

## **Tr** Proposed Regulation on fair treatment of business users of online platforms ☆

22 Nov. 2018 - Javier Huerta Bravo

Platform-to-business Regulation

## **Fi** European Commission and MEPs warn of unintended consequences of including operating systems in EU platforms regulation ☆

22 Nov. 2018 - Javier Huerta Bravo

MEPs are divided on the inclusion of operating systems in the scope of the draft regulation on fair treatment of business users of online platforms.

## **Fi** Colombia sets rules on online tourist accommodation services ☆

22 Nov. 2018 - Carlos Castellanos

The Colombian Ministry of Commerce, Industry and Tourism (Mincit) adopted new rules that regulate the provision of tourist accommodation services in Colombia, including the ones offered on online platforms, such as Airbnb.

## **Fi** EU Weekly Report ☆

18 Nov. 2018 - Hannah Bracken

This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Fi** Argentina and Colombia apply VAT to digital services provided from outside the country ☆

13 Nov. 2018 - Carolina Limbato

Argentina and Colombia have recently approved comprehensive tax reforms extending the scope of application of value added tax (VAT) to certain types of digital services provided by companies located abroad to people in Argentina or Colombia. This flash message analyses and compares the taxes in the two countries which although having a similar aim differ in approach to who is liable for collecting the tax. In Argentina, the local payment intermediaries (banks and credit card providers) must collect the tax. While in Colombia, the foreign digital service provider must collect and pay the VAT directly to the Colombian tax authority.

## **Fi** Online firms must provide information about paid content promotion in Brazilian presidential election ☆

12 Nov. 2018 - Andre Moura Gomes

The Brazilian Superior Electoral Court (TSE) asked Facebook, WhatsApp, Instagram, Twitter and Google to provide information on paid content promotion supporting the Brazilian president-elect Flavio Bolsonaro during the presidential election campaign this year. The court will investigate whether private companies paid to promote content supporting Bolsonaro online, infringing electoral rules.

## **Fi** EU Weekly Report ☆

11 Nov. 2018 - Javier Huerta Bravo

This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Tr** Taxation of online platforms ☆

7 Nov. 2018 - Javier Huerta Bravo

Taxation of online platforms

## **Fi** MEPs disagree on how to regulate online platforms and scope of related proposal protecting business users ☆

6 Nov. 2018 - Hannah Bracken

Members of the European Parliament's lead IMCO committee discussed the most contentious of the 740 amendments that they tabled to the proposal for a Regulation on fair treatment of business users of online platforms. These include: adding operating systems to the scope, how to address parity clauses and having a black list of unfair practices.

## **Fi** EU ministers disagree over proposed EU digital services tax ☆

6 Nov. 2018 - Javier Huerta Bravo

EU economics and finance ministers held on 6 November 2018 a policy debate on the proposed EU digital services tax directive. This flash message summarises the main points made by the ministers.

## **Fi** EU Weekly Report ☆

4 Nov. 2018 - Hannah Bracken

This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Cc** Taxation of online platforms ☆

1 Nov. 2018 - Javier Huerta Bravo

National approaches to the taxation of online platforms

## **Fi** Analysis of taxes on online platforms in Europe ☆

1 Nov. 2018 - Javier Huerta Bravo

Cullen International has published a new table looking at whether EU member states have proposed or adopted specific taxes on online platforms.

## **Fi** EU Weekly Report ☆

28 Oct. 2018 - Javier Huerta Bravo

This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Fi** European Parliament steps-up pressure against Facebook and urges member states to adapt electoral rules ☆

28 Oct. 2018 - Sofia Dilinos

The European Parliament has adopted a non-binding resolution surrounding the Cambridge Analytica case. The resolution urges Facebook to allow the EU's cybersecurity agency (ENISA) and the European Data Protection Board (EDPB) of national data protection authorities (DPAs) to carry out a full and independent audit of the platform. It also asks member states to adapt their electoral rules to online campaigning (including by introducing an obligatory system of digital imprints for electronic campaigning).

