



Geo-blocking, VPNs & Copyright

In this information sheet we give a brief overview of the law as it relates to geo-blocking, virtual private networks (VPNs) and copyright.

In June 2015, the *Copyright Amendment (Online Infringement) Act 2015* amended the Copyright Act to allow copyright owners to seek an injunction against a carriage service provider to “block” access to foreign websites that have the primary purpose to infringe, or to facilitate infringement of, copyright. Our information sheet *Copyright Infringement & Site Blocking* provides an overview of the new legislation.

The purpose of this information sheet is to give general introductory information about copyright. This is a very complicated and contentious area of law. If you need to know how the law applies in a particular situation, you will need to see a lawyer in private practice who has the relevant expertise.

We update our information sheets from time to time. Check our website at www.copyright.org.au to make sure this is the most recent version, and for information about our other information sheets, other publications and our seminar program.

Key points

- Geo-blocks are used for many reasons to restrict access to websites and online services.
- Some geo-blocks that prevent access to copyright material are technological protection measures (TPMs).
- Using a VPN to get around geo-blocks to download or stream copyright material can be an infringement of copyright.

What is geo-blocking?

Geo-blocking is a term used to describe measures online service providers use to limit access to users within a particular geographical area. As a result, people who seek access from outside the geographical area are blocked or restricted.

Geolocation software is used to discover the location of the person seeking access. On the internet, this is usually done by identifying the IP address, which reveals the country of origin. Another common way of restricting access to users within a certain area is to only accept credit cards from that area.

Why do people use geo-blocks?

There are many reasons why people use geo-blocking to limit their website or service to a particular area.

Targeted content

For copyright material, rights holders might choose to restrict access to a certain area because it is only popular in that area. By restricting access to content to one geographical location, a copyright owner or licensee might save costs on advertising, marketing and product support. For example, the cost of licensing a music track for use in a worldwide marketing campaign is likely to far exceed the cost of licensing the track for use in one or two countries only.

Licensing

Another important reason why people use geo-blocking for copyright material is because of licensing deals. To enhance their sales, a copyright owner might choose to license their material to different people in different countries, or at different times. They might also choose to make their material available at different prices in different markets, based on local market conditions. This is known as market segmentation.

Licensees might choose to limit access to their website or service based on restrictions imposed in the licence they have acquired. For example, if an Australian company licenses material for use in Australia only, they might wish to only allow access to the material by users located in Australia and prevent people from other countries having access. If the company did not impose the geo-block and allowed unrestricted access from all around the world, they might be in breach of their contract with the licensor.

Different jurisdictions

Another reason people might impose geo-blocks on copyright material is because of the differences in local copyright laws. While international copyright treaties make the copyright laws of most countries similar, there are important differences.

For example, material might not be protected in Australia but protected overseas. Assume that the work of a painter who died in 1954 is not protected by copyright in Australia, but is protected in Mexico. If a person wanted to create a website dedicated to the painter in Australia, using the painter's work on the website would not infringe copyright in Australia. However, if the website was available to people in Mexico, it might be an infringement in Mexico. The person might wish to impose a geo-block so that the website is only accessible in Australia, or only accessible in countries where the painter's work is not protected (i.e. not Mexico).

What does the Copyright Act say about geo-blocking?

To understand how geo-blocking is treated under the Copyright Act, you need to understand the provisions relating to technological protection measures (TPMs).

What is a TPM?

A TPM is a way copyright owners control access to, and copying of, their digital material. There are two types of TPMs in the Copyright Act, access control TPMS and copy control TPMs. A copy control TPM prevents people from copying the material.

An access control TPM limits access to the material. Access control TPMs are very common and appear as passwords, paywalls, pop-up screens, time-limited access (for example, if you "rent" an item on iTunes, your access expires after 48 hours) and other things that restrict access. It is an offence to circumvent an access control TPM.

The TPM must be used in connection with the exercise of copyright. That is, it must prevent or limit access to one of the exclusive rights of the copyright owner (for example, reproduction or communication to the public) in the material.

Importantly, there are special provisions for films and computer programs. If you acquire a film or computer program outside of Australia you can play the film or use the computer program in Australia. If the film or computer program has access controls that prevent their use in Australia,

these controls are not TPMs. For example, if you buy a DVD in Japan (region 2) and want to watch it in Australia (region 4) you are allowed to circumvent any region coding so you can watch the DVD in Australia.

Is a geo-block a TPM?

Some geo-blocks are TPMs, but some are not. For example, a music streaming website might prevent people in Australia from listening to songs it hasn't licensed for streaming in Australia. The technical way the website imposes this restriction is likely to be a TPM because it restricts the streaming of the music (which is a communication to the public – a right of the copyright owner).

