogues for both countries, in which case access to these works would not change.

Under this interpretation of Scenario 1, it is consequently difficult to foresee in detail how the accessibility of audiovisual content would change due to an extension of the Geo-blocking Regulation. Depending on the specific service and Member State involved,¹⁶² and in turn on the number of original productions currently not accessible to consumers in both Member States versus the number of items they might lose access to when switching to the catalogue of the other Member State, the impact of Scenario 1 on product variety can differ quite substantially. The initial analysis of Ampère data by JRC (Broocks et al., 2020) indicates that, at least for Netflix, the majority of original productions are already accessible in all Member State catalogues

¹⁶² Since the effects vary a lot, we consider each combination of service and country. Each combination covers one or two services (intra-service or cross-service substitution) and one or two member states (intra-country or cross-border substitution).

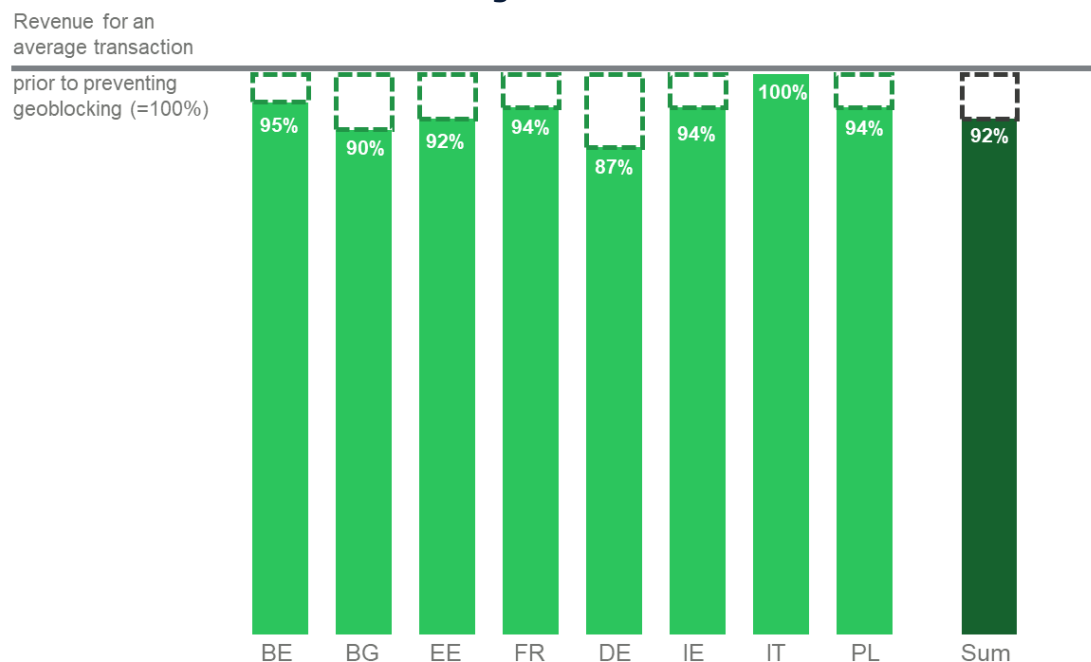
covered in the data set. This suggests that consumers who switch to a catalogue from another Member State may be likely to lose access to more pieces of content (i.e. the content only available on their domestic SVoD service) than they gain (i.e. original content not offered by these services domestically but only abroad). In conclusion, it appears that it is unlikely that under Scenario 1 the main driver of consumers' switching will be the quest for new content, or services, not already accessible domestically. See Section 5.4.4 for a more detailed discussion on the content-driven effect as this plays a larger role under Scenario 2.

Since at least with the popular global SVoD platforms, original content is a key driver of consumers' demand for these services, it seems plausible that price-sensitive consumers may switch to catalogues from other Member States offered at cheaper prices than in the Member State in which they reside under an extension of Geo-blocking Regulation following Scenario 1, in case of an interpretation of the Scenario that mandates making available all items for which sufficient rights are held by the SVoD service. Any demand for local content could easily be fulfilled by local broadcasters either through their linear programme or their online libraries. Consequently, price-sensitive consumers would likely switch to the cheapest alternative that fulfils their core needs regarding audiovisual content consumed via their SVoD subscription. Part of these core needs would likely be that they can (still) watch the European and non-European content they prefer with their current subscription. It is therefore likely that the extension in this scenario would mainly affect providers already active in the country of the subscriber, but under different conditions/prices.

In view of the above, the data analysis calculates the effect on the average transaction value for Amazon Prime Video in each of the eight Member States observed (Figure 33) and other Pan-EU SVoD services across the eight Member States observed (Figure 34). It should be noted that this only considers the price-driven changes in consumer purchases. It does not account for content-driven changes, which come into play in particular under Scenario 2. In sum, price-driven and content-driven effects lead to an overall positive revenue change for the average subscription (see Section 5.4.4 for a detailed explanation).

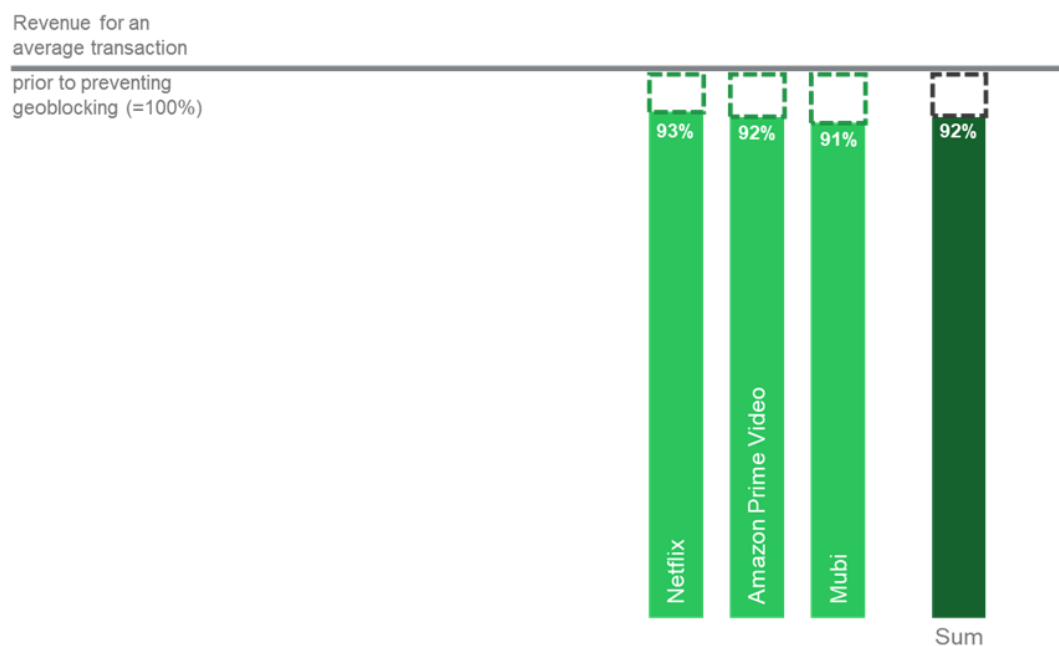
The pure price-driven effect would instead result in a reduction of the average revenue per subscription of around 8% (but without taking into account increased subscriptions in response to the lower effective price, which are addressed later in this section): consumers for whom cheaper catalogues of their currently used service become available would switch to these cheaper catalogues, if they meet the consumers' criteria for willingness-to-switch.

Figure 33: Effect of price-driven switching on the revenue per average subscription under Scenario 1 for the example Amazon Prime Video across eight Member States



Source: Own calculations

Figure 34: Effect of price-driven switching on the revenue per average subscription under Scenario 1 for 3 pan-European SVoD services across eight Member States

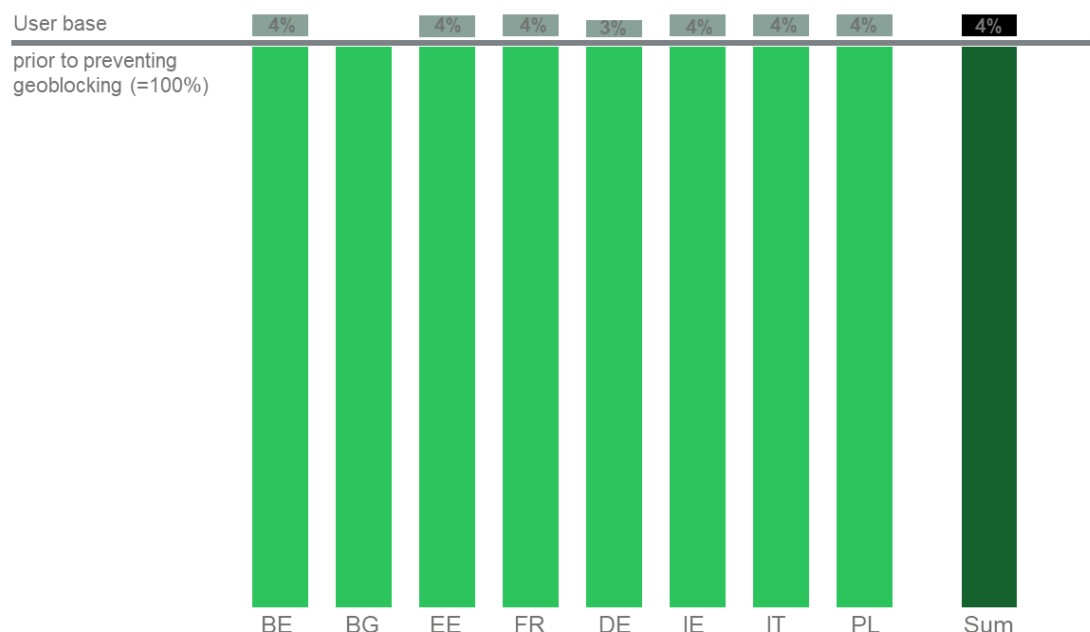


Source: Own calculations

This seems to be in line with interview findings, where industry stakeholders predict a negative effect as price discrimination would no longer be allowed. They predicted that an extension of the Regulation would likely result in a levelling out of the price to the detriment of the consumer. The price point would, in their view, be set to hit the largest consumer base, which means that price sensitive consumers would likely be priced out, which would in turn make some consumers more inclined to turn to pirated content. However, as the data analysis below will show, we predict that consumer prices should also remain quite stable under Scenario 1.

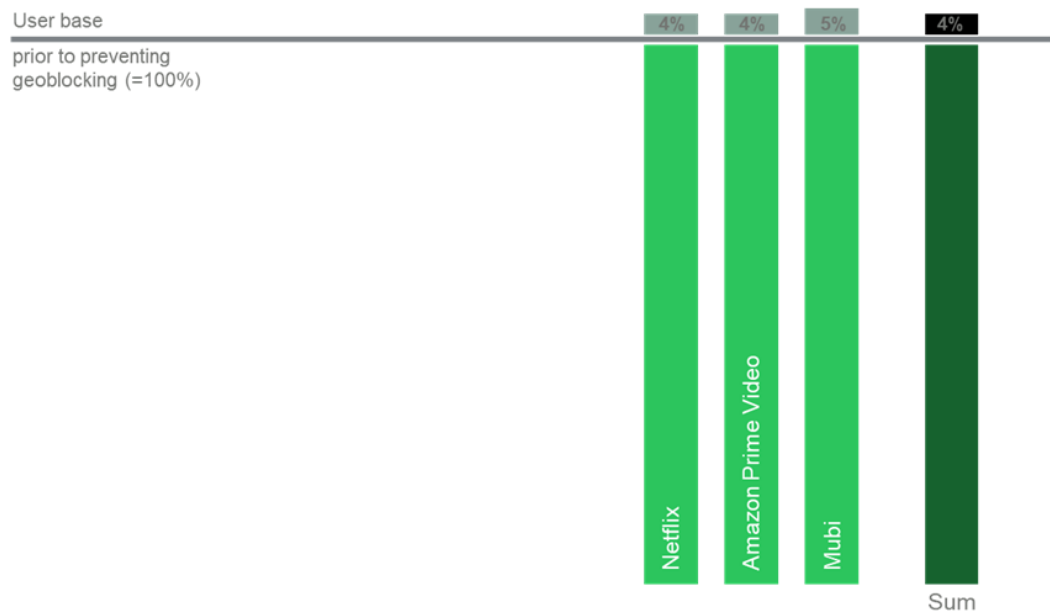
However, the purely price-based reduction in revenues would likely be offset to some extent by an increase in adoption from consumers who, so far, have not subscribed to any SVoD service and for whom SVoD services now become available (given that these services meet their willingness-to-pay as they are cheaper than the ones that were previously available to them). This quantity effect accumulates an additional 4% of new subscribers across the Member States. See Figure 35 for the price-driven effect on the size of the user base for Amazon Prime Video in each of the eight Member States observed and Figure 36 for the price-driven effect of three SVoD services across the eight Member States observed.

Figure 35: Effect of price-driven switching on the user base under Scenario 1 for the example Amazon Prime Video across eight Member States



Source: Own calculations

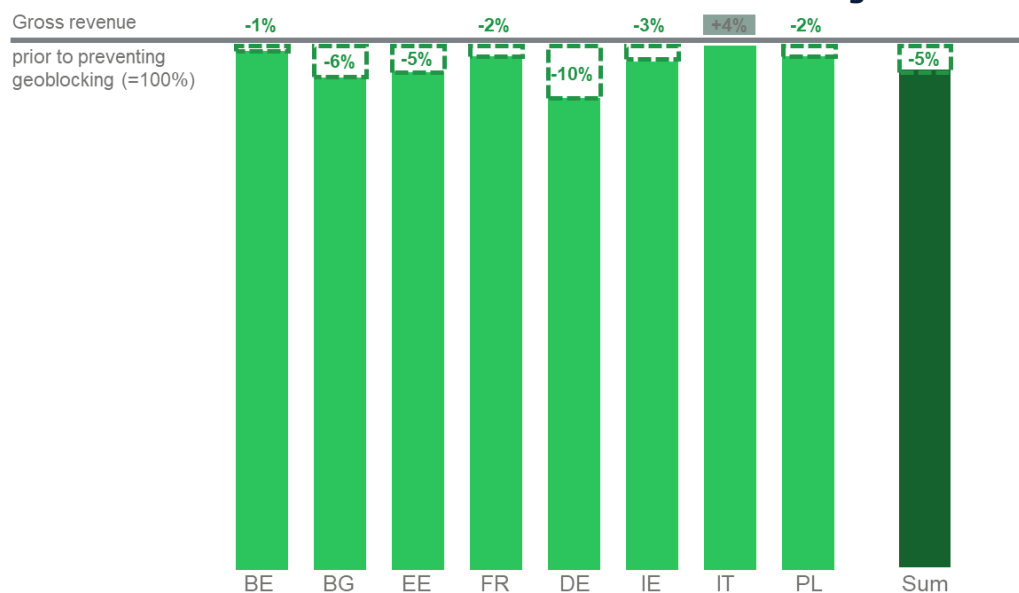
Figure 36: Effect of price-driven switching on the user base under Scenario 1 for 3 pan-European SVoD services across eight Member States



Source: Own calculations

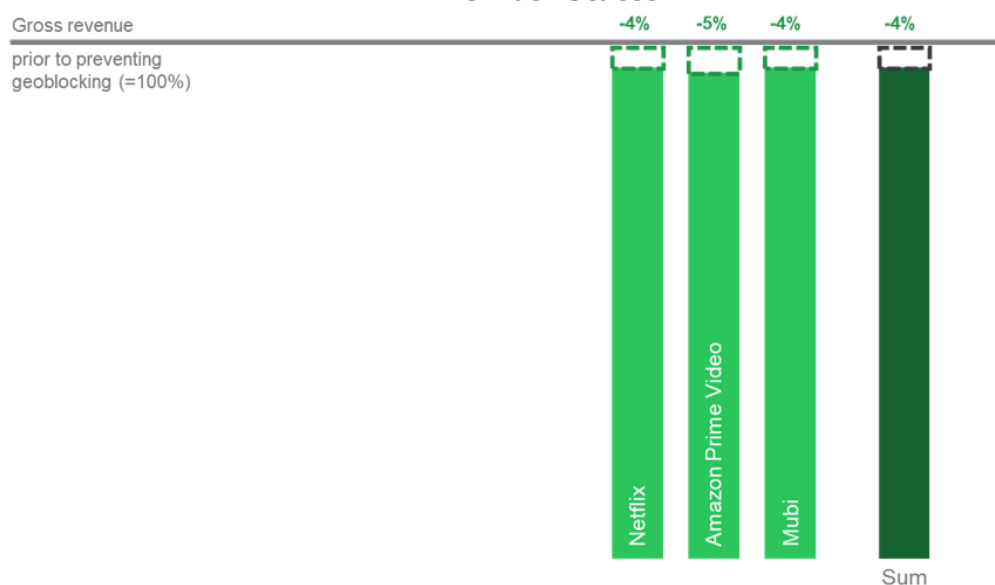
The combined quantity-driven and price-driven effect is presented in Figure 37 and Figure 38. It would result in a reduction of the average revenue per subscription of around 5% for Amazon Prime Video and 4% each for Netflix and Mubi across the 8 Member States covered. The combined overall effect, weighting on the basis of the number of subscribers to each service, is a 4% reduction for in average revenue per subscription for these providers and countries.

Figure 37: Combined effect of price-driven switching and an expanded user base under Scenario 1 for Amazon Prime Video across eight Member States



Source: Own calculations

Figure 38: Combined effect of price-driven switching and an expanded user base under Scenario 1 for 3 pan-European SVoD services across eight Member States¹⁶³



Source: Elaboration of the contractor (2019)

¹⁶³ We refrained from including small national services in the analysis here, because the price-driven analysis cannot account for content and since small national services with potentially large price differences such as is the case with HBO in Poland and Bulgaria could lead to unduly skewed results. In general, for

5.4.4 An overview of expected impacts under Scenario 2

Under **Scenario 2**, passive sales to consumers from Member States other than the targeted Member State could no longer be restricted, irrespective of the rights held or not held for individual items of content. Consequently, it is expected that consumers could also subscribe to services (and, by contrast to Scenario 1, access their respective entire country catalogues) that were not meant for them originally. This could open up a significantly increased product variety for consumers across all Member States. The data presented in the introduction to this section provides an indication of the amount of audiovisual content that would become accessible to consumers if they get the possibility to choose a subscription not meant for their current country. According to the JRC, Ampère data is inconclusive on the language versioning made available to consumers by SVoD services. Currently, based on anecdotal evidence, it appears that most SVoD services provide all language versions to all countries where a specific item is made available as part of the catalogue. However, since we do not have any conclusive data on this aspect, we refrain from further speculation on this point. In any case, limiting the available language versions in specific countries could be an effective way for service providers to limit cross-border demand also under **Scenario 2** if they were to choose to do so. Consequently, it is difficult to foresee with certainty whether consumers would effectively have more product variety in a language known to them under **Scenario 2**.

The price-driven switching in our model mirrors the revenue effects presented in the above for Scenario 1. Overall, relatively few consumers are actually expected to switch in light of the apparent possible discounts which could be realised by switching to the same service from another country. Disregarding content effects for the moment, for both Netflix and Amazon Prime Video under **Scenario 2** it is expected that around 4% of the current gross revenues would be lost to consumers switching to cheaper versions of the same service after taking into account the revenue gains from new subscribers who take advantage of the newly available lower prices (the same as in Scenario 1).

However, since Scenario 2 likely renders significantly more audiovisual content accessible to consumers compared to Scenario 1, it is also more likely to find substantial content-driven switching. See Figure 39 for the cross-border availability of audiovisual content which gives an idea of the magnitude of this effect.

SVoD services we face the challenge that the sample size is already fairly small in terms of services (compared to e.g. the millions of items in eBook catalogues). To keep the analysis robust, we have to restrict the analysis to services that cover most Member States observed in the study, since every service has a lot of analytical leverage. When restricted to only two countries, as would be the case for HBO PL/BG, the results can be unusually high, skewing the results and inviting misguided interpretation. See also footnote 146 for a further explanation on the applicability of our results and the likely impact of including small services predominantly targeted at national audiences.

Figure 39: Cross-border availability of audiovisual content

country	Lumière		Ampère	
	unique titles	country share	unique titles	country share
MT	100	0.3%		
SI	105	0.3%		
BG	112	0.4%		
HR	116	0.4%		
CY	121	0.4%		
LU	336	1.1%		
GR	409	1.3%		
RO	1838	5.8%	6158	12.97%
LV	2995	9.4%		
EE	2995	9.4%		
HU	3139	9.9%		
LT	3238	10.2%		
SK	3635	11.4%		
PT	3914	12.3%	4502	9.49%
NL	4384	13.8%	6287	13.25%
DK	4639	14.6%	15739	33.16%
FI	4720	14.8%	16130	33.99%
SE	4910	15.4%	12435	26.20%
CZ	5196	16.3%	6499	13.69%
PL	5335	16.8%	6232	13.13%
BE	6456	20.3%	6553	13.81%
IT	6941	21.8%	10862	22.89%
ES	8029	25.2%	10292	21.68%
IE	8139	25.6%	16933	35.68%
FR	12689	39.9%	9522	20.06%
AT	12846	40.4%	5327	11.22%
DE	13723	43.1%	15684	33.05%
Overall	31828	14.1%	47462	21.0%

Source: Ampère Lumière with JRC calculations

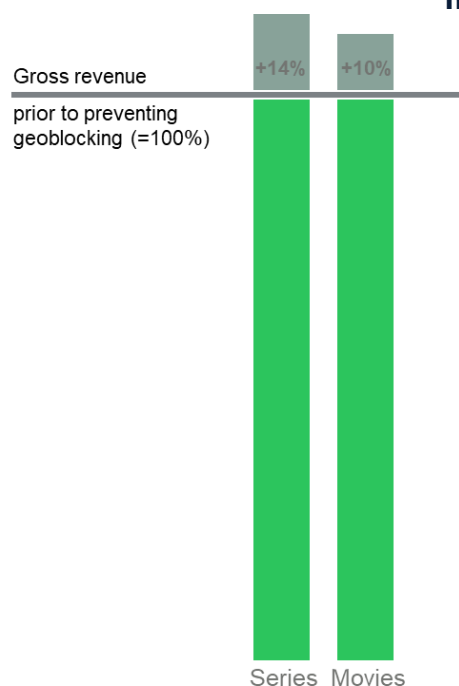
This effect is driven by the combination of adding subscriptions for consumers who already are subscribers to one or more services and new subscribers entering the market. Our model finds that such content-driven switching is likely to increase the

value of the average subscription of a sample of SVoD services offered in Europe.¹⁶⁴ We find that this effect differs somewhat between films and series becoming available. If content-driven switchers and new subscribers mostly look for films, the average revenue per subscription would increase by 10%. If series were more decisive in their choice of SVoD services, the increase would increase to 14% as more expensive SVoD services tend to be the ones with more attractive selections of series. In reality, consumers will not be driven by just films or series, but by an individual mix of the two. Nonetheless, our results indicate that this effect outweighs the potential loss incurred by price-driven switching. So, under Scenario 2, our data analysis suggests a slight overall increase in SVoD revenue (see Section 5.4.5.3).¹⁶⁵

¹⁶⁴ See Figure 34 for an overview of which services were in the sample. The model describes the case in which everyone who is willing to switch for content reasons switches to his or her new best option once. It turns out that by doing so, a user will switch on average to a more costly service than they currently subscribe to. This is based on the observed correlation between larger catalogues for most expensive services and/or version of the services. In the case of a serial switcher frequently changing subscription in view of the larger choice of providers and content becoming available, the fact remains that on average, revenue increases with the first switch. Nonetheless, the concept of serial switching naturally introduces a time aspect which has not been taken into account in the model for the sole reason that such any extrapolation into the future would make it necessary to also incorporate possible mitigation strategies, which are vaguely known at best. Disregarding any potential mitigation strategies by the industry, the serial switcher hypothesis in the long run leads to prices averaging around the overall average price across all services as long as each service has equal likelihood of being picked by any consumer. The underlying assumption of the present analysis is notably that content-rich (and likely more expensive) services are more attractive to consumers than services that offer less content. Based on this assumption, even serial switching is likely to result in average prices paid by consumers across all services converging above the simple arithmetic mean across all service prices.

¹⁶⁵ This estimate rests on the combination of our analyses referring to Scenario 1 and Scenario 2. Notably, these two analyses do not draw on the same set of SVoD services (Price analysis: Netflix, Amazon and Mubi. Content analysis: different sets of services for movies and series as provided by JRC). Whereas the analysis for Scenario 1 refers only to a selection of SVoD service already active in various Member States, the analysis for Scenario 2 includes a wider selection of SVoD service with varying levels of current international presence. We have provided an indication of the representativeness of these two analyses in terms of the fraction of TV engagement that the selected services represent. The two tables indicate that smaller (and more nationally focused) services have a comparatively small reach. It seems likely that these services are not well-known among consumers in other Member States and offer predominantly content targeted at a national audience. This transpires also from the factors emerging in the gravitational model that we applied for Scenario 2 where such small (more national) services have little weight. Consequently, it is likely that also in Scenario 1 their impact would be relatively limited in comparison to large pan-European services at the focus of the analysis. In sum, the results across Scenario 1 and 2 present an estimate of the overall effect across both small and large services, which tends to be driven by the larger ones.

Figure 40: Combined effect of content-driven switching and content-driven new subscribers



Source: Own calculations

The impact of a potential extension of the Geo-blocking Regulation on increasing consumer access to audiovisual content would depend on whether consumers would be able to access a broader range of content in their country of residence. Under Scenario 2, as consumers who reported experiencing issues while trying to access cross-border content in the Consumer Survey are likely to fall within the definition of passive sales, sellers would be obliged to provide these consumers access to the content they are interested in. Therefore, when it comes to general access to content, extending the Geo-blocking Regulation under this Scenario has the potential to benefit approximately one in ten consumers in the sector¹⁶⁶ who currently experience issues with access to their desired content.

While the model provides some static quantitative outcome, it does not take into account possible mitigation strategies by providers to limit/control some of the effects. To recall the Consumer Survey results regarding switching behaviour, price remains the key driver, followed closely by language accessibility and, to a lesser extent, by local content availability. In addition to driving switching behaviour, language accessibility appears to be a key factor in ensuring some consumers would engage with the audiovisual sector at all, as over half of the survey respondents stated that they would give up access to their favourite content if their preferred

¹⁶⁶ This proportion is based on all consumers who are active in the sector, including those who do not engage in cross-border usage. The proportion of consumers who engage in cross-border usage who stand to benefit is roughly 5 in 10 but they represent only a proportion of the full sector.

language would no longer be available through their current subscription or a potential new supplier. In case the Geo-blocking Regulation would be extended to the audiovisual sector, therefore, consumer reactions would be highly dependent on the changes in offer that would take place and the specific conditions related to language and content availability. As mentioned before, if providers would like to deter at least some consumers from switching subscriptions to territories where prices are lower, limiting language options available in these territories could be used as a mechanism to control (at least partly) such switching behaviour. The same is true, albeit to a lesser extent, for the availability of local content.

Moreover, extension under Scenario 2, like Scenario 1, may have an impact on prices applied in different Member States by multinational providers, in order to avoid price arbitrage. Indeed, if prices remained the same, it could be that a proportion of consumers from more affluent Member States would switch to subscriptions in less affluent member states, under the condition that the content is accessible in the specific language spoken, which applied to pan-EU providers in the absence of content differentiation mentioned above (see the analysis for Scenario 1 in Section 5.4.3). To limit this, providers could harmonise prices, even if this impact (and the possible normalised price) is not modelled. A normalisation of prices across all EU Member States, could also benefit consumers from countries with higher prices to the detriment of consumers from countries with lower prices, who would be forced to pay more for the same service. These possible dynamic effects are however subject to some qualitative analysis in Section 5.4.5.2.

5.4.5 Further exploration of the expected impact of Scenarios 1 and 2 on producers of audiovisual works

Our focus in this Section is primarily on feature films, not on sport, news, or adult content. We follow the analysis conducted in Section 5.4.4, extrapolating forward where appropriate in order to consider the impact of the Scenarios. Scenario 1 and to a greater extent Scenario 2 would make it easier for consumers to passively access audiovisual content both on a subscription and transaction basis. Given the diversity of prices among EU Member States, this would enable consumers to order from other Member States, benefitting from lower prices and possibly from additional items in the catalogue of available content.

Price convergence is already visible in the EU and might well be accelerated by either Scenario 1 or Scenario 2. These tendencies are likely to lead to lower prices in many EU Member States; however, the same tendencies might lead to price increases in EU Member States where prices are below the EU average (typically, Member States with low GDP per capita and low disposable income).

The literature, much of which has been inspired by market players in the sector, tends to focus on a possible loss of revenue to the audiovisual sector as a result of the undermining of exclusivity on the supply side, with little consideration of any gains potentially enjoyed on the demand side by consumers. Less analysed on the

supply side have been any off-setting tendencies that would increase revenues. Notable among these are the tendency of consumption of SVoD and TVoD to increase in response to lower prices and the additional revenues due to increased choice thanks to cross-border sales that would not otherwise have been possible. In this section, we take a more nuanced look at the likely evolution of revenues under Scenarios 1 and 2. In Section 5.4.5.3, we provide a full welfare analysis that looks at both consumer welfare and producer welfare.

5.4.5.1 Expected evolution of substitution effects across services

A key question for this Section is which kind of services would be substituted by consumers for which other kinds of services. More to the point, we discuss how a shift to Scenario 1 or Scenario 2 would change these substitution patterns. TVoD and SVoD already substitute to some extent for one another, and both have some ability to substitute for physical distribution of audiovisual content (e.g. DVDs), pay-TV, and cinema attendance. It is important to consider how a change might affect consumption, prices, and revenues.

For comparison, data on the SVoD and TVoD share of audiovisual sector end-user revenues appears in Section 5.4.1, and a plausible extrapolation of current growth trends for SVoD appears as Figure 27 and Figure 31 in that section.

There are suggestions in the literature that cross-channel substitutability might be quite low; however, the research to date is limited.¹⁶⁷ In an ideal world, one would calculate cross-elasticities among the various services. In practice, this would require large volumes of highly granular data that are simply not available. In consequence, we provide some educated guesses as to substitution effects based on qualitative assumptions and literature review.

For all substitution scenarios, language accessibility clearly plays a large role. This is visible in our survey results, as noted in Sections 5.3.2, 5.4.2 and 5.4.4.

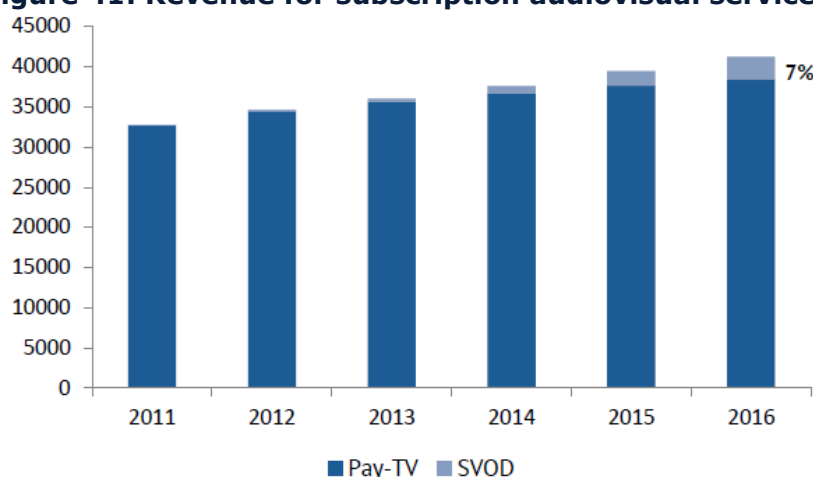
Our general sense is that TVoD and SVoD substitute for one another only to a limited extent. For a consumer to become able to acquire a single, previously unavailable title cross-border is likely to have only a limited likelihood of encouraging that consumer to cancel his or her current SVoD subscription, or to acquire or to fail to acquire an SVoD account in a country other than his or her country of residence. In any case, even though a shift to Scenario 1 or Scenario 2 affects both TVoD and SVoD individually, it is not likely to have much net impact on substitution between them.

¹⁶⁷ See, for instance: Mukherjee and Kadiyali (2011), "Modelling Multichannel Home Video Demand in the U.S. Motion Picture Industry". They found that there was low cross-channel price and availability elasticity between the purchase and rental home viewing channels, based on US data from 2000 and 2001.

Rather, we would tend to view SVoD as primarily a substitute for pay-TV, and TVoD primarily as a substitute for purchase or rental of a DVD, or to a limited extent as a substitute for a cinema visit. This observation is fully in line with observations in Grece and Fontaine (2017): 'TVoD mostly proposes films, plus a limited number of TV series, whereas SVoD services may dedicate much more catalogue space to TV content. As regards films, TVoD follows an early release window, as short as three to four months after the theatrical release, whereas SVoD competes at best with Pay-TV and its one-year window and depending on the country (France for example) often proposes films up to three years after their theatrical release. (...) TVoD can be considered as a substitute for physical video, and SVoD as a new form of – and a competitor for – traditional linear services.' This is also in line with the business model analysis presented in Section 5.1.1.

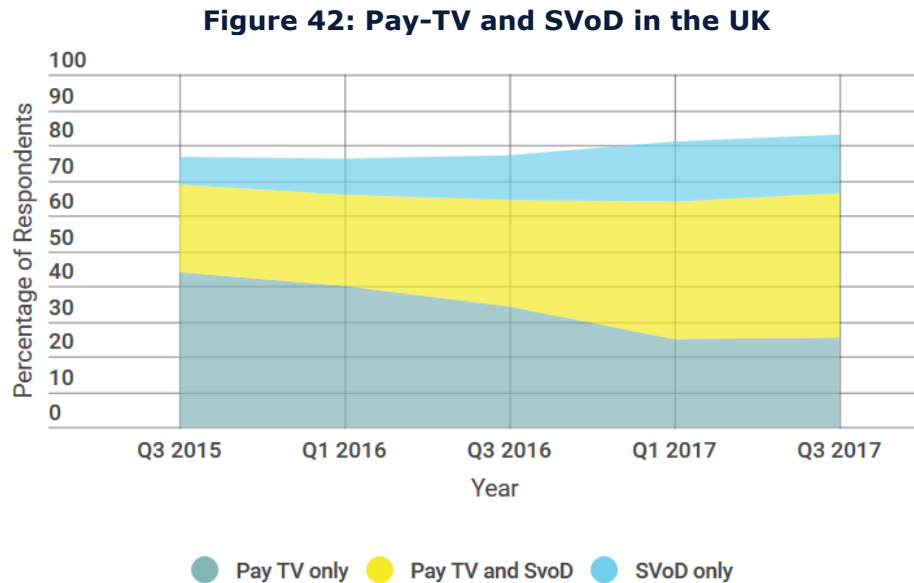
To date, competition with SVoD has not resulted in any net reduction in the number of pay-TV subscribers as both have grown (see Figure 41).

Figure 41: Revenue for subscription audiovisual services.

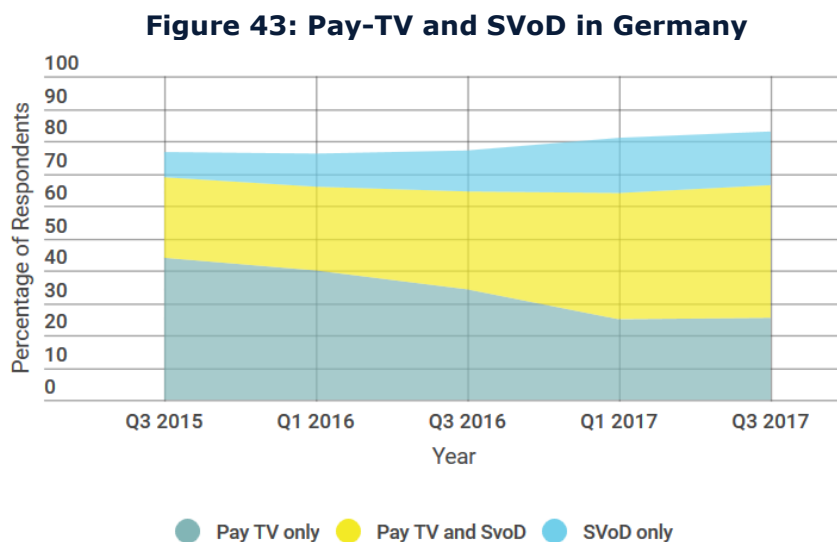


Source: Grece and Fontaine (2017), based on analysis of Ampere data

There is, indeed, a question whether SVoD functions as a *substitute* for pay-TV or as an economic *complement*. If two goods or services are substitutes, purchasing more of one means purchasing less of the other; if they are complements, however, purchasing more of one implies also purchasing more of the other. In the US, there is a strong tendency to view SVoD and pay-TV as direct substitutes. In Europe, however, they appear to function more as near complements rather than as substitutes. In addition to what Figure 41 shows, this is clearly visible in data for the UK and for Germany, where the major increase has been among subscribers to both pay-TV and SVoD (see Figure 42 and Figure 43). It is, however, still possible that SVoD has slowed the rate of growth for pay-TV in Europe.



Source: Grece and Fontaine (2017), based on Ampere consumer data



Source: Grece and Fontaine (2017), based on Ampere consumer data

5.4.5.2 Expected impact of increased availability and reduced prices on SVoD quantities and revenues (static analysis)

In Sections 5.4 and 5.4.4, we developed initial estimates of the expected changes in price, quantity, and revenues of SVoD subscriptions based on the results of the survey described in Section 5.3.2 in conjunction with a van Westendorp Price Sensitivity Meter (PSM) methodology. Taking a weighted average as a function of the number of subscribers that each service (Netflix Prime, Amazon Prime and Mubi) has in each of the eight Member States, the analysis suggests that prices would decline by some 8% (i.e. between 7.5% and 8.6%) under Scenarios 1 or 2 for each of the three services, as we explain in this section and in greater detail in Section 5.4.5.3.

This estimate reflects the degree to which, based on the results of our consumer survey, not all consumers will in practice switch to a less expensive SVoD service in a different Member State.

In Section 5.4.5.3, we refine and further extend this work by providing a welfare analysis that addresses not only the impact on market players in the audiovisual sector, but also the impact on consumers. In this section, meanwhile, we expand on the discussion of Sections 5.4 and 5.4.4 on prices, quantities and revenues for SVoD services.

In this section and in Section 5.4.5.3, we conduct a *static analysis*, assessing the direct effects of a possible change in the Geo-blocking Regulation with a focus on the demand side, but *disregarding possible competitive responses that might be taken on the supply side*. It is possible for instance that instead of maintaining their current pricing structures, multi-country providers such as Netflix, Amazon Prime and Mubi might instead switch to uniform pricing across the EU.

In the static analysis in this section and in Section 5.4.5.3, we limit ourselves to assuming that prices remain as they are, and that consumers respond individually in line with their survey responses. We considered but rejected an alternative (somewhat more dynamic) model, where providers of end-user online audiovisual services would have shifted to *uniform pricing across the EU*. That would have implied that no response on the part of individual consumers was necessary (or possible) because the uniform prices that would emerge under the supply side change would have already reflected the change, and no individual cross-border arbitrage would have been possible when all prices are the same.

We rejected this more dynamic approach because, in practice, providers of end-user online audiovisual services would likely find ways to customise their services to national preferences (including language) so as to maintain some degree of national price discrimination – less than today, but probably still substantial. Supply side responses from producers of audiovisual content and from those who supply them to end-users (notably in terms of prices and of release window practices) are possible and indeed likely, but trying to predict the measures taken and their likely effects would be highly speculative.

In Section 5.4.5.4, we describe in some depth a result from the literature that can provide a complementary and more granular view. Aguiar and Waldfogel (2019) use detailed cinema data to provide insights not only into changes in consumer and producer welfare (thus providing something of a cross-check on our work in this section and the next), but also providing a more detailed analysis of impacts on individual Member States and also on impacts on the United States.

Returning to our own static analysis, it is necessary to consider two distinct factors in assessing the likely impact of a possible change in the Geo-blocking Regulation as envisioned with Scenario 1 or Scenario 2 on the number of SVoD subscriptions:

- Increased propensity to subscribe at the lower price; and
- Increased availability of titles (i.e. gains in choice and quality, including, for example, access to catalogues that may be of interest to Europeans with a special interest in some language or country).

We first employ the survey results and the Van Westendorp methodology, as described earlier, to consider how switching solely in order to achieve a lower price within the same service is likely to impact the quantity of SVoD consumed. For this analysis, we consider Scenario 1 and Scenario 2 to be equivalent – we believe the differences are mainly visible when it comes to switching in order to obtain access to a larger or different catalogue. Our analysis here and in Section 5.4.5.3 is based on the same eight sample countries as elsewhere (Belgium, Bulgaria, Estonia, France, Germany, Ireland, Italy, and Poland), and on data for users of Netflix Prime, Amazon Prime, and Mubi, as well as those who do not currently subscribe to an SVoD service.¹⁶⁸ For each of the three services, we first estimate the impacts of users who switch from one of the eight Member States within that service in order to achieve a lower price. For these users, as previously noted, prices would decline by some 8% (i.e. between 7.5% and 8.6%) for the three services (Netflix Prime, Amazon Prime and Mubi). The methodology is described in greater detail in Section 5.4.5.3 (see especially Table 25). The number of SVoD subscriptions could however be expected to increase in response to the lower price thanks to the price elasticity of demand. Based on survey responses for consumers who do not yet subscribe to SVoD, we anticipate an increase of a bit more than 4% (i.e. between 3.5% and 5.4%) for the three services.

There are other ways to estimate the impact of price on quantity. When the price of a good or service declines, more people are inclined to purchase it. This is quantitatively expressed in the *price elasticity of demand (PED)*, which is simply the ratio between the change in quantity and the change in price. The PED is generally negative because price and quantity move in opposite directions.

Many economists have estimated the PED of audiovisual services over the years. Among the relevant results are those shown in Table 24. There is a substantial spread among these estimates. Many of the estimates suggest a highly elastic service (i.e. the absolute value of the PED is well in excess of 1.0, meaning that quantity effects are greater than the price change that causes them); however, a recent estimate relating to Netflix subscribers, and thus directly relevant here, works out to a PED of -0.6, which would be roughly in line with our van Westendorp calculations. This

¹⁶⁸ For Mubi, we have data for only five Member States, not for eight.

estimate implies a combined effect of switching services for existing users, plus gains in new users, of a bit less than 4%, which is in line with our estimate of 8% loss in price for existing users offset by 4% gain in revenue from new subscribers.

The Table 24 column “ Δ subscriptions” denotes the percentage change in the number of SVoD subscriptions that one should expect, other things being equal, based on an 8% decrease in average price per SVoD subscription (roughly equivalent to ARPU) as expected under Scenarios 1 and 2 (see above) and ignoring the effects of the likely expanded availability of titles. This is a simple calculation based on the PED and an 8% price reduction.

Table 24: Estimates of the price elasticity of demand (PED) for audiovisual services

Authors	Year	Relevant PED	Δ subscriptions	Δ revenue
The Diffusion Group (TDG) ¹⁶⁹	2019	-0.6	4.8%	-3.6%
Goolsbee and Petrin ¹⁷⁰	2003	-1.5	12.0%	3.0%
Oxera ¹⁷¹	2016	-2.6	20.8%	11.1%
Crawford and Yurikoglu ¹⁷²	2011	-13.1	104.8%	88.4%

Source: Own calculations

The 4% gain in subscriptions that our van Westendorp methodology estimates should thus be understood as a *conservative lower bound* on the gains in subscribership that could be expected solely in response to the effective lowering of ARPU prices and ignoring the gain in quality in the sense of an increased number of titles. Given that this portion of the survey was asking consumers who do not yet use SVoD services to express their willingness to pay for these, we suspect that the survey may somewhat understate the degree of consumer interest in SVoD services that could be expected once the services are better known. In particular, for a user who has never subscribed to an SVoD service, the combined uncertainty of a new subscription and of doing so in a Member State other than that the one where he or she resides may be a deterrent, especially since few acquaintances will be able to provide useful

¹⁶⁹ A 2019 survey of Netflix users by The Diffusion Group (TDG) found that a one USD per month increase in the subscription price was likely to lead to some 8% of subscribers cancelling their subscriptions. This is suggestive of a PED in the neighbourhood of -0.6. Multichannel News (2019), “Netflix Loses 8% of Consumers with \$1 Price Increase: Study”, <https://www.multichannel.com/news/netflix-could-lose-8-percent-of-subscribers>.

¹⁷⁰ Austan Goolsbee and Amil Petrin (2003), The Consumer Gains from Direct Broadcast Satellites and the Competition with Cable TV.

¹⁷¹ Oxera (2016), The impact of cross-border access to audiovisual content on EU consumers. Based on Mackenzie and de Roos (2014), Cheap Tuesdays and the demand for cinema, -2.53; and Dewenter and Westermann (2005), Cinema demand in Germany, -2.4–2.76.

¹⁷² Gregory S. Crawford and Ali Yurukoglu (2011), The Welfare Effects of Bundling in Multichannel Television Markets. “In markets that offer Basic, Expanded Basic, and Digital Basic cable services, this yields an average own price elasticity for Basic of -4.12, for Expanded Basic of -6.34, for Digital Basic of -13.11, and for Satellite of -5.35.33. These are on par with most previous estimates in the literature. [For example, the] The FCC (2002) (-2.19), the GAO (2003) (-3.22), Beard, Ford, Hill and Saba (2005) (-2.5), Chipty (2001) (-5.9), and Goolsbee and Petrin (2004) (-1.5 for EB, -3.2 for DB, -2.4 for Satellite), have all separately estimated the average own price elasticity of cable services, using market share regressions, diverse data sets, and instrumental variables techniques.”

advice as to how well this works in practice. If the price sensitivity of consumers for cross-border SVoD services, once all consumers are familiar with these, is similar to that established in the literature for various other audiovisual services, the number of new subscribers could be considerably higher than 4%.

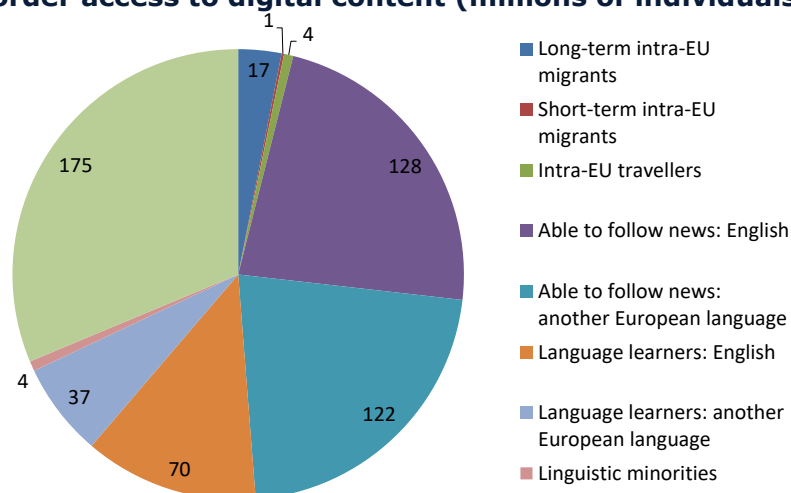
Indeed, if one were to assume convergence over time to the -2.6 PED used by the widely cited Oxera and O&O (2016) study, then the combined effects of price-based switching by existing users, together with new price-based subscriptions but ignoring any new subscribers lured by expanded or different catalogues would result in a net increase of 11.1% in overall SVoD revenues for the sector (see Table 24). One can debate whether this many new consumers would actually subscribe, since the new subscribers would have to find the new, lower cost services (i.e. there are certain search costs involved) and the pool of potential subscribers is not unlimited. These factors were already considered in Sections 5.4 and 5.4.4.

All of the estimates up to this point considered only price effects, ignoring the impact of increased quality primarily in the form of increased availability of titles. This factor appears to be even more important than the direct consumer response to price.

The increased willingness to subscribe in order to obtain access to content that would not otherwise be available is likely to be of greater interest to some consumers than to others. Issues of language and culture can be expected to play a large role (see also Section 5.4.2). Those who live in an EU country other than their home country, or who are learning a second European language may have a particular interest in content from that country. These populations are significant in Europe (see Figure 44). The availability of versions with subtitling or dubbing obviously plays a huge role as well.

This question of cross-border interest in content was also explored in the survey results that were presented in Section 5.3.2.

Figure 44: Population segments in the EU-28 that may have interest in cross-border access to digital content (millions of individuals, 2016)



Source: Marcus and Petropoulos (2017). P. 173

Section 5.4.4 provides an integrated assessment based on our survey results and a gravity model of cross-border propensity to place new subscriptions due to access to expanded catalogues under Scenario 2. There is a certain degree of uncertainty attached to this estimate, but we believe that an additional number of subscriptions of up to 9.6% could be expected.

This prediction of a net increase in revenue for the sector might surprise some experts, but the result is clear. We would also note that it is very much in line with the sophisticated analysis in Aguiar and Waldfogel (2019),¹⁷⁴ which used cinema admission data (available in much greater granularity than other data on audiovisual services) to estimate that eliminating cross-border barriers to the trade of audiovisual content would result in 'an 11% increase in revenue compared to the status quo' for European producers on average (but with significant variation from one Member State to the next), while US producers would experience 'a 1.8% decrease in revenue compared to the status quo.' It is clear that cinema admissions are not the same as SVoD services, but the result is at least indicative, and it is the most relevant research to date.

A few caveats are in order. First, not all firms and not all Member States will benefit, because low cost countries and distributors will tend to gain, while high cost countries

¹⁷³ J. Scott Marcus and Georgios Petropoulos (2017), Extending the scope of the geo-blocking prohibition: An economic assessment.

¹⁷⁴ Aguiar and Waldfogel (2019), "Digitization and the Welfare Effects of Motion Picture Trade", https://uc8204df7dfb6b324cc7a9c74ce8.dl.dropboxusercontent.com/cd/0/inline2/Atm_Vyel9IEWny0DNL6YpMSfT68vxqNKUo3iVGde_imM5BQann42_N5aoCgKHNg8CYjlrLp2RzUDNVYzrmrZ5V89uyDPJIScdSggt_fNCcSZomV7X5PwptDZDBAeyT_z-2l2WJema5sotBWlJ4qjSHzXI2b67k6fByMrW2Rto4NA6A3rietpf-QNdA5ShPpjAWa0qAKcw3q9HcUnyMwlpP4piYqgwmqRkKKhZM1wn5X_O0bRITgasVKsJN2CSmrVt9LQehoJDsDYUOhDBdPWuN-p2NmE1FqkETML-rvX72RPIjb7FQ_M4LM618FNMDCG2_yabiXQsgIcd3TWZBY12CkQ7xTxVxu6dkV7uRQ7TospKDw/file#

and distributors will tend to lose. (Section 5.4.5.4 provides some insights into the likely impacts at Member State level.) Total revenues across the EU, however, would be higher. For an integrated service such as Netflix or Amazon, it is likely that total European revenues are the real issue, and it doesn't matter all that much in which country these are earned. It may however be different for national providers, as increase of revenues for certain providers may correspond to losses for others, even if the overall amount is larger than the status quo. Second, the increase in revenue may or may not translate into an increase in profits. This depends not only on revenues, but also on costs. Given however that costs of production and distribution of audiovisual content appear to be continuing to decline across the EU, we expect that firms will be able to design their offerings so as to achieve gains in profits that are at least in line with the gains in revenue (see section 5.5.2.).

5.4.5.3 Expected impact of increased availability and reduced SVoD prices on societal welfare (static analysis)

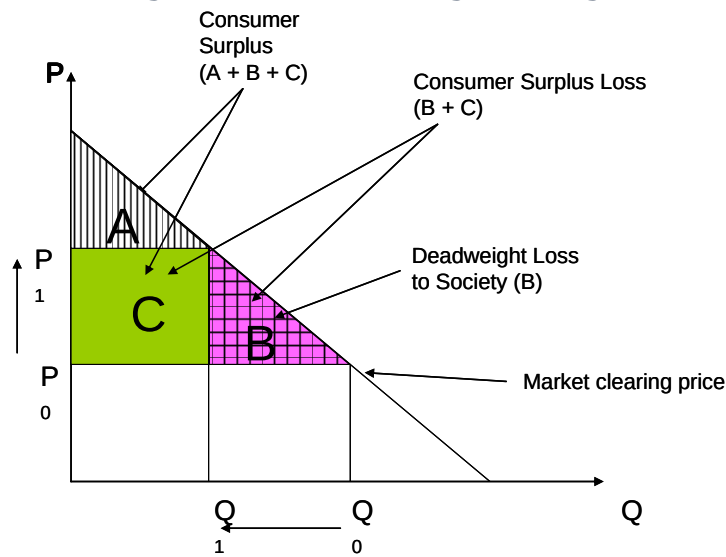
Impacts on societal welfare are often estimated using Harberger's Triangle. In an ideal competitive market, prices would be set at the exact level where the supply and demand curves cross. In Figure 45, the line that slopes downward to the right is the consumer demand curve, while the supply curve is not explicitly shown since it is not critical to this discussion (the marginal cost of supplying one additional unit of audiovisual content over the internet is close to zero). The point identified as the "market clearing price" is the expected and optimal pricing point in an ideal competitive market.¹⁷⁵

If prices are set at this ideal point, the consumer surplus corresponds to the areas labelled A, B, and C in Figure 45. It is the entire area above the price charged, but below the demand curve. It can be thought of as the degree to which consumers would have been willing to pay more than they were required to pay.

If prices are distorted, societal welfare is reduced. Market power is such a distortion, which leads not only to higher prices, but also to lower consumption as a result. The transaction costs imposed by barriers to cross-border commerce are another. The reduction in societal welfare is due to the price elasticity of demand, the tendency to consume more of things that are inexpensive, and less of things that are expensive.

¹⁷⁵ This general background on the Harberger Triangle is derived from J. Scott Marcus, Ilsa Godlovitch, Pieter Nooren, Bram van den Ende, Jonathan Cave and Werner Neu (2013), "How to Build a Ubiquitous EU Digital Society", available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/518736/IPOL-ITRE_ET\(2013\)518736_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/518736/IPOL-ITRE_ET(2013)518736_EN.pdf).

Figure 45: The Harberger Triangle



If a market distortion (geo-blocking in this case) artificially inflates the price charged, the price moves up from P_0 to P_1 , while the quantity correspondingly moves to the left from Q_0 to Q_1 . This reduces the consumer surplus (previously $A+B+C$) by the sum of the areas $B+C$. All that remains as consumer surplus is A .

This change entails, however, two distinct effects. Area C represents a *transfer* of surplus (or welfare) from consumers to producers. To an economist, since we tend to look at societal welfare in terms of the sum of consumer surplus and producer surplus, this transfer is in principle neutral. In other words, it is an allocative effect that neither adds to nor detracts from the overall welfare of society.¹⁷⁷

The area in triangle B , however, is truly and unambiguously problematic. It represents consumption that should have taken place but did not. It is referred to as a *deadweight loss*.

Based on our survey data, together with a few publicly available statistics, it is straightforward to estimate the static societal welfare impact of implementation of Scenarios 1 and 2 on prices, quantities, welfare transfer, and reduction of deadweight loss for the services analysed in the model. We make the simplifying assumption that the number of users who will change solely to benefit from lower prices is the same for Scenarios 1 and 2, but the number that will change to achieve a larger or different catalogue is greater under Scenario 2.

¹⁷⁶ Ibid.

¹⁷⁷ There may still be public policy implications, for instance in terms of distributional effects, but welfare transfers are neutral in terms of overall total societal economic welfare.

Recall that our survey data cover eight countries: Belgium, Bulgaria, Estonia, France, Germany, Ireland, Italy, and Poland. We have data for users of Netflix Prime, Amazon Prime, and Mubi, as well as those who do not currently subscribe to an SVoD service.¹⁷⁸

For each of the three services, we first consider the impacts of users who switch from one of the eight Member States within that service in order to achieve a lower price.¹⁷⁹ This can be directly inferred on the basis of the survey, where users were asked if they would be willing to make such a switch for a monetary savings of x%. On this basis, using the van Westendorp Price Sensitivity Meter (PSM) methodology, and taking a weighted average as a function of the number of subscribers that each service has in each of the eight Member States, the analysis suggests that prices would decline by some 8% (i.e. between 7.5% and 8.6%) under Scenarios 1 or 2 for the three services Netflix Prime, Amazon Prime and Mubi. This is visible in Table 25, where a price (the leftmost column) of 0.925 corresponds to a price reduction of 7.5% (i.e. $1.00 - 0.925$) from the level before implementation of a change to geo-blocking rules.

The number of SVoD subscriptions could however be expected to increase in response to the lower price thanks to the price elasticity of demand. Based on survey responses for consumers who do not yet subscribe to SVoD, we anticipate an increase of a bit more than 4% (i.e. between 3.5% and 5.4%) for the three services, as is visible in the second column of Table 25. This is smaller than we would have expected based on most of the typical estimates of price elasticity of demand for audiovisual services (see Section 5.4.5.2), but it is in line with the lowest and most recent of the estimates of PED, which moreover is highly relevant because it relates specifically to Netflix. It is possible that the PED will increase over time to levels that are more typical for other audiovisual services once consumers are sufficiently confident in ordering SVoD services on a cross-border basis. With that in mind, we believe that 4% represents a conservative estimate.

Revenue is, as always, price multiplied by quantity. Since price declines while quantity increases, the effects partly cancel each other out. We estimate that SVoD end-user revenue for the three services (Netflix Prime, Amazon Prime and Mubi) declines by about 4% (i.e. between 3.7% and 4.7%) under Scenarios 1 and 2 (see again Table 25, this time the third column from the left).

The results relate only to the three firms, but since they represent a large fraction of the SVoD market (and effectively set expectations for competitors), the *average* results for all firms operating in the EU-28 would probably not be very different. The

¹⁷⁸ The computation of price, quantity and revenue is essentially the same as in Sections 5.4 and 5.4.4, but the numerical results in those sections differ slightly because those computations average in two additional Netflix services.

¹⁷⁹ For Mubi, we have data for only five Member States, not for eight.

shifts at an individual Member State level can be much larger, but we assume that for these three multinational firms, what matters is how much money is earned in total, not which of their country catalogues earns the money. The impacts on individual (smaller) firms might however differ in important ways from these averages. For a firm operating in just a single Member State, any transfer of a customer to another Member State would mean that the customer and the customer's revenue move to a different firm.

Table 25: Estimated impact of the scenarios on societal welfare (static analysis)

	Price switching only			With quality switching		Revenue		
	Price	Quantity	Revenue	Quantity	Revenue	Welfare transfer	Reduction DWL	Add'l sales larger catalogue
Netflix	0.925	1.037	0.960	1.133	1.048	0.070	0.030	0.089
Amazon	0.921	1.035	0.953	1.131	1.042	0.074	0.027	0.088
Mubi	0.914	1.054	0.963	1.150	1.051	0.078	0.042	0.088

Source: Own calculations based on survey data and whose estimates of subscriber counters per Member State

Welfare transfer and reduction in deadweight loss can be computed directly from the survey data. Welfare transfer for Scenario 2 for the three services in the eight sampled countries represents between 7.0% and 7.8% of the initial revenues. This is welfare (money) that is transferred from suppliers to consumers. Deadweight loss is reduced by about 3% (i.e. by between 2.7% and 4.2%) for the three services.

The survey data also tell us that, on average and across all eight Member States, 9.6% of those who do not yet subscribe to an SVoD service but report that they obtain content through "grey" sources have reported that they would be willing to subscribe in order to obtain a larger or different catalogue than is available to them today. The 9.6% figure is for those who would switch for films, for those who would switch for greater access to television series, the figure is more like 14% (see Section 5.4.4). Many of these users likely have specialised interests, for instance interest in a language that is not widely spoken in the Member State in which they currently reside. This number represents new subscriptions due to quality (in the form of catalogue size), but it needs to be interpreted with some care since we do not know how large an increase in catalogue size would be required in order to motivate them to subscribe. We interpret it thus as an upper limit on the number of SVoD subscriptions that could be expected for reasons of catalogue size rather than price under Scenario 2.

