

Global watch on culture and digital trade

POLICY AND ECONOMIC CHALLENGES FOR THE GOVERNANCE OF ONLINE PLATFORMS

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Analytical report, May 2021

The May report, first, highlights the compatibility between the United States-Mexico-Canada Agreement (USMCA) and a new Mexican draft bill aiming to impose quotas of national content on the catalogues of digital audiovisual platforms and it also analyzes recent regulatory challenges related to Artificial Intelligence (AI) and the financial contribution of platforms to cultural creation. Second, it turns to several cross-national activities of online platforms, focusing on their expansion in new markets (Sub-Saharan Africa, Australia, New Zealand) and on the issues related to their content spending and the remuneration of creators.

Regulation of online platforms

Incompatibility between the new Mexican legislation on online video services and the USMCA?

The Mexican government seeks to promote a new Federal Cinematography and Audiovisual Law, which would impose a 15% quota of national content on the catalogues of streaming platforms, such as Netflix or Amazon Prime Video. However, according to the Latin American Internet Association ([ALAI](#)) and the Alliance for Trade Enforcement ([AFTE](#)), the introduction of quotas in the Mexican online audiovisual market could initiate international arbitrations against Mexico for violations of the USMCA.




In an interview in the El Heraldo de México, Sissi de la Peña, spokeswoman for ALAI, mentioned that a new legislation which will impose quotas of national content to online platforms will “violate the Telecommunications and Digital Trade chapters of the USMCA” and, more specifically, the provisions that indicate that none of the parties will grant less favorable treatment to a digital product. As such, following the introduction of quotas, tech companies could “initiate arbitrations arguing discriminatory treatment”. Besides, according to AFTE, which brings together 19 of the major US business associations, the new law could violate various articles of USMCA, such as articles 14.4, 14.10, 15.3 and 19.4. It can be said that free trade agreements incorporate various kinds of norms and reservations regarding the definition and treatment of digital cultural content. As such, if the negotiators do not include explicit cultural exception clauses in several chapters of the agreement, there is a risk of having strong consequences upon the capacity of governments and regional entities to develop and implement policy measures for the protection and promotion of diversity of cultural expressions in the digital environment.

In addition, Ricardo Monreal, the leader of the ruling National Regeneration Movement (MORENA) in the upper house of Mexican legislature, decided to postpone the Senate’s discussions on the project of the new Federal Cinematography and Audiovisual Law. The postponing of the discussions in September is related to criticisms coming from audiovisual professionals regarding the introduction of the 15% quota of national content on the catalogues of streaming platforms. According to criticisms, the quota would not have the expected result but it could generate a reverse result that would benefit the distributor Videocine rather than the independent producers and filmmakers. According to the Mexican Institute of Cinematography, Videocine is the most powerful distributor of Mexican cinema. As such, the streaming platforms would “buy the titles of Videocine which would attract the largest audience” in order to meet the quotas imposed by the new law.

The e-commerce negotiations, a challenge to artificial intelligence regulation

The action of the European Union (EU) to regulate AI could be constrained by the future plurilateral agreement on electronic commerce, that many members of the World Trade Organization (WTO) are currently negotiating.



In this sense, according to a report drafted by the Institute for Information Law, University of Amsterdam and published by the Federation of German Consumer Organization, several EU policy initiatives for AI governance, such as the Digital Services Act, risk being inconsistent with the WTO electronic commerce proposal “on source code, unless they neatly fit the GATS (General Agreement on Trade in Services) general exceptions”.

More specifically, the study concludes that “the source code clause within trade law indeed restricts the EU’s right to regulate in the field of AI governance in several important ways”. For instance, the EU goal to mandate external audits on AI systems will be “confined to the policy space that is allowed under trade law”. As such, the source code clause in trade agreements would restrict the access to computer and machine learning algorithms – which are expressed in source code – but also to the interfaces of an AI system.

France: discussions around the draft decree on on-demand audiovisual media services

In the framework of the transposition of the EU “Audiovisual Media Services” directive, the French government wishes to implement in July the SMAD (Audiovisual Media Services on Demand) decree, which will impose financial obligations toward video on demand (VOD) platforms. The draft decree will introduce three contribution rates. Platforms should invest 20%, 22.5% or 25% of their turnover generated in France to the production of French and European works. The higher the rate applied, the more platforms will be able to offer films quickly after their theatrical release. These amounts will also be subject to sub-quotas: 80% (for VOD services) and 85% (for subscription services) of the amounts should be invested to works of French expression.

However, Kerstin Jorna, Director General at the European Commission (Internal Market, Industry, Entrepreneurship and SMEs) expressed concerns, stressing that “the minimum production rates in French are likely to generate advantages for production firms established in France and they are expected to be significantly higher than those which should be proportional by case-law”. In addition, at the end of March, the Conseil supérieur de l’audiovisuel approved the draft decree, underlying, however, that the calculation of the turnover of VOD services would prove strongly complicated. For instance, Amazon Prime Video is an online service integrated into another larger program (Prime) or a part of subscriptions of Netflix and Disney Plus is linked to third-party distributors like Canal Plus.

Worldwide activities of online platforms

Music streaming services in Africa

In mid-March 2021, the Nigeria-based music streaming service Boomplay and Universal Music Group (UMG) have signed an expanded agreement in order to extend licensing of UMG's music catalog from 7 to 47 countries across the African continent. New markets include, among others, South Africa, Ethiopia, Cameroon and Senegal.

