



Audiovisual Regulation of VoD Platforms in the EU and Latin America: Between Level Playing Field, Competitiveness and Rationality of Audiences

*Marina Rossato Fernandes, Antonios Vlassis,
and Lucile Coenen*

INTRODUCTION

Public policies are a historical feature of the European film and audiovisual industries—with financial aid, market regulation, intellectual property rights regulation and various regulatory and support measures for the protection and promotion of cultural diversity as key components of national and European audiovisual and cultural action (Calligaro & Vlassis, 2017). Clearly, given its transversality, the film and audiovisual industry raises several major issues for its public regulation (Vlassis, 2015):

- (i) Economic issues as the film and audiovisual industry is a key sector in terms of growth, competitiveness and employment for national

M. R. Fernandes (✉) • A. Vlassis • L. Coenen
Faculty of Law, Political Science and Criminology, Center for International
Relations Studies (CEFIR), University of Liège, Liège, Belgium
e-mail: mrossato@uliege.be

and regional economies. It is revealing that, according to the UNESCO Institute for Statistics (2016, p. 11), audiovisual services are increasingly becoming the most important cultural service in terms of trade exchanges.

- (ii) Political issues given that film and audiovisual goods—seen as vehicles of shared ideas, values and collective representations—are resources of the power of States and of their capacity to shape their political environment. In this respect, film is the sector in relation to which most of the export and import measures are put in place (Deloumeaux, 2018, p. 136).
- (iii) Cultural and identity issues because film and audiovisual goods and services also have a distinct cultural value. Audiovisual expressions—distributed by the audiovisual industries—are usually components of national, regional, local or community identities and several actors are increasingly worried about the consequences of the cultural dominance.

On the one hand, the transversality of audiovisual and media industries is expected to raise normative conflicts, insofar as audiovisual goods and services are located at the junction of several sectors (Vlassis, 2015). As Sarikakis (2007, p. 14) argued, media and cultural industries have not only become increasingly central in the economies of European countries, but also “the terrain of contestation and consensus” regarding competitiveness, self-governance and cultural identity. On the other hand, the EU and EU Member States have played a key role in promoting internationally the importance of public regulation and of public policies in the audiovisual sector. The EU is the only regional multilateral organisation that ratified in 2006 the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE), which explicitly recognises the specificity of audiovisual and cultural goods and services and the legitimacy of cultural policies for the protection and promotion of the diversity of cultural expressions. Since the mid-2000s, the EU has sought to promote the key principles of the UNESCO CDCE, such as cultural specificity and importance of public policies in the audiovisual-cultural sectors. Moreover, the EU has had a strong normative influence on shaping audiovisual policies in several regions, such as Latin America (Vlassis, 2016a; Pauwels & Loisen, 2016; Fernandes et al., 2021a).

However, in multiple national and regional contexts, Video-On-Demand (VoD) streaming services have been key drivers of the need to

rethink cultural policies and audiovisual media regulation (Flew, 2016; Ranaivoson et al., 2023; Meir & Smits, 2024). US-based VoD platforms, such as Netflix, Disney+, HBO Max, Apple TV+ or Prime Video, trigger major challenges for film and audiovisual governance related to the production, distribution, broadcasting and consumption of audiovisual goods and services. The Audiovisual Media Services Directive (AVMSD), adopted in 2010 and revised in 2018, has its roots in this changing landscape of film and audiovisual production, distribution and consumption, as well as the increasing prevalence of on-demand streaming services in the audiovisual sector. The 2018 revised AVMSD proposed two major policy advances:

1. Quotas: On-demand audiovisual media services are required to include a minimum of 30% European works in their catalogues and ensure the visibility and prominence of these works.
2. Investments: Member States have the option to mandate financial contributions from streaming platforms operating within their jurisdiction or catering to audiences in their territories, even if these providers are established in other member states. Such contributions can include direct investments in the creation of European works or contributions to national funds.

As such, the transversality of film and audiovisual industries, the long-standing normative tradition of the EU of shaping audiovisual governance worldwide and the global activities of US-based VoD platforms trigger three key questions:

- (a) What has been the key rationale of including quotas and investment obligations towards VoD platforms in the AVMSD revision?
- (b) In which ways do the global VoD platforms influence the EU objective of promoting film and audiovisual industry through public regulation?
- (c) To what extent is this rationale shared by other public authorities and stakeholders abroad in non-EU regions and countries?

Firstly, based on policy discourse analysis (Puppis, 2019; Schmidt, 2017), the chapter aims to analyse how key stakeholders in EU audiovisual policy-making, such as European digital and communication companies as well as organisations of film and audiovisual professionals, deal with the

governance of the audiovisual sector in a platform-dominated market. The Federation of European Film Directors (FERA), EUROKINEMA, the Association of Commercial Television in Europe (ACT), DIGITALEUROPE, the European Broadcasting Union (EBU), DOT Europe,¹ the European Coalitions for Cultural Diversity (ECCD) and Netflix are taken into account in the analysis. Here, the chapter's objective is threefold: to comprehend the modes of governance these stakeholders have proposed for the audiovisual sector with a special focus on the two key advances proposed by the 2018 AVMSD revision, to grasp which aspects are associated with competitiveness for the stakeholders and to identify where they have perceived market distortions. Secondly, the chapter seeks to explore how the global activities of US-based platforms affect the normative influence of the EU in other regions, such as in Latin America and to understand whether and how the new measures adopted in the AVMSD can be a normative landmark in Latin America, where the EU has had a longstanding tradition of shaping regional and national audiovisual policies.

