Competition and IP
Competition and IP: Main Current Issues

1. SEPs:
   - UWP-Ericsson Vs Huawei-Samsung: “strategic” splitting up of patent portfolio?
   - Growing emphasis on improving the SSO and licensing process.
2. Pay For Delay: “Pay for Delay”…without delay?
4. Copyrights and Territoriality
The Eternal Tension Between Territorial Restraints and the Single Market

- Vertical Guidelines and Technology Transfer Guidelines: strike a balance between the single market and the need to foster local investment. For IP, there is the additional goal of facilitating licensing.
- Traditionally this balance relied on the distinction between active sales, passive sales and parallel trade.
- For IP, the national character of (most) rights introduces a further complication.
- Development of the internet and digital economy → challenges to the traditional distinction: an opportunity for the single market?
- The DSM Initiative: “Helping to make the EU’s digital world a seamless and level market place to buy and sell”.
- Emergence of (some) digital platforms eager to operate on a Pan-European model.
- The primacy (?) of content.
The “Copyright Reform Saga

- Initial uproar: “bringing Copyright Law into the digital age”
  - The “expats” complaint: access to home materials
  - The platform’s complaint: strict enforcement of national copyrights gets in the way of pan-European strategies and competitions.
  - The regulator’s complaint: local monopolies and large price differences

- Main demands/proposals
  - Portability
  - Copyright cleared where content is uploaded
  - Limit/Abolish Geoblocking: This is the main aspect in recent competition law investigations.
Geo-Blocking of Videos/Movies: “Pay TV” Case

• The Commission appears to accept that national territories can be carved out by assigning copyright to different players in different territories and enforcing these copyrights.
• … but using geo-blocking is a step too far (per object).

• Does this make sense?
• N once the benefits of territoriality are recognised, whether geo-filtering is necessary to harness these benefits should be an empirical question.
• Moreover, “mitigating strategies” may be implemented by rational content providers that could undermine benefits to consumers
Geo-blocking of Videos and Movies: An Economic Appraisal

Geo-Blocking (of video/movies): an appraisal

• Effectively, a ban on geo-blocking would simply amount to preventing rights-owners from enforcing their IPRs in the most efficient manner. In this respect, parties can already agree on a Pan-European license if they want.

• Importance of thinking about consequences:
  • Inefficient move towards Pan-European Licenses → possible concentration of the downstream industry, more difficult entry.
  • Refusal to serve: low value countries might find themselves without direct service. Moreover, investment in dubbing and sub-title might be affected.
  • The (adverse) welfare effects of such “readjustments” can be quite significant (brief discussion of CRA’s quantitative work on this issue)
Assessing the Likelihood of Harmful Reactions to a Ban on Geo-Blocking

- Consider a main country of language A and another country B where part of the population is interested in movies in the language of country A (maybe with subtitles)
- With territorial fragmentation, prices are higher in country B.
- If we keep these prices and reduce territorial fragmentation, some customers in A will buy from B.
- This creates two kinds of cost for rights-owners: lesser ability to price discriminate + increased competition between local rights-holders leading to lower revenues.
- Two solutions: still serve both countries and harmonise the prices or stop supplying country B. Under what conditions would the later option prevail?
Large disparities in studios’ revenues across countries

Subscription Pay-TV

Would a rational distributor let revenues in “core” markets be eroded by arbitrage into insignificant markets without reacting somehow?

Pierre Régibeau
CRA and Imperial College
GCLC Brussels 2017
Critical Switching Elasticities

- The “switching elasticity” refers to the percentage share of sales in country A that would switch to country B if price in country A increases by one per cent relative to the average price in the two countries. If this elasticity is equal to the “critical values” presented below, the movie studio is indifferent between withdrawing its content from country B and continuing to license its content in both countries. If the switching elasticity were higher, then Fox would prefer withdrawing its content from country B.

- In the next slide the high willingness to pay country (country A) is taken to be the UK. Each other country is then taken in turn as being country “B”.