The end is not nigh
EU’s geoblocking regulation “not what it says on the tin”
Countries should break IP rules to ensure growth

Countries such as India and China should break harmonised intellectual property rules to avoid protectionist measures from the US and EU, according to a new report from Gowling WLG.

The report, ‘Global Protectionism: are you leaving yourself open?’, analysed global trade data and found that protectionist measures across the globe have increased by more than 7,000 since 2009, leaving harmonisation of IP protection under threat.

Gowling’s report argued that it is in the best interests of countries that are “powerhouses of global growth” such as India and China to “break IP rules,” otherwise “rigid norms on the lines of those applied in Europe or the US will prevent them from making and selling products that they have, or aim to have, the capability to create by themselves”.

It said: “Countries are continuing to take an increasingly protectionist stance.”

“The US is the biggest proponent of protectionism with 1,085 more protectionist than liberalising measures created since 2009.”

The report added: “In the case of most countries across the globe, the US has the biggest effect with its protectionist policies. The US is followed by the EU making 1,063 more protectionist than liberalising measures than India (438), Argentina (365), Russia (364), Japan (275) and the UK (217).”

The report also surveyed CEOs and business owners, with more than 78 percent believing the protectionist climate will lead to a global recession.

However, almost half of those surveyed believe that protectionism is positive for their own sector, but some are cynical about the reasons for protectionism, with 50 percent saying protectionist policies are for political gain.

Gordon Harris, partner and head of IP at Gowling, commented: “Even if this is a short-term reaction it can be harmful, and eventually could limit access to best-in-class technologies, limiting growth.”

“The current era is not going to give way anytime soon, but in the meantime big, global questions are mounting that need concerted solutions—interoperable standards on privacy, copyright and certification.”

He added: “Recent seismic events such as Brexit, the election of Donald Trump, the rise of the far right political parties in Europe and flat wages and productivity point to an era of deglobalisation and increased protectionism.”

“Businesses tend to be split on protectionism, for example, 45 percent of those questioned in our research believe protectionism is good for their business. It means those leading the strategy for their business should factor in both the risk and potential reward when it comes to increasing global protectionism—changing supply chains and investing in alternative markets.”
Domain Registration
Domain name registrations across all TLDs reached 332.4 million at the end of Q4 2017

Fake Airbags
A man has been sentenced to 10 months in prison for selling counterfeit airbags

ICANN Applications
ICANN has halted the new gTLD applications for .corp, .home and .mail

Copyright Reform
The EU’s recent geoblocking regulation doesn’t do what it says on the tin

Industry Events
The latest and greatest IP related events

Industry Appointments
Hires at BakerHostetler, DLA Piper and more
Domain registrations hit 332.4 million at the end of 2017

Domain name registrations across all top-level domains (TLDs) reached 332.4 million at the end of Q4 2017, according to a new report from Verisign. This is an increase of around 0.5 percent (1.7 million) from the previous quarter and a 0.9 percent (3.1 million) increase year over year.

Verisign’s report, ‘The Verisign Domain Name Industry Brief’, also showed that total country-code TLD (ccTLD) domain name registrations reached around 146.1 million, a one percent increase over Q3 2017 and a 2.4 percent increase year over year. The .com and .net TLDs, which Verisign operates, had a combined total of around 146.4 million domain name registrations, with .com taking the majority at 131.9 million. The rise of cryptocurrency was also reflected in Verisign’s results, with coin, crypto and bit sitting as the top three keywords registered on .com and .net. It also showed that the top ccTLD at the end of 2017 was .cn (China), with 21.4 million registrations.

Chinese NCA shuts down 3,908 piracy websites in five year period

China’s National Copyright Administration (NCA) has shut down 3,908 copyright infringing websites in the past five years in a crackdown on piracy, Chinese state media outlet China Daily has reported. China Daily said that the crackdown has been carried out for 13 consecutive years and cooperates with a range of government departments across the entertainment sector, including music, online literature and video games.

