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Global watch on culture and digital trade

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CULTURAL GOVERNANCE AND PLATFORMS: AI CONCERNS AND ANTI-TRUST CONSIDERATIONS

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Analytical report, March 2024

The March report begins with the European Union (EU) Artificial Intelligence (AI) Act, a landmark piece of legislation to regulate the development and use of AI, as well as with the US draft bill on “the No Artificial Intelligence Fake Replicas and Unauthorized Duplications”. In addition, the report deals with the debate within the World Trade Organization (WTO) toward the extension of the moratorium on the imposition of customs duties on electronic transmissions. The report also focuses on the battle between Apple and the European Commission, as the latter imposed its first-ever fine on Apple for allegedly breaking EU law over its music streaming service. Moreover, the report emphasizes new partnerships and business plans, focusing on royalty issues regarding Spotify and on the royalty battle between Universal Music Group and TikTok. Finally, the report turns to the struggle for subscribers and geographical expansion among streaming services, with those of Paramount+, Disney+, and Netflix.



Regulation issues, digital trade and culture

Toward regulation on the use of AI in cultural sectors

Early February, EU member countries unanimously reached a deal on the EU Artificial Intelligence Act, greenlighting the final compromise text. Following the approval from the EU member states, mid-March, the regulation was endorsed by the [European Parliament](#) with 523 votes in favor, 46 against and 49 abstentions. The [AI Act](#) is the first comprehensive AI regulation in the world, which sets out harmonized rules for the use of AI systems in the Union, following a risk-based approach. It focuses on transparency issues regarding training data and artificially generated content and it will help to protect the rights of creators and ensure that AI is used responsibly in the music industry. More specifically, the [AI Act](#) includes “a requirement for AI developers to obtain permission from copyright holders before using copyrighted material in their AI models”. CEO of the German collecting society GEMA said that “those intending to offer generative AI in Europe must be able to explain what contents they used to train it. The results we now have are a step in the right direction, but need to be sharpened further on a technical level”. Besides, a new study carried out for collective management organizations ([CMOs](#)) in Europe predicts that the global market for generative AI market will exceed three billion USD by 2028. It is worth mentioning that, at the end of February, the [European Commission](#) has set up “an AI office to enforce new rules on AI systems and support innovation in AI”. The goal is to have EU-level governance of the [AI Act](#), rather than leaving oversight to member states and to allow for synergies with other regulations, such as the Digital Markets Act and Digital Services Act.

In addition, mid-January, in the United States a new bill – the No Artificial Intelligence Fake Replicas and Unauthorized Duplications ([NO AI FRAUD](#)) was introduced by a bipartisan group of House Representatives led by Democrat Rep. Madeleine Dean of Pennsylvania and Republican Rep. Maria Salazar of Florida. According to [Billboard](#), the bill goes a long way to establishing a “right of publicity” at the federal level in the United States. The No AI FRAUD Act establishes “an intellectual property right that every individual holds over their own likeness and voice, allows individuals to seek monetary damages for harmful, unauthorized uses of their likeness or voice,” and “guards against sexually exploitative deepfakes and child sexual abuse material,” according to a statement from Rep. Dean. The lawmakers said they hope to create a federal, baseline protection against AI abuse and uphold Americans' First Amendment rights online. The proposed legislation has garnered the approval of a number of prominent voices in the music industry, including the Recording Industry Association of America ([RIAA](#)).



Moratorium on Customs Duties on Electronic Transmissions


A key political issue at the 13th WTO Ministerial Conference (MC13) was the extension of the moratorium on imposition of customs duties on electronic transmissions. [Since 1998](#), WTO members have agreed not to impose customs duties on electronic transmissions, in conformity with the WTO Moratorium. While the term “electronic transmissions” is not defined, it is commonly held to encompass anything from software, emails, and text messages to digital music, movies and videograms. As such, the moratorium keeps online transactions – a Netflix streamed movie or a downloaded e-book – free of tariffs. The moratorium is not permanent. Every two years governments agree to extend it at the biennial WTO Ministerial Conference. During the 2024 Ministerial Conference, India, Indonesia, and South Africa expressed their concerns about the moratorium, raising issues about the scope of the moratorium, the dominance of the US-based Big Tech and the loss of customs revenue. However, as the [Japan Times](#) mentioned, the issue related to not renewing the moratorium was “the lack of an international legal framework or standard definition for digital trade. That means it’s not clear how governments would apply tariffs – whether they’d charge per transaction, per byte or per digital product, like a song, for instance”.

According to [Inside US Trade](#), over 170 business associations across the globe wrote a statement, stressing that “allowing the Moratorium to expire would be a historic setback for the WTO, representing an unprecedented termination of a multilateral agreement in place nearly since the WTO’s inception – an agreement that has allowed the digital economy to take root and grow”.

Finally, the WTO members decided to extend by two years the moratorium, which will expire on 31 March 2026. According to [Reuters](#), “India, which had sought concessions on agriculture, had blocked the extension but reversed course after a request from host United Arab Emirates, leaving the two-year extension as the only significant outcome from the ministerial conference”.

EU fine Apple

End of February, [Reuters](#) mentioned that Apple is set to be handed an EU antitrust fine in a music streaming case triggered by a Spotify complaint. Early March, the [European Commission](#) announced a 1.8 billion euros fine for Apple, saying the tech company abused its dominant position in the music market.




