



▶ FEBRUARY 2023 | N°31

Global watch on culture and digital trade

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TRANSNATIONAL DEBATES OVER THE TREATMENT AND VALUE OF DIGITAL CULTURAL CONTENT

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Analytical report, February 2023

The February report begins with the debates around intellectual property ownership in the age of Artificial Intelligence (AI), focusing on the lawsuit of Getty Images against Stability AI, the company behind Stable Diffusion, the popular AI art tool. The report also highlights the concerns expressed by US officials and tech companies toward the pending Canadian broadcasting legislation and its compatibility with provisions included in the Canada-United States-Mexico Agreement (CUSMA). The report emphasizes as well the struggle for subscribers and geographical expansion involving South-Korea-based digital comics companies or video streamers such as Netflix and Viaplay. Then, the report turns to new partnerships and business plans of transnational streaming services, focusing on Apple Music, Amazon Music, Netflix, Disney+, and TikTok.



Regulation issues, digital trade and culture

The debate over the value of human creativity in the age of Artificial Intelligence

Mid-January 2023, the visual media company [Getty Images](#) announced a lawsuit against Stability AI, the company behind Stable Diffusion, the popular AI art tool and free image generating tool. Getty Images alleged the tech company, which was recently valued at one billion USD, committed copyright infringement, copying and processing million of its images without obtaining the proper licensing. As stated in the [Financial Times](#), the legal case marks “the start of a battle fought between human artists and artificial intelligence companies over the value of human creativity”, sparking “an escalation in the global debate around intellectual property ownership in the age of AI”. The case will set a legal precedent for the British legal system and in the ways it will treat companies building generative AI – that can generate unique images and text. In addition, according to [WIRED](#), over the past few years, much of the innovation in AI, such as search engines like Google or social media sites like Instagram, has been “in ways to use more and more of the creators’ content for free”. This exploitative dynamic is increasingly damaging when it comes to the new wave of generative AI programs like [ChatGPT](#). Consequently, “without healthy content ecosystems, the content that generative AI technologies rely on to learn about the world will disappear”.

US concerns over Canadian broadcasting legislation

As stated in [Inside US Trade](#), in a document released in mid-January 2023, the Computer & Communications Industry Association (CCIA) stated that the pending Canadian broadcasting legislation (Online Streaming Act) is “explicitly discriminatory” and, if enacted, will violate the country’s commitments under the CUSMA. According to the [CCIA](#), Canada’s proposed Online Streaming Act would have “an adverse economic impact on US cross-border suppliers of online content by subjecting them to prescriptive obligations to ensure the production and promotion of Canadian content”. In a [press release](#), the CCIA also contended the bill “would certainly breach two rules under CUSMA: Article 14.10.1(b), which proscribes investment performance requirements intended “to achieve a given level or percentage of domestic content” and Article 19.4 on the “non-discriminatory treatment of digital products”. The CCIA represents major technology companies including Amazon, Apple, Meta, Google.



In addition, end of November 2022, during a meeting with the Canadian minister of International Trade, Export Promotion, Small Business and Economic Development, US Trade Representative Katherine Tai expressed concern that the pending broadcasting legislation could “impact digital streaming services and online news sharing and discriminate against US businesses”. In a similar vein, in mid-January 2023, the US Embassy in Ottawa expressed concerns that the Online Streaming Act could discriminate against US companies, stressing US officials are holding “consultations with businesses about how the Canada’s proposed legislation could affect their operations”. However, according to Canadian experts, the Online Streaming Act complies with the international standards.

It is worth reminding that, in May 2021, the Mexican government aimed to promote a new Federal Cinematography and Audiovisual Law, which would impose a 15 per cent 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 CUSMA. In an interview in the El Herald de México, Sissi de la Peña, spokeswoman for ALAI, mentioned that a new legislation which will impose quotas of national content to online platforms would “violate the Telecommunications and Digital Trade chapters of the CUSMA” and tech companies could “initiate arbitrations arguing discriminatory treatment”. Besides, according to AFTE, the new Mexican law could violate the articles 14.4 and 15.3 (National Treatment), 14.10 (Performance Requirements), and 19.4(Non-Discriminatory Treatment of Digital Products) of the CUSMA.

It can be said that free trade agreements incorporate various kinds of provisions and reservations regarding the definition and treatment of digital cultural content. As such, if the trade negotiators do not include explicit cultural exception clauses in one or several chapter(s) of the agreement, there is a high risk of having strong repercussions upon the capacity of governments to formulate and implement policy measures for the protection and promotion of the diversity of cultural expressions in the digital environment.

Worldwide activities of online platforms

Geographic expansion and struggle for subscribers

According to [TechCrunch](#), Korean storytelling companies want to promote webtoons and web novels in the Western market following their success in East Asia. In this context, South Korea-based [Kakao Entertainment](#) secured an approximately one billion USD investment in order to accelerate its three business divisions, including webtoons and web novels. The investment, which is considered as the largest amount ever received by a content company in South Korea, comes from Saudi Arabia's Public Investment Fund and the Singapore-based PWARP investment. In addition, mid-January, [Manta](#), the South-Korea-based digital comics publisher and n°1 comics app in the US, announced that the platform will begin offering its content in the Spanish language. It is worth noting that webtoons are serialized digital comics originating in South Korea and meant to be read top to bottom on mobile devices, such as smartphones and tablets. Digital comics gained popularity in South Korea and Japan in the early 2000s and caught on in the US in the 2010s. In 2014, Amazon acquired [comiXology](#), a service offering digital versions of comics. Finally, some examples of webtoons that were adapted into Korean movies ([K-dramas](#)) - and are available on transnational streaming services, such as Netflix -, are the drama Tomorrow, the zombie apocalypse series All of Us Are Dead, the thriller Hellbound and the drama True Beauty.

