

Regulating Netflix: A cross-national momentum?

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GLOBAL VOD PLATFORMS AND AUDIOVISUAL MEDIA GOVERNANCE

At the end of January 2023, the Australian government unveiled plans to impose Australian content investment quotas on Netflix, Disney+, Prime Video and other international streamers; at the same time, the Canadian Senate and House of Commons were debating the Online Streaming Act requiring streaming services companies to contribute to Canadian audiovisual content. Indeed, global video-on-demand (VOD) streamers, such as Netflix, Amazon Prime Video or Disney+ have become major enablers of a transnational flow of cultural contents (Lobato, 2018). While public policies in Europe and elsewhere are a historical feature of the audiovisual industries – with financial aid, taxation, market regulation – over the recent years global VOD platforms' strategies have generated wholly new audiovisual markets beyond the reach of current policies. Thus, their strategies, coupled with their transnational and deterritorialised dimension, have put high pressure on policymakers (Vlassis, 2021). Today, following the rapid transition of audiences from linear services to VOD ones, several regions and countries are seeking to involve global VOD platforms in the financing, distribution and visibility of national and regional audiovisual content. The key example is the European Union (EU), which adopted in 2018 a revised version of the Audiovisual Media Services Directive (AVMSD). Thus, several EU countries, namely Belgium, Croatia, Denmark, France, Germany, Italy, Poland, Portugal, Slovenia and Spain are developing investment obligations for non-domestic providers of on-demand audiovisual media services (Vlassis, 2022). In a similar vein, on-going debates in Australia, Canada, Mexico and South Africa are taking place and are dealing with the perspective of establishing measures, such as content quotas and financial contribution from VOD streamers, in the new platform-based audiovisual economy.

THE NECESSITY TO EXPLORE NEW VARIABLES FOR ONGOING CHANGES

Systematic reflection is now required on the rationales for such policy intervention in audiovisual media governance. There is an analytical urgency to explore variables, which are expected to play a key role in ongoing institutional and regulatory changes in audiovisual media governance. Obviously, today these normative demands are at the core of various types of platform governance and – almost – no one doubts the urge to regulate global online platforms (Helberger et al., 2018; Flew et al., 2019; Cammaerts & Mansell, 2020). However, the academic literature should further highlight why public authorities have decided to adopt regulations at a specific historical time – and not earlier or later (Vlassis, 2022). In other terms, it's crucial to investigate why and in which ways various stakeholders in digital media governance have started calling into question the dominant normative pattern that VOD platforms are exclusively technical systems for content delivery and multiplying straightforward discussions about the effectiveness and virtues of self-regulation, whereas government controls over the internet were long associated with illiberal regimes (Flew & Wilding, 2021, p. 49).

Audiovisual media governance does not emerge spontaneously from moral relevance of normative principles, deterministic power of digital technologies or business plans of global platform corporations. Instead, it is a political act, shaped by conflict and competing political worldviews that aim to promote their own values and interests (Freedman, 2008, pp. 1-4). Even though global VOD services represent disruptive new actors – creating technological, industrial and institutional shock (Thelen, 2018) – this disruption does not lead to the same political issue cross-nationally and to the same kind of policy responses. Political struggles over VOD platforms are expected to be framed and fought simultaneously by two crucial variables, dealing with 'state vs interest groups' relationships and global interdependence.

STATE VS SOCIETY RELATIONS AND NATIONAL PREFERENCE FORMATION

The first variable emphasises state-society relations and national preference formation regarding media governance. State priorities towards media governance are shaped by policymakers at the head of national governments who are embedded in domestic and transnational civil society. This decisively constrains their identities and purposes. As Andrew Moravcsik (1997) argues, the key goal of governments is to maintain themselves in office; this requires the support of a coalition of domestic voters, parties, interest groups and bureaucracies, whose views on media governance are transmitted, directly or indirectly, through domestic institutions and practices of political representation. Consequently, the first factor should focus on the degrees of political consensus that the regulation towards streaming platforms generates and the ways that governments aggregate the various preferences into policy outcomes. Special attention should be paid to the preferences advocated by various societal groups (media organisations, platforms and tech companies, civil society associations), the resources – such as money, political support, information and expertise – that they endow, the strategies through which these groups employ their resources effectively (Dür et al., 2015). As such, regulatory outcomes are strongly related to the political dynamics generated in each national context and they depend “on the specific alliances” (Thelen, 2018, p. 941) VOD platforms have inspired among interest groups and policymakers.