However, geo-blocks that prevents wholesale access to a website by blocking IP addresses, or prevent purchasing material by only accepting credit cards from certain countries, are unlikely to be a TPM under the Copyright Act. This because the geo-block is either not preventing access to identified material or not connected to the exercise of an exclusive right of the copyright owner.

What is a VPN?

A VPN (virtual private network) is a way of allowing a private computer network to securely and efficiently share data across the internet. A VPN server has been likened to a post box on the internet for the VPN user - it sends data from and receives data for the VPN user across the internet, in a way that can't be traced back to the VPN user. In a way, a VPN is like a private barrier between him or her and the internet.

The main benefit of a VPN is security and privacy, in that no one will be able to work out the person's real IP address. Because VPNs do not use an identifiable IP address, geolocation software is largely ineffective against them. Many people use VPNs for legitimate security reasons. They are also used to get around geo-blocks and gain access to websites and services they would otherwise be unable to access from their source country.

Is using a VPN to get around geo-blocks a copyright issue?

It will be a copyright issue if using a VPN involves infringing copyright in some way. It is an infringement of copyright in Australia to use material protected by copyright in one of the ways reserved to the copyright owner without permission and if an exception does not apply.

If someone in Australia uses a VPN to download a copy of material from an overseas website and they do not have permission from the copyright owner to download the material in Australia, it is likely to be an infringement of copyright in Australia. This is because downloading involves making a copy, which is a right exclusively controlled by the copyright owner.

Similarly, if someone in Australia uses a VPN to stream material from an overseas website and they do not have permission to stream the material in Australia from the copyright owner, it is likely to be an infringement of copyright in Australia. This is because streaming involves the copyright owner's exclusive right of communication to the public.

Further, by using the VPN to gain access to material and infringing copyright, it is likely that downloading or streaming in this way would involve circumventing an access control TPM. It is also likely to be in breach of the service provider's terms of service.

When is using a VPN to get around geo-blocks not a copyright issue?

If someone uses a VPN to gain access to something that is not protected by copyright, or use material protected by copyright in a way that is not exclusively controlled by the copyright owner, then using a VPN is unlikely to raise any copyright issues.

For example, if someone in Australia uses a VPN to buy shoes from an overseas website which is not otherwise accessible in Australia, this is not likely to be a copyright issue because buying shoes generally does not involve the use of any rights protected by copyright. However, using a VPN in this way may still be in breach of the website's terms of service.

Are there any other issues about using a VPN to get around geo-blocks?

Most websites and online service providers have terms and conditions of use. Many websites and online service providers bind their users to their terms and conditions of use, for example, by clicking an "I accept" box. If a VPN user agrees to terms and conditions for a website or online service in another country, it may be that they are in breach of those terms and conditions. Further, Australian laws may not be able to offer any assistance to a VPN user if the website or online service does anything which would otherwise be in breach of the Australian Consumer Law. For example, if an online service charges a VPN user's credit card twice, or sends the wrong item, a VPN user may not be able to use Australian Consumer Laws to obtain a refund.

Frequently Asked Questions (FAQs)

I want to use a VPN so I can stream my favourite TV show from the United States when it is broadcast there and before the spoilers are all over the internet. Are there any copyright issues for me?

It is likely that you are infringing copyright in Australia by streaming the show without permission in Australia.

I use a VPN, but only for security reasons. If I buy my copyright material in Australia legitimately, is using a VPN a problem?

No. If you are using material with permission and legitimately, using a VPN in this way is not a copyright issue.

What's the difference if I use a VPN to stream a film from another country, where streaming is not available in Australia, and buying a DVD in that country and watching it in Australia?

The difference between using a VPN to stream a show and buying a DVD and watching it home is a subtle one in copyright law. Watching a DVD at home with your family is not exercising any of the rights of the copyright owner. However, streaming a film via the internet involves the copyright owner's right of communication to the public.

As discussed above, under the Copyright Act, you are allowed to bypass region coding on a DVD.

If I paid for it it should be ok, right?

Just because you paid a copyright owner or licensee overseas, this does not necessarily mean that you have paid the copyright owner or licensee in Australia. If you have not paid and obtained a licence from the copyright owner in Australia, you may be infringing copyright in Australia. This is because for copyright material, there may be different owners and different licensees in different countries.

For example, different companies in France and Australia might own a film. The French company may decide to release the film in France online, but the Australian company might wait to have the film subtitled and packaged for domestic release at an Australian film festival. If an Australian VPN

user pays the French company to watch the film online, they have not paid the Australian company and it is likely that they have infringed copyright in the film in Australia.

Further information

For information about our other information sheets, other publications and seminar programs, see our website: www.copyright.org.au

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The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



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