We assume for purposes of this exercise that the prices paid by those who switch in order to obtain a larger catalogue are, on average, the same as that of the general population of users under Scenario 2 (see again Section 5.4.4).

The expected increase in revenue on this basis is up to 8.8% of the original pre-Scenario 2 revenue. It is slightly less than the 9.6% increase in subscribers because it takes place at the same time that average prices decline by about 8%.



The combined effect of switching to benefit from lower prices and new subscribers who wish to benefit from larger or specialised catalogues is an increase in overall end-user revenue to the sector of up to 4.2% to 5.1%. Again, this should be viewed as an upper limit.

It is also worth noting what is either not considered or not quantified in this analysis. Firstly, any effective increase in the size and, more importantly, the diversity of catalogues available to consumers is properly viewed as a gain in media pluralism. This would be positive, but it is not easily quantified. Moreover, while we expect an overall net gain in diversity based on the analysis just presented, there is also some risk that increased ease of cross-border purchases might lead to more consumers choosing catalogues with less national content, thus reducing or perhaps reversing any gains in content diversity. Moreover, no analysis of exact winners and losers has been possible based on the gravitational model due to the limitations described there.

Secondly, the effective reduction in price paid by price-sensitive consumers will have some tendency to reduce piracy of SVoD services. Piracy presumably has its own price elasticity (i.e. as prices decline, the incentive to bypass paying these is reduced). The maximum average price of 4% might not motivate much of a change of behaviour, but the percentage change in price in high priced Member States is actually much larger.

Wrapping up, taking both price and quality effects into account, the total average impact on SVoD end-user revenues is somewhere between a 4% decline and a 4% increase, based on the combined effects of a net reduction in end-user SVoD revenue of between 3.7% and 4.7% based solely on those who would switch to achieve a lower price, coupled with a gain of up to 8.8% associated with new subscribers lured by catalogues newly available cross-border. The impact would, however, be different on some market players than on others and these differences also have implications for content and cultural diversity.

If the increase in the number of subscribers were to evolve over time to be greater, and thus more in line with typical elasticities for audiovisual services (see Section 5.4.5.2), these numbers would shift upwards such that there might well be a net gain in total SVoD sector revenues from end-users even if one ignores any gains in subscribers due to a larger or more diverse catalogue.

New users who subscribe to gain access to broader catalogues or catalogues with different contents could add up to an additional 8.8% to SVoD sector revenues.

Finally, it is important to bear in mind that the SVoD sector revenues that we are considering here represented only 3.3% of total audiovisual sector revenues at present, although the share of revenues is growing (see Section 5.1.1). Impact on other distribution channels will tend to be considerably less (see Section 5.4.5.1). Thus, the maximum SVoD sector revenue reduction of 4% (not counting cross

substitution effects on other services) represents a reduction of something in the rough order of 0.2% in the total 2020 revenues of the audiovisual sector as a whole, considering the expected growth of SVoD. Even if the revenue reduction were to be the full maximum 4%, market players that use multiple distribution channels, and not just SVoD, would consequently tend to incur considerably less than the maximum 4% revenue reduction.

Conversely, if SVoD sector revenues were to increase by, say, 5% due to either an increase in catalogue size or to a stronger response to the price elasticity of demand, the increase in total audiovisual sector revenues (not counting cross substitution effects on other services) would represent an increase of something in the rough order of 0.3% in the total 2020 revenues of the audiovisual sector as a whole, taking into account the expected growth of SVoD.

5.4.5.4 Expected impact of increased availability and reduced prices on consumers, producers, and individual Member States (granular static analysis)

A recent study by Aguiar and Waldfogel (2019)¹⁸⁰ takes a different approach to the problem. They *simulate counterfactual scenarios using detailed cinema admission data* in order to reason about cross-border demand for audiovisual content in general. The analysis is static in the sense that it was based on films that were exhibited in more than one country in 2013, without assuming any change either in the total films available nor in their prices.

As the authors acknowledge in considerable detail, “our counterfactuals do not allow us to make a direct estimation of the magnitude of the effect of [the elimination of all barriers to cross-border trade in audiovisual copyrighted content] with digital distribution. They do, however, allow us to understand how film producers from different countries would be affected by [such] a policy ... in the sense of broadly similar changes in repertoire availability. In particular, they allow us to understand whether - for each origin country of production - the gains from reaching a larger set of foreign consumers offset the negative effect of facing more competition in their home market.”

As also noted in Section 5.4.5.2, Aguiar and Waldfogel (2019) conclude based on this cinema admission data that in the hypothetical event of the elimination of all barriers to trade within the EU for theatrically released films only (which is much broader than either Scenario 1 or Scenario 2), revenues for EU film producers could be expected

¹⁸⁰ Aguiar and Waldfogel (2019), “Digitization and the Welfare Effects of Motion Picture Trade”, https://uc8204df7dfb6b324cc7a9c74ce8.dl.dropboxusercontent.com/cd/0/inline2/Atm_Vyel9IEWny0DNL6YpMSfT68vxgNKUo3iVGde_imM5BQann42_N5aoCgKHNg8CYjlrLp2RzUDNVYzrmrZ5V89uyDPJIScdSgqt_fNCcSZomV7X5PwptDZDBAeyT_z-2l2WJema5sotBWlJ4qjSHzXI2b67k6fByMrW2Rto4NA6A3rietpf-QNdA5ShPpJAWa0qAKcw3q9HcUnyMwlpP4piYqgwmqRkKKhZM1wn5X_O0bRITgasVKsJN2CSmrVt9LQehoJDsDYUOhDBdPWuN-p2NmE1FqkETML-rvX72RPjb7FQ_M4LM6I8FNMDCG2_yabiXQsqIcd3TWZBY12CkQ7xTxVxu6dkV7uRQ7TospKDw/file#

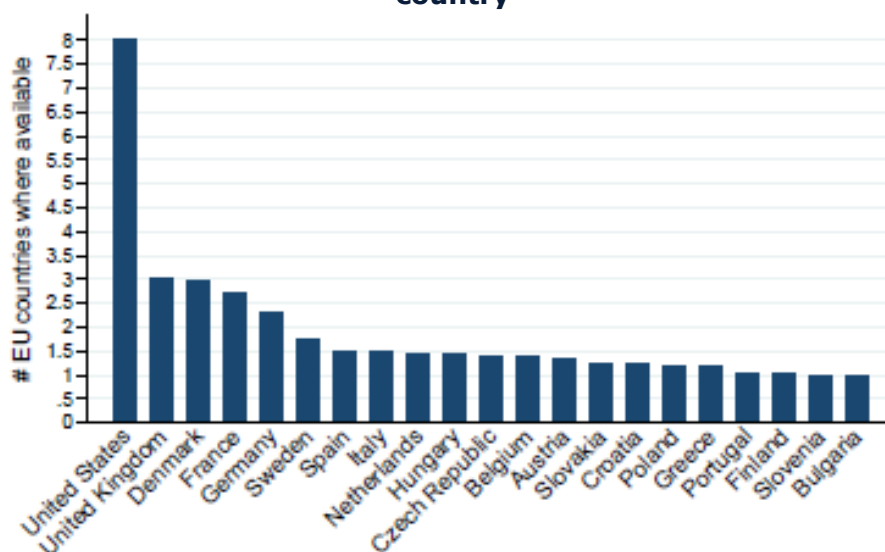
to grow by some 11% compared to the current situation, while revenues for US film producers could be expected to decline by some 1.8% due to more effective competition from EU producers. They also found that greater availability of films across the EU leads to gains for consumers in every Member State; however, this was already inherent in their modelling assumptions (more on this later in this section). These findings are for cinema, not for SVoD, but they are highly suggestive (and the data to do a comparable assessment of SVoD are not available).

The real value of this study Aguiar and Waldfogel (2019) from the perspective of the current study is that it provides insights at the Member State level. Most of the results presented in this chapter up to this point were in terms of averages across the EU-28; however, it is clear that not all Member States stand to benefit to the same degree from any legislative changes that might be made. Even for a change that is on balance positive for the EU as a whole, there might well be Member States that would ultimately be worse off.

Again, a detailed analysis of SVoD would ideally rely on highly granular data as to how consumers actually purchase SVoD (and also TVoD). We know of no suitably granular source for detailed data on the origin of works in SVoD. This is why Aguiar and Waldfogel (2019) analysed preferences for cross-border content in the context of films released to cinema (see also Section 5.2).¹⁸¹ Based on a sample of a substantial fraction of all films released in 2013, and considering only those that were shown in at least one EU Member State, Figure 46 shows the average number of EU Member States where the film was shown as a function of the origin of the film.

¹⁸¹ Aguiar and Waldfogel (2019), "Digitization and the Welfare Effects of Motion Picture Trade", https://uc8204df7dfb6b324cc7a9c74ce8.dl.dropboxusercontent.com/cd/0/inline2/Atm_VyeI9lEWny0DNL6YpMSfT68vxqNKUo3iVGde_imM5BQann42_N5aoCgKHNg8CYjlrLp2RzUDNVYzrmrZ5V89uyDPJIScdSggt_fNCcSZomV7X5PwptDZDBAeyT_z-2l2WJema5sotBWIJ4qjSHzXI2b67k6fByMrW2Rto4NA6A3rietpf-QNdA5ShPpjAWa0qAKcw3g9HcUnyMwlPp4pjYgqwmgrKKkKhZM1wn5X_O0bRITgasVKsJN2CSmrVt9lQehoJDsDYUOhDBdPWuN-p2NmE1FqkETML-rvX72RPjb7FQ_M4LM6I8FNMDCG2_yabiXQsgIcd3TWZBY12CkQ7xTxVxu6dkV7uRQ7TospKDw/file#. It should be noted that this proxy is not without limitations, since not all audiovisual works achieve cinema release, and also because cinema is not the same as SVoD, but it is nonetheless useful and indicative in understanding consumer demand for SVoD services.

Figure 46: Average number of countries in which films produced in 2013 and available in at least one EU Member State were shown in cinemas, by country



Source: Aguiar and Waldfogel (2019). p. 182

The differences are striking. Films produced in the US in 2013 were shown in cinema, on average, in eight EU Member States. Films produced in the EU were shown, on average, in not more than three EU Member States. For many of the Member States, works were typically shown in only one Member State, presumably the Member State of origin. Given that US films account for some 66% of all cinema admissions in Europe,¹⁸³ this is not surprising.

Distribution over SVoD seems to follow a similar pattern. As reported in the most recent Yearbook from the European Audiovisual Observatory, each title is available on SVoD in Europe in an average of 6.2 countries; however, if Netflix is excluded, each title is available on SVoD in Europe in an average of just 3.1 countries. Nearly half of all EU-28 non-national titles are available in only one country. Availability on TVoD is even less: on average, only two countries.¹⁸⁴

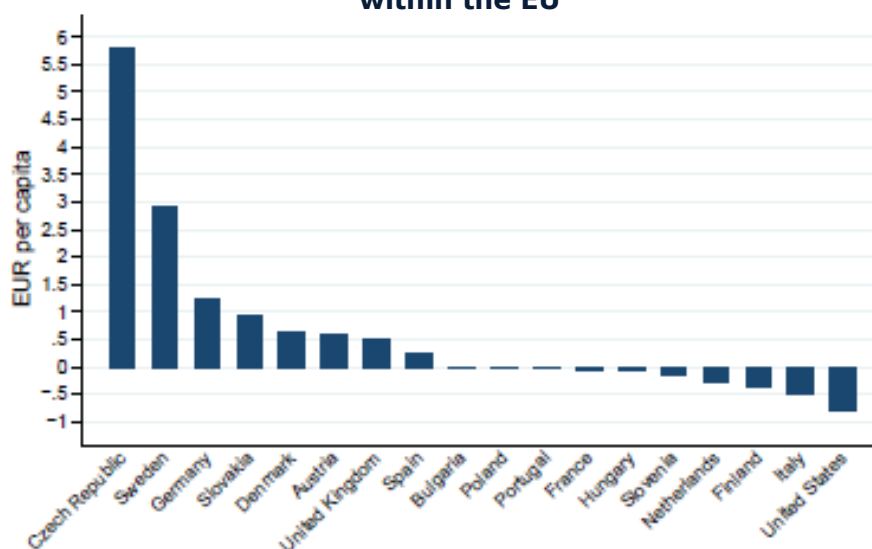
The gains derived from the elimination of all barriers to trade for European film producers would however be very unevenly distributed across EU Member States. Small EU Member States would tend to achieve high gains because elimination of barriers increases the availability of their works to a greater degree than for larger Member States, in general, but with some exceptions (see Figure 47). Some larger or higher production countries see reduction of producers' revenues due to increased competition, including France and Italy.

¹⁸² Ibid.

¹⁸³ European Audiovisual Library (2019), "Yearbook 2018/2019: Key Trends", p. 7.

¹⁸⁴ European Audiovisual Library (2019), "Yearbook 2018/2019: Key Trends", p. 26.

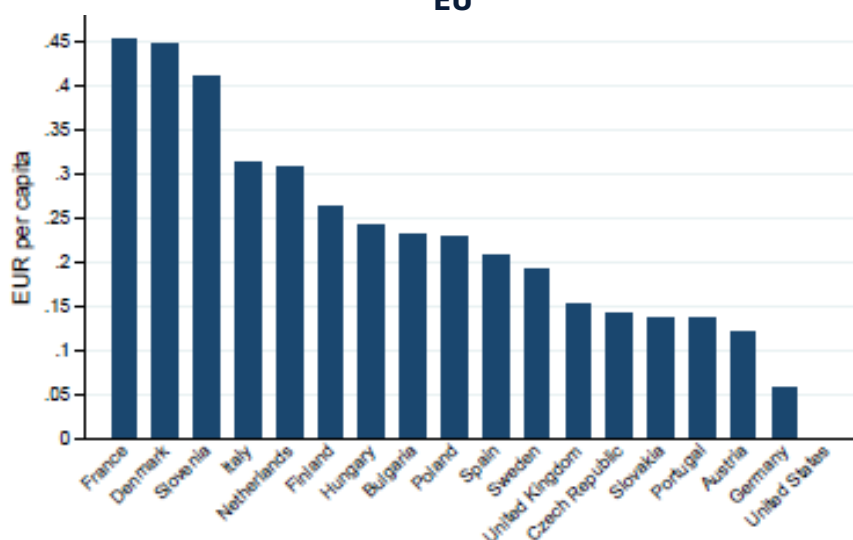
Figure 47: Estimated changes in per capita sector revenue from end-users with elimination of all barriers to trade for theatrically released films within the EU



Source: Aguiar and Waldfogel (2019)

Consumers in all countries gain, but consumers in smaller countries tend to gain more in general (see Figure 48). French consumers, however, do surprisingly well.

Figure 48: Estimated changes in per capita consumer surplus with elimination of all barriers to trade for theatrically released films within the EU



Source: Aguiar and Waldfogel (2019)

As noted in Section 5.4.5.2, we view these changes as most likely leading to a net gain in the diversity of European content available to European consumers thanks

to greater access cross-border to content that had not previously been available; however, we cannot exclude the possibility that more Europeans would subscribe to services with catalogues mainly geared to pan-European content and with only limited European national content, which might reduce or possibly even reverse any gains in European content diversity.

5.4.5.5 Possible changes in windowing practices

In order to extract the most revenue from each work, standard industry practice is to organise release into various *windows*, starting with the most profitable forms of exploitation and working down to the least profitable. This is explained in greater detail in Section 5.1.3. Exposition in cinemas tends to be the most profitable (for works that can achieve it). In order not to undermine the profitability of theatrical exposition, a work is not made available for TVoD streaming or on DVDs (i.e. in the *home entertainment window*), and certainly not on SVoD, pay-TV or FTA television, during the cinema window.

The exact average price of the works sold in each window is not known, but a recent study by the European Audiovisual Observatory¹⁸⁵ has provided some rough order of magnitude estimates for a number of audiovisual services that are useful for purposes of illustration (see Figure 49):

- Cinema exploitation: about EUR 7.10 per person;¹⁸⁶
- Purchase of a DVD: about EUR 3.50 per person;¹⁸⁷
- Rental of a DVD: about EUR 1 per person;¹⁸⁸
- Large pay-TV channel: probably in the range of EUR 0.10 per person.¹⁸⁹

¹⁸⁵ Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Julio Talavera Milla, Sophie Valais (2019), "Release windows in Europe: a matter of time", European Audiovisual Observatory. All of the estimates that follow derive directly from that report, and the footnotes are literal quotes.

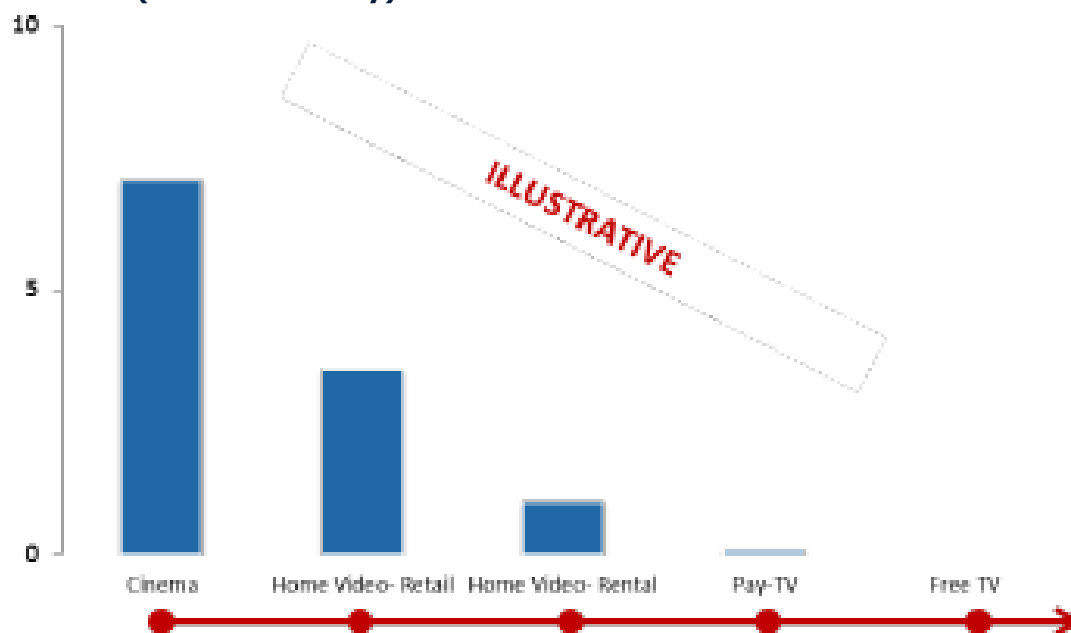
¹⁸⁶ Average ticket price in the European Union in 2018. Source: Focus – World Film Market Trends – 2019 Edition, European Audiovisual Observatory, May 2019.

¹⁸⁷ Average DVD purchase price in the European Union in 2017. Based on the hypothesis of 3 persons per household. Source: Yearbook 2018/2019, European Audiovisual Observatory, November 2018.

¹⁸⁸ Average DVD rental price in the European Union in 2017. Based on the hypothesis of 3 persons per household. Source: Yearbook 2018/2019, European Audiovisual Observatory, November 2018.

¹⁸⁹ OBS estimate for the average price per subscriber of a first-run, French-produced or co-produced film purchased by the French pay-TV channel Canal+. Based on the hypothesis of 3 persons per household. The price may be overstated due to the specific obligations that apply to Canal+. Source for data: La production cinématographique en 2018, CNC, March 2019.

Figure 49: Value derived from eah individual viewer in different exploitation windows (illustrative only)



Source: European Audiovisual Observatory¹⁹⁰

Window periods vary from country to country, and also from work to work. Indeed, some countries have placed restrictions on the duration of these windows. The average differences among EU Member States are depicted in Figure 17 in Section 5.1.3. The differences can be substantial.

If TVoD and SVoD content were to become available for passive purchases across the EU, one might expect these windows to converge over time. If a given fictional feature film, for instance, were to be available for passive sales via TVoD in Portugal (a country with a short theatrical window) just three months after the date of first theatrical release, it might be impractical to withhold it from TVoD release in for instance Germany (a country with a long theatrical window) until six months after theatrical release.¹⁹¹ Claims along these line are visible for instance in the Oxera and O&O (2016) study, and they merit reflection.

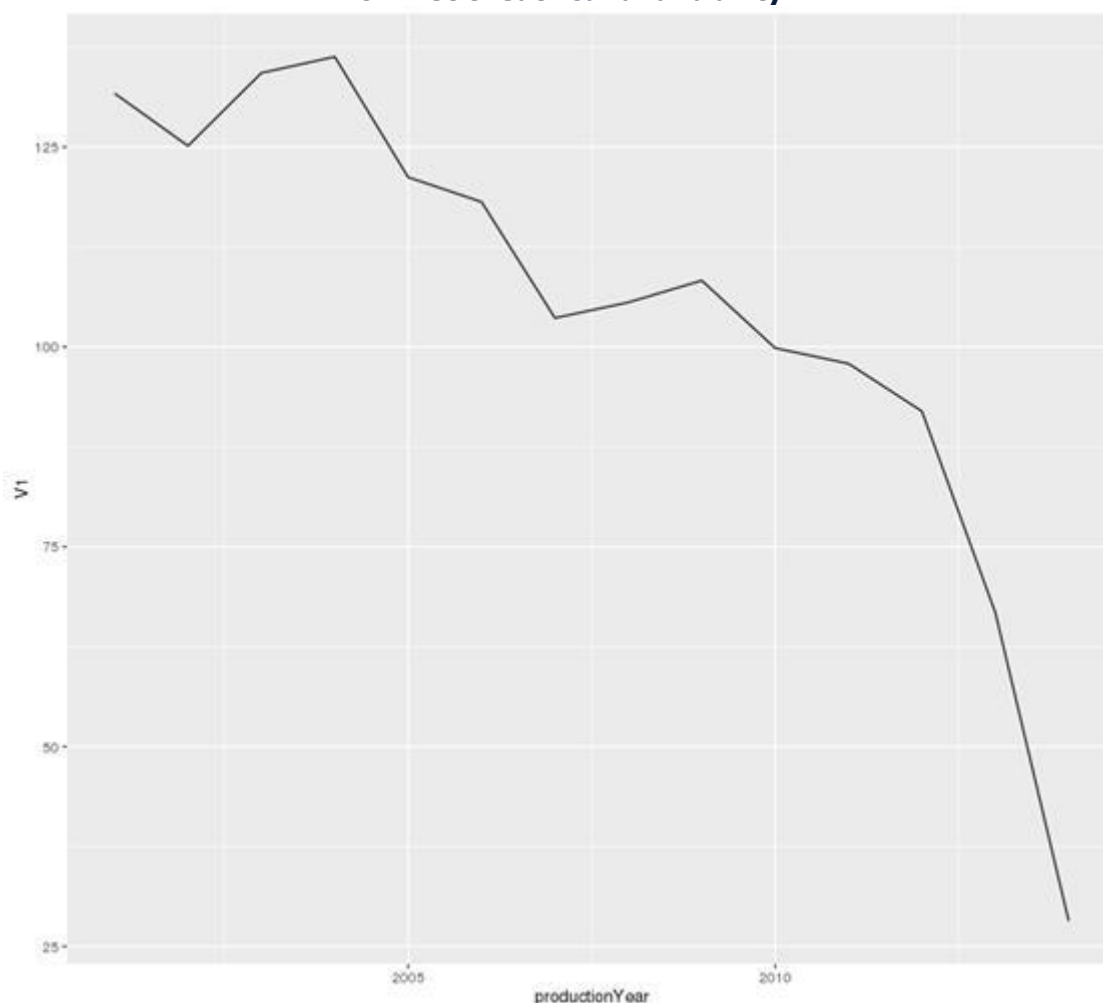
With this in mind, it is reasonable to wonder what the impact on revenues might be if changes in geo-blocking were to lead to convergence of windows across EU-28

¹⁹⁰ Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Julio Talavera Milla, Sophie Valais (2019), "Release windows in Europe: a matter of time", European Audiovisual Observatory.

¹⁹¹ These time frames are in fact typical for the withholding of TVoD and Electronic Sell-Through (EST) in the countries involved, based on a survey conducted in August 2019 by Europa Distribution, the International Federation of Film Distributors' Associations (FIAD), the International Video Federation (IVF), and the International Union of Cinemas (UNIC). See Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Julio Talavera Milla, Sophie Valais (2019), "Release windows in Europe: a matter of time", European Audiovisual Observatory.

Member States. The reality is that these windows are already converging in response to digitisation, and especially due to the availability of audiovisual content via streaming, as depicted in Figure 50. Some films have already experimented with day-and-date releases (simultaneous release in different windows). Day-and-date release has sometimes led to intense controversy, as was the case with an Italian film produced by Netflix, "Sulla mia pelle" (On My Skin), which was simultaneously released in theatres and on the streaming platform.¹⁹²

Figure 50: Divergence among the EU-28 Member States as regards the date of first theatrical availability

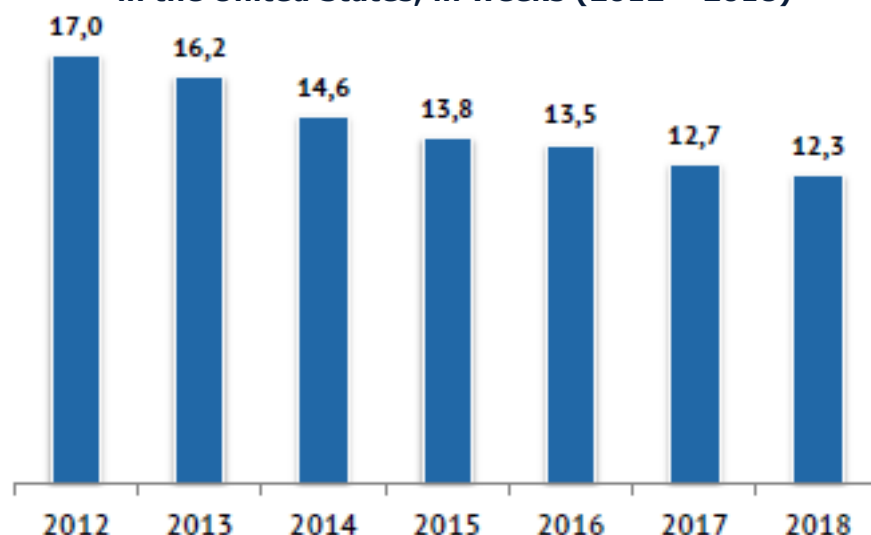


Source: Based on EAO Lumière data and JRC calculations

¹⁹² Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Julio Talavera Milla, Sophie Valais (2019), "Release windows in Europe: a matter of time", European Audiovisual Observatory.

This phenomenon of converging windows is not confined to Europe – it is a global response to the transformation and digitalisation of the audiovisual sector, as is visible in Figure 51. The average length of the theatrical window in the United States declined by 4.7 months, or (28%), over the seven years from 2012 to 2018. (It is, to be sure, still far longer than the theatrical window in any EU country.)

Figure 51: Average delay between the theatrical and retail TVOD releases in the United States, in weeks (2012 – 2018)



Source: National Association of Theatre Owners¹⁹³

In other words, convergence of windows is already under way, and can be expected to progress irrespective of any changes in geo-blocking practices. It is possible, however, that changes in geo-blocking rules might accelerate the convergence somewhat.

If convergence of windows were to accelerate, it should by no means be assumed that it is negative for overall audiovisual sector revenues. Research results on this point are limited; however, Mukherjee and Kadiyali (2011) found, based on US data from 2000 and 2001, that windowing in either rentals or purchase of DVDs would lead to lower revenues for the sector. They speculate on this basis that the studios may derive more revenue from one channel than the other, and that their preferences may have more to do with their individual profitability than with the profitability of the sector. That analysis is for a different audiovisual channel, and at a time when the market was less developed; nonetheless, it is thought-provoking to consider that the typical interests of the studios may be diametrically opposed to those of the

¹⁹³ As reported in Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Julio Talavera Milla, Sophie Valais (2019), "Release windows in Europe: a matter of time", European Audiovisual Observatory.

distributors, and that the studios may be better positioned than the distribution channels that sell to end-users to impose their will in the matter of windows.¹⁹⁴

We have not attempted a quantification of the likely impact of implementation of Scenario 1 or 2 on European windowing practices, but we note that any forward-looking quantification of the impact of a change in geo-blocking rules would need to be in comparison, not to the current impact of windowing practices, but rather to a future “business as usual” scenario where windows have contracted even in the absence of any change in geo-blocking rules.

5.4.5.6 Reflections on TVoD services

As stated at the beginning of Section 5.4, our primary focus in this section is on SVoD services, both because the revenues associated with SVoD are far larger than those associated with TVoD in Europe at present, and because they enjoy a much higher growth rate (see Section 5.1.1). However, we present a few reflections on TVoD here. Our assumption is that TVoD services substitute primarily for physical digital sales and rentals (mostly DVD), and to a more limited extent for cinema attendance.

Physical digital sales and rentals have steadily declined over the past few years, with the growth of TVoD presumably playing a large role in this shift (see again Section 5.1.1). From 2017 to 2018, DVD sales and rentals declined 15.8%, from €3.5 billion to EUR 3.0 billion.¹⁹⁵

Any change in the degree to which TVoD substitutes for cinema viewing might possibly raise policy issues as regards overall funding of the sector (since cinema is the most profitable channel), for media pluralism, and for preservation of cinema screening as a unique experience format for audiovisual works.

To frame this discussion, it is helpful to understand how cinema attendance is evolving in Europe. UNIC estimates total cinema box-office receipts in their territory in 2017 to have been some EUR 8.6 billion, representing a 1.7% increase from 2016.¹⁹⁶ This revenue was based on 1.34 billion cinema admissions in 2017, a 2.5% increase from 2016. When we consider the impact on producers, however, it is important to bear in mind that most cinema attendance in Europe is to view US films. In 2017, 66.2% of viewings were for US films, only 27.5% for European, and 3.7% for EU-US joint productions. The rest of the world accounted for only 2.6% of

¹⁹⁴ Mukherjee and Kadiyali (2011), “Modeling Multichannel Home Video Demand in the U.S. Motion Picture Industry”.

¹⁹⁵ Video Foundation (2019), Video market: Total Europe based on data by IHS Markit.

¹⁹⁶ International Union of Cinemas (2019), UNIC Annual Report 2018. Please note that UNIC’s member territories do not exactly correspond to the EU.

viewings in 2017.¹⁹⁷ This pattern of two-thirds of EU cinema attendance being for US works, and only about a quarter for EU works, has been steady for many years.¹⁹⁸

Nonetheless, any negative impact on cinema revenues due to substitution by TVoD might warrant careful reflection.

5.5 Expected impact on the production of audiovisual works

The anticipated impact of the changes proposed in Scenarios 1 and 2 have been extensively discussed earlier in this chapter. In this section, we take up the crucial question of the likely impact of these changes on the level of production of audiovisual content in the EU.

The central question is how the impact of the Scenarios might be translated into production of European audiovisual content. Will EU companies (e.g. producers, broadcasters, distributors, and VOD service providers) continue to be able to finance new works? Are there likely to be different impacts on high budget works versus low budget works? Will the works produced have at least as much capacity to circulate across borders as those that are produced today?

The implementation of either Scenario 1 or Scenario 2 could be expected to affect:

- Prices;
- Consumer demand, both through price effects and through increased variety and quality;
- Total revenues and profits;
- Changes in windowing practices;
- Changes in the exclusivity of licenses; and
- Revenues from sales from other audiovisual content and services.

Each of these is considered in this section.

We place particular emphasis on addressing a concern that has often been raised by firms active in the sector: namely, that extending the Geo-blocking Regulation to cover copyrighted audiovisual content services might result in a reduction in the volume of investment in European audiovisual content. This concern has been raised in multiple studies, including Plum (2012), CRA (2014), and especially in Oxera and O&O (2016). The argument runs that eliminating geographical discrimination would reduce the anticipated revenues from European works, leading to lower pre-sales investment in the works. This would tend to affect high-budget works more than low,

¹⁹⁷ Ibid.

This is in line with current data, which show US films are responsible for 66% of EU cinema admissions. European Audiovisual Observatory (2019), "Yearbook 2018/2019: Key Trends", p. 7.

¹⁹⁸ J. Scott Marcus, Georgios Petropoulos and Timothy Yeung (2019), Contribution to Growth: The European Digital Single Market: Delivering economic benefits for citizens and businesses, Section 5.2.4.

since high-budget works are more dependent on pre-sales funding. This argument is described in more detail when discussing the interview findings from industry stakeholders in Section 5.3.2. In this section, we consider the various elements of this argument.

The analysis in the present study is based on multiple sources. Particularly helpful were two studies by the European Audiovisual Observatory: Kanzler (2018)¹⁹⁹, which assesses financing sources for European audiovisual works and Grece and Fontaine (2017),²⁰⁰ which discusses the rise of online subscription video (SVoD) in Europe. A recently published study, Aguiar and Waldfogel (2019),²⁰¹ also proved to be particularly helpful.

5.5.1 Expected impact of changed anticipated profitability on funding sources

To analyse these statements, we employ a model which implies that any perceived reduction in profitability is likely to result in a reduction in the willingness of distributors to fund the creation of audiovisual works; conversely, any perceived increase should increase willingness to fund. The industry argument is based largely on the same thought model. We thus assume that the funders will respond rationally to the actual changes in profitability once any initial uncertainty or disruption to the sector has been worked through.

The literature has largely spoken of the risk in *pre-sales funding*. The European Audiovisual Observatory has recently made data available on the funding of a large number of European works theatrically released in 2016 (Kanzler, 2018).²⁰² This helps to frame this part of the discussion, and enables us to consider all forms of funding, not just pre-sales, although it should be emphasised that these data do not include TV series and other AV content not released in cinemas, and their possible different funding features.

In line with Kanzler (2018), our immediate focus is on the impact on production funding, not on revenues achieved once the work is released. Following Kanzler (2018):

¹⁹⁹ Martin Kanzler (2018), Fiction film financing in Europe: A sample analysis of films released in 2016.

²⁰⁰ Christian Grece and Gilles Fontaine (2017), Trends in the EU SVoD market.

²⁰¹ Aguiar and Waldfogel (2019), "Digitization and the Welfare Effects of Motion Picture Trade", https://uc8204df7dfb6b324cc7a9c74ce8.dl.dropboxusercontent.com/cd/0/inline2/Atm_Vyel9IEWny0DNL6YpMSft68vxqNKUo3iVGde_imM5BQann42_N5aoCgKHNg8CYjlrLp2RzUDNVYzrmrZ5V89uyDPJIScdSsgt_fNCCSZomV7X5PwptDZDBAeyT_z-2l2WJema5sotBWIJ4qjSHzXI2b67k6fByMrW2Rto4NA6A3rietpf-QNdA5ShPpjAWa0qAKcw3g9HcUnyMwIPp4pjYgqwmgrKkKhZM1wn5X_O0bRITgasVKsJN2CSmrVt9LQehoJDsDYUOhDBdPWuN-p2NmE1FqkETML-rvX72RPjb7FQ_M4LM6I8FNMDCG2_yabiXQsgIcd3TWZBY12CkQ7xTxVxu6dkV7uRQ7TospKDw/file#

²⁰² Martin Kanzler (2018), Fiction film financing in Europe: A sample analysis of films released in 2016. Works that received no public funding whatsoever are covered to only a limited extent in the sample, since in most cases the national film authorities have no data on their funding sources.

- The *production account* is a segregated bank account into which all the production funds are placed, and from which all production expenses are paid by the producers; and
- The *collection account* is an account into which income from sales is received and from which payments to financiers and profit participants is made.

Anticipated revenues from the work (i.e. payments into the collection account) can clearly influence some forms of financing (i.e. willingness to pay into the production account), but they are not the same thing, and the impacts can be different for different kinds of funding and different kinds of films.

Kanzler (2018) distinguishes among five major categories of funding, plus several minor categories (see also Section 5.1.2, and especially Table 13: Breakdown of cumulative financing volume by source (2016)):

- Direct public funding;
- Pre-sales (excluding broadcasting);
- Producer investments (excluding broadcasters);
- Broadcaster investments; and
- Fiscal incentives.

The literature mainly concerns itself with the impact on pre-sales funding, both from broadcasters and producers (see also Section 5.1.2). If a change in geo-blocking rules were to lead to a reduction in revenues for the audiovisual sector, the impact of any changes on direct public funding from a reduction in revenues can be expected to be minimal, except perhaps to the extent that Member State governments might feel the need to increase subsidies if revenues to producers were impacted. The impact on other categories (fiscal incentives, producer funding, and the minor categories) could be expected to be limited along the same line of argument.

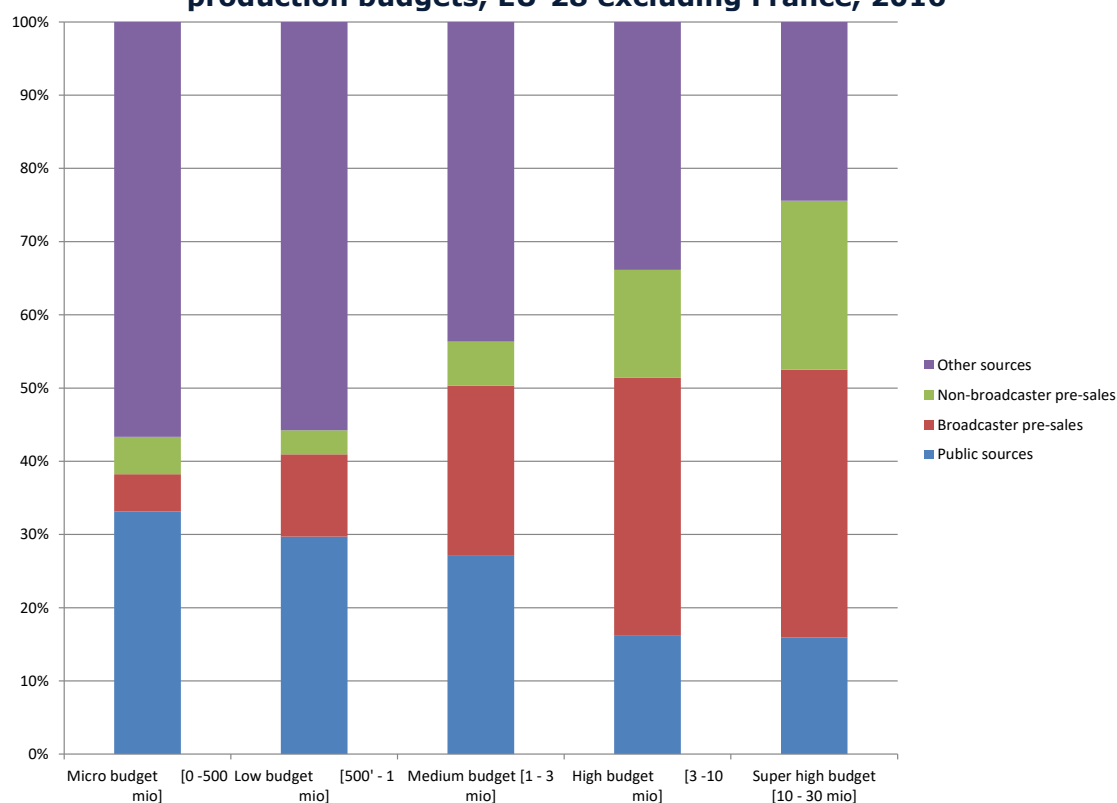
Before proceeding, we should note that our assessment is that net revenues to the audiovisual sector for SVoD would decline by not more than 4% due to price-based switching under either Scenario 1 or Scenario 2, with a distinct possibility that audiovisual sector revenues actually *increase* when one takes into account new subscriptions enabled by more diverse catalogues, together with adaptation over time of consumer confidence in cross-border ordering of SVoD services (see Section 5.4.5.3). Nonetheless, there is merit in considering how a reduction in sector revenues might impact pre-sales funding.

Previous assessments of the impact of pre-sales funding were not granular and they tended to ignore the funding differences between low-budget films and high-budget films. Kanzler (2018) is more correct in its analysis in this regard as it observes that 'there are structural differences in how films of different budget sizes are financed. Generally speaking, films with a budget of up to EUR 3 million depend to a higher degree on direct public support, while films with higher budgets finance their

production with proportionally higher shares of pre-sales and broadcaster investments [including broadcaster pre-sales investments].²⁰³ The study further notes a tendency for low-budget films to place greater reliance on public funding; however, this is primarily visible in French films, not as a Europe-wide phenomenon.²⁰³

The Kanzler (2018) study has treated broadcaster pre-sales funding (split-rights deals and profit-sharing arrangements) as broadcaster funding. For purposes of understanding the impact of possible changes in geo-blocking rules on pre-sales funding, however, it was necessary and appropriate to consolidate broadcaster pre-sales funding with other pre-sales funding in order to obtain an integrated view of pre-sales funding.²⁰⁴ We have done so in Figure 52 and Figure 53, showing results separately for Europe (EU-28) excluding France, and for France alone.

Figure 52: Contribution of pre-sales and of public funding to cinema production budgets, EU-28 excluding France, 2016

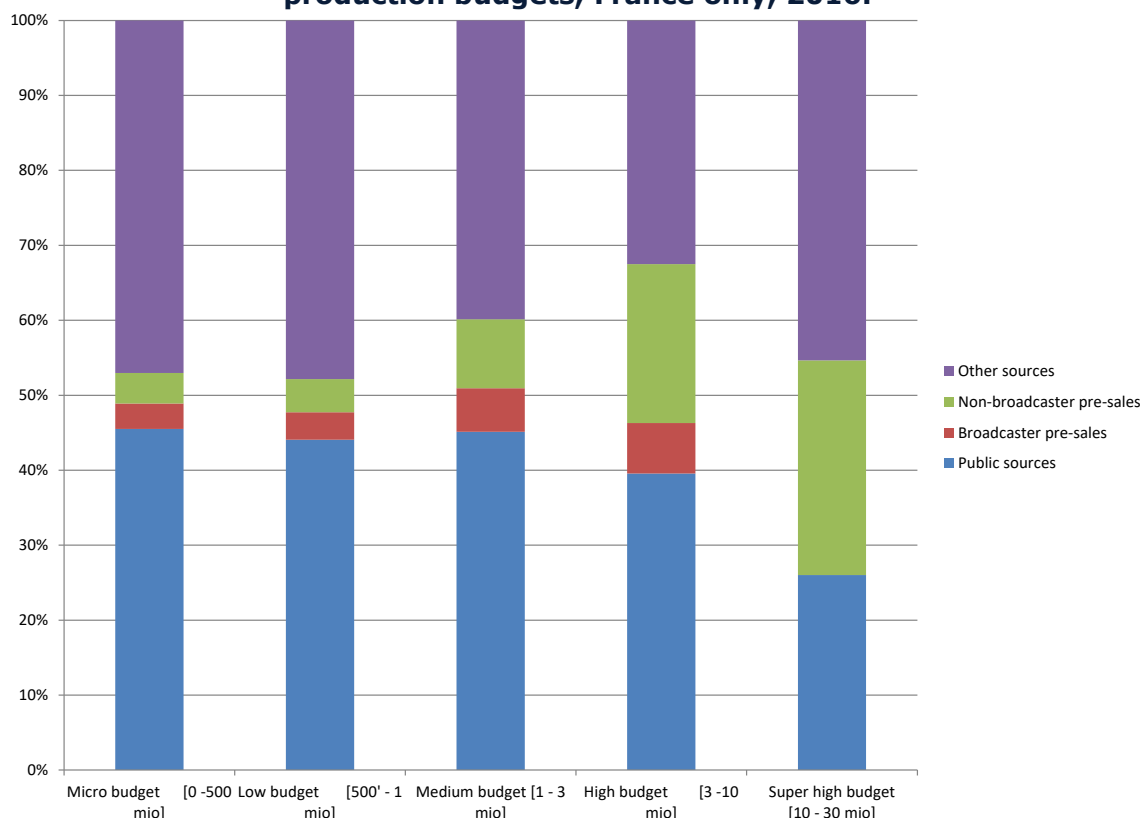


Source: Kanzler, 2018; own calculations

²⁰³ Kanzler (2018) tabulates France separately from other European countries because France represents more than half of the total funding of fictional works in the sample and because France funds fictional works significantly differently from many other European countries.

²⁰⁴ We express our thanks to the European Audiovisual Laboratory for providing the data that made this possible.

Figure 53: Contribution of pre-sales and of public funding to cinema production budgets, France only, 2016.



Source: Kanzler, 2018; own calculations

The literature has historically expressed concerns over the impact on the “long tail” of audiovisual production (i.e. low budget films with a limited audience, many of which never achieve exposition in cinemas). What these data make clear is that pre-sales revenue plays a minimal role in the financing of films with a production budget below half a million euros. On the other hand, they play a large role in financing films with budgets above three million euro. To put these data in perspective, 22% of films in the sample used in Kanzler (2018) had production budgets below half a million euro, while 35% had budgets above three million euro. Excluding France, the figures were 26% and 23%, respectively. This implies that, *if an extension of the Geo-Blocking Regulation were to reduce end-user revenues to the sector as has often been claimed, any resultant negative impact on pre-sales investments in the production of new audiovisual works would mainly be felt by high and super-high budget works.*

This also implies that any decrease or increase in overall revenues to the audiovisual sector will have far greater impact on the production of works in some Member States than in others. The impact could be expected to be larger in France and Germany, both of which have average budgets per film in excess of four million euro; conversely, they would be much less in Portugal, Lithuania, Czech Republic, Croatia,

Romania, Latvia and Estonia, all of which have median production budgets less than one million euro (see Table 26).

Table 26: Average sample budgets of European fiction films – country ranking (2016)²⁰⁵

Ranking (2016)

Rank	Country		Mean budget 2016 (in MEUR)	Median budget 2016 (in MEUR)	Number of sample films 2016
Countries with a median budget > EUR 3 million					
1	DE	Germany*	4.62	4.06	52
2	FR	France	4.61	3.49	159
Countries with a median budget between EUR 1 million to 3 million					
3	AT	Austria	3.04	2.32	14
4	NO	Norway	2.98	2.26	17
5	IT	Italy*	2.45	2.12	24
6	IE	Ireland	2.61	2.02	13
7	BE	Belgium*	2.03	1.98	16
8	GB	UK*	3.13	1.96	10
9	SE	Sweden	2.14	1.94	17
10	CH	Switzerland	1.92	1.94	10
11	NL	Netherlands	1.73	1.55	35
12	FI	Finland	1.33	1.26	18
13	BA	Bosnia-Herzegovina*	1.02	1.02	1
Countries with a median budget between EUR 500' and EUR 1 million					
14	PT	Portugal	0.95	0.98	7
15	LT	Lithuania*	0.84	0.84	2
16	CZ	Czech Republic	1.03	0.83	22
17	HR	Croatia	0.67	0.64	9
18	RO	Romania*	0.80	0.63	7
Countries with a median budget < EUR 500'					
19	LV	Latvia	0.67	0.48	3
20	EE	Estonia	0.46	0.45	7
21	ME	Montenegro*	0.29	0.29	2
TOTAL SAMPLE			3.17	2.07	445

Source: Kanzler, 2018, Table 9

²⁰⁵ Ranked by median budget. Note that these mean and median budgets represent sample averages and may differ from the official figures published by national film agencies. This is particularly true for countries where sample films represent less than 50% of the country's estimated annual production volume or where the number of film releases is very low in absolute terms. Value marked with an asterisk (*) should be viewed as "technical" values that describe the data sample rather than as representative values for the respective countries due to either low coverage rates or a very low number of sample films.

5.5.2 Expected impact of changed anticipated profitability on greenlighting decisions

A key component of the discussion to date has been the assumption on the part of some industry players and the firms that conduct studies for them that any reduction in revenues would have a disproportionately great impact on the number of audiovisual productions that would fail to be “greenlighted” for eventual production. The previously summarised Oxera and O&O (2016) study (see Section 5.2), for instance, argues that the ‘the distribution of margins between the different films [proposed for production] tends not to be uniform, but instead exhibits certain ‘lumpiness’, with a number of films falling close to the expected green-lighting margins.’ On this basis, they assume an ‘approximate multiplier of output reduction to producer revenue reduction’ ranging from 3 to 8.

It is reasonable to expect that anything that lowers the expected profitability of the audiovisual distribution sector as a whole is likely to have a negative impact on the willingness of studios to invest. The claim however that the response in terms of investment is *many times greater than the change in anticipated profitability* is supported only by a novel theoretical argument, not by any empirical proof.

Since the argument is important, it is worth taking a closer look at it, first based on *a priori* or theoretical considerations, and then as an empirical question.

5.5.2.1 *Multiplier effects from the perspective of a priori theoretical considerations*

If these multiplier effects in fact exist, one might reasonably expect that they would come into play in response to any phenomenon that alters the anticipated profitability of individual works. We see no reason to expect *a priori* that a change in anticipated profitability due to a change in the Geo-blocking Regulation would operate very differently from a change in anticipated profitability due to increased subscribership, or due to a change in anticipated profitability due to reduced production and distribution costs.

Leaving aside the question of whether revenues would really decline (which can be debated, as explained in Sections 5.4.5.2 and 5.4.5.3), this seemingly plausible analysis ignores a number of key considerations, most importantly:

- It assumes that the budgets for films proposed are *exogenous* (i.e. that they are independent of the studios’ willingness to fund); and
- It assumes that the threshold for greenlighting remains constant, or that the relationship between the threshold and the budgets of films proposed remains constant.

Oxera does not provide the data on which it bases its claim that ‘a number of films [fall] close to the expected green-lighting margins’, but this claim is plausible as far as it goes, and we can grant it for the sake of our argument.

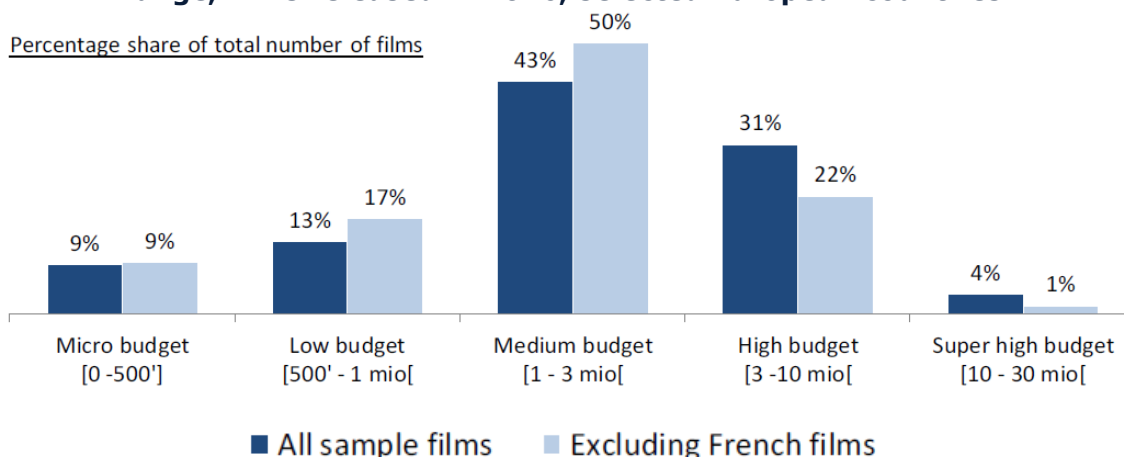
The claim of multiplier effects, however, tacitly rests on assumptions that there exists a probability cloud of proposed audiovisual works such that: (1) there is a known, fixed and immutable cost to produce any given potential audiovisual work; (2) that the producers do not know the willingness to pay (WTP) of broadcasters or investors in advance; and (3) that the producers make take-it-or-leave-it offers to broadcasters or investors. This thought model makes for elegant mathematical modelling; however, the question remains whether it conforms to reality in the majority of cases.

There are valid questions that need to be considered in regard to each of these three assumptions.

Firstly, the cost of producing a given potential work is not, in our view, chiselled into stone. They are not absolutely fixed and immutable in advance. The studios surely have many degrees of freedom and many trade-offs between the price and the quality of the work. Among these choices are whether expensive top actors should be hired versus less talented ones, how many actors should be hired, how much should be shot on location versus in the studio, and how much should be spent on special effects. Some of these may require revision of the script, but we suspect that this is routine. The producers likely have many opportunities to ratchet the cost of the potential work up or down to adapt to what investors or broadcasters are willing to pay. If the producers have numerous options to ratchet the cost of a production up or down, as seems likely to us, then one should expect a more flexible response on the part of the studios that would suggest that the change in investments, and thus in the number of productions green-lighted, would respond to changes in expected profitability in a roughly linear fashion with a multiplier not greatly in excess of 1.0.

The substantial spread among the production budgets of films, both within EU Member States and between them, likewise makes one wonder whether there can really be some fixed and predetermined production budget for every possible work. The spread of production budgets across Europe (including some countries that are not EU Member States) appears in Figure 54. Variations among European countries are visible in Table 26 in Section 5.4.1. Among the 18 EU Member States that appear in Table 26, the coefficient of variation (a measure of variability defined as the standard deviation divided by the mean) of mean budgets is 0.63, while the coefficient of variation of the median film budget is 0.59, indicating considerable variability.

Figure 54: Percentage share of total number of films by production budget range, films released in 2016, selected European countries.



Source: Kanzler, 2018

Secondly, many of the producers have a vast experience in the sector, and surely have a good sense of what investors and broadcasters are willing to spend. Independent producers presumably have commercial incentives to end up at a price for the work that is close to the maximum of what can be funded by the combination of subsidies, tax breaks, and outside investments; otherwise, they are “leaving money on the table”. Depending on their ability to profit from the work, they might also be sacrificing potential revenue if they think that a more expensive and therefore higher quality work is likely to earn more in cinemas and in other forms of distribution. This suggests that any bunching of proposed production costs, assuming that it exists, is not a result of costs that are inherently close to the funding limit, but is rather a rational response on the part of studios or independent producers to prior knowledge of what the funders are likely to be willing to invest.

Thirdly, the tacit assumption of take-it-or-leave-it offers is highly implausible. It is far more likely that the discussion does not instantly end after the first offer if the difference between the two positions is within limits. In most business discussions, if the negotiating positions are not hopelessly far apart, both parties would sit down and try to work something out.

Our understanding is that a European producer who has a work in mind initially applies for funding from film subsidy authorities at national level or perhaps elsewhere, identifies the likely level of public funding, and then looks for a broadcaster or a group of investors willing to fund the rest. This can be a complex negotiation that can sometimes take years to complete. This once again suggests a

flexible process that is unlikely to have the rigidities implicit in the theoretical model put forward in the Oxera and O&O (2016) study.²⁰⁶

The point of all this is that, if potential productions are offered at prices close to greenlighting thresholds, this is not a mere coincidence. Rather, *it is an expected outcome of the interplay between producers and those who invest in the works. The producers design their works so as to hit the price points that they understand to be required, and the negotiation process corrects for any errors.*

This further implies that the level of works should adjust fluidly up or down if the willingness of funders increases or if the cost of production declines. To the extent that multiplier effects are present, they should not be unique to changes in Geo-blocking rules; rather, one would expect that they would already be visible in any changes in expected revenues to the distribution portion of the audiovisual sector in the EU, either up or down. There is strong reason to believe that this is already happening, and this tends to be confirmed by actual data from 2014-2017 where observed multiplier effects are far smaller than those suggested in Oxera and O&O (2016).

Production costs have in fact not been constant, so it is reasonable to consider how the corresponding change in profitability has interacted with the level of production of audiovisual works in Europe. Digitisation has been driving down unit costs for both production and distribution of audiovisual content. Waldfogel (2016) argues that production, distribution and promotion all benefit massively from this change. For production, the gains come mainly from digital cameras and related technology. For distribution, the shift from physical distribution to digital distribution to theatres has likewise been revolutionary, as has the emergence of platforms such as Netflix and Amazon Prime. For promotion, consumers can now use the web to locate works of interest that are in the “long tail” of the distribution, and that otherwise never would have achieved large-scale cinema distribution.²⁰⁷

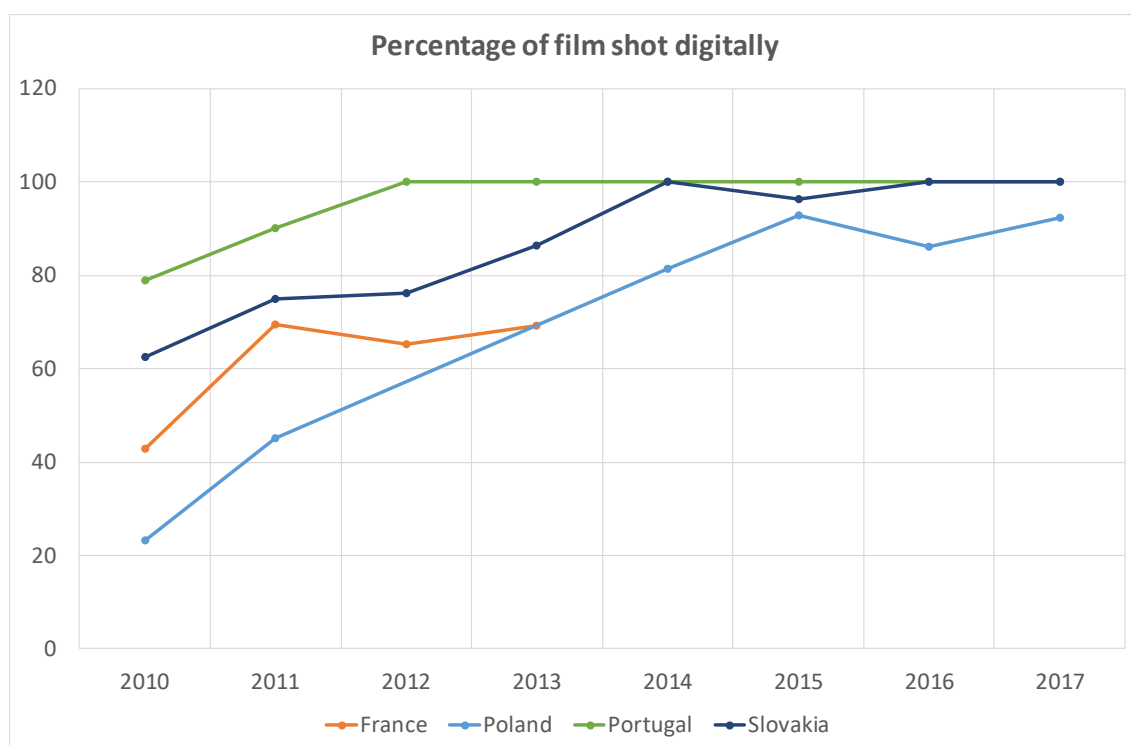
Empirically, it is clear that digitalisation has increased over the past few years (see for instance Figure 55). Unfortunately, the dataset employed for Figure 55 covers the fraction of films shot digitally (a key aspect of the digital transformation) for only a small number of countries. It is fair to say, however, that digitisation has transformed the sector. Waldfogel (2016) went on to argue that the number of films produced in the United States has expanded enormously in recent years thanks to these technological changes. Figure 56 makes clear that the growth in the production of

²⁰⁶ For insights into the greenlighting process albeit in an earlier day, see: Peter S. Grant and Chris Wood (2004), *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, Douglas & McIntyre, especially Chapter 4. The process in Europe entails a far greater focus on public funding than it does in North America, which is the main focus of the book.

²⁰⁷ Joel Waldfogel (2015), *Cinematic Explosion: New Products, Unpredictability, and Realized Quality in the Digital Era*.

national films is a phenomenon that is not confined to the USA.²⁰⁸ It is clear that both digitisation and the number of national films produced per year are moving in the same direction, and it seems logical to assume that digitisation drives down costs and thus increases the willingness to invest in audiovisual works, resulting in greater production; we caution, however, that a causal linkage is only suggested, not demonstrated.

