APRIL 2023 | N°33

Global watch on culture and digital trade

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DIGITAL CULTURAL GOVERNANCE: REGULATION ISSUES, AI CHALLENGE AND BUSINESS PARTNERSHIPS

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Analytical report, April 2023

The April report begins with the visit of US President Joe Biden in Canada and the concerns expressed by a collection of US-based business groups regarding the Canadian Online Streaming Act and its compatibility with the provisions of the Canada-United States-Mexico Agreement (CUSMA). The report also discusses an industry letter from music streaming services regarding anticompetitive and unfair practices from Apple. In addition, the report emphasizes the struggle for subscribers and geographical expansion among online platforms, focusing on the new pan-African streaming service established by South African media group MultiChoice, Comcast's NBCUniversal and Sky, as well as on the debates about content spending from Netflix and European broadcasters. Finally, the report turns to new partnerships and business plans, dealing with discussions about the treatment of artificial intelligence (AI) tools by the Writers Guild of America and with the agreement between Universal, Deezer and TIDAL.

Regulation issues, digital trade and culture

US Business groups vs Canadian regulations toward online platforms

According to Inside US Trade, mid-March, a collection of US business groups expressed concerns to President Joe Biden regarding upcoming Canadian regulations impacting on activities of online platforms. In their letter addressed to Joe Biden on 20 March, the business groups mentioned that “Canada is pursuing a number of problematic proposals and actions that could significantly limit the ability of US companies to export their goods and services and fairly compete in the Canadian market. It is critical for the United States to hold Canada accountable to its CUSMA”. More specifically, regarding the Online Streaming Act (Bill C-11), the business groups raised concerns, by pointing out that the pending Act “seeks to compel U.S. streaming services and social media platforms to fund and/or promote Canadian content on their platforms via extraterritorial regulatory agency actions. Consequently, U.S content creators – regardless of whether the content creator is an established publisher or an individual content creator – will be disadvantaged on platforms. Depending on the regulatory requirements for funding and technical requirements for promoting Canadian content, the cost of doing business in Canada will increase for U.S. online streaming services and social media platforms. This cost will ultimately trickle down to Canadian consumers, who will also experience less choice and personalization on the platforms”. In their letter, the business groups added that Bill C-11 “could have disastrous consequences for content production and distribution and could inspire other countries to implement similar content-preference schemes”. The business groups also raised concerns toward the Online News Act (C-18) and the introduction of a digital services tax in Canada.

The US Chamber of Commerce, the Coalition of Services Industries and the Information Technology Industry Council are among the ten signatories of the letter. Note that Biden visited Canada on 23-24 March to meet with Canadian Prime Minister Justin Trudeau and addressed the Canadian Parliament.

It is worth reminding that today several regions and countries have developed policy measures, such as content quotas and investment obligations, for involving large streaming platforms in the financing, distribution and visibility of audiovisual content. The key example is the European Union (EU), which adopted in 2018 a revised version of the Audiovisual Media Services Directive. In this respect, EU member states are obliged to implement European/national content quotas in the online catalogues of video-on-demand (VOD) streamers, whereas several EU member states - namelyFrance, Croatia, Germany, Spain, Slovenia, Italy, Portugal, Poland, Denmark, Belgium (French and Flemish communities) - and Switzerland are also developing investment obligations for VOD platforms. In a similar vein, ongoing debates in Australia, Mexico and South Africa are dealing with the perspective of establishing similar measures for online streamers in the new platform-based audiovisual economy.

Unfair practices: Spotify and Deezer against Apple

According to Reuters, in a joint industry letter addressed to the EU antitrust regulator's Executive Vice-President Margrethe Vestager, several music streaming services, such as Spotify, Deezer, and associations, such as European Publishers Council, urged the European Commission to "take action against Apple for anticompetitive and unfair practices". More specifically, the signatories explicitly mentioned that "[f]or years, Apple has imposed unfair restrictions on our businesses. These restrictions hamper our development and harm European consumers. They include the tying of the App Store to Apple's proprietary payment system, with its excessive commissions for app developers; the creation of artificial obstacles that prevent our businesses from freely communicating with customers; restrictions to developers' access to data of their own users; and capricious changes to terms and conditions". Finally, in their letter, the signatories pointed out that "the Commission should also swiftly enforce the Digital Markets Act, prioritizing Apple's designation as gatekeeper and ensuring that it complies with all the obligations related to app stores and mobile ecosystems".

Worldwide activities of online platforms

Geographic expansion and struggle for subscribers

The South African media group MultiChoice, which currently operates the video streamer Showmax, is partnering with Comcast's NBCUniversal and Sky to establish and launch a new large streaming service in Africa. According to BusinessTech, the new service will also operate as Showmax, combining "MultiChoice's investment in local content with international content licenced from NBCUniversal and Sky" and offering access to all MultiChoice's African content. This will be complemented by third-party content from HBO, Warner, Sony, as well as live English Premier League football. The new company will be 70% owned by MultiChoice and 30% by NBCUniversal. MultiChoice, which has the biggest market share in pay TV in Africa, stated "by using Comcast's global, scalable technology – in particular NBCUniversal's Peacock platform that already has over 20 million paid subscribers in the US – and their significant, international content portfolio, the new Showmax Group will be exceptionally well-placed to scale rapidly and become the leading platform in Africa". Further details about the new Showmax service, including launch date, will be announced at a later date. It is worth noting that Showmax launched in South Africa in 2015. Today, it rolls out across 60 countries in Africa and outside of Africa (Australia, France, Germany, United Kingdom, and others).