THE AVMSD REVISION BETWEEN DIVERSITY AND LEVEL PLAYING FIELD

Different perspectives on the AVMSD revision and competitiveness within the audiovisual industry shall be established through the exploration of several stakeholders who either drive the digital transformation or are profoundly affected by the economic, social and cultural consequences of this transformation (Vlassis, 2017). In 2013, the European Commission adopted a Green Paper *Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values* for which stakeholders were invited to share their views towards the AVMSD in a public consultation. The Commission identified several issues to be considered in the review. The following section outlines the differing views and perspectives coming from European associations and companies (see the list above).

¹ Previously known as European Digital Media Association (EDIMA), it was re-launched as DOT Europe in 2020.

Ensuring a Level Playing Field

Ensuring a level playing field is crucial for maintaining fair competition, protecting consumers, promoting cultural diversity, providing legal clarity and addressing contemporary challenges in the audiovisual sector. This principle aims to create a regulatory environment that balances the interests of industry stakeholders with broader societal goals. Several organisations, including EURALVA, ECCD, EUROKINEMA, FERA and EBU, deemed the provisions of the 2010 AVMSD relevant yet emphasised that there was work to be done in terms of fairness and effectiveness. They proposed extending the scope of the provisions to cover providers offering audiovisual content that does not fit the “TV-like” category or to those hosting user-generated content. Furthermore, FERA highlighted that new platforms have emerged and operated in the same market as traditional services but enjoyed certain exemptions, which distorted competition and was therefore considered as unfair. Additionally, EBU, while acknowledging the current effectiveness of the 2010 AVMSD, anticipated potential challenges in the future with ongoing media convergence and increased consumption of audiovisual content through platforms. Hence, EBU advocated for an extension of the scope, particularly for operators of significant audiovisual platforms and the establishment of a separate set of rules. As such, whereas convergence and digitisation of cultural content intended to increase competition between broadcasters and online players, between old and new providers of audiovisual content, as argued by EUROKINEMA (2015, p. 3), “the difference of policy treatment between the two categories of players may result in serious distortions with respect to the promotion of cultural diversity and media pluralism”. In view of this new development, placing obligations and responsibilities exclusively on old providers of audiovisual content, such as television broadcasters is “neither effective nor fair” (EBU, 2015). To wit, regulating streaming services, which play a role in citizens’ access to audiovisual media services, is related “to the cultural and media policy objectives underlying the AVMSD” (EBU, 2015, p. 8).

On the contrary, DOT Europe and DIGITALEUROPE including Netflix argued in favour of keeping the status-quo established by the 2010 AVMSD provisions. The distinction between linear and non-linear services was seen as relevant due to the different temporality of linear and non-linear content: when it comes to non-linear content, the user proactively decides what content to watch and when to do so. They argued that on the

one hand, defining norms for this type of content falls outside the scope of the 2010 AVMSD and, on the other hand, regulating platforms, streaming and sharing services with concepts designed for “traditional” audiovisual goods and services ignores the nature of the Internet. In addition, DOT Europe emphasised the significance of digital growth in Europe, asserting that excessive regulations may become obsolete over time. In this respect, an extension of the scope of the AVMSD was deemed to endanger not only the business model of the online platforms, but also major sociocultural aims. Changing the scope could have “a negative impact on the availability of content in the EU, media pluralism, innovation and the development of new products” (EDIMA, 2015, p. 11). These stakeholders opposed expanding the scope, considering the current coverage appropriate. They did not perceive any distortions in the market and, citing the distinct immediacy of content consumption in non-linear services (as users can actively decide what content to watch in case of non-linear), saw no necessity to review regulations between linear and non-linear services. As such, consumers and content producers were seen as the beneficiaries of these developments. “The market provides users a wealth of choice” (DIGITALEUROPE, 2015, p. 7) and according to these stakeholders, any form of regulatory interference would impact the free choice of consumers.

Promoting European Audiovisual Content

The promotion of European content has triggered political debates as it implied the potential extension of quota mechanisms to streaming services and the financial contributions of online providers to the production and rights acquisition of European works.

The application of quotas to streaming services and the obligation for financial contribution to local content was strongly opposed by associations of the digital and communication sectors including Netflix, which advanced a twofold argument: the defence of free choice of consumers and seeing streaming services as a valuable tool for promoting cultural diversity. According to them, in a world of increasing choice, the services best positioned to respond to consumer demand will continue to distribute a certain amount of local cultural content. Put differently, unlike the State sovereignty in cultural affairs, these associations argued in favour of the sovereignty of consumers. Indeed, as argued by the ACT (2015, pp. 17–19), “if our consumers feel we are offering the wrong mix of content, they will migrate to another platform or service with a different

content offer. If there were such evidence, it would be for the market, not the regulator, to correct the market failure". In this respect, quotas for national cultural content are seen as inadmissible and the EU has "neither the legal competence nor the administrative capacity to seek to harmonise the daily operational practices of broadcasters to this extent". In addition, it is argued that quotas are detrimental to the personalisation of digital services. When watching content via an online service, subscribers already control their own viewing experience and the titles surfaced to them are highly personalised. "There is no need for any regulatory measure that would interfere with a VoD company's personalised approach to providing their services" (EDIMA, 2015, p. 21).

