

# Global watch on culture and digital trade

## GOVERNANCE OF CULTURE AND REGULATION OF ONLINE PLATFORMS: CROSS-NATIONAL ISSUES

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Analytical report, July 2021

The July report focuses on cultural governance and regulation issues toward online platforms. Firstly, it deals with the ongoing discussions taking place in Canada on the broadcasting legislation; secondly, it analyzes the audiovisual media reform in Australia and the different viewpoints provided by the actors involved. Thirdly, the report focuses on the new developments regarding the governance of online platforms and culture in Europe. Finally, it analyzes South Africa's new proposal for establishing a local content quota on streaming services and it emphasizes competition issues toward global tech companies in the United Kingdom (UK) and the United States (US).

### Regulation of online platforms and cultural issues

#### **Canada: Broadcasting Bill C-10**

Bill C-10, submitted by Steven Guilbeault, the Minister of Canadian Heritage last November, aims to integrate global platforms, such as Netflix or Disney Plus, into the Broadcasting Act, by forcing them to contribute financially to the creation and discoverability of Canadian cultural content. The objective is to impose a level-playing field regulatory framework for all actors involved and to submit online platforms to the same rules as the country's traditional broadcasters. C-10 would force digital companies to contribute a proportion of their revenues generated in Canada into a fund intended to Canadian creators, as well as to invest in Canadian shows.




The Department of Canadian Heritage estimates that by 2023, around C \$ 830 million would be dedicated annually to the creation and production of Canadian content. In addition, the Canadian Radio-television and Telecommunications Commission will receive new powers that will allow it, among others, to formulate requirements in terms of discoverability so that online platforms showcase Canadian content on their catalogues and share relevant data. The bill is based on a report submitted by a group of experts in January 2020.

However, since the end of April 2021, the process of passing Bill C-10 has been significantly slowed down by the Conservative opposition, which points out the bill will undermine the rights and freedoms of Canadian users on social media. The Canadian Coalition for Cultural Diversity accused the Conservative Party of "obstructing Parliament" and leading "a campaign of disinformation" about the reform. For his part, the Minister of Canadian Heritage stressed that the Conservatives "want Canadians to believe that the broadcasting law will regulate the content published by individuals [...] but it is simply false [...] the individuals who publish content cannot be considered as broadcasters". On June 22, the Bill C-10 was approved by the House of Commons, but it remains to be passed by the Senate, which suspended its parliamentary work for the summer period on June 29.

### **Audiovisual Media Reform in Australia**

The Australian government aims to modernize television and audio-visual regulation in Australia and it announced a public consultation, seeking views on the proposed measures outlined in its Media Reform Green Paper "Modernising Television Regulation in Australia". Among the measures, the Green Paper proposes the introduction of an Australian content investment obligation on VOD services. The consultation process ended in May 2021.


Among the submissions from media operators and streaming providers, Amazon Prime Video underlined that "since 2019, Prime Video has commissioned 14 Amazon Original series in Australia, investing 150 million USD in local productions, which has resulted in more than 2 500 jobs across Australia" adding that "Amazon Australia does not believe there is any cogent justification for requiring to invest a proportion of Prime Video's gross Australian revenue in new Australian content".



In addition, Netflix stated “the Green Paper seems to assume that streaming entertainment companies are not investing in Australian content production because they are not obliged to. This is not correct. In the financial year 2019-20, the Australian Communications and Media Authority (ACMA) reports that the total investment on adult drama and children’s content from all commercial television broadcasters was \$89.7 million. In the same period Netflix's investments in Australian adult drama and children’s content totalled just more than \$111 million”. This argument has largely been mobilized by Netflix in different national contexts. Yet, even though the investment in production is real, it would be necessary to verify if the investment deals with regional, local or national content according to the official definitions. Finally, Netflix stressed that inflexible and prescriptive regulatory intervention “risks significant unintended consequences for the rapidly evolving streaming entertainment industry”.

In addition, the Media Entertainment & Arts Alliance mentioned that the key elements of the proposed “content investment obligation” that could be imposed on VOD services would be the following ones: “requiring SVODs (and AVODs such as YouTube) to invest a percentage of their Australian revenue in Australian content; making Australian content discoverable to Australian audiences; requiring that SVOD and AVOD businesses report to ACMA each year about performance against those expectations; and providing the Minister with the power to implement formal regulatory requirements on an SVOD or AVOD service that failed to meet expenditure expectations for two consecutive years”.

The Motion Picture Association (MPA) explicitly stressed that “in considering whether to impose burdensome regulation on VOD services, the Australian Government must give consideration to Australia’s international obligations, particularly the Australia-United States Free Trade Agreement (AUSFTA)”. The MPA pointed out that under Chapters 10 and 11 of AUSFTA and further to Annex II concerning Australia’s Non-Conforming Measures, “before Australia may consider any regulatory interventions on “interactive video services” (which would include VOD services), it must first make a finding that “Australian audiovisual content or genres is not readily available to Australian consumers” or “access to such programming on interactive audio and/or video services is not unreasonably denied to Australian consumers”. The test is a general test relating to availability of access to Australian content rather than a specific test of the level of Australian content on a particular service”.



