Contents Contents

	List of Figures and Tables	page viii
	Preface	ix
	Acknowledgements	xi
	List of Abbreviations	xii
	Table of Cases	xiv
	Table of Legislation	xvii
	The of Legislation	XVII
1	Introduction wall find any against the	
1		1
	1.1 Background	1
	1.2 Scope of This Book1.3 Towards a Digital Single Market	5 11
	1.4 Traditional and New Modes of Governance in the EU	16
	1.4.1 Analysing the Framework for Licensing and Access	16
	1.4.2 Different Modes of Regulating	17
	1.5 Outline	25
2	Market and Economics Context	28
	2.1 Underlying Concepts: Exclusivity, Contractual Freedom and	
	Territoriality	28
	2.2 An Intertwined Relationship: Multi-Territorial Licensing and	
	Cross-Border Access	32
	2.3 The Age of Access and Its Business Models	37
	2.4 Online Licensing of Copyright-Protected Works	42
	2.4.1 Licensing by Collective Management Organisations 2.4.1.1 Intermediaries as a Solution to Market Failure	42
	2.4.1.2 Multi-Territorial Mono-Repertoire Licensing and the	42
	Disaggregation of Repertoire	56
	2.4.1.3 Re-Aggregation and (Some) Direct Licensing?	58
	2.4.2 Licensing Arrangements of Audiovisual Works	61
	2.4.2.1 A Minor Role for Intermediaries	62
	2.4.2.2 Territorial Dimensions in the Licensing of Audiovisus	al
	Works	63
	2.4.3 Industry-Led Arrangements, Operational Aspects and	
	Standards 2.5 Summary	68
	2.5 Summary	73

Perspective Perspective ...

3.2 Licensor-Licensee [Selamonships Licensing Contracts and Territorial

3	Licensing and Access from a Competition Law		
	Perspective	75	
	3.1 Licensor-Licensor Relationship: Model Contracts and Territorial		
	Restrictions	78	
	3.1.1 Barcelona and Santiago Agreements	81	
	3.1.2 Simulcasting Agreement	83	
	3.1.3 CISAC Saga (2000–2013)	86	
	3.2 Licensor-Licensee Relationship: Licensing Contracts and Territorial	00	
	Restrictions	94	
	3.2.1 Football Association Premier League and Murphy	96	
	3.2.2.1 Factual Background and Issues at Stake	96	
	3.2.1.2 Free Movement and Competition Law Aspects	98	
	3.2.1.3 (Absolute) Territorial Exclusivity after Premier League and Murphy	102	
	3.2.2 Application of Premier League and Murphy	109	
	3.2.2.1 Background of the Pay TV Investigation	109	
	3.2.2.2 Implications of the Investigation	111	
	3.3 Summary	117	
4	Multi-Territorial Licensing from a Legislative Perspective	121	
	4.1 Regulating via Soft Law	123	
	4.1.1 Background of the Online Music Recommendation	123	
	4.1.2 Competition for Rights Holders	126	
	4.1.3 Criticism and Reactions in the Marketplace	128	
	4.2 Legislative Intervention and Codification	133	
	4.2.1 Background of Directive 2014/26/EU	133	
	4.2.2 Scope of Directive 2014/26/EU	137	
	4.2.3 Administrative Part: Governance and Transparency		
	Framework (Title II)	145	
	4.2.3.1 General Licensing Provisions	146	
	4.2.3.2 General Provisions of the Governance and		
	Transparency Framework	147	
	4.2.4 Multi-Territorial Licensing Framework (Title III)	148	
	4.2.4.1 Considered Policy Options	149	
	4.2.4.2 The European Licensing Passport	152	
	4.2.4.3 The Mechanism of the Passport Model	154	
	4.2.5 Criticism and Discussion	160	
	4.3 Proposal for a Directive on Copyright in the Digital Single Market	170	
	4.4 Summary	172	
5	Cross-Border Access from a Legislative Perspective	177	
	5.1 Status Quo and Contractual Arrangements	180	
	5.2 Cross-Border Portability Regulation	185	
	5.2.1 Scope of Regulation (EU) 2017/1128	186	
	5.2.2 Legal Mechanisms for the 'Common Approach'	189	
	5.2.3 Discussion of the Portability Regulation	194	
	5.3 Geo-Blocking Regulation (EU) 2018/302 and Its Copyright Interface	201	
	5.3.1 Scope of the Geo-Blocking Regulation	202	
	5.3.2 Access to Interfaces versus Access to Goods or Services	204	