Accordingly, these stakeholders highlighted that regulations that have suited the analogue audiovisual era may not be suitable today insofar as "digital services and devices have contributed to drive cultural diversity by making European content widely available and discoverable" (DIGITALEUROPE, 2015, p. 18). Besides, streaming services have strongly supported the creation of European works. European culture is exported and viewed outside Europe thanks to the new ways that digital content can be disseminated and monetised. It is worth highlighting that DIGITALEUROPE explicitly suggested that European audiovisual policy should imitate other successful audiovisual industries, such as South Korea. "Korea has done what France failed to do: promote the country's film industry at a low cost and encourage efficiency. Creating a dependence on public subsidies such as those generated by copyright levies hinders, rather than helps European culture" (DIGITALEUROPE, 2015, p. 20).

As a result, Netflix expressed concerns regarding quotas and prominence, which it perceived as potentially harmful to the viability of both existing and emerging business models, posing a risk of stifling market dynamics and generating distortions. In other terms, public regulation would have the opposite effect. In addition, the introduction of prescriptive quotas would endanger a sustaining business model which achieves major goals of the EU audiovisual policy, "providing European consumers with the ability to access a wide variety of European and international content" (Netflix International, 2015, p. 6). It is worth noting that this argument is constantly promoted by US-based VoD platforms. In March 2023, Reed Hastings, the Netflix's founder and executive chairman, emphasised streamers' 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 EU". This discourse is justified on the

basis that all the other networks are “national networks who specialise in one language group”, while Netflix “specialises in connecting” (Deadline, 2023). According to this viewpoint, in a platform-dominated market, more than ever, the market will take care of itself, generally seen as a valuable tool to ensure socially agreed public values. Indeed, beyond the contestation between economic and non-economic values pursued, the promotion of cultural diversity in the audiovisual sector is not perceived in contradiction with the free market and free trade logic.

On the contrary, for the associations of broadcasters and audiovisual professionals, the main issue relates to the lack of contribution to the production and distribution of European works by certain online players, which either fall outside the current scope of the AVMSD or try to avoid stricter national rules through jurisdiction shopping within the EU. In a similar vein, by mentioning the UNESCO CDCE, these associations stressed that online players undermine the effectiveness of European and national rules and distort competition among operators. In light of the growing number of global players active in the value chain, it is necessary to ensure that each relevant player in the value chain invests a share of the turnover of the service concerned in the production and rights acquisition of European works. According to these stakeholders, the country-of-origin principle is seen as further enhancing the power of transnational groups, undermining future developments of local cultural players that provide local content and opportunities for local producers.

Put differently, the principle of the country of origin enables “forum shopping” from streaming platforms, which can decide on the location of their EU headquarters according to the level of protection of regulations. This situation puts the whole audiovisual sector in countries with more protective policies under high pressure, insofar as online players can settle in countries with the least stringent rules on promotion of European works. In other terms, they can use the country-of-origin principle to cherry pick the location of their European headquarters (Valcke & Lievens, 2009, p. 138). Consequently, taking the country-of-origin principle as the leitmotif of the AVMSD, this creates unfair competition between services and a race to the bottom for media policies of member states. Clearly, the main issue was that the application of the country-of-origin principle was not combined with the harmonisation of national audiovisual legislation. In this context, the European Coalitions for Cultural Diversity recommended the principle of country of destination in article 13 of the AVMSD. As such, in the absence of harmonisation of rules across Europe,

the EU legislation should give the country of destination the possibility to apply its policy on the promotion of European and national works.

To conclude, two questions have arisen in the audiovisual policy-making in the light of VoD platforms: whether EU and national rulemaking exacerbates or alleviates the problems of the audiovisual sector and whether the absence of rules imposed on the VoD platforms is beneficial or obstructs the achievement of the EU's economic and sociocultural aims (Kalimo & Pauwels, 2009). The key rationale of the AVMSD revision was to legitimate public intervention towards global VoD platforms and to generate new regulations, such as content quotas and investment obligations, towards streaming services across the EU. By seeking to extend a cultural policy toolkit to non-EU online services (Vlassis, 2023a) and despite strong objections coming from powerful associations of digital industry, the AVMSD revision generates a level playing field for stakeholders in the European film and audiovisual economy and seeks to promote cultural diversity in the European audiovisual sector (Albornoz & García Leiva, 2019; Vlassis, 2023a). However, the AVMSD should be analysed not only as a European response to the disruptive action of global VoD streamers in the audiovisual market but also as a policy process integrated into a broader and overall cross-national debate regarding the governance of audiovisual streaming services. Thus, it is crucial to investigate whether the key rationale of the AVMSD is shared by public authorities and stakeholders abroad, notably in regions such as Latin America, where the normative influence of EU audiovisual policies was strong in the past years.

THE EU INTERNATIONAL ACTION CHALLENGED BY GLOBAL VOD PLATFORMS

The EU's Normative Influence on Latin American Supranational Audiovisual Policy

The European Union has a longstanding tradition of shaping supranational media policies in Latin America, particularly within influential regional audiovisual entities such as the Specialised Meeting of Audiovisual and Cinematographic Authorities of Mercosur and Associated States (RECAM) at Mercosur² and Ibermedia Program in the Ibero-American region (Vlassis, 2016b).