The NCA also investigated 22,568 piracy cases nationwide and deleted more than 6 million links to pirated content over the last five years. The NCA said that online copyright infringement had been curbed and the public’s awareness of copyright protection has been raised, according to China Daily.

MUSO partners with EUIPO

Copyright protection provider MUSO has partnered with the EU Intellectual Property Office (EUIPO) to assess the economic impact of digital infringement across the EU. The study will be done through the European Observatory on Infringements of IP Rights, with MUSO providing the key underlying data.

Data from MUSO’s new Discover platform, which monitors piracy focused websites and measures daily visits to over 50,000 piracy-focused websites and billions of pages of piracy content, will be given to the EUIPO to enable estimates of the economic cost of piracy.

MUSO chief strategy officer, Christopher Elkins, commented: “Most studies to date on
**Man sentenced for fake airbag sale**

A man has been sentenced to 10 months in prison, suspended for 12 months, for selling counterfeit airbags.

Robert Czernik of Poole, Dorset, will also have to carry out 135 hours of unpaid work for selling the fake airbags. Czernik was arrested in 2016 and over 190 airbag covers, along with a variety of airbag parts, were seized.

The counterfeit airbags were fakes reproductions of 28 brands, including Honda, Toyota, Mercedes Benz, Audi and Skoda.

Honda confirmed that the airbags sold by Czernik had not been produced to a recognised safety standard and may not activate correctly in a collision.

Detective sergeant Kevin Ives, of the City of London Police Intellectual Property Crime Unit (PIPCU), commented: “Czernik has put drivers at risk of serious injury and death by selling counterfeit airbags and covers. We have worked tirelessly for more than two years to ensure the successful prosecution of Czernik.”

He added: “The dangers of buying counterfeit goods should not be underestimated. With potentially shocking implications for public safety, it’s vital that you are extra careful and check where you are buying goods from.”

Managing director of Honda UK, David Hodgetts, said: “The safety of customers is of paramount importance, and we aim to eliminate counterfeiting.”

“We strongly recommend any modification to the airbag systems of our cars be undertaken by a trained technician in an official dealership.”

“If customers are concerned, they should visit their local dealership.”

**INTA marks key 2017 achievements**

INTA has highlighted its key achievements in 2017, including ever-increasing membership and a “record-breaking” annual meeting, in its 2017 annual report. According to INTA, 2017 membership statistics saw the association reach 7,246 members, including 1,131 corporate members, representing 31,000 professionals from 191 countries.

In 2017, INTA saw a membership growth retention rate of 91 percent and added nearly 300 new members.

The association also revealed that its 2017 annual meeting was “record-breaking”, with 10,104 attendees from more than 150 countries, making it the largest INTA meeting ever.

On top of this, INTA saw expansion into Latin America and the Caribbean with the opening of a new office in Santiago, Chile.

A message from INTA’s leadership, 2017 president Joseph Ferretti, 2018 president Tish Berard and INTA CEO Etienne Sanz De Acedo, said: “For INTA, it was a pivotal year—one in which we wrapped up the 2014 to 2017 strategic plan, with accomplishments in all key areas, including protection of trademarks, communications, international expansion, and member satisfaction.”

They added: “This 2017 annual report underscores the association’s significant operational milestones, policy achievements, long-standing and new resources, and other events and initiatives that marked this year.”
UK launches trade secrets consultation

The UK Intellectual Property Office (IPO) has launched a technical consultation on the EU trade secrets directive and its implementation into UK law. The directive harmonises the definition of trade secrets across EU member states, as well as the civil means through which victims of trade secret misappropriation can seek protection.

This includes stopping the unlawful use and further disclosure of misappropriated trade secrets, the removal from the market of goods that have been manufactured on the basis of a trade secret that has been illegally acquired, the right to compensation for the damages caused by the unlawful use or disclosure of the misappropriated trade secret.

The UK has maintained that, despite its vote to leave the EU and subsequent trigger of article 50, it will remain a full member of the EU until it leaves and will continue to negotiate, implement and apply EU legislation.