Regarding the geographical expansion of Netflix, early March, Reed Hastings, the streamer's founder and executive chairman, stressed Netflix's ability to "attract viewers from one country to content from another", by saying that Netflix has become "the biggest builder of cross-European culture in the European Union". It is partially because all the other networks are "national networks who specialize in one language group". Netflix "specializes in connecting". Besides, in 2022, the region Europe-Middle East-Asia became the streamer's biggest by subscribers with 76.7 million, overtaking the 74.3 million in the US and Canada. Following the Hastings' claim, the European Broadcasting Union (EBU), which represents Europe's public broadcasting networks including the BBC, France Televisions and ZDF, has responded by stressing that the EBU members spent 21 billion USD in 2022 on "homegrown content", well above the investment of VOD services in Europe. According to the EBU's statement, "public service media are proud to be the biggest investors in European content. Our members finance 43% of all European content, excluding news and sport. The EBU's members were prioritizing European content on their VOD platforms with 95% of programming originating from a European country, compared to just 31% of the content available on Netflix".

New partnerships and business plans

According to Variety, the Writers Guild of America (WGA) has proposed allowing AI to write scripts, “as long as it does not affect writers’ credits or residuals”. In other terms, the WGA’s proposal to regulate the AI seek to ensure “the studios can’t use AI to undermine writers’ working standards including compensation, residuals, separated rights and credits”. As such, contrary to some expectations, the guild, the primary labour union which represents film and television writers in the United States, has not proposed a ban on the use of AI technology; instead, it treats AI as an “assistive tool for human writers” rather than as a human creator; so, a writer could use AI tools, like ChatGPT developed by Open AI, to help write a script without having to share writing credit and divide residuals. Likewise, “a studio executive could hand the writer an AI-generated script” to edit or polish and the writer would still be considered the first writer on the project.

On his side, Open AI’s co-founder and president, Greg Brockman, pointed out that the question about intellectual property rights is like “asking a question about exactly how copyright should work right at the creation of the Gutenberg Press. We’re going to have an answer”. On 16 March, the US Copyright Office declared that AI-assisted works could be eligible for copyright protection”. According to The Guardian, Marc Guggenheim, who has numerous film and TV credits, stressed “right now I don’t think AI is ready for primetime in terms of being able to write scripts or craft stories but I see a world where it absolutely will be able to do that. Look at how fast the technology has advanced in the past couple of months even. It probably will be a real threat to writers down the road”, adding that “if AI is going to tell stories from the perspective of its programmers, essentially, then you have to worry about the lack of diversity among the programmers”.

In addition, according to Billboard, the music streaming services TIDAL, Deezer and Universal Music Group announced that they are partnering to test new potential payment models that would more fairly reward artists and develop a more artist friendly music streaming service. Deezer’s chief executive, Jeronimo Folgueira, stressed “working together with the label and the artists to figure out ways of helping the artist directly access their fanbase and monetize that fandom would benefit us and them as well … the platforms like Deezer and Spotify, we’re not making enough profits. And many artists are struggling to make a living. So, for the system to be viable, we need to grow the pie. That has to be the number one focus”.

According to Michael Nash, Universal's chief digital officer, "it is too early to describe the new model … but paramount will be rewarding artists who bring fans on to streaming services and keep them there longer, as will offering fans different returns for coming on board". It is worth noting that the France-based streaming service Deezer was one of the first platforms to commit "to exploring alternative payment models to help assure artists are compensated fairly and in September it launched a campaign for a user-centric payment system". Besides, TIDAL already has some of the highest streaming rates in the industry, being one of the few to pay over one cent per stream when the average is 0.0128 USD per stream.

Finally, according to Hollywood Reporter, global streamers' original content spending will grow to 26.5 billion USD in 2023, a 14 percent increase from 23.2 billion USD in 2022, representing "more than a quarter of total original content expenditure worldwide". However, as research firm Ampere Analysis mentioned, this rate of growth in investment is slower than in prior years and it shows "a marked slowdown from the 45 percent increase recorded from 2021 to 2022". The focus is on six key transnational streamers: Netflix, Amazon Prime Video, Apple TV+, Disney+, HBO Max and Paramount+. In addition, according to Variety, Netflix is forecasted to spend 1.9 billion USD on local content in the Asia-Pacific region in 2023, representing a 15% increase from last year.

Additional readings for the April report:

Interactive cinema: how films could alter plotlines in real time by responding to viewers' emotions, *The Conversation*, 20 March 2023, Link.

Junos 2023 reminds us how Canadian content regulations and funding supports music across the country, *The Conversation*, 14 March 2023, Link.

AI isn't Hollywood's Villain – it's a flawed hero, *WIRED*, 13 January 2023, Link.

Indicative sources :

- Business groups to Biden: Raise trade concerns during Canada visit, *Inside US Trade*, 28 March 2023, Link.
- Spotify joins media firms to urge EU action against Apple's 'unfair practices', *Reuters*, 19 January 2023, Link.
- WGA would allow artificial intelligence in scriptwriting, as long as writers maintain credit, *Variety*, 21 March 2023, Link.
- Multichoice is launching a new mega streaming service with Comcast, *BusinessTech*, 2 March 2023, Link.
- Reed Hastings says Netflix is "biggest builder of cross-European Culture", *Deadline*, 6 March 2023, Link.
- 'Of course it's disturbing': will AI change Hollywood forever? *The Guardian*, 23 March 2023, Link.
- AI meets Hollywood, *Forbes*, 23 March 2023, Link.
- Can Deezer pioneer a new streaming royalty model with 'more flexibility', *Billboard*, 22 March 2023, Link.
- Global streamers' original content spend increase to slow in 2023 amid "more cautious approach", *The Hollywood Reporter*, 24 March 2023, Link.

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Layout by IFCCD