3	Licensing and Access from a Competition Law	
	Perspective	75
	3.1 Licensor-Licensor Relationship: Model Contracts and Territorial	,
	Restrictions	78
	3.1.1 Barcelona and Santiago Agreements	81
	3.1.2 Simulcasting Agreement	83
	3.1.3 CISAC Saga (2000–2013)	86
	3.2 Licensor–Licensee Relationship: Licensing Contracts and Territorial	00
	Restrictions	94
	3.2.1 Football Association Premier League and Murphy	96
	3.2.2.1 Factual Background and Issues at Stake	96
	3.2.1.2 Free Movement and Competition Law Aspects	98
	3.2.1.3 (Absolute) Territorial Exclusivity after Premier League	90
	and Murphy	102
	3.2.2 Application of Premier League and Murphy	109
	3.2.2.1 Background of the Pay TV Investigation	109
	3.2.2.2 Implications of the Investigation	111
	3.3 Summary	117
	5.5 Summary	117
4	Multi-Territorial Licensing from a Legislative Perspective	121
	4.1 Regulating via Soft Law	123
	4.1.1 Background of the Online Music Recommendation	123
	4.1.2 Competition for Rights Holders	126
	4.1.3 Criticism and Reactions in the Marketplace	128
	4.2 Legislative Intervention and Codification	133
	4.2.1 Background of Directive 2014/26/EU	133
	4.2.2 Scope of Directive 2014/26/EU	137
	4.2.3 Administrative Part: Governance and Transparency	131
	Framework (Title II)	145
	4.2.3.1 General Licensing Provisions	146
	4.2.3.2 General Provisions of the Governance and	140
	Transparency Framework	147
	4.2.4 Multi-Territorial Licensing Framework (Title III)	148
	4.2.4.1 Considered Policy Options	149
	4.2.4.2 The European Licensing Passport	152
	4.2.4.3 The Mechanism of the Passport Model	154
	4.2.5 Criticism and Discussion	160
	4.3 Proposal for a Directive on Copyright in the Digital Single Market	170
	4.4 Summary	172
	1.4. Odminiary specimens and a larger to Fall the Large to Large t	112
5	Cross-Border Access from a Legislative Perspective	177
	5.1 Status Quo and Contractual Arrangements	180
	5.2 Cross-Border Portability Regulation	185
	5.2.1 Scope of Regulation (EU) 2017/1128	186
	5.2.2 Legal Mechanisms for the 'Common Approach'	189
	5.2.3 Discussion of the Portability Regulation	194
	5.3 Geo-Blocking Regulation (EU) 2018/302 and Its Copyright Interface	201
	5.3.1 Scope of the Geo-Blocking Regulation	202
	5.3.2 Access to Interfaces versus Access to Goods or Services	204

	Contents	vii
	5.4 Looking over the Fence: Cross-Border TV and Radio Broadcasts	210
	5.4.1 Consultation on SatCab Directive in 2015	210
	5.4.2 Proposal for a Regulation on Online Transmissions of	
	Broadcasting Organisations	213
	5.5 Summary	215
5	The Regulatory System: Challenges and Solutions	218
	6.1 Mapping the Regulatory Landscape	218
	6.2 The EU's Double Approach	230
	6.2.1 Ex Ante or Ex Post Regulation?	230
	6.2.1.1 Using Competition Law to Ensure Access to Works	231
	6.2.1.2 Quasi-Regulatory Interventions via Competition Law	234
	6.2.2 The Interplay at an Institutional Level	237
	6.2.2.1 Intra-Institutional Interplay at the European	
	Commission	237
	6.2.2.2 The Role of the Court of Justice	240
	6.2.3 Summary	242
	6.3 Reconciling the Analogue Territorial with the Digital Borderless	
	World	243
	6.3.1 Introduction of a Unitary Copyright Title	245
	6.3.2 A Country of Origin Principle for the Digital Content World	247
	6.3.3 Towards a Consumer Perspective in Access to	
	Copyright-Protected Works	250
	6.4 Concluding Remarks	254
	Polymerass	257
	References Index	278
	maex	210

the received proper of the volume and the business translate, in part