² Established in 1991 through the Treaty of Asunción, the Common Market of the South is a free-trade bloc that includes Argentina, Brazil, Paraguay and Uruguay.

The EU has been acknowledged as a model of supranational integration within the Southern Common Market (Mercosur) (Dri, 2010) and has highly influenced the development of supranational audiovisual policies in the region. Since its creation in 2003, RECAM has viewed the European Union as a model to achieve its ambitions in fostering the integration of Mercosur's audiovisual industries (Canedo & Crusafon, 2014). The RECAM's early minutes meeting stressed its alignment with safeguarding cultural diversity (RECAM, 2004a) and envisaging the transfer of the EU media policy (RECAM, 2004b). The milestone in this relation was the implementation of the Audiovisual Mercosur Program (AMP), where the core idea lies in creating "a Mercosur Media Program based on the EU MEDIA Program" (European Commission, 2007). Through AMP, the EU invested resources in developing Mercosur's supranational media policy, promoting itself as a model to be followed. The implementation of AMP faces numerous constraints and its results were less significant than the original ambitions (Fernandes et al., 2021a). Nevertheless, the normative influence of the EU shaped media policy in this region.

In the Ibero-American region, the EU was similarly viewed as a model in establishing the Ibermedia Program, the principal Ibero-American entity dedicated to supporting the audiovisual sector in the region. Created in 1997, Ibermedia was inspired by the EU MEDIA Program (Falicov, 2012), with the objective of fostering an audiovisual industry capable of competing with US dominance (SEGIB, 2009). Until now, the audiovisual policies in Ibero-America that have been developed concentrate primarily on traditional media, especially cinema and prioritise funding for co-productions. A broader ambition in the relationship between the EU and Ibero-America was to create a Euro-Latin American space and establish an industry that not only champions its unique identity against the backdrop of US hegemony (Crusafon, 2011) but also nurture shared cultural values (Domínguez & Montero, 2009). Unlike RECAM, Ibermedia did not engage in policy transfer with the EU, but its normative influence remains evident, particularly in the shared ideals of protecting cultural diversity and opposing the pervasive influence of the Hollywood film industry.

It is crucial to recognise that Latin America lacks the same political and institutional clout as the EU to enforce regulations. The foundation of supranational policies lies in the preservation of sovereignty and necessitates negotiations among member states to harmonise film and audiovisual policies within the region (CACI, 1989; Mercosur, 2003). Consequently, these supranational bodies are crucial in sparking debate

and promoting regulation at the national level (Fernandes et al., 2022). Thus, the EU's influence through these institutions has demonstrated its endeavours to broaden its normative impact in Latin America. By drawing on its regulatory experiences, the EU aims to shape the development of supranational media policies that not only embody shared cultural values but also cater to economic interests (Vlassis, 2016b). This panorama reveals the central ideas that marked this relationship. First, the idea alignment on the defence of cultural diversity underscores the cultural perspective of the audiovisual sector, where the EU has a strong normative engagement (Pauwels & Loisen, 2016). Second, one must mention the rationale of formulating supranational policies for enhancing dialogue among regions. Essentially, this interaction is primarily facilitated through policy measures. While there is a clear economic objective behind the goal of creating a regional market for the free flow of audiovisual products, achieving this objective necessitates the creation of cultural policies. These policies must acknowledge the intrinsic cultural value of audiovisual content, ensuring that the drive for market growth is balanced with the preservation and promotion of cultural diversity. This highlights the importance of public policy over the process of economic liberalisation and the principle of free trade. Third, the relationship between these regions was driven by the idea of policy transfer, where the EU is perceived as a normative model to be followed, which has influenced Latin American supranational audiovisual policies since its creation.

To explore the normative influence of the EU and especially of the AVMSD, in Latin America, this section uses policy discourse analysis (Puppis, 2019; Schmidt, 2017) to investigate the underlying rationality in the discourse of different stakeholders. This includes an analysis of the ideas and policy solutions presented by Latin American supranational audiovisual institutions, such as the General Ibero-American Secretariat (SEGIB) and Ibermedia, the main civil society organisation on media regulation in Latin America, the Latin American Observatory for Regulation, Media and Convergence (OBSERVACOM) and industry professionals and entities within the private sector, attending the market and policy forum Iberseries & Platino Industria.³

³ An industry event organised in 2021 in Madrid by the Secuoya Foundation, EGEDA and the Federación Iberoamericana de Productores Cinematográficos y Audiovisuales (FIPCA).

Latin America's Regulatory Response to VoD Platforms

Considering the influence of the EU in Latin American supranational media policy, such as at Mercosur or Ibero-American region, one might have anticipated the EU's AVMSD to serve as a model for Latin America's approach to regulate global VoD platforms. In contrast, Latin America's response to the rise of VoD platforms until now indicates weakened EU normative influence.

While the EU has been at the forefront of developing supranational regulations to manage the complexities of the audiovisual landscape, Latin America lacks a cohesive supranational media policy tailored to regulating VoD platforms. At the national level, despite ongoing debates and the introduction of legislative initiatives within the region's principal audiovisual markets, such efforts have largely remained unfulfilled. The exception to this trend is the area of taxation, where progress has been noted across several countries (Baladron & Rivero, 2019). Nonetheless, the implementation of quotas and investment obligations, key components of the AVMSD, remains stagnant in the Latin American setting.

