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Global watch on culture and digital trade

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PLATFORMS, DIGITAL TRADE, AND CULTURE: ENSURING POLICY SPACE

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Analytical report, December 2023

The December report begins with the decision of the US administration to end its support for proposals on data flows, data localization and source code being discussed in World Trade Organization negotiations on e-commerce, representing a major shift in the US trade policy. The report also deals with the Digital Markets Act and the three legal challenges the European Union is facing toward its new legal framework seeking to regulate competition in the European digital market. In addition, the report highlights the on-going debates in India and New Zealand regarding the regulation of Video-On-Demand (VOD) platforms. Moreover, the report emphasizes new partnerships and business plans, focusing on Spotify and TikTok. Finally, the report turns to the struggle for subscribers and geographical expansion among streaming services, with those of Netflix and Disney+.

Regulation issues, digital trade and culture

A major shift in the US digital trade policy?

The Biden administration will end "its support for proposals on data flows, data localization and source code being discussed in World Trade Organization negotiations on e-commerce to ensure sufficient 'policy space' for the US and others to assess their approaches to digital trade". In a statement, the Office of the US Trade Representative (USTR) stated that "in order to provide enough policy space for those debates to unfold, the United States has removed its support for proposals that might prejudice or hinder those domestic policy considerations". As The Hill stressed, until now, the US has stood "against taxes on cross-border data flows, the requirement that data be stored in an export market (i.e. "data localisation") and demands that source code of software be shared with an importing country". In the past several years, these positions have been a key component in the US trade policy and have been "enshrined in the US-Mexico-Canada Agreement". In addition, mid-November, the US administration announced its intention to postpone Indo-Pacific Economic Framework talks on high-standard digital rules.

While business groups have strongly condemned the shift in the US trade policy, "not all are opposed to it". As The New York Times explained, "many smaller tech companies complain that big players engage in monopolistic behavior that should be regulated. For instance, Google has been accused of privileging its own products in search results, while Apple has been accused of charging some developers exorbitant fees to be listed in its App Store. A group of smaller tech companies called the Coalition for App Fairness thanked the USTR for dropping support for the so-called tech-friendly agenda at the World Trade Organization".

Platforms against EU Digital Markets Act

The European Union (EU) is facing at least three key legal challenges toward its new legal framework dealing with competition in the European digital market. According to Reuters, mid-November, Meta, TikTok and Apple have filed legal cases contesting decisions taken by the European Commission under its recently-introduced Digital Markets Act (DMA), "an EU law, set to come into force in the first quarter of 2024, that brings in tougher rules for tech companies and makes it easier for users to move between competing services".

While details have not been made public, Apple would challenge "the inclusion of its App Store on the list of gatekeepers". Meta said it disagreed with the Commission's decision to designate its Messenger and Marketplace services under the DMA. Besides, TikTok, owned by China's ByteDance said its designation risks "entrenching the power of dominant tech companies [...] and hampering the company's ability to grow". Microsoft, Google, and Amazon have not yet challenged the designations of their services under the DMA, whereas Meta did not appeal against the status of Facebook, Instagram and Whatsapp. As The Financial Times mentioned, "companies have until March 6 to comply with the new rules. Their appeals, however, do not enable them to escape from complying with the legislation. A court in Luxembourg is expected to rule on the appeals in a matter of months rather than years as has been the case traditionally with antitrust investigations".

It is worth reminding that in early September the European Commission unveiled its list of online services designated as gatekeepers, which "will now have six months to adapt to strict antitrust practices or face up to 20% global annual turnover fines". The list of gatekeepers includes Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft. TikTok's parent ByteDance is the sole non-US tech giant listed. The "gatekeeper" designation concerns companies owning "core platform services" that control digital market access between corporate sellers and end-consumers in the digital space. It concerns search engines, social media, intermediation services or exploitation systems. Alphabet is designated as a gatekeeper for eight core platform services, in the case of Meta, the list includes five of its services, three Apple services were designated, Microsoft and Amazon have two services concerned respectively and ByteDance is concerned only for its application TikTok. As such, 21 of 22 core platform services are operated by US-based companies.

India and VOD services

In India, streaming platforms, such as Netflix, Prime Video, Disney Hotstar, would likely be subject to recommendations coming from monitoring boards, which would be largely controlled by the Indian nationalist government and be unrepresentative of the diversity of the country's cultural and audiovisual environments. More concretely, the Ministry of Information and Broadcasting in India has prepared a draft for a new Broadcasting Services Bill, seeking to replace the current Cable Television Networks (Regulation) Act, 1995. The new bill aims to bring a consolidated legal framework for the broadcasting sector and extend it to Over-the-Top content and digital news.

However, it introduces both “Content evaluation committees”, a self-certification body that will certify the content of broadcasters and “Broadcast Advisory Council” to “advice the central government on programme code and advertisement code violations”. More specifically, to monitor content on streaming services, the Broadcasting Advisory Council, which will be established, will consist of five government members and five government-nominated “independent” ones from media, entertainment, broadcasting, child rights, etc. “Violating the code of conduct may result in temporary suspension, expulsion, advisory warnings, condemnation, and fines for platforms”. As such, powers assigned to the Indian nationalist government and consequently to Hindu right wing raise strong concerns to VOD platforms, such as Netflix, Disney Plus Hotstar and Prime Video.According to The Washington Post, “today, executives at the India offices of Netflix and Prime Video and their lawyers ask for extensive changes to rework political plots and remove passing references to religion that might offend the Hindu right wing or the political party in power, the Bharatiya Janata Party”.

New Zealand: new measures toward VOD platforms?

