



Department of Broadband, Communications and the Digital Economy
Response to Questions on Notice from
House of Representatives Standing Committee on Infrastructure and
Communications
Inquiry into information technology pricing
13 March 2013

Mr Husic

1. **If we were to recommend ending geo-blocking and the practice of region protection, what do you see as the upside and downside of the move?**

Answer

The Department notes that the development of any such legislative measure would need to take into account a range of factors including:

- Determining a definition of 'geo-blocking' noting the range of measures and techniques which could be considered to be geo-blocking (see below);
- Whether a ban would unreasonably disadvantage Australian businesses, particularly would they be able to continue to negotiate for and comply with region-restrictive licensing conditions on a competitive basis with overseas entities. For example Australian internet TV operators may not be able to source popular foreign content if they were prevented by law from restricting that content to Australian viewers;
- Whether a ban would be consistent with Australia's international obligations including trade and copyright treaties, and
- Whether a ban on geo-blocking would be effective in reducing regional price discrimination in the medium to longer term, given the availability of alternative measures.

Supporting information

Broadly speaking, 'geo-blocking' or otherwise restricting the locations in which content can be sold and accessed can be done for a number of reasons;

- Segregating markets for the purpose of price differentiation and company accounting.
- Compliance with licensing restrictions to only sell/deliver to citizens within certain countries, particularly common with sporting content.
- Compliance with release date embargoes imposed by the producer/distributor.
- Localisation requirements, ensuring compatibility with video format standards in the region or containing appropriate language options.
- Compliance with national laws, eg classification, online gambling restrictions, providing local warranties.

There are a number of ways in which a product can be geo-blocked or region protected.

1. *By IP Address*

Websites determine whether a user is able to access content based on the country in which their IP address is registered. This type of blocking is frequently used to prevent an online content provider (such as a catch-up TV service) from breaching their licensing conditions and providing the content outside of the area they are authorised to provide it to. There is evidence that it is also used to direct customers to national/regional 'stores' to force them to purchase software or content from their local supplier at their local price.

IP address blocks can be circumvented by making it appear that the user is connecting from within a country allowed to access the content. This is generally done through the use of a virtual private network or proxy server located in the country. There are potential safety and legal issues for a user undertaking the circumvention.

2. *Region coded hardware/firmware*

These locks are mainly used on DVD and Blu-Ray disc and typically break the world into a series of 'zones'. Software/content is sold on physical media that is linked to one or more zones and only work on players set to those zones. The practice relates almost exclusively to video/film content and enables the film industry to achieve a number of goals around price discrimination, release dates, classification and copyright.

Modifications or software are available in most cases to enable a player to read discs from other regions. This is legal in Australia. The Copyright Act was amended in 2006 to specify that these regional restrictions were not 'technological protection measures' for the purposes of the Copyright Act and therefore there was no prohibition on circumventing them in order to view material coded to other regions.

3. *Online accounts attached to a region*

There are also a number of methods of geo-blocking related generally to the customer having an account which is tied to a particular region or country. The country is typically related to the billing address of the credit card used by the user, or the shipping address to which products are sent. Stores will refuse to send content physically or digitally to customers who are registered outside of their region.

A number of methods have emerged to circumvent this type of block, including online purchasing agents like PriceUSA who are located within the US and will purchase the product on the citizen's behalf and mail it to them.

Mr Neville

- 2. If we were to have a general policy that geo-blocking was not acceptable on electronic equipment in this country, would that be enforceable?**

Answer

As there is no current detailed proposal to ban geo-blocking being considered the Department is unable to directly comment on whether a ban would be 'enforceable'.

In practice the enforceability of a ban on one or more types of geo-blocking may depend on a number of factors including whether there is a legal entity present in the jurisdiction against which action can be taken, or whether there is a physical connection which would allow Australian authorities to intervene. The availability of web based geo-blocking measures as an alternative to equipment based measures would also need to be considered. For example IP based geo-blocking can be undertaken by overseas based vendors via websites hosted outside of Australia.

Mr Fletcher

- 3. Can software come in different versions-for example a home version and a power users version – and those will have different prices? And can that be done by having exactly the same code but the home version has an extra line that says 'the following functionality is disabled'?**

Answer

It is the understanding of the Department that the practice identified by the committee is correct. In some cases the differences between different "versions" of software is determined by code which disables certain options based on the access rights and license of the user.

Mr Husic

- 4. Can you outline the price constraint provisions within the Telecommunications Act?**

Answer

Under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the Minister for Broadband, Communications and the Digital Economy may determine by a legislative instrument that Telstra retail services are subject to price control arrangements (the Price Control Determination).

Retail price controls were first introduced in 1989 and, as currently implemented, apply only to certain Telstra fixed-line services. They cap the price of untimed local calls and directory assistance calls; reinforce Extended Zone calling arrangements; ensure that a basic line-rental service is offered nationally at a regulated rate; regulate prices for fixed-to-mobile, long-distance and international

calls; allow schools and charities to access plans at residential service rates; and deal with various associated matters.

The services subject to price caps are split among four regulated 'baskets'. The first includes local and international calls, trunk calls and line rentals; the second covers the basic residential line rental product; the third applies to basic business and charity line rental; and the fourth comprises line connection charges.

Retail price controls on Telstra have both economic and social equity aspects. Productivity gains are passed through to consumers; legislative and licence conditions relating to universal service, untimed local calls and low-income measures are supported; and social equity is promoted by requiring reasonably-priced voice communications throughout Australia.

More information on retail price controls can be found at

http://www.dbcde.gov.au/telephone_services/telstra_retail_price_controls