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Global watch on culture and digital trade

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ONLINE PLATFORMS, CULTURE AND REGULATION ISSUES IN AFRICA

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Analytical report, November 2020

The November report first analyzes the new proposals on the regulation of online platforms prepared by South Africa. Second, it focuses on the new strategies carried out by Netflix in the African continent and the place of regional online competitors. Third, it highlights a link in Netflix strategies between India and several African countries. Fourth, it emphasizes the concerns expressed by business groups regarding the new digital tax legislation of Mexico. Finally, it presents a state of play of ongoing discussions for the elaboration of three international instruments: a recommendation on ethics of artificial intelligence within the United Nations Educational, Scientific and Cultural Organization (UNESCO); the e-commerce negotiations within the World Trade Organization (WTO); and the negotiations on digital taxation within the Organization for Economic Cooperation and Development (OECD).

South Africa: new proposals for regulating online platforms

In South Africa, the governmental cabinet approved the publication of the report from the Presidential Commission on the fourth industrial revolution. In the report, the Commission recommends the introduction of a series of taxes, including a new digital tax for global technology companies such as Netflix, Amazon and Facebook. The Commission mentions that it is a priority for South Africa to participate actively in international efforts to ensure that global digital companies pay an equitable share of tax in the countries in which they operate.

The report added that the infrastructure investment needed to further digital services in South Africa can only be sustainably funded if global technology companies “are not allowed to avoid and evade tax in the manner in which they currently do so”.

In addition, the minister of Communications and Digital Technologies in South Africa, Stella Ndabeni-Abrahams, recently published a draft white paper entitled “A New Vision for South Africa 2020” and seeking to propose major changes in the regulations of the country’s broadcasting industry. The white paper suggests regulatory reforms regarding online platforms, including imposing licence requirements on global streaming services, such as Netflix, Amazon Prime Video, and Apple TV+. More specifically, the South African Broadcasting Corporation proposed that the new regulation should expand the definition of a TV licence in order to include services such as video-on-demand services.

These regulatory initiatives are strongly linked to the position taken by South Africa toward the plurilateral e-commerce negotiations within the WTO. South Africa and India, two key WTO members, refuse to join the e-commerce talks. One of the main issues is related to the WTO Moratorium on Customs Duties on Electronic Transmissions and the request from major economies participating in the talks, such as the United States (US), the European Union (EU), Japan, Canada and Brazil, to make the moratorium permanent.

According to the position of South Africa and India, the moratorium prevents developing countries from utilizing electronic commerce tariffs in order to develop their digital sectors in the same way developed countries, like the US, have used tariffs for other industries, such as agriculture, steel and aluminium sectors. In this respect, the two countries do not join the e-commerce negotiations because the main impact of the new deal could be the loss of the use of tariffs as a trade policy tool for supporting nascent industries. According to India and South Africa, “in the current configuration of policies, rules, market dynamics and corporate power, economic gaps are likely to increase”. Therefore, without tariffs, developing countries lose their ability to protect their domestic digital industries “resulting in loss of jobs and destitution” and they would be “more reliant on imports from developed countries, which would hurt their chances for competitiveness”.

Netflix's African strategy facing regional competitors

Netflix is the world's largest subscription-streaming service with around 195 million subscribers across the globe. The Californian company has got around 28 million subscribers since January 2020. More than 80 per cent of the new subscribers are not from North America. Netflix signed-up 11.4 million new subscribers in Europe, followed by a major increase in Asia-Pacific with 7.3 million new membership additions.

However, as Bloomberg mentions, five years after it arrived in Africa, Netflix is struggling to "grow beyond the wealthiest segment of the population". Since 2015, the US company is present in 54 countries on the African continent and it has 1.4 million subscribers, while almost 20 million customers signed up to Sub-Saharan African pay-TV company DStv (Digital Satellite Television) owned by the South African company MultiChoice. It is worth noting that MultiChoice also operates Showmax, an online subscription video on demand service (SVOD) which launched in South Africa in 2015. Today, Showmax has more than 0.6 million subscribers and it rolls out across 60 countries in Africa and outside of Africa (Australia, France, Germany, United Kingdom, and others). Besides, the online platform Disney Plus is not expected to operate in Africa until 2022.

By end 2019, Netflix accounted for 45 per cent of the 2.75 million SVOD subscribers in the region. According to Digital TV Research, Africa will see significant growth in SVOD as "the nascent market continues to mature" to a total of around 13 million subscriptions by 2025. In this respect, in order to strengthen its presence in the region, Netflix seeks to adapt its trade practices to the boom of mobile Internet users in Sub-Saharan Africa. The Californian company will experiment with cheaper, mobile-only subscriptions and commission more locally produced shows. An important battleground will be Nigeria, sub-Saharan Africa's biggest economy and key player of African TV industry. Netflix is testing if viewers will buy the mobile-only service at 1 200 naira (2.65 USD) a month, below the 2 900 naira for the Netflix basic account fees.

