

Global watch on culture and digital trade

ONLINE CONTENT, DIGITAL PLATFORMS AND GOVERNANCE: CROSS-NATIONAL CHALLENGES

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Analytical report, March 2021

The March report, first, highlights the compatibility between the United States- Mexico-Canada Agreement (USMCA) and a new Mexican draft bill aiming to curb the power of social media platforms and analyzes the developments within the digital tax talks and the plurilateral e-commerce negotiations. Second, it turns to several policy initiatives regarding the governance of online platforms. The focus will be on India, China, Australia and the United States.

Trade agreements, digital technologies and culture

Mexico, telecommunications law and USMCA

In Mexico, Ricardo Monreal, the leader of the ruling National Regeneration Movement (MORENA) in the upper house of legislature, has proposed a 52-page draft bill to restrict the power of social media platforms and grant the country's telecoms regulator considerable authority. The proposed amendment to the federal telecommunications law would oblige social media companies with more than a million users, including Facebook, YouTube or Twitter, to "request authorization" from the Instituto Federal de Telecomunicaciones (IFT), Mexico's Telecoms regulator, in order to continue operating in the country.



It would also require that social media platforms clear with national regulators any revisions to their terms of service before adopting them. In addition, the legislation would regulate content moderation practices and create a mechanism for users to dispute platforms' decisions to remove content or accounts, by appealing to the IFT and allow the government to fine companies for violations of the proposed rules. "This autonomous organism will decide if someone is violating constitutional rights on social media and if that's the case, the responsible companies will receive a financial sanction", Monreal said. The law would allow fines of up to 4.4 million USD for companies found to be violating users' right to free speech.

However, the proposal has been criticized for its potential implications both for freedom of expression and for Mexico's commitments in the digital trade chapter of the United States-Mexico-Canada Agreement (USMCA). The American Internet Association (ALAI) stressed that the reform would violate "the free and open nature of the Internet" by establishing a supervisory authority. In this respect, the new legislation would put unjustified barriers to digital trade and violate USMCA's provisions on national treatment by requiring special licensing only for certain social media platforms. In addition, according to Inside US Trade, the proposal would raise issues about how it would "regulate Internet content" holding companies liable for content moderation decisions in conflict with USMCA Article 19.17.3, which protects "suppliers or users of an interactive computer service" from liability for actions "taken in good faith" to remove content they consider "harmful or objectionable". Furthermore, the proposed legislation would be in conflict with the USMCA Article 19.11, which states that "no Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means, if this activity is for the conduct of the business of a covered person".

According to several analysts, the key reason for the proposed regulation is that Mexican authorities want to exercise more control over platforms and define what these companies can do, following the suspension of Donald Trump's accounts by US social media platforms.

OECD digital tax negotiations

Regarding digital tax negotiations, taking place within the Organization for Economic Cooperation and Development (OECD), the US Deputy Treasury Secretary has made clear that the United States will engage in these multilateral discussions to reach a conclusion that “will hopefully level the playing field”, adding that the US goal will be to “ensure that we protect America’s tax revenues and make sure that American companies can compete on a level playing field”. As such, the US administration still argues that countries’ digital services taxes, by their structure and operation, discriminate against US digital companies, are inconsistent with principles of international taxation and burden US commerce. Recently, 11 countries have adopted or have planned to implement a digital service tax: Austria, Spain, Italy, India, Indonesia, Turkey, France, United Kingdom, Brazil, the Czech Republic, Kenya.

End of January, negotiators from 140 countries virtually gathered for a three-day summit to carry on talks about how to tax the digital companies and set a deadline of June 30 to get a deal. As Pascal Saint-Amans, director of the OECD’s Centre for Tax Policy and Administration, stressed, “what’s at stake on digital is more symbolic than about revenue [...] we’re talking about a few billions, no more”.

E-commerce negotiations

Following the circulation of a consolidated negotiating text, several industry associations from around the world are pushing for the further development of plurilateral e-commerce negotiations within the World Trade Organization. In their January 26 letter, they called for an agreement that “can help realize the promise of cross-border access to technology and the trusted movement of data across regions”. In addition, end of January, the Global Services Coalition, a network of trade associations representing services businesses across the globe, published a statement, which stressed that any deal should include a “permanent ban on custom duties on electronic transmissions” and should allow “data to flow across borders in a manner that facilitates interoperability while respecting WTO members regimes for privacy and security”.



In the draft negotiating text, published by bilaterals.org and dated December 14, the negotiators also included a US proposition that would protect interactive computer services suppliers from liability for content shared on their platforms. As [Inside US Trade](#) mentioned, the US-proposed language for interactive computer services is identical to Article 19.17 of the USMCA. This proposition is based on the principle that technology platforms should not be “treated as the publisher or speaker of any information provided by another information content provider”, as stipulated by the Section 230 of the US Communication Decency Act of 1996. Clearly, the content of the plurilateral agreement on e-commerce could be influenced by initiatives already undertaken at the regional level, such as the USMCA, the [digital economy agreements](#) promoted by Singapore or the negotiating texts on Digital Services Act and Digital Market Act within the European Union. These initiatives deal with different logics regarding liability for platforms, triggering political confrontation in the context of multilateral negotiations.