Figure 55: Percentage of films shot digitally, selected EU Member States (2012 - 2017)

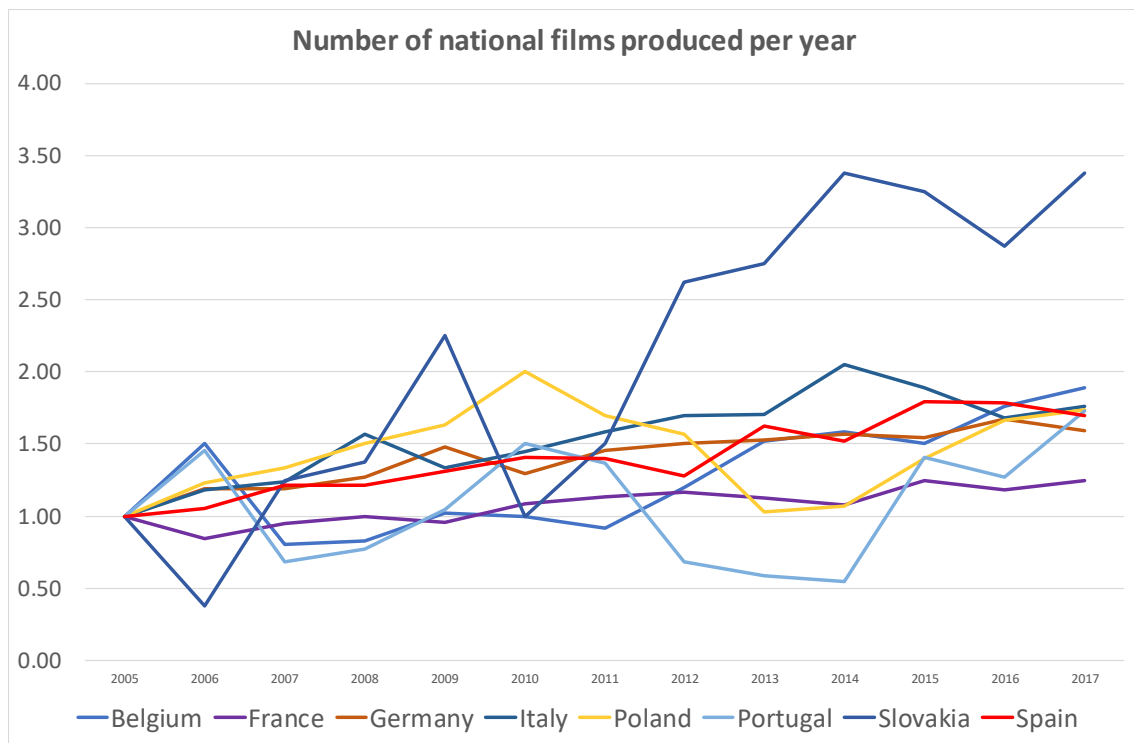


Source: UNESCO Institute for Statistics (UIS) database, own calculations²⁰⁹

²⁰⁸ In contrast to the overall trend, the number of films produced in the EU in 2017 was 3.8% lower than in 2016 due to a decline in the number of fiction films. Investment in film production declined, as did film budgets. The overall upwards trend is nonetheless clear. See European Audiovisual Library (2019), "Yearbook 2018/2019: Key Trends", p. 10.

²⁰⁹ For a data dictionary and for background, see <http://data.uis.unesco.org/>.

Figure 56: Number of national films released per year, selected EU Member States, 2005-2017



Source: UNESCO Institute for Statistics (UIS) database, own calculations²¹⁰

In fact, a change in the Geo-blocking Regulation and related instruments might perhaps be expected to change the level of production by a percentage that is *considerably less* than the percentage by which SVoD revenues are reduced, because SVoD revenues represent only a small fraction of the revenues that investors could expect to earn today. SVoD is growing rapidly, but it represents a small share of end-user audiovisual revenues today (see Section 5.4.1).

Incidentally, the reduced costs thanks to technological improvements have further implications. In Sections 5.4.5.2 and 5.4.5.3, we noted that the changes in the sector in Scenarios 1 and 2 might well lead to increased revenues once consumers become accustomed to the possibility of ordering SVoD cross-border, despite reduced prices, thanks to the presumed high price elasticity of demand. We also noted that higher revenues did not necessarily imply greater profitability, as this depends not only on prices, but also on costs.

These arguments do not preclude a multiplier great than 1.0, but they suggest that a multiplier as great as that put forward in Oxera and O&O (2016) is highly unlikely.

²¹⁰ For a data dictionary and for background, see <http://data.uis.unesco.org/>.

5.5.2.2 Multiplier effects from an empirical perspective

As noted in Section 5.5.2.1, to the extent that multiplier effects exist, one should expect that they would already be visible in response to any change in revenues (and thus *ceteris paribus* in the expected profitability) of the portion of the audiovisual sector that serves end-users, either up or down, and irrespective of the cause.²¹¹

With that in mind, in this section we consider on a quantitative basis, based on recent historical data, the degree to which an increase or decline in revenues for audiovisual products and services for end-users has been associated with a corresponding increases in (1) revenues allocated upstream to production of audiovisual content, and (2) the number of feature films produced in the EU-28. In this context, *downstream* services are closer to consumers, while *upstream* services relate to the “raw materials” used to generate the ultimate end products, which in this case is the audiovisual content itself.

The sources of data employed are:

- For **end-user revenues** to the audiovisual sector, data provided by the European Audiovisual Observatory and used extensively in Section 5.4.1;
- For **revenues attributable to the production (and post-production) of audiovisual content**, *NACE data* collected by national statistical authorities and made available by Eurostat; and
- For the number of films produced, data on the *total number of national feature films* produced as provided by the UNESCO Institute for Statistics (UIS) database.²¹²

Eurostat maintains an extensive database of data corresponding roughly to revenues, gross value added (GVA), profits and number of enterprises by NACE code (the European refinement of the UN’s ISIC classification scheme). By construction, the national statistical agencies are to allocate revenue to one and only one NACE code. The overall mapping for audiovisual works is complex – there are separate categories not only for production and post-production of audiovisual works, but also for projection (in theatres), distribution (to theatres), television broadcasting, wholesale trade in DVDs and Blu-ray and such, retail trade in the same, and also sales of the same in stalls and at fairs. We rely on only two of these categories, each of which is reasonably purely for purposes of the analysis here, and in each case base the analysis on turnover (in millions of euro):

- Motion picture, video and television programme *production* activities; and
- Motion picture, video and television programme *post-production* activities.

²¹¹ In addressing the impact of an extension of the Geo-blocking Regulation, Oxera and O&O (2016) identify several contributory factors, not just price erosion at consumer retail level. However, if there is little impact on retail revenues, as appears to be the case based on the analysis in Section 5.4.5.2 and elsewhere in this chapter, then the impact of e.g. loss of exclusivity on the studios cannot be great.

²¹² For a data dictionary and for background, see <http://data.uis.unesco.org/>.

The first of these is defined as “production of motion pictures, videos, television programmes (television series, documentaries, etc.), or television advertisements”. The second is defined as “post-production activities such as editing, film/tape transfers, titling, subtitling, credits, closed captioning, computer-produced graphics, animation and special effects, developing and processing motion picture film, as well as activities of motion picture film laboratories and activities of special laboratories for animated films”.²¹³

Using these data sources, the relationship between overall end-user revenues for the EU-28, production revenues (including post-production) for the EU-28 and also for comparison for the EU-27_2020, and the number of films produced for the EU-28 over the years 2014-2018 is as shown in Figure 57. Unsurprisingly, production and post-production revenues are less than the end revenues that ultimately drive them, and appear to be parallel to them in a linear relationship. The number of national feature films likewise appear to be in a predictable linear relationship with overall sector end revenues, as expected (but bearing in mind that sector revenues enable many forms of audiovisual content production, not just national feature films).

A simple linear regression finds that each additional million euro over the period 2014-2018 corresponded to an additional 1.7 million euro of investment in production or post-production of audiovisual works, and to the production of two additional feature films. The regression results tend to support the visually good fit of the data – even though there are only four data points, the coefficients of determination (r^2) are 0.82 and 0.73, respectively (although the confidence interval is rather wide). As always, correlation does not ensure causation, but it is not unreasonable to assume that greater revenues help to drive greater investment, and conversely that any reduction in revenues might drive reduced investment.

Interestingly, fully 50% of the increase in investment over those four years was in the UK, which is no longer an EU Member State and may be no longer of direct interest in the future. EU-28 audiovisual revenues from end-users increased by EUR 6,522 million, EU-28 production budgets by EUR 12,208 million, and EU-27_2020 production budgets by EUR 6,126 million over the period 2014-2017. UK revenues represented 33.4% to 37.2% of EU-28 revenues over those years, but UK production budgets represent 50.2% of the increase over those years. This means that an over-proportionate share of the increase went to the UK, implying also that the response in EU-27_2020 countries *was less than 1.7 for those years*. (Visually, the slope of the green line in Figure 57 is similar to that of the light blue line at the top. The slope of the yellow line is greater than either.)

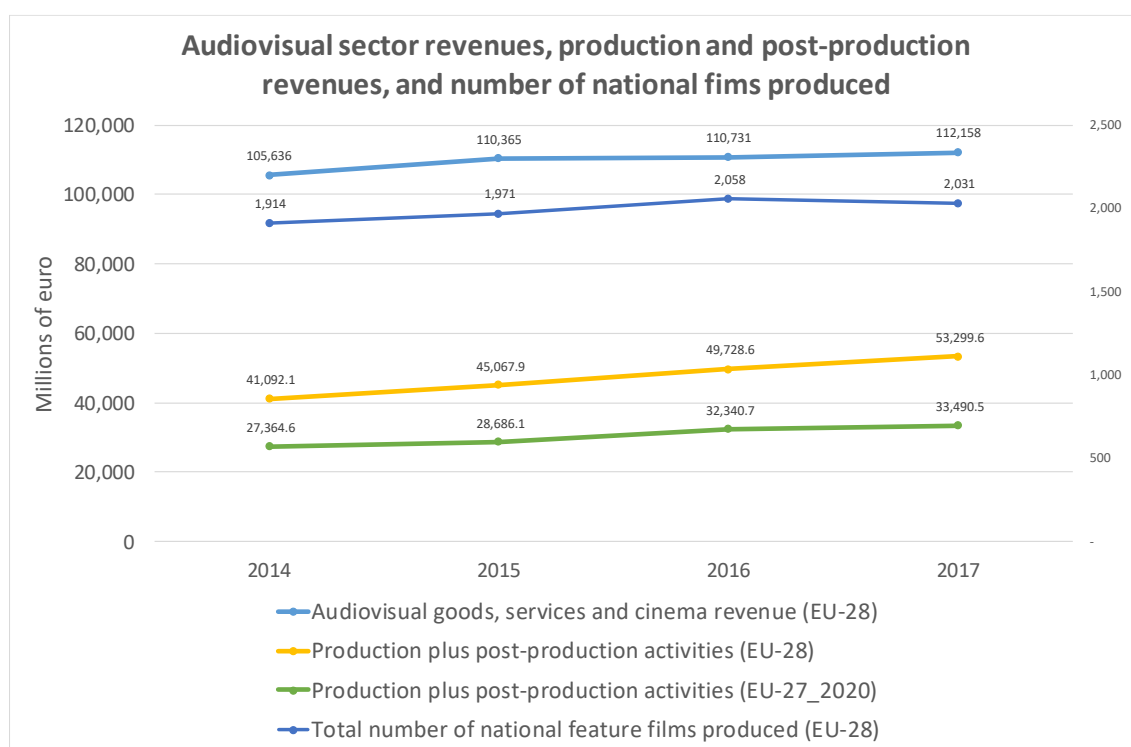
How that would play out going forward is highly speculative in light of various uncertainties over the future relationship with the UK. Moreover, the balance of

²¹³ Eurostat (2008), “NACE Statistical classification of economic activities in the European Community”.

production between the EU-27_2020 and the UK might well shift in ways that are not yet predictable once the relationships between the EU-27_2020 and the UK settle into new patterns.

That the increased revenues corresponded to even greater investment in production over the period 2014-2017 is a striking result. That it is greater than 1.0 (hence particularly sensitive to end-user revenue trends) is in line with Oxera and O&O (2016), but it is far lower than the factor of 3 to 8 predicted in that study.

Figure 57: Audiovisual sector revenues, production and post-production revenues, and number of national films produced



Sources: European Audiovisual Laboratory, Eurostat NACE, UNESCO Institute for Statistics (UIS), own calculations

5.5.3 Changes in the flow of revenue within the audiovisual sector

The welfare analysis in Section 5.4.5.3 addresses flows of money between consumers and industry players active in the audiovisual sector, but it does not address changes in the flow of money within the audiovisual sector. In the recent past, it is likely that the producers of audiovisual media had strong bargaining power and pricing power vis-à-vis the distributors, enabling the producers of works to capture a large portion of the economic surplus associated with the works. The funding model in the recent past can be presumed to rely on this flow of revenue. With the rise of large platforms like Amazon, Netflix and now Disney that both produce and distribute works, pricing power is probably already shifting in their favour, possibly reducing the pricing power of studios that are not also distributors.

To the extent that less money is passing through from distributors to producers, there should be less funding for new production. To the extent that integrated firms such as Netflix, Amazon and Disney are selling their own productions, however, they are insulated from any changes.

In our interviews and in some of the literature, this is expressed as a concern over possible loss of territorial exclusivity. It is well established that the studios benefit substantially by being able to price differently in different territories.²¹⁴ We know of no hard data on revenue flows within the sector, but it is possible to make qualitative assessments.

To date, the flow of revenues into film production and post-production appears to be growing slightly faster than revenues to all distribution channels to end-users (see Section 5.5.2.2 and especially Figure 57).

Scenario 1 should have no impact at all on these relationships, so far as we can see. It only obliges distributors to respond to passive sales requests for works for which they already have rights. It does not alter the balance between producers and distributors in any fundamental way.

Under **Scenario 2**, producers would still be able to licence their films to distributors with full territorial exclusivity regarding active sales (meaning that a distributor would enjoy full exclusivity in one territory for active sales). But the producers would not be able to exclude the competition from distributors in other Member States through cross-border passive sales. However, in a passive sale scenario, distributors in other Member States would not be able to actively promote or advertise the film to attract consumers in other territories. These restrictions are substantial. As one of our interviewees observed, a Latvian audiovisual work is unlikely to achieve much in the way of sales in France without active promotion (for more details, see Section 3.2.2.4).

Consistent with our approach throughout this chapter, we consider it impractical to speculate on how market players in the sector would respond to legislative changes to implement Scenario 1 or Scenario 2. This is particularly true for relationships between content producers and content distributors, and especially so in the light of large platforms such as Netflix, Amazon and Disney that have already changed, and will continue to change, the nature of these relationships in important ways.

5.6 Overall summary for the audiovisual sector

Below we present the key overall findings for the audiovisual sector. The various limitations and assumptions influencing these findings and in the report as a whole are addressed in Section 2.5.

²¹⁴ Peter S. Grant and Chris Wood (2004), *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, Douglas & McIntyre.

- An extension of the Geo-blocking Regulation under Scenario 2 could have a significant positive impact on audiovisual content variety, potentially unlocking many items for consumers, especially in currently underserved Member States (at least in the short term). However, an extension of the Geo-blocking Regulation may also have complex implications for the European audiovisual sector.
- We have made an estimate of the impacts on consumers and on the audiovisual sector firms that directly serve them of extending geo-blocking obligations on SVoD services in line with Scenario 1 or Scenario 2. We present the main results here, followed by the numerous limitations to which the estimates are subject.
- On the basis of our survey results for eight Member States and additional data for Netflix Prime, Amazon Prime and Mubi, and using the van Westendorp Price Sensitivity Meter (PSM) methodology, we estimate that SVoD average transaction revenues would decline by some 8% (i.e. between 7.5% and 8.6%) for the three services under Scenarios 1 or 2 based solely on consumers switching to less expensive services cross-border, and ignoring new subscribers who seek access to broader or different content.
- Based on survey responses for consumers who do not yet subscribe to SVoD, we anticipate an increase of a bit more than 4% (i.e. between 3.5% and 5.4%) in the number of SVoD subscribers to the sampled services as a response to lower prices for the three services under the same assumptions. This is smaller than we would have expected based on most of the typical estimates of price elasticity of demand for audiovisual services, but it is in line with the lowest and most recent of the estimates of PED; it is thus a conservative estimate.
- Under the same conservative assumptions, and still ignoring new users who subscribe in order to gain access to more or different content, we estimate that overall SVoD revenue for the three services is likely to decline by about 4% (i.e. between 3.7% and 4.7%) under Scenarios 1 and 2. This reflects the combined effect of effectively lower prices achieved cross-border, together with new subscribers who join due to the lower prices.
- Under Scenario 2, new users who subscribe to gain access to broader catalogues or catalogues with different content could add up to an additional 8.8% to SVoD sector revenues. The combined effect of these switchers together with the price switchers suggests that implementing Scenario 2 should have a small positive net impact on end-user revenues to the sector.
- SVoD sector revenues represented only 3.3% of total audiovisual sector revenues for services to end-user in 2017, although the share of revenues is growing. We have provided plausible projections of SVoD growth which suggest that revenue in 2023 will be nearly twice as great as it was in 2018 (then EUR 5.4 billion). At that point, it might represent some 22% of all audiovisual revenues from end-users.
- Dynamic impacts on financing and production of audiovisual content due to reduction of revenues are likely, due in part to the peculiarities of audiovisual

investments and pre-sales of rights, but there is room to debate the magnitude of these effects. An influential previous study, Oxera and O&O (2016), claimed that 'the distribution of margins between the different films [proposed for production] tends not to be uniform, but instead exhibits certain 'lumpiness', with a number of films falling close to the expected green-lighting margins.' On that basis, they estimated an 'approximate multiplier of output reduction to producer revenue reduction' ranging from 3 to 8. It is reasonable to expect the two to move in the same direction, but they provided minimal substantiation for these large multipliers. One should reasonably expect that any multipliers would already apply to any factors that either raise or lower the expected level of EU end-user audiovisual sector revenues, but such large multipliers seem to be empirically inconsistent with historical trends over the past few years. Empirically, the actual EU-28 revenues for production and post-production have increased 1.7 times as fast as overall revenues from end-users for audiovisual works from 2014-2017, suggesting that a modest multiplier may be present, but that a multiplier of from 3 to 8 is implausibly high.

- These estimates are subject to numerous **limitations**. Among them:
 - These estimates reflect relatively simple, static modelling. Many dynamic effects are not considered. Notably, the reaction of market players in the audiovisual sector to the change would be highly speculative, and has not been modelled.
 - Only SVoD has been modelled, not TVoD (which is smaller in revenue terms, and growing more slowly). TVoD might show different properties in some cases, for example as regards demand for high-value works, either because consumers seek a lower price or because they are not yet available in all Member States.
 - We have not separately modelled sports. Subscriptions to high value sport events may have different demand characteristics, and cross-border price differences can be large. Impacts might consequently be very different from those that we have modelled. Low viewership events, by contrast, might struggle to get air time and might possibly benefit substantially from greater cross-border visibility, but we have not modelled this.
 - Cross-service substitution effects have not been quantitatively modelled. SVoD presumably substitutes for pay-TV, while TVoD presumably substitutes for the declining sales of DVDs and Blu-rays, and both SVoD and TVoD probably substitute to at least some extent for other forms of audiovisual content distribution. No reliable data on economic cross-elasticities is available to support modelling.
 - Our complete model can provide estimation of both price and variety effects for eight reasonably representative countries and three major SVoD providers. Since the three represent a substantial fraction of the SVoD market, and likely set effective standards for the rest, extrapolating those results to SVoD in the EU as a whole is probably

not too far off the mark as regards *average* effects on the SVoD market. However impact on individual SVoD providers, and in individual Member States, might be very different from the average results.

- Our survey data allow us to distinguish among the eight Member States selected, but are not sufficient to enable us to make statements about the impact on consumers and service providers on a Member State by Member State basis. It is impractical to do a country-by-country analysis for SVoD due to lack of granular data, but a similar assessment for cinema (Aguiar and Waldfogel, 2019) is indicative. In the event of an elimination of all cross-border barriers (which is broader than the scenarios considered in this study), revenues for EU film producers could be expected to grow by some 11% compared to the current situation, while revenues for US film producers could be expected to decline by some 1.8% due to more effective competition from EU producers. In terms of sector revenues, small EU Member States would tend to achieve high gains because elimination of barriers increases the availability of their works to a greater degree than for larger Member States, in general, but with some exceptions. Producers in some larger or higher production countries such as France and Italy could experience loss of revenues due to increased competition. Consumers in all countries would gain, but consumers in smaller countries would tend to gain more in general.
- The possible impact of language differentiation (and of the appeal of different language) is not modelled quantitatively in detail, as data on overlap of the different catalogues does not enable us to identify whether different language versions are available, and if so, how many. The possible impact on demand of different language choices available in case of cross-border access is however generally captured in the willingness to pay analysed in the consumer survey.
- Smaller SVoD providers, especially any that operate in only a single Member State, might be negatively impacted (even if average revenue impacts are positive or are only slightly negative). The model however does not quantify this.

6 Impacts on non-audiovisual sectors (music)

This section addresses the impacts of the potential expansion of the scope of the Geo-blocking Regulation to include online services giving access to copyright-protected content in the music sector. Firstly, a static analysis of the sector and its current characteristics is presented, followed by an overview of literature on geo-blocking and music services and the dynamic analysis of expected impacts.

6.1 Analysis of the sector

This Section presents a static analysis of the music sector at present to act as a background for the impact analysis in the next Section. Firstly, the economic importance and business models used in the sector are discussed, followed by the licensing models.

6.1.1 Economic importance and business models used in the sector

Table 27 presents an overview of the key characteristics of the music sector on the EU level.

Table 27: Key characteristics of the music sector (NACE code J592) in 2016²¹⁵

	EU28	EU27 2020
Number of enterprises	26,979	23,745
Persons employed	45,000	35,000
Turnover (EUR million)	9,690	6,750
Value added (EUR million)	4,450	2,920
Ratio value added/turnover	0.46	0.43
Average company size (employees)	1.7	1.5
Average turnover per company (EUR)	359,168	284,270
Average value added per company (EUR)	164,943	122,973
Average turnover per person employed (EUR)	215,333	284,270
Average value added per person employed (EUR)	98,889	83,429

Source: Eurostat [sbs_na_1a_se_r2]

The music is the second biggest of the sectors covered. The most recent figures which are comparable across all indicators and countries on Eurostat are from 2016. In terms of turnover, the sector is comparable to, for instance, activities relating to camping grounds, recreational vehicle parks and trailer parks and comprises 0.04% of the total services economy.²¹⁶ Regarding the size of companies in the sector, the average company size in employees was 1.5 in 2016. In addition, the Independent Music Companies Association (IMPALA) reports that 99% of the music businesses in Europe are micro, small or medium sized enterprises, contributing to 80% of the sector's jobs. However, SMEs' cumulative market shares in Europe amount to less than 20%.²¹⁷

²¹⁵ Data is not available for Malta.

²¹⁶ Compared to numbers from Eurostat [sbs_na_1a_se_r2].

²¹⁷ <https://www.impalamusic.org/node/9>

In comparison and to present more recent figures, data from the International Federation of the Phonographic Industry (IFPI) suggest that, in 2018, the global recorded music market grew by 9.7%. This was the fourth consecutive year of global growth and the highest growth rate since the IFPI began tracking the market in 1997. This growth was predominantly driven by a 32.9% rise in paid streaming that now accounts for 37% of total revenue.²¹⁸ Europe posted modest growth (+0.1%) in 2018, with a varied picture for countries across the region. There was a stronger growth in markets such as Austria (+20.0%) and Ireland (+7.5%) and a significant growth in some of the Nordic markets, with Sweden and Norway growing 2.8% and 1.7% respectively. Germany was the only top 10 European market to see a decline in revenues (-9.9%), partly due to its continued transition away from a physical-led market. Overall, paid streaming in Europe rose by 29.2%, while physical revenues fell by 19.4% and downloads by 24.3%. Performance rights revenue for the region dropped by 6.7%, the steepest decline in this area of any region, contributing to the territory's overall slower growth.²¹⁹

Regarding the importance of streaming services in these developments, streaming grew in Europe by 27.5% in 2018. The revenues from these in 2018 represented 58.9% of total sales in the European recorded music market, a considerable increase from 47.2% in 2017: in Europe, paid streaming revenues represent 58.9% of the turnover of the sector, while worldwide, these streaming revenues account for 37% of the global turnover of the music industry.

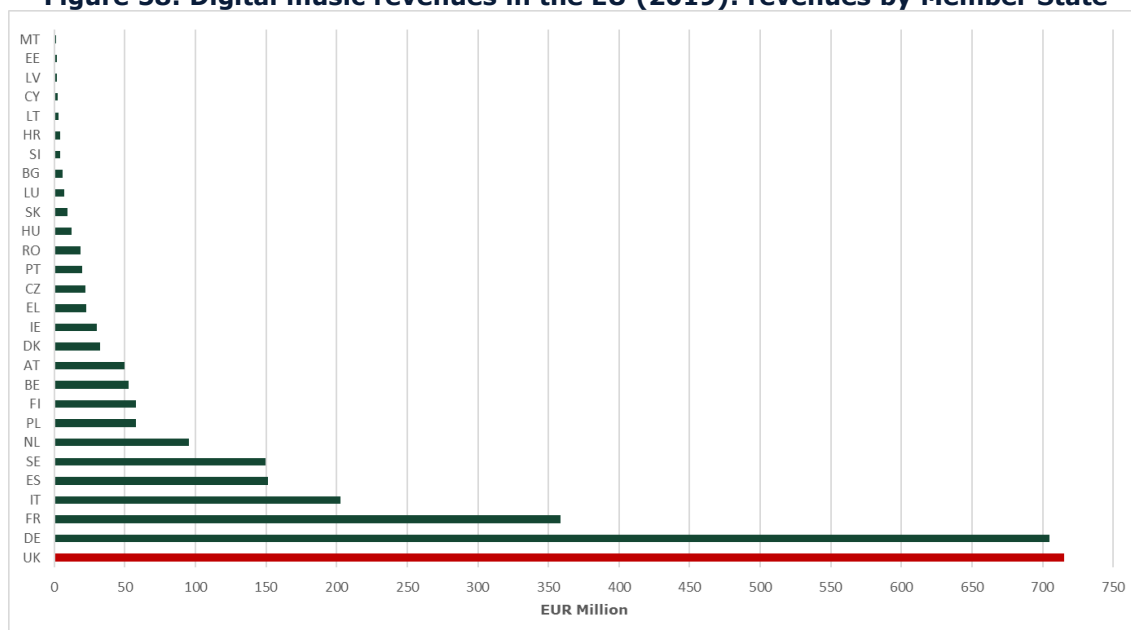
More than half of all sales revenue came from subscriptions to streaming services such as Spotify Premium, Apple Music, and Deezer Premium. Overall sales growth was tempered by the transition in some of the largest markets from sales of physical content and digital downloads to streaming.²²⁰ Data from Statista's Digital Market Outlook show the weight of the different Member States in the total forecasted revenues for 2019 in the EU28 for the digital music market (Figure 58).

²¹⁸ IFPI (2019): Global Music Report 2019. Available at: <https://www.ifpi.org/news/IFPI-GLOBAL-MUSIC-REPORT-2019>.

²¹⁹ IFPI (2019): Global Music Report 2019. Available at: <https://www.ifpi.org/news/IFPI-GLOBAL-MUSIC-REPORT-2019>.

²²⁰ IFPI (2019): Global Music Report 2019. Available at: <https://www.ifpi.org/news/IFPI-GLOBAL-MUSIC-REPORT-2019>.

Figure 58: Digital music revenues in the EU (2019): revenues by Member State



Source: Own calculation based on Statista's Digital Market Outlook

Although the music industry has been facing a rapidly changing technological environment for decades, it has always managed to adapt. In fact, technological innovations have only had a limited impact on the composition of the value chain. By repackaging music into new formats, like subsequently the audio cassette, CD, DVD, downloads and now streaming, the (recorded) music industry has actually benefited from these innovations, selling the same product to the same audience, but in a different container, and winning new acolytes along the way.²²¹ This is notwithstanding the fact that companies have encountered losses down the road and there are still aspects of vulnerability concerning the new digitally driven growth. Apart from the difference that may exist in the level of revenues earned in the pre-digital era and now, there is an issue of sustainability of the present model.

The industry of music publishing is largely a vertically-integrated business sector, which is dominated by large companies that have managed to incorporate other companies controlling the key channels and value links in the network, the so-called majors, which are multinational conglomerates specialised in the areas of marketing, financing and distribution and focus mainly on mainstream and international acts.²²² A logical consequence of this is that the music industry suffers from a high concentration.²²³ According to *Music & Copyright*, in 2015 the three major labels had a combined share of 73,2% of the worldwide music market. Universal Music was the

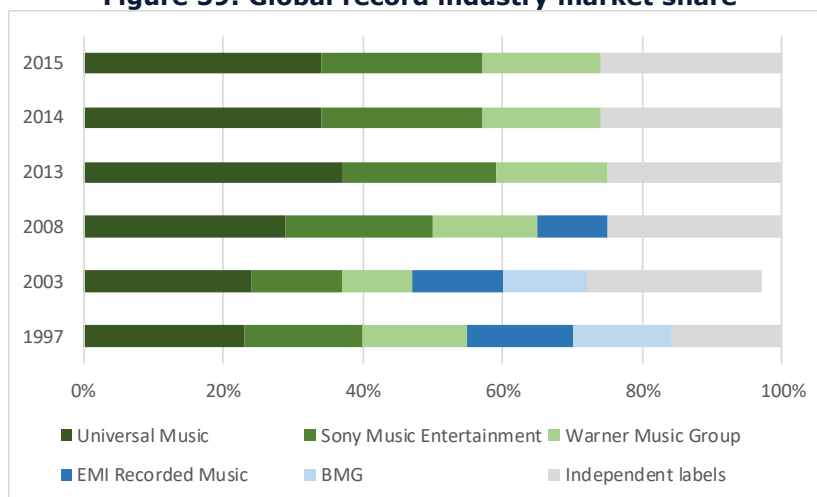
²²¹ The Music Industry in the Dawn of the 21st Century - Networking for a thriving music industry. Kunnskapsverket, rapport 05/2017 Available at: https://kunnskapsverket.org/sites/default/files/reports/the_music_industry_ricardo_alvarez_2017.pdf

²²² Graham et al, 2004.

²²³ Leyshon, 2001.

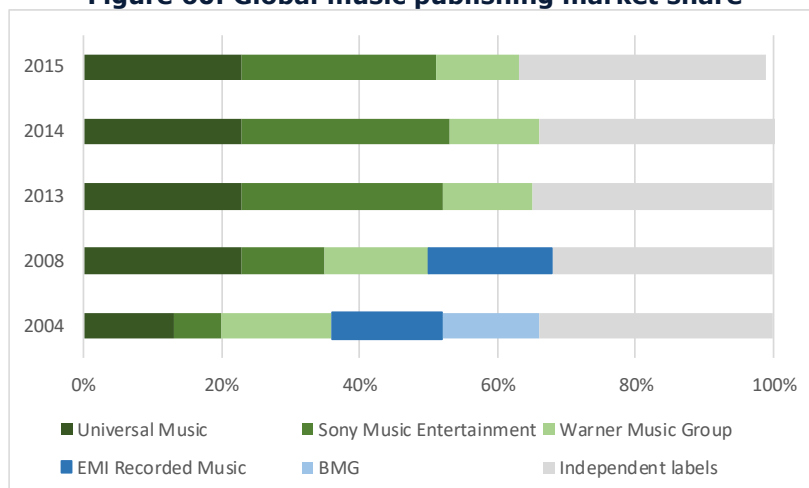
biggest label in 2015 with a 33,5% share of the combined physical and digital recorded music trade revenue, Sony Music Entertainment was the second-largest music company with a market share of 22.6%, while Warner Music's share was 17,1%. On the other hand, there is a large number of independent (indie) record companies with a combined share of the physical/digital revenue of 26,8% in 2015.²²⁴ To further illustrate this, Figure 59 presents the market shares on the global record industry.²²⁵ Figure 60 presents instead the market share on the global music publishing market.

Figure 59: Global record industry market share



Source: *The Music Industry in the Dawn of the 21st Century - Networking for a thriving music industry.*
Kunnskapsverket, rapport 05/2017

Figure 60: Global music publishing market share



Source: *The Music Industry in the Dawn of the 21st Century - Networking for a thriving music industry.*
Kunnskapsverket, rapport 05/2017

²²⁴ The Music Industry in the Dawn of the 21st Century - Networking for a thriving music industry. Kunnskapsverket, rapport 05/2017 Available at: https://kunnskapsverket.org/sites/default/files/reports/the_music_industry_ricardo_alvarez_2017.pdf

²²⁵ To complement this graph, it should be noted that parts of BMG and EMI have been acquired by Sony Music Entertainment.

Business models in the music industry have transformed significantly in recent years, moving from the concept of music as something integrated into a traditional physical carrier (on media such as cassette tapes, CDs, vinyl) to music as a service available via digital formats. According to the latest Global Music Report published by the International Federation of the Phonographic Industry (IFPI), this transition away from a physical-led market is still ongoing.²²⁶ In 2018, paid streaming in Europe increased by 29.2% compared to the previous year, while physical revenues fell by 19.4%. As stated by a European-level association from the music sector during the fieldwork interviews, 2018 was the first year for distributors where digital revenues on the EU market exceeded revenues from the physical market. Notably, the music sector is vertically-integrated on the publishing side of the industry, whereas the distribution part of the value chain is populated by distributors (physical and digital) which are independent from the global labels.

This transformation in music consumption has been driven not only by the natural process of technological change, but notably also by the compelling need for the music industry to fight the boom of online piracy in the early 2000s.²²⁷ The increasing number of user-friendly file sharing services which allowed users worldwide to illegally download and share music without any compensation for the rightholders, pushed the industry to go digital in order to safeguard it. In this sense, Apple's iTunes Music Store (launched in 2003) has been the pioneering online service which attracted consumers offering the opportunity to purchase music at less than EUR 1 per track.²²⁸ Nowadays, three different business models can be distinguished in the music industry:

1. *Single-song download*: this system offers the opportunity to consumers to purchase single songs for download and offline usage, unbundled from the albums and without requiring signing up for a monthly subscription. Apple iTunes is still one of the major players adopting this model, which tends to have uniform pricing as a common feature. This means that almost every song in the catalogue is sold at the same price or in a predefined price range: typically, EUR 0.69, EUR 0.99 or EUR 1.29 for iTunes, while albums on average cost EUR 9.99. This ensures that consumers have access to a transparent and easy pricing structure;²²⁹
2. *Freemium*: this model has been made famous by streaming platforms like Spotify and Deezer, which are the two most popular platforms based on this formula where two or more different service versions are available: the most basic version is free, while the more advanced version is offered on a

²²⁶ <https://www.ifpi.org/downloads/GMR2019.pdf>

²²⁷ Wikström (2014). The Music Industry in an Age of Digital Distribution. Available at: <https://www.bbvaopenmind.com/wp-content/uploads/2014/04/BBVA-OpenMind-The-Music-Industry-in-an-Age-of-Digital-Distribution-Patrik-Wikstrom.pdf>.

²²⁸ Wikström (2014). The Music Industry in an Age of Digital Distribution. Available at: <https://www.bbvaopenmind.com/wp-content/uploads/2014/04/BBVA-OpenMind-The-Music-Industry-in-an-Age-of-Digital-Distribution-Patrik-Wikstrom.pdf>.

²²⁹ Wikström (2010). The Music Industry: Music in the Cloud.

subscription basis.²³⁰ As expressed by individual companies offering such services during interviews, the profit margin for the free version is often very low, or even negative, and it is expected that the subscription fees for the paid version would generate enough revenues to make the service profitable. Typically, the free version offers limited features like shuffle mode (i.e. the users of the service cannot listen to the desired song on-demand, they can just pick playlists and albums and play at random the songs included in these wider sets, they face advertising placement during the playing of songs or they only have the opportunity to listen to music in streaming online without the option to download songs for offline reproduction). Upgrading the service to the premium version, requires the payment of a monthly or annual fee and may unlock additional features, in some cases also related to a higher quality of the music files played.

3. *Subscription based*: this model is essentially identical to the premium option of the freemium service. Users have access to the entire catalogue of songs available on the platforms (usually both for online and offline consumption) upon the payment of a subscription fee. The difference with freemium services is that this kind of subscription-based services does not offer any content for free. Alongside the bigger worldwide players such as Amazon Prime Music, Google Play Music and Apple Music, this subscription-based model is also offered by smaller, often national providers: for example, some telecommunication operators have bundles where an extensive music catalogue is included in the internet connection package (e.g. TIM Music in Italy, run by the incumbent telecom operator in the Italian market).

A fourth business model can be identified, i.e. the free advertising-based model mixing AV and music content (e.g. YouTube). However, for the scope of this study, it is not integrated in the economic model (Section 6.4) due to the lack of available data for the analysis, focusing on subscription-based models.

A common feature for all the three models is that usually the access to the service is provided on all of the typical devices available on the market (PCs, Smart TVs, smartphones and tablets, using Android, iOS, Windows or other operating systems). In terms of cross-border activity, besides the biggest players mentioned in this section, smaller players tend to be operating mostly in their own country and in certain cases with some country-specific content (e.g. Balkanfolk OOD, a Bulgarian online music platform which is specialised in national folklore music).

According to Statista's Digital Market Outlook, forecasted revenues for 2019 for digital music (music downloads and streaming) amount to EUR 2.08 billion²³¹ for about 140 million of paying customers.²³² Figure 61 shows the weight of the different

²³⁰ Wikström (2010). The Music Industry: Music in the Cloud.

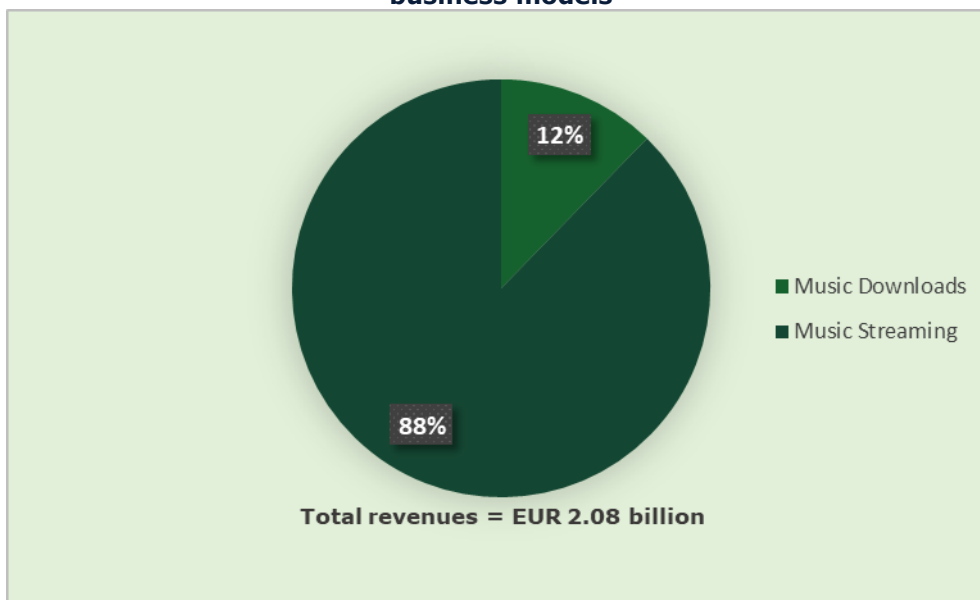
²³¹ Adding up the revenues in the UK, would increase the total turnover to EUR 2.79 billion.

²³² Own calculations, based on Statista data:

<https://www.statista.com/outlook/200/100/digital-media/worldwide>

business models in the total revenues pointing towards the huge importance of music steaming compared to music downloads.

Figure 61: Digital music revenues in the EU27_2020: market shares of the different business models



Source: Own calculation based on Statista's Digital Market Outlook

Statista's Global Consumer Survey provides a proxy of the market shares of the main providers in the digital music sector, based on a number of respondents which varies per country.²³³ Among the eight Member States of focus, Statista data for France, Germany, Italy and Poland are available and presented in the tables below.

Table 28 shows the providers with the highest number of items purchased in these four countries, based on the answers to the question, Which of these providers have you bought music downloads or streaming services from in the past 12 months?. These market shares are not turnover based (i.e. the sum of the shares does not add up to 100%), instead they have to be considered as market positions.: The percentages below only reflect the consumers' answers to the survey, in which multiple choices were possible.

²³³ <https://surveys.statista.com/surveys/7680848/150119>

Table 28: Market position of digital music purchases

Italy	Market Positions	France	Market Positions
Spotify	51%	Deezer	41%
Amazon Music	36%	Spotify	34%
YouTube Music	28%	YouTube Music	25%
iTunes	24%	Amazon Music	22%
Google Play store	22%	Apple Music	19%
Apple Music	17%	iTunes	18%
Deezer	8%	Google Play store	14%
SoundCloud	7%	Napster	7%
Tidal	6%	SoundCloud	7%
Other	5%	Fnac Jukebox	5%
Napster	4%	other	5%
Grooveshark	3%	Qobuz	2%
Rdio	2%	Tidal	1%
Germany	Market Positions	Poland	Market Positions
Amazon Music	52%	Spotify	54%
Spotify	37%	Empik	25%
iTunes	14%	Google Play store	21%
Apple Music	13%	Tidal	21%
YouTube Music	13%	iTunes	18%
Google Play store	11%	Apple Music	15%
Deezer	9%	Deezer	13%
Napster	5%	Amazon Music	10%
SoundCloud	5%	Other	4%
Other	3%		
Juke	2%		
Qobuz	2%		
Tidal	2%		

Source: Statista, based on a sample of n=2832 Digital music purchasers for France, n=3547 Digital music purchasers for Italy, n=4011 Digital music purchasers for Germany and n=1883 Digital music purchasers for Poland

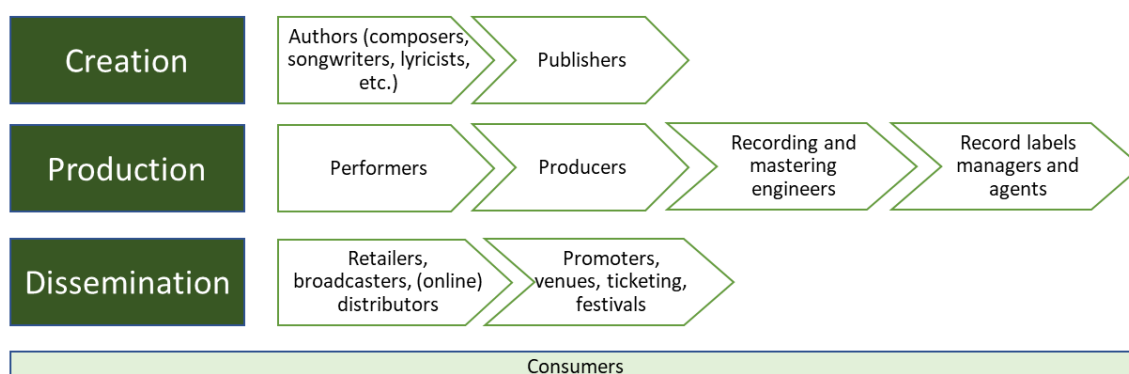
6.1.2 Licensing models

Before the digitalisation of the music industry, the vertical structure of the market for recorded music could be described as many creators supplying creative expressions to a small number of larger record labels and publishers. In turn, these produced and marketed the resulting recorded music and subsequently sold it to consumers through a fragmented retail sector. The digitalisation of the industry however has seemingly led to a new structure in which the retail segment has also become more concentrated. The change of the market structure started in 2003 when the Apple iTunes Music Store was launched. This changed the value chain of the music sector in which digital delivery, through the purchase and download of albums and individual tracks, was the new product on offer. This pushed iTunes to the forefront of the music distribution business. Since 2010, it has been the largest music

distributor in the world. Other web-based retailers have followed this trend, hoping to capitalise on the increased number of devices capable of playing music.²³⁴

When looking at the music industry and the digital technologies that have underpinned it during the last 20 years, it is obvious that the entry barriers have been significantly lowered with decreasing transaction and production costs. This has resulted in a much broader supply of music by many different players, creating countless niche markets in parallel to the traditional market. In addition, these developments have led to a move towards decentralisation, de-massification, disintermediation and personalisation.²³⁵ The figure below shows the core stakeholders of the traditional music industry value chain. However, it is important to note that behind every link in the chain there are many other players contributing value to the music industry – the broader music industry.

Figure 62: Basic value chain of the music sector



Source: Own elaboration based on: *The Music Industry in the Dawn of the 21st Century - Networking for a thriving music industry*. Kunnskapsverket, rapport 05/2017

Contractual relationships regarding licenses and rights in the music sector forms a complex issue and the practices may vary according to the business models of the different players in the value chain. Fundamentally, there is a distinction between different kinds of rights:

- mechanical rights: rights for reproduction, either physical (CDs, DVDs, records, tapes, etc.) or non-physical (including sheet music and online music)
- synchronisation rights: rights to use music (for soundtracks for films, TV shows or games)
- performing rights: rights to make music available by distributors or platforms

²³⁴ Morten Hviid; Sofia Izquierdo-Sanchez; Sabine Jacques: Digitalisation and Intermediaries in the Music Industry: The Rise of the Entrepreneur? In: scripted. Vol 15, Issue 2. 2. October 2018 Available at: https://script-ed.org/wp-content/uploads/2018/10/hviid_et_al.pdf

²³⁵ The Music Industry in the Dawn of the 21st Century - Networking for a thriving music industry. Kunnskapsverket, rapport 05/2017 Available at: https://kunnskapsverket.org/sites/default/files/reports/the_music_industry_ricardo_alvarez_2017.pdf

Typically speaking, the artists (authors and performers of music content, who may be represented by their agents) assign their copyrights to music publishers or publishing companies, based on a publishing contract. These publishers are paid by the artists to license their content and promote their content with distributors and broadcasters. The publishers then sell performing rights to distributors, such as (digital) service providers and (online) streaming platforms, based on license agreements, which happen on a non-exclusive but territorial basis permitting distribution throughout the EU (often permitting worldwide distribution also). The publishers are often also in charge of assisting the artists in monitoring where their content is being used, collecting royalties and distributing these to the artists.²³⁶

Usually publishers pay collective management organisations (CMOs) or other aggregators/collection organisations to perform (parts of) these monitoring, collection and disbursement tasks. The publishers share content metadata with the CMOs, who then match their metadata with the data from distributors, in order to calculate the exact royalty fees that distributors have to pay based on the number of times each individual song has been played. The CMOs then collect these royalty fees and distribute the money to authors, publishers and record labels.

In certain cases, artists who have not transferred their rights to publishers might deal directly with CMOs cutting out the music publishers or publishing companies, although this is usually the case for artists not popular enough to be signed by music publishers or publishing companies. It is important to note that the role of CMOs typically differs for Anglo-American repertoire and for continental repertoire.²³⁷ The record labels form the last category of stakeholders in the music sector. They typically provide the marketing and promotion for the content created by the performers who are signed with them; at least in the case of the more popular artists, lesser known artists usually have to do parts of these tasks themselves.

Record labels are involved in maintaining the brands and trademarks of the artists they represent as well as coordinating the production, manufacture, distribution, marketing, promotion, and enforcement of copyright for the recordings and music videos created under their label. Lastly, they also engage in talent scouting and development of new artists, which is also referred to as artists and repertoire or A&R. Several large companies are record labels and music publishers at the same time and

²³⁶ Europe Economics, IViR (2015), Remuneration of authors and performers for the use of their works and the fixations of their performances.

²³⁷ For instance, online services are required to obtain authors' rights from various stakeholders in the case of Anglo-American repertoire in order to legitimately use music content, because recently Right Management Organisations (RMOs) have appeared (formed by major publishers in order to manage and license the Anglo-American repertoire in the European market). However, not all rights, have been transferred to these newly formed RMOs, with the performing rights still remaining with the traditional CMOs. Furthermore, publishers forming these RMOs have only transferred mechanical rights to RMOs from the traditional CMOs in cases of multi-territorial usage (which is, however, often the case). Source: Europe Economics, IViR (2015), Remuneration of authors and performers for the use of their works and the fixations of their performances.

combine the different tasks.²³⁸ Notably, many smaller independent record labels are also active in the market, accounting for more than 20% of the revenues of the sector (see Figure 59).

At the same time, it is important to keep two things in mind. Firstly, there is also a market of independently produced (indie) music where all of the above actors are either independent from commercial organisations or where the artists have to do all these tasks themselves. Secondly, in addition to the contractual relationships described above, there are many more contractual relationships for the distribution of music with other services than digital service providers (e.g. radio stations, film productions in which the music is used, etc.).

Regarding the contractual arrangements and specifically the licensing of rights, Figure 18 coming from the COMP Sector Inquiry shows that music is among the content categories for which rights are most often licensed to a large share of EU countries: 38% of the rights agreements submitted by digital content providers are in the EU28. This may be explained as being the result of the scope of the commercial activities of certain digital content providers in these sectors. However, according to the evidence collected during the interviews with music distributors and labels, the digital content providers (e.g. Spotify and Deezer) that have rights for a number of Member States, obtain these through national-specific licenses rather than through a unique pan-EU contract. As explained in Section 6.3.1, although it is possible for music streaming services to obtain multi-territorial licenses through licensing hubs, this is not always what happens in reality (especially for smaller players active in a limited number of Member States). Among the reasons mentioned by interviewed industry stakeholders, the understanding of the needs and of characteristics of each local market are two critical elements to explain the complexity of rights' licensing.

Another relevant factor that could explain the differences in the territorial scope of licensing agreements is the interest in and consumer demand for specific content, based on cultural and linguistic differences. Figure 20 provides information on the territorial scope of licensing agreements per business model, including music as well as other AV content (however 70% of the players active in subscription-based models across all sectors retain rights only for one Member State), while Figure 21 compares the exclusivity in terms of technology and the territorial scope of the agreements (roughly 5% of the licensee from each sector have exclusive rights for 28 Member States).²³⁹

Territoriality as a concept plays a different role in the music sector compared to the audiovisual sector,. For the music sector, there is (almost) no territorial exclusivity

²³⁸ Europe Economics, IViR (2015), Remuneration of authors and performers for the use of their works and the fixations of their performances.

²³⁹ Figures 26 and 27 contain aggregate information for all the sectors, i.e. the percentages reported are not specific for music.

when the content is being licensed to distributors. Compared to the audiovisual sector, where a distributor often exclusively distributes certain content, in the music sector multiple streaming services (e.g. Spotify, Deezer, and national players) distribute the same albums and tracks within the same country. According to interviewed stakeholders, the reason for this is that the music industry can best be described as a “licensing industry” where artists and publishers benefit from their music being played as much as possible.

However, the concept of exclusivity exists in the music sector too. Each distributor, in order to obtain the rights for a certain artist, negotiates with the label retaining those rights. In general, each label is the exclusive rightholder for an artist in a certain territory. Therefore, in the music sector, “territorial exclusivity” relates to the exclusive right held by a label, rather than the distributor (as it is the case for the audiovisual sector). As explained in detail in sections 6.3.1 and 6.4, territoriality has an impact on the distributors’ pricing decisions.

6.2 Findings from the literature on geo-blocking and music content

Economic literature has dealt with the topic of music downloads in several studies. For instance, Gomez-Herrera and Martens (2015) provide empirical evidence on the extent of market segmentation in the EU, both on the supply and demand side. They measure the contribution of several drivers of market segmentation, with an in-depth analysis of the music distribution in the Apple iTunes store, the dominant provider of digital music downloads in the EU in the period under analysis.

Their results show that cross-border availability of music content in the platform is in the 73-82 per cent range. This implies that there is still some way to go to achieve the 100 per cent mark that would be expected in a truly open digital single market. The study also shows that distribution for music is clearly U-shaped. About 52 per cent of all songs in the sample and 56 per cent of all albums are available in all EU countries. From there availability quickly drops. However, at the other end of the distribution there is an upsurge again, with about 13 per cent of all song tracks and 15 per cent of albums being available in at least 3 countries.

Aguiar and Waldfogel (2014) analyse the potential impact of EU policies that aim at reducing cross-border EU trade costs and improve convergence in music availability across countries. More specifically, their study calculates the economic benefits for consumers and producers from further trade opening in digital music. They used a comprehensive dataset from Nielsen on digital music track sales in the US, Canada, 13 EU Member States, and 2 other European countries (Norway and Switzerland)²⁴⁰

²⁴⁰ “The dataset initially includes the following 16 European countries: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. However, given that Poland enters the data in 2008 only, we decided to drop it from the analysis.” (Original footnote quoted from the Aguiar and Waldfogel (2014) paper on page 5 referring to their selection of European country data as part of their analysis.)

from 2006 to 2011 to estimate a structural model of music demand. Their results showed that a European single market for music would have brought most of the benefits of frictionless global trade to both consumers and producers alike. More specifically, the benefit of the trade situation at that time (status quo), compared to a situation without music trade, for consumers would have been about EUR 300 million per year across the world (a 11.3% gain from trade). Producers would have gained EUR 85 million (a 2.8% increase), although producers in some countries would have lost more from increased competition than what they would have gained from sales in foreign markets. Worldwide liberalisation relative to the status quo would have delivered additional benefits to consumers, EUR 38 million in total for all countries (a 1.3% increase). Annual gains for European consumers would have reached a total of EUR 31 million (a 3% increase). A Europe-wide liberalisation through a single market for music, would have achieved EUR 19 million consumer welfare gains (a 1.8% increase). Effects on producers were mixed. North American producers would have experienced small benefits from worldwide frictionless trade (0.4% increase), while European would have gained on average EUR 17 million (a 1.8% increase). Under a European single market, European producers' annual gains would have reached EUR 10 million (a 1.1% increase), while the total gains to North American producers was EUR 3.7 million (a 0.17% increase). Next to some simplifications and assumptions required by the econometric approach of this paper, the main concern, given the role that music streaming services play today, is that the paper refers to a transactional digital music distribution model.

Waldfoegel (2019) focuses on music streaming services. He examines cross-border price discrimination in online music streaming services. This is a common strategy for multinational firms, including major streaming services such as Spotify and Apple Music. It is of general theoretical interest to understand the quantitative effects of country-specific pricing on revenue and welfare. To this end he calibrates a simple empirical logit model of world demand – and subscription pricing – at Spotify, using available data on monthly prices while using data on streaming volumes by country to create measures of the numbers of users. He finds that country-specific pricing raises Spotify revenue by 5.9 %, and reduces world consumer surplus by 1.0 %, compared to uniform worldwide pricing. However, country-specific pricing within Europe raises Spotify revenue in Europe by 1.1 % and increases consumer surplus by 0.3 %, compared to uniform pricing. This is explained by the fact that consumers in lower-income European countries gain more from price discrimination than consumers in higher-income countries. While the main analysis treats Spotify as a monopolist, the author also implements a duopoly model of Spotify and Apple Music using Google search volumes as proxies for Apple Music subscriptions, with similar results.

Finally, Waldfoegel, Aguiar and Gomez-Herrera (2018) observe that while the world generally embraces free trade in most products, policy makers in many countries are particularly concerned about forces that enable cross-border access to cultural products. In order to analyse this aspect, they looked to the effects that digitisation

has already brought about in this regard. Indeed digitisation – through the sale of digital music and more recently streaming – has sharply reduced the cost of trade in recorded music. Using data on pop charts, 2004-2015, as well as Spotify streaming for 2014-2015 in 18 countries, they pose the following questions: 1) how have trade frictions evolved with digitisation? 2) have consumption patterns grown more similar across countries? 3) have sales grown more concentrated in a small number of particular origin countries? 4) how have the repertoires of small and large countries (particularly the US) fared in the world market? They document declining trade frictions (e.g. declining home market shares for domestic music) over time and show that frictions are smaller for streaming vs sales of individual items. Second, they find that consumption patterns are converging across countries. Third, although consumption is converging across destinations, it is converging to a mix that is more diversified by different countries of origin. Thus, digitisation appears to level the playing field across producing countries.

6.3 Results from the field work

This section presents the evidence on the music sector collected from the fieldwork. Firstly, the interview results are discussed, followed by the consumer survey results and the results of the mystery shopping exercise.

6.3.1 Feedback from the interviews

To expand the analysis on licensing presented in Section 6.1.2, another relevant consideration on the territorial scope of the rights needs to be made, since it will play a role on the modelling of the two effects under the two scenarios. Interviewed stakeholders explained that music distributors acquire licenses on a territorial basis by licensing directly from the labels retaining the rights for the artists in their portfolio, either with aggregators of rights which play an intermediary role.

Even though pan-European or multi-territory licenses are usually available in the music sector as described in Section 6.1.2, rights are typically held by different labels for different territories. The reason for this, according to stakeholders, is that the understanding of the local market is critical for a successful entry.

In practical terms, this means that each label has an exclusive license for the territory where it is responsible for the promotion, marketing and distribution in exchange of sharing the profits with the artist. Even in the case where a label holds the rights for all European territories, the territorial exclusivity of a licence still matters as, according to industry stakeholders, it has a direct impact on the diversity of music offered to the consumer.

If the ability for music services to geo-block is lifted, the industry's claim is that the licensees would not be able to impede users, based in another country, to access the music to their service in the form of passive sales. The concern of the interviewed stakeholders is described as follows: a distributor might obtain the rights to distribute an artist's repertoire through a licensing agreement with the label retaining the rights

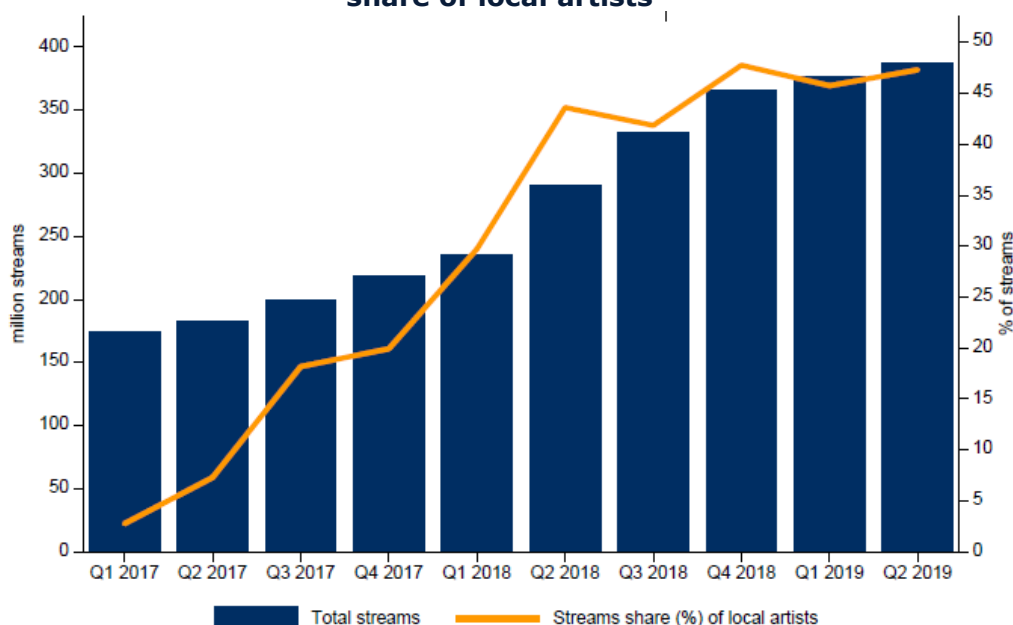
for country A, but at the same time it would be forced to answer to consumers' unsolicited requests from any other Member State; therefore the distributor would make the artist's repertoire available in countries other than country A, bypassing the territorial exclusivity of the labels retaining the rights in those other countries. How this could happen under the two different scenarios, is discussed in Section 6.4.

