

# **Geolocation, Geoblocking, and the Law**

**Marketa Trimble**

Samuel S. Lionel Professor of Intellectual Property Law  
William S. Boyd School of Law

**Goethe-Universität Frankfurt am Main  
Exzellenzcluster Normative Ordnungen  
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# Cyberspace, Physical Location, and the Law

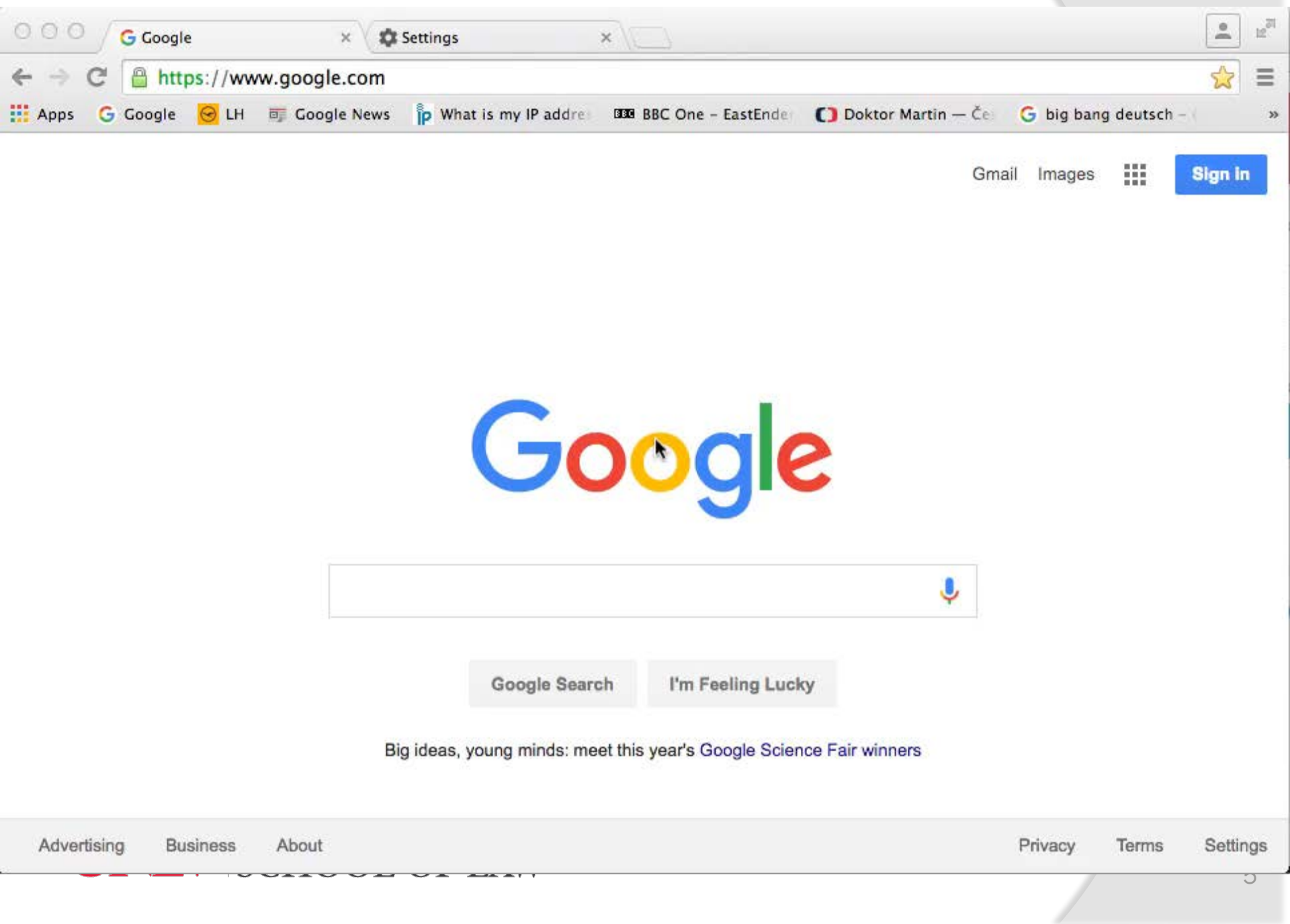
- **Accessibility of websites (and other content) potentially from anywhere where an Internet connection is available**
- **Ability to act remotely**
- **Possibility to strategically locate activities and assets to avoid enforcement**
- **Global jurisdiction over present actors**
  - v. **no enforcement power over absent actors with no assets in the jurisdiction**
  - v. **power over intermediaries (e.g., internet service providers, payment processors, servers)**