According to the IPO, the UK already has a “well-developed system of legal protection for trade secrets”, therefore the directive will not require substantial changes to be made to UK law. The main changes proposed relate to procedural matters in the courts and are intended to provide clarity, transparency and consistency across UK jurisdictions. The deadline for responses to the consultation is 16 March.

ICANN rejects .corp, .home and .mail

The Internet Corporation for Assigned Names and Numbers (ICANN) has halted the new gTLD applications for .corp, .home and .mail and agreed to refund applicants the full fee of $185,000.

ICANN's board agreed to the resolution at a meeting on 4 February, in which it determined to defer the delegation of the domains indefinitely due to name collisions.

According to the board, a name collision occurs when an attempt to resolve a name used in a private namespace, under a “non delegated TLD, or a short, unqualified name” results in a query to the public Domain Name System (DNS). It said: “When the administrative boundaries of private and public namespaces overlap, name resolution may yield unintended or harmful results. The introduction of any new domain name into the DNS at any level creates the potential for name collision. However, the new gTLD programme has brought renewed attention to this issue of queries for undelegated TLDs at the root level of the DNS because certain applied-for new TLD strings could be identical to name labels used in private networks.”

ICANN said that a “secure, stable, and resilient internet” is its “number one priority”
and that it has “made a commitment to the internet community to mitigate and manage name collision occurrence”.

Each of the 20 applicants will be refunded the full fee of $185,000, totalling a $3.7 million payout from ICANN. The refunds will come from ICANN’s new gTLD programme funds, which are made up of the applications fees collected in the 2012 round of applications.

Man fined more than £500,000 for counterfeit selling

A man who bought counterfeit DVDs from China and sold them as genuine products on eBay has been fined £567,000 following 16 months of imprisonment.

Paul Foster had pleaded guilty to one offence of fraudulent trading and nine offences of infringing the Trade Marks Act. He was sentenced to 16 months imprisonment in January 2016. His operation was discovered after a joint investigation by the Federation Against Copyright Theft (FACT) and Staffordshire Trading Standards. At a hearing at the crown court on 12 February 2018, Foster was ordered to pay back £567,000 in proceeds of crime money and prosecution costs of £36,858.

Kieron Sharp, CEO of FACT, commented: “This result reinforces the severity of counterfeiting and IP crime.”

“Not only has Paul Foster’s criminal actions landed him 16 months in prison but he now has been ordered to pay back more than half a million pounds from his ill-gotten gains. Illegal enterprises like Foster’s fake DVD business not only starve the creative industries and UK economy, but it also impacts and threatens the livelihoods of the hundreds of thousands of people who support and work in the industry.” He added: “We would like to thank Staffordshire Trading Standards for their efforts in this investigation and will continue to work with them to protect consumers and legitimate businesses from falling victim to intellectual property crime.”

Gill Heath, cabinet member for communities at Staffordshire County Council, said: “This confiscation order against Paul Foster is by far the largest order ever secured by Staffordshire Trading Standards and is entirely fitting for the shocking offending by this individual.” She added: “Counterfeiting costs legitimate businesses dearly and damages the economy and the court has clearly taken these offences very seriously. This is a great result for our Trading Standards team and reflects the hard work of the officers involved in carrying out both the criminal and financial investigation.”

IPTV supplier fined £18,000

A pre-loaded IPTV box supplier must pay a £18,000 fine for selling illicit streaming devices online, as well as breaching the Premier League’s copyright.

Nayanesh Patel, who sold the boxes on several online platforms, including eBay and Facebook and has agreed to remove all of his infringing adverts from the platforms, disable access to his website and cease all sales of the devices. Another supplier who sold subscriptions to illegal streams of the Premier League via eBay must also pay £8,000. According to the Federation Against Copyright Theft (FACT), these actions are part of a “wide-ranging copyright protection programme” by the Premier League, that has resulted in a successful blocking order preventing illegal streams being broadcast in the UK.