To explore the normative influence of the EU, especially of the AVMSD, in Latin America, this section also investigates the underlying rationality in the discourse of different stakeholders. Firstly, during face-to-face interviews, supranational entities in Ibero-America, specifically SEGIB⁴ and Ibermedia, articulated that regulation of VoD was not prioritised within their agendas, attributing this to be beyond its scope and emphasising that no regulatory frameworks are currently under development. Although these institutions lack the authority to enforce regulations, their critical role in stimulating debate helps to influence policy at the national level. When probed about formulating policies in the digital landscape, especially in light of VoD platforms' significant influence on the audiovisual sector, the AVMSD was not referenced and there was no mention of market distortions that could justify introducing regulatory measures. In the context of Mercosur, RECAM did not articulate any stance on VoD regulation and given its constrained political influence (Fernandes et al., 2021b), scepticism prevails regarding its potential to undertake such initiatives.

⁴Ibero-American General Secretariat, responsible for fostering cooperation across the Ibero-American cultural sector.

This signifies a departure from the traditionally strong influence of the European Union on Latin American media policy. Intriguingly, the discourse at the grassroots level, particularly among leading film professionals, similarly lacked a concrete demand for supranational regulation or adopting the AVMSD as a reference (Fernandes, 2023).

In a critical policy debate forum, the Iberseries & Platino Industria, the prevailing discourse circulating among industry professionals framed VoD as an opportunity rather than a threat. Here, the stakeholders did not elaborate on market distortions and there were no discussions on the need for regulation to ensure a level playing field. On the contrary, the VoD was seen as having the potential to increase the competitiveness of the Ibero-American audiovisual sector, especially by boosting the funding to local/national productions. Therefore, rather than viewing the AVMSD as a tool to enhance competitiveness that could be used as a reference for VoD regulation, the policy agenda centred on securing substantial budgets for audiovisual productions that would enable Ibero-American content to be appealing for the large-scale productions of VoD platforms (Fernandes, 2023).

Unlike initial discussions surrounding the formulation of Ibero-American audiovisual policies focusing on challenging the power of US majors, the current debate has taken a different direction. The European Union, previously at the heart of these discussions as a model for its cultural protection policies, is no longer the central point of reference. When the EU is mentioned in contemporary debates, it is not for its role as a defender of cultural perspective or as a corrective force against market distortions. Instead, its liberalising tendencies are highlighted, indicating a significant pivot in the narrative. This shift reflects a broader change in the discourse on media policy within the Ibero-American context, where the EU's approach is perceived more for its potential to liberalise the market than for its protective measures, underscoring a departure from previous priorities.

Amidst this shift, the OBSERVACOM emerges as one of the few voices persistently upholding the original principles that once guided the policy debate, particularly emphasising the AVMSD's foundational values. OBSERVACOM is a regional think tank composed of academics and experts in communication, specialising in regulation and public policy, stands out as the sole policy actor referencing the AVMSD. In its advisory role to UNESCO, OBSERVACOM undertook a thorough analysis of the AVMSD, underscoring its rationale for developing public policies that

support democratic values, uphold citizens' rights and are rooted in the principle of cultural diversity. The organisation highlighted the directive's critical role in ensuring the competitiveness of European industries and media services, emphasising its significance in promoting a balanced and diverse media landscape (OBSERVACOM, 2019, p. 10).

OBSERVACOM advocated for regulating Over-The-Top (OTT) services, recommending measures such as financial contributions, the promotion of local and national content through investments, quotas and ensuring their visibility. These recommendations are grounded in the UNESCO CDCE and address regulatory asymmetries that disadvantage national competitors. This approach reflects a normative influence from the EU, maintaining an alignment with cultural perspectives and the broader objective of fostering a diverse and competitive media environment (OBSERVACOM, 2019, p. 25). Its position is aligned with European entities that support revising the AVMSD, including EURALVA, ECCD, EURO CINEMA, FERA and EBU. Their underlying rationale encompasses support for competitiveness and cultural diversity, advocating for key policy mechanisms such as quotas and mandatory investments.

Parallel to the absence of debates on supranational VoD regulation, there is a noticeable rise in the normative influence of US-based platforms, particularly Netflix, on the audiovisual policy debates within Latin America (Fernandes & Alborno, 2023). Netflix promotes itself as an advocate for content diversity and social inclusion, emphasising its efforts to elevate voices that have been historically underrepresented in the media. This approach is strategically utilised to bolster its cultural influence and facilitate its transnational expansion (Asmar et al., 2023). Netflix's primary narrative asserts that its platform inherently supports national content and diversity, thereby arguing that regulation is unnecessary (Fernandes & Alborno, 2023). However, this discourse leaves aside fundamental dimensions of audiovisual diversity, such as market concentration (García Leiva & Alborno, 2021). In addition, promoting strong relationships with culture professionals is a key component in the public diplomacy of US-based VoD platforms. During the COVID-19 outbreak, Netflix established a US \$100 million fund to help professionals facing hardship in the cultural industries. Furthermore, Netflix provided each US \$1 million to major public and private audiovisual agencies, such as the British Film Institute, the Italian Film Commission, the Brazilian Institute of Audiovisual Content, the Argentine and Mexican Academy of Film Arts and Sciences, the Instituto de la Cinematografía y de las Artes Audiovisuales

and the Film Academy in Spain, as well as the Netherlands Film Fund (Vlassis, 2021).

