

Consumer perspective

regarding region locks and digital rights management.

Pursuant to the antitrust investigation of the
European Commission against Valve Corporation and
Capcom (COMP/40424),
Bandai Namco (COMP/40422),
ZeniMax Media (COMP/40420),
Koch Media (COMP/40414), and
Focus Media (COMP/40413).

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1. Introduction

The online retailing market for games started to grow out of a small niche with the advent of broadband internet connections in the early 2000s. Shortly after the Valve Corporation released the Steam client as an online matchmaking system for the competitive game Counter Strike, online game distribution started to grow into the multi-billion dollar business it is today. Online distribution cuts costs on distribution lines, advertising and storage. Consumers could be buying, downloading and viewing/playing content out of the comfort of their homes. Today, retail physical copies of video games often only contain an installer file for the online distribution client and a so-called CD-Key (or activation key) to be activated on the distribution platform. It is to be expected, that with further prevalence of broadband connections online distribution – not only in the games industry but for any other audio-visual content as well – will become the standard avenue of business.

Product piracy has always been a large concern in the industry. The online distribution allowed for live authentication of activation keys, seemingly eliminating pirated copies of games (piracy groups have only recently given up the cat-and-mouse game of circumventing copy protections). After online activation, the permanent online copy protection emerged, so that licenses cannot be used by more than one person at a time, which in the past had been limited to the physical copy of a medium – and had sparked illegal cracking programs, which eliminated the constant checking of the optical drive for the disc medium of the retail content. This digital rights management (DRM) was a godsend for the games industry and it was subsequently used for much more: limited installations (customers reinstalling the game frequently would find that this was not infinitely possible and consequently had to get in touch with customer support to resolve the issue), regional pricing, arbitrary blocking (revoking of licenses) of users who “complain too much” etc., lockdown on specific platforms/hardware or restriction of lending/re-selling of once purchased games/licenses. There emerged situations where online gaming between different countries was not possible due to cross-regional incompatibilities. End User License Agreements allowed for arbitrary shutdown of game

servers, effectively taking the possibility away of ever playing a game again (especially for online games) while restricting the use of measures to circumvent the identification of the customer's country of origin.

The aspect that is of interest for the antitrust investigation is the regional pricing of game licenses within the European Single Market. A customer – or rather their country of origin – is identified by personal data such as IP addresses, billing addresses, credit card information or other regional payment criteria. Taking into account different levels of spending capacities in different regions, it seems logical for publishers to sell games at prices in these regions without the influence of competition, since cross-border trading is easily discouraged with the regionalisation in digital rights management systems.

2. The Single Market from the perspective of gamers as consumers

While the online distribution makes the hobby of gaming so much more easy than it was a few decades ago, there are drawbacks to ubiquitous and always up-to-date content. For one, it is no longer possible to keep content in a state that one might have enjoyed before as it can change at the whim of the publisher. Although it is the copyright owner's right to change their copyrighted material, patches/updates for game content have been known to break savegames, deleting game progress, alter the whole experience to a user's dislike, or even take it away from users without fear of repercussions or any kind of refund. Activation or game hosting servers might be shut down in an effort to save costs, making games unusable to the consumer. Consumer rights have been hollowed out by digital rights management over the years.

When it comes to the single market, region locks (or geo locks, IP barriers, etc.) have the potential to hinder a free flow of digital goods. This is mainly done to enforce a fragmented patchwork of national licensing, where publishers own or buy the rights to sole, confined distribution of a product or service on a per-country basis. Other reasons for locks might be price discrimination, censorship laws or a scaled/sequential release in different countries. This leads to bizarre situations in which a sale is marketed europe-wide, but depending on the customer's country of origin, they will receive different contents. For instance, the website www.bundlestars.com (managed by Focus Multimedia Limited, UK, registration number 2408658) sold a bundle of games to be activated on the Steam platform for €2.79. German customers received 9 games in the bundle while everyone else received 10 games for the same price (see ANNEX D). The missing game was a remake of the game "Rise of the Triad", which was unrated for Germany and whose predecessor was entered onto the list of media harmful to young people by the BPjM (German Federal Department for Media Harmful to Young Persons). The game as such had to be treated as a USK 18 ("Keine Jugendfreigabe") rated title, meaning it may be displayed and advertised publically, but may only be sold to adults. Indiscriminate of age, all Germans were locked out from receiving this game, as the publisher did not want to risk youth protection issues in Germany. But since

adults are legally allowed to buy, import, activate and play the game as they see fit, a total lockout is disproportionately unfair to this group of customers.