Kevin Plumb, director of legal services at the Premier League, commented: “This case shows there are serious consequences for sellers of pre-loaded boxes and is a warning for anyone who thinks they might get away with this type of activity. The Premier League is currently engaged in a comprehensive copyright protection programme that includes targeting and taking action against sellers of pre-loaded devices, and any internet service providers or hosts that facilitate the broadcast of pirated Premier League content.”

EU Copyright Directive “compromise amendments” revealed

EU rapporteur Axel Voss has proposed “compromise amendments” to article 13 of the EU’s Copyright Directive, which would further shift the burden of responsibility for copyright infringement to internet platforms. Article 13 places responsibility on platforms, such as YouTube, to filter content that their users upload and take down user content at the behest of rights owners. One of Voss’s amendments would also require platforms to get copyright licences for all content uploaded by their users.

Julia Reda, German member of the European Parliament (MEP), said that Voss’s amendments were “compromise in name only”.

In proposing these amendments, Voss is “dismissing calls from across the political spectrum to stop the censorship machines”, Reda argued, “he is ignoring one and a half years of intense academic and political debate pointing out the proposal’s many glaring flaws. He is discarding the work of several committees of the parliament which came out against upload filters, and of his predecessor and party colleague MEP Therese Comodini Cachia, who had correctly identified the problems almost a year ago.” She added: “He is brushing off the concerns about the proposal’s legality several national governments have voiced in council. And he is going against the recently published coalition agreement of the new German government—which is going to include Voss’s own Christian Democratic Party—where filtering obligations are rejected as disproportionate.”

Reda commented that the licensing amendment is a “bizarre addition to the European Commission proposal, which is impossible to implement in practice. Who exactly are the platforms supposed to get those licence agreements from? While there may be collecting societies representing professional authors in a few areas such as music or film, which may be able to issue a license covering the works of many individual authors, other sectors do not have collecting societies at all,” she said.

This is not the first time article 13 has come under fire. Last year, the Electronic Frontier Foundation, among 56 civil society organisations penned a letter to European lawmakers demanding that article 13 be withdrawn.

The EFF suggested the article would “force companies to actively monitor their users’ content, which contradicts the ‘no general obligation to monitor’ rules in the Electronic Commerce Directive”.
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The end is not nigh

The EU’s recent geoblocking regulation doesn’t do what it says on the tin. German MEP Julia Reda says this is but one small step for geoblocking freedom, far from the leap that was promised

Barney Dixon reports

On 27 February, the EU Council adopted a regulation that it said would “ban unjustified geoblocking in the internal market”.

The council describes geoblocking as a “discriminatory practice that prevents online customers from access and purchasing products or services from a website based in another member state”.

This particular regulation will remove discrimination based on a customers nationality, their place of residence and place of establishment.

In recent press material, Lilyana Pavlova, minister for the Bulgarian presidency of the council described the regulation as “the end of geoblocking”, meaning “wider choice” and “better deals for consumers”.

But while the council celebrates the end times for the geoblocking restriction, one member of European parliament, Julia Reda, says that the now adopted regulation doesn’t do enough, and certainly not what it says on the tin.

In 2014, Reda, who hails from Germany and is a member of the Pirate Party Germany and the Greens-European Free Alliance, declared that she would “be advancing the long overdue European copyright reform” in the current legislative period, running from 2014 to 2019.

When the news broke of the adoption of the regulation, many news sources intoned, using the European Council’s wording, that this was the end of geoblocking. Reda, concerned with the potential of broad over-egging of the regulation, took to Twitter and said that “No, the EU did not abolish geoblocking today. Don’t believe the headlines!”

Geoblocking also grants the entertainment industry the ability to block copyrighted content across borders, resulting in the ever-dreaded message “this content is not available in your country”. The newly adopted regulation does not cover copyrighted content and, as a result, services like Netflix will continue to gate content by region and play virtual private network (VPN) whack-a-mole to stop users from bypassing this.

