Regulating OTT Platforms

OTT in the new digital economy Conference
Bangkok, 17 November 2020

Elena Scaramuzzi, Head of Global Research – Cullen International
Top 10 Trends

[APAC] Apple and Google’s app stores under scrutiny in Australia
The Australian Competition and Consumer Commission (ACCC) started an investigation into the country’s mobile app store market. The app store market is entirely controlled by just two companies: Apple and Google.

[APAC] OTT providers to pay ‘network usage fees’ in South Korea
New rules will oblige large foreign OTT platforms like Netflix and YouTube to compensate South Korea’s internet service providers for the high use of their infrastructure generated by those services.

Analyses

Use of social media in times of elections
In an increasing number of countries around the world, governments have been monitoring the use of social media in times of elections. In some countries, rules normally applicable to mass traditional media, such as television or radio, have been extended to include social media.

Benchmarks

Social media regulation
5G
Artificial Intelligence
Internet of Things (IoT)
Data flows
Privacy in the digital age
Fintech (soon)
OTT voice and messaging services (soon)
Power of Big Tech (soon)
International Trade (soon)
Global research on OTTs – Cullen Global Tech Trends

1. Social media and video-sharing platforms (e.g. Facebook, YouTube)
2. Video on demand (e.g. Netflix, Amazon Prime)
3. Voice & messaging services (WhatsApp, Kakaotalk)
4. Online marketplace (eBay, Alipay)

Regulate? How?
Same dilemmas, on a global scale...

Data from Datareportal 2019

**‘vertical’**
- Telecom
- Media
- Banking
- ...

**‘horizontal’**
- Consumer protection
- Competition
- Security
- ...

[Image of a slide with blue boxes and text]
Different possibilities

- ‘Light touch’ / self-regulation / broad safe harbours
- Less sector regulation (for the regulated)
- More horizontal regulation (for all)
- Regulate (only some?) OTTs

How to find the right balance?
TODAY: limited regulation of video-sharing platforms (VSP)

<table>
<thead>
<tr>
<th></th>
<th>Licence needed?</th>
<th>Ex ante foreign media ownership restrictions on this service?</th>
<th>Platform-specific regulatory authority?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>China</td>
<td>Yes (permit)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>India</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Japan</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Korea</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Russia</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Singapore</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>EU-level</td>
<td>No</td>
<td>No</td>
<td>No - but proposed</td>
</tr>
<tr>
<td>France</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Brazil</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>USA</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>South Africa</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

AU, JP, IN, RU: SA: Limitations for certain media – e.g. newspapers and broadcasting.
EU, FR, US: can be set ex-post for “national interest”. RU, SN: Registration.
TODAY: safe harbour generally with broad scope

All or most forms of illegal/harmful content

BR  EU  FR  IN  JP  ZA  US

Focus on copyright infringements

AU  CN  KR  RU  SG
### Users sharing Illegal content on social media

<table>
<thead>
<tr>
<th></th>
<th>Fake news</th>
<th>Piracy</th>
<th>Child pornography</th>
<th>Terrorism</th>
<th>Hate speech</th>
<th>Cyberbullying</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia</strong></td>
<td>Voluntary code (P)</td>
<td>Amend. 2015</td>
<td>Online safety act 2015</td>
<td>Abhorrent material 2019</td>
<td>Online safety act 2015</td>
<td>Online safety act 2015</td>
</tr>
<tr>
<td><strong>India</strong></td>
<td>Copyright amend. 2012</td>
<td>IT Act 2000, guid. 2011, law 2012</td>
<td></td>
<td>IT Act 2000, guid. 2011, law 2012</td>
<td>Hate speech laws</td>
<td></td>
</tr>
<tr>
<td><strong>Japan</strong></td>
<td>Liabilities lim. Act 2001</td>
<td>Child prostitution act, Liab. Lim act</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Korea</strong></td>
<td>Proposals</td>
<td>Copyright Act</td>
<td>Law 2009 last amended 2014</td>
<td></td>
<td></td>
<td>Law 2018</td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>POFMA 2019</td>
<td>Copyright am. 2014, 2016</td>
<td>Criminal code, undesirable pub.</td>
<td>POFMA 2019</td>
<td>POFMA 2019</td>
<td></td>
</tr>
<tr>
<td><strong>Brazil</strong></td>
<td>electoral rules + proposals</td>
<td>Copyright law internet law</td>
<td>Criminal law, Internet law 2014</td>
<td>Law 2016, internet law 2014</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>USA</strong></td>
<td>Review Sec 230 Com Decency Act?</td>
<td>DMCA notice and take down</td>
<td>US Code Title 18 (prove crim liability)</td>
<td>US Code Title 18 (prove crim liability)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>South</strong></td>
<td>As special</td>
<td>Copyright act art</td>
<td>Criminal law, ECTA, FPAA art 18, ECTA take</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Evolution in the EU