# Relevance of Physical Location

- **Prescriptive jurisdiction**
  - Choice-of-law rules
  - The territoriality principle
- **Adjudicatory jurisdiction**
  - Personal jurisdiction
  - In rem jurisdiction
- **Enforcement jurisdiction**
  - Jurisdiction to enforce v. physical ability to enforce

# Geolocation

- A mechanism to determine the physical location of an actor
- Used early on in advertising, security
- Possibility to tailor content based on the user's physical location



Google

Settings



https://www.google.com



- Apps
- Google
- LH
- Google News
- What is my IP address
- BBC One - EastEnders
- Doktor Martin
- big bang deutsch

Gmail Images

Sign In

# Google



Google Search

I'm Feeling Lucky

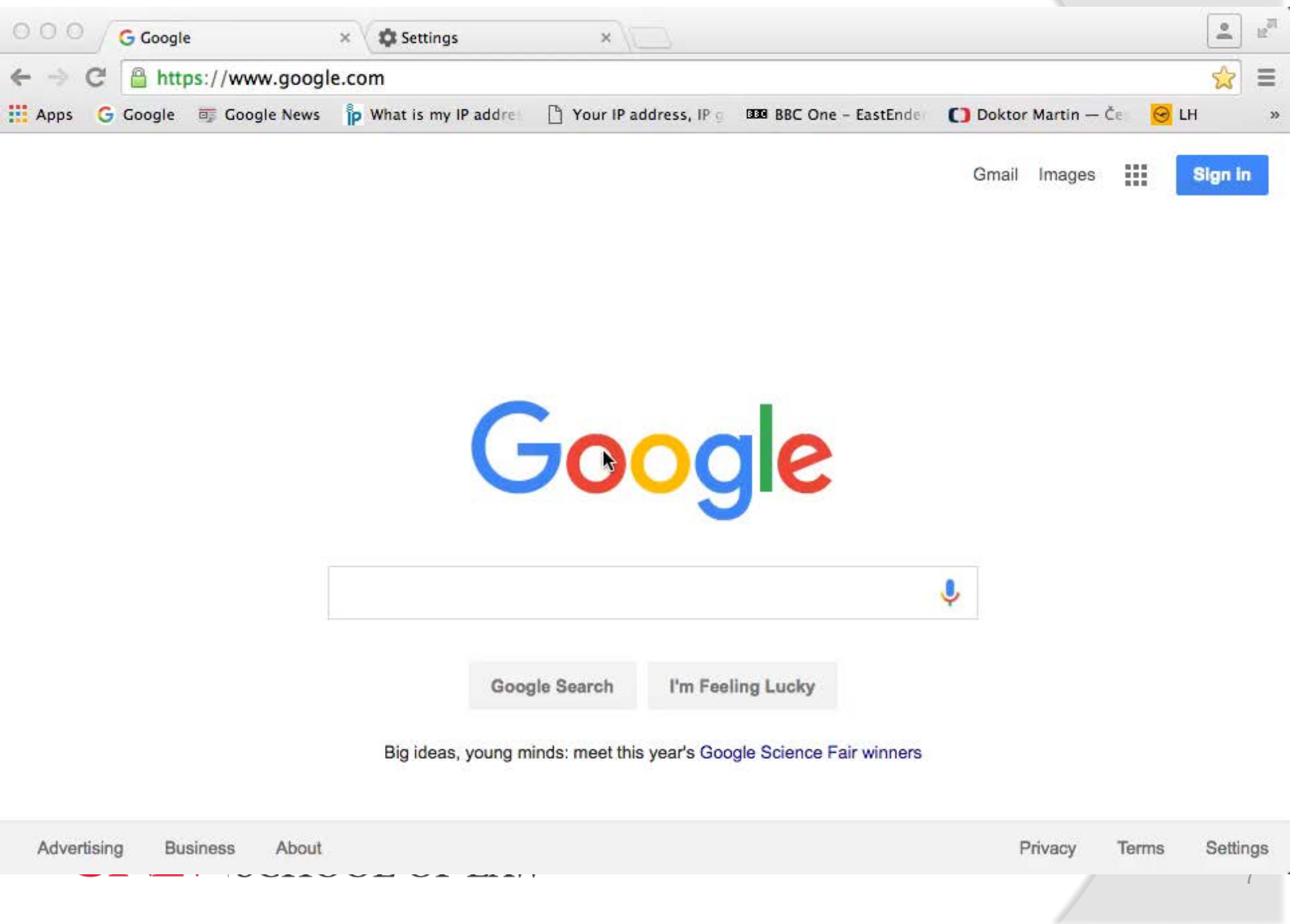
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Advertising Business About