While recent game console generations have been generally region free and one can import games from other countries, publishers on consoles are moving towards region locking certain DLC (Downloadable Content) in order to change games according to youth protection laws. Online game stores are also common on consoles and the future might also see region locking for reason of price discrimination here. Games themselves are not locked into regions on consoles (within the EU at least), so the argument of having to lock games for youth protection reasons on PC is invalid, as if this were the reason, publisher would have to implement region locks on consoles, too. At least no German youth protection provision calls for nationwide lockouts, only age related lockouts are mandated. Since this is not easily done on a national or even European scale, all adults of a country are locked out on PC in an effort to keep children from obtaining the media. While young people may tend to (illegally) use online sources for a cracked version of a game, adults, who are more likely to pay for the content, may not be able to use some games they have bought due to the locks. Customers are not regularly informed about the locks that are imposed onto the product they are buying and are in for a nasty surprise when they are not able to use the product at home.

This is in no way a consistent problem throughout the industry. While some publishers lean towards not using any locks, many more do otherwise in the interest of recuping the most revenue possible or due to an oversensitivity towards possible youth protection infringements.

3. The issues with Region Locks

Using the Steam platform as an example for an online distribution platform, the following will explain what digital rights management and region locks in particular mean for customers. The Valve Corporation gives the publishers of digital games content a plethora of regions to choose from when adding certain locks to a released title.

- **Product purchase**

The Steam client is restricted to the country in which it was activated (see extract of help pages in ANNEX A&B). Not even with the use of a VPN (Virtual Private Network) tunnel can one purchase from another European country. Using an internet browser, one can in some cases buy games in other countries' storefronts, but an activation might not be possible (see next point). Products can either be directly purchased in the Steam country storefront, or from resellers as an activation key. One cannot directly identify what game a key is associated with or if it may be locked in one's own country. Some resellers offer refunds, although these promises may not always be honoured. Buying an activation key is a risky deal for customers and depends on whether the reseller is authorized or not authorized. Some unauthorized resellers buy cheap keys (from retail copies) en mass in low-income regions such as the Middle East or Asia and then sell them to Western customers. Naturally,

publishers have an interest in hindering this practice. But price discrimination can also happen within Europe (exchange rates EUR-GBP and account region lock). The Steam Client is locked to one's home country, so if a customer wants to buy from the UK, where games are at average about 15% cheaper, they will have to circumvent the account lock with a new account, a payment method which cannot be traced to a specific country, and a VPN connection and then gift their purchase to their original account.

- **Product activation**

The most prevalent kind of region lock on a game distribution platform is an activation lock. All other locking mechanisms build upon this kind of lock. When trying to enter a product activation key into the distribution platform's client software, the key is checked for eligibility and an IP-address check on the customer takes place. If the customer's country of origin is not listed as an eligible country, the activation is denied and the game is not added to the customer's personal library on the platform.

- **Product download**

Provided the product activation key has not already been made unavailable in a region through an activation lock preventing a customer from adding it to their game library, there is still another category of lock which is often employed: the download lock.

Before any attempted download of a game's content, Steam will check the Internet Protocol ID, or "IP address", to ascertain from which country the customer is trying to download the content. So even if a customer – in defiance of the Steam Subscriber Agreements (SSA) – had used a VPN tunnel to activate the game into their account, they will not be able to download the game without an active tunnel. If the game the customer wants to download were equipped with a download lock, they will not be able to download it as Steam will block the IP-address region from accessing the game files – indifferent to the fact whether the game was bought legally in another EU member country.

- **Product usage**

Should a consumer circumvent the activation and download locks during a visit abroad or through means of a VPN-Client against the provisions in the Steam Subscriber Agreement to install a game, then after return to the home country or disconnection of the VPN Client the IP-address check will prohibit the start/usage of the activated and downloaded/installed game.