Reda says that, alongside the geoblocking regulations’ other facets, she proposed that it should ban the geoblocking of copyrighted content, if the seller has the rights.
She says: “Usually, the seller and rightsholder are not the same person. The rightsholder licences the works to a vendor, it could be Amazon eBooks, or Netflix, then that vendor offers it to consumers.”

“We said: if the seller has the rights to sell in another country, then there shouldn’t be geoblocking.”

But Reda’s suggestions were removed from the regulation, not in the least because of the arguments of various national governments, including France.

Reda says that France was very vocal against the inclusion of copyrighted content in the regulation, with a lot of their arguments focusing on the financing models in the film industry.

Reda contends that these arguments “are besides the point, because the geoblocking regulation would not have changed the rules for licensing copyrighted content individually to different countries, as this is a copyright issue”.

“For example, filmmakers would have still been able to sell the exclusive rights to a film to different vendors in the different territories and the copyright regulation would not have changed that.”

She adds: “Even though I pushed for the inclusion of videos, the parliament position did not include videos anyway, so the licensing model of the film industry could not possibly be affected by it. For the French government, it was more of a point of principle, they think that passing anything that the entertainment industry doesn’t like is the first step towards its demise.”

Other countries, such as Sweden, were lobbied by businesses from their countries. Reda says that Spotify was extremely active in lobbying against the ban on geoblocking for music.

Reda finds that arguments painting copyright as “especially complicated” and requiring extra measures and study are an excuse.

She argues that the real reason members states were against the inclusion of copyrighted content in the regulation, is because “nobody wants to pick a fight with the entertainment industry”.

Reda says: “As a result the regulation doesn’t really do what it says on the tin. If you look at press releases from the European Commission and so on, they make it seem as though we just banned geoblocking. It’s the same as how the EU has banned data roaming 10 separate times over the last 10 years.”

She adds: “Every small step in the right direction is announced as if we solved the problem, and I don’t think we can be satisfied with what we have achieved so far.”

Despite its downfalls, Reda says that the regulation is still a positive force.

“I did vote for it”, she says, “it’s not making anything worse and it does actually ban quite a lot of geoblocking. It covers everything except copyrighted content. So for example, if you are buying a product, they can’t block you from buying it in a different country if it’s cheaper there, or if they offer a different version of it.”

She continues: “The second thing is services. For example, if you’re renting a car to drive from the UK to France, sometimes the rental company will give you a different price depending on the country you are placing the order from.”

“There are some positives for consumers, but the first thing that people think of when they hear geoblocking is: ‘this video is not available in your country’, and we have to be careful not to create false expectations about what this regulation will do.”

However, for those wanting to avoid the geoblocking of copyrighted content, there is nothing to be done now. The regulation is adopted and a review will not be held until 2020, two years after it enters into force.

But Reda says that there are other facets of EU copyright law that need to be looked at like the upcoming regulation on the online transmissions of broadcasters, covering the online offerings of TV companies and radio stations.

According to Reda, the European parliament has taken a “very conservative stance on this proposal and said that the broadcasters should only be allowed to make TV news and current affairs programmes accessible across borders”.

“The European Council, on the other hand, is actually a little more ambitious and saying that anything that is the own production of a broadcaster should be able to be made available across borders.”

“So in that case, I am more on the side of the Council which is at least trying to make a bit of progress.”

There’s also article 13 of the EU’s Copyright Directive, which would further shift the burden of responsibility for copyright infringement to internet platforms. Recently proposed ‘compromise amendments’ to article 13 have rocked the boat, with Reda offering a staunch rejection to what she calls “bizarre amendments”.

On top of this, Reda intends to face proposals for a so-called link tax, that would, under certain circumstances, make the linking to news articles copyright infringement.

Reda says there are all things that could make the internet “less free and open”.