Privacy Terms Settings

# Geolocation

- A mechanism to determine the physical location of an actor
- Used early on in advertising, security
- Possibility to tailor content based on the user's physical location
- **Based on IP addresses v. on a combination of information (including, e.g., cellular phone signals, WiFi signals, and GPS signals)**



# Google



Google Search I'm Feeling Lucky

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# Geolocation

- **Geolocation (determination of a user's physical location)**
  - v. **Identification of a user's internet connection**
  - v. **Identification of a user's device**
  - v. **Attribution (linking particular acts on the Internet to a particular user)**

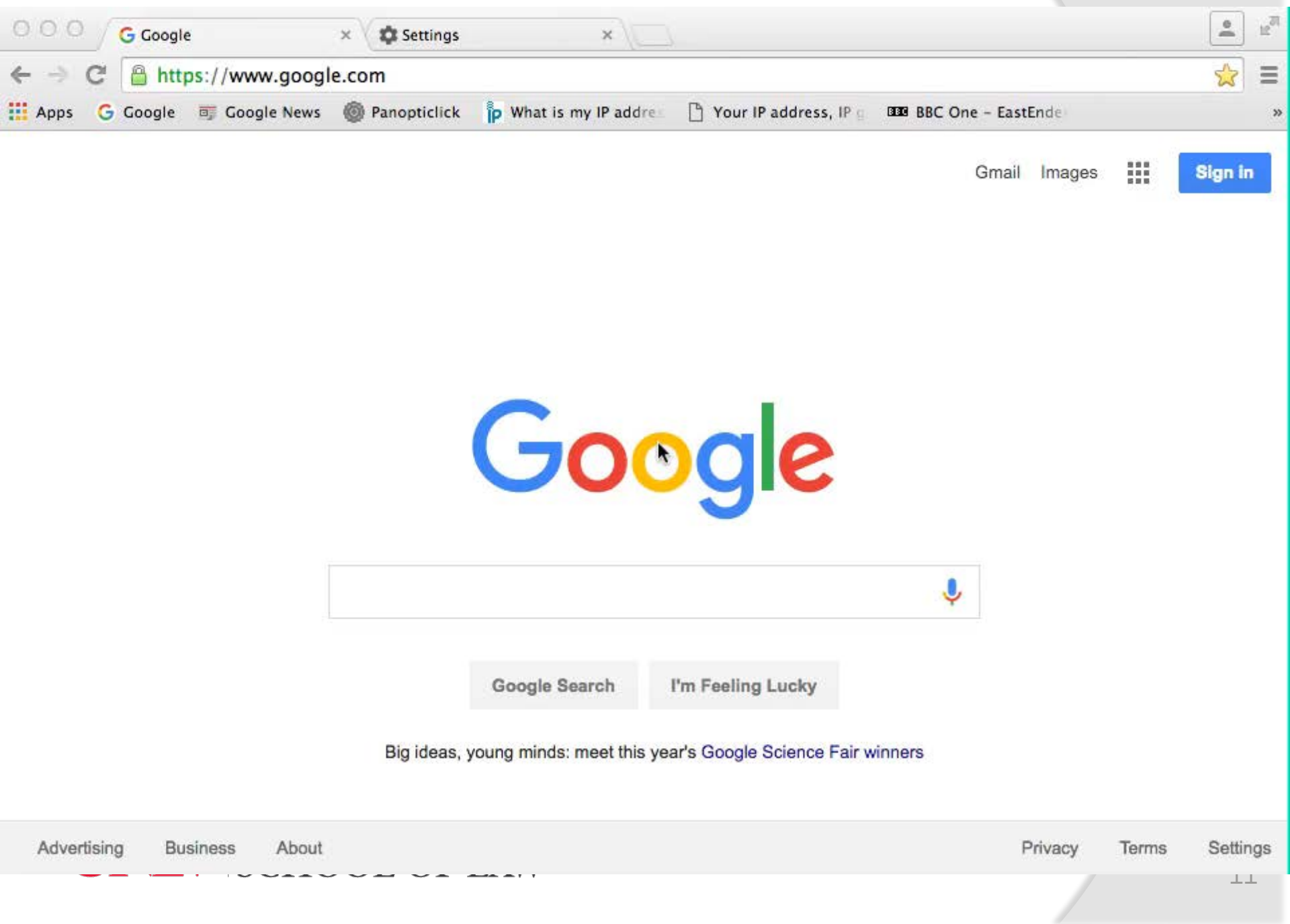


# Geolocation

- **Geolocation (determination of a user's physical location)**
  - v. **Identification of a user's internet connection**
    - **IPv4 v. IPv6 protocol**
  - v. **Identification of a user's device**
  - v. **Attribution (linking particular acts on the Internet to a particular user)**

