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Global watch on culture and digital trade

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TOWARD STRONGER REGULATORY COOPERATION REGARDING DIGITAL ISSUES

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Analytical report, November 2021

The November report begins with the joint statement from the first meeting of the Trade and Technology Council (TTC) between the United States (US) and the European Union (EU), focusing on concrete outcomes and the perspectives of this bilateral regulatory cooperation. It also deals with new policy developments regarding the digital services tax and with the negotiations toward the European Digital Services Act. Then, the report turns to several cross-national activities of online platforms, emphasizing new policy partnerships and highlighting new economic initiatives developed by global platforms, such as Netflix, Spotify and Disney Plus, in Africa and Asia.

Regulation issues, digital trade and culture

Toward a US-EU cooperation regarding digital technology issues

End of September 2021, an inaugural meeting of the EU-US TTC took place in Pittsburgh, USA. The participation at the meeting of the US Secretary of State Anthony Blinken underscores the high-politics dimension of the bilateral discussions. Following the meeting, a joint statement was published, with a first set of deliverables.

As such, the US and EU seek to focus on five specific areas in the coming months with a view to achieve concrete outcomes: foreign investment screening, the use of Artificial Intelligence, the need to secure semiconductor supply chains, export controls for sensitive technologies, joint efforts to tackle global trade issues, such as non-market and trade-distorting policies and practices.

In addition, in the joint statement, the US and EU have identified common issues of concern around “illegal and harmful content and their algorithmic amplification, transparency, and access to platforms’ data for researchers as well as the democratic responsibility of online intermediaries”. In this sense, they plan to engage with platform companies “to improve researchers’ access to data generated by platforms, in order to better understand and be able to better address systemic risks linked to how content spreads online”. Moreover, the US and EU stated that their goal is to “identify and avoid potential new unnecessary barriers in trade in products or services derived from new and emerging tech, while ensuring that legitimate regulatory objectives are achieved”. Mid-October, the European Commission launched an online consultation platform on the TTC allowing stakeholders to share their views and provide common proposals on the work ahead.

Besides, Karan Bhatia, Google’s Vice President of Government Affairs & Public Policy, stressed the need for regulatory cooperation, pointing out that “the US should not enact new privacy and technology trade control regulations without consulting; the EU should pursue bilateral consultation to ensure technology initiatives like the Digital Market Act reflect the EU-US values-based alliance”. Finally, even though the joint statement represented a first concrete outcome from the TTC, the inaugural meeting did not specifically deal with data privacy and data flow regulation due to long-standing different approaches between the US and the EU. Besides, the TTC could also be challenged by the opposing views of the EU and the US on trade relationships with China.

Digital services tax

The US agreed to terminate its Section 301 investigations into digital services taxes imposed by France, the United Kingdom, Austria, Spain and Italy and affecting primarily large US tech corporations, such as Google or Facebook. This decision came after a deal to manage the transition to a new global tax regime for large highly profitable corporations.

In this sense, these countries will get to keep their taxes in place until a new international framework negotiated by the Organization for Economic Cooperation and Development (OECD) will be implemented – expected to occur sometime in 2023. The OECD deal has two Pillars. The first Pillar allows countries to tax companies doing business in their jurisdiction without a physical presence. In other terms, large multinational corporations are taxed based on where their goods and services are sold, rather than where they operate. The second Pillar would implement a global minimum business tax of 15 per cent. However, it is worth mentioning that if the amount that companies pay to the five countries mentioned above exceeds what they would have to pay under the new rules, the companies will be eligible for a credit.

Digital Services Act: Controversy around the country of origin principle

During the ongoing negotiations on the Digital Services Act within the European Council, a strong controversy has been triggered around the country-of-origin principle, one of the cornerstone principles of the Digital Single Market. Under this principle, the service providers are only subject to the jurisdiction of their country-of-origin or home country, i.e., the country where they are established. France is trying to turn the principle upside down suggesting the country-of-destination principle for the new EU's content moderation rules; however, this proposal is strongly criticized by several EU member states.

According to EURACTIV, under Ireland's leadership, a coalition of countries including Croatia, Czechia, Estonia, Finland, Latvia, Lithuania, Luxembourg, Slovakia and Sweden signed a non-paper, stressing that "the country-of-origin principle is fundamental in providing businesses with the necessary legal certainty" and "any changes to this fundamental Single Market approach would inherently undermine the development of digital services in Europe, allowing only the very large players to scale across the Single Market".

In reality, the country-of-origin principle means that almost all big US tech companies will be regulated by the authority of the country they are legally based in, i.e., either Luxembourg or Ireland. Apple, Google, Twitter, Microsoft and Facebook have their headquarters in Ireland, while Amazon is subject to Luxembourg's supervision. According to Politico, "the French government wants the lead regulators to be required to share data with other authorities, with the possibility of reallocating cases by mutual agreement".

France will take over the rotating presidency of the Council of the EU in January 2022. It is worth noting that the EU Audiovisual Media Services Directive includes a derogation to the country-of-origin principle in order to tax non-domestic video-on-demand operators targeting a given member state.