ONLINE PLATFORMS

New framework on online platforms
Revise the 2000 E-Commerce Directive
Address specific problems through targeted instruments or enhanced voluntary efforts by industry

Level playing field (AVMSD)
Trust and transparency
Harmful and illegal content online
Evolution of audiovisual media sector regulation in the European Union

TV Without Frontiers (1989)
- Single market
- Viewers’ protection
- Cultural diversity (EU works)

AVMS 2010
- Also covers VOD services by minimum set of rules (two-tiered approach)
- Technology neutral

New AVMS 2018
- Improves the level playing field between TV and VOD services
- New set of rules for video-sharing platforms (VSPs)
### Improved level playing field between TV and VOD and basic protection granted on VSPs

<table>
<thead>
<tr>
<th></th>
<th>TV</th>
<th>VOD service</th>
<th>VSPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hate speech</td>
<td>✓</td>
<td>✓</td>
<td>✓ (different rules)</td>
</tr>
<tr>
<td>Protection of minors</td>
<td>✓</td>
<td>✓ (Now aligned)</td>
<td>✓ (different rules)</td>
</tr>
<tr>
<td>Qualitative advertising rules</td>
<td>✓</td>
<td>✓</td>
<td>✓ (different rules except for own ads)</td>
</tr>
<tr>
<td>Accessibility</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Rules on sponsorship and product placement</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Signal integrity</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Findability</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Promotion of EU works (quotas)</td>
<td>✓ (50%)</td>
<td>✓ (new 30%)</td>
<td></td>
</tr>
<tr>
<td>Promotion of independent EU works</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quantitative advertising rules</td>
<td>✓ (relaxed)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
VSPs must take appropriate measures to protect viewers

- Protect **minors** from programmes, user generated videos and commercial communications that could be harmful

- Protect viewers from:
  - incitement to **violence or hatred** on certain grounds (defined by EU Charter of Fundamental Rights)
  - other **criminal offences** (e.g. public provocation to terrorism, dissemination of child pornography, racism, xenophobia)

- **Age verification**
- **Parental control** (end-users in control)
- **Rating systems for users**
  - The strictest access control measures for the most harmful content
  - No processing of minors’ data for commercial purposes
- **T&C to include and apply restrictions**
- **Systems for users to flag/report this content**
- **Systems to explain users results of reports**
- **Dispute resolution procedure**
- **Media literacy measures and tools**
Way forward in the EU

New EU policy for digital platforms

Ex ante regulation (Digital Services Act)

Deepen the Internal Market and clarify responsibilities for digital service (incl. revision Ecom D)

New competition tool to address structural competition problems

Active enforcement of current antitrust rules

New ex ante instrument for gatekeeper platforms

New 2019-2024 European Commission: EU Digital Strategy

Way forward in the EU
Other countries are ADAPTING regulatory frameworks to EVOLVING economic and social environments. However, priorities and approaches differ

- Australia
- Brazil
- China
- India
- South Africa
- USA
- and more…

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Get in touch!

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