Netflix's discourse is rather explicit in the international report "Behind the Camera: Creativity and Investment for Latin America and the Caribbean – Learnings from Conversations with Key Players in the Audiovisual Sector" (Olavarría et al., 2021). Produced through a collaboration between the Inter-American Development Bank (IDB) and Netflix, this trilingual report (available in Spanish, Portuguese and English) aimed to shape regional policies (Olavarría et al., 2021, p. 15) and overtly criticised the idea of implementing VoD regulation akin to that in the EU. The report directly critiques OBSERVACOM's endorsement of "European content quotas" (Olavarría et al., 2021, p. 31), arguing that adopting the European Union's approach in Latin America would be arbitrary due to the region's unique context. Instead, it suggests focusing on incentives for content production, arguing that by generating national content, the key to success ultimately resides within the preferences of the audiences themselves (Olavarría et al., 2021, p. 31). It is important to note that the above mentioned production incentives are centred around initiatives that facilitate the production of audiovisual content in Latin American countries, especially through production services and film commissions. The prevalent argument advocates for the ease of access for transnational companies to engage in domestic production, positing this as a strategy to sustain local content generation. This approach implicitly argues against the necessity for mandatory investment contributions from these entities. This stance supports a liberalisation approach, advocating for the Latin American audiovisual sector's competitiveness to be bolstered through "talent, infrastructure, and direct incentives" (Olavarría et al., 2021, p. 15) rather than regulatory constraints.

In this context, Netflix maintains a consistent rationale similar to its stance during the AVMSD discussions. Its first key argument centres on streaming services acting as a potent mechanism for enhancing cultural diversity through producing and distributing content from various countries and its commitment to underrepresented groups. This approach mainly argues against the need for regulatory measures concerning investment obligations. Secondly, Netflix emphasises the consumer's rationale, positing that the audience is responsible for choosing what to consume, thereby suggesting that content quotas are unnecessary. This discourse is based on a market-driven approach where consumer choice dictates content production and distribution and regulation is not necessary.

The analysis indicates that, in Latin America, despite recommendations from experts and civil society organisations like OBSERVACOM, there is a lack of development in supranational media policy specifically tailored to address the challenges posed by VoD services. Furthermore, the AVMSD does not appear to exert significant normative influence in the region. Industry professionals tend to favour a liberalisation approach while not engaging in advocacy for supranational policies in this domain. Concurrently, VoD players, notably Netflix, are increasingly exerting influence, shaping policies to align with their interests and business models (Fernandes & Albornoz, 2023). This scenario highlights a unique dynamic in Latin America's media landscape, where the evolving platform-dominated environment challenges traditional policy frameworks.

Finally, it is worth noting that mid-January 2024, in a collective statement (Variety, 2024), twenty screen production organisations have urged governments to enact regulation towards streaming services. The statement provided a set of principles through which government regulation of digital streaming platforms should be guided. Among these principles, the organisations explicitly mentioned that “all platforms that derive financial benefit from conducting business in the local market should financially contribute, proportionally, to the creation of new local content for the benefit of local audiences”. Interestingly, the statement was supported by 20 organisations, including 14 from Europe and 3 from Canada, showing that whereas stakeholders are actively advocating for regulatory measures towards VoD services in the EU and in a few other countries, such as Canada, with longstanding tradition in public audiovisual policies, in several regions across the globe stakeholders are fragmented and institutions have not taken a decisive stance regarding the regulation of VoD platforms.

CONCLUDING REMARKS

The analysis of the stakeholders' perspectives on VoD regulation reveals two primary divergent political lines. On the one hand, an argument favouring VoD regulation stems from concerns over market distortions, emphasising the necessity to establish a level playing field and promote cultural diversity. On the other hand, the digital and communication sectors, emphasising the rationale of consumer choice, refute the existence of these market distortions and argue that the VoD business model is expected to be convergent, by promoting both economic competitiveness and public objectives, such as cultural diversity. Whereas in the EU,

various stakeholders supported regulation towards VoD platforms leading to the 2018 AVMSD revision, in Latin America stakeholders increasingly adopted a different rationality in line with transnational VoD platforms, showing little interest in pursuing VoD regulation at the supranational level.

Until now, the EU has witnessed a reduction in its normative power in Latin America in the context of audiovisual policy, as the core principles of the AVMSD have not resonated with Latin American supranational institutions. While certain stakeholders, such as OBSERVACOM, align with the AVMSD's rationale of promoting regulatory measures for cultural diversity and an equitable competitive environment, this standpoint is not universally embraced as a normative benchmark. There is a lack of concentrated efforts to ensure a level playing field, with VoD platforms being viewed to enhance both economic competitiveness and public objectives, such as availability and diversity of audiovisual content. The narrative advanced by US-based VoD platforms, such as Netflix, is gaining traction in policy discussions in Latin America, diminishing at the same time the normative influence of the EU. The findings suggest that the EU is experiencing a relative decline as an international actor capable of promoting EU values globally (Fernandes, 2023).