# Geolocation

- **Geolocation (determination of a user's physical location)**
  - v. **Identification of a user's internet connection**
  - v. **Identification of a user's device**
    - **MAC address**
    - **Computer fingerprinting (e.g., EFF tool)**
  - v. **Attribution (linking particular acts on the Internet to a particular user)**



Google

Settings

https://www.google.com

Apps Google Google News Panopticlick What is my IP address Your IP address, IP g BBC BBC One - EastEnde

Gmail Images

Sign In

Google

Google Search

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# Geoblocking

- **Restriction of access to content on the internet based on user's location**
  - (1) **Geolocation**
  - (2) **Geoblocking**
- **Adoption of geoblocking by the private sector**
  - **Market partitioning**
  - **Security**
  - **Compliance with territorially-defined contractual obligations**
- **The use of geoblocking for regulation and for the enforcement of laws**



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Google.cz v jazycích: [English](#)

# Legality of Geoblocking (I)

- **Int'l: WTO/GATT rules**
- **US: Dormant Commerce Clause**
  - **Flo & Eddie, Inc. v. Sirius XM Radio, Inc.**, 821 F.3d 265 (2d Cir. 2016) (pre-1972 sound recordings and satellite radio)
  - **Direct Marketing Ass'n v. Brohl**, 814 F.3d 1129 (10th Cir. 2016), *cert. filed Sept. 1, 2016* (state online sales tax)
- **EU: EU single market**
  - **Proposal for a Regulation on ensuring cross-border portability of online content services in the internal market**
  - **Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence, or place of establishment within the internal market**

## Legality of Geoblocking (II)

- **Privacy issues**
  - Information about user's current location
  - Tracking user's location over time
- **Free speech issues**

# Is Geoblocking Mandatory? Required by Law?

- Regulation of online gambling
- Limitation of personal jurisdiction
- EU: Right to be forgotten
- Canada: Injunction on the internet
  - *Equustek Solutions Inc. v. Google Inc.*, [2015] BCCA 265, June 11, 2015, appeal pending to the Supreme Court of Canada
- Territorially-limited licenses
  - *Spanski Enterprises, Inc. v. Telewizja Polska, S.A.*, D.D.C., 1:12-cv-00957-TSC



# Circumvention of Geoblocking

- **Used to evade geoblocking and access information that is inaccessible because of a user's location**
- **To protect privacy**
- **To secure free speech**
- **To test the networks**



Search Google or type URL

What is my IP address

Welcome to Google C

Chrome Web Store

Grid of application thumbnails including IP address checker, Chrome welcome screen, and Chrome Web Store.

# Legality of the Circumvention of Geoblocking

- **Anti-hacking provisions**
- **Violation of laws against access to certain content**
  - **Online gambling**
  - **Child pornography**
  - **Other content prohibited by national laws**
- **Protection for digital rights management (DMCA)**
- **Contract/license/terms of service conditions**

# Opposition to Geoblocking

- **Objections to geoblocking *per se*:**  
**Geoblocking**
  - is contrary to the original architecture of the internet
  - is imperfect, and spillover is more than negligible
  - has uncertain legality
    - e.g., *GlobalMode* in New Zealand
  - is associated with not insignificant implementation costs
  - may have an impact on free speech
- **Objections concerning the underlying reasons for geoblocking**

# Geoblocking Serving Positive Ends

- **Diversity of content on the internet**
  - From a global perspective, the diversity of content accessible to users around the world will be enhanced by geoblocking
  - Geoblocking allows for content to be made available where it is legal
  - Geoblocking allows for territorially-limited (i.e. lower-priced) licensing
- **Other reasons for geoblocking**
  - A territorial partitioning of the internet is inevitable as long as countries have strong national public policies that shape at least some of their laws
  - Online gambling and other sensitive areas of regulation will provoke countries' strong policy stances, for which geoblocking on the internet offers a workable *modus operandi*

# The EU Anti-geoblocking Campaign

- **Proposal for a Regulation on ensuring cross-border portability of online content services in the internal market**
- **The effects of the cross-border portability proposal**
  - **The Proposal legislates an acceptable level of cross-border spillover**
  - **The Proposal requires tracking and authentication (i.e. impact on privacy)**
  - **Localization fiction in Article 4:**

“The provision of an online content service to, as well as the access to and the use of this service by, a subscriber, ... shall be deemed to occur solely in the Member State of residence...”
- **Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence, or place of establishment within the internal market**

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