For instance, Canada has not yet succeeded in adopting and implementing new measures since the issue of regulation towards major VOD streamers has been highly confrontational among actors involved. The policy debate on regulation started during the 2015 legislative elections, when Stephen Harper, Conservative leader and Canadian prime minister from 2008 to 2015, expressed his explicit opposition to a so-called “Netflix tax”, by generating, since then, a strong political confrontation over the regulation of VOD streamers (Schnitzer, 2019). It’s revealing that from 2020 to present, executive and legislative institutions, political parties, as well as various stakeholders in Canada are strongly debating the Online Streaming Act as a new regulatory framework towards VOD streamers and their potential obligations in the domestic audiovisual market. By contrast, in France, a wide political consensus around the “cultural exception” principle has been developed since the end of 1980s and also persisted against global VOD

streamers. In this respect, the regulation on VOD platforms in France has received a broad political acceptance from a variety of actors and in December 2021, national broadcasting authorities announced that global video streamers signed an agreement to start investing 20% of their annual revenues on French cultural content. Hence, this opinion piece argues that states and other political institutions represent some subset of domestic and/or transnational society (Moravcsik, 1997) and understanding the political and social conditions under which the behaviour of stakeholders in digital media governance converges toward cooperation or conflict should matter in media politics.

GLOBAL INTERDEPENDENCE AND NATIONAL MEDIA POLICIES

Secondly, variations in the national preferences towards audiovisual media governance depend not only on the intrinsic features of each state, but also on the ways in which the international factor is expected to influence the internal policy-making process. National policy responses in audiovisual media governance are shaped by externalities generated by technological and economic interdependence between firms, by international commitments of each state and political influence of international norm entrepreneurs (Avant et al., 2010). Besides, national governments receive strong demands from domestic media and audiovisual industries facing transnational economic and technological competition from major streamers. Global VOD platforms are able to disrupt the level-playing field and to threaten the carefully established equilibrium among the different actors involved in the value chains (producers, distributors, etc.). These parameters are expected to have implications for media policy choices made by public authorities. In addition, the regional and international commitments of national governments, such as the UNESCO Convention on Protection and Promotion of Diversity of Cultural Expressions, the EU Audiovisual Media Services Directive, the United States-Mexico-Canada Agreement (USMCA), the Australia-United States Free Trade Agreement, create bilateral or multilateral normative frameworks of governance, which are also supposed to generate incentives or constraints for the development of new regulations in audiovisual media governance. For instance, in a white paper released mid-

January 2023, the Computer & Communications Industry Association stated that the pending Canadian broadcasting legislation (Online Streaming Act) dealing with VOD platforms is “explicitly discriminatory” and, if enacted, will violate the country’s commitments under the USMCA. In a similar vein, the same kind of concerns have been expressed by the Latin American Internet Association. It pretends that the introduction of quotas in the Mexican online audiovisual market would “violate the Telecommunications and Digital Trade chapters of the USMCA” and tech companies could “initiate arbitrations arguing discriminatory treatment”. In this respect, policy and economic interdependence imposes constraints or incentives on state behaviour, by shaping conditions under which the attitudes of stakeholders in digital media governance converges toward cooperation or conflict.

To conclude, I herewith suggest to systematically delve into the specific political dynamics that VOD platforms generate in each national context and explain how both variables, namely ‘state-society relationships’ and ‘global interdependence’, relate to different regulatory outcomes. Today, there is a crucial cross-national change in ways public authorities deal with major VOD platforms. The on-going regulations aim at a level-playing field in the audiovisual sector, as large VOD platforms have increasingly disrupted the established equilibrium among the different actors involved in the value chains (producers, broadcasters, etc.). A level-playing field is established by transferring policy instruments, such as investment obligations and/or quotas, from the analogue-broadcast age to the digital one. Beyond this, it is also urgent to implement targeted policy measures which go beyond this path-dependence logic, by for instance attempting to boost discoverability of diverse cultural content in online catalogues of streaming services or improving transparent access to data about digital content supply and digital consumption – which has so far been treated as a trade secret by VOD streamers.