Boomplay launched in 2015 and it is currently one of the main pan-African music streaming services, growing rapidly. In July 2018, it had 17 million monthly users, whereas in June 2020, it grew to 75 million users, with 86% of them living in sub-Saharan Africa. Boomplay is owned by Transsion Holdings, the China-based top phone-maker in Africa and NetEase, a Chinese Internet company that has its own large NetEase Cloud Music Service in its homeland. As Quartz Africa noticed, "much of Boomplay's growth is driven by coming pre-installed service on Transsion smartphones". During the music summit NY:LON Connect, Boomplay managing director, Martha Huro revealed that 70% of Boomplay streams are made on African content, adding that today "our greatest competition is piracy. It's not each other as digital service providers".

It is worth mentioning that Africa becomes a region where the big US/Western tech companies and the Chinese ones are in head-to-head competition for better positioning themselves in the regional music-streaming market and benefitting from the high potential of the African music industry. As such, end February 2021, Spotify announced its significant launch into 39 additional African countries, including Angola, Cameroon, Nigeria, Senegal, Zambia and Uganda. For its part, end April 2020, Apple Music, previously available in 13 African countries including South Africa, Nigeria and Kenya, announced the extension of its services to 25 more countries, such as Angola, Algeria, Senegal.

In this context, Apple Music has developed a targeted strategy in order to promote dynamically the local artists and content. In July 2020, Apple Music launched a new artist discovery program in Africa called Africa Rising aimed at "identifying, showcasing and elevating rising African talent" and, in March 2021, it launched its campaign Africa to the World, a definitive collection of original and exclusive content from continent's artists. The music platform is available in 33 countries in Sub-Saharan Africa.



Finally, Tencent-owned music streaming platform JOOX is already available in South Africa and it is planning to roll out its services to other music markets in Africa. JOOX, controlled by the Chinese tech giant, is one of the largest music platforms in several countries in South East Asia, such as Malaysia, Indonesia, Myanmar and Thailand.


iQIYI in Australia and New Zealand

Online video platform iQIYI, controlled by the Chinese tech giant Baidu, is seeking to start operating in Australia and New Zealand. It will set up a local office in May with its own marketing, promo and business development staff. The goal is to set up operations via the local partner Sun Entertainment Production. Recently, iQIYI has rolled out its services in South East Asia and has opened a Singapore headquarter to serve as base of its regional expansion. It is worth noting that the online video market in Australia and New Zealand is dominated by Netflix and local platforms such as Stan (part of Nine Entertainment) in Australia and Neon (part of Sky network) in New Zealand.

In addition, in Australia, mid-March 2021, a coalition of actors, such as Simon Baker, Bryan Brown and Marta Dusseldorp, launched a campaign aiming to convince parliament to introduce regulation for requiring video streaming services to spend 20% of their local revenue on new Australian content. For its part, the Australian government aims to modernize television and audio-visual regulation in Australia and it announced a public consultation, seeking views on the proposed measures outlined in its Media Reform Green Paper. Among the measures, the Green Paper proposes the introduction of an Australian content spend obligation on VOD services. The Australian government has extended the public consultation to May 23.

Payment rates from music streamers

Apple Music's payment rate for artists and labels is a 0.01 USD per stream. This rate appeared in an email newsletter sent by Apple to labels, publishers and artist community and first reported by the Wall Street Journal on April 16. As the Wall Street Journal noticed, the disclosure "reflects music streaming services' increasing efforts to show they are artist-friendly".



The Apple Music's rate is significantly higher than what Spotify, the world's largest music-streaming service, pays music right-holders per stream. Spotify generally pays between 0.003 USD and 0.005 USD per stream. It is worth, however, stressing that what artist will be paid per stream depends on the distribution contract and listener base. In other words, when a streaming service pays artists, it is important to focus on "who owns each song and who distributes it".

Content spending from Netflix and Amazon Prime Video

Netflix revealed that it will spend over 17 billion USD on original content in 2021, insofar as "the production delays from COVID-19 in 2020 will lead to a 2021 slate". The content spending from Netflix reached 11.8 billion USD in 2020 and 13.9 billion USD in 2019. For its part, Amazon increased considerably its content spending during the COVID-19 pandemic. Amazon spent 11 billion USD on TV series, movies and music for its Prime services in 2020, an increase of 41% from 7.8 billion USD in 2019. According to the annual report, Amazon has more than 200 million Prime members worldwide.

Additional readings for the May report:

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- EU Artificial Intelligence regulation at risk in WTO e-commerce deal, study says, Euractiv, 27 janvier 2021, [Link](#).
- Quotas d'œuvres françaises et chronologie des médias : la Commission européenne sensible aux arguments de Netflix, Le Monde, 16 avril 2021, [Link](#).
- Commission européenne, CSA, Netflix : les avis divergent sur le projet de décret SMAD, Les Numériques, 14 avril 2021, [Link](#).
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- Chinese Streamer iQIYI Eyes Australia, New Zealand Moves, Variety, 19 avril 2021, [Link](#).
- How local content rules on streamers could seriously backfire, The Conversation, 17 mars 2021, [Link](#).
- Apple Music Reveals How Much It Pays When You Stream a Song, The Wall Street Journal, 16 avril 2021, [Link](#).
- Amazon Spent \$11 Billion on Prime Video and Music Content in 2020, up 41% From Year Prior, Variety, 15 avril 2021, [Link](#).

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