Similarly, if any other EU-Citizen or person living within the EU buys/activates a product in their home country, and tries to use it in a country where the game is unavailable with a usage lock, they will not be able to download/play it from there. For Germany (IP addresses associated with Germany) this applies to the following products:

- ❑ Kane & Lynch 2: Dog Days, Square Enix

- ❑ Sleeping Dogs: Definitive Edition, Square Enix
- ❑ Wolfenstein: The New Order, Bethesda Softworks
- ❑ Wolfenstein: The Old Blood, Bethesda Softworks
- ❑ Eidos Anthology Pack, Square Enix/Eidos Interactive
- ❑ Quakecon Bundle 2015, Bethesda Softworks

The last bundle is another example of German customers receiving [less](#) than every other customer, as many games are missing in the bundle purchasable from Germany.

- **Product lending and re-selling**

After a product has been activated on a customer's account, it is indefinitely bound to that account, provided the activation key is not retroactively declared as "invalid" and stripped from the customer's library. Keys may be labelled "invalid" if they are suspected to be obtained illegally (i.e. been stolen, paid for fraudulently with stolen credit cards or anything similar). This may frequently happen with activation keys obtained by an unauthorized reseller. For customers it is not be easily ascertainable, if the copy they have bought was legally obtained in the first place. In the interest of the publisher, these retroactive deletions do make sense.

Excursion to "family-sharing": Still, the seemingly irrevocable binding of keys to user accounts makes it impossible for customers to resell games, or easily lend them to friends as it is possible for console games or any other physical entertainment items (PlayStation, Xbox, VHS, DVD, Blu-ray, etc.). To alleviate this disadvantage, the Valve Corporation had introduced the "Family Sharing" service to the Steam Client in 2013, which allows users to share their games with family (and, unofficially, friends), provided the publisher does not lock their game from this service. Digital rights management, however, does not allow for simultaneous play, so when lending someone access to the library, still only one person can play only one game at any given time.

4. The German condition

Germany is a bit of a special case in the gaming industry. For a very long time now, youth protection provisions have cultivated the understanding that it is difficult to market games (especially those with violent content) in Germany. Contrary to the rest of Europe, Germany does not allow for the use of the PEGI game rating system but instead uses a combination of USK ratings, indexation and court-ordered confiscation of gaming content. This complicated system confuses easily and fear of indictment and prison sentence carries wide, so when in doubt, game publishers usually block games for the whole of Germany and only allow specially "adjusted" versions (see [this list](#)). No law in Germany, however, forbids adults to import any kind of media (even confiscated media, as long as it is for personal use only - some exceptions for criminal pornography aside). So us German users are unproportionally affected by region locks, not only for pricing reasons.

Special German versions also entail a difference in customer service. While uncensored games might be serviced, updated and have additional content available, specialised German versions are often kept in a sub-par state (e.g. *Sleeping Dogs*, published by Square Enix), as making different versions has already been more expensive for the publishers and after release, development teams are cut down to a core crew. It is therefore important to many German users to acquire not the special German version, but the ROW version (rest-of-world) in order to receive updates and service. For adult gamers, the single market promises a purchase of another version of the product and no national law encumbers that, but this is then counteracted by arbitrary region locks.

Publishers state that youth protection provisions make it impossible for them to market an unrated version of a game to Germans. But there is a possibility, which is – granted – quite difficult. If there were to be an age verification system, adults who have verified their age would be able to purchase nearly all kinds of media. Publishers do not want to employ such a system, due to issues with cost and/or administration, and/or because they want to market a game openly, which is understandable. So Germans are often stuck with other versions without the possibility of buying abroad. This is not the intention of youth protection.

In the consumer community, many projects have arisen in which customers inform themselves and others of impending locks, price discrimination and censorship. For Germany, a large one is a Steam community group called "for UNCUT!", which curates the store content as a community curator to provide information on locks (full disclosure: the authors are administrators of this group), and which tries to persuade publishers from implementing locks for Germany (with mixed results). A helpful tool in regard to finding out locks on Steam is the non-profit Website www.steamdb.info, where packages and apps sold on the Steam Stores are displayed. A short tutorial on SteamDB can be found in ANNEX E.