Finally, a [research paper](#), published by United Nations Conference on Trade and Development (UNCTAD), cautions that many of the digital rules negotiated in the WTO plurilateral talks, have “high costs of compliance and could impact trade competitiveness of developing countries in the digital economy”.

Internet regulation

India: new regulation for online platforms

End of February, the [Indian government](#) released [Guidelines for Intermediaries and Digital Media Ethics Code](#), tightening rules that govern how social media and streaming services operate in India. The [new rules](#) will require social media, such as Facebook and Twitter, to take down unlawful content quicker and to provide the identity of the originators of unlawful messages on their platforms. Streaming services, such as Netflix, Amazon Prime Video and Disney Plus, will include a “classification rating”, receiving oversight over content containing sexually explicit scenes, violence and abusive language. In this respect, the [new regulations](#) incorporate oversight mechanism that will allow the government to ban content affecting “the sovereignty and integrity of India”. As in the case of Bollywood, the content of streaming services will be controlled by Central Board of Film Certification (CBFC), a State authority in charge of censoring the “disturbing movies”.



It is worth noting that streaming platforms, such as Netflix and Amazon Prime Video, have already adopted a self-regulation code, including a framework for age classification. The goal was to avoid government-imposed control and eventual censorship of the streaming sector. However, recently, Netflix or Amazon series attracted widespread complaints from Hindu communities due to “offending scenes”.

China: controlling the production chain of information

The Cyberspace Administration of China, the country’s Internet watchdog, will require bloggers, influencers and content creators on public social media accounts, known as self-media, to have a Chinese authorities-approved credential before they can publish on a wide range of subjects. As stated by the political scientist Titus Chen, “the regulators want to control the entire procedure of information production”.

Australia: new law on media and digital platforms

Australia has passed a new law that will force online platforms, such as Google and Facebook, to pay publishers and local media outlets to link their content on news feed and in search results. According to the News Media and Digital Platforms Mandatory Bargaining Code, a government-appointed arbitrator can decide on the final price that either platform will have to pay Australian news publishers, provided a commercial deal cannot be reached independently. Few weeks before the adoption of the law, Facebook shut down news pages in Australia in opposition to the legislation. Finally, Facebook restored them after the government included some amendments in the Code, including a provision that “must take into account whether a digital platform has made a significant contribution to the sustainability of the Australian news industry through reaching commercial agreements with news media businesses”.

US: streaming services and royalties

The Mechanical Licensing Collective (MLC), a non-profit organization designated by the US Copyright Office pursuant to the 2018 Music Modernization Act, announced that streaming platforms, including Spotify and Apple Music, have paid 424.3 million USD in “accrued unmatched royalties” (or “black box” money).



As MLC stated, once the organization analyzes the data, songwriters and publishers, who are MLC members, will receive royalty payments. The highest amounts transferred from digital streaming services to the MLC came from Apple Music (over 163 million USD), Spotify (over 152 million USD), Amazon (42 million USD) and Google/YouTube (over 32 million USD).

Besides, facing competition from Google, Apple and Amazon, Spotify is planning to launch into 85 more countries, especially into countries across Asia, Africa, the Pacific and the Caribbean, including Nigeria, Ghana, Pakistan, Bangladesh, Jamaica.

Additional readings for the March report:

- La saga australienne préfigure inévitablement d'autres affrontements entre la puissance des Big Tech et celle des États. Le Monde, 24 février 2021, [Link](#).
- Global online platforms, COVID-19, and culture: the global pandemic, an accelerator towards which direction? Media, Culture and Society, Février 2021, [Link](#).

Sources :

- Section 301 – Digital Services Taxes, [Link](#).
- USMCA-Chapter 19-Digital Trade, [Link](#).
- The 2018 Music Modernization Act, [Link](#).
- What is at stake for developing countries in trade negotiations on e-commerce? UNCTAD, [Link](#).
- Posicionamiento de ALAI regulación de plataformas iniciativa Senador Monreal, ALAI, 8 février, [Link](#).
- Mexican proposal to regulate social media companies sparks USMCA concerns, Inside US Trade, 26 février, [Link](#).
- Industry groups push for WTO e-commerce progress after text is issued, Inside US Trade, 26 janvier, [Link](#).
- Facebook, Netflix Face Fresh Scrutiny as India Tightens Grip, Bloomberg, 25 février, [Link](#).
- Netflix, Amazon, Disney+ Hotstar will now have to classify their content according to age in India, Business Insider India, 25 février, [Link](#).
- Australia passes new media law that will require Google, Facebook to pay for news, CNBC, 24 février, [Link](#).
- \$424 Million Up for Grabs as Music Streaming Services Fill MLC's Black Box With Unmatched Royalty Pay, Variety, 16 février, [Link](#).

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