While the AVMSD has the potential for wider diffusion, it would necessitate greater efforts to amplify the EU's normative power, as the transnational VoD platforms gain in significance, converging economic considerations and cultural concerns. Strengthening influence in Latin America requires enhancing discussions on the necessity of public regulation and fostering collaborative spaces for exchanging practices involving local stakeholders. This approach could amplify underrepresented voices that lack the power to influence policy agendas (Fernandes, 2023). In addition, the challenge in regulating transnational VOD companies emphasises the need for policy formulation beyond national borders, spotlighting the opportunity for improved cooperation among regions in devising new regulatory structures. Finally, this shift may reflect a broader transformation in the EU's normative influence globally. As such, it opens up avenues for further research (Vlassis, 2023b) into whether the EU is diminishing its influence on the international stage and how US-based VoD platforms are shaping policy decisions towards audiovisual regulation worldwide and dominant understandings towards competitiveness in a platform-dominated market.

REFERENCES

- Albornoz, L. A., & García, L. T. (2019). *Audio-visual industries and diversity: Economics and policies in the digital era*. Routledge.
- Asmar, A., Raats, T., & Van Audenhove, L. (2023). Streaming difference(s): Netflix and the branding of diversity. *Critical Studies in Television: The International Journal of Television Studies*, 18(1), 24–40.
- Association of Commercial Television in Europe. (2015). *Consultation on directive 2010/13/EU on audiovisual media services: A media framework for the 21st century*. Brussels.
- Baladron, M., & Rivero, E. (2019). Video-On-Demand services in Latin America: Trends and challenges towards access, concentration and regulation. *Journal of Digital Media and Policy*, 10(1), 109–126. https://doi.org/10.1386/jdmp.10.1.109_1
- CACI. (1989, November 11). *Convênio de Integração Cinematográfica Iberoamericana*. Caracas.
- Calligaro, O., & Vlassis, A. (2017). The European policy of culture: Between economic paradigm and the rhetoric of exception. *Politique Européenne*, 56, 8–28. <https://doi.org/10.3917/poeu.056.0008>
- Canedo, D., & Crusafon, C. (2014). The European audiovisual policy goes abroad: The case of inter-regional cooperation with Mercosur. In K. Donders, C. Pauwels, & J. Loisen (Eds.), *The Palgrave handbook of European media policy* (pp. 526–541). Palgrave Macmillan. <https://doi.org/10.1057/9781137032195>
- Crusafon, C. (2011). El espacio audiovisual euro-latinoamericano: El cine como eje central de la cooperación supranacional. *Anàlisi. Quaderns de Comunicació i Cultura*, 41, 27–45.
- Deadline. (2023, March). *EBU responds to Netflix claims over European influence*. Retrieved from <https://deadline.com/2023/03/netflix-european-broadcasting-union-reed-hastings-european-cultural-influence-1235283469/>
- Deloumeaux, L. (2018). Persisting imbalances in the flow of cultural goods and services. In *Re-shaping cultural policies: Advancing creativity for development* (pp. 125–142). UNESCO.
- DIGITALEUROPE. (2015, September 28). *Consultation on directive 2010/13/EU on audiovisual media services: A media framework for the 21st century*. Brussels.
- Domínguez, J. M., & Montero, D. (2009). Europe as a partner new spaces for audiovisual cooperation between Latin America and the EU. *Global Media and Communication*, 5(51), 1742–7665. <https://doi.org/10.1177/1742766508101315>
- Dri, C. F. (2010). Limits of the institutional mimesis of the European Union: The case of the Mercosur parliament. *Latin American Policy*, 1(1), 52–74. <https://doi.org/10.1111/j.2041-7373.2010.00004>

- EUROKINEMA-Association de producteurs de cinéma et de télévision. (2015, September 29). *Consultation on directive 2010/13/EU on audiovisual media services: A media framework for the 21st century*. Brussels.
- European Broadcasting Union. (2015, September 30). *Consultation on directive 2010/13/EU on audiovisual media services: A media framework for the 21st century*. Brussels.
- European Commission. (2007). *Mercosur regional strategy paper 2007–2013*.
- European Digital Media Association. (2015). *Consultation on directive 2010/13/EU on audiovisual media services: A media framework for the 21st century*. Brussels.
- Falicov, T. L. (2012). Programa Ibermedia: Cine Transnacional Ibero-Americano O Relaciones Públicas Para España? *Revista Reflexiones*, 91(1), 299–312.
- Fernandes, M. R. (2023). The end of an era? The decrease of the EU influence in Ibero-American digital media policy discourses. *International Journal of Cultural Policy*, 29(7), 876–893. <https://doi.org/10.1080/10286632.2022.2147517>
- Fernandes, M. R., & Alborno, L. A. (2023). Netflix as a policy actor: Shaping policy debate in Latin America. *Journal of Digital Media & Policy*, 14(2), 249–268. https://doi.org/10.1386/jdmp_00124_1
- Fernandes, M. R., Donders, K., & Loisen, J. (2022). Ibermedia as a collaborative space for film co-production policy? A stakeholder analysis on decision-making processes. *Communications Society*, 35(2), 137–153. <https://doi.org/10.15581/003.35.2.137-153>
- Fernandes, M. R., Loisen, J., & Donders, K. (2021a). Audiovisual policy transfer between Mercosur and the European Union has gone offtrack. *International Communication Gazette*, 1–20. <https://doi.org/10.1177/17480485211052169>
- Fernandes, M. R., Loisen, J., & Donders, K. (2021b). Mercosur caught between lofty ambitions and modest achievements: A critical analysis of 16 years of audiovisual policy-making. *International Journal of Cultural Policy*, 27(4), 544–558. <https://doi.org/10.1080/10286632.2020.1786544>
- Flew, T. (2016). Convergent media policy: Reflections based upon the Australian case. In S. Simpson, M. Puppis, & H. Van den Bulck (Eds.), *European media policy for the twenty-first century: Assessing the past, setting agendas for the future* (pp. 219–237). Routledge.
- García Leiva, M. T., & Alborno, L. A. (2021). VOD service providers and regulation in the European Union: An audiovisual diversity approach. *International Journal of Cultural Policy*, 27(3), 267–281. <https://doi.org/10.1080/10286632.2020.1769614>
- Kalimo, H., & Pauwels, C. (2009). Policy approaches in the converging media and communications sector. In C. Pauwels, H. Kalimo, K. Donders, & B. V. Rompuy (Eds.), *Rethinking European media and communications policy* (pp. 353–365). VUBPress Brussels University Press.