A point of interest raised by industry interviewees under scenario 2 is the potential impact on cultural diversity in the music sector: According to various interviewed industry stakeholders, geo-blocking supports local creation and, therefore, a diversified content. Currently, digital music services tend to tailor the content of national platforms to the taste of the national audience, which usually varies a lot. This allows the services to connect with the local fanbase while boosting the overall available offer. Moreover, geo-blocking allows for price discrimination (see a detailed explanation on price discrimination in Section 6.4).

Linked to cultural diversity is the activity of music talent scouting (A&R), that accounts for around 39% of the labels' revenues: the removal of geo-blocking under Scenario 2 could have a negative impact especially for lower income EU countries, where revenues are considerably lower compared to the bigger markets (as shown in Figure 58). In fact, stakeholders representing the music publishing industry claim that streaming services play a positive role in fostering local repertoire. As shown in the 2019 NERA's report²⁴¹ prepared for the IFPI, calculations in Poland based on Spotify's weekly charts showed that, in the last two years, the total number of streams has more than doubled and the share of streams generated by Polish artists has grown from 5% to 50% (Figure 63).

²⁴¹ NERA (2019). The possible extension of the EU Geo-Blocking Regulation: Likely impact on the creation, promotion and digital distribution of music in the EU.

Figure 63: Growth in total streams in Spotify's Top 200 chart in Poland and share of local artists



Source: NERA analysis based on weekly Spotify Top 200 chart in Poland.

Under Scenario 2, the interviewees fear that streaming services would lose customers in smaller markets, substituting them with subscribers from bigger Member States (given a high enough price sensitivity²⁴²). According to the providers, this potential increase in the increased amount of customers from the largest markets²⁴³ might ultimately limit the incentive for these services to promote and stream local artists from smaller countries. In turn, without digital platforms' appetite in delivering these artists, the investments of the labels in discovering local talent might be reduced.

It is further perceived by the interviewees that independent artists and labels (especially, micro, small and medium-size record companies, which account for 80% of new musical releases) would be the main affected parties, potentially leading to a standardisation in the music on offer. Currently if a label releases a new album by a band, it is promoted differently in each territory: while licences can be pan-European, labels need to be able to roll out targeted promotion and marketing campaigns territory by territory, in the national language. To get music fans in another country interested in an unknown artist from a different country, a consistent work of promotion with local media is needed, to try to build the profile of the artist's music. For example, artists and their label might want to give fans the opportunity to stream a complete album one week before its release, to form an opinion, even before the purchase decision. This stream might be hosted in each country by

²⁴² See Section 6.4 for a detailed analysis of consumers' sensitivity to prices.

²⁴³ As shown in Figure 58, digital music revenues from Germany and the United Kingdom already equal the sum of the revenues coming from all the other 26 Member States.

different operators: in one country by a local blog specialised in a certain music genre, in another country by a music magazine, and so on. These partners help the labels and the artists to achieve much more efficient promotion and marketing campaigns. Although it seems unlikely that, as an immediate consequence of the lift of geo-blocking, a significant cross-border consumption of a content that needs tailored marketing effort to be visible to consumers will occur, the interviewees reported that targeted media partnerships rely heavily on geo-blocking techniques or on the exclusive licenses to national labels. Interviewees consider that under Scenario 2, the required level of exclusivity of the local label would not be ensured. Passive sales, through different versions of the streaming services, would make impossible for local labels to engage in these kinds of partnerships with specialised media outlets in different markets. In their view, territorial exclusivity could no longer be offered under scenario 2, hence these media outlets might not cooperate with the label and the artists in their promotion efforts. This would subtract a source of revenue for labels, which today are made possible by national exclusivity. This outcome might be detrimental especially for the smaller or independent labels which have niche and local content in their portfolios. As a consequence of the impossibility to protect less-developed markets through price discrimination, under Scenario 2, the only artists who might be easily promoted are the big artists signed to major labels that have the financial resources and market power to be able to organise Europe-wide campaigns. The industry interviewees fear that music consumption, and ultimately the whole musical landscape, would be at danger of becoming less diverse.

Moreover, as reported by the CMOs on the impacts on licensing, in the current situation obtaining the rights on a multi-territory basis in the EEA requires licences from all the major licensing hubs and publishers, as well as a number of national CMOs. As explained before in this section, under Scenario 2, a distributor would be able to stream an artist's repertoire to any Member State, in order to answer consumers' unsolicited requests. In this case, the content would be available in any Member State, even if the distributor has a licensing agreement only with the label retaining the rights for one country.

CMOs believe that the successful business model adopted in the past by Deezer and Spotify would be hardly replicable, under Scenario 2: these two big players in the music industry started with a targeted launch in a very limited number of territories, in order to minimise their costs and focus their promotion, before aiming to expand into new territories as their user base grew. A major advantage for new start-ups is the ability to obtain rights for the global repertoire from the relevant national rightholders, in some cases via a fixed priced licence. This business strategy is considered to be hardly applicable under Scenario 2 because, according to the interviewees, the fixed fee of the licenses would increase to reflect the extended potential pan-EU scope of the rights (at least for passive sales).

According to CMOs, it is uncertain how copyright licensing practices would change. Consumers might have less transparency and certainty compared to the scenario, in

which almost every artist is available in almost all the territories: the certainty of a very high content availability across national catalogues might be diminished if multi-territorial services start to focus on mainstream content at the expenses of national artists.

CMOs also argue that, under Scenario 2, although the scenario does not impose a European-wide exploitation of the rights, this would be the *de facto* outcome (see the discussion on unsolicited consumers' requests presented earlier in this Section 6.3.1)., Echoing the concern of the other players in the music industry, CMOs explained that the likely result would be a negative impact on cultural diversity. This is because the priority for online music services launching multi-territorial services is to ensure the content the majority of consumers search for is available in the first place, while local content, which is generally of lesser interest to consumers outside of the local market, represents a lower priority. This impact would be the strongest under Scenario 2, as the access of consumers to music content from other Member States would be much bigger. As previously explained, the reason for this is that (according to interviewees) the lower price of a subscription service in certain Member States might be an important driver to switch to a foreign provider, especially considering the very high cross-catalogue availability of songs and albums. This in turn might trigger a reaction from the platform towards a higher uniform price.

The overall takeaway from NERA's report as well as the interviewees (both platforms and music publishers) conclude that the main perceived impacts would be on small and low-income countries, particularly in eastern and southern Europe. The main risks for consumers in these countries identified under Scenario 2 in the music sector are:

- an upward pressure on the monthly subscription rates (towards the price level of the higher income EU countries) damaging mostly Eastern and Southern European consumers];
- A connected risk of increased piracy in these countries; and
- A lower offer of local and independent content in addition to the standardised offer from international and mainstream artists, with negative impacts for cultural diversity.

The main comment from consumer organisations points out that in the idea of a digital single market, these barriers to cross-border access generate frustration for consumers but, generally, non-audiovisual sectors seem to be less problematic in this respect compared to the audiovisual services.

6.3.2 Findings from the consumer survey²⁴⁴

This section focuses on findings from the consumer survey on key factors that impact consumer attitudes and behaviour. It should be noted that results from this survey when it comes to cross-border access and related metrics may differ from those

²⁴⁴ All tables in this section have our own survey as a source, unless otherwise indicated.

reported in the most recent Eurobarometer Survey²⁴⁵ due to differences in the target population of the two surveys.²⁴⁶

Usage and spending

The music sector is the digital content sector where consumers are least likely to pay to access content: only 26% has paid for a subscription or individual purchase over the last 12 months. This is indeed most likely due to the large offer of free, legal sources by international providers. Use of pay-per-item purchases and online subscription is nearly equal (13% for pay-per-item and 14% for subscriptions), yet average expenditure on pay-per-item purchase is considerably higher compared to subscription services: consumers spend on average a monthly amount of EUR 27 on pay-per-item purchases and EUR 19 on subscriptions.

Table 29: Average monthly spending on music online purchases

	Music
Base size	268
Paid subscription(s)	€ 19
Paid per item	€ 27
Subscription(s) and cost per item	€ 24

Question asked: On average, how much money do you spend per month on online purchases in this sector?

Cross-border access and geo-blocking issues

The proportion of consumers accessing cross-border content in this sector (defined as services NOT meant for users in your country) is limited to approximately one in four consumers (23%) – the highest cross-border usage overall, even if differences are small.

²⁴⁵ Flash Eurobarometer 477b: "Cross-border access to online content".
https://data.europa.eu/euodp/en/data/dataset/S2221_477_ENG

²⁴⁶ For a more thorough explanation please refer to Section 5.3.2 of this report

Table 30: The type of content or service that consumers accessed or attempted to access (for free or via a purchase) in the past 12 months

	Music
Base size	7411
Specific content or service meant for users living in the country of residence	84%
Specific content or service <u>not</u> meant for users living in the country of residence	23%

Question asked: Over the past 12 months, please indicate the type of content or services you accessed or attempted to access (for free or via a purchase)?

Based on consumers' experiences, the music sector is least prone to geo-blocking as only 38% have experienced any issues when trying to access cross-border content (including all types of access). This figure represents the lowest level of issues among all digital content sectors. This means that, on average, 9%²⁴⁷ of all consumers in this sector (including those who do not engage in cross-border usage) experience some form of geo-blocking. Issues related to extra charges are less prevalent (9%) compared to standard geo-blocking practices such as rerouting or blocked access (17%). In addition, 22% of consumers experienced issues but found a way to access the content they were looking for.

Table 31: Consumers' experience when attempting to access specific content or service not meant for users residing in the respective country

	Music
Base size	1821
It worked without a problem and without using extra tools (e.g. Virtual Private Network)	62%
I experienced some problems but found a way to access the content (e.g. via Virtual Private Network)	20%
I was charged extra to access the content	9%
It did not work (e.g. no access, redirected, refused payment)	17%

Question asked: What happened when you tried to access specific content or service NOT meant for users residing in your country?

²⁴⁷ This proportion is computed by multiplying the % of respondents who engage in cross-border usage by the % of respondents who experience issues, to arrive at an overall proportion of issues in the general population of users.

Content availability

According to 51% of consumers, the content they wanted to access was not always available through their existing subscriptions. This proportion is higher for individual content (68%). These figures contrast with the high level of cross-border availability of music content. When it comes to access via illegal channels, only 2% (individual content) and 3% (subscriptions) of consumers claimed to use them, while 29% (subscriptions) and 18% (individual content) gave up trying to access it.

Consumer satisfaction

Similar to the results for the other sectors, consumer satisfaction with the number and variety of providers (79%), the choice and quality of content (78%) and the language availability (77%) in the music sector is high overall. However, only half of respondents indicate that they feel that current prices are justifiable considering the offers - a trend that can be observed across all digital content sectors. These figures correspond well with the fact that the majority (92%) of consumers find price an important factor in their purchase decisions.

Current switching behaviour

When it comes to switching behaviour, about one in three consumers who access music content make changes to their subscription. This is most commonly by switching provider or subscription type (24%) and less so by adding a new subscription (5%), which suggests that multiple subscriptions are uncommon in this sector. Therefore, switching appears to be a common activity for consumers in the music sector.

Drivers of hypothetical switching behaviour: price, language accessibility and local content

In a similar way to other sectors, consumers clearly find price important (92%), yet content availability is rated even higher than price (95%), while language accessibility (84%) is rated as less important overall, and least important when compared to the other sectors. This is not surprising as speaking the language is not a prerequisite for listening to music, while most mainstream music uses English as the core language.

When it comes to the drivers of consumer behaviour, as in other digital sectors, price is key followed by language accessibility and local content.²⁴⁸

As for the other sectors, we asked consumers to imagine 3 specific switching examples:

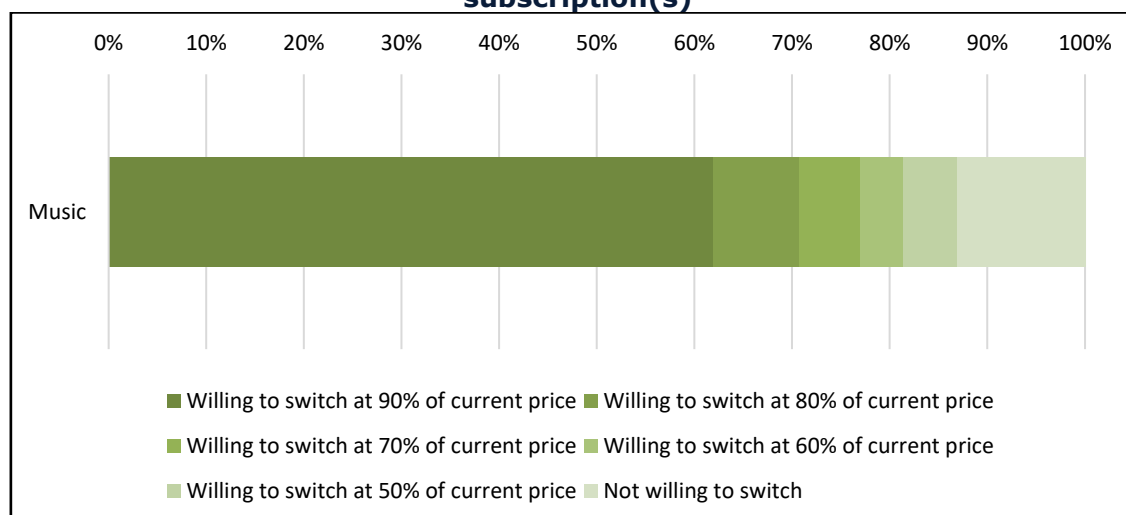
- 1) Example 1: the offer remains exactly the same but only the price varies

²⁴⁸ With respect to consumer behavior, the survey compared directly the importance of price, language accessibility and local content. As opposed to the ranking reported above, content availability (in general) was not taken into account in this comparison. As such, these rankings may differ.

- 2) Example 2: the offer provides similar content or catalogue, but is meant for users in other countries and may not include consumers' preferred language; the price also varies
- 3) Example 3: the offer is meant for users in other countries and may not include consumers' preferred language but may also feature limited local/national content; the price also varies

The first example estimates the consumers' price sensitivity should the offer remain the same. Not surprisingly, 62% of consumers would switch their music subscription if the price drops by as little as 10% but the offer remains the same. An additional 25% would switch if the price drops further, leaving only 13% of respondents who are not sensitive to price changes. These figures show that if the offer remains the same, hypothetically 9 in 10 consumers would switch their music subscription, with the majority showing very high price sensitivity.

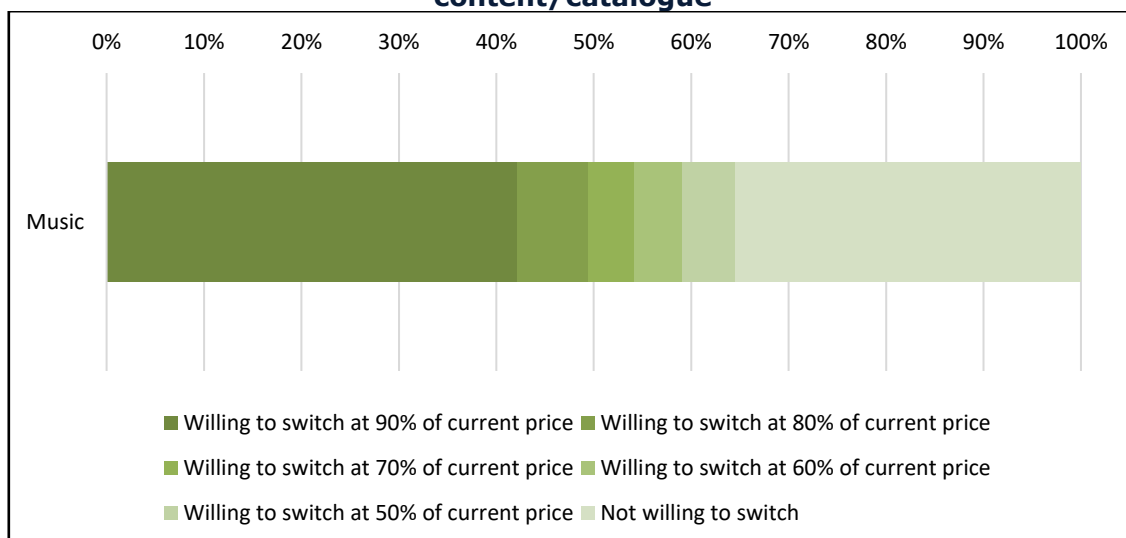
Figure 64: Consumers' willingness to switch providers or service if the content and language options are broadly the same as for their current subscription(s)



Question asked: Would you switch to another service provider or service, offering you broadly the same content and same language options as your current subscription?

The second example studies price sensitivity under conditions where the offer may not feature their preferred language options. As in other sectors, consumers' likelihood to switch was lower in this example, with 42% willing to switch for a 10% price discount and an additional 22% when offered larger discounts. While the drop is significant (18%) suggesting that language matters to some consumers, a major proportion of consumers remain price sensitive (65%). Over 1 in 3 (35%) consumers in the music sector are not willing to switch even for a 50% price discount if their preferred language is not available.

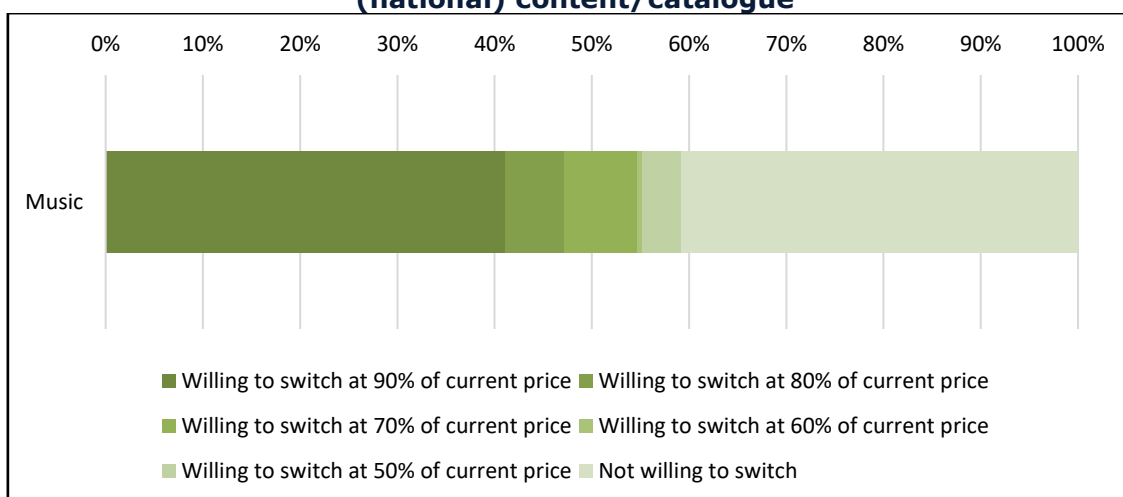
Figure 65: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence but offers a similar content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence BUT offering you similar content/catalogue?

The third example adds the factor of local content in addition to limited language availability. Here, we observe a small increase in the proportion of consumers (5%) who would not be willing to switch if local music content is limited, regardless of the price discount. As in the other sectors, the majority of consumers (59%) would be willing to switch based on varying price discounts, with 41% expressing extreme price sensitivity (10% discount).

Figure 66: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence and offers no or limited local (national) content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence AND offering you no or limited local (national) content/catalogue?

Based on these figures, and in line with findings for other sectors, two key factors drive consumer switching behaviour in the music sector – price and language availability – with price being the highest. Specifically, we can estimate that roughly six in ten consumers (59%) are exclusively sensitive to price while 22% are most sensitive to language availability. Language availability, while still important, appears to have a smaller impact on consumers’ switching preferences in the music sector, compared to the audiovisual sector (excl. sports). Only 5% appear to be sensitive to the availability of national or local content in this sector. Looking at the additional question on the importance of language accessibility, only 14% stated that they would not switch their provider of music content if their preferred language is not available, regardless of the price.

6.3.2 findings from mystery shopping exercise

Based on results from the mystery shopping exercise, the main issue observed in the music sector relates to price differentiation, particularly for subscription-based services.

Access and availability

No issues were observed when it comes to cross-border access to providers of music. It was common that the first time a website was accessed it was displayed in its intended language and automatic detection of location was not used to re-route consumers at this stage

In the music sector, other issues were mainly due to price differences, both for one-off purchases and subscription offers. Most subscription providers, in particular, have pricing models aligned to the country to which a specific service is targeted. Managing these differences seems to happen by using automatic detection of consumers’ location and adapting the offer accordingly.

Registration

In the music sector, approximately one in four cross-border shopping attempts were blocked during the registration stage. For subscription-based services, in particular, price differences were commonly observed at this stage, after the consumer enters their physical address or other data that communicates their location, unless it is automatically detected.

Payment

At the payment stage, no issues were observed when it comes to cross-border access to providers of music. For some providers, payment methods (e.g. PayPal, credit card) seem to also be used as a means to verify shoppers’ actual location.

6.4 Expected impact on consumers and on industry

This section presents the impacts of a potential extension of the Geo-blocking Regulation to include music services; firstly, the impacts on Scenario 1 and then the impacts under Scenario 2 are discussed.

Most of the music streaming services are available in all Member States (see Table 32). Moreover, prices barely diverge across northern and western European countries, while eastern and southern European countries present instead the most significant differences in the monthly prices for music subscription services.

According to the study conducted by NERA²⁴⁹ for the IFPI, this difference in prices is mostly due to the characteristics of the markets and how it relates to price elasticities: the higher the price elasticity, consumer demand on a price increase (or decrease) would be more sensitive, and vice versa. The pricing strategy adopted by the music subscription services across the EU reveals that northern and western EU Member States have a lower elasticity of demand compared to the southern and eastern ones. The study claims that a hypothetical similar price increase in all the countries would lead to a reduction in sales in each country. However, the reduction in units sold would be more significant in the southern and eastern countries (the more price elastic ones) rather than in the northern and western ones (the countries with a lower price elasticity).²⁵⁰ Moreover, NERA's report and the interviewees in the music sector argue that the resulting uniform price would be a weighted average between higher and lower prices: the significant difference in the market size (as shown by Figure 58) would lead to a uniform price which would be close to the current price charged in the higher income markets. Moreover, Aguirre & Cowan (2014) claim that, in a scenario where there are two groups of countries with significantly different price elasticities and substantial differences in the level of sales, the result of a uniform pricing strategy would be a reduction in total sales and consumer welfare.²⁵¹ The validity of all these claims will be critically assessed in Section 6.4.1.

In terms of cross-catalogue availability, the results by JRC (Broocks et al, 2020) indicate further that catalogues of individual services virtually do not differ across Member States.²⁵² This was also supported by the stakeholder interviews conducted for this study and by NERA's findings.

²⁴⁹ NERA (2019). The possible extension of the EU Geo-Blocking Regulation: Likely impact on the creation, promotion and digital distribution of music in the EU - Report prepared for IFPI

²⁵⁰ Ibid.

²⁵¹ Aguirre, I., & Cowan, S. (2014). Monopoly price discrimination with constant elasticity demand. *Economic Theory Bulletin*, 3(2), 329-340

²⁵² Alaveras G, Gomez-Herrera E, Martens B. 2017. Geo-Blocking of Non Audiovisual Digital Media Content in the EU Digital Single Market.

Table 32: Prices of music streaming services across the EU28

Country	Currency	Service										Avg. price for one streaming service in each country
		Tidal (Standard)	Apple Music (Basic)	Spotify (Premium)	Deezer (Premium)	YouTube (Premium)	SoundCloud Go+	Play Music (Premium)	TuneIn	Amazon Music (unlimited)	Napster	
AT	EUR	9.99	9.99	9.99	9.99	9.99	s. u.**	9.99	8.69	9.99	9.95	9.84
BE	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	s. u.**	9.85
BG	EUR	8.99	8.99	4.99	0.00	8.99	s. u.**	8.99	s. u.**	4.99	s. u.**	7.66
CY	EUR	5.17*	s. u.**	6.99	6.99	6.99	s. u.**	6.99	8.69	6.99	s. u.**	6.97
CZ	EUR	5.81*	5.81*	5.99	6.44*	5.81*	s. u.**	5.81*	s. u.**	5.99	s. u.**	5.95
DE	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	9.95	9.86
DK	EUR	12.87*	12.87*	12.87*	12.87*	12.87*	s. u.**	12.87*	s. u.**	s. u.**	12.87*	12.87
EE	EUR	6.99	6.99	6.99	6.99	6.99	s. u.**	6.99	8.69	6.99	s. u.**	7.20
EL	EUR	6.99	6.99	s. u.**	s. u.**	6.99	s. u.**	6.99	8.69	6.99	s. u.**	7.27
ES	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	9.95	9.86
FI	EUR	9.99	9.99	9.99	9.99	9.21*	s. u.**	9.21*	8.69	9.99	9.95	9.67
FR	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	9.95	9.86
HR	EUR	s. u.**	s. u.**	s. u.**	6.99	7.80	s. u.**	8.99	s. u.**	s. u.**	s. u.**	7.93
HU	EUR	4.50*	4.47*	4.99	4.50	4.47*	s. u.**	4.47*	s. u.**	4.99	s. u.**	4.63
IE	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	9.95	9.86
IT	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	9.95	9.86
LT	EUR	s. u.**	6.99	6.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.99	s. u.**	6.99
LU	EUR	9.99	9.99	9.99	9.99	9.99	s. u.**	9.99	8.69	9.99	9.95	9.84
LV	EUR	6.99	6.99	6.99	6.99	6.99	s. u.**	6.99	8.69	6.99	s. u.**	7.20
MT	EUR	s. u.**	6.99	6.99	s. u.**	s. u.**	s. u.**	s. u.**	s. u.**	6.99	s. u.**	6.99
NL	EUR	9.99	9.99	9.99	9.99	9.99	9.99	9.99	8.69	9.99	9.95	9.86
PL	EUR	s. u.**	4.60	4.60	4.60	4.60	s. u.**	4.60	0.00	3.99	s. u.**	4.50
PT	EUR	6.99	6.99	6.99	6.99	6.99	s. u.**	6.99	8.69	6.99	6.95	7.17
RO	EUR	4.20	4.20	4.99	4.99	4.62*	s. u.**	4.62*	s. u.**	s. u.**	s. u.**	4.60
SE	EUR	9.21*	9.21*	9.21*	9.21*	9.21*	s. u.**	9.21*	s. u.**	9.99	9.21*	9.30
SI	EUR	5.99	5.99	5.99	6.99	5.99	s. u.**	5.99	8.69	s. u.**	s. u.**	6.52
SK	EUR	5.99	5.99	5.99	5.99	5.99	s. u.**	5.49	8.69	5.99	s. u.**	6.27
Average price per service Ex-EU28	EUR	8.42	8.29	8.19	8.42	8.31	10.19	8.33	8.71	8.18	10.01	
Average price per service EU27	EUR	8.29	8.16	8.06	8.28	8.18	9.99	8.20	8.69	8.03	9.88	
UK	EUR	11.59*	11.59*	11.59*	11.59*	11.59*	11.59*	11.59*	9.09*	11.59*	11.60*	11.34*

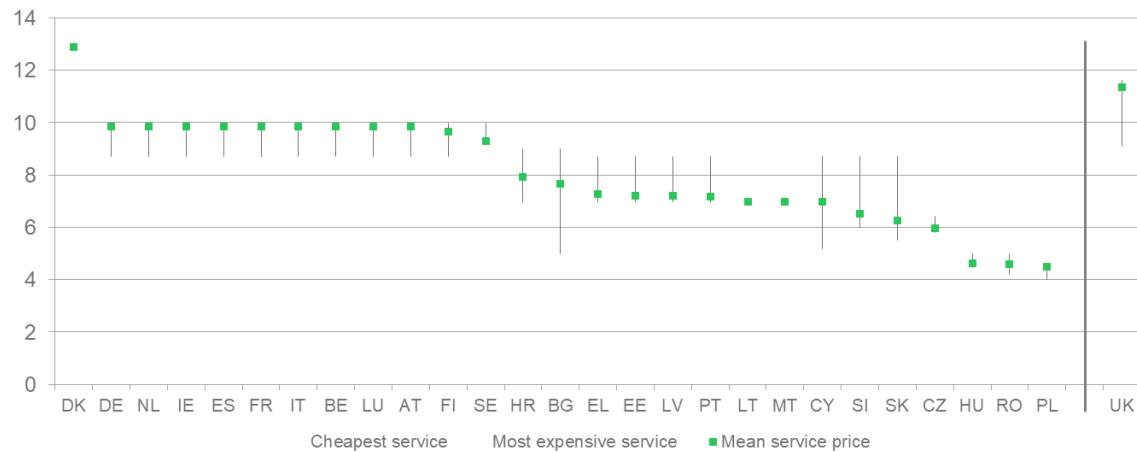
*Currency converted

**s.u. = service unavailable

Source: Own calculations

The following graph illustrates that unlike SVoD services, music streaming services follow a mostly territory-driven price differentiation strategy. This finding is broadly in line with the NERA report.²⁵³

Figure 67: Prices of music streaming services across Member States (in EUR)



Source: Own calculations

Furthermore, the annual survey conducted by WIK-Consult in Germany indicates little demand for purchasing an additional service if a consumer has already has subscribed to one. The results also indicate that transactional business models play a negligible role in Germany for online music entertainment. However, the results also indicate that advertising-based services appear to increase in importance. This is probably due to the increasing popularity of YouTube as a surrogate music streaming service. Notably, the results cannot distinguish users of Freemium models between advertising-based and subscription users. We included them with subscription services. Therefore the figure for subscription services shown here is likely an overstatement of the actual number.

Table 33: Number of music streaming services used in Germany (only users of at least one service)

Year	Music streaming services (all)	subscription services	advertising-based services	transaction-based services
2015	1,63	1,01	0,24	0,38
2016	1,73	0,97	0,56	0,20
2017	1,65	1,00	0,74	0,00
2018	1,61	0,87	0,80	0,00

Source: Own calculations

The table below reports the advertised catalogues sizes of various music streaming services offered in Europe. It shows that the most popular ones differ only somewhat

²⁵³ Ibid.

in their size. It also suggests that catalogue size, per se, is not a good predictor of popularity, as the subscription service with the largest catalogue (SoundCloud) is far from being among the most popular services in Europe. The picture changes for advertising-based services, such as YouTube, which are used often by consumers to listen to music. These services offer a huge variety of titles, covers and so forth, but does not require any monetary payment from consumers. Notably, YouTube offers a paid premium service for consumers who do not want to see and hear advertisements.

Table 34: Overview size of music catalogues for music streaming services

Service (alphabetically)	Advertised size of the catalogue (no. of songs in million)
8tracks	6.5
Anghami	30
Apple Music	> 45
Deezer	> 53
Earbits	0.1
hoopla	5
iHeartRadio	30
Jango	30
Joox	Not available
Line Music	1.5
LiveXLive Powered by Slacker	13
MOOV	1.5
Music Choice	55
Music Unlimited (Amazon)	> 50
MyTuner Radio	30
Napster	> 40
NetEase cloud music	36
Pandora	30-40
Patari.pk	0,02
Play Music (Google)	> 40
Qobuz	40
radical.fm	25
Saavn	30
SiriusXM Essential / SiriusXM Premier	33
SoundCloud Go	> 135
Spotify	> 35
Stingray Music	Not available
Tidal	> 60
TuneIn	Not available
YouTube Music	30 ²⁵⁴ /Not available

**transactional service*

Source: WIK desk research based on press releases and website information of the individual services as well as media coverage of the services. The most up-to-date information was used for each service.

These general findings should be kept in mind when assessing the impact of the two scenarios as defined above. They are in line with the results of Alaveras et al.

²⁵⁴ As part of the premium subscription. The number of songs available through the advertising-based YouTube platform are likely more than on any platform, but there is no specific data available.

(2017).²⁵⁵ Although they did not directly verify cross-border availability of music in streaming services, they provide a small sample test that suggests that it could reach around 96% on Spotify. Furthermore, they identified the same fundamental strategy as we did as regard the tiering of prices for music streaming across Member States.

6.4.1 Scenario 1

The analysis of ten relevant subscription music streaming services suggests that almost all of them are accessible in all Member States. It further suggests that there are limited price differences across services for each Member State. However, almost all services tend to be significantly cheaper in some Member States. These appear to cluster in eastern Europe. Depending on the interpretation of Scenario 1, this can have different impacts.

If one item in each catalogue where the service does not hold sufficient rights beyond one Member State would prevent that catalogue from becoming available to consumers from other Member States under Scenario 1, its impact would arguably be negligible as each catalogue, despite overlaps, is likely to feature at least one item. Even if it does not, such items could easily be added by service providers to exclude the application of the Geo-blocking Regulation to their services.

Under the assumption that all the titles for which the service has sufficient rights across Member States are also made available in these Member States, it is likely that a large portion of catalogues of pan-EU service providers would become available for consumers in all other Member States, given the huge overlap of catalogues both within and across services.²⁵⁶ Even if substantial parts of catalogues would not be available beyond the originally targeted Member States, arguably the most popular items would still be available cross-border as they feature on all major music streaming services equally as typically a whole portfolio of a label is contracted to a subscription service.²⁵⁷ Given that only three major labels dominate the music market, it is likely that the most popular titles would be available for all consumers across Member States under this interpretation of scenario 1. This implies price-driven switching by consumers gravitating to the cheapest service offering and likely choosing the same service they have opted for. We have modelled this according to the methodology described in the methodology section of this report (section 4). For Spotify, the purely price-driven effect results in a 28% reduction of the value of the average subscription currently on the service. There is also some market expansion of new subscribers attracted by the service becoming available at a cheaper price that now meets their willingness-to-pay. This adds up to an additional 3% of

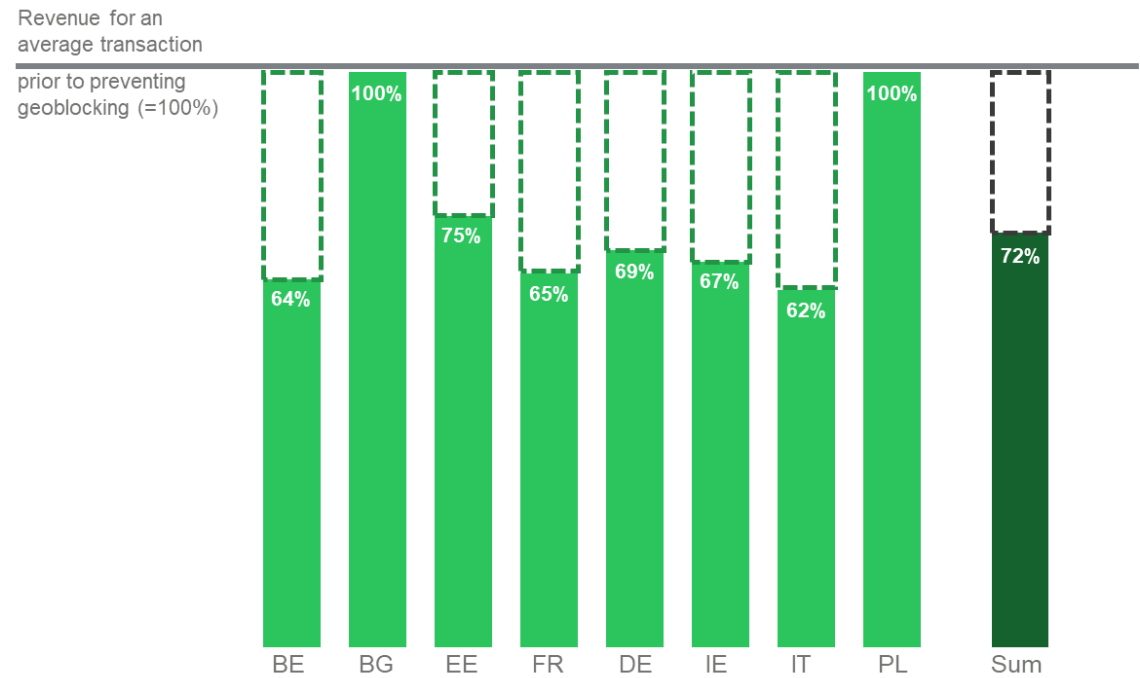
²⁵⁵ Alaveras G, Gomez-Herrera E, Martens B. 2017. Geo-Blocking of Non Audiovisual Digital Media Content in the EU Digital Single Market.

²⁵⁶ According to the NERA (2019) study is common practice that major labels make contracts for all their artists with music streaming services. Given that these major labels produce the majority of popular content and have contracts with most major music streaming services it is likely that catalogues across services overlap significantly at least regarding the content produced by major labels.

²⁵⁷ Labels make such contractual arrangements with multiple music streaming services.

subscribers across the eight Member States in our analysis. Combined, we estimate that price-driven switching and adoption of relatively cheaper versions of music streaming services would result in a reduction of overall revenue of 26% for Spotify, the most popular music streaming subscription service in Europe. Across six popular music streaming subscription services we find a combined effect of -25% for the average subscription (see the following six figures for details).

Figure 68: Price-impact on revenues – Spotify



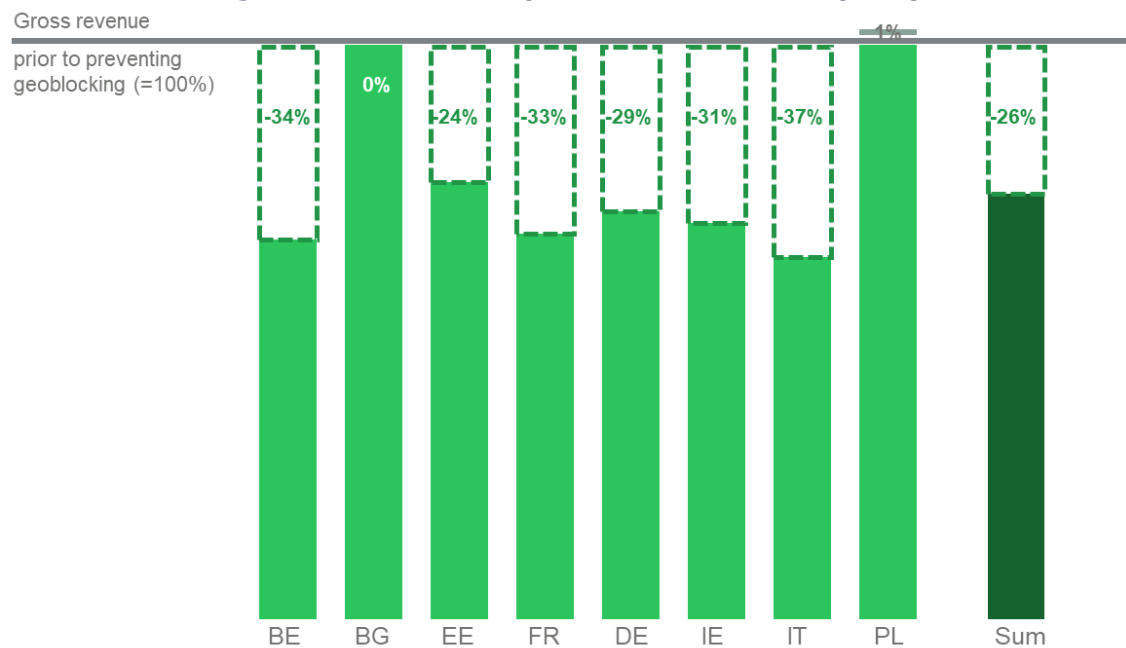
Source: Own calculations

Figure 69: Accessibility-impact on user base – Spotify



Source: Own calculations

Figure 70: Overall impact on revenues – Spotify

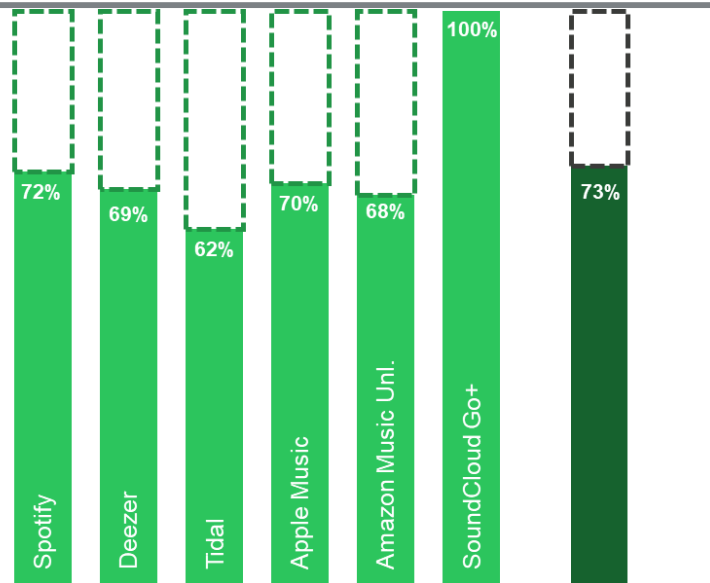


Source: Own calculations

Figure 71: Price-impact on revenues – selected services across MS

Revenue for an
average transaction

prior to preventing
geoblocking (=100%)

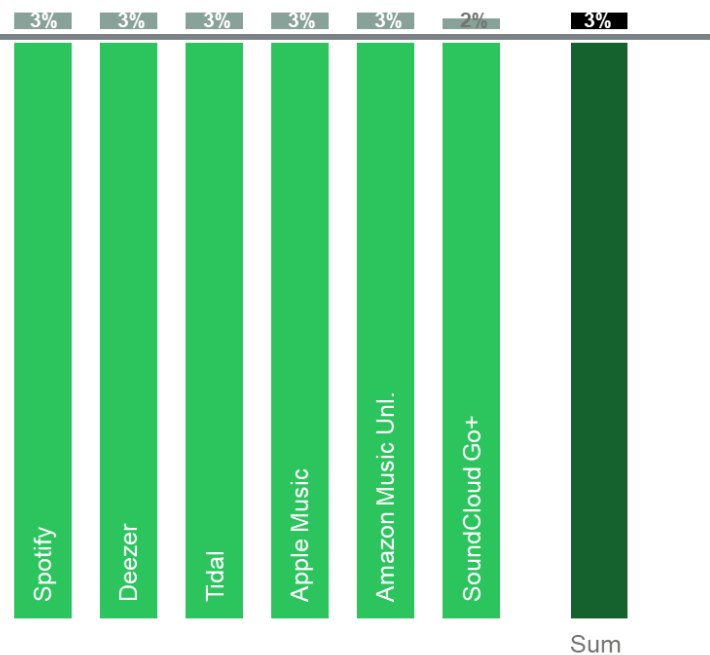


Source: Own calculations

Figure 72: Price-impact on revenues – selected services across MS

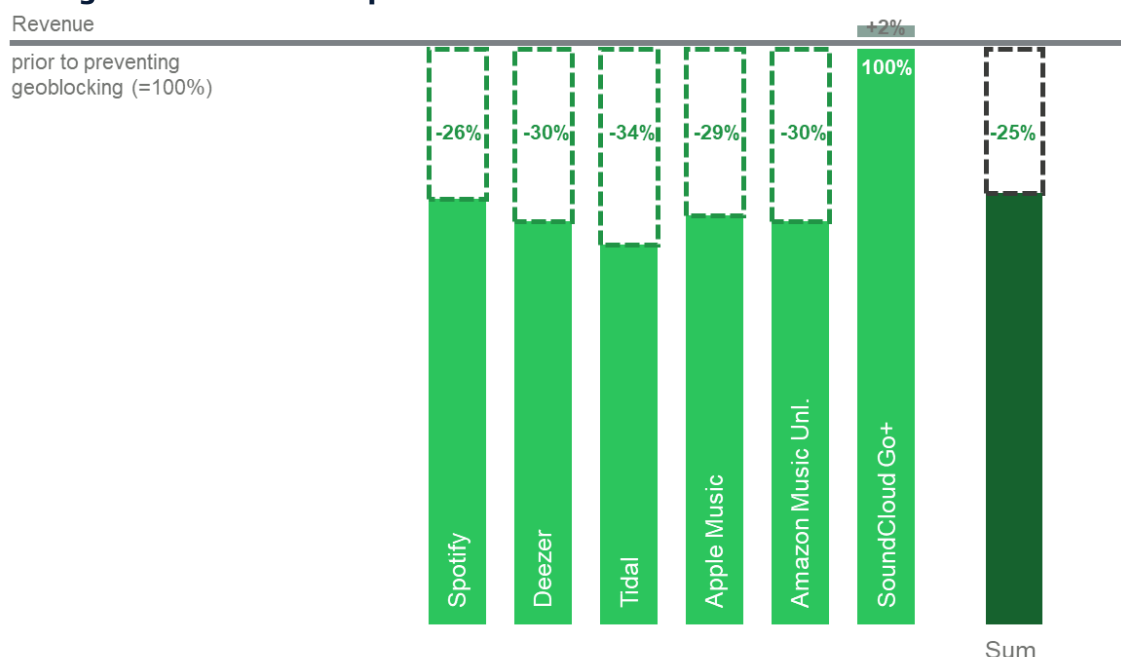
User base

prior to preventing
geoblocking (=100%)



Source: Own calculations

Figure 73: Overall impact on revenues – selected services across MS

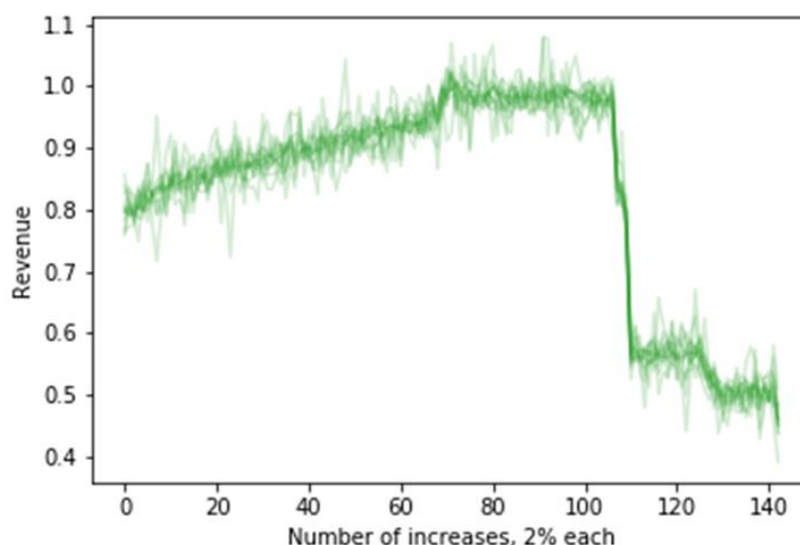


Source: Own calculations

Given the potential significant impact on revenues, an obvious mitigation strategy to secure existing revenue for music streaming services would be to increase prices of music streaming services in Member States where these services are offered much more cheaply than in the major markets. This is also envisaged in the NERA report. We used our data to simulate the effect of increasing prices continuously for the services. The graph below shows how the revenue across the eight Member States in our sample would develop as prices are increased. It shows that, from a revenue optimising perspective, the most positive impact of this mitigation strategy is likely to occur at a price increase of the cheapest services by roughly 70% (and all subsequent services enough to be on the same level).

The expected revenue peaks, according to our estimate, at slightly over 100% of the revenue prior to an extension of the Geo-blocking Regulation (see Figure 74). After that, the total revenue that can be achieved diminishes slowly at first and, after increasing the price of the current cheapest service (2%) 100 times, it sharply drops. This suggests that, due to the inherent transaction costs for consumers who would have to switch to a different country's service offer and due to people unsubscribing in countries with heavily increased prices, some price discrimination could be kept even when geo-blocking is prohibited without affecting overall revenue. Moreover, this quantification does not take into account the effects of other mitigation strategies based on the diversification of the service (in terms of language interface or local content), which could reduce the attractiveness of some versions of the service for foreign customers, but which cannot be predicted.

Figure 74: Effect of simulated price increases for cheap offers for the Spotify music service



Source: Own calculations

6.4.2 Scenario 2

Given the methodological framework outlined in the previous section, the effects under Scenario 2 would likely be very similar to the latter interpretation of Scenario 1. Even under Scenario 2, consumers would likely gravitate to cheaper versions of the same service they subscribe to: given the huge overlap of catalogues within each service across countries, it is unlikely that content accessibility as such drives much of the demand for the same service cross-border. Given that consumers typically fulfil their demand for music playback by subscribing to one service, it is also unlikely that many consumers would subscribe to a second service due to it becoming accessible in their country.

Wherever necessary, consumers will likely fulfil any marginal demand for music not featured on subscription services by relying on advertising-based ones.

Putting both availability and price changes together, it is possible (in alignment with the calculations presented in Section 5.6) to estimate the welfare transfer and the reduction in deadweight loss. For services that already were already extensively analysed, both estimates are summarised in the table below.

Table 35: Welfare analysis, music.

Revenue		
	Welfare transfer	Reduction DWL
Spotify	0,28	0,0216
Deezer	0,31	0,0207
Tidal	0,38	0,0186
Apple Music	0,3	0,021
Amazon Mus	0,32	0,0204
SoundCloud	0	0,02

Source: own calculations

We find that welfare transfer is unusually high compared to other sectors (between 0% and 38%). This is mostly due to the large degree of price discrimination between countries in the music sector. Nonetheless, we still observe a reduction in deadweight loss between 1.8% and 2.2%. We note that this calculation only reflects the immediate effect under ceteris paribus condition, but does not take into account possible mitigation strategies of providers. In particular, an industry reaction in the form of price increases in smaller markets that currently offer the same subscriptions at substantially lower prices is considered likely, and in this case the likely welfare transfer from producers to consumers, as well as the possible reduction of DWL would be substantially different from the one shown here.

6.5 Overall summary for the music sector

Below we present the key overall findings for the music sector. The various uncertainties in these findings and in the report as a whole are addressed in section 2.5.

- The music sector has been undergoing a phase of fundamental change, triggered predominantly by digitisation and by the increasing popularity of the internet among consumers. While, at first, pirated digital music surged, the increasing popularity of subscription music streaming services has recently recouped some of the lost revenues. Next to physical distribution, subscription services have become the key distribution channel for music. Transaction-based online services are very small.
- There is a high degree of concentration in the production segment of the music publishing sector with three major labels dominating the market.
- Our analysis of costs and opportunities of an extension of the geo-blocking regulation focused on subscription music streaming services as these are dominant business model of online distribution that will likely be most affected by an extension of the regulation.
- We find that price differentiation happens according to Member States, but not so much for individual services in individual Member States. Paired with the high willingness-to-switch indicated by the responses in the consumer survey and the substantial overlap in catalogues across services at least concerning popular titles (effectively close to 100% of catalogues are

accessible to consumers in all Member States where a particular service is present), this would likely result in a substantial movement of consumers to cheaper versions of the same service if they were to become available as a result of an extension of the geo-blocking regulation.

- Without taking into account possible mitigation measures by providers, price-driven switching in Scenario 1 (in the sample of pan-EU providers analysed) would likely result in a reduction of 25% for the average revenue associated with an individual transaction. This reduction also accounts for new consumers subscribing for the first time as cheaper versions of the services become accessible. This accounts only for switching to cheaper versions of the same service. We do not assume that an extension of the Geo-blocking Regulation would have a profound effect on cross-service switching since most services have been available side by side in most Member States, where music streaming is available with prices differing only slightly within each Member State. Consumers have chosen a certain service or else they would switch services for reasons other than an extension of the Geo-blocking Regulation such as interoperability of the service with their (newly) purchased hardware. Within this purely static model and the providers at stake (representing however a large share of the market), we would expect a large decrease of prices and overall revenues coupled with a possible increase in consumption. Overall, this would trigger significant welfare transfers and a slightly positive change in deadweight loss.
- These results reflect a static analysis, assessing the direct effects of a possible change in the Geo-blocking Regulation with a focus on the demand side, but disregarding possible competitive responses that might be taken on the supply side. Notably, we assume that prices remain as they are, and that consumers respond individually in line with their survey responses.
- One might by contrast assume under a dynamic approach where providers shift to uniform pricing across the EU, no individual cross-border arbitrage is possible because all prices are the same. This could lead to some degree of price harmonisation across Member States, verging towards the level of prices currently charged in the large markets in the EU where average incomes are relatively high. This would imply that no response on the part of individual consumers would be necessary (or possible) because the uniform prices that emerge thanks to the supply side change already reflect the change, and no individual cross-border arbitrage is possible when all prices are the same. Waldfogel (2019), summarised in section 6.2, takes this approach. Within this approach, the overall effects of price harmonisation may also be slightly negative, as small price reductions in high demand countries may well be compensated by large price increases in low demand countries.
- Taking into account the inherent costs of cross-border/cross-services switching, reality (possibly influenced by product differentiation mitigation strategies), actual effects might well lie somewhere between these two visions of (1) individual switching to take advantage of price differentiation, versus (2) price convergence such that little differentiation remains.

- We do not expect different results in scenario 2 for the sample of pan-EU service providers modelled, since effectively, already under scenario 1, services would have in practice to make all or most their contents available to consumers in all Member States. This is because they usually hold sufficient rights for the majority of songs featured on their catalogues.
- This result however might not be the case for smaller national platforms that usually retain rights only for one or very few countries. While for these services the impact under scenario 1 may be limited, it might differ significantly for these services in scenario 2. We cannot, however, make a specific estimate of how these services would be affected by an extension of the geo-blocking regulation in this latter scenario, based on the data that is available.

7 Impacts on non-audiovisual sectors (e-books)

This section addresses the impacts of the potential expansion of the scope of the Geo-blocking Regulation to include online services giving access to copyright-protected content in the e-books sector. Firstly, a static analysis of the sector and its current characteristics is presented, followed by the dynamic analysis of expected impacts.

7.1 Analysis of the sector

This Section presents a static analysis of the e-books sector at present to act as a background for the impact analysis in the next Section. Firstly, the economic importance and business models used in the sector are discussed, followed by the licensing models.

7.1.1 Economic importance and business models used in the sector

Table 36 presents an overview of the key characteristics of the e-book market on the EU level.

Table 36: Key characteristics of the e-book sector (NACE code J5811) in 2016²⁵⁸

	EU28	EU27_2020
Number of enterprises	918	843
Persons employed	4,916	4,514
Turnover (EUR million)	26,896.1	20,460.2
Value added (EUR million)	351	226
Ratio value added/turnover	0.39	0.33
Average company size (employees)	5.4	5.4
Average turnover per company (EUR)	974,945	807,829
Average value added per company (EUR)	381,264	268,090
Average turnover per person employed (EUR)	182,262	150,864
Average value added per person employed (EUR)	71,400	50,066

Source: Eurostat [sbs_na_1a_se_r2]

In 2011, the global book market started to go through a drastic change due to the digital transformation, with a high pace of e-book penetration first in the United States and the United Kingdom. By 2013, both the US and UK markets began to mature, with growth in e-book penetration slowing down and e-books transcending their initial niche in a number of countries in continental Europe.²⁵⁹ Since 2013, the evolution of the four indicators for e-books suggests that the growth of the e-book market has been relatively modest; this analysis was confirmed during interviews

²⁵⁸ Data was calculated by firstly establishing a coefficient based on the average market shares of the e-book sector in the total books sector for countries where this market share was available (Germany, Spain, the Netherlands, France and Denmark) in the Global eBook report from Rüdiger Wischenbart. This coefficient has been used on all four indicators of the general book publishing sector (extracted from Eurostat) for the other countries (Data is not available for Estonia, Ireland, Malta, the Netherlands and Sweden) in order to provide estimations for the e-book market in all EU countries. Even though the coefficient is based on 2013 data, interviews with sector organisations have shown that this coefficient is still realistic as the share of e-books in the total book sector has remained rather stable since then.

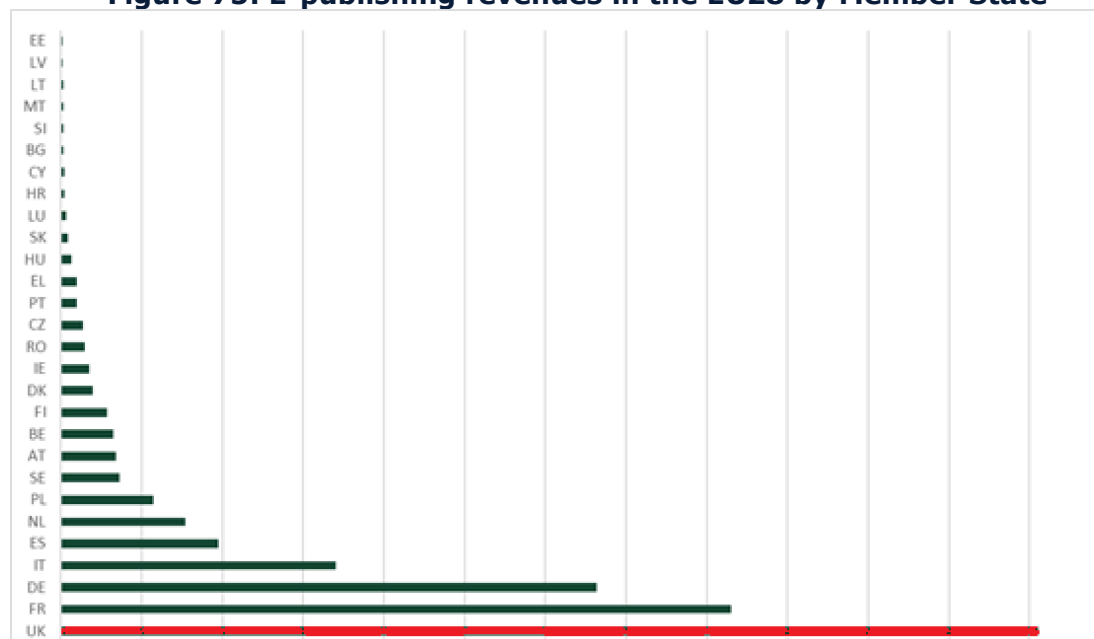
²⁵⁹ Rüdiger Wischenbart (2013): Global eBook. A report on market trends and developments. Available at: https://www.wischenbart.com/upload/the_global_ebook_report_fall2013_final04-2edi_pdf.pdf

with sector organisations that delineated a similar development of the market and, in terms of companies' size, it was pointed out that several booksellers and publishers are micro or small businesses. This is confirmed by Table 36 with the data from Eurostat that shows that the average company size is 5.4 employees. In terms of turnover, the sector is comparable to, for instance, repair of footwear and leather goods and comprises 0.003% of the total services economy.²⁶⁰

Notably, other sources (e.g. Statista) provide much different figures about the size of the e-publishing industry in Europe: among the possible reasons to explain the differences in the figures, it needs to be noted that Eurostat's data are older and with some data gaps at country level. Moreover, the NACE code for the publishing sector does not identify in a clear way the digital revenue share of the sector.

The figure below presents data from Statista's digital market outlook which shows the weight of the different Member States in the total forecasted revenues (roughly EUR 3.98 billion) for 2019 in the EU28 for the e-publishing market ²⁶¹.

