

# Global watch on culture and digital trade

## **DIGITAL CULTURAL GOVERNANCE: BETWEEN ARTIFICIAL INTELLIGENCE CHALLENGES AND REGULATION ISSUES**

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Analytical report, May 2023


The May report begins with the regulatory issues around generative artificial intelligence (AI) systems, by analyzing in which ways the existing law should apply to copywritten works the AI trains on and how public authorities should treat those works. The report also discusses the negotiations on the European Artificial Intelligence Act and in which ways the European Parliament seeks to frame the debate about generative AI systems. Besides, the report analyzes the UK Government's new draft Media Bill, dealing with streaming platforms, such as Netflix, Disney+ and Prime Video. In addition, the May report emphasizes the struggle for subscribers and geographical expansion of streaming services, highlighting a report published by the European Audiovisual Observatory and a study from Netflix about the African audiovisual streaming market. Finally, the report turns to new partnerships and business plans, dealing with the decision from Amazon and Apple to release their film productions in cinema theaters and with the launch from Warner Bros. Discovery of the new streaming service Max.

## Regulation issues, digital trade and culture

### Creation, copyright and artificial intelligence

As the [New York Times](#) mentioned, today lawmakers are starting dealing with issues related to “authorship and ownership” regarding cultural works and creative machines. On the one hand, the generative AI systems, like Open AI’s ChatGPT, can produce “copycats of human works that dilute the market” and, on the other hand, they can use creators’ works, without their permission, as training data. Indeed, as [CNN](#) pointed out, AI learns by “either training on existing works on the internet” or through a library of cultural works given to the AI by humans. In April, [Universal Music Group](#), which controls about a third of the global music market, sent urgent letters to streaming platforms, such as Spotify and Apple Music, asking them to “block artificial intelligence platforms from training on the melodies and lyrics of their copywritten songs”. Besides, the company claimed that the training generative AI that uses artists’ music violates the company’s agreements and copyright law. Clearly, no regulations exist about what generative AI systems can and cannot train on. The US Copyright Office announced that it will publish public input on “how the law should apply to copywritten works the AI trains on and how the office should treat those works”.

It is worth noting that mid-April [Spotify](#) and Apple Music removed a song that used AI to clone the voices of music artists Drake and The Weeknd after it went viral on TikTok. In addition, [Reuters](#) stressed that, as of mid-February, there were over 200 books in Amazon’s Kindle store listing ChatGPT as an author or co-author. However, there are strong “concerns over authenticity, because ChatGPT learns how to write by scanning millions of pages of existing text. An experiment with AI by CNET resulted in multiple corrections and apparent plagiarism before the tech news site suspended its use”. [Justin Jutte](#), assistant professor in intellectual property law at University College Dublin, stated that “this is a problem that we encounter in many areas of AI, that in order to create something with AI, we need to have learning materials and this, in many cases, includes material that is protected by copyright”. On her side, [Hayleigh Boshier](#) pointed out that AI programs could be seen to have infringed “music rights in at least two ways: by using the music to train the AIs and in copying parts of the music that the AI produces from the training data”.




In mid-March, a new coalition called the Human Artistry Campaign was established in the United States in order to “ensure AI technologies are developed and used in ways that support human culture and artistry – and not ways that replace and erode it” and to advocate AI best practices, which emphasize “adherence to existing law including copyright and intellectual property”. The campaign is supported by 40 major organizations, such as the Recording Academy, the National Music Publishers Association, the Recording Industry of America, and many others.

### **Negotiations on the Artificial Intelligence Act**

The Artificial Intelligence Act is a landmark proposal from the European Union (EU) to regulate AI based on its potential to cause harm. The European Parliament is set to finalize its position on the legislation. As EURACTIV mentioned, the meteoric rise of OpenAI’s ChatGPT “played a role in disrupting the discussions, as EU lawmakers scrambled to decide how to deal with a technology that is moving and is not covered in the original proposal”. According to the Financial Times, the European Parliament is preparing “tough new measures over the use of artificial intelligence, including forcing chatbot makers to reveal if they use copyrighted material”, a measure designed to allow “content creators to demand payment”. As such, EU lawmakers seek to distinguish general purpose AI from foundation models, including generative AI systems like ChatGPT and Stable Diffusion, introducing a stricter regime for the latter. Foundation model is defined as “an AI system model that is trained on broad data at scale, is designed to generality of output, and can be adapted to a wide range of distinctive tasks”. In this respect, EU lawmakers aim for the provider of foundation models to comply with a series of requirements. These requirements include data governance measures, involvement of independent experts for testing and mitigating risks to safety, fundamental rights, the rule of law. In addition, generative AI models would have “to make publicly available a summary disclosing the use of training data protected under copyright law”.

### **UK regulation toward video-on-demand platforms**

Following the release of the Government’s new draft Media Bill, streaming platforms including Netflix, Disney+ and Prime Video will be “subject to more regulation” in the United Kingdom (UK). With the aim of leveling the playing field, video-on-demand (VOD) platforms will be under the purview of the UK’s media regulator Ofcom, which has so far overseen public and private broadcasters.