5. Conclusions

Consumers have profited greatly from the advent of online content dissemination. But Digital Rights Management – originally utilized as an anti-piracy toolbox – has become more of a user's Digital Rights Moratorium blocking access, revoking usage at random without proper legal means or diminishing long-held consumer rights at the will of rights holders or large publishers. While Valve is not a particularly exceptional example of this, they are a service provider not only for the consumer, but also for the game publishers, who might want ever more control. This entails also control over pricing, naturally. For German customers at least, pricing is not that much of an issue – large discounts in sales are what made Valve great in the eyes of the customer base – but availability of content is. Publishers might want to stay on the safe side when it comes to (un-)rated content, but German adults cannot legally import and use some games anymore if the publishers can arbitrarily lock up a complete ecosystem in online distribution. While this may not be part of the Commission's investigation, it is an underlying problem. When an adult gamer may choose to buy an uncensored game version in the UK, for example (because it is cheaper there due to the exchange rate), they are surprised to learn and angry when it persists that their Client is locked to their home country and can only buy there. To get an imported medium to work,

¹ <http://steamcommunity.com/groups/foruncut>

often the consumer has to jump through significant (technical) hoops and is then mostly in breach of the EULA (Steam Subscriber Agreement, "SSA"). Publishers will state licensing or youth protection law issues when it comes to region locking. But while licensing is thought to provide legal rights to a publisher to sell to a specific region, the activation of a product might not be part of the purchase process. To our knowledge there has not been a precedent deciding this in court. So the argument that sale, activation, download and usage has to be restricted in order to ensure licensing rights or youth protection is flawed. Licensing is a business decision between partners and not businesses and consumers, while youth protection is not a regional but an age problem. So a proper age-verification process might be necessary if the publishers feel they must be safe from prosecution, rather than locking their content out of entire countries. Pricing within the EU is subsequently not an argument at all.

ANNEXES A-D are attached in the Email

Annex E

Excerpt from the FAQ of for UNCUT! Steam Group:

SteamDB & Region/Geo Locks

What is SteamDB?

[SteamDB](#) is not affiliated with Valve or Steam and is maintained by [xPaw](#) and [Marlamin](#). Using the APIs offered by Valve, information of products offered on Steam is made transparent, which is a great help for our purposes.

Note: One has to log in to the site to be able to fully use the search function (searching for Tags).

What is a region lock?

In the group and in our curator the term *region lock* refers to preventing the activation of keys. This lock is realized with the tags *AllowPurchaseFromRestrictedCountries* (contains the value No or Yes) and *PurchaseRestrictedCountries* (with [country codes](#).) Key with these tags cannot be activated with IP addresses of the set countries (No) or only with them (Yes).

Take note of the *billingtype*: For our purposes the most relevant are: *Store*, *CD Key* and *Store or CD Key*. The package, meaning the product license, is accordingly either available via the store and/or as a key. Region locks on packages with a *billingtype* that also affect the store cause the store pages to be inaccessible in these countries. Games, however, can be unavailable in a country's store independent of this tag (this information is not provided by SteamDB).

A special case is the tag *RequiresPreApproval* which also causes a region lock. It is only used in very few cases.

Attention: Steam gifts are excluded from region locks, meaning they can still be activated (provided they are not blacklisted for the country, see below). The *AllowCrossRegionTradingAndGifting* tag has no effect except for cheaper regions like Russia, China or South America apparently.

What is a blacklist?

A blacklist is defined as the activation lock of keys and gifts, and the start and download lock with certain IP addresses. This is achieved through the *prohibitrunincountries* tag. Steam checks the IP address each time the client is launched. Sometimes this is referred to as a geo lock.

Whitelists, the activation and usage restricted to certain countries, exist through the *onlyallowrunincountries* tag. Gifts from cheaper priced regions like Russia, China or Brazil have whitelists set by default.

Remark: It appears that start and download locks are no longer effective 90 days after activation.

A special version of a black or white list can be achieved with the combination of *Releasestate*, *ReleaseStateOverrideCountries* and *Releasestateoverrideinverse*, marking games as unreleased in certain regions which prevents downloading and starting.

Do these locks affect Family Sharing?

"Can region-restricted content be shared across regions?"

No, any region restrictions will remain in place when lending or borrowing content."