- Meir, C., & Smits, R. (2024). *European cinema in the streaming era*. Routledge.
- Mercosur. (2003). *Creación de la RECAM (MERCOSUR/GMC/RES N°49/03)*. Mercosur.
- Netflix International. (2015). *Consultation on directive 2010/13/EU on audiovisual media services: A media framework for the 21st century*. Amsterdam.
- OBSERVACOM. (2019). *Desafíos y asimetrías regulatorias de los servicios audiovisuales en Internet. ¿Qué hacer?* UNESCO.
- Olavarría, D., Luzardo, A., & Mateo-Berganza Díaz, M. M. (2021). *Behind the camera: Creativity and investment for Latin America and the Caribbean*. Inter-American Development Bank.
- Pauwels, C., & Loisen, J. (2016). Leading by example? European Union implementation of cultural diversity in internal and external audiovisual policies. *Javnost*, 23(2), 153–169. <https://doi.org/10.1080/13183222.2016.1162980>
- Puppis, M. (2019). Analyzing talk and text I: Qualitative content analysis. In H. Van den Bulck, M. Puppis, K. Donders, & L. Van Audenhove (Eds.), *The Palgrave handbook of methods for media policy research* (pp. 367–384). Palgrave Macmillan.
- Ranaivoson, H., Micova, B. S., & Raats, T. (Eds.). (2023). *European audiovisual policy in transition*. Routledge.
- RECAM. (2004a). *I Reunión Especializada de Autoridades Cinematográficas y Audiovisuales*.
- RECAM. (2004b). *II Reunión Especializada de Autoridades Cinematográficas y Audiovisuales*.
- Sarikakis, K. (2007). Introduction: The place of media and cultural policy in the EU. In K. Sarikakis (Ed.), *Media and cultural policy in the European Union: European studies* (pp. 13–21). Rodopi.
- Schmidt, V. A. (2017). Theorizing ideas and discourse in POLITICAL SCIENCE: Intersubjectivity, neo-institutionalisms and the power of ideas. *Critical Review*, 29(2), 248–263. <https://doi.org/10.1080/08913811.2017.1366665>
- SEGB. (2009). *Evaluación Programa Ibermedia 1998–2008*.
- UNESCO Institute for Statistics. (2016). *The globalization of cultural trade: A shift in consumption: International flows of cultural goods and services 2004–2013*. UNESCO-UIS.
- Valcke, P., & Lievens, E. (2009). Rethinking European broadcasting regulation: The audiovisual media services directive unravelled at the Dawn of the digital public sphere. In C. Pauwels, H. Kalimo, K. Donders, & B. Van Rompuy (Eds.), *Rethinking European media and communications policy* (pp. 127–164). VUBPress Brussels University Press.
- Variety. (2024, January). *Global production bodies unite to ask governments to ensure streamers invest more in local content*. Retrieved from <https://variety.com/2024/digital/news/global-production-bodies-unite-streamers-invest-local-content-1235875256/>

- Vlassis, A. (2015). *Gouvernance mondiale et culture: de l'exception à la diversité*. Presses de l'Université de Liège.
- Vlassis, A. (2016a). European Commission, trade agreements and diversity of cultural expressions: Between autonomy and influence. *European Journal of Communication*, 31(4), 446–461. <https://doi.org/10.1177/0267323116655506>
- Vlassis, A. (2016b). Organizaciones regionales y diversidad cultural: la diplomacia de la Unión Europea con el Mercosur entre la sombra de Hollywood y la acción intergubernamental. *Cuadernos de Información y Comunicación*, 21, 97–115.
- Vlassis, A. (2017). The review of audiovisual media services directive: Many political voices for one digital Europe? *Politique européenne*, 56, 102–123.
- Vlassis, A. (2021). Global online platforms, COVID-19 and culture: The global pandemic, an accelerator towards which direction? *Media, Culture and Society*, 43(5), 957–969.
- Vlassis, A. (2023a). Platform governance and the politics of media regulation: The review of the European audiovisual media services directive. *Journal of Digital Media & Policy*, 14(1), 29–46.
- Vlassis, A. (2023b). Why to regulate Netflix: The cross-national politics of the audiovisual media governance in the light of streaming platforms. *Media, Culture & Society*, first published online.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