In the fourth quarter of 2022, [Netflix](#) added 7.66 million net new subscribers, compared to its own estimation of 4.5 million additions. This is the first quarter that Netflix's new ad-supported services is included in its results. This growth is a sign that the development of this cheaper version of its streaming service helps dealing with competition and attracts new customers. As such, [Netflix](#) counts 230.75 million subscribers worldwide, with a 4 per cent year-over-year growth in total subscriptions. The largest number of new subscribers comes from Europe, the Middle East (3.2 million), followed by the Asia-Pacific region (1.8 million) and Latin America (1.76 million). In addition, the company announced that the Netflix founder and co-CEO [Reed Hastings](#) would be stepping down from his position and transitioning to the post of executive chairman.



Viaplay, a streaming service launched in 2007 and owned by Viaplay Group based in Sweden, has signed multiple partnerships to make hundreds of hours of content from Viaplay Select available on partner media operators across the globe. As such, subscribers to the partner operators will be able to access Viaplay films and series, with a focus on Nordic noir, along with curated third-party productions. Since spring 2022, [Viaplay Select](#) has launched in more than 20 markets, including seven in Eastern Europe with Pickbox NOW, [Canada](#) with Bell Media's Crave service, Austria with Canal+ service, Australia with SBS, nine Latin American countries with DMD's Cindie, and Japan with WOWOW. Besides, Viaplay's direct-to-consumer streaming service is available in the Nordic and Baltic countries, Poland, the Netherlands, and the UK, and will launch in the US and Canada in the first quarter of 2023. It is worth noting that Viaplay Select is a branded content concept launched by the Viaplay Group in April 2022.

New partnerships and business plans

Netflix is planning its largest-ever lineup of South Korean content, with 34 new and returning films and series set to roll out in 2023. According to [Netflix's](#) announcement, "over 60% of all Netflix members" watched Korean titles in 2022. [Don Kang](#), Netflix's VP content in Korea, pointed out that "over the last year, Korean series and films have regularly featured in our Global Top 10 list in more than 90 countries, and three of Netflix's most-watched shows ever are from Korea". Throughout 2022 and right behind the US-based content including licensed Hollywood or Netflix's titles, films and series originating partly or wholly from [South Korea](#) proved the second-most popular content in the catalogue of Netflix in 89 different countries.

In addition, over the last ten years, global content spending almost doubled, from 128 billion USD to [243](#) billion USD, following large content investment from streaming companies in order to feed user bases. However, according to the [Financial Times](#), this decade-long spending boom on original television shows is expected to slow. "Analysts predict 2023 will be a pivotal year for the video media industry, hammered by the deteriorating economy". Hannah Walsh, research manager at research group Ampere, pointed out that "services will continue to focus on original content to compete in a crowded cost-sensitive market, but we are already seeing a shift in content commissioning to incorporate a greater volume of cheaper unscripted formats". According to [Variety](#), for the first time, Netflix content spending declined by five per cent in 2022. The streamer paid out 16.84 billion USD for content, which was less than in 2021, when the streamer dedicated 17.70 billion USD for content.



Disney Streaming is planning to add support for Imax-quality immersive sound for a selected batch of Marvel movies and other titles in 2023. It is the second phase of Disney+'s partnership with Imax after the launch of 13 Marvel movies in Imax's expanded aspect ratio in 2021.

In the US, Apple Music and Amazon Music decided to increase by a dollar their standard monthly subscription for their on-demand streaming services. Apple stressed that the price increase is due to higher licensing costs, intended to benefit artists and songwriters, who will "earn more for the streaming of their music". Amazon Music is also increasing its pricing in the UK, Germany and Japan. Besides, Spotify founder Daniel Ek stated that price rises are being considered for Spotify service in major markets, including the US. End of January 2023, Spotify announced that the company is reducing its staff by approximately six per cent of its workforce, which means around 600 employees will be out of work.

Finally, mid-January 2023, Rotana Music Group and TikTok have signed a licensing agreement for the short-form video app to access Rotana's catalog of Arab music.

Additional readings for the February report:

- Big Tech is firing employees by the thousands. Why? And how worried should we be? *The Conversation*, 25 January 2023, [Link](#).
- ChatGPT could transform society – and its risks require regulation, *The Hill*, 19 January 2023, [Link](#).
- Streaming Into 2023: Five Big Questions for the New Year, *Variety*, 28 December 2022, [Link](#).
- Could video streaming be as bad for the climate as driving a car? Calculating Internet's hidden footprint, *The Conversation*, 8 December 2022, [Link](#).

Indicative sources :

- Tech industry group: Canadian streaming bill would violate USMCA, *Inside US Trade*, 20 January 2023, [Link](#).
- ChatGPT stole your work. So what are you going to do? *WIRED*, 20 January 2023, [Link](#).
- Getty Images suing the makers of popular AI art tool for allegedly stealing photos, *CNN Business*, 18 January 2023, [Link](#).
- Can Korean digital storytelling platforms captivate North American and European audiences? *TechCrunch*, 24 January 2023, [Link](#).
- K-Pop and Media Giant KAKAO entertainment secures 966 million USD investment from sovereign wealth funds, *MusicBusiness Worldwide*, 12 January 2023, [Link](#).
- Netflix adds more than 7 million subscribers in Q4, smashing previous target, *Variety*, 19 January 2023, [Link](#).
- Viaplay Select on Canal+ in Austria, *Advanced Television*, 26 January 2023, [Link](#).
- Spotify announces layoffs to 6% of its workforce – stock price jumps in response, *Forbes*, 26 January 2023, [Link](#).
- TikTok signs licensing deal with Rotana Music Group, *Arab News*, 27 January 2023, [Link](#).

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