Figure 75: E-publishing revenues in the EU28 by Member State



Source: Own calculation based on Statista's Digital Market Outlook

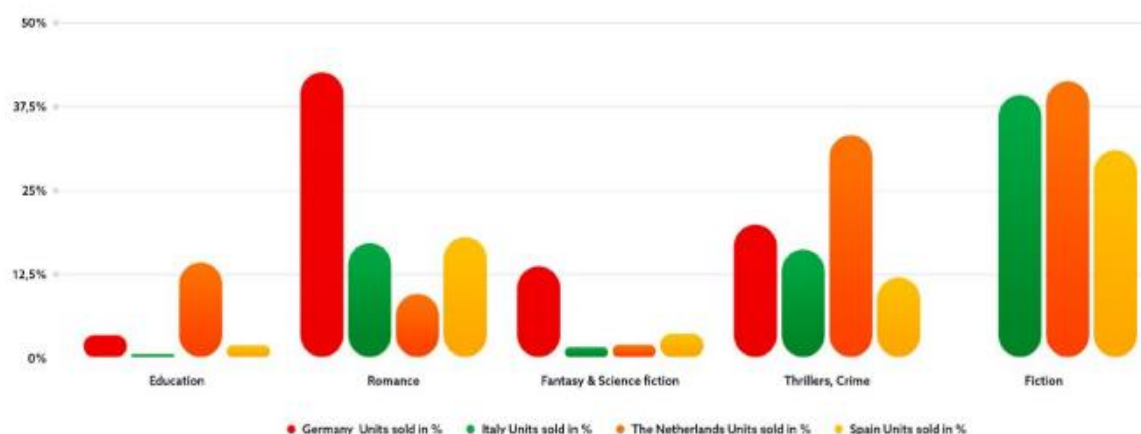
In 2018, the European e-book barometer surveyed four markets: Germany, Italy, the Netherlands and Spain. According to the survey results, there are huge differences in consumers' preferred price points for e-books. In Germany and Italy, two peaks become visible: the first with very low priced (mostly self-published)

²⁶⁰ Compared to numbers from Eurostat [sbs_na_1a_se_r2].

²⁶¹ E-papers' revenues refer to the subscriptions to online newspapers purchased by consumers. Revenues from advertising on the websites of the newspapers are not counted in the estimates shown in Figure 75.

literature and the second with paperback price levels. In the Netherlands, on the other hand, consumers accept high priced offers more easily. In Spain, e-books should be priced even lower than normal books compared to other countries for consumers to buy them. In all countries on average, most e-books are bought by consumers at less than EUR 10 (average value). There are typically two cheaper options to buy e-books: self-published literature and promotional offers to drive the volume of sales; the average price for these lies around EUR 5. There is one more break-even spot at EUR 13 (for high-quality titles from established publishers). From 2016 to the first half of 2018, consumers' price sensitivity in this lower price category increased. The same does not go for the higher price ranges of around EUR 10 and above. Lastly, Figure 76 shows that e-book sales differ wildly by genre, for instance, in romance, it can account for up to half of all digital e-book sales (within the four markets covered by the European e-book barometer). In general, literary bestsellers and thrillers see a fair share of digital market share, also outside of the English language markets. Fan communities of fantasy and science fiction have also embraced e-books.²⁶²

Figure 76: E-book sales by genre in Germany, Italy, the Netherlands and Spain in 2017



Source: Rüdiger Wischenbart: *European e-book barometer. A report on digital consumer publishing in Germany, Italy, the Netherlands and Spain, 2018*

Three main features define the different options that customers have available to access e-books:

- The choice between paying per individual title or opting for a subscription-based service;

²⁶² Rüdiger Wischenbart: *European e-book barometer. A report on digital consumer publishing in Germany, Italy, the Netherlands and Spain, 2018*. Available at: https://www.bookwire.de/fileadmin/customer/documents/Barometer_Brochure_18_10_01_kl.pdf

- The type of devices where the titles can be read; and
The possibility for users to have unlimited access to the titles they bought from multiple devices at any time.

Findings from the desk research exercise showed that, regardless of the size of the publisher, titles are offered across the EU via individual purchases and via subscription-based models. Publishers' individual titles are purchasable either on the website of the publisher itself, or via online portals selling e-books from several different publishers (e.g. Rakuten, Kobo, Amazon, IBS.it, etc.). In terms of accessibility, e-books are available for consumption through different devices powered by different software: desktop PC, e-readers, tablets and smartphones (iOS, Android, Windows 10 Mobile or other operating systems).

In addition, the existence of different file formats for e-books (e.g. EPUB, Mobipocket, Kindle) reflects the options available to distributors and content creators to customise aspects such as layout, multimedia and copyright protection. Different platforms sell their titles under various file formats, ranging from EPUB and PDF, which are open formats, to the Kindle File Format (.azw) which is the common proprietary standard for the e-books sold by Amazon and not compatible with many non-proprietary devices sold in the market.²⁶³

E-books have been triggering a wave of structural innovation, with experiments in new business models, such as subscriptions as drivers for reading communities (e.g. Nubico in Spain, Scoobe in Germany, Youboox in France), new models of cooperation between publishers, telecommunication giants, other technology partners and scores of start-ups, which include digital-only publishing ventures, social reading platforms, or service providers that adapt data mining to the requirements of publishing and book retail (e.g. Amazon, Apple, Google)²⁶⁴. In the meantime, global platforms such as Amazon or Apple's iBook store challenge traditional local players in book publishing and retail. Kobo, which is a newcomer to the market, proposes its approach in the form of partnership models with local players (e.g. Libris BLZ in the Netherlands, Libreka in Germany, and Mondadori in Italy) as an alternative to the predominance of the traditional players on the e-book market.²⁶⁵ Next to the major players, there are smaller players that tend to actively market their products in one country only, or in a very limited number of countries. However, based on the organisations sampled for this study (listed in annex I) the websites of these players are usually accessible cross-border and offer the possibility to purchase individual e-book titles from a foreign country.

²⁶³ <https://www.makeuseof.com/tag/ebook-formats-explained/>

²⁶⁴ Bain & Company (2010). Publishing in the digital era. Available at: <https://www.bain.com/insights/publishing-in-digital-era/>

²⁶⁵ Rüdiger Wischenbart (2013): Global eBook. A report on market trends and developments. Available at: https://www.wischenbart.com/upload/the_global_ebook_report_fall2013_final04-2edi_pdf.pdf

As already mentioned, players such as Amazon and Rakuten Kobo offer subscription models in some markets across the EU. So far, none of the subscription services is active in all the EU Member States. Table 37 presents the availability of Amazon Kindle Unlimited and Kobo Plus in EU countries. The two services are available at the monthly price of EUR 9.99.

Table 37: EU country availability of two selected e-book subscription services

Amazon Kindle Unlimited	Kobo Plus
France	Belgium
Germany	The Netherlands
Italy	
Spain	
United Kingdom	

Source: Amazon, Kobo

Notably, there are also cases of operators that offer their customers more tailored subscription models, in addition to the flat monthly rate at a predefined price. An example is Legimi, a relatively small Polish platform active in the retail market in Poland and Germany which sells around 60,000 titles through subscription packages. On top of the traditional offer which grants unlimited access to the entire catalogue against a monthly fee of EUR 9.40,²⁶⁶ Legimi has three different subscriptions based on the number of pages read per month.

Table 38: Sample of Legimi's subscription packages²⁶⁷

E-books 300	E-books 1000	E-books 1500
Monthly payment of EUR 1.64	Monthly payment of EUR 4.68	Monthly payment of EUR 5.86
300 pages included per month	1,000 pages included per month	1,500 pages included per month

Source: Legimi

According to Statista's digital market outlook, forecasted revenues for 2019 for e-publishing (e-books, e-magazines and e-papers²⁶⁸) amount to EUR 2.7 billion²⁶⁹ for about 120 million of paying customers.²⁷⁰ Figure 77 shows the weight of the different categories of content in the total revenues pointing towards the importance of e-books, which account for more than half of the total revenues.

²⁶⁶ Price converted from PLN (Polish zloty) at the exchange rate of June 24th, 2019 using the ECB currency converter tool available at: <https://sdw.ecb.europa.eu/curConverter.do>

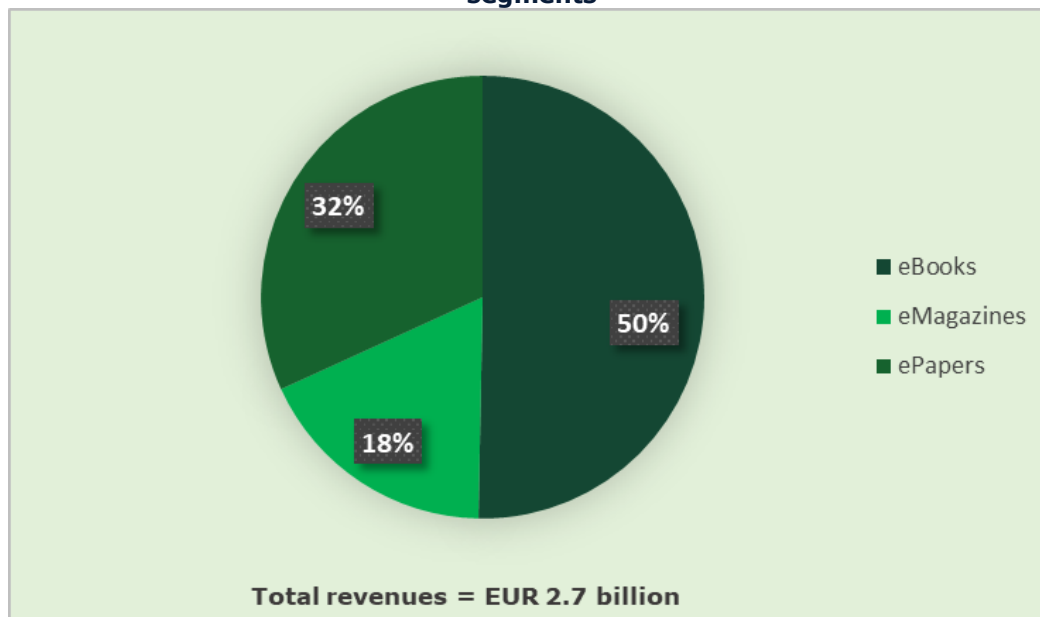
²⁶⁷ Monthly prices in this table are converted in EUR at the exchange rate of June 19th, 2019 using the ECB's currency converter available at: <https://sdw.ecb.europa.eu/curConverter.do>.

²⁶⁸ Under the definition of e-papers, Statista identifies the digital replicas of printed daily or weekly newspapers, whereas e-magazines are defined as digital replicas of printed consumer, trade or business magazines.

²⁶⁹ Adding up the revenues in the UK, would increase the total turnover to EUR 3.98 billion.

²⁷⁰ Own calculations based on Statista data: <https://www.statista.com/outlook/200/100/digital-media/worldwide>.

Figure 77: E-publishing revenues in the EU27: market shares of the different segments



Source: Own calculation based on Statista's Digital Market Outlook

Statista's global consumer survey provides a proxy of the market position of the main providers in the e-publishing sector, based on a number of respondents which varies per country.²⁷¹ Among the eight Member States of focus, Statista data is available for France, Germany, Italy and Poland and presented in the tables below.

Table 39 shows the providers with the highest number of purchased items in these four countries, based on the answers to the question: which of these providers have you bought e-books from in the past 12 months?

²⁷¹ <https://surveys.statista.com/surveys/7680848/150119>

Table 39: Market position of e-book purchases

Italy	Market Positions	France	Market Positions
Amazon	78%	Amazon	61%
laFeltrinelli	21%	fnac	28%
Google Play store	20%	Google Play store	19%
Mondadori Store	18%	Cultura	19%
ibs.it	17%	Apple iBooks	17%
Apple iBooks	7%	Espace Culturel E. Leclerc	11%
other	7%	Chapitre	11%
Libreria Rizzoli	6%	RakutenKobo	9%
RakutenKobo	6%	other	8%
BookRepublic	5%	Décitre	7%
Il giardino dei libri	5%	Feedbooks	6%
ebooksitalia	4%	Bookeen	6%
Hoepli.it	3%	Nolim	5%
macro librarsi	3%	7switch	5%
Street Lib	2%		
Germany	Market Positions	Poland	Market Positions
Amazon	68%	Empik	67%
Thalia	25%	Świat Książki	34%
Apple iBooks	15%	Tania Książka	23%
ebook.de	14%	Legimi	17%
Google Play store	14%	Gandalf	14%
Bücher.de	13%	Publio	14%
Hugendubel	12%	Ebookpoint	12%
Weltbild	9%	Nexto	11%
other	8%	Helion	10%
Beam	7%	Raudiovisualelo	10%
RakutenKobo	6%	Muza	9%
		Woblink	9%
		other	9%
		Virtualo	8%
		Bezdroża	7%
		Muve	5%

Source: Statista, based on a sample of n=2038 E-publishing purchasers for France, n=3547 E-publishing purchasers for Italy, n=2521 E-publishing purchasers for Germany and n=1883 E-publishing purchasers for Poland.

Table 40 shows the providers with the highest number of purchased items in these four countries, based on the answers to the question: which of these online newspapers have you spent money on in the past 12 months?

Table 40: Market position of e-paper purchases

Italy	Market Positions	France	Market Positions
ilsole24ore.com	34%	lemonde.fr	38%
gazzetta.it	30%	leparisien.fr	35%
corriere.it	27%	lefigaro.fr	28%
ilfattoquotidiano.it	26%	lequipe.fr	25%
repubblica.it	24%	other	19%
fanpage.it	23%	lepoint.fr	18%
ilgiornale.it	23%	ouest-france.fr	17%
tgcom24.mediaset.it	20%	leprogres.fr	16%
lastampa.it	19%	lexpress.fr	15%
ilmessaggero.it	16%	lesechos.fr	14%
ilmattino.it	15%	ledauphine.com	11%
ilgazzettino.it	11%	laudiovisualoixdunord.fr	10%
quotidiano.net	11%	sudouest.fr	10%
other	11%	ladepeche.fr	8%
citynews.it	7%	liberation.fr	8%
Germany	Market Positions	Poland	Market Positions
bild.de	32%	wyborcza.pl	59%
other	29%	dziennik.pl	33%
handelsblatt.com	28%	gazetaprawna.pl	28%
sueddeutsche.de	23%	nowiny24.pl	23%
faz.net	22%	dziennikpolski24.pl	17%
taz.de	18%	dziennikzachodni.pl	16%
fr-online.de	15%	dziennikwschodni.pl	15%
welt.de	15%	expressilustrowany.pl	15%
zeit.de	14%	gazetawroclawska.pl	15%
express.de	12%	polskatimes.pl	15%
mopo.de	12%	gloswielkopolski.pl	13%
waz.de	12%	pb.pl	13%
		dzienniklodzki.pl	11%
		dziennikbaltycki.pl	9%
		other	9%

Source: Statista, based on a sample of n=2038 E-publishing purchasers for France, n=3547 E-publishing purchasers for Italy, n=2521 E-publishing purchasers for Germany and n=1883 E-publishing purchasers for Poland

Table 41 shows the providers with the highest number of purchased items in these four countries, based on the answers to the question: which of these online magazines have you spent money on in the past 12 months?

Table 41: Market position of e-magazine purchases

Italy	Market Positions	France	Market Positions
focus.it	28%	01net.com	32%
other	25%	capital.fr	25%
vanityfair.it	21%	programme.tv	25%
donnamoderna.com	20%	femmeactuelle.fr	23%
grazia.it	20%	cosmopolitan.fr	20%
elle.com	19%	other	20%
nautica.it	17%	closermag.fr	18%
lacucinaitaliana.it	16%	gala.fr	18%
quattroruote.it	16%	voici.fr	18%
millionaire.it	10%	parismatch.com	16%
amica.it	9%	programme-tv.net	16%
ggitalia.it	9%	public.fr	16%
quimamme.it	7%	santemagazine.fr	16%
home-comfort.it	6%	elle.fr	13%
wired.it	6%	marieclaire.fr	13%
fedeltadelsuono.net	5%	telerama.fr	13%
Germany	Market Positions	Poland	Market Positions
spiegel.de	31%	newsweek.pl	42%
handelsblatt.com	26%	polityka.pl	32%
focus.de	25%	focus.pl	31%
sueddeutsche.de	25%	wprost.pl	31%
welt.de	24%	angora.com.pl	27%
bild.de	22%	gazetapolska.pl	23%
instyle-abo.de	21%	tygodnikpowszechny.pl	18%
other	21%	other	15%
faz.net	19%	dorzczy.pl	14%
wiwo.de	13%	idziemy.pl	14%
psychologieheute.de	12%	nowe-panstwo.pl	13%
zeit.de	12%	przekroj.com.pl	13%
		tygodnikprzeglad.pl	12%
		wsieciprawdy.pl	10%
		gosc.pl	9%
		nie.com.pl	9%

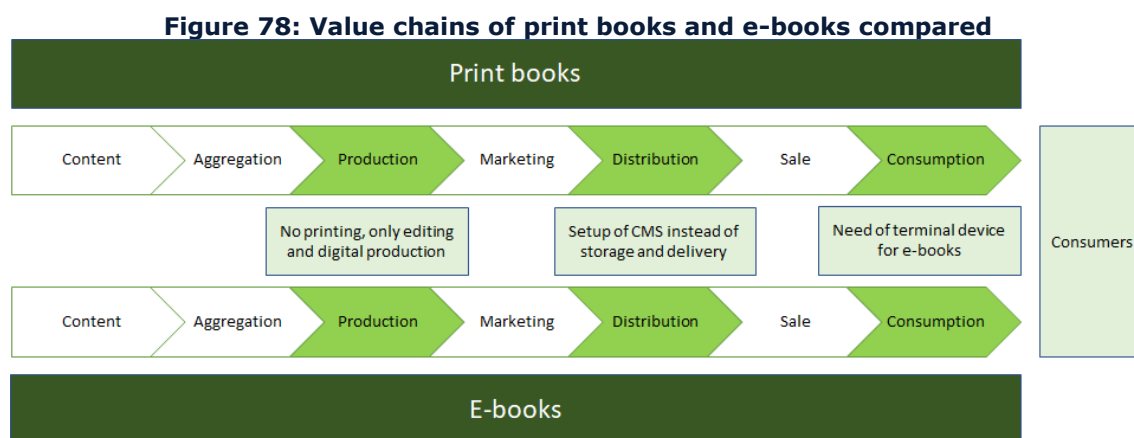
Source: Statista, based on a sample of n=2038 E-publishing purchasers for France, n=3547 E-publishing purchasers for Italy, n=2521 E-publishing purchasers for Germany and n=1883 E-publishing purchasers for Poland

These market shares are not turnover based (that is, the sum of the shares does not add up to 100%). Instead they have to be considered as market positions: the percentages presented below only reflects the consumers' answers to the survey, in which multiple choices were possible

7.1.2 Licencing models

The digital shift and the introduction of e-books has changed the value chain and the contractual relationships between its different actors compared to the traditional book

market. In general, the market has moved from a model, which was based on the purchase of individual copies, possibly in combination with some licencing to get the selling rights (with traditional books), to a purely licence-based model (with e-books). The figure below shows the different steps in the value chain of the traditional and the e-book markets.



Source: Own elaboration based on PwC (2016)

Traditionally, authors are signed with a publishing house that is in charge of the aggregation of content and the production and marketing/promotion of their titles. The publishing houses then sell the different book titles to wholesale companies who distribute the books to retailers who in turn sell the books to consumers. The business model for e-books differs significantly, especially in terms of production and distribution. Production is less costly. Publishers still need to account for costs such as editing, digital production and marketing across both the print and digital versions, but do not have to engage in the more time-consuming and costly process of printing, storage, delivery and returns. Regarding distribution, wholesale distributors do not exist for digital publications, while a content management system has replaced storage and delivery. In this sense, digital publishers have eliminated the role of the wholesale companies and instead deal directly with the retailers (in this case the online platforms where the e-books are sold). There are also instances where the authors are dealing directly with the e-book platforms (i.e. self-publishing authors) cutting out the publishing houses. However, authors may not be in a good position to do all their own marketing and advertising. This is why this option is usually applied by less popular, non-bestselling authors, who in many cases may end up in a more traditional relationship with publishers after the self-publication of their works has been used as a sort of market testing tool.²⁷²

Generally speaking, in the e-books sector publishing houses acquire world-wide rights for each specific language version from an author and then make commercial agreements with distributors and retailers granting non-exclusive licenses on a

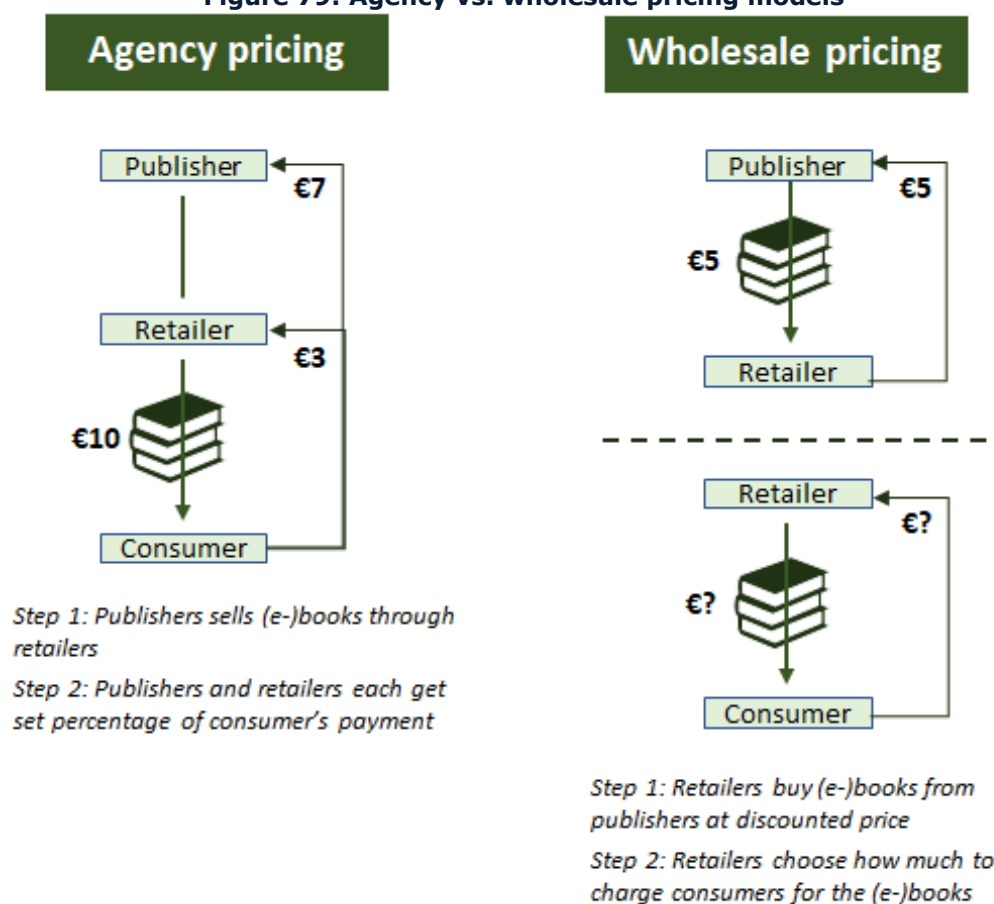
²⁷² PricewaterhouseCoopers (2016). Turning the Page: the Future of eBooks.

territory-by-territory basis²⁷³. An interesting discussion is who holds the necessary rights for digital copies (including e-books and audiobooks) of older publications, since the contracts with publishing houses don't mention the rights for older publications. As discussed in Section 3, the recent Tom Kabinet case has ruled out digital exhaustion for e-books.

Regarding the contractual relationships between the publishing houses and the online platforms, the distribution agreements that allow the sale of e-books are usually provided on a non-exclusive but territorial basis. The global trend is that, when these platforms first started to emerge, the price for the e-books was usually decided by the platform (such as when Amazon first introduced its e-reader, Kindle). When Apple began to sell e-books, they developed a new contractual relationship with the publishing houses in order to compete with Amazon. Under this relationship, it was the publishing house that decided on the price, while the platform received a set percentage of the gross revenues (usually around 30%). This model is referred to as agency pricing as opposed to the previous wholesale pricing model. Figure 79 presents the differences between these two models in an infographic.

²⁷³ Ibid.

Figure 79: Agency vs. wholesale pricing models



Source: Publishing Trendsetter "What is the Agency Model for Ebooks? An Infographic"

There has been a lot of debate between supporters of both agency and wholesale pricing. There have also been several court rulings (notably in the United States) suggesting agency pricing may constitute anti-competitive behaviour, in turn leading to a kind of agency pricing light where the retailer has a certain bandwidth between which they are able to set their own price allowing for some discounts.

E-books are not covered by the COMP sector inquiry, so no qualitative information can be provided on the territorial scope of licencing agreements in this sector.

7.2 Results from the field work

This section presents the evidence on the e-books sector collected from the fieldwork. Firstly, the interview results are discussed, followed by the consumer survey results and the results of the mystery shopping exercise.

7.2.1 Feedback from the interviews

According to European associations active in the publishing industry, the e-book segment accounts only for 8% of the whole turnover of the industry. Figures from

interviewees show that the revenues are even lower for booksellers, who do not retain the rights for any of the titles sold: instead they have agency model-type contracts²⁷⁴ with publishers, acquiring licenses to distribute e-books in a certain language.

Data provided by booksellers suggest that, even for those that are already active cross-border, foreign sales are particularly low. According to some interviewed booksellers, less than 10% of the revenues comes from abroad and in some cases, the non-domestic demand is even lower than 2%. In line with this, the share of the total revenues coming from non-domestic sales is very low as well. Table 42 below shows some anonymised data received from interviewed booksellers. All the figures reported are expressed in EUR and they refer to the latest data available. The heading Forecasted IT costs is an estimate, provided by the respondents, of the necessary investments that these sampled booksellers would have to make to meet cross-border sales in countries currently not served. These IT costs refer to billing, correct geographic identification of the customer and related pricing information.

Table 42: Comparison between e-books revenues and forecasted IT costs

Stakeholder	Total e-books sales (EUR)	Cross-border e-book sales (EUR)	Bookshop turnover (offline and online) (EUR)	Forecasted IT costs (EUR)
Bookseller A	53,208	0	13,500,000	100,000
Bookseller B	N/A	Very low	N/A	80,000 -120,000
Bookseller C	N/A	Very low	N/A	112,000 ²⁷⁵
Bookseller D	54,879	0	2,500,000 - 3,000,000	N/A

Source: Own calculations

Although based on a very limited set of figures provided by very few respondents, this table confirms what has been shown in Table 36, that e-books sales are still not comparable to the revenues coming from the sales of physical books.

Regarding the impacts on rightholders and distributors, it has been estimated by interviewees that the costs of installing technology ensuring cross-border access from every EU Member State are much higher than the total e-books revenues for online booksellers; this is notwithstanding the fact that in some cases cross-border access is already possible. Notably, only one respondent estimated that the potential additional revenues coming from an extension of the market (under scenario 2) would amount to around EUR 200,000 per year.

²⁷⁴ The different business models are discussed in more detail in Section 7.1.1.

²⁷⁵ Bookseller C is a bookseller already selling e-books cross-border. It explained that the amount of EUR 112,000 in IT costs to comply with an extended scope of the Geo-blocking Regulation is due by: "adapting pricing to country of consumer", "adapting to currency of consumer" and "adapting to tax rate applicable in country of consumer".

This information is an outlier compared to the answers collected from the other stakeholders: the respondent explained that it would be “technically able and willing to implement the technical requirements for the sale of e-books to other EU countries”, considering “the higher costs for the technical implementation and payment processing acceptable in comparison to the advantages by an expansion of its sales area”. All the other respondents stated that, in order to effectively locate consumers, to display the relevant price considering the different national VAT regimes and national fixed prices, an investment of around EUR 100,000 would be required. Especially for smaller booksellers (SMEs) this might form a significant burden causing them to give up on selling e-books, which might in turn limit consumer choice.

An important additional consideration for the e-book sector is the fixed book pricing schemes that exist in several Member States (Table 43).

Table 43: Fixed book price systems in the EU27

Country	Paper Fixed Price	Introduced/ Revoked	Duration of Applicability	Maximum Discount	E-Book Fixed Price
Austria	Yes	2000	2 years after publication	5%; 10% for libraries	No
Belgium	Yes	2018	6 months after publication	5%; 15% for libraries	Yes
Bulgaria	No		-	-	-
Croatia	Yes	2007			
Cyprus	No		-	-	-
Czech Republic	No	-	-	-	-
Denmark	No	2011	-	-	-
Estonia	No	-	-	-	-
Finland	No	1971			
France	Yes	1981	2 years after publication	5%; 9% for libraries	Yes
Germany	Yes	2002	Minimum 18 months	0%; 5% for research libraries	Yes
Greece	Yes	Revised 2014	2 years after publication	10%	Yes (2010)
Hungary	No	2007	-	-	-
Ireland	No	1994	-	-	-
Italy	Yes	2005	20 months after publication	15%; 20% during book fairs or trade fairs	No
Latvia	No		-	-	-
Lithuania	No		-	-	-
Luxembourg	No		-	-	-
Malta	No		-	-	-
Netherlands	Yes	2005	Publishers can reduce prices every 6 months	5-10% for students	No
Norway	Yes	2014 Agreement	Until 30th April the year after publication	12.5% for book shops, 20% for libraries	Yes
Poland	No	-	-	-	-
Portugal	Yes	1996	18 months	10%; 20% for libraries and during book fairs	No
Romania	No		-	-	-
Slovenia	Yes	2014	6 months	0%; 20% for book fairs	Yes
Spain	Yes	2007	2 years after publication	5%; 10% for World Book Day and book fairs, 15% for public entities	Yes
Sweden	No	1970	-	-	-
Switzerland	No	2007	-	-	-

Source: International Publishers (2014); <https://www.booksellers.org.uk/BookSellers/BizFormFiles/d753955b-ad88-4241-9efe-24d5d60a7166.pdf>; <https://thenewpublishingstandard.com/half-of-belgium-gets-fixed-price-book-law/>; Fixed Book Price Regimes Beyond the Rift (2017); Books at What Price

In practice, this system works out as a resale price maintenance (RPM) mechanism with maximum discounts allowed compared to the price defined by the publisher. The maximum range of discounts allowed by the legislation in case of e-books differs in each Member State. The idea behind this system is to limit price competition between booksellers for two particular reasons. Firstly, to protect smaller booksellers against larger chains for which it might be easier to offer large discounts for a while and, in so doing, outpricing smaller retailers. This is supported by the market shares for e-book purchases presented in Table 39, which shows a large gap between large players (especially Amazon) and small operators. This finding has been confirmed during interviews with associations and operators from the e-book sector, who pointed to the perceived risk of Amazon outpricing them and taking over the European e-book market. The second reason for fixed book prices is to promote the sale of less popular books by ensuring that booksellers are able to compensate and recoup their costs for these with a guaranteed margin (which is the same for every bookseller) on more popular books. As a cultural policy measure, these two aspects are closely intertwined. The rationale of such policy is that, through the preservation of smaller booksellers, an important outlet for smaller publishers is preserved and more diversified titles are offered.

Fixed book prices are relevant to this study, as it is important to consider what implications the extension of the geo-blocking regulation would have. Namely, if consumers were able to buy their e-books in all other Member States, in practice they could avoid the fixed book prices by buying their e-books in Member States where no such scheme exists. During interviews, this has also been mentioned by stakeholders from the e-book sector as one of their major concerns with extending the scope of the regulation.

Notably, compliance costs have been forecasted by both online booksellers, which are already capable of providing e-books cross-border, and other booksellers, which currently sell only in their country. These could affect all sales beyond the minimum threshold of cross-border sales for application of the VAT in the country of destination (currently EUR 10,000, which according to one respondent would occur in at least 13 Member States)

Regarding the impacts on consumers, industry interviewees feared that the costs of imposing cross-border access (expressly under scenario 2) to all booksellers would not be compensated by the potential additional revenues coming from the expansion of the markets. This might in turn lead to the smaller national booksellers being forced to exit the market limiting the production of long tail e-books (e-books with lower sales and in less spoken languages) leading to less consumer choice and lower product variety.

Data provided by one e-book provider suggests that, due to different fixed book price legislations across countries, the same e-book title in the United Kingdom (which does not have fixed book prices) is usually provided at a lower price than in Germany

(which does have fixed book prices). For German book titles this was the case for 98.5% of the titles, while for English book titles this was the case for 53% of the titles. These price differentials were considered by interviewees to be a major obstacle to the removal of geo-blocking, as they expected that the highest minimum price might be applied across the EU following the rationale described for the music sector above. According to interviewees, this might ultimately lead to an expected detrimental impact on consumer welfare.

7.2.2 Findings from consumer survey²⁷⁶

This section focuses on findings from the consumer survey on key factors that impact consumer attitudes and behaviour. It should be noted that results from this survey when it comes to cross-border access and related metrics may differ from those reported in the most recent Eurobarometer survey²⁷⁷ due to differences in the target population of the two surveys.²⁷⁸

Use and spending

While the e-books sector is relatively small compared to the other sectors studied, 29% of consumers paid for an individual e-book over the last 12 months, while 12% paid for an online subscription, and overall paid purchases were 39%. This suggests little overlap between the two groups, with consumers either choosing to buy e-books individually or via a subscription but rarely both. Average monthly spending on pay-per-item purchases is lower (EUR 16) compared to subscription services (EUR 20).

Table 44: Average monthly spending on online purchases

	E-books
Base size	497
Paid subscription(s)	€ 20
Paid per item	€ 16
Subscription(s) and cost per item	€ 18

Question asked: On average, how much money do you spend per month on online purchases in this sector?

Cross-border access and geo-blocking issues

E-books represent the sector where consumers are least likely to engage in cross-border access. Only 15% accessed e-books for free or via a purchase through services not meant for users in their own country. It should be noted that differences across

²⁷⁶ All tables in this section have our own survey as a source, unless otherwise indicated.

²⁷⁷ Flash Eurobarometer 477b: "Cross-border access to online content".
https://data.europa.eu/euodp/en/data/dataset/S2221_477_ENG

²⁷⁸ For a more thorough explanation please refer to Section 5.3.2 of this report.

sectors are not big. The sector with the highest proportion of consumers is music, where only 23% accessed content cross-border.

Table 45: The type of content or service that consumers accessed or attempted to access (for free or via a purchase) in the past 12 months

	E-books
Base size	5567
Specific content or service meant for users living in the country of residence	90%
Specific content or service <u>not</u> meant for users living in the country of residence	15%

Question asked: Over the past 12 months, please indicate the type of content or services you accessed or attempted to access (for free or via a purchase)?

In contrast to findings from the mystery shopping, where no issues were observed with cross-border access to e-books, the consumer survey shows that approximately one in two consumers (53%) do experience issues – the highest level overall among all digital content sectors. In particular, 15% claim they were charged extra, while 24% state that access was not possible. Over a quarter of respondents (28%) experienced issues that they could resolve themselves. Taking these figures together, we can estimate that, on average, 8%²⁷⁹ of all consumers who access e-books (both domestically and cross-border) experience issues linked to geo-blocking.

Table 46: Consumers' experience when attempting to access specific content or service not meant for users residing in the respective country

	E-books
Base size	967
It worked without a problem and without using extra tools (e.g. Virtual Private Network)	47%
I experienced some problems but found a way to access the content (e.g. via Virtual Private Network)	28%
I was charged extra to access the content	15%
It did not work (e.g. no access, redirected, refused payment)	24%

Question asked: What happened when you tried to access specific content or service NOT meant for users residing in your country?

²⁷⁹ This proportion is computed by multiplying the % of respondents who engage in cross-border usage by the % of respondents who experience issues, to arrive at an overall proportion of issues in the general population of users.

Content availability

Considering content availability, 45% of consumers can remember occasions when access to e-books they were interested in was not available through their existing subscription. This proportion is comparable for individual content (44%). When it comes to access via illegal channels, only 4% of consumers claimed to use them as a resolution for individual books but a higher proportion (12%) did so when it comes to lack of access through a subscription. Roughly one in four consumers chose to give up access to content they were interested in (23% for subscriptions and 25% for individual content).

Consumer satisfaction

When it comes to consumer satisfaction with e-books, the results are in line with figures observed for the other sectors. There is a relatively high consumer satisfaction with the number and variety of providers (77%), the choice and quality of content (75%) and the language availability (76%) in the e-books sector. When it comes to prices, however, only slightly more than half of respondents (55%) indicate that they feel that current prices are justifiable considering the offers - a trend that can be observed across all digital content sectors. Compared to some other sectors (music and audiovisual content excluding sports) price appears to be slightly less important in driving consumers' purchase decisions. Despite these minor differences, the vast majority of consumers (88%) do state that price matters.

Current switching behaviour

While subscriptions appear to play a smaller role in the e-books market, when it comes to actual switching behaviour, 1 in 3 consumers (34%) who access e-books via this channel have made changes to their subscription over the last year. As in the music sector, switching the type of subscription or provider (28%) is much more common than adding a new subscription (5%), suggesting that multiple subscriptions are uncommon for e-books users. Still, switching appears to be a common activity when it comes to subscriptions in this sector.

Drivers of hypothetical switching behaviour: price, language accessibility and local content

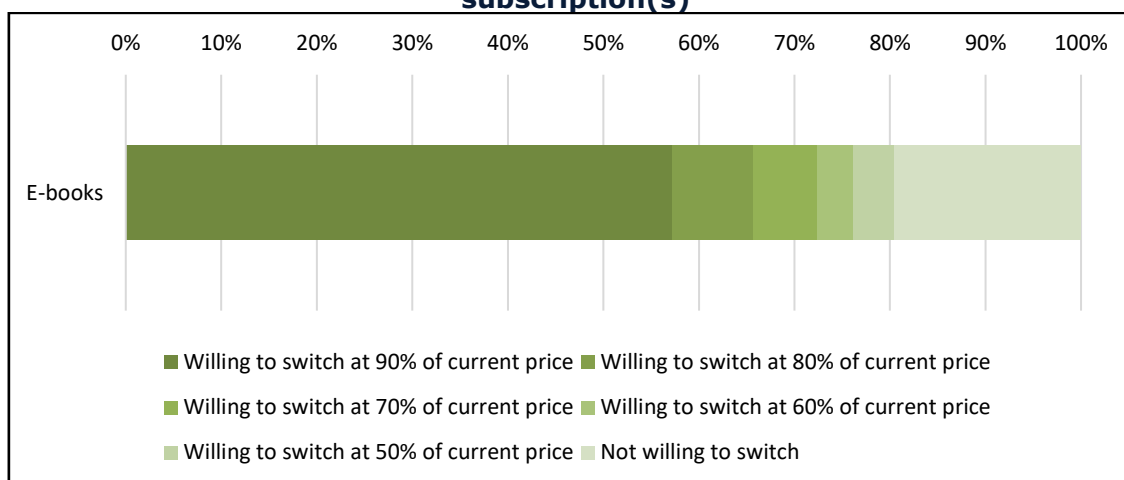
It is difficult to determine which factor matters most to consumers by looking at their subjective evaluations. As stated above, consumers clearly find price important (88%), yet content availability is rated slightly higher than price (91%), while language accessibility (89%) is rated somewhere in between. This is somewhat surprising as speaking the language is a prerequisite for being able to access content in this sector.

When it comes to the drivers of consumer behaviour,²⁸⁰ as for the other sectors, we asked consumers to imagine 3 specific switching examples:

- 1) the offer remains exactly the same but only the price varies
- 2) the offer has similar catalogue or content but is meant for users in other countries and may not include consumers' preferred language; the price also varies
- 3) the offer is meant for users in other countries and may not include consumers' preferred language but may also feature limited local or national content; the price also varies

The first example estimates consumers' price sensitivity should the offer remain the same. In line with other sectors, over half of consumers (57%) would switch their e-books subscription if the price drops by as little as 10% but the offer remains the same. An additional 23% would switch if the price drops further, while the remaining 20% claim not to be affected by price changes (up to 50% discount). These figures show that if the offer remains the same, hypothetically 8 in 10 consumers would switch their e-books subscription. This figure, while very high, is lower than in the music and audiovisual sectors.

Table 47: Consumers' willingness to switch providers or service if the content and language options are broadly the same as for their current subscription(s)



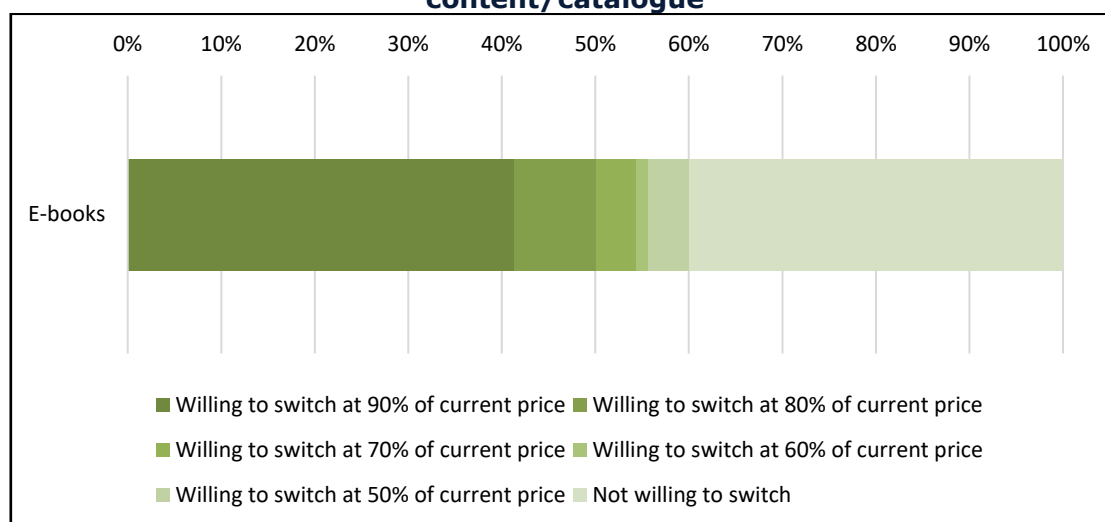
Question asked: Would you switch to another service provider or service, offering you broadly the same content and same language options as your current subscription?

In the second example we examined price sensitivity under conditions where the offer may not feature consumers' preferred language options (cross-border access). In line with other sectors, consumers' price sensitivity was lower, with 41% willing

²⁸⁰ With respect to consumer behavior, the survey compared directly the importance of price, language accessibility and local content. As opposed to the ranking reported above, content availability (in general) was not taken into account in this comparison. As such, these rankings may differ.

to switch for a 10% price discount and an additional 19% willing to switch for discounts up to 50% of the original price. The overall drop in price sensitivity is significant. While in the first switching example, 20% of all consumers were not willing to switch, in this one 40% were not willing to do so, suggesting that language matters to some consumers. Still, the drop is smaller compared to the audiovisual sector and comparable to the music sector. The majority of consumers remain price sensitive (60%) with four in 10 not willing to switch if their preferred language is not available.

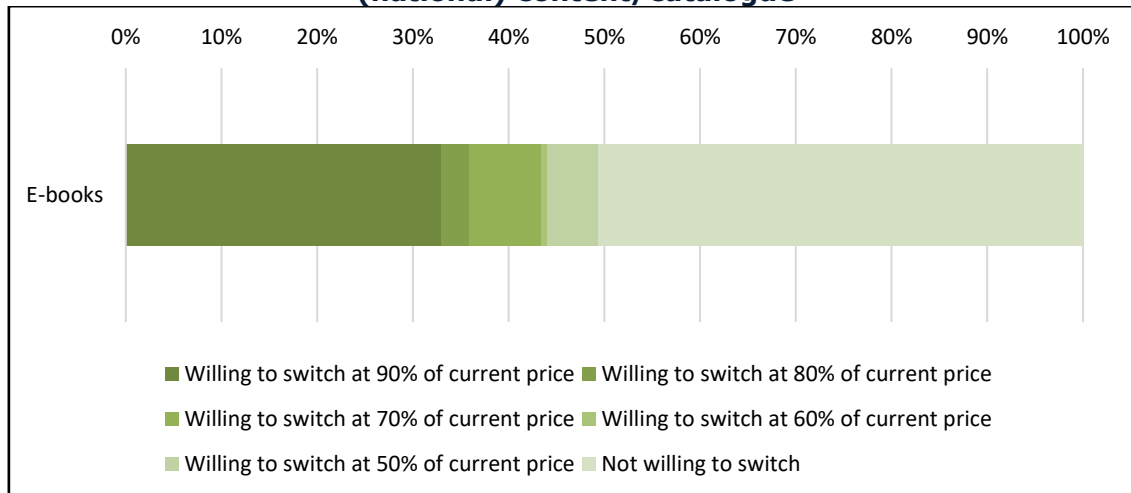
Table 48: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence but offers a similar content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence BUT offering you similar content/catalogue?

The third example explores the importance of local content in addition to limited language availability. Here, we observe a sizable increase in the proportion of consumers (11%) who would not be willing to switch if local e-books content is limited, regardless of the price discount. Thus, the importance of local content is higher in the e-books sector, compared to the other sectors surveyed. In this example, only half of consumers (49%) would be willing to switch based on varying price discounts, with 33% expressing extreme price sensitivity (10% discount).

Table 49: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence and offers no or limited local (national) content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence AND offering you no or limited local (national) content/catalogue?

Based on these figures, we can conclude that for the e-books sector all three factors drive consumer switching behaviour – price, language accessibility and local content availability. We can estimate that roughly half of consumers (49%) are exclusively sensitive to price, while 20% find language availability more important and 11% appear to be sensitive to the availability of national or local content, suggesting that this factor plays a bigger role compared to other sectors. When probing the importance of language accessibility further, 21% of consumers stated that they would not switch their e-book provider if their preferred language is not available, at any price.

7.2.3 Findings from mystery shopping exercise²⁸¹

Based on results from the mystery shopping exercise, overall, the e-books sector seems to be characterised by the lowest level of geo-blocking compared to the other sectors, at all stages of the consumer journey.

Access and availability

No issues were observed when it comes to cross-border access to providers of e-books. No issues were observed when it comes to cross-border availability of e-book offers for subscriptions. For one-off purchases, some cases of price differences were observed.

²⁸¹ Please note that Amazon's EU stores were not included in our sample for this Mystery Shopping Exercise.

Registration

Issues during registration were least common in the e-books sector with only 1 out of 10 attempts resulting in geo-blocking due to the foreign address not being accepted.

Payment

At the payment stage, no issues were observed when it comes to cross-border access to providers of e-books.

7.3 Expected impact on consumers and on industry

This section looks at the impacts of a potential extension of the geo-blocking regulation to include e-books; firstly, the impacts on scenario 1 and then the impacts under scenario 2 are discussed.

Regarding the data analysis, we consider a transaction-based business model which, despite the increasing importance of subscription-based models, is still prevalent in the e-book sector, especially for occasional readers of e-books who will be unlikely to opt for a subscription model. In the following, we present our baseline findings on product variety, pricing across Member States and the potential impact of language availability.

Product variety

The methodology to gather data on product variety is explained in general in section 4.6.2.2. The original data extraction for the three main target countries (the UK, Italy and Poland) had to be recalibrated based on the specific item IDs that were retrieved from the original data. This allowed a close examination of the fraction of books that were apparently not picked up in the original data extraction from iTunes (Table 50). The first column shows the fraction of e-books that were not found in Italy or the UK while appearing in the Poland database. The fractions are considerable, indicating that both catalogues in Italy and the UK offer most of the e-books available in Poland. Surprisingly it's a totally different picture the other way around as can be seen in the first row. 2.2% of books in the Italian database (6.7% for the UK respectively) which are not listed in the Polish database were not identified correctly in the original data extraction. This means that 97.8% (93.3% for UK respectively) of these e-books are truly unavailable in Poland, which is a very substantial fraction.

Table 50: Fractions of titles incorrectly categorised as unavailable in the raw data

	Poland	Italy	United Kingdom
Poland	-	0.022	0.067
Italy	0.958	-	0.604
United Kingdom	0.842	0.665	-

Source: Own calculations

Combining the data from the original data extraction and the re-calibrated revised data, an estimation can be made of the true fraction of one catalogue that is not

available in another. The results can be found below (Table 51). Most e-books are available in Italy and the UK, while roughly 40% of each catalogue is missing in Poland.

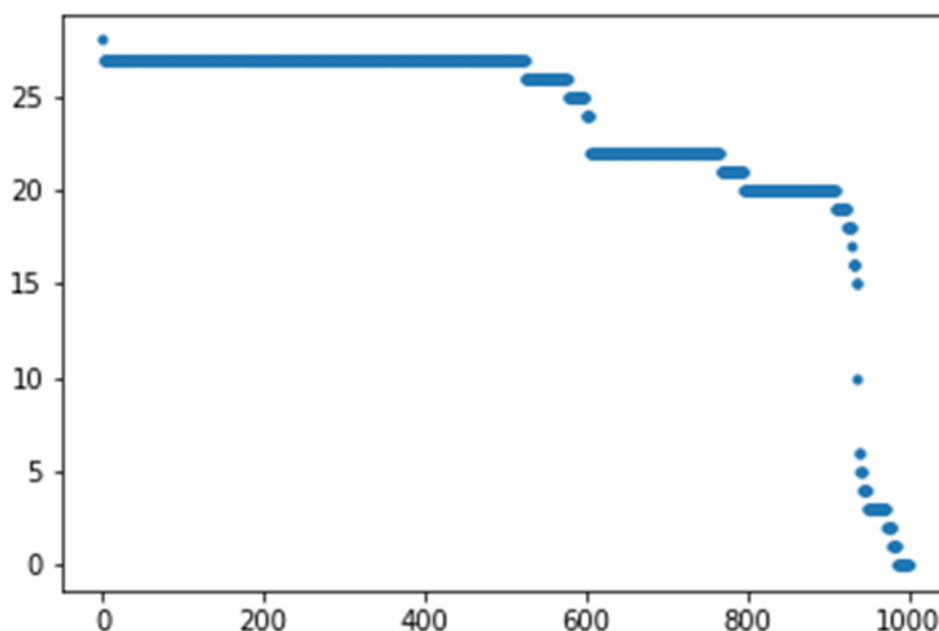
Table 51: Fractions of e-book titles in Poland, Italy and the UK unavailable in the respective other catalogues

% of whole row catalogue/ not in col catalogue	Poland	Italy	United Kingdom
Poland		0.006	0.036
Italy	0.395		0.046
United Kingdom	0.398	0.038	

Source: Own calculations

By drawing a random sample of 1,000 e-books from the UK catalogue and extracting accessibility data for the other catalogues for each of them, it has been possible to scale the detailed analysis presented in the table above for three countries to all Member States. The results of the analysis are shown below. In essence, the data on all Member States mirrors the results found for the selected three countries. Croatia appears to be a country with miniscule accessibility of e-books and is clearly an outlier. There is another group of countries similar to Poland in the original analysis whose residents have access to roughly two thirds of the sampled items. In the remaining countries, which are in the majority, iTunes offers access to around 90% of the items sampled for this exercise.

Figure 80: Availability of a sample of 1,000 e-books across Member States



Source: Own calculations

Table 52: Number of available e-books out of a sample of 1,000 in each Member State

Austria	935	Italy	940
Belgium	931	Latvia	915
Bulgaria	597	Lithuania	911
Croatia	5	Luxemburg	933
Cyprus	926	Malta	931
Czech Republic	606	Netherlands	935
Denmark	785	Poland	606
Estonia	931	Portugal	926

Source: Own calculations

Our results differ somewhat from Batikas et al. (2015)²⁸² who focused on the market for e-books in the EU. They used data from the Amazon Kindle e-books store, the market leader. They found that residents in all EU countries have access to the Amazon US Kindle store. However, access to Amazon's six e-books' stores in the EU (the UK, Germany, France, Spain, Italy and the Netherlands) is restricted to residents in each of these countries and in four neighbouring countries with which they share a language. Their results show that there is no cross-border store access between these six countries.²⁸³ Because e-book catalogues overlap between these stores by 93%, cross-border access restrictions do not significantly affect cross-border availability in the EU. Lifting digital access walls for Amazon e-books' stores in the EU would result in a small increase in the variety of book titles available to EU consumers. E-book prices vary between Amazon EU stores, and between EU and US e-books' stores. The study shows that consumers can find price opportunities between their local store and the US store only. In this sense, lifting geographical access restrictions would increase price options, especially for EU28 e-book consumers. However, the welfare impact is difficult to predict as it might lead to increased price convergence, with winners and losers.²⁸⁴

Price

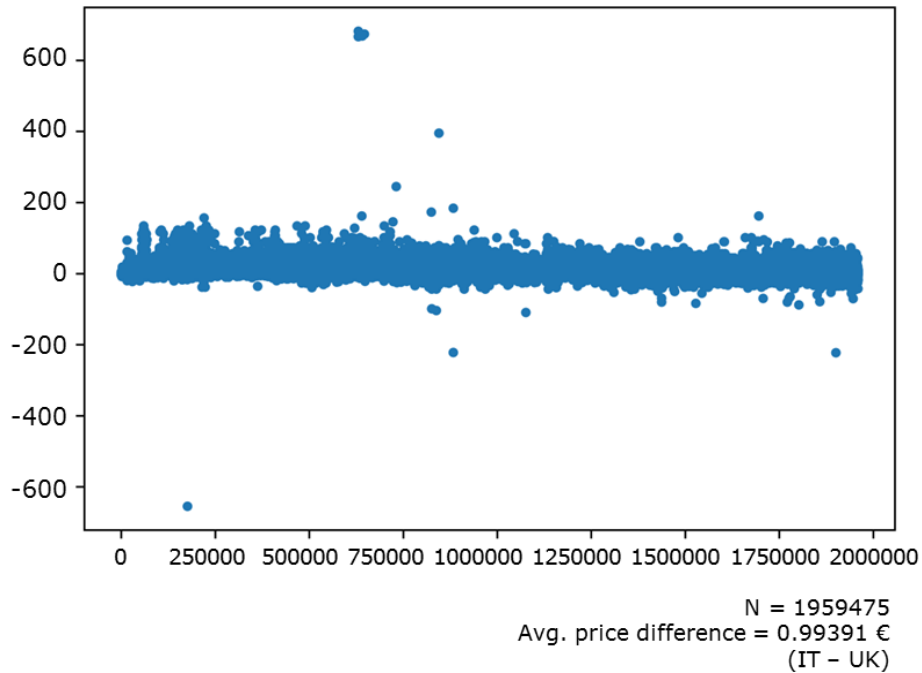
Price differences are straightforward to analyse. Since the sample of e-books is unbiased, pairwise price differences can be calculated only for the three database intersections. E-books in Italy are on average roughly EUR 1 more expensive than in UK (exchange rate from 01.08.2019) and EUR 0.12 more expensive than in Poland. Poland on the other hand is roughly EUR 0.19 more expensive than the UK for the average e-book. More details about the range of differences can be found in the graphs below.

²⁸² Batikas M, Gomez-Herrera E, Martens B. 2015. Geographic Fragmentation in the EU Market for e-Books: The case of Amazon - Institute for Prospective Technological Studies Digital Economy Working Paper 2015/13

²⁸³ Please note that this is not reflected in the results from the mystery shopping as Amazon's EU stores were not included in our sample.

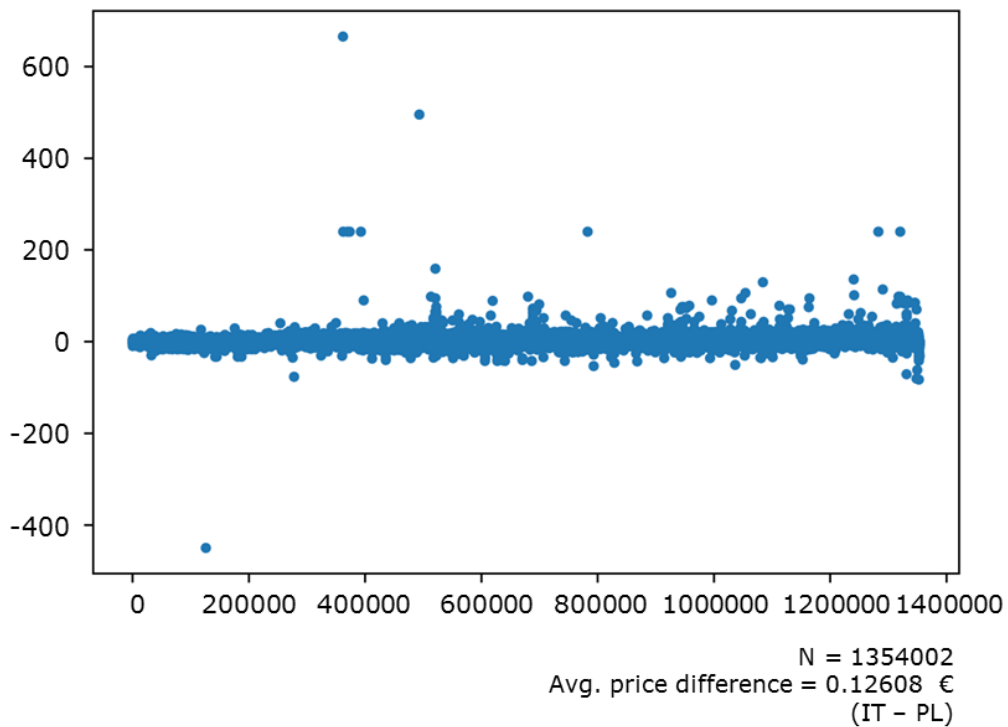
²⁸⁴ The project team gratefully acknowledges JRC's support in the summary of this study. See Georgios Alaveras & Estrella Gomez Herrera & Bertin Martens, 2015. "Geographic Fragmentation in the EU Market for e-Books: The case of Amazon," JRC Working Papers on Digital Economy 2015-13, Joint Research Centre.

Figure 81: Price comparison for e-books in Italy and the UK



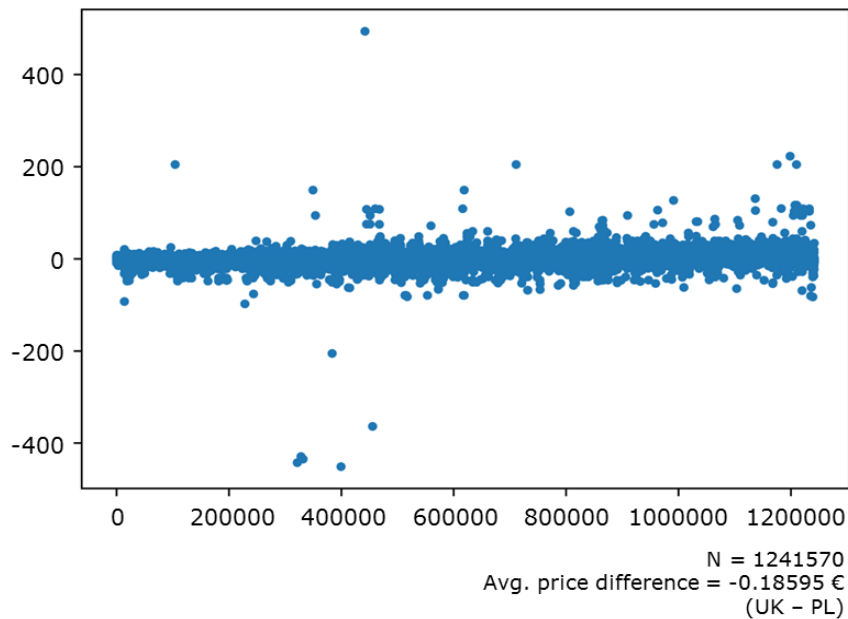
Source: Own calculations

Figure 82: Price comparison for e-books in Poland and Italy



Source: Own calculations

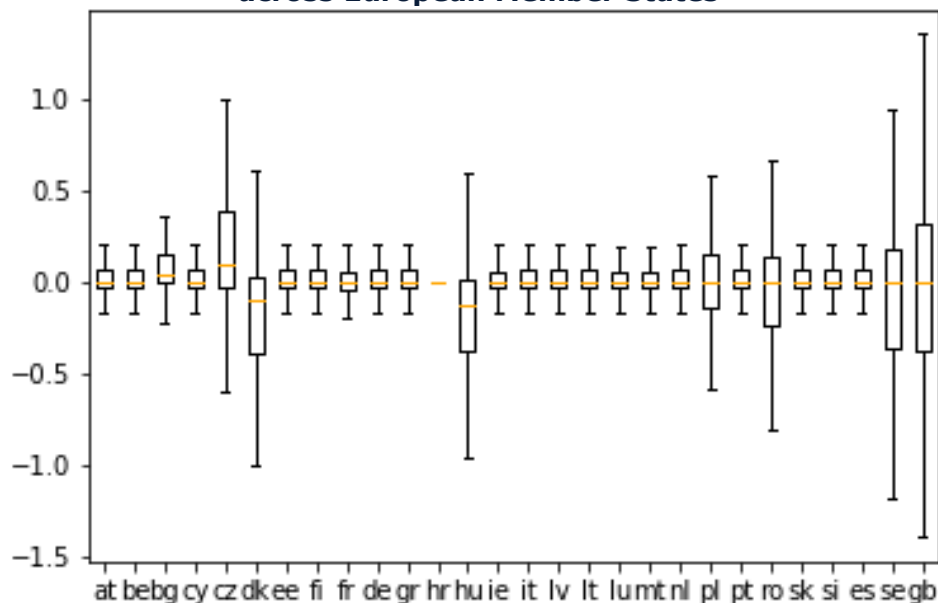
Figure 83: Price comparison for e-books in the UK and Poland



Source: Own calculations

Similar to the analysis of the accessibility of e-books based on the random sample of 1,000 items from the UK catalogue, the analysis of price per item across Member States indicates similar results to those for the three selected countries that were analysed in detail. Overall, prices do not tend to vary substantially across Member States for the same item.

