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Global watch on culture and digital trade

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FROM REGULATION OF ONLINE PLATFORMS TO DIGITAL ECONOMIC AGREEMENTS: A STATE OF PLAY

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Analytical report, February 2021

The February report firstly emphasizes the Digital Economic Agreements promoted by Singapore, as well as the perspectives of the enlargement of the Trans-Pacific Partnership (TPP). Secondly, it turns to several initiatives taken by public authorities in order to impose new regulations for online platforms. The focus will be on South Africa, Kenya, Indonesia, Australia, South Korea, France, and the European Union (EU).

Trade agreements, digital technologies and culture

Digital Economic Agreements

Early December, the United Kingdom (UK) and Singapore signed a free trade agreement (FTA) to ensure that companies from both countries continue to enjoy the same benefits than those granted by the EU-Singapore FTA after Brexit. In addition, both countries plan to start scoping the modules of a UK-Singapore Digital Economic Agreement (DEA), with the aim of launching negotiations in early Spring 2021. The negotiations of the DEA, the first such agreement of Singapore with a European country, will deal, among others, with flow of data across borders, personal data protection, interoperable digital ecosystems, cybersecurity, as well as electronic commerce.

Given previous positions of the UK conservative government and of Singapore, the DEA raises concerns regarding the definition and place of digital cultural services in the agreement and the public policy leeway with regard to the regulation of this type of services. It is worth mentioning that Singapore is not party to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

In addition, Singapore has already signed two DEAs, which develop further several norms and provisions included in digital chapters of bilateral and plurilateral trade agreements. In mid-June 2020, New Zealand, Chile and Singapore signed the Digital Economy Partnership agreement and, early August, Singapore and Australia digitally signed a DEA, following the official conclusion of negotiations at the end of March 2020. The Singapore-Australia DEA also incorporates memorandums of understanding on seven key issues: data innovation, cooperation on artificial intelligence, trade facilitation, cooperation for electronic invoicing, electronic certification cooperation, personal data protection, digital identity.

The goal of the DEAs is to become a normative model for bilateral and multilateral trade negotiations (World Trade Organization and other forums) generating new standards for regulation in the area of digital technologies.

The enlargement of Trans-Pacific Partnership?

As stressed by Inside US Trade, end January, the UK began soliciting comments from the public on the impact of joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which currently includes 11 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. UK trade minister Liz Truss stated that the UK “will shortly submit the formal request to join this free trade area”. In addition, mid-January 2021, the South Korean government issued a statement pledging “to work this year for the joining of CPTPP”. It is important to recall that the US administration withdrew from the TPP in 2017. The remaining 11 countries reworked the deal into the CPTPP, putting aside some provisions the US had insisted on.

As such, during the TPP negotiations and under pressure from the US administration, the previous conservative Canadian government of S. Harper had accepted some limits to the application of cultural exception and introduced two clauses in the agreement. The clauses prevented Canada to adopt “discriminatory requirements on service suppliers or investors to make financial contributions for Canadian content development” and "measures restricting the access to on-line foreign audio-visual content”. Following the withdrawal of the United States, the new liberal government concluded side letters with the ten remaining signatory countries in order to maintain the whole of Canada’s cultural exception.

During the campaign trail, Joe Biden stressed the US administration would not join CPTPP without first making changes to the agreement.

Online platforms and regulation issues

Kenya

Early January, the Kenyan government started implementing the Digital Services Tax, proposed by the Kenya Revenue Authority in 2020, following the Finance Act 2019. Internet businesses and entrepreneurs, which generate revenue in Kenya, are obligated to pay a 1.5% fee on the value of goods and services offered or sold online. Some of these goods and services include e-books and e-movies; streaming of TV shows and music, supply of digital content for listening, viewing or playing on any audio, visual, or digital media. The government claims that the new policy could generate up to 45 million USD in revenue by June 2021. In addition, by April 2021, the Kenyan government will establish a 14% VAT (Value Added Tax), which will be charged on digital marketplaces, such as electronic commerce, online subscriptions, and other digital services.

South Africa

The South-African government plans to impose local content quotas on streaming services such as Netflix. The proposal is included in the draft white paper on Audio and Audio-visual Content Services policy framework, which is currently open to public consultation.