Worldwide activities of online platforms

New business plans and geographical expansion

Mid-October, the Walt Disney Company unveiled 27 new titles in Asian local languages including 18 originals, with the aim to create in total 50 Asia-Pacific original series and shows by 2023. The majority of the 27 new titles comes from Japan, South Korea and Indonesia. As Luke Kang, Walt Disney's Asia-Pacific president stated, "[video-on-demand] is quickly going mainstream and Disney Plus is well positioned to take part in that". Committing its resources toward developing original content in the region, Disney Plus is currently available in Australia, New Zealand, Japan, Singapore, India, Malaysia, Indonesia and Thailand and it will also launch in South Korea, Hong Kong and Taiwan in November 2021. In addition, Walt Disney Company announced the launch of "APAC Creative Experience Program", an investment project targeting content markets in Asia-Pacific and aiming to connect creators from this region with the company's filmmakers, creators and executives based in Hollywood through creative masterclasses, live panels and other activities.

In addition, Spotify developed new payment methods for its customers in Africa in order to consolidate its presence in the continent and to benefit from the growing mobile phone use. In Africa, an issue for several digital operators relates to payment on a continent where many people usually have a mobile phone rather than a checking account. As Phiona Okumu, Spotify's head of music for Sub-Saharan Africa stressed, "a lot of African countries are unbanked so that means they don't use credit cards and this is very true for a lot of East African countries. In Kenya, you use M-Pesa for the most part". In this sense, according to Reuters, Spotify secured alternative payment methods, such as M-Pesa, when it moved into Kenya in February. M-Pesa, owned by telecom operator Safaricom, is used to ship money, save, borrow and make payment for goods and services. By 2020, sub-Saharan Africa had 548 million mobile money accounts, up 12 per cent from 2019, more than any other region across the globe.

Finally, end of October, Spotify announced the launch of Spotify Premium for Students in 20 new countries, especially in the Middle East and Africa, including South Africa, Egypt, Lebanon, Morocco, Bahrain, Qatar. The offer is open to eligible university students, who could have the benefits that come with being a Premium subscriber for discounted price of a Premium subscription.

New partnerships

Netflix and UNESCO established a partnership for launching a short film competition on “African Folktales, Reimagined” across sub-Saharan Africa. Each of the six winners will be trained by industry professionals and will receive a production grant of 75 000 USD through a local company in order to develop, shoot and post-produce their films under the guidance of Netflix. The six short films will premiere on Netflix in 2022 as an “Anthology of African folktales”. Entrants must be citizens and residents of a country in sub-Saharan Africa and be aged 18-35. In addition, each of the six winners will also receive 25 000 USD in cash.

Ernesto Ottone, UNESCO’s assistant director-general for culture, said the organization had approached Netflix as it carried out the first complete mapping of the film and audiovisual industries in 54 states of the African continent. Published with the support of the government of the People’s Republic of China, the report stated the film and audiovisual sector in Africa remains historically and structurally “underfunded, underdeveloped and undervalued”, pointing out that the sector has the potential to create over 20 million jobs and generate 20 billion USD in revenues per year.

According to the report, only 44 per cent of countries have an established film commission and at least 50 per cent of the potential revenue of the sector is lost to the illegal exploitation of creative audiovisual content.

Fight against piracy

The Alliance for Creativity and Entertainment (ACE) has shut down the popular illegal streaming service, Electro TV Sat. The service received around 90 000 monthly visitors with substantial traffic coming from French-speaking countries.

It had been active since April 2020, featured 6 000 channels and 200 000 movie titles and TV series, affecting all the members of the ACE. Céline Boyer, Canal+ Group's head of Content Protection, stated "the many successes of ACE in the Maghreb region and CANAL+ Group's consistent focus on French speaking markets highlight a new dynamic in the global fight against piracy".

The ACE is a world's coalition dedicated to fight digital piracy and protect intellectual property rights. It was established at the instigation of the Motion Picture Association (MPA) and it gathers 34 members, such as Netflix, Amazon, Apple TV+, NBC Universal, Walt Disney, Viacom CBS. It is worth noting that early October, MPA Chairman Charles Rivkin accepted the Distinguished Cross of the Police Merit by the Spanish National Police in recognition of the work of the MPA and the ACE for reducing piracy. The MPA and ACE have worked for several years with the Spanish National Police to carry out significant operations in Spain and around the world and to dismantle networks that illegally distributed audiovisual content.

Additional readings for the November report:

- How Netflix affects what we watch and who we are – and it's not just the algorithm, The Conversation, 14 October 2021, Link.
- The music industry is booming and can afford to give artists a fairer deal, The Conversation, 28 September 2021, Link.

Indicative sources

- EU-US Trade and Technology Council Inaugural Joint Statement, 29 September, Link.
- EU and US hold first Trade and Technology Council meeting, Global Trade Review, 4 October, Link.
- Inaugural US-EU Trade and Technology Council Meeting Recap, Center for Strategic and International Studies, 1st October, Link.
- US reaches deal with France, others, agrees to end tax probes, Inside US Trade, 21 October, Link.
- France's plan to rein in Big Tech (and Ireland and Luxembourg), Politico, 27 May, Link.
- Ireland draws a red line on country of origin principle in DSA, EURACTIV, 24 September, Link.
- Disney Unveils Over 20 Series and Films in Asian Local-Language Streaming Push, The Variety, 13 October, Link.
- Disney Announces Asia-Pacific Originals in its Bid to Compete with Netflix, Forbes, 17 October, Link.
- Music streamers turn to telcos to make Africa pay, Reuters, 15 October, Link.
- Netflix and UNESCO search for African film-makers to 'reimagine' folktales, The Guardian, 14 October, Link.

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