Figure 84: Price differences for a sample of 1,000 e-books across European Member States



Source: Own calculations

In the overall analysis, only seven Member States have been found to show a price pattern for e-books that markedly differs from the other Member States. Furthermore, it has been found that even these price differences are, in absolute values, relatively small. Finally, it has been found that there is, at least for Poland, Romania, Sweden and the UK, no obvious pattern in the identified price difference. Essentially, these countries show the same median price of the same items but scattered markedly more around the median point featuring both lower and higher prices for the same items than other countries. Consequently, it is not expected that under either scenario 1 or scenario 2 a clear-cut cheap country for all e-books is likely to emerge to which consumer would gravitate. This is further curbed as, under both scenarios, sellers could have to observe fixed book price regulations for passive sales stemming from a country where these apply.

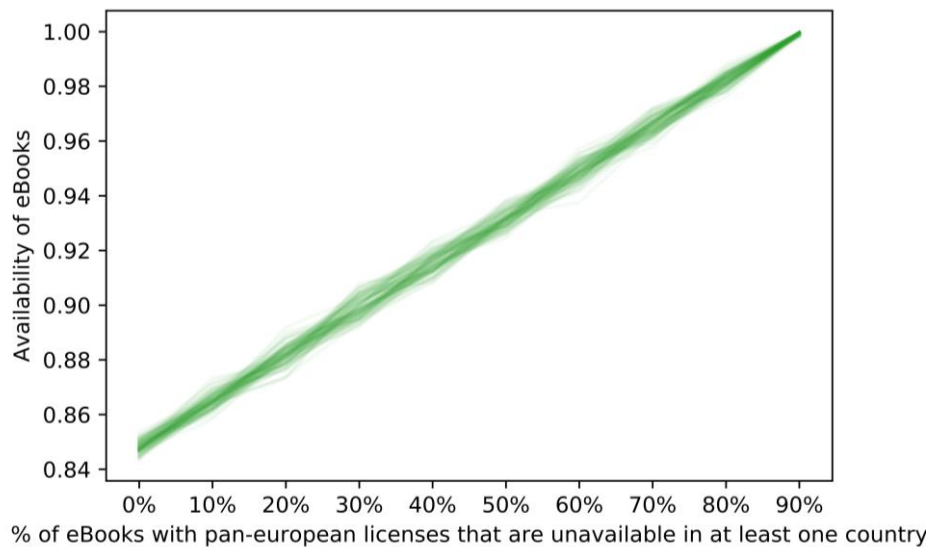
Language availability

Since each individual translation of an e-book features as an individual item in the iTunes catalogue, the effect of language availability above cannot be observed beyond the finding of accessibility presented above.

7.3.1 Scenario 1

In Scenario 1, there would be no change of accessibility if rights were already exploited by distributors of e-books across all countries where they are licensed. Given the findings on licencing, pointing out that copyright licenses are usually not limited to the specific territory where the publisher or distributor is active, this seems unlikely. As we cannot know the exact share of books in our samples for which the distributor holds sufficient rights to distribute them in all Member States, we approximated the effect of random e-books becoming available. Using examples of adding unavailable e-books randomly to stores that lack them, we find that there is no obvious qualitative difference between e-books and that the availability increases linearly with an increasing number of withheld e-books in Scenario 1. While it is not possible to pinpoint the true percentage, it should be noted that the 100% mark is essentially equivalent to our understanding of Scenario 2.

Figure 85: Relation between withheld e-books and availability



Source: Own calculations

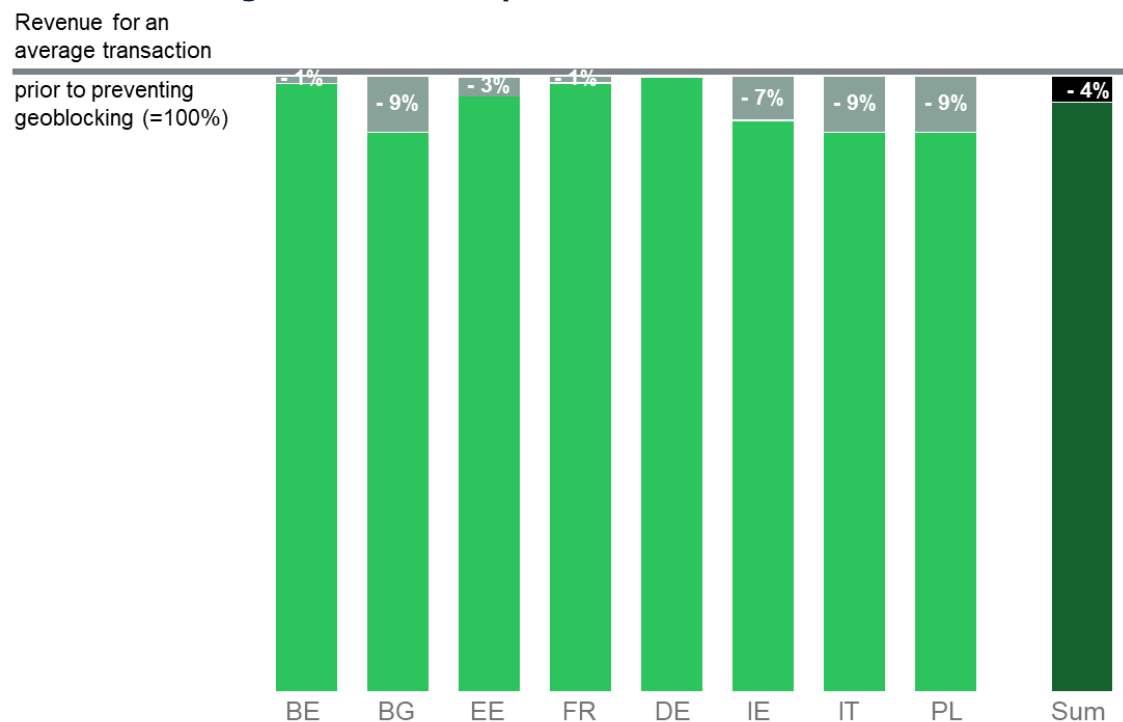
For the impact on revenues, this implies that if the requisite rights are currently not withheld by the distributor, Scenario 1 would likely have no measurable effect, as the distributor would not have the right to sell them in additional territories. On the contrary, if all e-books became suddenly available, because distributors usually have the sufficient rights to sell everywhere, but currently do not make use of them, scenario 1 would essentially have the same effect as Scenario 2 on revenues. Scenario 2 therefore can be considered an upper bound, in case that licencing practices would ensure the general availability of worldwide or at least EU rights by existing distributors. Between the two extremes a linear relationship would exist, related to the amount of books for which pan-EU licenses are held. Since by and large price differences between e-books are relatively small, we would expect that the impact on revenues would follow a similar trend.

7.3.2 Scenario 2

Under Scenario 2, as consumers can choose freely from e-books' stores across all Member States, it is likely that price-sensitive consumers would gravitate for each item to the store, where it is offered at the cheapest price. This price-driven optimisation would result in a reduction of the average transaction revenue for an e-book in iTunes of 4%.²⁸⁵ This reduction is somewhat compensated by new users purchasing e-books for the first time, as they find e-books matching their willingness-to-pay. We estimate that 4% more users would enter the market compared to the current situation. The combined overall price-driven effect is a reduction of 2% of the gross revenues across the eight Member States we observe in this report.

²⁸⁵ Limits to reductions due to fixed book prices in some Member have been accounted for in the calculation by limiting the reduction to the maximum reduction (if any) allowed in the respective Member States' fixed book price regime.

Figure 86: Price-impact on revenues for iTunes



Source: Own calculations

Figure 87: Accessibility-impact on user base for iTunes



Source: Own calculations

Figure 88: Overall impact on revenues for iTunes



Source: Own calculations

The overall expected effect of lifting geo-blocking would be a 2% decrease in overall revenue across the eight Member States. In Scenario 1 the results could be proportionally lower, depending on the number of items for which booksellers hold pan-EU rights (which is unknown) . They consider mainly price differences across countries for specific items and their effect. It is also expected that, under **Scenario 2**, the more e-books become accessible via passive sales, the more additional consumers would start using e-books.

Furthermore, the welfare analysis mirroring those in the other sectors would point to a welfare transfer of around 4%, with the deadweight loss reduced by about 3.8%. The calculations are similar to those conducted in section 6.4 with the caveat of only incorporating the distributor analysed (iTunes).

Given that cross-border demand for e-books depends more strongly on the language skills of the individual consumer than for other copyrighted content, the expected effect would likely be limited by exactly these language skills.

Overall, it is not expected that the impact of Scenario 1 and Scenario 2 differ greatly for e-books. Furthermore, consumers in any Member States can today already access millions of e-book titles on iTunes and other stores. A lack of consumable titles per se is therefore difficult to understand. Overall, the increase in accessible items would likely have a limited effect on the average number of e-books read by a specific consumer. Consequently, it is under either scenario unlikely that the whole market would change dramatically.

7.4 Overall summary for the e-books sector

Below we present the key overall findings for the e-books sector. The various limitations of these findings and in the report as a whole are addressed in Section 2.5.

- Our analysis found significant gaps in product availability for individual e-book titles across certain Member States. While in major markets, typically more than 90% of e-books present in the iTunes catalogues of the UK and Italy are available (based on a random sample of 1,000 e-books), in Bulgaria, the Czech Republic and Poland only around 60% of titles are available. Croatia features virtually none of the titles randomly selected from the iTunes catalogues in the UK, Italy and Poland. An extension of the Geo-blocking Regulation might resolve this issue, with the exception of titles for which distributors/publishers hold limited licenses. Yet this analysis does not look into the accessibility of individual titles through other providers, which in some instances may address the gaps of catalogue of specific providers.
- Price differences across Member States, in the iTunes' e-books catalogues, are on the other hand minor, mostly in the range of +/- EUR 0.05. While the vast majority of price differences are within this range, there are some notable outliers which range between EUR 0.19 and EUR 0.99. In particular, countries that do not belong to the Euro area differ the greatest from the average price.
- An extension of the Geo-blocking Regulation under Scenario 2 (representing the upper limit of effects in the absence of detailed information on licencing practices, but taking into account anecdotal information about general availability of global and/or regional licenses) would likely reduce the average revenue for an e-book in iTunes by 4%, across both established and new customers, considering the expectation that the average price paid by new consumers purchasing an e-book for the first time is somewhat lower than that of established customers. Scenario 1 would have a smaller effect than Scenario 2, depending on the actual licencing practices.
- Under Scenario 2, a welfare transfer of around 4% is expected for iTunes. The deadweight loss shrinks by about 3.8%. However, there is a risk of an asymmetric higher negative impact, especially on smaller booksellers, who will face relatively higher price pressure (not specifically modelled in the study) and higher administrative costs (compared to the revenue per transaction, which stakeholders claim to be low) arising from having to serve, via passive sales, consumers in Member States other than the ones that the seller already targets. Moreover, application of fixed-price legislation for e-books in different Member States may raise additional compliance costs.

8 Impacts on non-audiovisual sectors (software and games)

This section addresses the impacts of the potential expansion of the scope of the Geo-blocking Regulation to include online services giving access to copyright-protected content in the sector of software and games. Firstly, a static analysis of the sector and its current characteristics is presented, followed by the dynamic analysis of expected impacts.

8.1 Analysis of the sector

This section presents a static analysis of the software and games sectors at present to act as a background for the impact analysis in the next section. Firstly, the economic importance and business models used in the sector are discussed, followed by a description of licencing models.

8.1.1 Economic importance and business models used in the sector

Table 53 presents an overview of the key characteristics of the software and games sector on the EU level. As the NACE code for gaming is included in the higher-level NACE code of software, two separate categories are presented: games and othersoftware .

**Table 53: Key characteristics of the software sector
(NACE code J582²⁸⁶, minus J5821) in 2016**

	EU28	EU27_2020
Number of enterprises	22,365	20,200
Persons employed	184,479	184,479
Turnover (EUR million)	26,307	24,082
Value added (EUR million)	13,306	11,828
Ratio value added/turnover	0,51	0,49
Average company size (employees)	8,2	9,1
Average turnover per company (EUR)	1.176.258	1.192.178
Average value added per company (EUR)	594.947	585.545
Average turnover per person employed (EUR)	142.602	130.541
Average value added per person employed (EUR)	72.127	64.116

Source: Eurostat [sbs_na_1a_se_r2]

²⁸⁶ Data is not available for Ireland, Malta, Slovenia and Slovakia. Data is limited for Estonia and the United Kingdom.

Table 54: Key characteristics of the game sector (NACE code J5821²⁸⁷) in 2016

	EU28	EU27_2020
Number of enterprises	2,421	2,185
Persons employed	12,788	12,788
Turnover (EUR million)	5,331	4,541
Value added (EUR million)	2,165	1,904
Ratio value added/turnover	0.41	0.42
Average company size (employees)	5.3	5.9
Average turnover per company (EUR)	2,201,983	2,078,261
Average value added per company (EUR)	894,259	871,396
Average turnover per person employed (EUR)	416,875	355,099
Average value added per person employed (EUR)	169,299	148,890

Source: Eurostat [sbs_na_1a_se_r2]

For software, the data also shows a trend which is consistent with the other sectors in the scope of the study: SMEs are the most represented category of companies in the software industry, with an average of 9.1 employees per company, the highest number of the sectors covered.

For games, SMEs are the most represented category of companies in the games industry, with an average of 5.9 employees per company, the second highest number of the sectors covered.

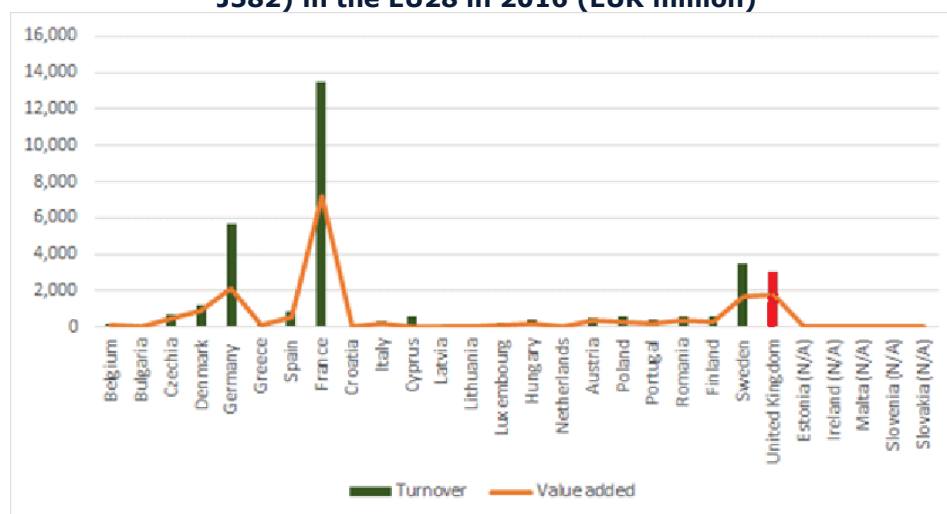
Notably, other data sources apart from Eurostat provide much higher figures about the size of the videogame industry in Europe. Among the possible reasons to explain the differences in the figures, it should be noted that Eurostat's data do not include several countries. Moreover, the NACE code for the games sector is related to computer games, a stricter classification compared to the broader scope of videogame developing.

According to Newzoo, the global leading provider of analytics for games and e-sports, the size of the European videogame market amounted to EUR 21 billion in 2018. Even with different percentages based on the data gathered, also Newzoo's elaborations show a consistent increase in the growth rate of the game sector, which grew by 15% between 2017 and 2018 (based on the data for France, Spain, UK and Germany).

Figure 89 presents the turnover and value added of the combined software and game sectors in the EU28 in 2016 (Eurostat). According to this data, France, Germany, Sweden and the United Kingdom are clearly the most dominant markets in Europe: comparing these figures with the data from Statista presented in Figure 91, the fourth most important market, in terms of revenues, seem to be Italy rather than Sweden.

²⁸⁷ Data is not available for Austria, Czechia, Ireland, Italy, Luxembourg, Malta and the Netherlands; data is limited for the United Kingdom.

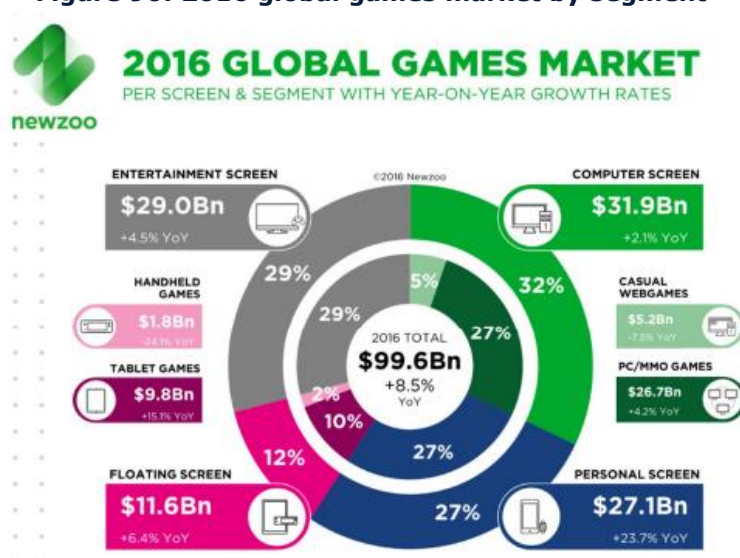
Figure 89: Turnover and value added of the software and game sector (NACE code J582) in the EU28 in 2016 (EUR million)



Source: Eurostat [sbs_na_1a_se_r2]

Games are traditionally split into three major categories: PC, mobile, and console games. In early 2012, Newzoo introduced a more consumer-centric segmentation based on the kind of screen on which the games are played as an alternative for the traditional game segmentation, see Figure 90 for the revenues on the global game market along these lines.²⁸⁸

Figure 90: 2016 global games market by segment



Sebastian Santasärkkä: *The Digital Games Industry and its Direct and Indirect Impact on the Economy. Case study: Supercell and Finland.* Helsinki Metropolia University of Applied Sciences 2017

²⁸⁸ Newzoo is the leading market research company covering the global games market. Sebastian Santasärkkä: *The Digital Games Industry and its Direct and Indirect Impact on the Economy. Case study: Supercell and Finland.* Helsinki Metropolia University of Applied Sciences 2017. Available at: <https://pdfs.semanticscholar.org/dddb/83207f1fa0ca2140c5a000ac7339fa09fd03.pdf>

In the game sector, mobile gaming is the largest segment, claiming more than half of all global game revenues for the first time.²⁸⁹ Combined smartphone and tablet gaming is projected to generate EUR 71.7 billion, accounting for 51% of the total global market in 2018. The segment also has the most players with 2.2 billion, the majority of whom are gaming on smartphones. In addition, both console and PC games are growing. Console is the second-largest segment with revenues of EUR 30.4 billion in 2018. This is expected to grow to EUR 34.2 billion in 2021 with an expected Compound Annual Growth Rate (CAGR) of +4.1% during the period 2017-2021. The overall PC segment is projected to generate EUR 28.9 billion in 2018 and is the third-largest segment. Growth in downloaded/boxed PC games is offset by declining browser PC revenues, as browser gamers have largely transitioned to mobile. Browser PC revenues are expected to continue to decline with an expected CAGR of -16.1% during the period 2017-2021, reaching an expected EUR 2.2 billion in 2021. The size of the global video game market is expected to grow to about EUR 69 billion in 2020, this would imply an increase of approximately 14.6%.

According to Outsoft, the growth of the gaming sector is primarily caused by two key developments. On the one hand, smartphone and tablet device ownership growth is increasing the overall gaming market. On the other hand, customers previously investing in handheld, console and PC games are more likely to now opt for mobile games.²⁹⁰

Looking at the EU28, data from Statista's digital market outlook²⁹¹ show the weight of the different Member States in the total forecasted revenues for 2019 in the digital videogames market (Figure 91).

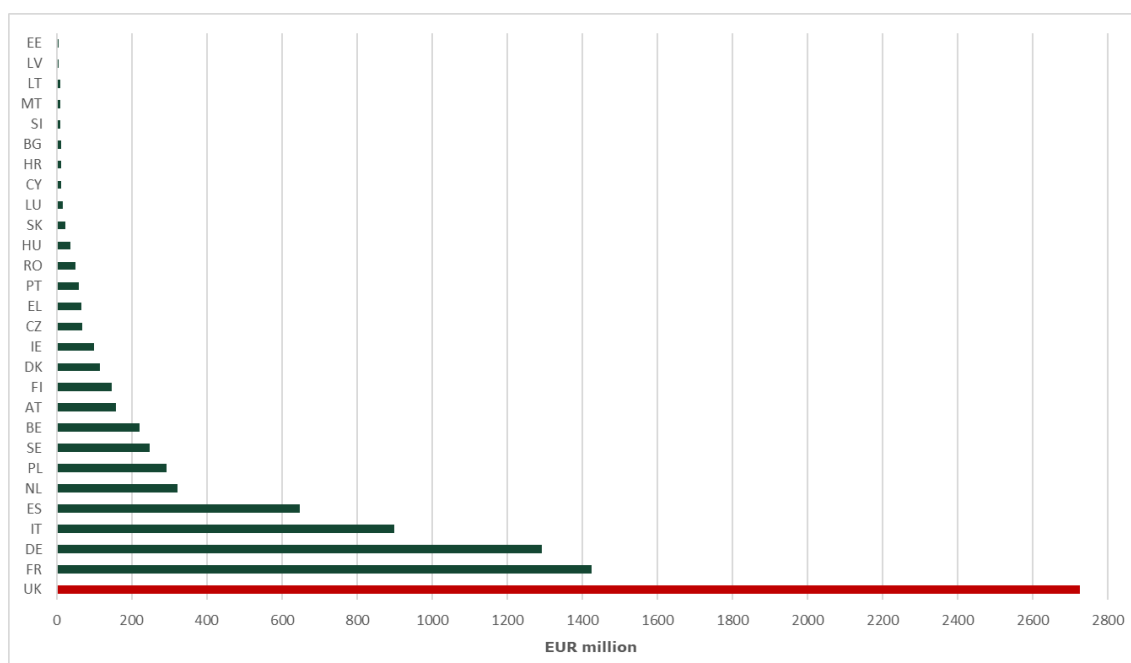
²⁸⁹ Newzoo (2018): 2018 Global Games Market Report. Available at: https://m.amazonappservices.com/l/296652/2018-06-26/9c5wz/296652/52511/Newzoo_2018_Global_Games_Market_Report.pdf

Figures converted from USD at the exchange rate of June 25th 2019 using the ECB currency converter tool available at: <https://sdw.ecb.europa.eu/curConverter.do>

²⁹⁰ Outsoft (2018): Global Mobile Games Market Outlook 2015-2018. Available at: <http://outsoft.com/wp-content/uploads/pdf/Outsoft-Global%20Games%20Market%20Outlook%202015-2018.pdf>

²⁹¹ <https://www.statista.com/outlook/200/100/digital-media/worldwide>

Figure 91: Digital videogames revenues in the EU (2019): revenues by Member State



Source: Own elaboration based on Statista's Digital Market Outlook

In addition, when measuring the size of the gaming industry, usually only direct sales to consumers are considered. However, it is clear that the gaming industry has a much bigger impact on national output. The purchase of video games results in the purchase of other complementary products, which can be divided into four categories: processors, content, devices and broadband internet access. Gaming does not only trigger complementary sales, but also triggers the development of these complementary products faster than they would otherwise occur²⁹². For example, without videogames, computer processing would have not developed as fast as it has²⁹³.

Under the broad definition of software, two main business models are adopted by developers and distributors to make content available across the EU: either directly on the website of the company or the independent developer, or on EU-based portals which aggregate software (e.g. Softpedia or Softonic for desktop applications and Google Play or App store for smartphone and tablet applications).

However, the catalogues of the app stores for smartphones and tablets present differences in each country. Users can access cross-border the version of the store

²⁹² Sebastian Santasärkkä: The Digital Games Industry and its Direct and Indirect Impact on the Economy. Case study: Supercell and Finland. Helsinki Metropolia University of Applied Sciences 2017. Available at: <https://pdfs.semanticscholar.org/dddb/83207f1fa0ca2140c5a000ac7339fa09fd03.pdf>

²⁹³ Sidak (2007). Video Games: Serious Business for America's Economy. Available at: <https://www.criterioneconomics.com/video-games-serious-business-for-america-s-economy.html>

of their own country of residence chosen at the time of the first access to the service. However, they cannot switch to a different catalogue just to download one or more applications which are available only on foreign versions of the catalogues. For instance, as stated on Google Play's website: 'you can only change your Play country once per year. So, if you change your country, you won't be able to change it back for 1 year.'²⁹⁴

Regarding the different relationships between the provider and the consumer, there are different types of software

- free software, as in the case of freeware²⁹⁵ or open source²⁹⁶ software
- software that, in general, gives permission to authorise a certain number of devices on which the customer can install and use the software on an individual purchase
- software that charges a monthly or annual fee
- freemium software (or in-app purchase), where developers offer such software in a free version with limited features that can be upgraded via future purchases

In terms of device compatibility, several applications are software-specific or device-specific and can only be used on PCs (Windows, macOS, Linux, etc.), on mobile (Android, iOS, Windows Mobile, etc.) or on more devices and operating systems.

In the gaming industry, which presents a similar pattern to the one described for software, digitalisation is the most important driver of growth. Prior to the mobile gaming explosion, games were mostly played on consoles and PCs. A dramatic change happened in 2007 when Apple released the first smartphone (iPhone) and the mobile gaming segment was born. After smartphones became more widely available on the market, also offered by other companies, the gaming industry experienced yet another revolution, which completely changed the way people played games. Mobile technology has rapidly developed since and led to an explosion of mobile gaming, which has already overtaken gaming revenues from PC and consoles.²⁹⁷

²⁹⁴ <https://support.google.com/googleplay/answer/7431675?hl=en>.

²⁹⁵ Generally, freeware refers to software that is available without demanding a fee for usage and it can be distributed as a fully operational program for an unlimited period. The rights of owning such a software usually belongs wholly to its developer.

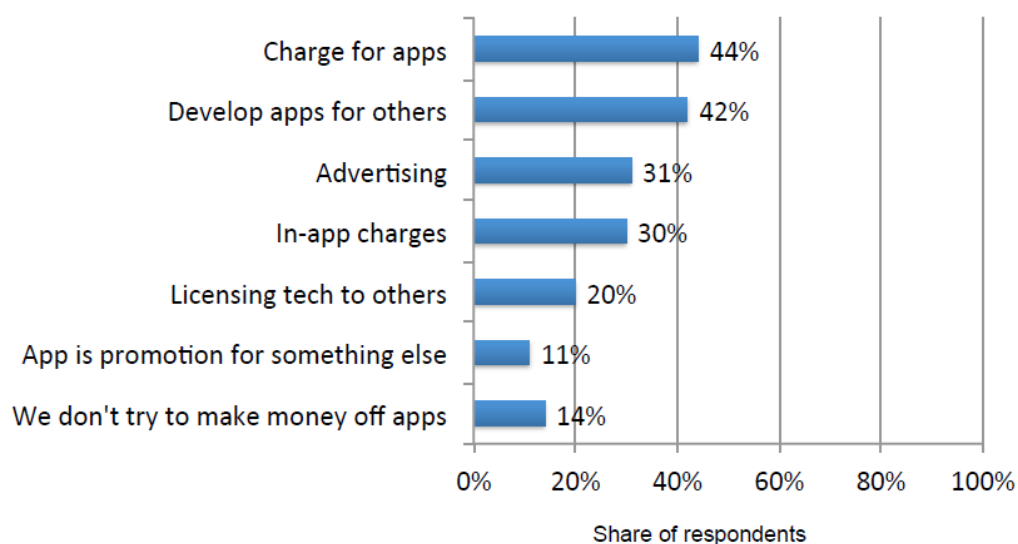
²⁹⁶ Open source refers to a piece of software with a publicly accessible source code under a license that gives users the right to use the software as they please, including studying, changing and distributing it.

²⁹⁷ Sebastian Santasärkkä: The Digital Games Industry and its Direct and Indirect Impact on the Economy. Case study: Supercell and Finland. Helsinki Metropolia University of Applied Sciences 2017. Available at: <https://pdfs.semanticscholar.org/dddb/83207f1fa0ca2140c5a000ac7339fa09fd03.pdf>. Newzoo (2016). The Global Games Market Reaches \$99.6 Billion in 2016, Mobile Generating 37%. Available at: <https://newzoo.com/insights/articles/global-games-market-reaches-99-6-billion-2016-mobile-generating-37/>

If a game is available via an app for smartphones and tablets, the content is usually made available through comprehensive portals such as the Google Play store or the App Store. Digital titles for PC are instead available either via websites of the developers (mostly the bigger players),²⁹⁸ or via portals such as Steam. Videogames for consoles are typically sold through the online stores run by the consoles' manufacturers (e.g. PlayStation Store) with some titles additionally available as physical copies. Moreover, both free games and freemium versions can be played on social media or can be integrated in other physical devices such as Smart TVs. Traditional game publishers, such as Electronic Arts with its EA Access, are also experimenting with subscription services, including offering access to older titles in their back catalogues. Several start-ups and more established firms active in the games sector also offer game subscription services, including services based on streaming technology, where pre-installation is no longer required to play games.

Figure 92, which appeared in a 2014 GigaOM's study commissioned by the European Commission on the EU market for mobile apps, summarises the main commercial strategies adopted by independent game developers in Europe.

Figure 92: Main sources of app-related revenues for EU independent developers²⁹⁹



Source: Gigaom Research EU independent developers survey, 4Q 2013 N= 199

²⁹⁸ E.g. large companies like Ubisoft, the French developer of successful franchises like Assassin's Creed, run their own online store. (Ubisoft launched it in 2012). In 2013 Ubisoft announced that they would also open the platform to other publishers. Source: <https://www.polygon.com/2013/2/19/4001836/ubisoft-uplay-shop-third-party-games-ea-origin-chris-early-interview>. It seems that to date they <https://www.polygon.com/2013/2/19/4001836/ubisoft-uplay-shop-third-party-games-ea-origin-chris-early-interview>.

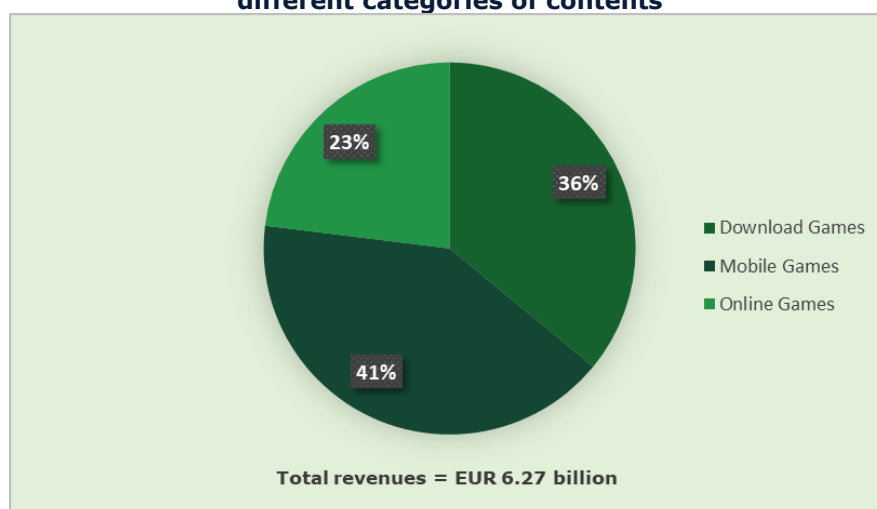
This online store also sells video games of third-party publishers, with a functioning similar to Steam.

²⁹⁹ European Commission (2014). Sizing the EU app economy. Available at: <https://publications.europa.eu/en/publication-detail/-/publication/0b79fa5e-6326-4b26-b8bb-3b5f5e21521b>

A 2018 briefing from the European Parliament on the European app economy acknowledged that some bottlenecks hampering the growth of the sector still exist, notably limited availability of finance, shortage of digital skills, the need to constantly upgrade infrastructure and the need to improve access to data.³⁰⁰ The strengthening of the digital single market is part of the EU's strategy to tackle these issues, however, more recent studies analysing the commercial strategies of EU independent game developers have not been identified in the existing literature.

According to Statista's digital market outlook, forecasted revenues for 2019 for digital videogames (videogames distributed through the internet, such as mobile games, download games and online games that require an internet connection) amount to more than EUR 6 billion³⁰¹ for more than 70 million of paying customers.³⁰² Figure 93 shows the weight of the different categories of content in the total revenues showing a rather equal distribution between download games, mobile games and online games.

Figure 93: Digital videogames revenues in the EU27_2020: market shares of the different categories of contents



Source: Own elaboration based on Statista's Digital Market Outlook

Statista's global consumer survey provides a proxy of the market shares of the main providers in the digital videogames sector, based on a number of respondents that varies per country.³⁰³ Among the eight Member States in focus, Statista data is available for France, Germany, Italy and Poland and presented in the tables below. Table 55 shows the providers with the highest number of purchased items in these four countries, based on the answers to the question: where have you spent money

³⁰⁰ European Parliament (2018). European app economy: State of play, challenges and EU policy. Available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2018\)621894](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2018)621894)

³⁰¹ Adding up the revenues in the UK, would increase the total turnover to EUR 8.9 billion.

³⁰² Own calculations based on Eurostat data:

<https://www.statista.com/outlook/200/100/digital-media/worldwide>

³⁰³ <https://surveys.statista.com/surveys/7680848/150119>

on online video games in the past 12 months (downloads, in-app purchases, subscriptions). These market shares are not turnover based (that is, the sum of the shares does not add up to 100%). Instead they have to be considered as market positions, where percentages presented below only reflects the consumers' answers to the survey, in which multiple choices were possible.

Table 55: Market position of digital videogames purchases³⁰⁴

Italy	Market Positions	France	Market Positions
Amazon	46%	PlayStation Store	38%
PlayStation Store	31%	Steam	29%
GameStop	27%	Google Play store	28%
Google Play store	26%	iTunes	16%
Steam	20%	Blizzard Battle.net	15%
iTunes	11%	Nintendo eShop	15%
Nintendo eShop	11%	Microsoft Store	14%
Epic Game Store	9%	Xbox Games Store	14%
Microsoft Store	9%	Epic Game Store	13%
Xbox Games Store	9%	Origin	13%
Origin	8%	Other	11%
Other	7%	Uplay	9%
Blizzard Battle.net	6%	DLGamer	6%
Malaudiovisualida	6%	GOG.com	5%
GOG.com	5%	Desura	4%
Uplay	5%		
Fxstore	4%		
Desura	3%		
Green Man Gaming	3%		
Softonic	3%		
Germany	Market Positions	Poland	Market Positions
Amazon	38%	Steam	50%
Steam	34%	Origin	31%
PlayStation Store	29%	Ubisoft	26%
Google slay Store	27%	G2A	20%
Blizzard Battle.net	14%	Epic Game Store	17%
iTunes	13%	other	17%
Origin	13%	GOG.com	16%
Nintendo eShop	11%	Humble Bundle	12%
Ubisoft	11%	CDKeys	10%
Epic Game Store	10%	WinGameStore	9%
Microsoft Store	10%	Gamivo	8%
Humble Bundle	9%	Fanatical	7%
Other	8%	Muve	6%
GamersGate	7%		
GOG.com	7%		
Uplay	7%		
Xbox Games Store	7%		
Green Man Gaming	3%		

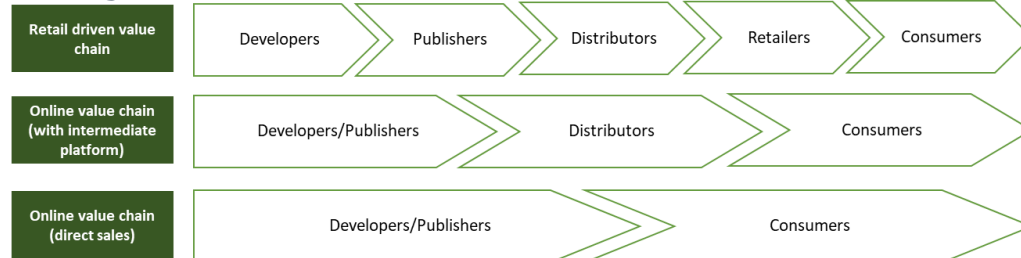
Source: Statista, based on a sample of n=2605 Digital videogames purchasers for France, n=2861 Digital videogames purchasers for Italy, n=2751 Digital videogames purchasers for Germany and n=1820 Digital videogames purchasers for Poland

³⁰⁴ The marketplaces listed in the table sell videogames either for mobile either for consoles or PC: for example, it must be noted that Steam, PlayStation Store and Google Play store serve different platforms (PC, PlayStation and Android devices respectively).

8.1.2 Licencing models

For software and games, different value chains can be distinguished for the three different ways in which content can be offered to consumers.

Figure 94: Different value chains in the software and game sectors



Source: Own elaboration based on: Andrea Bellini et. al. (2018), Industrial relations and creative workers. Overall Report

Firstly, it is important to note that PC, mobile and console games can be sold using several of the business models above. Regarding retail software and³⁰⁵ PC and console games, distributors buy games on a wholesale level and distribute these further to retailers who sell the games to consumers. There is therefore no agency model in the software/games sectors as is the case for e-books, which is explained in more detail below. Retail games are not discussed here as this is out of scope of this study and as physical distribution of PC videogames contained in CD/DVDs is in principle already covered by the geo-blocking regulation. The focus is on online-distributed games, offered both through an intermediate platform and the publishers' direct sales channels.

Regarding software and games distributed online, the first option is that these are sold directly by the developer to the consumer.³⁰⁶ A second option is for these software and games to be sold by an aggregator intermediary, such as Steam for PC-based video games and Softpedia or Softonic for desktop applications.

As already discussed, mobile software and gaming is the largest segment as of 2018, claiming more than half of all global game revenues for the first time.³⁰⁷ These mobile software and games are often sold through an intermediate distributor, usually an EU-based portal which aggregates software and/or games, such as Google Play or App Store. These applications exist in three different categories

- Free-to-play software and games
- Pay-to-play software and games
- Freemium software and games

³⁰⁵ Retail distribution of software and games includes also the physical copies of CD/DVDs.

³⁰⁶ <https://store.bandainamcoent.eu/it/product/437805/tekken-7-edizione-per-collezionisti-ps4>

³⁰⁷ Newzoo (2018): 2018 Global Games Market Report. Available at: https://m.amazonappservices.com/l/296652/2018-06-26/9c5wz/296652/52511/Newzoo_2018_Global_Games_Market_Report.pdf

This last category is the most profitable: for instance, these form 90% of the revenue share of the Android App store.³⁰⁸ This model was initially developed by the gaming industry and it is based on the realisation that the most valuable asset in the internet era is an online audience that are attracted by free services. The engagement of these audiences can be turned into revenues through advertising and upscaling to premium services. This is usually done based on microtransactions where consumers can download a free piece of software or game and can then buy additional features or virtual currency used to play the game afterwards. There are also hybrid forms that combine features from the various business models.

The most important contractual relationship in these sectors exists between the developers and distributors. This agreement can be characterised in the same way as the agreement between artists and music publishers described above. In other words, the development of games/software is done in house by publishers or by developers who then assign their copyrights to software/game publishers. There is no set formula for what rights the developer will grant, which will vary depending on a number of factors, including which party provides the financing and game concept.³⁰⁹ These publishers are paid by the developers to license their content and to promote it on online platforms. In the majority of cases, these agreements are based on lump sum payments where the publishers buy all the rights from the developer. These publishers combine software and games from many developers in their portfolios. The publishers then make deals with online distributors on a non-exclusive and usually global basis. However, territoriality does play a role: desk research findings show that different localised versions are sold in each territory and price discrimination is usually applied as well.

Lastly, regarding software, commercial rights under software licenses vary widely. The simplest commercial use is for internal business purposes, but software can also be made available in sets, suites or libraries, ported for certain operating systems but not others, optimised for use with some development tools but not others, bundled with third party supplied components or underlying software, or customised for use by the end user.

Online software and digital games are not covered by the COMP Sector Inquiry³¹⁰, so no qualitative information can be provided on the territorial scope of licencing agreements in this sector.

³⁰⁸ <http://pelipaja.centria.fi/wp-content/uploads/2015/05/Business-Models-in-Video-Game-Industry-autum2014.pdf>.

³⁰⁹ World Intellectual Property Organization (2013), Mastering the Game, Business and Legal Issues for Video Game Developers, Creative industries – No. 8, p. 33, WIPO publication No 959E.

³¹⁰ The Sector Inquiry dealt with games in the part concerning “consumer goods” (i.e., copies of video games contained in CD/DVDs).

8.2 Results from the field work

This section presents the evidence on the software and games sectors collected from the fieldwork. Firstly, the interview results are discussed, followed by the consumer survey results and the results of the mystery shopping exercise.

8.2.1 Feedback from the interviews

According to interviewed industry stakeholders, the software and games sectors are subject to fast evolving creative and commercial pressures, as well as localisation needs that vary country by country. They consider these are the reasons that may require industry players to apply different prices in different national markets when offering content to consumers: allowing the companies to make a decision, based on the prevailing market conditions, would maintain flexibility to apply lower prices. This would, in turn, boost sales in countries with lower purchasing power. In order to allow the development of the videogame production of less established markets, interviewees reported that some game developers test the market potential of their games by soft launching them in a limited number of small markets first. In Europe, this is usually the home country of the game company. This approach can be considered as similar, although different in substance, to the windowing practices applied by cinema distributors (see section 5.1.3) where games could be distributed in different countries at a different time.

However, if geo-blocking was forbidden, stakeholders predict that the European digital market would be so large that individual companies (in particular SMEs) might see themselves unable to use certain countries as a test market (although this could be still done for active sales). This might deter the development and availability of cutting-edge content. If this is true for small or even micro developers willing to enter the market, according to interviewees, this is different for larger developers. Within the current system of licencing, the rights granted by publishers to distributing platforms are generally already EEA-wide (mostly in the mobile games' segment). Therefore, exclusive territorial licencing is not as relevant to game publishing as to other sectors.

Therefore, it is hard to quantify the impact on the relevant territories covered in a licencing agreement, since the licenses are already pan-European in the majority of the cases. Moreover, game content and services offered are almost identical on all the national versions of the storefronts (besides the need to comply with certain specific national legal, or other, requirements). As confirmed by Apple, the platform (the AppStore in this example) does not apply, in principle, any territorial restriction in the distribution of the titles. The selection of the countries in which the software or the games shall be available is an independent choice by the developer and/or the publisher.

However, as explained, and similarly with the e-book sector, industry interviewees reported that if distributors would have to serve consumers in other countries (making the content available through passive sales), they might face higher

compliance costs. One issue related to compliance costs, noted by industry interviewees, is the transparency of the online store, mostly in terms of clarity of the contents offered and of the payment terms and conditions. Currently consumers pay for game store content in the currency of their country, paying a price stated on each game store in local currency; stakeholder fears that if consumers had the right to purchase from any game store, they could potentially be purchasing in almost all currencies of the EEA. This foreign currency price might not be directly equivalent to the price in their home game store (due to currency fluctuations and VAT rates) and small online local distributors might not be able to effectively identify (and display prices accordingly) based on the consumer's location. Lastly, if the regulation were to be extended to this sector, with prices in non-Euro countries, companies argue that will have to match Eurozone prices to ensure that consumers do not abuse fluctuating exchange rates. This would make the marketing of games more difficult, according to interviewees, as a promise to sell a game with a certain price would always carry an exchange rate risk. Therefore, an expanded regulation would be likely to move the exchange rate risk to European game companies and, SMEs especially, would face a significant increase of their administrative burden³¹¹. The price of the desired content may thus not be entirely clear to the consumer at the point of purchase.

According to the industry stakeholders, the importance of a correct geographical identification of the customers is related to the display of correct pricing information, and compliance with the relevant laws in the consumer's country. Content and services that are illegal in the customer's country would have to be blocked³¹², and require companies to ensure that the location of each user making a purchase is recognised and an appropriate block to the content is applied whenever needed.

Moreover, the industry expressed the concern that, if geo-blocking were lifted, consumers would have the possibility to buy from websites that are not in the consumer's native language. In this case, there might be some consumer dissatisfaction and complaints. Therefore, a chilling effect on the European game sector has been mentioned by industry stakeholders as a likely consequence should the regulation's scope be expanded.

To illustrate the impact on consumers, industry interviewees referred to recent studies that show very weak consumer demand for cross-border access to video games and gaming apps³¹³. Most notably, the latest Eurobarometer survey showed that only 4% of respondents have tried to access or download games or gaming apps

³¹¹ Application of article 5 of the Geo-blocking Regulation, however, is subject to the fact that the currency is accepted by the trader.

³¹² For example, because of laws in France concerning e-sports competitions or laws in Denmark on promoting energy drinks, videogame contents not compliant with relevant national legislations would oblige distributors to implement IT tools to locate the country of origin of the customer. This is to ensure that certain contents are not made available in countries where they are illegal.

³¹³ This "weak consumer demand for cross-border access to video games" is based on confidential intelligence data of the interviewed stakeholders.

through online services intended for users in another EU country. and In the key demographic of 15-24, only 10% have attempted to do so. In the same Eurobarometer study only 9% of respondents mentioned video games in response to the question, which of the following content would you be interested in accessing through online services generally meant for users in another EU country?.³¹⁴ However, one European SME developer of mobile games (which does not geo-block its titles so far) considered that the consumer's interest in cross-border access to their games is high, mentioning western Europe and the US as their biggest markets. In conclusion, according to European-level stakeholders from the sectors, the high annual growth of the industry (12-15%) is a proxy of the high consumers' satisfaction on the structure of the market today. Unfortunately, civil society and consumer organisations could not provide statistics specific to the videogame sector to confirm or dismiss this statement from the industry about there being a limited interest for cross-border access to content. It agrees with the claim presented in the other sections of this study about the need to remove any form of geographical barrier that might hamper the implementation of the digital single market.

Regarding the enlargement of the scope of the regulation (possibly under scenario 2) to include the gaming and software sectors, an EU-level industry organisation noted that rather than expanding content availability and variety of the offer, this could have a negative impact on pricing, which in turn could result in alienating consumers and potentially damaging emerging markets. This is because, given the significant differences between the economic conditions of the EU Member States affecting developers' pricing strategies, it would be impossible to prevent a consumer located in a higher income Member State to purchase an online title, such as a famous videogame franchise, from the website of a distributor from a lower income country. This opportunity for price arbitrage, according to interviewees, might generate a cross-border demand which nowadays it is not existing.

Moreover, according to the interviewee's, without the ability to engage in price discrimination, the economic incentive to produce and distribute a diverse set of video games in lower income Member States would be reduced. The development of a parallel market in pirated games is perceived, by the industry players, to be a likely outcome.

Lastly, another area which might affect consumer experience under Scenario 2 and under Scenario 1 whenever the trader has the relevant rights, according to interviewed stakeholders, is safety. Although the EU has taken significant steps in harmonising information requirements for consumers, there are still significant differences between Member States in different areas of compliance. For example,

³¹⁴ European Commission (2019). Accessing content online and cross-border portability of online content services. Available at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLA SH/surveyKy/2221>

Germany has a specific regulation for information that has to be available on traders' websites (Imprint regulation), in France epilepsy warnings are required, while the age rating system for video games (pan European game information - PEGI³¹⁵) does not apply in Germany where a different age rating system (Unterhaltungssoftware Selbstkontrolle - USK³¹⁶) is used for the protection of minors. This implies that a German consumer visiting other online stores would see PEGI ratings instead of the German USK ratings. In this case, parents might not be familiar with the different rating system, and the parental controls they have set may not prevent a game being played that is rated higher than their child's age under the USK system. PEGI and USK not only use diverse age ranges and logos, but they might also evaluate the same game to be suitable for a different age.

8.2.2 Findings from consumer survey³¹⁷

This section focuses on findings from the consumer survey on key factors that impact consumer attitudes and behaviour. It should be noted that results from this survey when it comes to cross-border access and related metrics may differ from those reported in the most recent Eurobarometer Survey³¹⁸ due to differences in the target population of the two surveys.³¹⁹

Usage and spending

When it comes to software, 17% of respondents accessed paid content per item while 14% paid for an online subscription. For games, individual purchases are much more common with one in four paying for them over the last year (23%), while only one is ten paying for a gaming subscription (10%). Overall access is similar in both sectors (30% for software and 31% for games) and suggest little overlap between the two groups, with most consumers making a choice between purchasing software or games individually or via a subscription. For games, average monthly spending on pay-per-item purchases is higher (EUR 26) compared to subscription services (EUR 20), while the opposite is true for software (EUR 16 and EUR 22, respectively). Spending on games is overall slightly higher compared to software (EUR 23 vs. EUR 19)

³¹⁵ <https://pegi.info/>

³¹⁶ <https://usk.de/en/>

³¹⁷ All tables in this section have our own survey as a source, unless otherwise indicated.

³¹⁸ Flash Eurobarometer 477b: "Cross-border access to online content".
https://data.europa.eu/euodp/en/data/dataset/S2221_477_ENG

³¹⁹ For a more thorough explanation please refer to Section 5.3.2 of this report

Table 56: Average monthly spending on online purchases

	Software or apps	Games
Base size	369	370
Paid subscription(s)	€ 16	€ 26
Paid per item	€ 22	€ 20
Subscription(s) and cost per item	€ 19	€ 23

Question asked: On average, how much money do you spend per month on online purchases in this sector?

Cross-border access and geo-blocking issues

Issues related to geo-blocking were not as common in these sector as for audiovisual content and music, although some issue were recorded during the mystery shopping. Based on consumers' own knowledge, 17% accessed software or apps and 21% accessed games for free or via a purchase through services not meant for users in their own country.

Table 57: The type of content or service that consumers accessed or attempted to access (for free or via a purchase) in the past 12 months

	Software or apps	Games
Base size	7299	5833
Specific content or service meant for users living in the country of residence	87%	85%
Specific content or service <u>not</u> meant for users living in the country of residence	17%	21%

Question asked: Over the past 12 months, please indicate the type of content or services you accessed or attempted to access (for free or via a purchase)?

In line with findings from the mystery shopping, the consumer survey shows that between 41% (games) and 44% (software) of consumers do experience issues. Approximately 11% for software and 12% for games encountered extra charges while geo-blocking occurred in 18% of the cases for software access and 17% for games. Roughly a fifth of respondents (22% for software and 19% for games) experienced issues but managed to resolve them by using extra tools. Taking these figures together, we can estimate that, on average, 7-8% of all consumers who access software or games (both domestically and cross-border) are likely to experience issues linked to geo-blocking.

Table 58: Consumers' experience when attempting to access specific content or service not meant for users residing in the respective country

	Software or apps	Games
Base size	1428	1421
It worked without a problem and without using extra tools (e.g. Virtual Private Network)	56%	59%
I experienced some problems but found a way to access the content (e.g. via Virtual Private Network)	22%	19%
I was charged extra to access the content	11%	12%
It did not work (e.g. no access, redirected, refused payment)	18%	17%

Question asked: What happened when you tried to access specific content or service NOT meant for users residing in your country?

Content availability

Considering content availability, only 23% of consumers can remember occasions when access to software they were interested in was not available through their existing subscription, compared to more than double (51%) that figure for games. When it comes to individual content, these proportions are higher for both software (47%) and games (56%). These levels are comparable to the audiovisual sector (compared to games) and e-books sector (compared to software) but overall lower than the music sector. It appears that the issue of content availability is more pronounced for games compared to software.

Consumer satisfaction

When it comes to consumer satisfaction with software and games, the results are in line with figures observed for the other sectors. There is a relatively high consumer satisfaction with the number and variety of providers (78-79%), the choice and quality of content (77-79%) and the language availability (75-76%) in both sectors, with no apparent differences across these factors. When it comes to prices, a similar trend is observed as for other sectors. Around half of respondents (48% for software and 51% for games) indicate that they feel that current prices for subscriptions and individual content (on average) are justifiable considering the offers.

Current switching behaviour

Subscriptions appear to play a smaller role in the software sector compared to games and this is reflected in consumers' actual switching behaviour. Only a quarter of respondents switched (25%) subscription in this sector compared to 36% for games. For games specifically, switching the type of subscription or provider (28%) is much

more common than adding a new subscription (8%), suggesting that multiple subscriptions are not common.

Drivers of hypothetical switching behaviour: price, language accessibility and local content

It is difficult to determine which factor matters most to consumers by looking at their subjective evaluations as all factors are rated highly. While the vast majority of consumers (90% for games and 92% for software) do state that price matters in their purchase decisions, content availability appears to be slightly more important (92% for games and 95% for software). In turn, language accessibility is rated as slightly less important for games (88%) compared to software (92%).

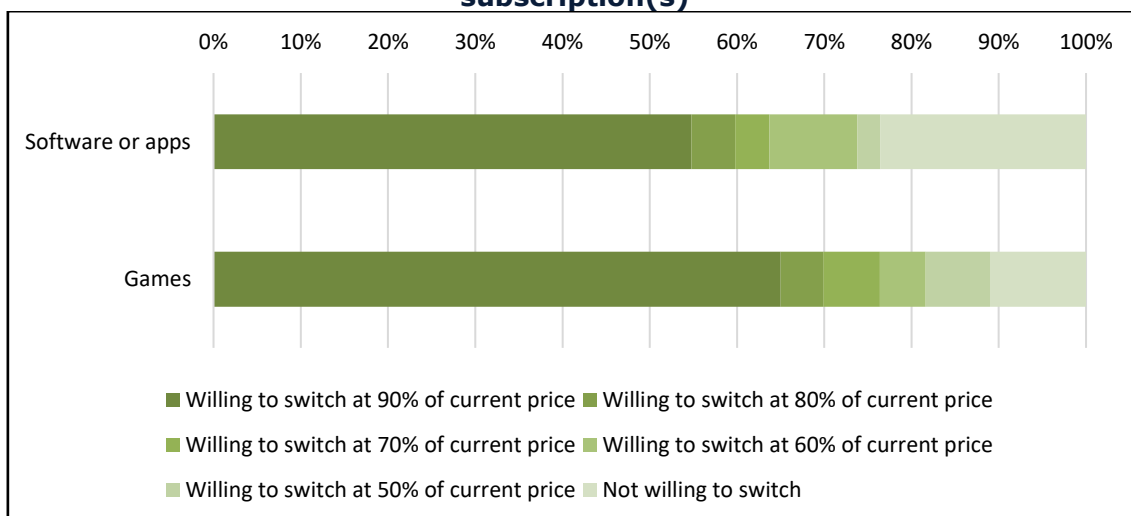
When it comes to the drivers of consumer behaviour,³²⁰ as for the other sectors, we asked consumers to imagine three specific switching examples:

- 1) the offer remains exactly the same but only the price varies
- 2) the offer include a similar catalogue but it is meant for users in other countries and may not include consumers' preferred language; the price also varies
- 3) the offer is meant for users in other countries and may not include consumers' preferred language but may also feature limited local ornational content; the price also varies

The first example estimates consumers' price sensitivity if the offer remains the same. In line with the audiovisual sector, almost two thirds of consumers (65%) would switch their gaming subscription if the price drops by as little as 10% but the offer remains the same. This is the case for 55%, who would switch their software subscription. This could be due to software products offering very specific benefits unlike games which provide a more general entertainment value. For games, an additional 24% would switch if the price drops further (22% for software). As such, price appears to be extremely important for the gaming sector with only 11% of respondents not willing to switch even if the price drops by 50%. For software, this is true for roughly a quarter (24%) of respondents.

³²⁰ With respect to consumer behavior, the survey compared directly the importance of price, language accessibility and local content. As opposed to the ranking reported above, content availability (in general) was not taken into account in this comparison. As such, these rankings may differ.

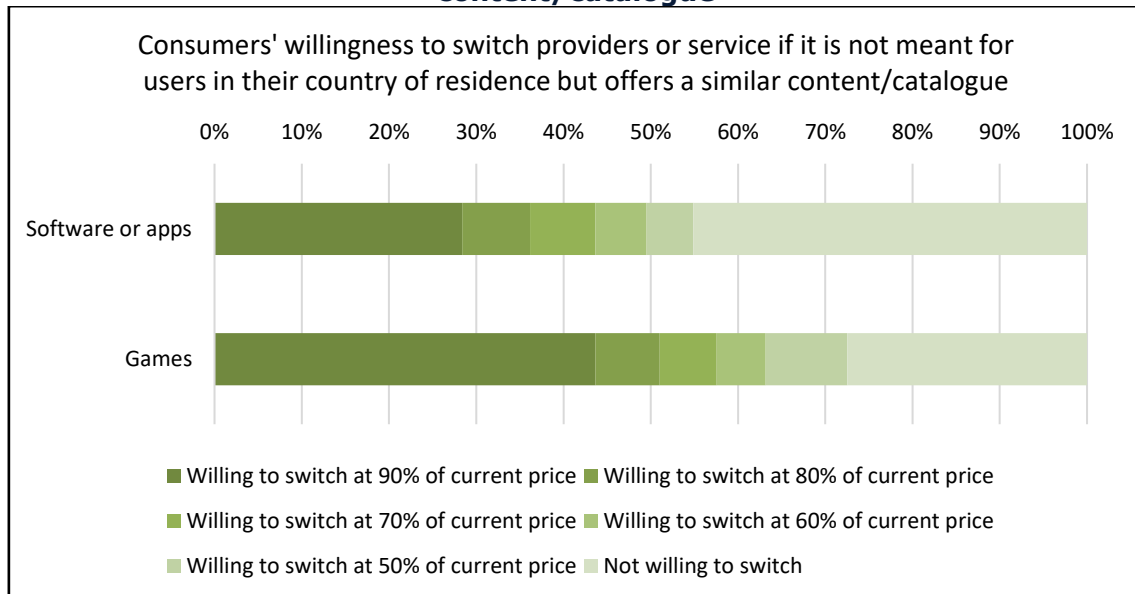
Table 59: Consumers' willingness to switch providers or service if the content and language options are broadly the same as for their current subscription(s)



Question asked: Would you switch to another service provider or service, offering you broadly the same content and same language options as your current subscription?

In the second example we examined price sensitivity under conditions where the offer may not feature consumers' preferred language options. In line with other sectors, consumers' price sensitivity was lower for both software and games, with only 28% (software) and 44% (games) willing to switch for a 10% price discount. The overall drop in price sensitivity is more significant for software (22%) compared to games (17%), where language appears to play a lesser role. For software, the drop is smaller compared to the audiovisual sector and comparable to the music sector. For games, the majority of consumers remain price sensitive (73%) with only around a quarter not willing to switch if their preferred language is not available.