The goal is to ensure local content quota in on-demand content services, which should not exceed 30% of the video catalogue. Communications and Digital Technologies minister Stella Ndabeni-Abraham stressed that “the proposal for 30% of the South African content in the platforms’ catalogues is to ensure that on-demand content services contribute to the overall development of the creative industries similar to the traditional broadcasters”.

European Union

The European Audiovisual Media Services Directive, approved by the EU in November 2018, demands that video-on-demand (VOD) services allocate at least 30% of their online catalogues to local and European content. In addition, under the directive, EU countries can get streaming services, such as Netflix and Disney Plus, to invest in producing local content. In this context, the French government plans to propose for VOD services three separate local investment rates of 20%, 22.5% or 25% of their annual turnover, which would be reinvested in the production of local film and TV programs; besides, 85% of this investment would be spent on French-language content.

According to Variety, today the part of the European content in the online catalogues of Amazon Prime Video, Netflix and Disney Plus varies considerably. Focusing on four EU countries (France, Italy, Germany and Spain), the European content in the Amazon Prime Video catalogue varies from 27% to 39%, in the Netflix catalogue from 19% to 24%, and in Disney Plus catalogue from 4% to 6.5%.

South Korea

End January, the South Korean government required global tech companies, such as Google, Facebook and Netflix, as well as national online platforms, such as Naver, Kakao and Wavve, to provide stable online services. Under the amendment included in the revised Telecommunications Business Act, which took effect in late 2020, online content service providers are accountable if they fail to maintain stable services and they also should report services errors to the ministry of Science and ICT. According to the ministry, Google accounts for a 25.9% of the country’s daily data traffic, followed by Netflix at 4.8% and Facebook at 3.2%. Google was the first company required to submit a report to the ICT ministry after its services, including Gmail and YouTube, went down for around 45 minutes.

In addition, early January, Netflix signed leases on two production facilities outside of Seoul in order to deepen its investment in Korea, notably in original Korean films and TV shows. From 2015 to 2020, Netflix has spent 700 million USD on Korean content, including 80 shows made in South Korea.

Australia and France facing Google

End January, Google has threatened to remove its search engine from Australia over the attempt of the central government to introduce a new digital media code regarding regulation of online platforms. The mandatory code of conduct would compel Google, Facebook and potentially other platforms to pay local news media companies for providing their content in search and sharing it on social media. According to Google, the new code would “dismantle a free and open service that’s been built to serve everyone […] breaking a fundamental principle of how the web works”.

At the same time, following the application of the EU Copyright Directive, Google and a group of French newspapers (Alliance de la Presse de l’Information Générale) signed an agreement, which involves “neighboring rights” and establishes a framework for Google to negotiate individual licence agreements with newspapers on digital copyright payments. The payments will be based on criteria, such as the daily volume of publications, monthly Internet traffic and “contribution to political and general information”.

Indonesia

Indonesia may pursue a plan to establish a digital tax to technology companies on the income they generate in the country. Finance minister Sri Mulyani Indrawati stressed that “we hope for a global taxation agreement […] but it does not mean we cannot collect the taxes. The difference is we will not be doing something that is based on a formula advocated by the Organisation for Economic Cooperation and Development”. In July 2020, Indonesia, Southeast Asia’s biggest economy, imposed a 10% VAT on digital services on non-resident Internet companies. The Indonesian decision was largely linked to the economic impact of the COVID-19 pandemic. The tax is applying to companies that have a “significant economic presence” in Indonesia operating in sectors, such as big data, multimedia and software. As such, in November 2020, Indonesia collected 20.9 million USD from 22 digital technology companies.

In addition, Disney Plus Hotstar, a low-cost version of Disney Plus, launched in September and boosted Indonesian VOD market. Early January, paying subscriptions to video services reached 7 million in Indonesia, a net addition of about 3.6 million subscribers between September 2020 and January 2021. Disney Plus, the market leader, picked up 2.5 million subscribers, followed by regional operator Viu with 1.5 million subscribers, Vidio with 1.1 million, and Netflix with 0.85 million.

Additional readings for the February report:

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- “Artificial divide: How Europe and America could clash over AI”, European Council on Foreign Relations, 20 janvier 2021, Link.

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- Kenya eyes 45 million USD in revenue as it implements digital services tax, Techpoint.Africa, 12 janvier, Link.
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- Europe's Streaming Showdown is Coming to a Head, Variety, 10 décembre, Link.
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- Google is threatening to pull its search engine from Australia. So what does that mean for you? ABC News, 25 janvier, Link.

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