According to The Spinoff, in New Zealand, SPADA, the screen producers guild, is launching a campaign which seeks to make big streaming services, such as Netflix and Disney Plus, to pay a levy on their New Zealand’s revenue. The goal of this proposition coming from SPADA is to demand a levy on streamers to be invested back into local productions through the funding agencies. “Their opening bid is around 5%, which could bring in around 11 million USD per year into a sector that is suffering through both a tough macroeconomic climate and the prolonged impact of the still-live actors’ strike”. It is interesting to note that according to an interview to The Spinoff, Irene Gardiner, SPADA president, stressed that “internationally, some territories are going for quotas, some are going for levies, some are going for a mixture of both. Quotas, which is another way that some other countries are going on this, are very tricky because of the trade agreements that we have […] The streamers use our broadband infrastructure, which was partially paid for by New Zealand taxpayers. They don’t have any broadcasting regulations. And as everyone knows, they have been really devastating for viewership of the traditional free-to-air local broadcasters”.

Worldwide activities of online platforms

New partnerships and business plans

According to Billboard, Spotify is planning to implement three changes to its royalty model early next year that "would affect the lowest-streaming acts, non-music noise tracks and distributors and labels committing fraud". Spotify claims the changes will drive an additional one billion USD toward artists, "by redirecting the payments that had previously gone to fraudulent streams, noise content or distributors that do not distribute royalties below a certain amount". As such, according to the updated streaming payment policies of Spotify, starting in early 2024, "tracks must have reached at least 1000 streams in the previous 12 months in order to generate recorded royalties. Spotify will not make additional money under this model, and it will use the tens of millions of dollars annually to increase the payments to all eligible tracks". Under the new scheme, more than two-thirds of the tracks uploaded to that platform will not be eligible to receive royalties – but that change, notably, "will only impact about 0.5% of the royalty pool". However, this has triggered debate around the music industry, with some stressing the ethical dimension "of not paying artists for whatever streams they gathered simply because they were not popular enough". Besides, it is worth mentioning that in June 2023 digital music companies, such as DistroKid, UnitedMasters, and digital services suppliers, such as Spotify and Amazon Music, came together to establish the Music Fights Fraud Alliance, seeking to eradicate streaming fraud and streaming manipulation across digital streaming services.

According to TechCrunch, TikTok is teaming up with streaming music services, including Spotify, Amazon Music and Apple Music, "on a new feature that will allow users to save directly to their preferred streaming music app the songs they hear in TikTok videos". The addition comes at a time when TikTok's influence is increasingly a factor in propelling songs into viral hits and discovering new artists and new music. The Add to Music App feature appears as a button that says "Add Song" next to a track name at the bottom of a TikTok video. TikTok's Add to Music App is launching for users in the US and the UK in partnership with Spotify, Apple Music, and Amazon Music. TikTok said "it will roll out the feature in more markets in the coming months".

As Variety mentioned, the feature is separate from TikTok Music, "premium music-streaming service and app that is currently available to users in Australia, Brazil, Indonesia, Mexico and Singapore.

The company does not have plans at this point to launch TikTok Music in the US”. In a statement, Ole Obermann, TikTok’s global head of music business development, stressed that the Add to Music App feature creates “a direct link between discovery on TikTok and consumption on a music streaming service, making it easier than ever for music fans to enjoy the full-length song on the music streaming service of their choice, thereby generating even greater value for artists and rightsholders”.

Geographical expansion and struggle for subscribers

Early November, Netflix announced that its cheaper, ad-supported tier had reached 15 million global monthly active users. According to CNBC, “that’s triple the most recent figure, disclosed in May, and notable growth for Netflix as it laps a year since rolling out the subscription option”. It is worth reminding that “the introduction of advertising in 2022 was a stunning development for Netflix, which spent years insisting it would never run ads”.

In addition, Disney+ reported that its subscriptions are at 150 million, up from 146.7 million in the previous quarter. The quarter saw Disney’s Hulu reach 48.5 million subscribers and ESPN+ up to 26 million. According to the The New York Times, “the business model supporting Disney’s businesses like the broadcast network ABC was no longer working”. During an interview, Robert A. Iger, chief executive of the Walt Disney Company, explained that “the distribution model, the business model that forms the underpinning of that business and that has delivered great profits over the years is definitely broken. And we have to call it like it is”. As such, Disney announced that it plans to reorganize its involvement in ESPN and ABC and buy out Comcast’s stake in Hulu for 8.61 billion USD, “a long-expected move that distances the company from traditional TV and increases its bet on streaming”.

Additional readings for the December report:

Netflix is still growing its subscriber base – here’s how a local approach is helping, *The Conversation*, 3 November 2023, Link.

Who will write the rules for AI? How nations are racing to regulate artificial intelligence, *The Conversation*, 8 November 2023, Link.

Indicative sources :

- TikTok and Meta challenge the EU's landmark digital rules, *The Financial Times*, 16 November 2023, Link.
- How the Biden administration took the pen away from Meta, Google and Amazon, *The New York Times*, 27 November 2023, Link.
- US to end support for WTO e-commerce proposals, wants 'policy space' for digital trade rethink, *Inside US Trade*, 24 October 2023, Link.
- Apple files legal challenge to EU's Digital Markets Act, *Reuters*, 17 November 2023, Link.
- Broadcasting Bill: Cable TV like regulation to affect OTTs growth, say experts, *Financial Express*, 14 November 2023, Link.
- Netflix is a wasteland for NZ TV. A bold new campaign hopes to change that, *The Spinoff*, 30 October 2023, Link.
- Spotify unveils new streaming royalty policies, *Variety*, 21 November 2023, Link.
- TikTok's newest feature lets you save favorite songs directly to Spotify, Apple Music and Amazon Music, *TechCrunch*, 14 November 2023, Link
- Netflix ad-supported tier has 15 million subscribers, triple the previous count, *CNBC*, 1 November 2023, Link.

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