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“Platforms and access to audiovisual contents: which challenges as regards to regulation?”

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The survey is entitled “**Platforms and access to audiovisual contents: which challenges as regards to regulation?**” and was conducted by the “**Directorate of Research and Economic studies**”. It was disclosed at the end of last September, a few days before a seminar was organized at the CSA (September 27) which topic was “AV issues in the digital space: platforms and data”.

It is a 100 pages work, available (in French) online both on CSA and EPRA’s websites. An English version should be ready shortly (I’ll inform EPRA’s Secretariat).

It provides us with a broad overview on the definition of the platforms, their scope, the market state, the economic issues they raise and the challenges then arising in terms of regulation. To carry out the study, the directorate in charge has conducted a series of hearings (you will find a complete list of them in the end of the document).

➔ First and foremost, the introduction of the study raises the question “**What is a platform?**”

Several definitions have already been provided by **public authorities**:

- [The annual review of the *Conseil d’Etat* (French highest administrative Court) in 2014;
- The *Conseil national du numérique* (Independent administrative body advising the government) in June 2015;
- And today the Bill « *Pour une République numérique* » - « for a digital Republic » in 2016 - its adoption is still ongoing (could be amended).]

The definition proposed by the study is **matching the one given by the European Commission** as it targets (p.8): “[the] *Platforms ensuring an intermediation between the AV content, the internet users, and other groups of users such as the advertisers*”.

The paramount **difference with free TV channels**: TV channels finance themselves the content they broadcast for the audience and master the commercial strategy of the broadcast it, while investing in the content is not central in platforms’ business models.

The difficulty is that today, the platforms are operating on different levels: some play a role at the production, creation and broadcasting levels. The study underlines that “*They blur the borders between different types of media, between the unprofessional and professional contents, and between the free and paying*”. (Not to mention geography...).

➔ What role is played by the platforms concerning **audiovisual contents**?

1. Customers use:

One of the first finding is the **tremendous surge in video consumption online**: it represented 70% of worldwide internet traffic in 2015 and should reach 82% of the traffic by 2020 (Cisco Visual Networking).

However, it is still **not challenging the “living room TV screen” position**: even though youth is pushing internet video consumption forward, for 40 million French, TV screens remain the exclusive way to consume AV contents (Médiamétrie).

2. Providers use:

AV contents play a **central role in most platforms**:

- First, **linear TV services permanently use them**: they have “YouTube channels”, Facebook pages and Snapchat accounts: 25 to 50% of the platforms traffic is estimated to be generated by TV providers.
- Also, contents are used by the platforms as a key **element of their strategy**, to enrich their services. They use different means: content production, development of live broadcast tools, distribution of premium contents, etc. A good example is Apple: the firm has early developed cultural content offers to strengthen the attractiveness of its devices: iTunes, Apple Music and Appstore. Consequently, the services provided by Apple account for 10% of the firm’s turnover, but are serving its main activity which is selling devices, that represents 90% of Apple’s turnover.

➔ How do platforms **affect the value chain of AV media and monetize AV contents**?

Monetization of AV contents on platforms is based on **two mechanisms**:

- A **pay-for-content model** where the user has to make a transaction to access a content (we think of videos services such as Apple store) ;
- A **free model**, where advertisement funds the content (similar to free linear services business models. Even though the user is not paying, he/she contributes to enriching the platform which collects its personal data).

Pay-for-content:

-> **In France** the pay-for content model is **still weak**: only 8% of French internet users have subscribed to an SVOD platform, versus 27% in the UK and more than 50% in the US.

-> **Overall**, this model is proving **fragile**: Spotify revealed its services are still not profitable as its subscribers are, most of the time, eventually not willing to opt for the pay-for-content offer; and Netflix, whose global losses have doubled in 2015 and now amount to more than 330 million dollars, recently admitted that the subscribers growth is not meeting the expectations.

Free:

-> In Europe, the level of the online advertising market shows how dynamic it is as it has exceeded TV advertising market for the first time in 2015 (36,2 billion € vs. 33,3 billion € spent in investments worldwide. [In France, the value of the market has raised by 6% and is now of 3,2 billion dollars].

➔ How is the platform **market shaping**?

1. **1st finding:** Digital platforms have a **tendency to concentration**

Huge actors are emerging, taking dominant positions or even monopolies. This is due to the shape of the market:

a. A **two-sided market**

Definition: Platforms constitute a market where a firm provides a real or virtual exchange place capable of easing interactions between different categories of agents.