As such, the MPA stated the reservation “does not permit the Australian Government to impose measures to ensure the creation or availability of Australian content such as those considered in the Green Paper”.

### **Regulation issues in Europe**

In an interview published in the newspaper Le Monde, Roselyne Bachelot, the Minister of Culture in France, underlined that through the new SMAD (Audiovisual Media Services on demand) decree - which is expected to come into force in France on 1 July 2021 - the big platforms such as Amazon or Netflix “will participate in French cultural creation for 20% to 25% of their turnover. They could invest around 200 million euros per year. It's a cultural revolution!”.

Early June 2021, Swiss councilors approved the implementation of a tax obligation on online streamers, such as Netflix. The provision, backed by the Council of States, requires online streamers operating in Switzerland to invest at least 4% of their turnover in the Confederation’s film industry (against 1% proposed by the National Council). Besides, the National Council expresses its concerns that the additional costs generated by these obligations will be transferred to users, who might see increased subscription fees. The new financial obligations are part of a new film law included in the Federal Office of Culture’s agenda for the period 2021-2024.

According to a study carried out by the research centre SMIT, “today there seems to be an emerging consensus within the [European Union] EU that companies that benefit from content should also contribute to content production, regardless of the market in which they are based or the types of services they are offering”. The following EU member states have already introduced or plan to introduce investment obligations that apply to VOD services with headquarters in other EU member states that target domestic audiences: France, Germany, Italy, Spain, Portugal, Poland, Slovenia, Croatia, as well as the French and Flemish communities in Belgium. The rate of levy can be from 1.5% of the turnover (Poland) to 25% (France). Yet, it is worth mentioning that several EU member states, such as Denmark, the Netherlands, Greece, Ireland, Sweden, Hungary, Cyprus, Malta, Estonia, Finland, Slovakia, do not impose specific financial obligations to foreign VOD services in order to contribute to audiovisual content funds.

## **South Africa's New Proposal for establishing a local content quota**

The new South African proposal of audiovisual legislation plans to introduce a 30% local content quota on streaming services, such as Netflix, and to require online content service providers to obtain an individual or class license in order to operate in South Africa. Public hearings on the Draft White Paper on Audio and Audiovisual content services policy framework was held between 10 May and 14 June 2021.

Among the submissions, the National Association of Broadcasters (NAB) noticed that “support for local content and content diversity remains a key consideration and the NAB is encouraged to note that local content quotas in particular will remain relevant in the new regulatory framework”, adding that “on-demand content services which have an annual turnover of 50 million rand or greater required to apply for a license”. In addition, in a 19-page written submission, Netflix stressed that rather than imposing “a local content quota, the White Paper should be revised to focus on incentivizing content providers to make investments in local content production”, underlying that “quotas imposed in regions like the EU may be wholly inappropriate for the South African context. The EU 30% local content quota for example is fulfilled by content from across Europe as a whole (serving 450 million people) rather than local content of only one Member State”. Among others, submissions were also received from AT&T, Walt Disney and the US Chamber of Commerce.

## **Competition and anti-trust issues**

The UK's Competition and Markets Authority (CMA) is investigating Apple and Google over their dominant position in the mobile phone market. That includes the operating systems Android and iOS, both app stores (App Store and Play Store), and Safari and Chrome web browsers. The CMA is concerned that the mobile platform giants' “effective duopoly” in those areas might be harming consumers.

In addition, in the United States, Amazon, Apple, Facebook and Google could be forced to overhaul their business practices under a package of five bills introduced by a bipartisan group of House lawmakers. The antitrust reforms would make harder for dominant platforms to complete mergers and prohibit them from owning business lines that present clear conflicts of interest.

#### Additional readings for the July report:

- Netflix audience data, streaming industry discourse, and the emerging realities of 'popular television', Media, Culture & Society, 9 June 2021, [Link](#).
- US lawmakers are taking a massive swipe at big tech. If it lands, the impact will be felt globally, The Conversation, 15 June 2021, [Link](#).
- Channel 4: rather than privatizing public service media we should be expanding it online, The Conversation, 23 June 2021, [Link](#).

#### Sources :

- Chambre des Communes du Canada, Projet de Loi C-10, [Link](#).
- L'avenir des communications au Canada : le temps d'agir, Rapport final, January 2020, [Link](#).
- L'étude est terminée au comité du Patrimoine canadien, La Presse, 11 June, [Link](#).
- Australian Government, Media Reform Green Paper, [Link](#).
- Netflix's Media Reform Green Paper submission, [Link](#).
- MPA's Media Reform Green Paper submission, [Link](#).
- Australia-United States Free Trade Agreement, [Link](#).
- Roselyne Bachelot : "La France a besoin d'acteurs forts pour résister aux géants mondiaux de l'audiovisuel et du numérique", Le Monde, 9 June 2021, [Link](#).
- SMIT, Investment obligations for VOD providers to financially contribute to the production of European works, a 2021 update, June 2021, [Link](#).
- South-African government, Audio and audiovisual content services policy framework, [Link](#).
- Netflix submission on the Draft White Paper on Audio and audiovisual content services policy framework, [Link](#).
- Lawmakers unveil major bipartisan antitrust reforms that could reshape Amazon, Apple, Facebook and Google, CNBC, 11 June 2021, [Link](#).

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