

Global watch on culture and digital trade

ONGOING CONFRONTATIONS BETWEEN PUBLIC REGULATION AND GLOBAL EXPANSION OF ONLINE PLATFORMS

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Analytical report, June 2021

The June report, first, deals with music streaming providers and the antitrust and competition distortion charges against Apple issued by the European Commission following a complaint from Spotify. It also analyzes recent regulatory challenges related to artificial intelligence (AI) as well as the negotiations within the Organization for Economic Cooperation and Development (OECD) on a global tax regime. Second, it turns to several cross-national activities of online platforms, focusing on strong content competition between Netflix, Amazon Prime Video and HBO Max, the expansion of Disney Plus in East Asia and the shutting down of the piracy streaming website Cuevana.

Regulation of online platforms and cultural issues

Apple in the online music market: abuse of dominant position

On April 30, the European Commission issued that Apple abuses “its dominant position” and “distorts” competition in the online music market. The European Union (EU) had opened a formal investigation of Apple and its App Store rules for app developers following a complaint by the online streaming music service Spotify filed in 2019. According to the European Commission, tech giant Apple is using its App Store - which is also a gatekeeper to users of iPhones and iPads - to create unfair competition and promote its own Apple Music application.



The EU accuses the US firm of charging app developers a 15-30% commission fee on all subscriptions, while Apple Music is exempt and of limiting the ability of app developers to inform users of alternative purchasing possibilities outside of apps. Apple now could be forced to change its business model and face a fine up to 10% of its annual revenue, which could be as high as 27 billion USD based on Apple's annual revenue of 274.5 billion USD.

According to Apple's press release, "at the core of this issue is Spotify's request to be able to promote alternative offers on its iOS application, a practice that no store across the world would allow [...] Spotify wants all the benefits from the App Store but doesn't consider it should pay anything for it".

The criticisms developed by Spotify are strongly supported by the Coalition for App Fairness. According to the latter, "developers note that a 15-30% fee in the Apple Store represents an enormous portion of their revenue, in many cases an untenably large one. They argue that when they're competing with one of Apple's apps - like Music, Mail or Books - the situation becomes even harder. Apple first introduced the 30% fee on apps in 2011, which forced many apps to go completely out of business".

New legal framework for artificial intelligence

On April 21, the European Commission proposed a new framework for the governance in the use of AI. The goal of the EU is to develop new global norms "to make sure AI can be trusted". The proposed framework would apply to all providers of AI in the EU, irrespective of whether they are established within the EU. The proposal by the Commission adopted a risk-based approach to AI, distinguishing among unacceptable, high and low risks to the fundamental rights and safety of AI users. With respect to governance, the proposal would establish a European Artificial Intelligence Board composed of representatives from the EU member states and the Commission. As a next step, the European Parliament and European Council will have to examine and adopt the Commission's proposal.

It is worth noting that the European Parliament has also undertaken a significant amount of normative work in the area of AI. In October 2020, it adopted a number of resolutions related to AI including on ethics, civil liability and intellectual property rights.



The resolution with regard to intellectual property rights (IPRs) stresses that AI should not have legal personality; thus, ownership of IPRs should only be granted to humans.

Finally, on May 19, the Parliament adopted a resolution on AI in education, culture and the audiovisual sector. The resolution focuses on education, cultural heritage, cultural and creative sectors and industries, as well as on the audiovisual sector.

In the resolution, the Parliament points out that the use of AI in algorithm-based content recommendations on media service providers, such as video on demand services, may have “a serious impact on cultural and linguistic diversity, notably regarding the obligation to ensure the prominence of European works under Article 13 of the Audiovisual Media Services Directive” and it notes that “the same concerns are equally relevant to the music streaming services and calls for the development of indicators to assess cultural diversity and the promotion of European works on such services”. In addition, the Parliament calls on the Commission to establish a clear ethical framework for the use of AI technologies in media in order to ensure access to culturally and linguistically diverse content at Union level, based on accountable, transparent and inclusive algorithms, while respecting individuals’ choices and preferences.

OECD negotiations on a global tax regime

The US administration, European governments and other participants are confident a deal will soon be struck in the negotiations on a global tax regime at the OECD. In mid-May the US administration floated a global minimum tax of around 15%, less than the 21% rate it has proposed for the overseas earnings of US businesses – a level that countries including the United Kingdom, Ireland, the Netherlands or Czech Republic regarded as too high. In addition, the US administration is reluctant to any deal targeting specific industries for taxation, such tech companies. For their part, European governments emphasize measures to ensure multinationals – notably big tech firms such as Amazon or Facebook – pay more of their tax in the countries in which they operate and favour a deal which will ensure that all digital firms be covered by the new normative framework.