She adds: “While we are continuing to work towards the abolishment of geoblocking, we’re also having to consider all of these other proposals that might make the situation worse.”
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Hires at BakerHostetler, DLA Piper and more

BakerHostetler has hired Troy Schmelzer as partner in its intellectual property group.

Schmelzer, who previously worked at Norton Rose Fulbright as partner, will join BakerHostetler's Los Angeles office as part of its electrical, mechanical and computer science prosecution team.

His practice focuses on patent and trademark prosecution, portfolio management, and strategic counseling in a range of fields including the mobile device, software applications and semiconductor industries.

Mark Tidman, chair of BakerHostetler’s IP group, commented: “While the firm has long had a stellar reputation in the IP world, we continue to grow and strengthen our practice, across multiple disciplines and for clients around the globe.”

“Troy Schmelzer is a great addition to our patent prosecution team and overall IP practice.”

John Cermak, managing partner of BakerHostetler’s Los Angeles office, added: “Troy Schmelzer is a welcome addition to our growing IP team in Los Angeles.”

He has outstanding credentials in patent prosecution and portfolio management work on behalf of technology firms, and our clients on the west coast, across the US and overseas will benefit from his experience.”

DLA Piper has recruited Ben Mulachy and Gina Reif Illardi as partners in its Intellectual Property and Technology practice.

Mulachy focuses on representing a variety of industries, including major film studios, broadcast and cable television networks.

Illardi focuses on counseling advertising, marketing and public relations agencies, as well as movie studios and TV networks.

Both join from Jenner & Block, where they were partners.

Stuart Liner, co-managing partner of DLA Piper’s Los Angeles offices, commented: “As we continue to strategically expand in Los Angeles, adding Ben Mulachy will allow us to strengthen our practice offerings for new and existing clients here and across the country.”

“He and Gina Reif Illardi complement our media and entertainment capabilities well, and their skillset will be immediately beneficial.”

Ann Ford, co-chair of DLA Piper’s IP and Technology practice, added: “Ben Mulachy and Gina Reif Illardi are highly skilled lawyers with outstanding reputations among clients and peers.”

“They bring substantial experience in the entertainment industry, including representation of major film and television studios, to our global platform, and we are pleased to welcome them to the firm.”

Sheppard, Mullin, Richter & Hampton has promoted four intellectual property attorneys to partner across its Shanghai, San Diego and San Francisco offices.

Ericka Schulz was promoted in the firm’s San Diego office. Her practice focuses on patents, trademarks, copyright and trade secret litigation. She works across a number of fields, including the electrical, software and blockchain industries.

In San Francisco and Palo Alto, Lai Yip was promoted to partner. She serves as co-leader of the firm’s China IP team and focuses on litigation relating to fair, reasonable, and non-discriminatory licensing of standard-essential patents. She also covers trademark infringement and trade secret misappropriation.

In Shanghai, the firm has promoted Michael Zang and Harris Gao.

Zang is a member of the firm’s corporate, antitrust and IP practice groups and handles IP licensing and IP due diligence in the pharmaceutical, e-commerce and green technology industries.

Gao is part of the firm’s IP, business trial and corporate groups, focusing on international IP litigation and technology transactions in the technology and life sciences industries.

Memery Crystal has hired Carl Rohsler as partner in its London office.

Rohsler joins from Squire Patton Boggs where he led the firm’s intellectual property litigation and gambling regulatory practice. His practice covers a full range of IP services, including patents, trademarks, designs and copyright.

Rohsler said: “I am delighted to be joining Memery Crystal and look forward to developing IP and gambling law as part of the growing litigation team. It is an exciting time for me and I am really looking forward to being part of such a dynamic firm.”

Nick Davis, CEO of Memery Crystal, commented: “We are very pleased to welcome Carl Rohsler to Memery Crystal.”

He added: “We believe he will be an excellent addition to our litigation and intellectual property teams. His knowledge and experience as a litigator will be invaluable to us as we continue to expand our offering as a firm. His appointment is the latest senior hire for Memery Crystal, further expanding our presence and capability in the London market.”