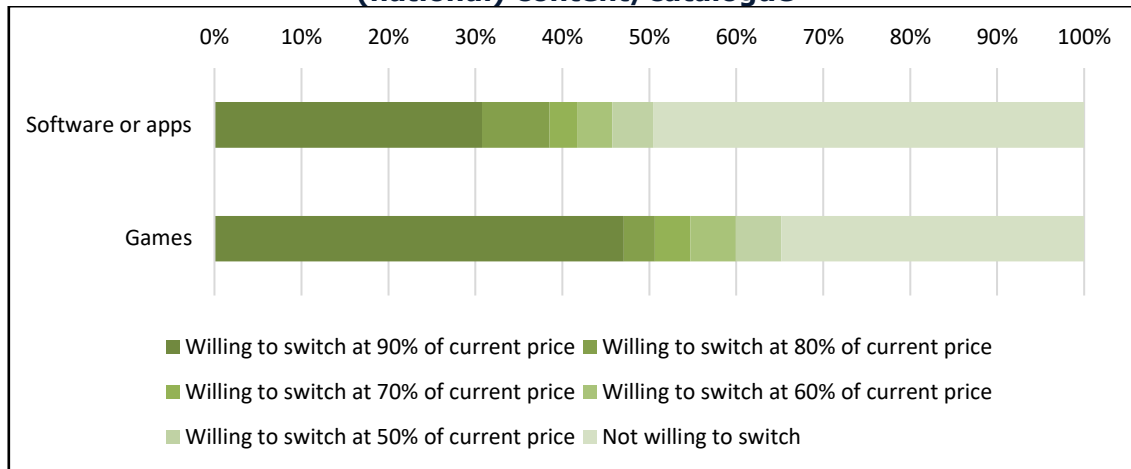
Table 60: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence but offers a similar content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence BUT offering you similar content/catalogue?

The third example explores the importance of local content in addition to limited language availability. Here, we observe a minor increase in the proportion of consumers (4% for software and 7% for games) who would not be willing to switch if local content is limited, regardless of the price discount. Therefore, the importance of local content is limited for software and moderate for games, compared to the other sectors surveyed. In this scenario, only half of consumers (49%) would be willing to switch their software subscription based on varying price discounts, while this is true for 65% of consumers accessing games.

Table 61: Consumers' willingness to switch providers or service if it is not meant for users in their country of residence and offers no or limited local (national) content/catalogue



Question asked: Would you switch to another service provider or service NOT meant for users in your country of residence AND offering you no or limited local (national) content/catalogue?

Based on these figures, we can conclude that for the software sector, price and language accessibility are both important factors. However, for the gaming sector price appears to play a key role in driving switching behaviour while language accessibility is less important. Local content is important to a limited proportion of consumers in both sectors (4% for software and 7% for games). We can estimate that roughly half of consumers (50%) are exclusively sensitive to price in the software sector, while this is true for almost two thirds (65%) in the games sector. When probing the importance of language accessibility further, 25% of consumers stated that they would not switch their provider of software content if their preferred language is not available, at any price. This was only true for 11% of consumers in the games sector.

8.2.3 Findings from mystery shopping exercise

The software and games sectors are characterised by a moderate level of geo-blocking compared to the other digital content sectors studied.

Access

No issues were observed when it comes to cross-border access to providers of software and games. Usually, issues were only faced at later stage of the consumer journey.

Availability

When it comes to the availability of offers, no issues were observed for one-off purchases of games and software. For subscriptions, only minor cases of price difference were noted for software providers, while no issues were observed for games.

Registration

In the games and software sectors, blocking of cross-border shopping during registration was observed in approximately 1 in 3 shopping attempts overall. These findings are in line with our qualitative observations of the shopping process, suggesting that changes in availability and price are only observed during registration. For gaming platforms part of larger enterprises, a re-routing to another website took place before the consumer could actually make a purchase.

Payment

At the payment stage, no issues were observed when it comes to cross-border access to providers of software and games.

8.3 Expected impact on consumers and on industry

This section presents the impacts of a potential extension of the Geo-blocking Regulation to include software and games. Firstly, the impacts on Scenario 1 and then the impacts under Scenario 2 are discussed.

Regarding the data analysis, before describing our findings as regards scenarios 1 and 2, this part of the section on the impact of a potential extension of the Geo-blocking Regulation describes our general findings as regards product variety, pricing and language availability across three types of stores: (1) PlayStation Network, (2) Steam and (3) Google Play Store.

Product variety

Based on the data analysis, PC games seem to be broadly accessible for consumers across Member States, closely followed by mobile apps. Only console games are not necessarily universally accessible. The following graphs show the accessibility of pieces of content for the 28 stores (PlayStation Network and Steam) in Member States³²¹. For all three types of games and software considered here, the majority of content is available in all their stores in Member States. The items unavailable in at least one of the national stores account for 3-18% of ratings or downloads.³²² This indicates that content that is not accessible in all countries tend to be items that are less popular globally. Overall, our findings are in line with the results by Alaveras et al. (2017).³²³ They found cross-border availability to be high for games on the PlayStation Network. They found that 81.1% and 90.5% respectively for PS3 and PS4 PlayStation games are available cross-border. The figures presented below also provide information about the (unweighted) share of items whose accessibility is restricted in some or many Member States. The number of items is indicated on x-axis of each of the graphs. So, for instance, the graph on PSN indicates that there

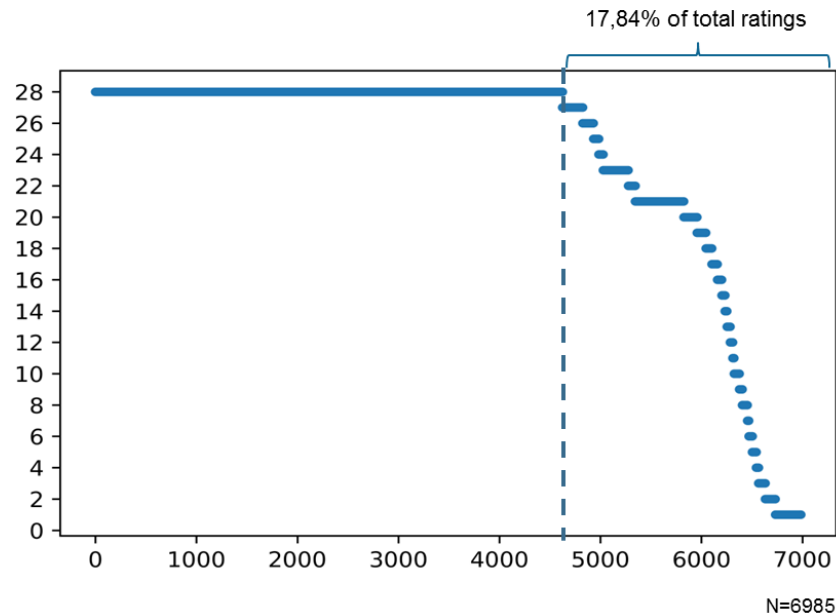
³²¹ Google Play Store is available in 25 Member States.

³²² These translate into the following unweighted shares: 34% for PSN, 5% for Steam and 24% for Google PlayStore. Notably, these figures can be somewhat misleading as a qualitative check indicated that many of these titles are test versions and similar content not actually meant for sale.

³²³ Alaveras G, Gomez-Herrera E, Martens B. 2017. Geo-Blocking of Non Audiovisual Digital Media Content in the EU Digital Single Market.

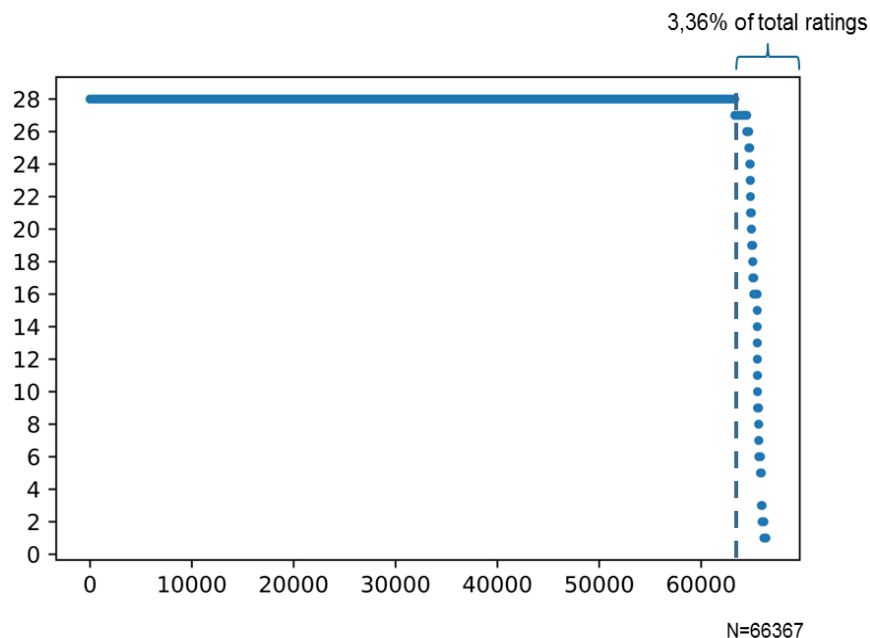
are roughly 7000 individual items featured across all country stores in our sample. Around 4600 of these are available in all 28 stores (indicated by the dashed line). The other bars indicate how many items are available in other 28 stores respectively. In other words, the 18% of weighted items (ratings) correspond to roughly 34% of items (unweighted).

Figure 95: AOF the PSN catalogue



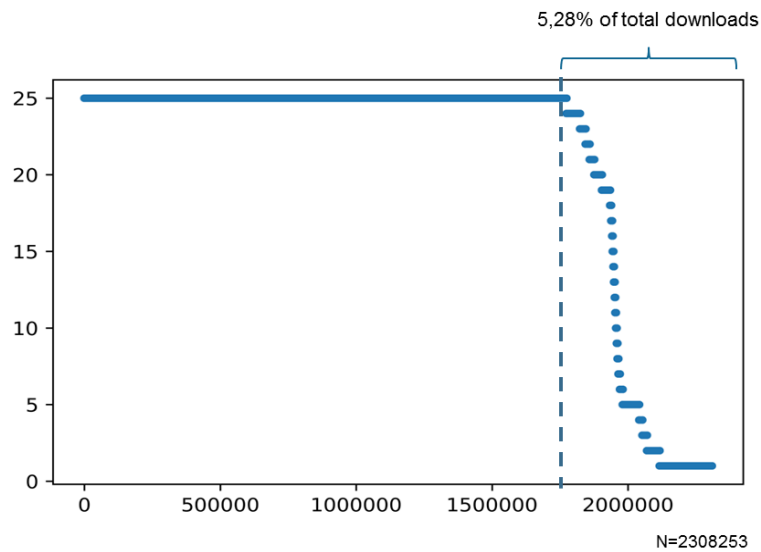
Source: Own calculations

Figure 96: Accessibility of the Steam catalogue



Source: Own calculations

Figure 97: Accessibility of the Google Play store catalogue



Source: Own calculations

Depending on the extent of the licencing agreement, there would either be no change of accessibility, if all rights were already used by distributors of games and software, or items that are currently not offered in certain Member States would become available as distributors would have to make use of their rights to sell specific content. There will remain some items that will still inaccessible due to national legislation, such as child protection laws. Essentially, we would find a similar effect as in the simulation of random e-books becoming available (see section 7.3).

Under scenario 2, passive sales would enable consumers to access a substantial fraction of the apps available on the Google Play Store and on the PSN store, whereas the effect on the Steam store would be almost negligible. Weighting the newly accessible items by the relative importance, it becomes clear that the additional utility for consumers may be limited for Steam and Google Play Store. For PSN, consumers would likely be able to access formerly non-available games (notwithstanding games that were blocked in their respective country due to legal reasons other than geo-blocking).

Price

The pricing analysis for gaming and software platforms is split into two parts. Firstly, the basic descriptive statistics is calculated for each store and their targeted Member States, then it is summarised as boxplots. On average, and after applying exchange rates, items are cheapest on Steam with EUR 5.58, followed by Google Play Store with EUR 6.85 (only considering non-free items) and led by PSN with an average price of EUR 22.14 per item. When looking at differences between Member States, each store follows a different pattern. While in the Steam store Euro is the dominant currency and prices are the same apart from UK (Pound) and Poland (Zloty), items in the Google Play Store vary in price seemingly at random, while comprising a much

broader variety of currencies. The PSN store is somewhere between the two, having significant price differences only between countries with different currencies, but also accepting a wider range of currencies.

Figure 98: Descriptive statistics for PSN

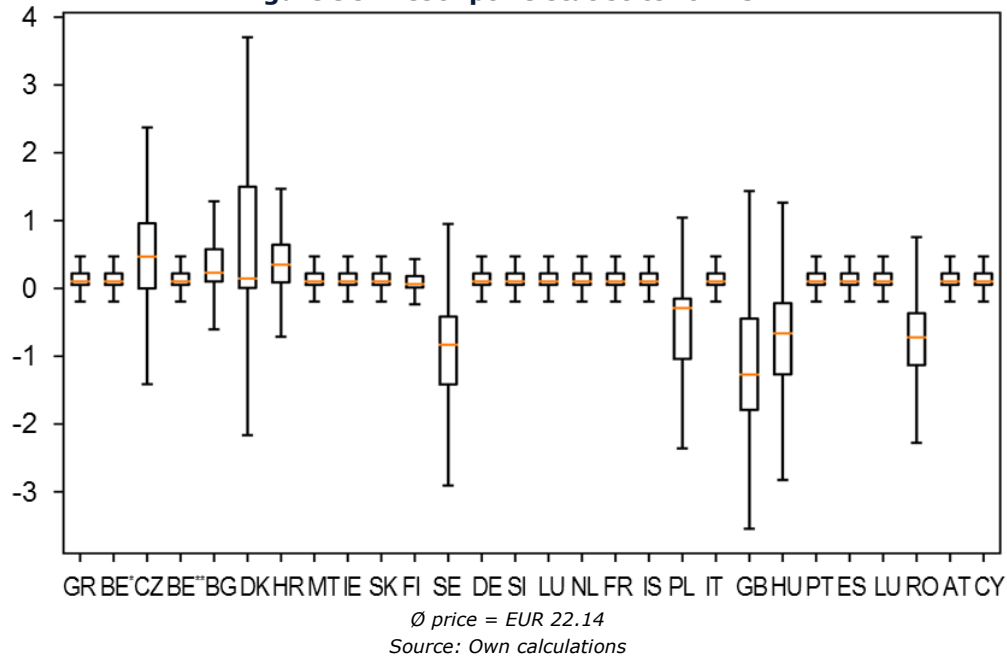
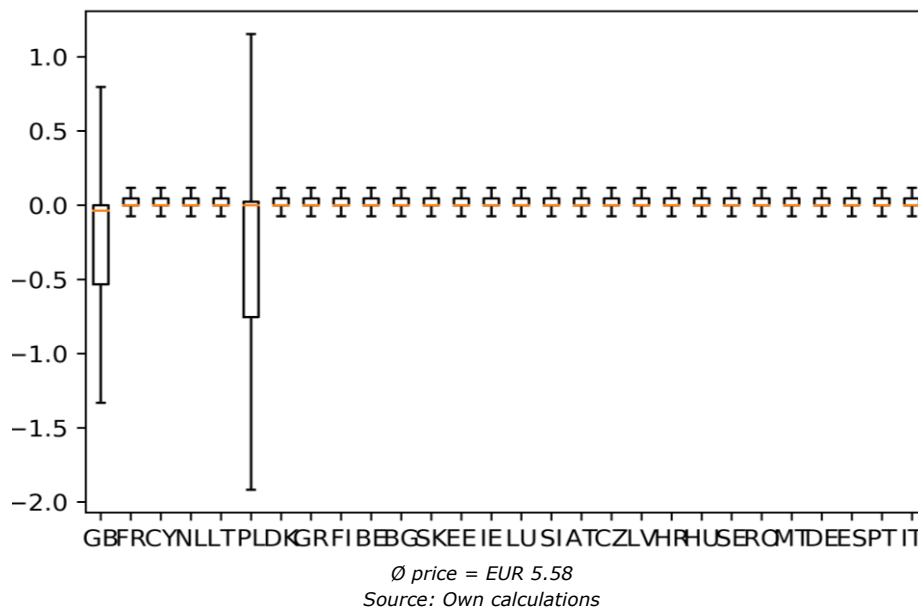
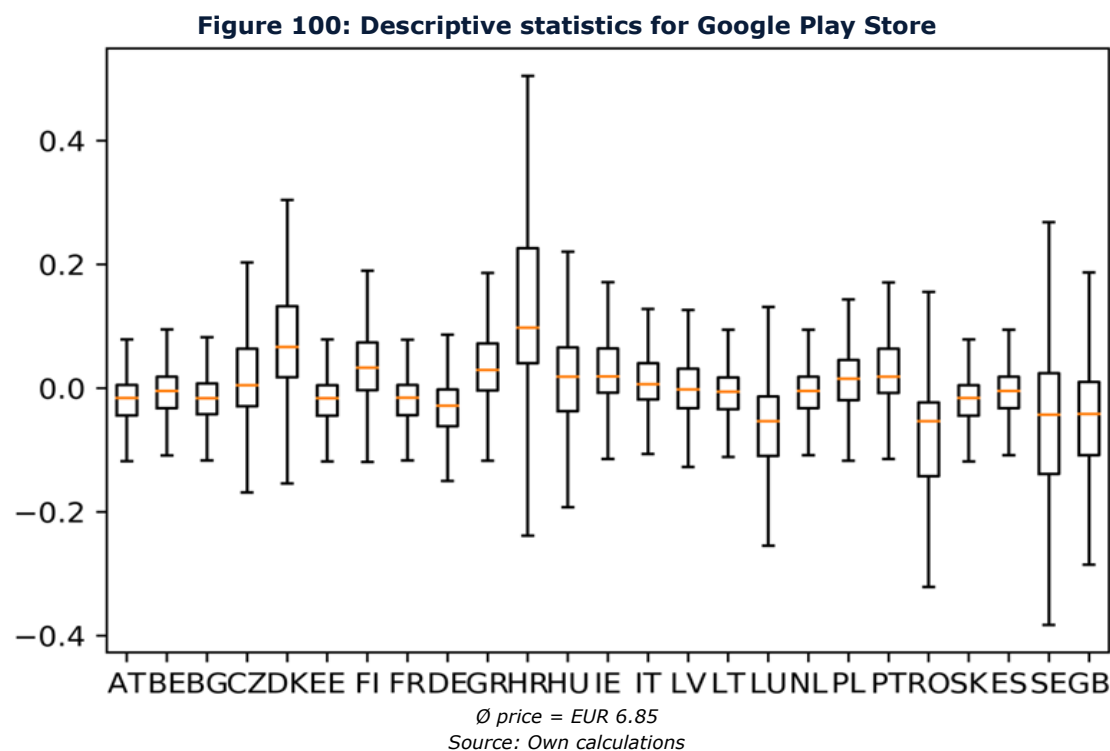


Figure 99: Descriptive statistics for Steam



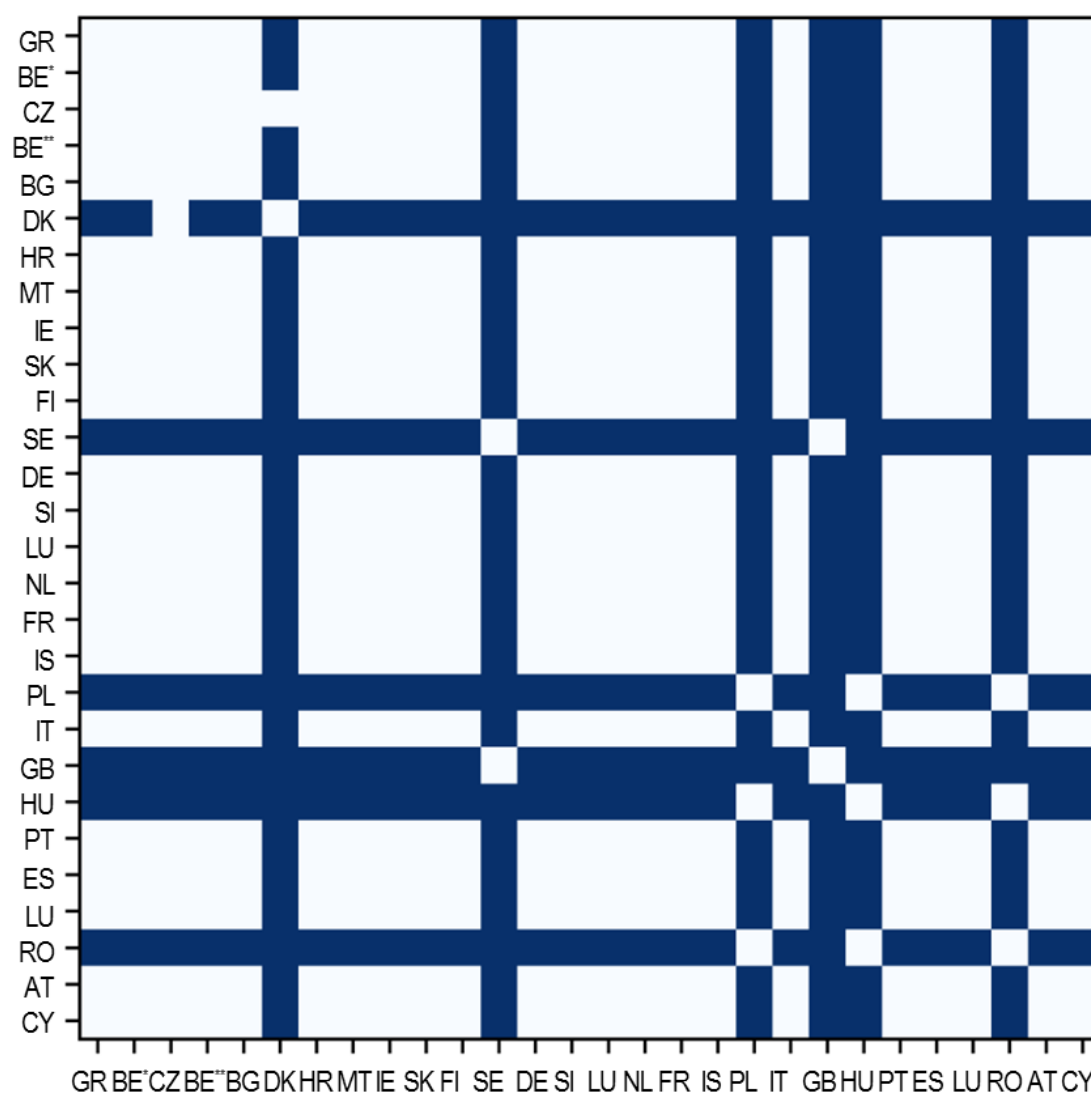


With the consumer survey in mind, pairwise differences between countries have been further investigated. The figures below show pairwise comparisons for all the three platforms across all Member States available in the respective store.

White tiles indicate a difference smaller than a fixed threshold, while blue tiles indicate significant differences. For Steam this only replicates the findings from the boxplot. Only the UK and Poland differ from the remaining member states.

PSN and Google Play Store both produce meaningful pattern for different thresholds with an exemplary selection illustrated in the graphs below.

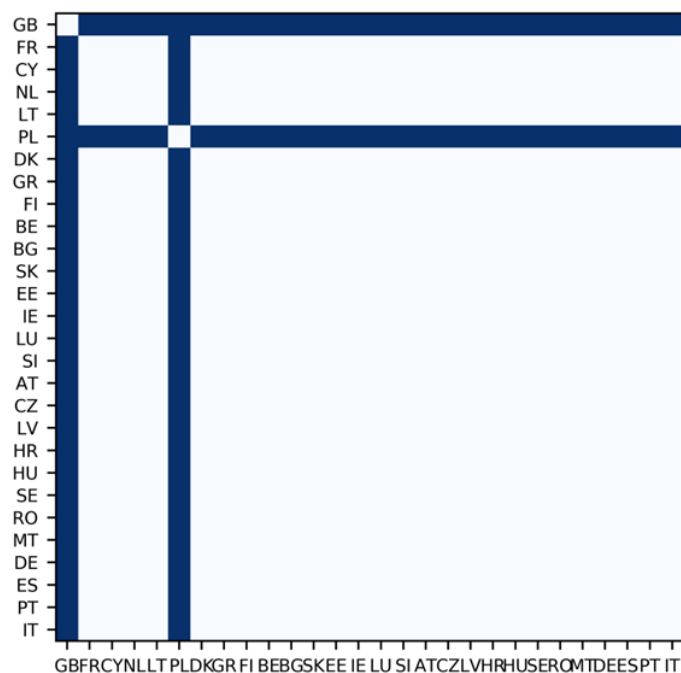
Figure 101: Pairwise differences between countries given a fixed threshold for PSN³²⁴



Dark blue indicates a difference
 $\varnothing$ difference > EUR 0.5
 Source: Own calculations

³²⁴ The substantially different patterns of observed price differences compared to the other two stores likely stem from the higher average price. Notably, the threshold for a price differences highlighted in the figure above was set somewhat lower than for the other two stores. For PSN, the threshold was around 2% of the average price whereas for the other two stores the threshold represents between 3 and 4% of the average price.

Figure 102: Pairwise differences between countries given a fixed threshold for Steam

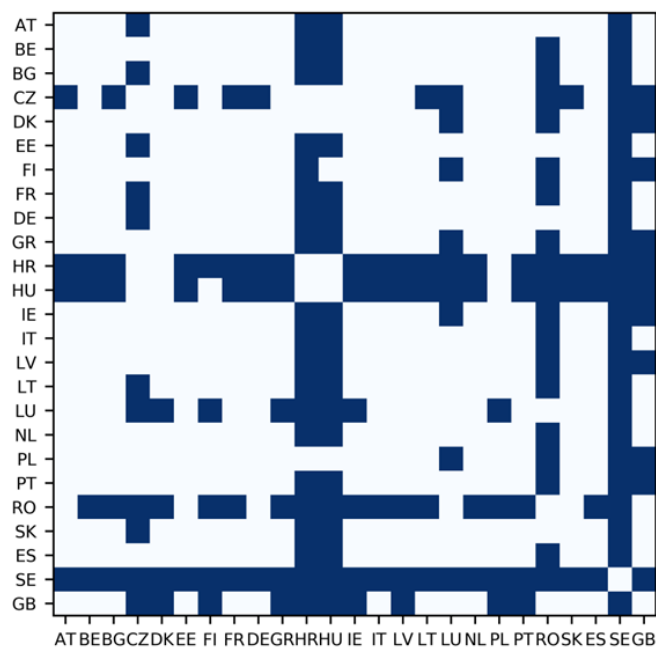


$\emptyset$ difference EUR 0.2

Dark blue indicates a difference

Source: Own calculations

Figure 103: Pairwise differences between countries given a fixed threshold for the Google Play Store



$\emptyset$ difference > EUR 0.2

Dark blue indicates a difference

Source: elaboration of the

8.3.1 Scenario 1

The revenue impact of Scenario 1 depends on the current use of the rights to distribute specific games or software by distributors. As outlined in Section 8.3, there would be no direct impact in terms of variety available if all distributors already sold games and software in all Member States where they hold sufficient rights to do so. If there is a sufficient share of distributors that arbitrarily decide to exclude some Member States from their sales despite having the rights to sell there, or applies price differentiation across different versions, we could see some revenue impact as consumers will likely purchase games and software from the cheapest store they are aware of.

There would potentially be some consumers who also enter the market for the first time, as specific games or software become available at prices meeting their willingness to pay. However, the exact effect is difficult to foresee, as we cannot know the specific share of content bound by the the arbitrary decision of not selling. The findings on accessibility documented at the beginning of section 8.3, suggest that this is in any case only relevant for PSN games: both apps of the Play Store and PC games on Steam store are broadly available across Member States. Therefore, we expect that the distribution of most games is already happening broadly across stores offered in the EU Member States. We would expect price-driven switching to be relatively similar in both Scenario 1 and Scenario 2. The results of price driven switching are presented in the graphs below.

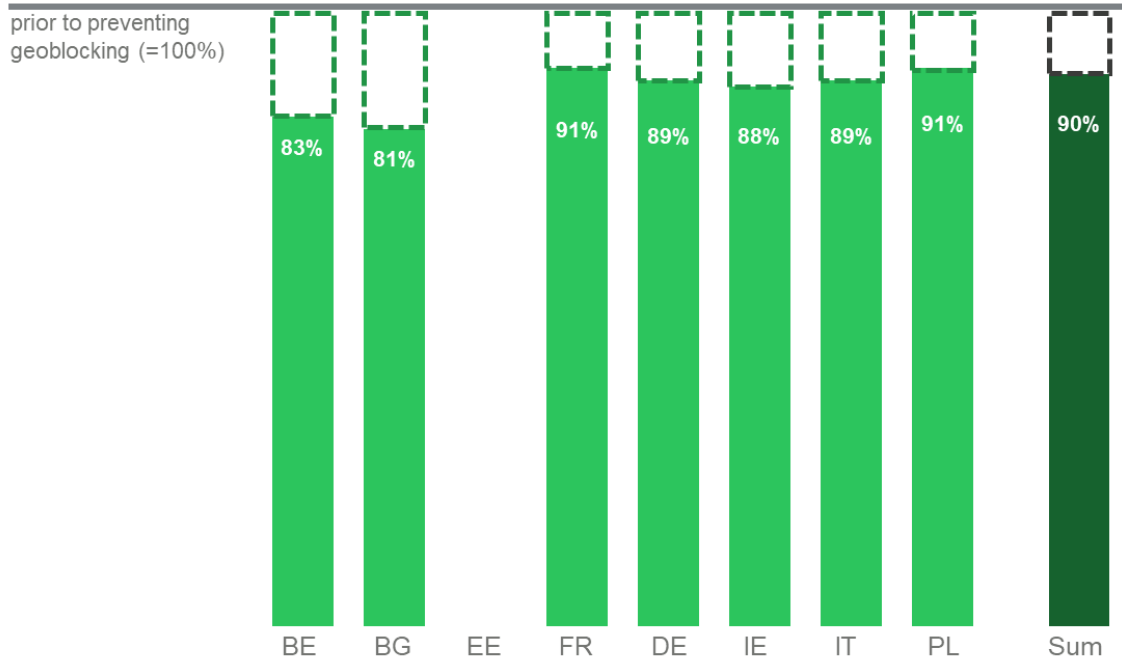
For the PSN store we expect, based on our data analysis, a reduction of the revenue from the average transaction of around 10% (Figure 104) across the seven stores analysed (Estonia does not have a specific store). As cheaper games become available, around 4% of additional consumers would purchase games on PSN, according to the general willingness-to-pay indicated in the consumer survey (Figure 105). The combined effect (Figure 106) suggests that Scenario 1 would result in a maximum effect of a 7% reduction of the average transaction price.

Since the Steam store already differentiates between Member States, we do not expect any effect from an extension of the Geo-blocking Regulation here.

For the Google Play Store, the effect from such an extension is expected to be around 2% overall (Figure 112) for in store purchases of any software, excluding app purchasing options, that is, combining the price-driven arbitrage realised by consumers and additional consumers purchasing applications on the Play Store, due to cheaper versions of the applications they want becoming available.

Figure 104: Price-impact on revenues – PlayStation Network

Revenue for an average transaction prior to preventing geoblocking (=100%)



Source: Own calculations

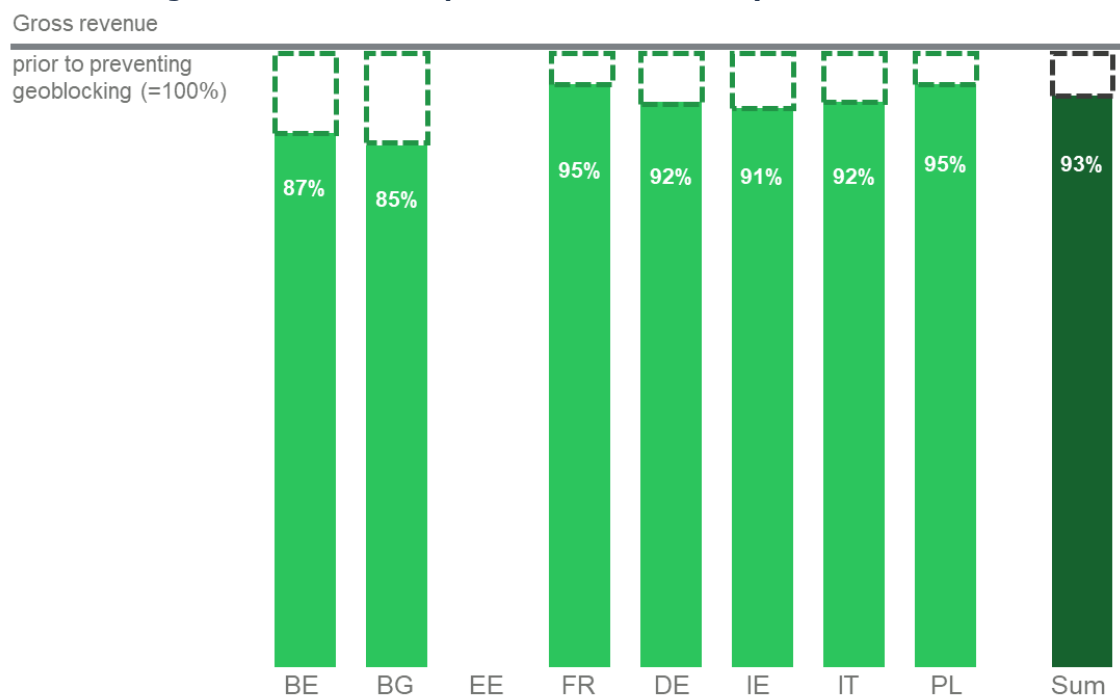
Figure 105: Accessibility-impact on user base – PlayStation Network

User base prior to preventing geoblocking (=100%)



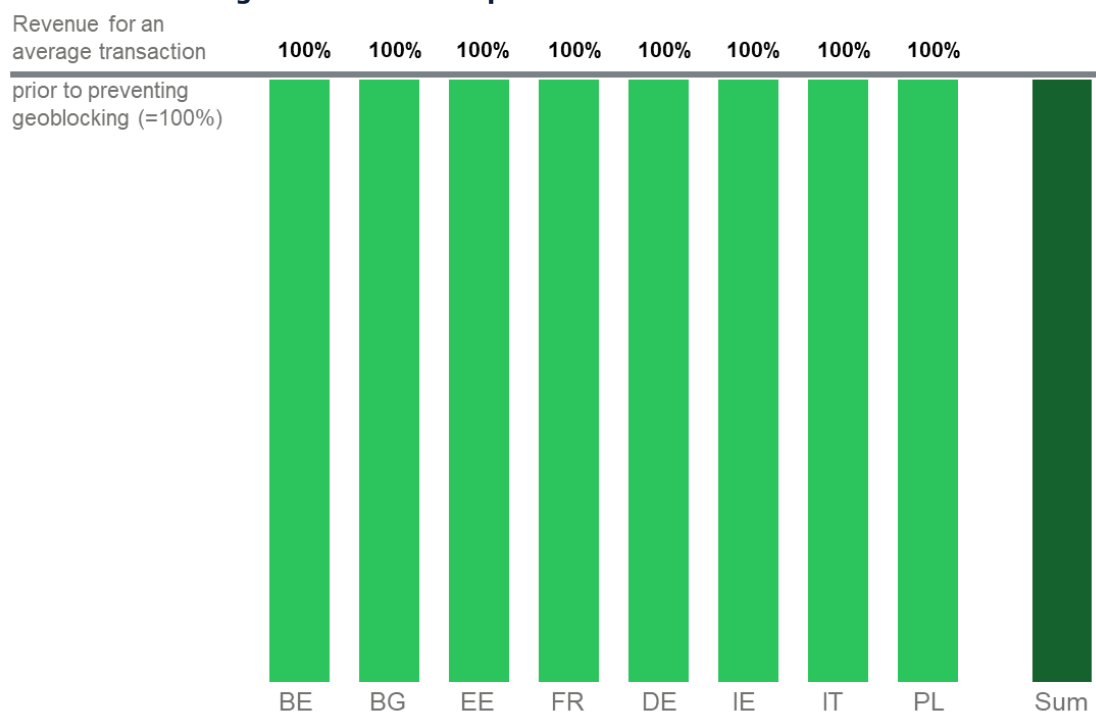
Source: Own calculations

Figure 106: Overall impact on revenues – PlayStation Network

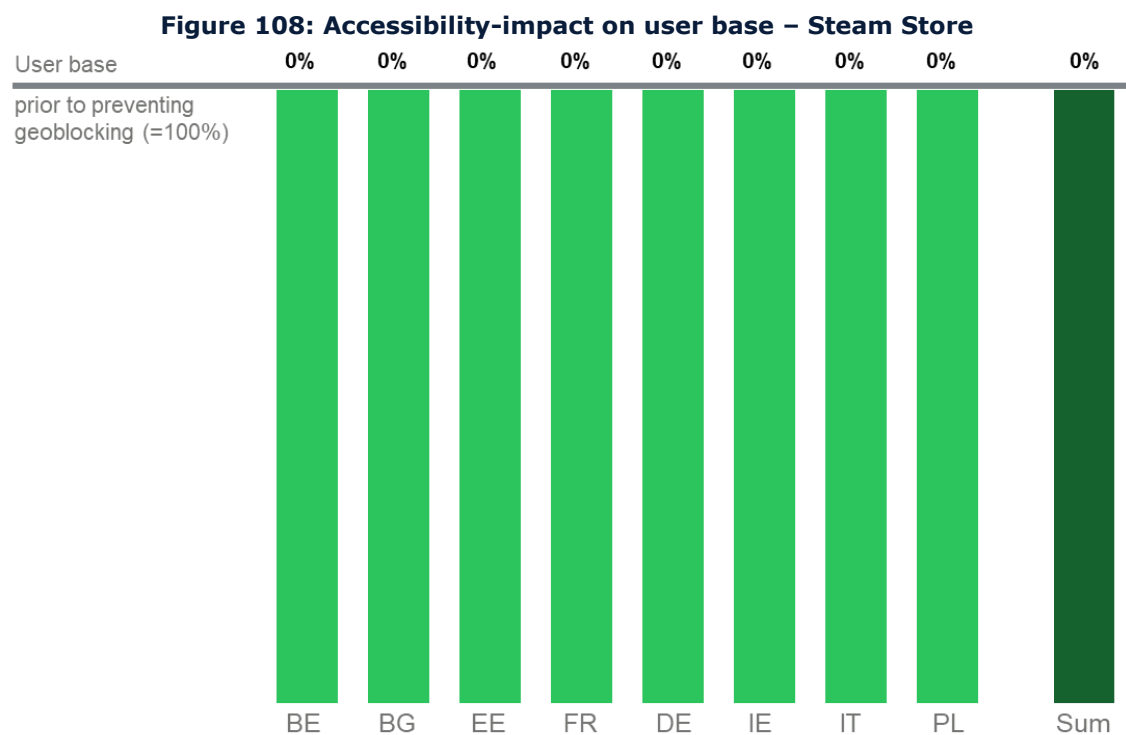


Source: Own calculations

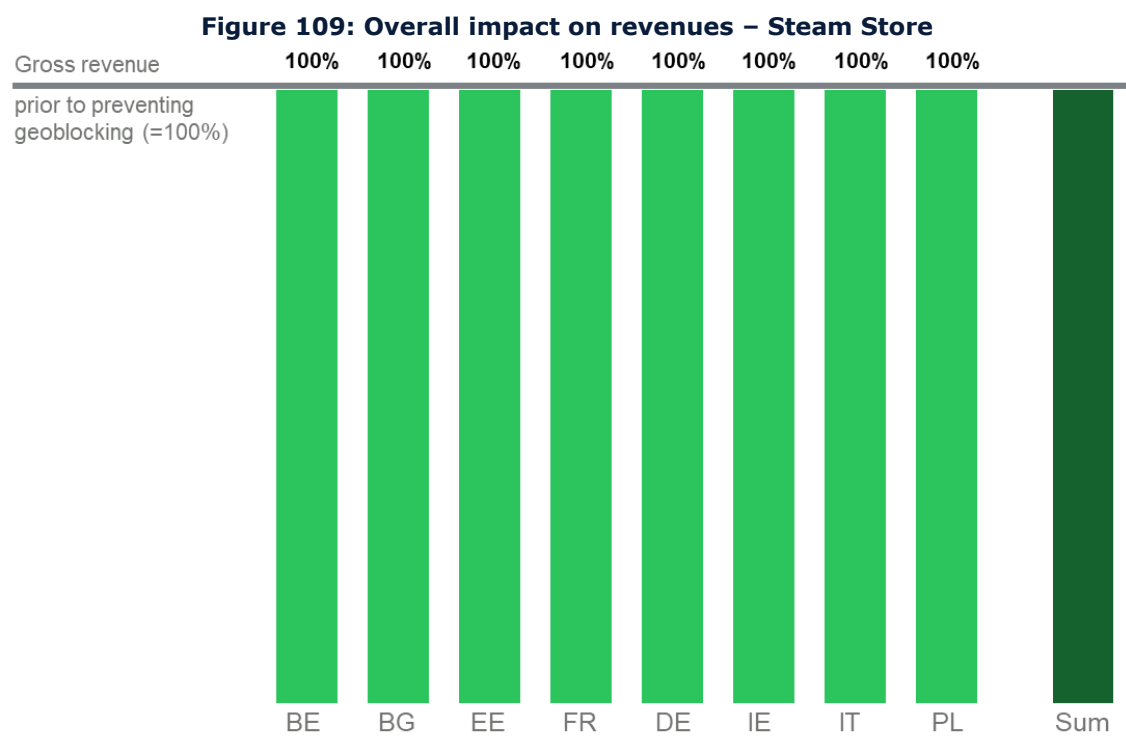
Figure 107: Price-impact on revenues – Steam Store



Source: Own calculations



Source: Own calculations

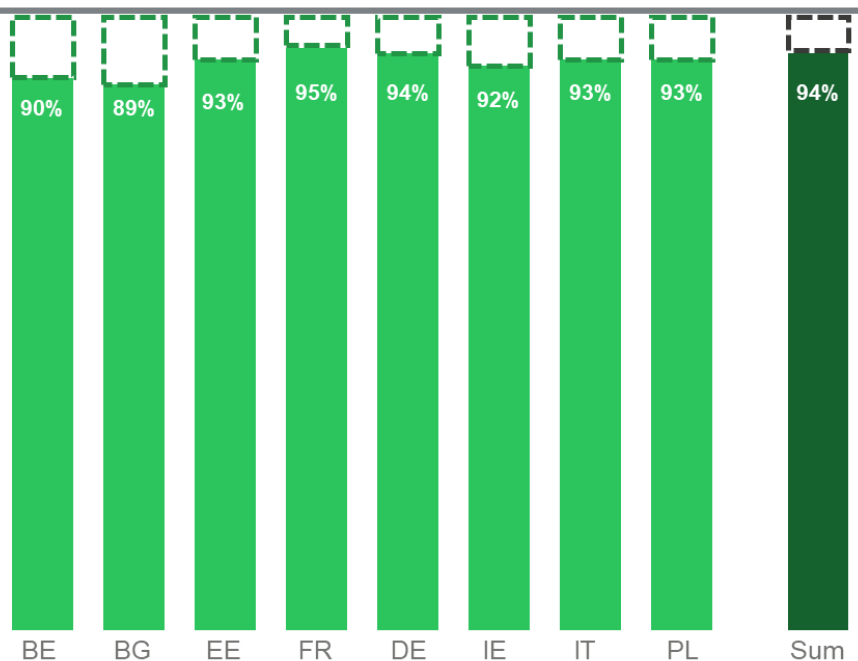


Source: Own calculations

Figure 110: Price-impact on revenues – Google Play store

Revenue for an average transaction

prior to preventing geoblocking (=100%)

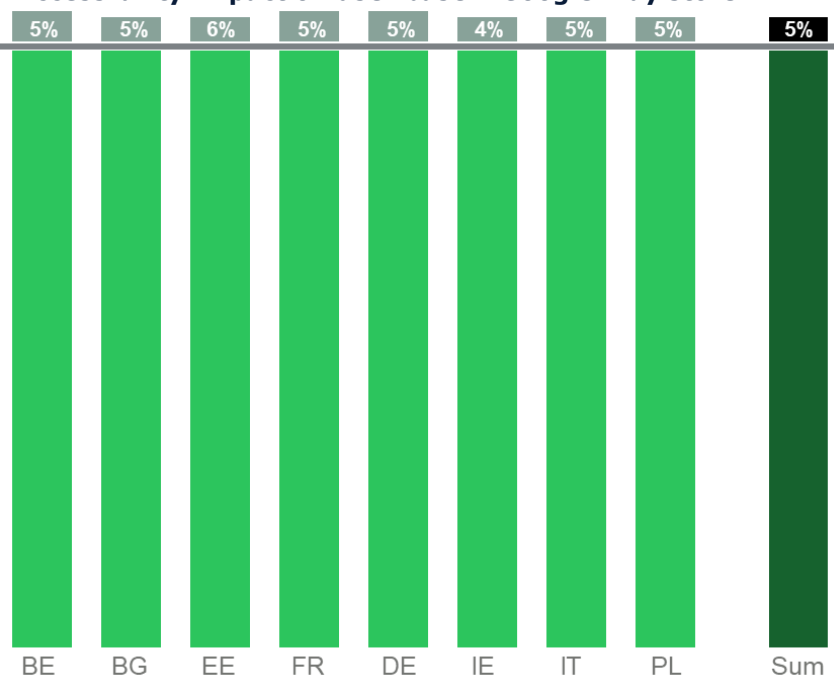


Source: Own calculations

Figure 111: Accessibility-impact on user base – Google Play store

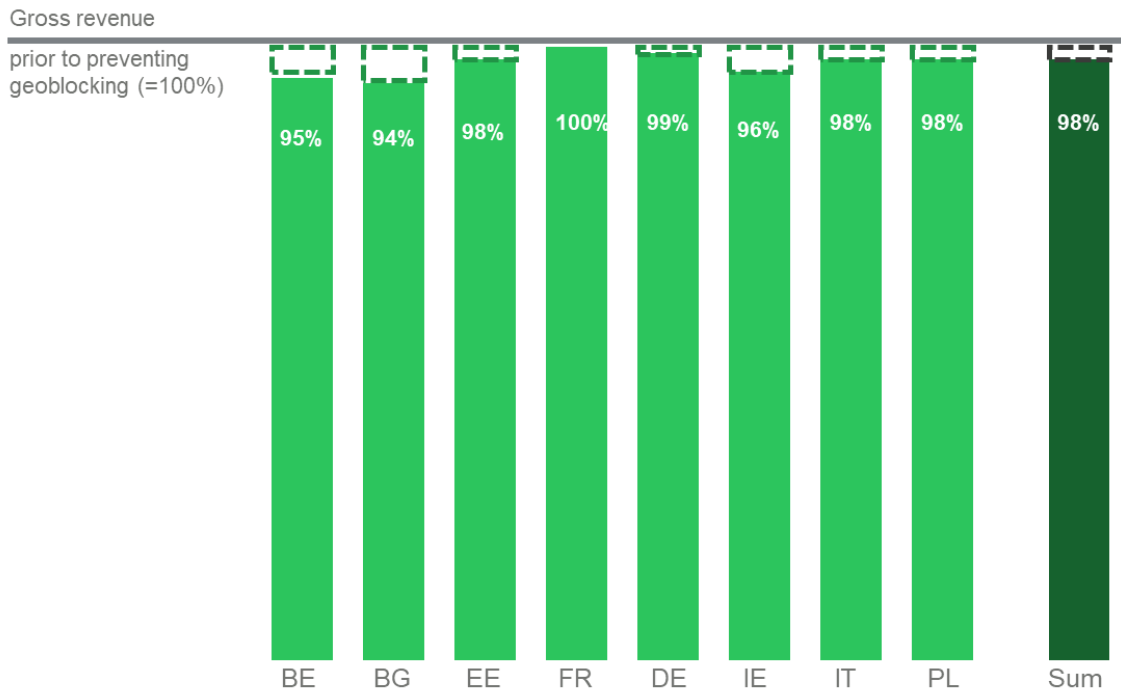
User base

prior to preventing geoblocking (=100%)



Source: Own calculations

Figure 112: Overall impact on revenues – Google Play store



Source: Own calculations

8.3.2 Scenario 2

Regarding the data analysis for Scenario 2, the effect that we expect for games and software are the same as under the broad interpretation of Scenario 1: essentially, all games and software would become available cross-border because the necessary rights reside with the distributor.

In alignment with section 5.6, we conduct a welfare analysis based on the survey and secondary data. This welfare analysis takes into account the effects observed in the switching analysis described in the preceding section. They would only hold for the whole if we saw similar effects of price-driven switching and corresponding reductions in prices actually paid by consumers across the sector. Consequently, the results of the welfare analysis need to be interpreted with great care.

Table 62: Welfare analysis, Software & Games

Revenue		
	Welfare transfer	Reduction DWL
PSN	0,1	0,036
Steam	0	0
Play Store	0,06	0,047

Source: Own calculations

Unsurprisingly, there is no transfer or reduction in deadweight loss for Steam, since geo-blocking has been voluntarily lifted in the past. For PSN and the Google Play Store, we observe a welfare transfer between 6% and 10% and a reduction in deadweight loss between 3.6% and 4.7%.

8.4 Overall summary for the software and games sectors

Below we present the key overall findings for the software and games sectors. The various uncertainties in these findings and in the report as a whole are addressed in section 2.5.

- The specific services analysed as part of the present study paint a diverse picture in terms of content accessibility. For games, cross-border availability of individual items of content is high overall, but depends on the specific platform considered. For example, for PlayStation Network (PSN), games representing around 18% of total ratings are not available in all EU Member States' online stores. For PC games on Steam, the same figure is only around 3%. For mobile software and games on the Google Play Store it is around 5%. This indicator weighted by the reviews or rather downloads appears to be a better measure than the mere share of unavailable games as it also indicates whether the games which are not accessible cross-border actually matter to consumers.
- There is little price differentiation from one Member State to another. Prices differ somewhat for PSN and Google Play Store. This is likely explained by currency exchange rates triggering the rounding up of prices. To illustrate this, for Steam, we cannot identify any noticeable price differences apart from two countries with currencies other than the Euro. Notably, no groups of particularly cheap or expensive countries emerge in the analysis.
- For PSN, we estimate a 7% reduction in the average revenue for the average transaction, accounting for new consumers. For Steam, there is no measurable impact on revenues. For Google Play Store, the reduction is around 2%.
- For the observed distributors of software and games, we find a welfare transfer between 0% and 10%, depending on the platform. We also anticipate a reduction in deadweight loss of between 0% and 4.7%.

ANNEX I: List of companies analysed during the business model analysis

Table 63: List of companies analysed during the business model analysis

Country	Sector	Name company
Belgium	E-books	Fnac
Belgium	E-books	Mes livres numériques
Belgium	Music	N.E.W.S.
Belgium	Music	Crammed discs
Belgium	Games	Fishing cactus
Belgium	Games	Larian Studios
Belgium	Audiovisual services (series)	Voo
Belgium	Audiovisual services (series)	Proximus TV
Belgium	Audiovisual services (films)	UniversCiné
Belgium	Audiovisual services (films)	Rtbf Auvio
Belgium	Audiovisual services (sports)	Playsports
Belgium	Audiovisual services (sports)	BE tv go
Belgium	Software	Peopleware
Belgium	Software	CSiD-GenApi
Bulgaria	E-books	Helikon AD
Bulgaria	E-books	Colibri OOD
Bulgaria	Music	Music Mall EOOD
Bulgaria	Music	Balkanfolk OOD
Bulgaria	Games	Pulsar EOOD
Bulgaria	Games	Ozone Entertainment OOD
Bulgaria	Audiovisual services (series)	BTV Media Group EAD
Bulgaria	Audiovisual services (series)	Bulgarian Telecommunication Company EAD
Bulgaria	Audiovisual services (films)	Neterra Communications EOOD
Bulgaria	Audiovisual services (films)	Miramar Film OOD
Bulgaria	Audiovisual services (sports)	NOVA Broadcasting Group AD
Bulgaria	Audiovisual services (sports)	A1 Bulgaria EAD
Bulgaria	Software	Microinvest OOD
Bulgaria	Software	SoftShop EOOD
Estonia	E-books	RAHVA RAAMAT Aktsiaselts
Estonia	E-books	OÜ Raamatukauplus Krisostomus
Estonia	Music	Eesti Rahvusringhääling (Klassikaraadio)
Estonia	Music	Osaühing ERP
Estonia	Software	Nortal AS
Estonia	Software	Aktsiaselts Proekspert
Estonia	Games	Osaühing Creative Mobile
Estonia	Games	Osaühing Playtech Estonia

Estonia	Audiovisual services (series)	Telia Eesti AS
Estonia	Audiovisual services (series)	Eesti Rahvusringhääling
Estonia	Audiovisual services (films)	Elisa Eesti AS
Estonia	Audiovisual services (films)	AS Ekspress Meedia
Estonia	Audiovisual services (sports)	AS Postimees Grupp
Estonia	Audiovisual services (sports)	Eesti Rahvusringhääling
EU	E-books	Amazon books
EU	E-books	Google Play store
EU	Music	Spotify
EU	Music	Deezer
EU	Games	Steam
EU	Games	App Store
EU	Audiovisual services (series)	Netflix
EU	Audiovisual services (series)	CHILI
EU	Audiovisual services (films)	Rakuten TV
EU	Audiovisual services (films)	Sky
EU	Audiovisual services (sports)	Eurosport Player
EU	Software	Softonic
EU	Software	Softpedia
Germany	Audiovisual services (videos)	Maxdoma - Owner: Pro Sieben Sat 1 (7TV Joint Venture GmbH)
Germany	E-books	Ciando GmbH
Germany	E-books	Libreka GmbH
Germany	Audiovisual services (videos)	Zweites Deutsches Fernsehen
Germany	Audiovisual services (sports)	Sport1 GmbH (Owner: Constantin Media AG)
Germany	Audiovisual services (sports)	DOSB New Media GmbH (sportdeutschland.tv)
Germany	Music	Idagio
Germany	Music	Deutsche Telekom
Germany	Software	Koch Media GmbH
Germany	Software	SAP SE
Germany	Games	Crytek
Germany	Games	Deck13 Interactive GmbH
Germany	Audiovisual services (films)	ProSiebenSat.1 Media
Germany	Audiovisual services (films)	EYZ Media GmbH - realeyz
Ireland	E-books	Gill Group
Ireland	E-books	Bookmate
Ireland	Music	Moodmaster
Ireland	Music	Tremolo Music Publishing
Ireland	Software	Trilogy Technologies

Study on the impacts of the extension of the scope of the Geo-blocking Regulation to audiovisual and non-audiovisual services giving access to copyright protected content

Ireland	Software	Ergo
Ireland	Games	Digit Game Studios
Ireland	Games	Kamagames
Ireland	Audiovisual services (films)	Volta
Ireland	Audiovisual services (films)	Screen Ireland
Ireland	Audiovisual services (videos)	TG4
Ireland	Audiovisual services (videos)	RTE player
Ireland	Audiovisual services (sports)	aerTV
Ireland	Audiovisual services (sports)	EIR Sport
Italy	E-books	Mondadori Libri Spa
Italy	E-books	Sellerio Editore Srl
Italy	Music	Sugarmusic S.p.A.
Italy	Music	Maciste Dischi Edizioni Di Sarubbi Antonio
Italy	Games	Milestone S.R.L.
Italy	Games	Digital Bros S.P.A.
Italy	Audiovisual services (series)	Cattleya S.r.l.
Italy	Audiovisual services (series)	TIM S.P. A
Italy	Audiovisual services (films)	Rai S.p.A.
Italy	Audiovisual services (films)	Lucky Red S.r.l.
Italy	Audiovisual services (sports)	DAZN Group
Italy	Audiovisual services (sports)	Discovery Italia S.R.L.
Italy	Software	Zucchetti S.p.a.
Italy	Software	Bending Spoons S.p.A.
Poland	E-books	Legimi S.A.
Poland	E-books	Ravelo.pl
Poland	Music	Independent Digital
Poland	Music	Plus Music (part of Plus-mobile phone network operator)
Poland	Games	11 bit studio
Poland	Games	Gog.com
Poland	Audiovisual services (series)	Play Puls
Poland	Audiovisual services (series)	WP Pilot (Grupa Wirtualna Polska)
Poland	Audiovisual services (films)	CDA Premium (CW Media S.A.)
Poland	Audiovisual services (films)	Kino Swiat VoD
Poland	Audiovisual services (sports)	Ipla.tv
Poland	Audiovisual services (sports)	Player.pl (Grupa TVN)
Poland	Software	Incom Group S.A.
Poland	Software	Cstore.pl

France	Audiovisual services (films)	La Cinetek
France	E-books	Chapitre
France	Audiovisual services (videos)	MyTF1
France	Audiovisual services (videos)	TV Replay - Télé 7 jours Replay
France	Audiovisual services (videos)	France Tv
France	Games	Ubisoft
France	Games	Gameloft
France	Music	Qobuz
France	E-books	Cultura (Socultur SAS)
France	Software	Dassault Systèmes
France	E-books	Decitre Interactive
France	Audiovisual services (films)	UniversCiné
France	Audiovisual services (sports)	RMC Sport
France	Audiovisual services (videos)	Dailymotion

Source: Own elaboration

ANNEX II: List of organisations that provided input through the stakeholder consultation

Table 64: List of organisations that provided input through the stakeholder consultation

No.	Country	Organisation	Date
Audiovisual sector			
1	Global	AETN UK	Written input
2	EU	ACT - Association of Commercial Television in Europe	16-05
3	AT	Allegro	Written input
4	DK	Angel Films	Written input
5	DE	Arthaus	Written input
6	Global	beIN Sports	Written input
7	SE	Bonnier Broadcasting	17-05
8	FR	Canal+	17-05
9	EU	CEPI – European Audiovisual Production	18-07
10	BE	Cinéart	Written input
11	Global	EDiMA	17-07
12	EU	EFADs – European Film Agency Directors	10-07
13	DE	Eksystent	Written input
14	EU	EPC – European Producers Club	25-07
15	AT	EPO-Film	Written input
16	EU	Europa Distribution	18-07
17	EU	EUROVOD – Network of European Independent VoD Platforms	14-08
18	AT	FAMA – Film & Music Austria	Written input
19	EU	FIAD – International Federation of Film Distributors' Association	18-07
20	EU	FIAPF – International Federation of Film Producers Associations	11-06
21	EU	Fremantle	Written input
22	DE	GMfilms	Written input
23	AT	Graf Film	Written input
24	AT	Hoanzl	Written input
25	EU	IVF – International Video Federation	11-06
26	AT	KGP-Film	Written input
27	PL	Kino Swiat	Written input
28	FR	La Cinétek	31-07
29	FR	Les films du Losange	Written input
30	IT	Lucky Red	25-07
31	BE	Lumière	Written input
32	ES	Mediapro	11-07
33	IT	Mediaset	13-05
34	AT	Mischief-Film	Written input
35	Global	MPAA – Motion Picture Association of America	24-06
36	AT	MR-Film	Written input
37	Global	Netflix	29-07
38	UK	Peccadillo Pictures	Written input
39	LU	RTL Group	Written input
40	UK	Sky	14-05

41	EU	SROC – Sport Rights Owner Coalition	18-06
42	AT	Superfilm	Written input
43	AT	TALK-TV	Written input
44	FR	TF1	14-05
45	EU	UNIC – The International Union of Cinemas	13-06
46	DE	Vaunet	Written input
47	Worldwide	Vodafone	Written input
48	BE	VOFTP – Flemish Independent Film & Television Producers	Written input
Consumer organisations/civil society			
49	EU	BEUC – The European Consumer Organisation	01-08
50	EU	CERRE – Centre on Regulation in Europe	22-07
51	EU	Consumer Choice Center	18-07
52	DE	Verbraucherzentrale Bundesverband (VZBV)	11-09
53	SI	Zveza Potrošnikov Slovenije (ZPS)	19-09
Collective Management Organisations			
54	LT	Artisjus	Written input
55	NL	Buma/Stemra	Written input
56	EU	GESAC – European Grouping of Societies of Authors and Composers	24-07
57	IE	IMRO	Written input
58	CZ	OSA – Ochranný svaz autorský	Written input
59	UK	PRS for Music	Written input
60	FR	SACEM – Société des auteurs, compositeurs et éditeurs de musique	Written input
E-books sector			
61	FR	Albin Michel	Written input
62	Worldwide	Amazon	12-08
63	DE	Buchhandlung Reuffel	Written input
64	EU	EIBF – European and International Booksellers Federation	03-07
65	EU	FEP – Federation of European Publishers	19-07
66	DE	Holtzbrinck	Written input
67	DE	Lehmanns Media	Written input
68	DE	Libri	Written input
69	FR	Madrigall	Written input
70	FR	TEA – The E-book Alternative	03-07
71	DE	Tegeler Bücherstube	Written input
72	DE	Thalia	Written input
Music sector			
73	Worldwide	Apple	25-07
74	UK	Beggars Group	Written input
75	Worldwide	ICMP – International Confederation of Music Publishers	18-06
76	Worldwide	IFPI – International Federation of the Phonographic Industry	12-07

77	EU	IMPALA – The independent music companies association	09-07
78	Worldwide	Spotify	09-07
Software/games sector			
79	EU	ISFE – Interactive Software Federation of Europe	16-07
80	EE	Osaühing Creative Mobile	14-08

Source: Own elaboration

ANNEX III: Overview of covered topics and indicators for the consumer survey

Overview of covered topics

The first part of the consumer survey explored **consumer access to digital content in the covered sectors**, their experience with geo-blocking practices, their purchase behaviour (including actual spending), their switching behaviour and reasons for switching as well as consumer behaviour with respect to content accessibility. In addition, this section explores consumer access to digital content via grey or unknown sources and the reasons for this behaviour. The second part of the survey focused on **consumer preferences and general levels of satisfaction** when it comes to content availability (local vs. international), content variety, language accessibility and pricing. Furthermore, it explored consumer perceptions regarding cross-border offers as they compare to the current domestic offers, they have access to. Lastly, the survey covered **consumer willingness to pay and price sensitivity**, both in general as well as linked to cross-border offers based on varying key factors such as language accessibility and the availability of local content. The overview of results presented in this section is structured along the three sections of the survey: 1) consumer access and purchase behaviour, 2) consumer satisfaction and preferences and 3) consumer willingness to pay and price sensitivity. These three dimensions provide important insights into consumer experiences, behaviour and preferences related to geo-blocking in the sectors surveyed. As such, they can be helpful in estimating the potential impact of the extension of the Geo-blocking regulation to digital services giving access to copyright-protected content, particularly as related to consumer value/utility linked to pricing, product variety and language availability. These results are further used in Task 3, where they are interpreted in the context of all other evidence gathered during the project in order to clearly outline different Scenarios of the potential impact of the extension on consumers. As these results are preliminary, pending the finalisation of the fieldwork and weighting of the data, text comments have not been included yet. This structure serves to guide the discussion on how to present these findings in the Third Interim Report as well as the Final Report.