The fine is “the result of a European Commission antitrust probe which is investigating contractual restrictions that Apple imposed on app developers that prevent them from informing iPhone and iPad users of cheaper music subscription options and that harm music consumers who may end up paying more”. The US-Swedish streaming company [Spotify](#) filed a complaint with the EU in 2019, claiming that Apple limits choice and competition in its app store by charging a 30% fee on all purchases. End of February, in its statement, [Apple](#) stated that “Spotify pays Apple nothing for the services that have helped them build, update and share their app with Apple users in 160 countries spanning the globe. Fundamentally, their complaint is about trying to get limitless access to all of Apple’s tools without paying anything for the value Apple provides”.

Worldwide activities of online platforms

New partnerships and business plans

Early February, in a [statement](#), Spotify stated that the US-Swedish company paid over nine billion USD to the music industry in 2023, including record companies, music publishers, performance rights organizations and collecting societies. This amount would bring its total payments to rights holders since Spotify’s founding to 48 billion USD. A payout of nine billion USD in 2023 means that [Spotify](#) paid out approximately 63% of its annual revenues to the music industry. Taking into account that the global value of music copyright was 41.5 billion USD in 2022 and the global value of music rose 10% in 2023, “Spotify would have accounted for roughly 20% of label and publishing income worldwide”.

End of February, music content from [Universal Music Group](#) (UMG), the world’s biggest record label, began to be removed from the social media platform TikTok, owned by the Chinese company [Bytedance](#). The latter mentioned in a statement that “we are in the process of carrying out UMG’s requirement to remove all songs that have been written (or co-written) by a songwriter signed to Universal Music Publishing Group based on information they have provided”. According to a report from Rolling Stone, the battle between [UMG](#) and [TikTok](#) will impact artists who aren’t signed to UMG but have publishing deals with the label, including [Harry Styles](#) or Steve Lacy. The removed content applies to both videos posted by the artists themselves and a much-larger pool of user-generated videos that use music in the background. End of January, UMG said in a [statement](#) that it would pull its tracks from TikTok because of a lack of compensation for artists and songwriters.



According to the statement, “TikTok proposed paying our artists and songwriters at a rate that is a fraction of the rate that similarly situated major social platforms pay”.

Geographical expansion and struggle for subscribers

According to a new report called *The Southeast Asia Online Video Consumer Insights & Analytics*, the Southeast Asian region had a strong slowdown in terms of number of new Video-on-Demand (VOD) subscribers. According to *Variety*, the new report focusing on Indonesia, Malaysia, Philippines, Singapore, and Thailand showed that the region included only 1.3 million new VOD subscribers compared with 11 million in 2022. Korean content drove 36% of VOD viewership, followed by US and Japanese content with 21% and 14% respectively. In addition, Southeast Asian content accounted for 12% of VOD viewership and Chinese dramas captured 10% of total consumption, driven by strong demand in Thailand. Finally, while *Netflix* retains its leadership with a market share of over 45%, regional streaming services, such as Viu and Vidio, are gaining ground.

Paramount+ in the fourth quarter saw its global subscriber count increase by 4.1 million net additions since the third quarter, for a total base of 67.5 million at the end of 2023. At the same, the company dismissed about 800 employees to lower expenses. Besides, *Disney+* and India-based Disney+ Hotstar lost 0.6 million subscribers in the final quarter of 2023. Collectively, Disney+ totaled 149.6 million streaming subscribers at the close of 2023. At its streaming service Hulu, Disney saw “a lift from 43.9 million subscribers to 45.1 million”. Finally, according to *Quartz*, only three US-based video subscription services have managed to turn a profit in the 17 years from the launch of the streaming revolution: Netflix, Hulu and Warner Bros. Discovery. Besides, gross subscriptions are slowing down, falling to 10.1% year-over-year in 2023, down from 21.6% in 2022.

Additional readings for the March report:

Deepfakes in South Africa : protecting your image online is the key for fighting them, *The Conversation*, 22 February 2024, [Link](#).

Artificial intelligence needs to be trained on culturally diverse datasets to avoid bias, *The Conversation*, 13 February 2024, [Link](#).

Indicative sources :

- The EU push forward landmark AI act protecting artists, *RouteNote*, 12 December 2023, [Link](#).
- European Commission launches artificial intelligence office to enforce new rules, *Science/Business*, 27 February 2024, [Link](#).
- House Lawmakers unveil NO AI FRAUD Act in push for federal protections for voice, likeness, *Billboard*, 10 January 2024, [Link](#).
- Streaming a movie abroad may soon come with taxes at the border, *The Japan Times*, 22 February 2024, [Link](#).
- EU set to fine Apple in Spotify music streaming case, sources say, *Reuters*, 27 February 2024, [Link](#).
- Spotify paid 9 billion USD to labels and publishers in 2023, *Billboard*, 08 February 2024, [Link](#).
- TikTok begins removing Universal Music Publishing Songs, Expanding Royalty Battle, *Variety*, 27 February 2024, [Link](#).
- Paramount hits 67.5 M subscribers as streaming loss shrinks to 490M USD, *The Hollywood Reporter*, 28 February 2024, [Link](#).

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