Worldwide activities of online platforms

Content competition

Netflix announced it will set up a Scandinavian hub with new offices in Stockholm, Sweden in the second half of 2021. The Swedish offices will oversee the production of Netflix films and series in Sweden, Denmark, Norway, Finland and Iceland, focusing on more original local content across Europe. According to Lina Brouneus, Netflix's director of acquisitions and co-productions for Europe, the Middle East and Africa, Netflix expects to have close to 70 original Scandinavian titles available on its global service by end of 2021, adding that "almost two-thirds of Netflix subscribers globally have watched a Nordic original film or series". It is worth noting that Netflix has around 4.2 million subscribers in Sweden, Denmark, Finland and Norway, while the Scandinavian platform Viaplay, owned by Nordic Entertainment Group, has around 3 million subscribers. Finally, Netflix already has offices in Amsterdam, Madrid, Berlin, London, Paris and Brussels and will be launching offices in Rome and Istanbul later this year.

In addition, Amazon seeks to grow its position in the entertainment landscape. At the end of May, it announced that it made a deal valued at 8.45 billion USD to acquire the famous Hollywood major Metro Goldwyn Mayer-MGM. The deal gives Amazon an extensive catalogue of more than 4 000 films - including the James Bond film series, the Silence of the Lambs, Basic Instinct, Rocky - and 17 000 TV shows that it is going to use for filling out its Amazon Prime video content catalogue. As Amazon CEO Jeff Bezos pointed out, "the acquisitions thesis here is very simple: MGM has a vast, deep catalog of much beloved intellectual property [...] and with the talented people at MGM and the talented people at Amazon Studios, we can reimagine and develop the IP for the 21st century". It is worth reminding that Amazon was one of the key beneficiaries from the lockdown measures due to the COVID-19 pandemic. Today, its revenue reach around 350 billion USD and its market capitalization reaches more than 1 600 billion USD.



Finally, in mid-May, AT&T announced the merging of Warner Media with TV company Discovery in order to create a new major media player and compete with Netflix, Disney or Amazon toward streaming content. Warner Media owns HBO, CNN and the Warner Bros. movie studio and Discovery operates numerous cable networks. Both companies also have their own streaming platforms: HBO Max and Discovery Plus. The deal could allow HBO Max to be a dominant player in the digital-streaming landscape, joining Netflix, Amazon Prime Video and Disney Plus as a global platform.

Disney Plus in East Asia

Disney Plus seeks to expand its activities in East Asia. The streaming service will launch in Malaysia on June 1st, while it previously launched in Singapore in February, and in Japan, Indonesia and India last year. Rollouts in other East Asian markets, such as South Korea, Hong Kong, Taiwan, Philippines and Thailand are also expected in the second semester of 2021. In addition, for diversifying its online catalogue with local content, Disney Plus signed multi-year content deals with key Malaysian studios, such as Skop Productions, Media Films, etc. At the same time, Disney announced its intention to close 18 linear TV channels in Southeast Asia and Hong Kong as the entertainment company will emphasize the expansion of its streaming services.

Today, Disney Plus is present in 60 markets worldwide and has over 100 million paying subscribers in total. According to AMPD Research, affiliated with Media Partners Asia, in Southeast Asia, Netflix is the leader accounting for some 40% of streaming time during the first quarter of the year, followed by Hong Kong based Viu (15%), Tencent's WeTV (13%), Baidu's iQIYI (10%). However, in the first three months of 2021, among the 4.9 million new subscriptions, Disney Plus got around 2 million subscribers, driven by growth in Indonesia and its launch in Singapore.

Shutting down of streaming site Cuevana

End of April, the Alliance for Creativity and Entertainment (ACE) reported that it shut down Cuevana, one of the most popular piracy streaming operations in Latin America. Cuevana featured in the US administration's list of most notorious piracy websites.



The ACE announced “a successful cease and desist communication with the operators of Cuevana in Santiago, Chile [...] and the official transfer of 30 domains previously used by Cuevana that had received over seven million visits”. The ACE includes major online platforms (Netflix, Amazon and Hulu), Hollywood majors, (Sony Pictures, Paramount, Disney) as well as media operators (BBC, Televisa, Canal Plus). However, as the website TorrentFreak mentioned, the most popular Cuevana site, Cuevana3.io is still online.

Additional readings for the June report:

- TikTok and geopolitics: how digital nationalism threatens to entrench big tech, The Conversation, 20 May 2021, [Link](#).
- The EU path towards regulation on artificial intelligence, Brookings, 26 April 2021, [Link](#).

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- Proposal for a Regulation laying down harmonised rules on artificial intelligence, 30 April 2021, [Link](#).
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- EU accuses Apple of App Store antitrust violations after Spotify complaint, The Verge, 30 April 2021, [Link](#).
- European Governments Grow More Optimistic on G-7 Tax Accord, Bloomberg, 25 May 2021, [Link](#).
- Netflix to Open Nordic Hub in Sweden, The Hollywood Reporter, 28 April 2021, [Link](#).
- Amazon Buys MGM, Studio Behind James Bond, for \$8.45 billion, Variety, 26 May 2021, [Link](#).
- AT&T is merging WarnerMedia with Discovery to create a new media giant, The Verge, 17 May 2021, [Link](#).
- Disney Plus Hotstar Sets Launch Date in Malaysia, The Hollywood Reporter, 3 May 2021, [Link](#).
- MEDIA Partners Asia, Report, 18 May 2021, [Link](#).
- ACE successfully shuts down illegal streaming operation Cuevana in Chile, 29 April 2021, [Link](#).

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