The study provides with a theoretical explanation of the concept.

b. A market where a **critical size** (critical mass) must be reached to make it sustainable

A minimal number of users is needed on one of the two sides, to spark a **network effect** (definition: the increasing number of users is likely to attract further users and then broadens the basis of subscribers and makes the platform more attractive). As these effects are, on the digital market, created globally, they foster a high concentration of the market (e.g.: Facebook, created 2004, dominates the market of social networks with 1,65 billion users and 64% of advertising market shares in 2014).

c. A **“winner takes all”** phenomenon

This refers to the situation where a market is dominated by the firm(s) who managed to trigger a strong growth before its/their competitors: the winner of the market is not necessary the first that entered it, but the one(s) **having the fastest growth**.

d. Several **barriers to entry**

It means that several factors make the market access difficult for incoming competitors: massive data collection; important initial investments (R&D) etc.

Among them, **Exclusivities are particularly important:** exclusivity obligations imposed to AV content providers tend to lock the market and prevent competitors from entering it. State competition regulators act as watchdogs in this field (Decision of the *Conseil de la concurrence*, 25th April 2007: “exclusivity clauses are not, as such, abusive, as long as they are not damaging competition beyond the restrictions that are merely the consequence of the dominant position of an economic agent”).

2. **2nd finding :** Strong market positions can be **balanced by some specificities of the digital market**

The contestability of the market might however be preserved by:

a. **“Short innovation cycles”**

The pace of innovation is so strong on the digital market that the positions of powerful agents can **constantly be challenged by a new product**. This was actually underlined in a “Microsoft vs. Skype”

decision of the EC (2011) that noted that innovation cycles were particularly short and that the developments of agents were extremely fast.

Also: gratuity on the digital market encourages a competition based on products and not on prices.

b. Consumers behavior

The consumers' behavior can challenge platforms' important market shares as profitability is based on it.

Indeed, free and numerous apps and the possibility for the users to download several similar apps ("multi-homing") are limiting the "switching costs" normally implied by network industries. The hurdles still existing to personal data portability and interoperability and open ecosystems are currently tackled by EU institutions (European regulation of April 27, 2016) and Competition regulators (Study published jointly by French and British competition regulators 2014).

[Definition: Android, developed by Google, is an open ecosystem as it is integrated by devices designers vs. iOS, developed by Apple, available only on Apple devices]

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➔ What are the **upcoming challenges** as regards to regulation?

The third part of the study highlights the questions arising when it comes to regulating the platforms. The authors spotlight **10 topics**, and each of them is matched to a question arising for regulation. I picked up three of them:

1. **Prescription power** of the platforms

This is seen as a challenge to preserve cultural diversity and pluralism. As polls show that social networks are now a major source of information, the user must be aware of these sources.

Also, even though the positive role played by the algorithms is acknowledged, personalizing the contents entails a risk of locking the consumer in its own preferences (tastes), as recommendations prove to be very much followed by consumers.

Challenge: How to conciliate personalization of the contents, which can meet a real consumer's expectation, and the general purpose of cultural diversity?

2. **Standardization** of contents offers

Contents offers tend to be more and more similar, as many devices/terminal manufacturers are adopting the same operating system. As a matter of fact, many TV manufacturers or internet providers having audiovisual services have left their own system and prefer to integrate Android TV which is developed by Google. Besides, many smartphone manufacturers have never developed their own OS and rely on Android.

This externalization could therefore be detrimental to the diversity of content offers proposed to the audience.

Challenge: How to manage to prevent that the adoption of a same OS by devices manufacturers constitute a hurdle to innovation and diversity, and be detrimental to consumers?

3. Compliance with copyright and IP law

So far, the French IP law requires online public communication services to respect copyrights applying on the contents they broadcast. The French law (LCEN, 2004) also requires that these services get the appropriate equipments to track the contents put online without their owner's agreement (such as the software "Content ID" used by YouTube). However, right-holders regularly report the presence online of illegal contents.

New provisions laid down in an EU bill (directive) called "Copyright in the Digital Single Market" issued last September should be able to strengthen the rules applying to platforms.

Challenge: How to ensure both the largest access to AV works and the compliance with copyright and IP law?

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Conclusion: The audiovisual content offer online is soaring and platforms tend to become a key element in content creation and broadcast on the net. As huge actors are developing, taking dominant positions and displaying a tremendous amount of videos, an efficient legal framework must now be adopted to ensure security of the audience and prevent harmful content and hate speeches from arising.

All these challenges will certainly be better achieved within the EU territory if the rules are further harmonized and if the responsibilities of the regulators are better clarified.