As such, the Ofcom “content code” should also be applied by VOD platforms, protecting “audiences from a wider range of harmful material”. Rules around harmful material have applied to the national broadcasters for decades, facing high fines if they break them. In addition, according to [Variety](#), the draft Media Bill has included “new protections for public service broadcasters such as the BBC and ITV, ensuring their on-demand services such as iPlayer and ITVX are easily discoverable on smart TVs”. Finally, according to [Forbes](#), streaming services will have to “provide subtitles on 80 percent of their programs, while 10 per cent must have audio description and five per cent signed interpretation”. As [Hollywood Reporter](#) stated, “for national governments, the oversized success of Netflix and other global streamers in an increasingly digital economy is the reason they need to be regulated”.

## **Worldwide activities of online platforms**

### **Geographic expansion and struggle for subscribers**

According to [Business Insider](#), Netflix announced its plans to expand its operations in Africa, “following the success of its local content production ventures in the region” and notably of its South Africa series *Blood and Water*. According to the [report Netflix socio-economic impact](#), Netflix has invested 175 million USD in film content production in South Africa, Nigeria and Kenya combined since 2016, creating over 12 000 jobs. In South Africa, Netflix launched in 2016 and has invested in 173 licenced titles and commissioned 16 Netflix original South African series. As such, having invested over 125 million USD in productions between 2016 and 2022, Netflix invested 71% of its total investment in South Africa. In addition, Netflix was launched in Nigeria in 2016 and since then, over 23 million USD has been invested in 283 local licensed titles and in three commissioned titles.

According to a new report published by the [European Audiovisual Observatory](#) and titled *Film and TV Content in VoD Catalogues – 2022 edition*, 32 per cent of all works found in VOD catalogues are of European origin (produced in one or more countries members of the Council of Europe). Out of this, 21 per cent are from the 27 [EU](#) member states, while 11 per cent are listed as “other European works” produced in countries members of the Council of Europe. It is worth noting that “other European works” are mainly works produced in the United Kingdom. US-produced works represent 49 per cent of all works listed in VOD catalogues and other international productions account for the remaining 19 per cent.



Among the EU27 exported content on Subscription VOD services in Europe, the most exported content was French (27 and 24 per cent for films and TV series), followed by Spain, Germany and Italy. These four countries represent 59 per cent of the EU27 non-national exported films and 68 per cent of the EU27 non-national TV series. The report covers 971 VOD catalogues for film data and 497 VOD catalogues for data on TV series.

### **New partnerships and business plans**

Apple and Amazon are increasingly leaning into big-screen releases. As such, Apple plans to release its biggest movies in theaters, one month before they appear on its streaming service, Apple TV+ and aims to spend one billion USD a year on movies that get exclusively theatrical releases. In addition, Amazon released one of the biggest box-office successes of the year *Creed III* and gave Ben Affleck's *Air* a traditional release in cinemas around the globe. Amazon has also already committed to put around 15 new movies in theaters annually. According to [Bloomberg](#), "marketing is a big reason" most people in Hollywood including tech companies still believe movies need "a theatrical release to be an event". As such, according to [Variety](#), this move from Apple and Amazon is "a way to promote their respective streaming services" and their own content, as well as to get incremental revenue from other wells compared to going straight to streaming. Instead, Netflix co-CEO [Ted Sarandos](#) pointed out that Netflix will support its current model of making movies for its subscribers and does not intend to follow Amazon and Apple in embracing a traditional theatrical model.

Finally, Warner Bros. Discovery confirmed that HBO Max will be changing its name and branding to Max from 23 May 2023, bringing in new content from Discovery+ channels. According to [Variety](#), the company promises to feature more than 40 new titles and TV series every month. Max will be available in three different versions: Max Ad-Lite, Max Ad Free, Max Ultimate Ad Free. The latter will have an expanded catalog of content available. According to [the Verge](#), Warner Bros. Discovery decided to drop the HBO branding in order to "broaden the appeal of the app" beyond the content for adults. JB Perrette, president and CEO of the company, pointed out that "we all love HBO. And it's a brand that has been built over five decades to be the edgy, ground-breaking trendsetter in entertainment for adults. But it's not exactly where parents would most eagerly drop off their kids".



## Additional readings for the May report:

If ChatGPT wrote it, who owns the copyright? It depends on where you live but in Australia it's complicated, *The Conversation*, 25 April 2023, [Link](#).

Inside the music industry's battle with the UK government over AI song generators, *The Conversation*, 14 April 2023, [Link](#).

How the Online Streaming Act will support Canadian content, *The Conversation*, 5 April 2023, [Link](#).

## Indicative sources :

- New laws to help bring more great shows to British screens and airwaves, UK Government, 28 March 2023, [Link](#).
- Netflix's socio-economic impact: South Africa, Nigeria & Kenya (2016-2022), 2023, [Link](#).
- ChatGPT launches boom in AI-written e-books on Amazon, *Reuters*, 21 February 2023, [Link](#).
- AI Act: EU Parliament walking fine line on banned practices, *EURACTIV*, 14 April 2023, [Link](#).
- The Netflix tax: lawmakers increasingly take aim at streaming giants to fund local priorities, *The Hollywood Reporter*, 11 April 2023, [Link](#).
- Netflix to expand operations in Africa after successful investment in local content production, *Business Insider Africa*, 13 April 2023, [Link](#).
- 32% of all films and TV seasons in VOD catalogues are European productions and 21% are of EU27 origin, reveals the new EAO report, *Cineuropa*, 29 March 2023, [Link](#).
- Behind Apple and Amazon's Billion-Dollar Bet on Movie Theaters, *Bloomberg*, 27 March 2023, [Link](#).
- Warner Bros. Discovery explains why it's dropping the HBO Max name, *The Verge*, 12 April 2023, [Link](#).

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