This offer is still higher than the offer of 250 naira a month by Iroko, a Nigerian streaming platform focusing on Nollywood content. However, in May 2020, in light of COVID-19 pandemic and the devaluation of the local currency (naira), Irokotv announced that 28 per cent of its employees in Nigeria were on an indefinite unpaid leave of absence. Today, Iroko has around 0.3 million subscribers.

Before Nigeria, Netflix started this mobile trial in South Africa and Egypt. As Techpoint.Africa mentioned, Netflix also liaised with network carriers in South Africa to allow users without a bank account to subscribe with airtime or prepaid vouchers.

In addition, Netflix seeks to diversify its content offer and in May launched the initiative "Made by Africa, Watched by the World". The goal is to mix new, original content from African creators with older African classics that have not previously been streamed elsewhere. Through this initiative, Netflix aims to demonstrate its "commitment to the continent and its creative community". The selection features the South African films "Gangster's Paradise: Jerusalema" and "Tsotsi" or the Nigerian films "King of Boys" and "Lionheart", as well as Netflix original productions such as "Queen Sono" and "Blood & Water". Following this initiative, Dorothy Ghettuba, Netflix head of Africa originals, stated that "we want you to know that if you're looking for the best African stories, then you will find them on Netflix".

India, a country to consider for Netflix new strategies

Before focusing on Africa, in July 2019, Netflix launched a cheaper mobile plan for India. The US company started a 2.8 USD per month mobile subscription, which excluded TV casting and can run on one device – smartphone or tablet – at time. Netflix also lowers the streaming quality to standard definition. In July 2020, Netflix unveiled a Mobile+ plan for delivering streaming in high-definition quality and supporting viewing across mobile, tablet and computer screens (but not TV).

Besides, Netflix is planning a new promotion: letting everyone in a given country access the service for free for a weekend. Netflix will first give users in India access to its services at no charge for a weekend as part of a test to expand its reach in the country, with potential to bring this strategy to other countries. The event will be called StreamFest and will not require any payment information. Streamfest comes only days after Netflix confirmed the end of free trials in the United States. Previously, anyone could sign up for 30 free days of streaming, with the option to cancel before one was charged for a subscription.

Mexico’s Digital Tax worries US and Canada business groups

According to a letter from business groups addressed to the Mexican Congress, the Mexican government proposal to shut down websites not complying with a new digital tax is incompatible with the United States-Mexico-Canada Agreement (USMCA) and other laws. More specifically, Article 18-H BIS of the Law of Value-Added Tax includes a so-called ‘kill switch’ that would suspend the Internet connection of non-resident entities providing services to Mexican users for failure to comply with Mexico’s tax laws and tax registration requirements.

According to the letter, this provision is incompatible with Article 145 of Mexico’s Federal Telecommunications and Broadcasting Law and Article 6 of Mexico’s Constitution. In addition, this proposal appears to “be inconsistent” with a number of provisions included in several chapters of the USMCA, such as National Treatment (Article 15.3), Access and Use (18.3), and Principles on Access to and Use of the Internet for Digital Trade (19.10).

The letter is signed, among others, by US and Canadian Chambers of Commerce, Asociación Latinoamérica de Internet, Coalition of Services Industries, Software & Information Industry Association.

International discussions on digital issues: a state of play

From 2019 to 2021, UNESCO is carrying out a two-year process to develop the first global standard-setting instrument on ethics of artificial intelligence in order to protect and promote human rights. The first version of the Recommendation was developed by an ad-hoc group of 24 experts. During July and August, UNESCO convened a global public online consultation, along with 11 regional and sub-regional virtual consultations, to discuss the first version. Taking into account the feedback received during the consultation process, the ad-hoc expert group revised the first version and produced the first draft of the Recommendation, which was transmitted to member states for written comments in September 2020. Member states are now invited to submit their comments and observations on the first draft no later than 31 December 2020.

In addition, WTO negotiators in the plurilateral talks on electronic commerce are working on a consolidated negotiating text by the end of the year. The negotiations include more than 80 countries and focus on open government data, source code, services market access and personal information protection.

Finally, in mid-October, the OECD released its long-awaited report on its digital tax plans. However, according to different stakeholders, a political agreement on the OECD's proposals will not happen before mid-2021. Clearly, the result of the US elections will impact the ongoing negotiations.

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