Consumer survey indicators

This section presents an overview of the specific indicators measured by the consumer survey by broad topic

Part I: Indicators related to consumer access and purchase behaviour

1. Types of access to digital content (SC4)

Consumers access digital content either for free or via paid access. An additional key distinction is made between subscription-based access and access paid per item (via a download or streaming). This distinction is key to consider when **estimating the relative importance of free vs. paid and subscription-based vs. paid-per-item digital content** in each of the surveyed sectors.

2. Cross-border vs. domestic access (Q1)

In addition to types of access in general, a distinction is made between offers that are meant for domestic users and offers that are meant for users residing in a different Member State. In particular, by content or service meant for domestic users, services that offer domestic (local) language options (e.g. translations, dubbing and/or subtitles), local content, local language interfaces etc. are covered. In contrast, access to services NOT meant for domestic users, refers to services that feature different languages/interface options not necessarily including those used domestically. This distinction helps to measure the **prevalence of cross-border access to digital content** in all surveyed sectors.

3. Geo-blocking prevalence (Q2)

Geo-blocking occurs when consumers are prevented from accessing specific digital content due to their location. The Consumer Survey focused on four Scenarios:

- Successful access without any issues;
- Successful access with issues that were resolved
- Successful access with extra charges incurred; and
- Unsuccessful access.

The last three Scenarios indicate some form of geo-blocking or altered purchase conditions (e.g. price) based on the consumer's location. Estimations are made of the geo-blocking prevalence in the context of general access and cross-border access to digital content in order to estimate the current barriers for consumers to accessing digital content cross-border, which has significant implications for the expected impact of a potential extension of the Geo-blocking Regulation.

4. Consumer spending (Q4)

Consumer monthly spending on purchasing digital content is measured for both paid subscriptions and pay-per-item Scenarios for each covered sector. These figures are used to inform the current economic profile of each sector as well as to segment consumers based on their willingness to pay and cross-border access to digital content. This can shed light on the group of consumers in each sector for whom cross-border access is important and their relative willingness to pay for digital content. Consumers' current spending is also a key proxy of the economic relevance of each sector and is used further used to estimate consumer price sensitivity.

5. Switching behaviour and reasons for switching (Q5, Q6, Q22)

In order to determine the potential impact of extending the Geo-blocking regulation to digital content, consumers' propensity to switch between providers in each of the studied sectors is considered. Switching behaviour as well as consumers' reasons for switching between providers can play a key role in predicting their decision-making under different sector condition and legal Scenarios. This indicator is focused specifically on subscriptions to digital content. In addition, the survey measures

consumers' intentions/likelihood to switch under different conditions of language accessibility vs. price. Together with the indicators measuring consumers' willingness to pay and price sensitivity, it helps in making concrete assumptions on how different legal Scenarios would impact consumer choice and switching behaviour considering differences inherent to specific sectors.

6. *Consumer behaviour linked to content availability (Q7)*

Content availability is a key factor that links to gaps in consumer needs when it comes to the access to digital content. This indicator has two components. First, for each covered sector the (subjective) frequency when consumers faced **issues with content availability** over the past 12 months is measured. Second, consumers' self-reported reactions to such issues is measured, which helps to focus on the importance of this factor for different groups of consumers. The indicator is measured separately for subscription-based offers and pay-per-item content to allow further comparisons across these dimensions.

7. *Access via grey or unknown sources (Q12-Q15, Q23)*

When consumers are unable to access specific content via their regular subscription or services provided in their country of residence, they may seek to obtain access to this content via grey or unknown sources. As this type of consumer behaviour can have implications for the economic value of the covered sectors, the Consumer survey covers consumer knowledge of, access and reasons for access of digital content through grey or unknown channels. Consumer knowledge is defined as their level of awareness of whether the sources they use to access digital content are legal or not. Access is measured as the incidence of consumers who accessed digital content (in a specific sector) via grey or unknown sources. In order to arrive at a better understanding of the motivations behind consumer use of grey sources, consumers who indicate that they did are further asked to specify the reasons driving their behaviour.

Part II: Indicators linked to consumer satisfaction and preferences

8. *Consumer preferences (Q9, Q11)*

To correctly estimate the potential impact of the extension of the Geo-blocking regulation on consumers, consumer preferences and how they vary per sector are considered based on key factors linked to the objectives of the research questions this study aims to address language accessibility, content availability, quality of the service/platform and price. A set of indicators is computed based on the importance of each of these factors in consumers' decision to purchase access to digital content in a given sector. In addition to the general indicators, specific indicators linked to the aspects of the offer that factor into consumers' decision-making process are computed: availability of local content, large variety of international content and how these relate to the price of the service.

9. Consumer satisfaction (Q8)

Tightly linked to consumer preferences is consumer satisfaction with the current offer of digital content in the respective sector. Consumer satisfaction is measured for several key factors: subscription prices, pay-per-item prices, choice of providers/offers, content variety and quality, and language accessibility. Consumer satisfaction with different aspects of the current offers in each market helps to identify specific gaps and link them to the context and Scenarios of the potential extension of the Geo-blocking regulation. Gaps are identified by factoring in consumer preferences and identifying aspects that are 1) important to consumers and 2) are characterised by relatively low consumer satisfaction.

10. Perceptions of cross-border vs. domestic offers (Q10)

The survey investigates consumer satisfaction further in the context of cross-border access to digital content. The same factors covered by the previous indicator of satisfaction (price, choice, content variety and quality and language accessibility) are assessed by asked consumers to compare subjectively offers meant for users in their country of residence (domestic) to those meant for users in other EU country (cross-border). This indicator is used to further link any gaps identified in consumer satisfaction to their perception of domestic vs. cross-border offers.

Part III: Indicators linked to consumer willingness to pay

11. General willingness to pay (Westendorp Q16-Q19)

Consumer willingness to pay for digital content is a key factor to consider when predicting the impact of a potential extension of the Geo-blocking regulation. Its importance goes beyond investigating the impact on consumers, as it is a key determinant of the potential economic impact of the extension on all market players, affecting both the demand and supply side. The widely accepted premise of the Westendorp approach (also known as the Price Sensitivity Meter or PSM³²⁵) is used to measure consumers' price preferences. Firstly, consumers' general price sensitivity to offers of digital content is measured, which considers what they actually pay (reported in Q4) for current access in a specific sector. This approach allows to obtain a general price sensitivity curve, all variables held constant, for each respondent.

12. Willingness to pay linked to aspects of the offer (Q20, Q21, Q29)

To further link consumer willingness to pay to cross-border access to digital content, the Consumer Survey measures price sensitivity under three difference conditions:

- Domestic access – general (baseline) Scenario;
- Cross-border access - offering similar content but lower language accessibility; *and*
- Cross-border access - offering limited local content.

³²⁵ Van Westendorp, P. (1976) "NSS-Price Sensitivity Meter (PSM) – A new approach to study consumer perception of price." Proceedings of the ESOMAR Congress.

This indicator allows to estimate how consumers' actual willingness to pay varies when forced with concrete cross-border offers that differ in terms of language accessibility and/or the local content they provide.

ANNEX IV: Full results of the Consumer survey

Q1

The type of content or service that consumers accessed or attempted to access (for free or via a purchase) in the past 12 months	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	5567	7411	7299	5833	6629	4727
Specific content or service meant for users living in the country of residence	90%	84%	87%	85%	87%	86%
Specific content or service <u>not</u> meant for users living in the country of residence	15%	23%	17%	21%	21%	20%

Q2

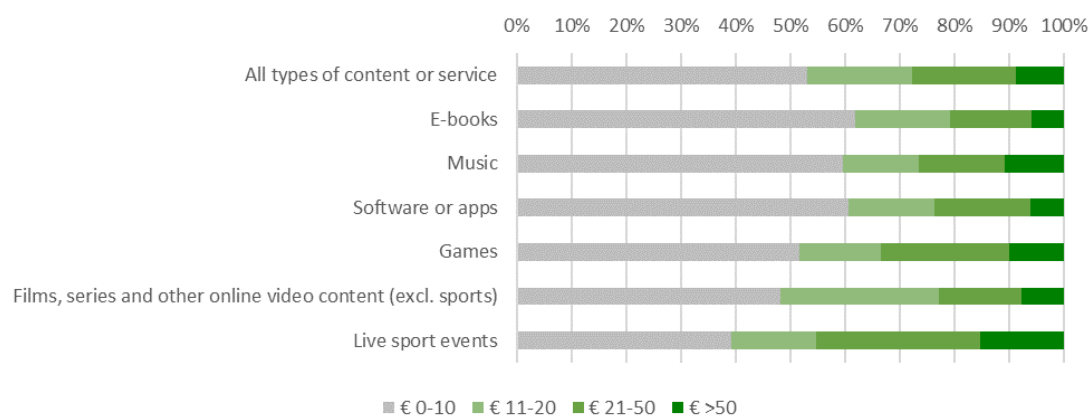
Consumers' experience when attempting to access specific content or service <u>not</u> meant for users residing in the respective country	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	967	1821	1428	1421	1537	1132
It worked without a problem and without using extra tools (e.g. Virtual Private Network)	47%	62%	56%	59%	56%	46%
I experienced some problems but found a way to access the content (e.g. via Virtual Private Network)	28%	20%	22%	19%	19%	23%
I was charged extra to access the content	15%	9%	11%	12%	13%	17%
It did not work (e.g. no access, redirected, refused payment)	24%	17%	18%	17%	21%	22%

Q4

Average monthly spending on online purchases of...	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	2527	497	268	369	370	653	370
Paid subscription(s)	€ 22	€ 20	€ 19	€ 16	€ 26	€ 19	€ 33
Paid per item	€ 21	€ 16	€ 27	€ 22	€ 20	€ 17	€ 29
Subscription(s) and cost per item	€ 22	€ 18	€ 24	€ 19	€ 23	€ 20	€ 32

Study on the impacts of the extension of the scope of the Geo-blocking Regulation to audiovisual and non-audiovisual services giving access to copyright protected content

Price range of average monthly spending on online purchases of...

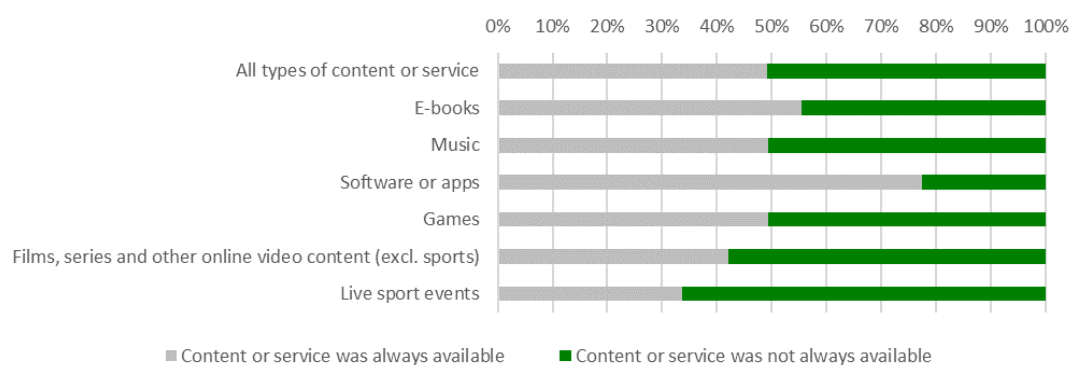


Q5

Changes to consumers' paid subscription in the past 12 months	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	1404	190	146	210	129	522	207
I switched to a different subscription with the same provider	13%	16%	13%	11%	18%	9%	20%
I switched my subscription(s) to a different provider	8%	13%	11%	7%	11%	4%	11%
I added another subscription with a different provider but kept my old subscription(s)	9%	5%	5%	7%	8%	11%	10%
I did not switch my subscription(s)	71%	66%	71%	75%	64%	75%	60%

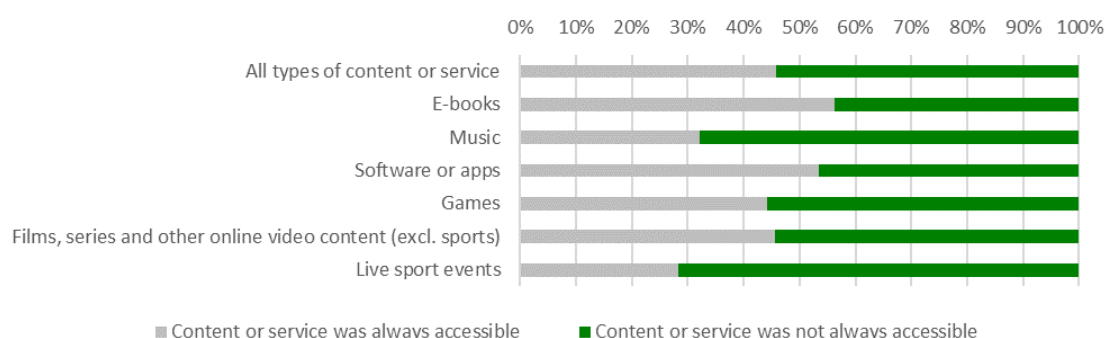
Q7

Availability of content or services through the existing subscription in the past 12 months



Consumers' reaction if content or service was not available through the existing subscription in the past 12 months	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	697	82	72	59	57	301	126
I did nothing as it was not that important to me	37%	27%	37%	39%	40%	41%	33%
I accessed the content via alternative legal channels	31%	38%	32%	39%	41%	26%	32%
I gave up because I could not find the content via alternative legal channels	24%	23%	29%	20%	17%	23%	28%
I accessed the content via alternative grey or unknown channels	8%	12%	3%	2%	2%	10%	7%

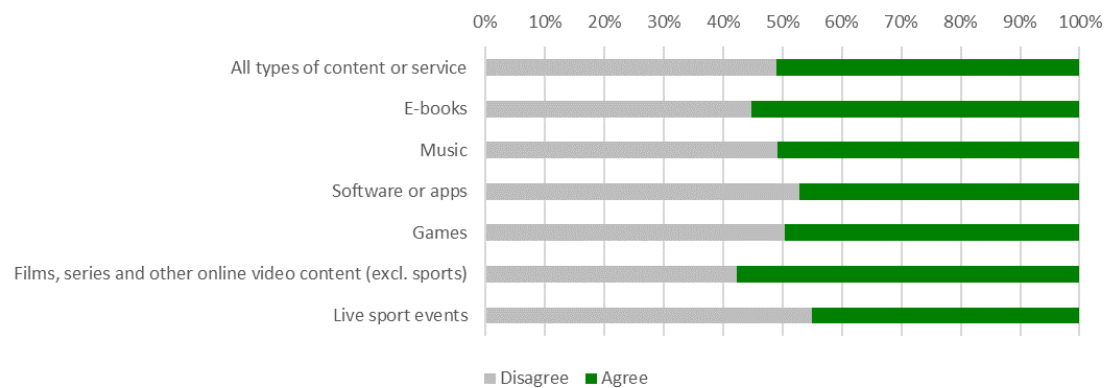
Accessibility of content or services to purchase via a download or other services providing access to individual content in the past 12 months



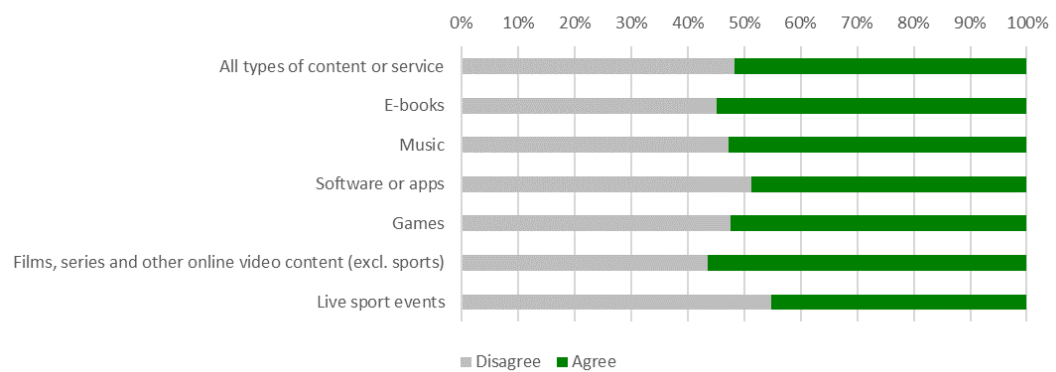
Consumers' reaction if content or service was not accessible to purchase via a download or other services providing access to individual content in the past 12 months	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	693	162	95	87	144	84	121
I did nothing as it was not that important to me	32%	31%	29%	40%	33%	35%	28%
I accessed the content via alternative legal channels	40%	39%	51%	36%	36%	32%	47%
I gave up because I could not find the content via alternative legal channels	22%	25%	18%	21%	24%	27%	16%
I accessed the content via alternative grey or unknown channels	5%	4%	2%	2%	7%	6%	8%

Q8

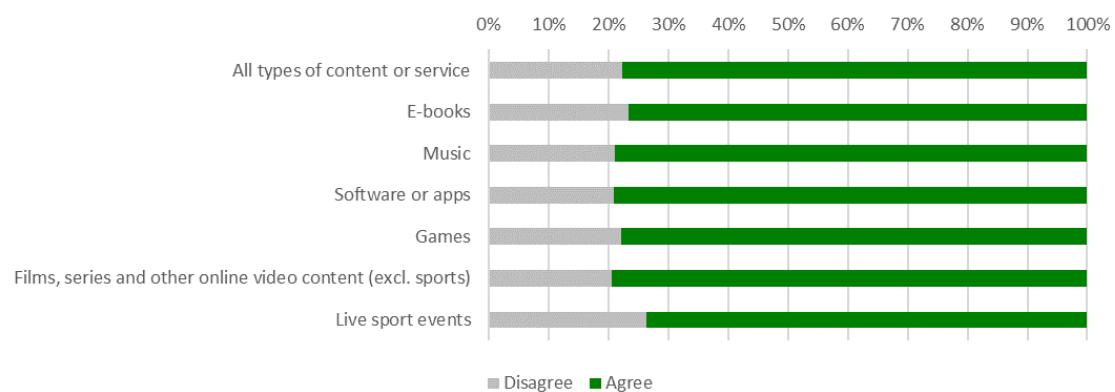
The current subscription prices are justifiable considering the offers



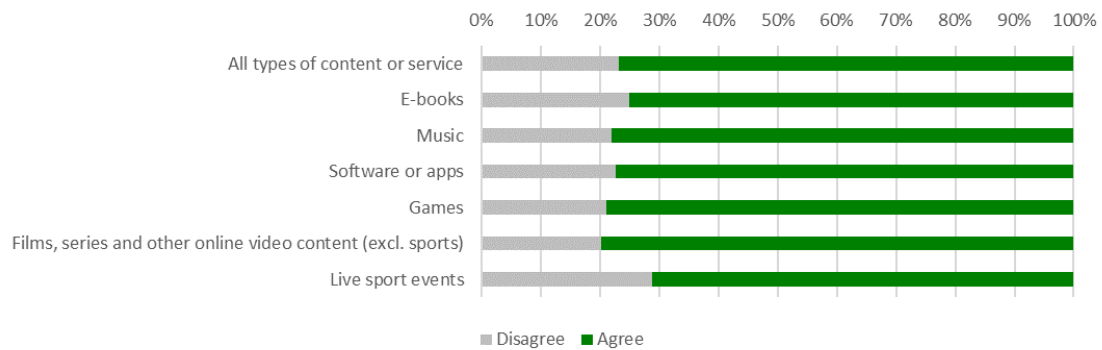
The current prices per item are justifiable considering the offers



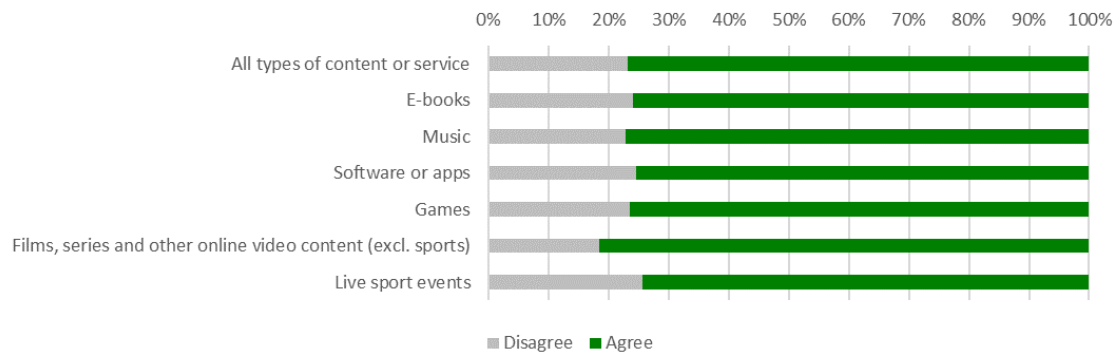
The number and variety providers/offers I can choose from is sufficient



The choice and quality of content offered by each provider is sufficient to meet my needs

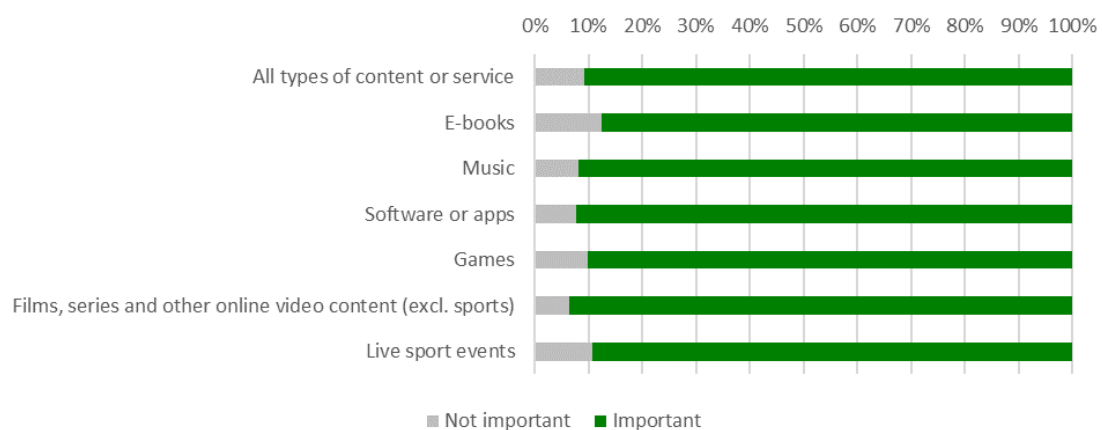


The specific languages (dubbing or subtitles) in which the content is available are sufficient for my needs

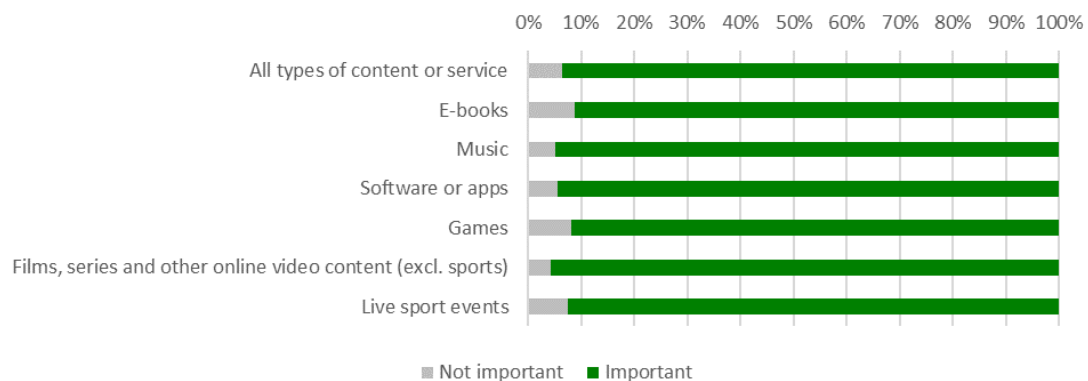


Q9

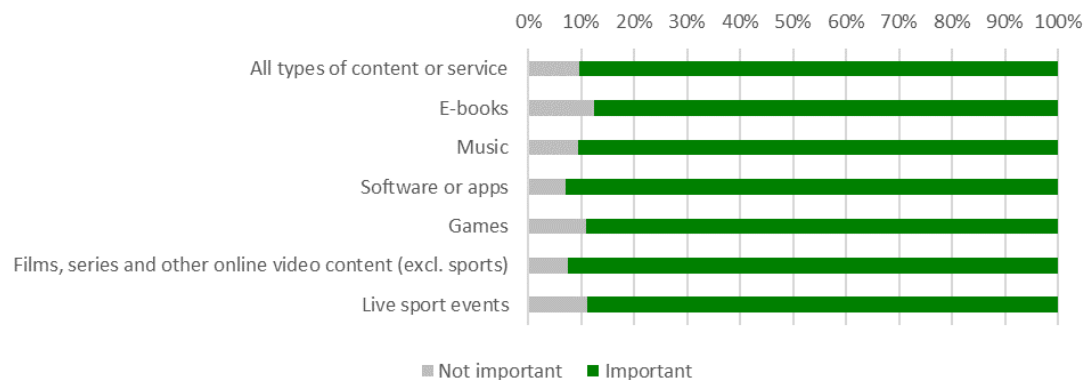
Importance of the price when choosing an offer



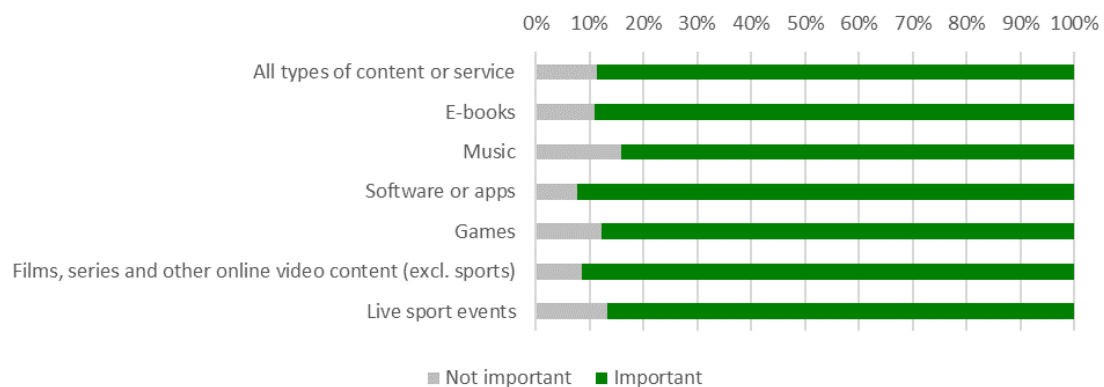
Importance of the availability of specific content when choosing an offer



Importance of the quality of the platform through which the content is delivered when choosing an offer



Importance of whether content is available in the preferred language (via subtitles or dubbing) when choosing an offer

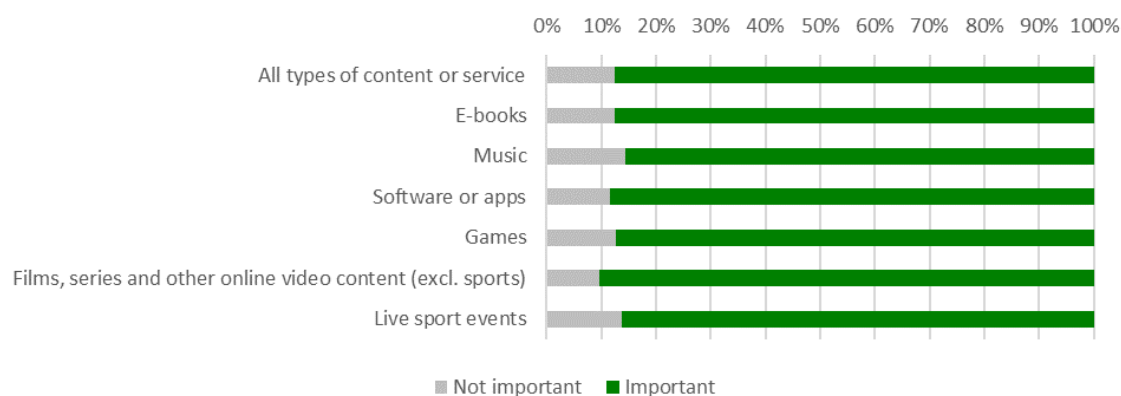


Q10

Consumers' opinion on content or service offered in their country	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	1292	186	198	175	235	226	272
I think the current subscription prices in my country of residence are cheaper than in other EU countries	45%	55%	45%	37%	40%	52%	43%
Base size	1291	186	206	173	240	219	267
I think the current prices per item in my country of residence are cheaper than in other EU countries	43%	44%	41%	38%	37%	47%	48%
Base size	1304	189	195	178	235	239	268
The number and variety of providers/offers I can choose from in my country of residence are better than in other EU countries	56%	62%	54%	55%	53%	54%	59%
Base size	1298	186	198	173	246	230	265
The choice and quality of content offered by providers in my country of residence are better than in other EU countries	54%	63%	52%	41%	58%	53%	58%
Base size	1278	182	200	177	244	220	255
The specific languages (dubbing or subtitles) in which the content is available in my country of residence are better than in other EU countries	61%	71%	52%	57%	61%	59%	67%

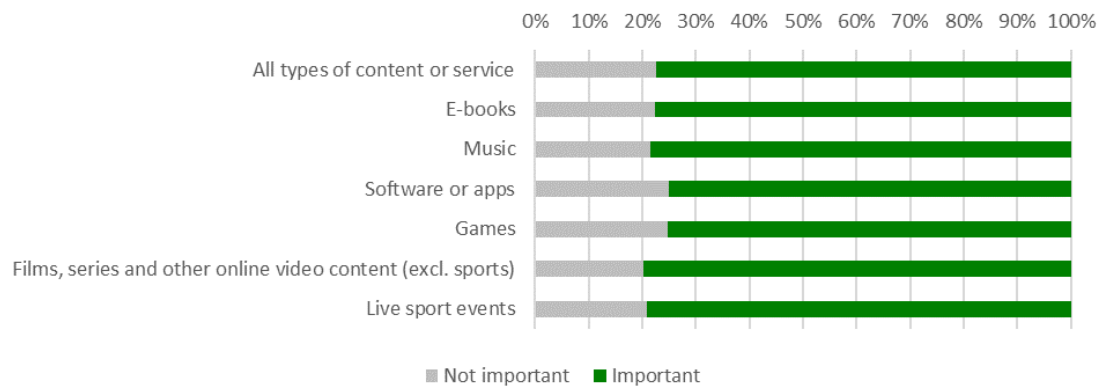
Q11

The online service offers enough variety available in the local language and/or adapted to users in my country of residence

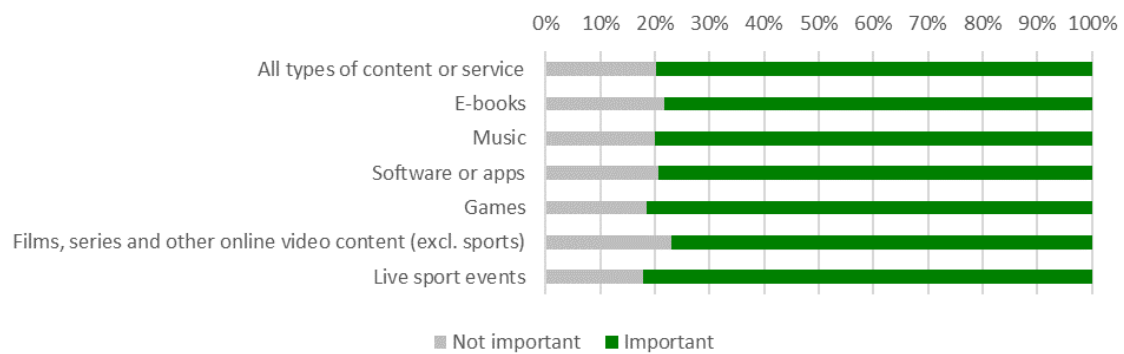


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The online service offers a large variety of European and non-European content

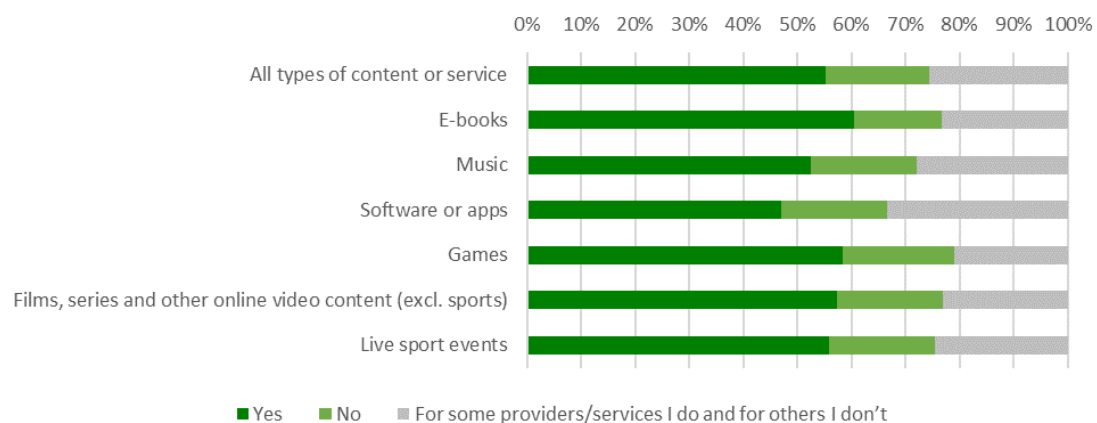


The online service is as cheap as possible, or free, even if this means that it will not be specifically adapted to my country of residence



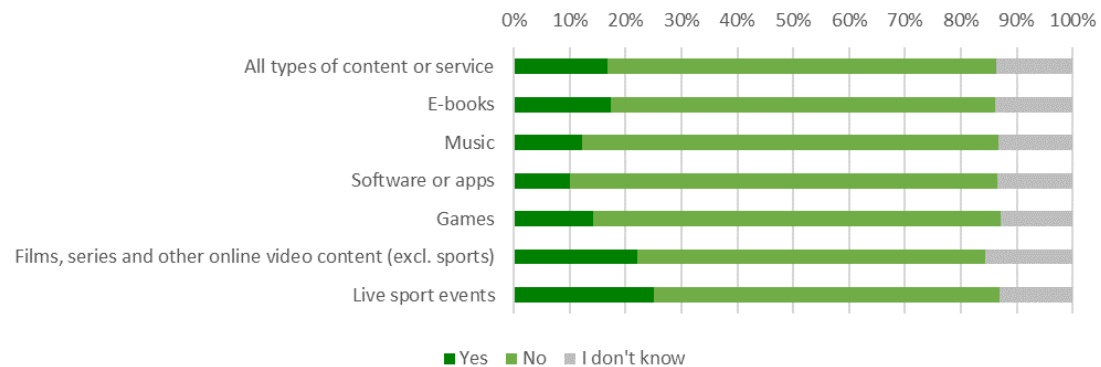
Q12

Whether or not consumers know that a source is legal



Q13

Whether consumers have accessed content or services via grey or unknown sources (websites, apps etc.) in the past 12 months



Q14

Reasons why consumers used grey or unknown sources during the past 12 months	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	1619	257	207	196	228	377	354
Because the content is available quicker and/or easier	25%	21%	24%	31%	24%	28%	22%
Because grey or unknown sources offer a larger choice	27%	21%	23%	33%	20%	40%	24%
Because the search engine I use shows grey or unknown sources on top of the list	18%	17%	17%	19%	13%	13%	27%
Because content from grey or unknown sources is free of charge or cheaper	40%	33%	44%	42%	37%	41%	43%
Because it is for my personal use and I don't see anything wrong in it	28%	25%	33%	30%	31%	29%	24%
Because I can use/access the content in another country	17%	20%	14%	19%	15%	11%	24%
Because I can stream or download the content per item (e.g. one song and not the whole album or one series/movie and not an entire subscription)	25%	23%	28%	30%	26%	24%	24%
Because I want to check the content first before I order it from a legal source	22%	27%	23%	25%	24%	17%	20%
Because the content was available in my preferred language	22%	22%	21%	26%	22%	23%	18%
Other	6%	4%	3%	4%	5%	10%	4%

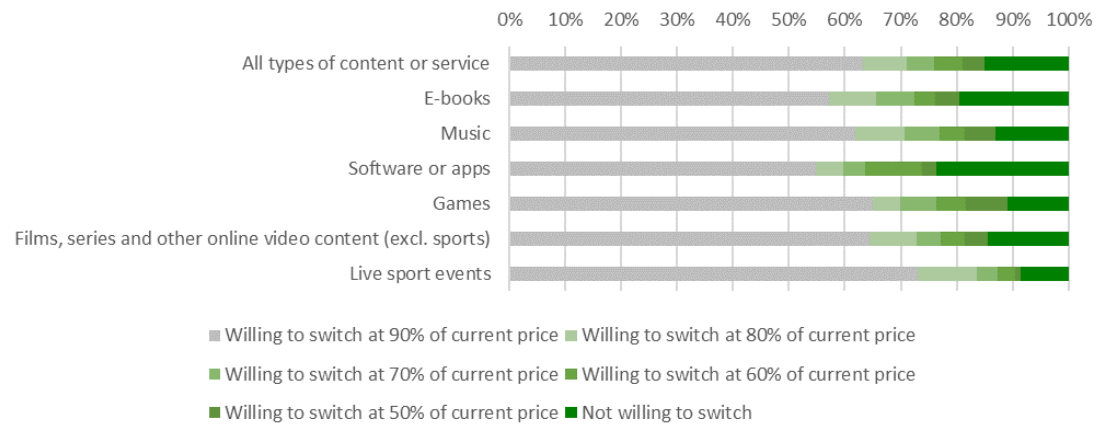
Q15

Reasons why consumers do not know whether they accessed digital content from grey/unknown sources during the past 12 months	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	1682	292	279	306	267	294	244
Because I don't know whether sources of content are legal or grey/unknown (e.g. some providers use both legal and grey/unknown sources)	74%	75%	75%	74%	66%	79%	71%
Because I don't care whether sources of content are legal or grey/unknown	15%	14%	15%	12%	16%	14%	23%
Other	11%	11%	10%	14%	18%	7%	6%

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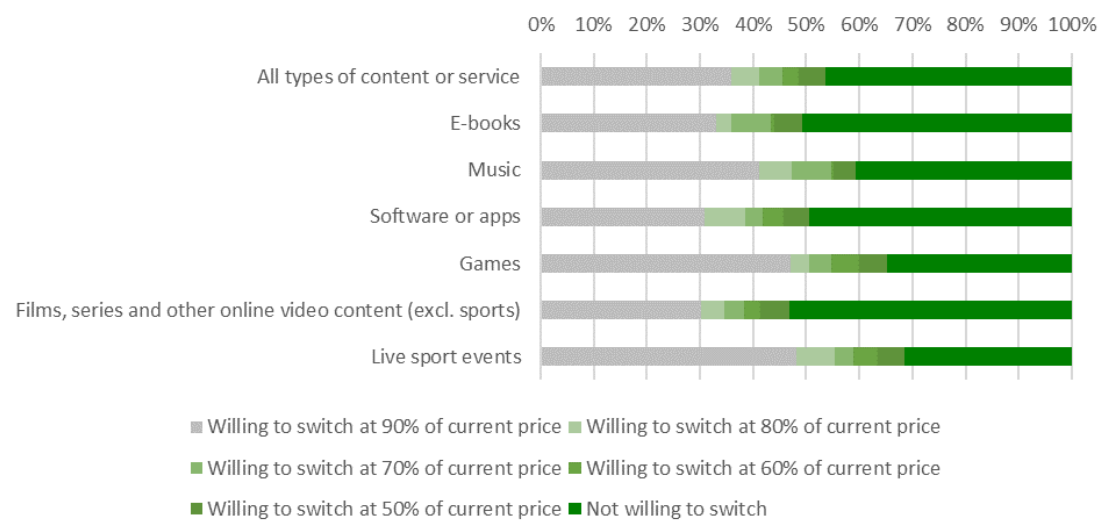
Q20

Consumers' willingness to switch providers or service if the content and language options are broadly the same as for their current subscription(s)



Q21

Consumers' willingness to switch providers or service if it is not meant for users in their country of residence and offers no or limited local (national) content/catalogue



Q22

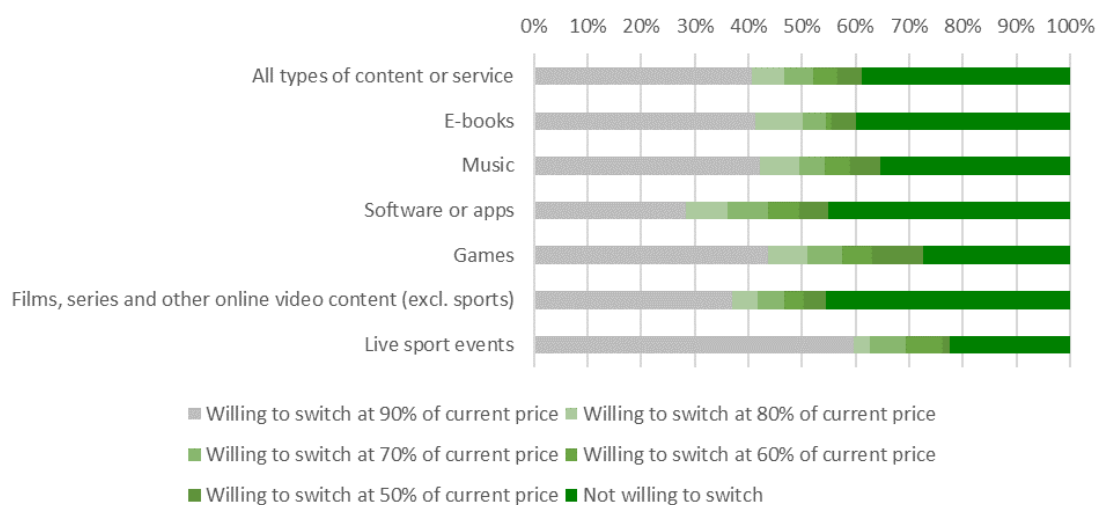
Consumers willingness to subscribe to a different provider(s) or service that is not meant for users in the respective country of residence, because the current provider no longer provides access to the favourite content	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	2527	497	268	369	370	653	370
I WOULD SWITCH if my preferred language/s are available AND the price is the same.	37%	40%	35%	36%	42%	30%	43%
I WOULD SWITCH if my preferred language/s are available AND the price is significantly lower than what I currently pay.	37%	34%	38%	31%	34%	40%	42%
I WOULD SWITCH even if my preferred language/s are NOT available if the price is significantly lower than what I currently pay.	8%	4%	13%	8%	13%	7%	5%
I WOULD NOT SWITCH if my preferred language/s are not available, regardless of the price.	18%	21%	14%	25%	11%	23%	10%

Q23

Consumers' reaction if their favourite content is not available in their preferred language(s)	All types of content or service	E-books	Music	Software or apps	Games	Films, series and other online video content (excl. sports)	Live sport events
Base size	404	87	35	68	44	125	45
I would instead try to access my favourite content through other legal means (e.g. Virtual Private Network)	39%	40%	23%	44%	47%	36%	35%
I would instead access my favourite content through grey or unknown channels	6%	2%	0%	9%	5%	9%	2%
I would will give up access to my favourite content	56%	57%	77%	47%	48%	55%	63%

Q29

Consumers' willingness to switch providers or service if it is not meant for users in their country of residence but offers a similar content/catalogue



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ANNEX V: List of covered websites during the Mystery Shopping Exercise

No.	Sector	Website
1	E-books	http://bookmate.com
2	Audiovisual services (movies & series)	http://filmilaenutus.delfi.ee/
3	Music	http://ww.balkanfolk.com/
4	E-books	http://www.ciando.com/
5	Music	http://www.crammed.be/
6	Games	http://www.gamepood.ee/est/
7	Games	http://www.gog.com/
8	E-books	http://www.publio.pl/index.html
9	E-books	https://abo.zeit.de/
10	Audiovisual services (sports)	https://boutique.canal.fr/
11	Audiovisual services (movies & series)	https://chili.com/
12	E-books	https://ebook.chapitre.com/
13	Audiovisual services (sports)	https://elevensports.it/
14	Software	https://en.softonic.com
15	Software	https://fr.softonic.com/
16	Music	https://ie.7digital.com/
17	E-books	https://insiders.bookriot.com/subscription-plans/
18	Audiovisual services (movies & series)	https://it.dplay.com/passa-a-plus/
19	Software	https://it.softonic.com/
20	Audiovisual services (sports)	https://kanal2.postimees.ee/pluss/livetv
21	Audiovisual services (sports)	https://landing.a1xplore.tv/bg/
22	Software	https://licentie2go.be/
23	Audiovisual services (movies & series)	https://neterra.tv/
24	Music	https://nl-be.7digital.com/
25	Software	https://onoff.ee/
26	Audiovisual services (movies & series)	https://pilot.wp.pl/tv
27	Audiovisual services (sports)	https://play.diemaxtra.bg/home
28	Software	https://play.google.com/store/
29	E-books	https://play.google.com/store/books
30	Audiovisual services (movies & series)	https://polbox.tv/en/shop/helper/pc/
31	Software	https://products.office.com/et-ee
32	Audiovisual services (movies & series)	https://rakuten.tv/

33	Audiovisual services (movies & series)	https://realeyz.de/
34	E-books	https://sellerio.it/it/
35	Audiovisual services (sports)	https://sklep.player.pl/playerplus/oferta/rekomendowane
36	Audiovisual services (sports)	https://sportdeutschland.tv/sportdeutschland-tv-plus
37	Software	https://store.centio.bg/
38	Games	https://store.playstation.com/de-de/home/games
39	Games	https://store.steampowered.com/
40	Games	https://store.ubi.com/fr/home
41	E-books	https://tellimine.ee/est/ajalehed/postimees
42	Music	https://tidal.com/
43	Music	https://tidal.com/pl
44	Audiovisual services (sports)	https://tv.sport1.de/bestellung/step1_registrieren.php
45	Audiovisual services (movies & series)	https://tve.starman.ee/
46	Audiovisual services (movies & series)	https://tvplaypremium.ee/account/subscription/plan
47	Games	https://uk-shop.crytek.com/
48	Audiovisual services (movies & series)	https://voyo.bg/
49	Audiovisual services (sports)	https://watch.dazn.com/en-IT/sports/
50	E-books	https://www.24symbols.com/?locale=it
51	Software	https://www.adobe.com/ee/
52	E-books	https://www.amazon.de/
53	Music	https://www.apple.com/ee/apple-music/
54	Games	https://www.apple.com/ios/app-store/
55	E-books	https://www.biblio.bg/
56	Audiovisual services (sports)	https://www.bt.com/sport/app/
57	Audiovisual services (movies & series)	https://www.cda.pl/
58	Software	https://www.ceneo.pl/Oprogramowanie
59	E-books	https://www.colibri.bg/
60	Audiovisual services (sports)	https://www.dailymotion.com/gb
61	E-books	https://www.decitre.fr
62	Music	https://www.deezer.com
63	Software	https://www.elara.ie/category.aspx?maingroup=Software
64	Audiovisual services (sports)	https://www.elevensports.be/
65	Audiovisual services (sports)	https://www.elevensports.pl/
66	Games	https://www.epicgames.com/store/it/
67	Software	https://www.eurieka.ie/software.html

68	Audiovisual services (sports)	https://www.eurosportplayer.com/
69	Audiovisual services (movies & series)	https://www.fr.universcine.be/
70	Games	https://www.gamingdragons.com/en?lang=english
71	Audiovisual services (movies & series)	https://www.hayu.com/home
72	E-books	https://www.helikon.bg/
73	E-books	https://www.ibs.it/libri
74	Music	https://www.idagio.com/
75	Software	https://www.klick.ee/
76	E-books	https://www.kobo.com/be/nl/plus
77	E-books	https://www.kriso.ee/
78	Audiovisual services (movies & series)	https://www.lacinetek.com/fr/
79	E-books	https://www.legimi.pl/ebooki/
80	Software	https://www.lizengo.be/
81	Software	https://www.lizengo.de/
82	Audiovisual services (movies & series)	https://www.maxdome.de/
83	E-books	https://www.mayersche.de/
84	Audiovisual services (movies & series)	https://www.mediasetplay.mediaset.it/
85	E-books	https://www.mercierpress.ie/ebooks/
86	E-books	https://www.meslivresnumeriques.be
87	Games	https://www.microsoft.com/bg-bg/store/games/windows
88	Audiovisual services (movies & series)	https://www.molotov.tv/offers
89	Music	https://www.musicme.com/
90	Audiovisual services (movies & series)	https://www.netflix.com/
91	Audiovisual services (movies & series)	https://www.nowtv.com/ie
92	Games	https://www.origin.com/irl/en-us/store#%2Fstore
93	Audiovisual services (sports)	https://www.playsports.be/ott/onboarding/plans
94	Music	https://www.plusmusic.pl/offer
95	Music	https://www.primephonic.com/?locale=it
96	Audiovisual services (movies & series)	https://www.primevideo.com/
97	Audiovisual services (movies & series)	https://www.primevideo.com/offers/nonprimhomepage/ref=atv_nb_lcl_de_DE
98	Music	https://www.qobuz.com/fr-fr/music/streaming/offers
99	E-books	https://www.rahvaraamat.ee
100	Audiovisual services (sports)	https://www.rmcsport.tv/souscrire.html#go2=.rs-offre-content

101	Audiovisual services (movies & series)	https://www.rtbef.be/auvio/categorie/films?id=36
102	E-books	https://www.scribd.com/
103	Audiovisual services (sports)	https://www.skysports.com/get-sky
104	Software	https://www.softonic.pl/
105	Software	https://www.softpedia.com/
106	Software	https://www.softwarebilliger.de/
107	Software	https://www.softwaremaniaitalia.com/shop/
108	Music	https://www.spotify.com/
109	Music	https://www.spotify.com/bg/
110	E-books	https://www.standaard.be/
111	Music	https://www.timmusic.it/
112	Audiovisual services (movies & series)	https://www.timvision.it/
113	Audiovisual services (sports)	https://www.tvplayhome.it/teminiai-paketai/sportas/
114	Audiovisual services (movies & series)	https://www.vivacom.bg/bg/tv/paketi/tv-go/tv-go-start
115	Audiovisual services (movies & series)	https://www.voo.be/fr/tv/vod/
116	Games	https://www.xbox.com/et-ee
117	Games	https://www.xbox.com/fr-FR/
118	Games	https://www.xbox.com/it-IT/
119	Music	https://www.youtube.com/premium
120	Music	https://www.zeezee.de/store
121	E-books	https://youboox.fr/
122	Audiovisual services (movies & series)	www.netflix.com/fr
123	Games	www.nintendo.be/nl
124	E-books	www.virtualo.pl
125	Audiovisual services (movies & series)	www.volta.ie

ANNEX VI: Overview of covered topics and indicators for the mystery shopping exercise

Overview of covered topics

The mystery shopping exercise was tailored to the context of the project and the specific sectors under investigation. A focus was placed on three key stages of the consumer journey: **accessing a website, registration and payment**. The delivery stage was excluded as it is not relevant within the scope of this study as it only considers digital content. Differences between sectors are considered to the extent to which the scope of the task allows it given the limited sample of 250 exercises. When designing the questionnaire, a clear distinction was made between subscriptions and one-off purchases, as their relevance varies in different sectors. Mystery shoppers were able to search for and report on both subscriptions and pay-per-item content as well as free content during the exercise across all sectors.

The questionnaire was designed to follow a **two-stage consumer journey**. In the first part, mystery shoppers were asked to review the website while pretending to be **based in the provider country** (i.e. the country for which the services/content were meant or tailored to). While doing so, shoppers searched for and recorded specific offers available on the provider's website: up to 2 offers of pay-per-item content and up to 2 offers of subscription-based content. To ensure a balanced sample is obtained, shoppers were encouraged to look for both local and internationally tailored examples and to give examples at least one of which is free and one paid, when possible. Prices, including VAT and specific currency were also recorded. No registration was required during the first stage of the exercise.

The second stage of the exercise was meant to mirror a **cross-border shopping attempt**, spanning the three key phases of the consumer journey: access, registration and payment. The key switch during this stage was that shoppers were prompted to change their VPN connection to the country where they were simulating to be based - the consumer country. During the access stage, shoppers looked for differences in the appearance or extension of the website they visited, including language changes or other content-related changes. During the registration stage they were provided concrete details (name, address, telephone number and email address) that can be used to register on the website. They were asked to look for the exact same content they found during the first stage of the exercise in order to check if these offers are available to access cross-border and under which conditions (e.g. cost and payment methods available to them). Any issues encountered during the three steps of the consumer journey were recorded, including specific URLs for further quality checks.

The two-stage approach was chosen as it allows for the direct comparison of content or offers available domestically (first stage) and cross-border (second stage) and as it is used to determine whether there are differences observed in the offers available

to consumers who access content cross-border. In addition, it allows to compare the conditions of specific offers (e.g. if subscriptions have a different level of access when accessed cross-border) as well as any price differences between specific domestic and cross-border offers and the payment methods (and additional costs, if any) asked from consumers.

Mystery shopping indicators

Based on the overview of topics, the following indicators to use the mystery shopping analysis have been identified:

1. Website access

The possibility to access a specific website and corresponding country extension both from the country itself and from another Member State indicates free access. With this indicator an analysis is made of the cases in which consumers are **redirected** to another website, redirected to a different national version of the same website as well as cases for which access is completely **blocked**.

2. Language availability

Language differences when accessing a website cross-border vs. domestically can also indicate that consumers' location is considered in the providers' offer. This indicator is measured at both stages of the exercises to allow direct comparisons.

3. Content availability

For both subscription and pay-per-item offers, the proportion of shops, for which changes in content availability are observed when accessing the website from a country different from the consumer country is identified. The two-stage approach helps identify these cases easily by directly comparing domestic and cross-border access to the exact same offers. A downside of the approach is that it is not possible to test the full catalogue (where this is applicable) but only pick a few examples at random.

4. Price differences

For both subscription and pay-per-item offers, an analysis is made of whether there are any price differences observed in the offers when accessing the website cross-border compared to accessing it from the consumer country. Price differences are computed across all examples recorded per mystery shopping attempt (up to 2 subscriptions and up to 2 per-per item offers). Firstly, the incidence of price differentiation is estimated as the proportion of offers where differences in prices were observed. In addition, the average price difference as a proportion of the total price of each offer is computed, considering only those cases where price differences are observed.

5. Website registration

Registration issues due to consumers residing in a country different from the one specific content or services are targeted at are also tackled by the Mystery Shopping

exercise. Shoppers report if they experienced any registration issues (in case they had to register) and whether these issues were related to the physical address or phone number they provided. The incidence and types of issues experienced is the key indicators derived for further analysis.

6. Payment methods

During both stages of the exercise, shoppers are asked to indicate which payment methods are available to them, selecting them from an exhaustive list of options. Payment options are compared across the two shopping stages, in order to identify whether cross-border consumers are provided with a different set of options to choose from. Lastly, during the cross-border stage of the exercise, shoppers indicate whether it seems possible to enter specific payment details in order to complete the purchase, considering the most common payment methods (credit or debit card). The payment process itself (comparing different payment methods) was not possible to check within the scope of the mystery shopping exercise.

Due to the small sample obtained ($n=250$), the analysis is both quantitative, using the derived indicators, as well as qualitative. The quantitative analysis is structured per sector group following the structure presented above, investigating the different stages in the consumer journey where geo-blocking is most prevalent, in addition to key factors such as price differentiation, language and content availability. Qualitatively, a debriefing session was organised with each mystery shopper in order to better understand the key issues they faced during the exercise as these provide the necessary context for interpreting the qualitative data obtained. The reporting focuses primarily on quantitative insights, while the qualitative data aids in their interpretation. The outcomes of the Mystery Shopping exercise are used together with other tasks to inform conclusions drawn based on the full analysis carried out.

ANNEX VII: List of sources used for this study

- Aguiar, L. and J. Waldfogel (2014). Digitization, Copyright, and the Welfare Effects of Music Trade. JRC/IPTS Digital Economy Working paper 2014/05.
- Aguiar, L. and J. Waldfogel (2016). Netflix: Global Hegemon or Facilitator of Frictionless Digital Trade? JRC Digital Economy Working Paper 2016/09.
- Aguiar, L. and J. Waldfogel (2018). Platforms, Promotion, and Product Discovery: Evidence from Spotify Playlists. JRC Digital Economy Working Paper 2018/04.
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