## **Fi** United States, Mexico and Canada reach new North-American trade agreement

24 Oct. 2018 - Ana Carolina da Motta



The United States, Mexico and Canada announced an agreement to replace the North-American Free Trade Agreement (NAFTA), in force for the last 24 years, with a "high standard new agreement". The new United States-Mexico-Canada Agreement (USMCA), which includes digital trade and revised intellectual property provisions, will not enter into force until legislators in the three countries approve it. Approval is reportedly not expected before 2020.

## **Fi** WIK conference on platforms and data

23 Oct. 2018 - Hannah Bracken



Data sharing, online platforms and interoperability were debated at a conference organised by WIK Consult. The proposed platform to business (P2B) regulation and how competition law can regulate algorithms were also discussed.

## **Fi** EU Weekly Report

21 Oct. 2018 - Hannah Bracken



This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Fi** Mexican states cannot ban payment in cash of Uber-like services, Supreme Court established

17 Oct. 2018 - Elena Scaramuzzi



The Mexican Supreme Court established that ride-hailing services provided by Uber and similar companies may be paid in cash. The decision set a key precedent, considering that more than 60% of the Mexican population does not have a bank account or a credit card.

## **Fi** EU Weekly Report

14 Oct. 2018 - Javier Huerta Bravo



This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Fi** EU Weekly Report

7 Oct. 2018 - Javier Huerta Bravo



This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Fi** EU Weekly Report

30 Sep. 2018 - Hannah Bracken



This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

## **Fi** European Parliament discusses proposal on protecting business users of online platforms

28 Sep. 2018 - Olha Hrubá



This flash message provides information on the latest discussions in the European Parliament on the proposal for a Regulation on fair treatment of business users of online platforms.

## **Tr** Collaborative economy

26 Sep. 2018 - Javier Huerta Bravo



Collaborative economy

## **Fi** EU Weekly Report

23 Sep. 2018 - Javier Huerta Bravo



This report recaps EU regulatory developments affecting the digital economy last week and lists the events taking place this week.

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A helpful reminder of the week's regulatory news

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# Over the top (OTT) regulation

26 Oct. 2018 - Ana Carolina da Motta






Question ?

Over the top television (OTT) refers to the capability to deliver audiovisual services and general content to connected devices (such as television sets, game consoles, computers, tablets and smart phones) over unmanaged networks (i.e. open internet). OTT enables those who do not own networks to monetise their content and to reach end-users. It enables viewers to access traditional linear broadcasting programmes, as well as catch-up and on-demand services that are available on the internet.

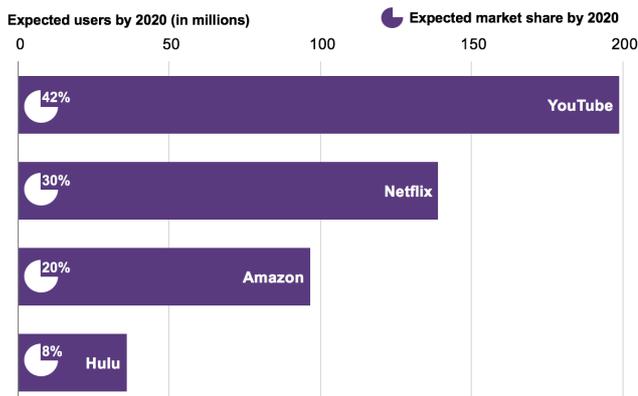
The table below shows for each country:

- the main (national and international) audiovisual OTT providers
- the business model of these OTT providers, i.e. whether it is subscription based, transactional (where the viewer pays for each programme) or funded by advertising
- whether OTT providers produce or commission their own production content (such as for local content) or/and if they acquire existing content rights.

The table also shows if, in any of the countries covered:

- OTT providers are subject to obligations that are imposed on traditional audiovisual market players
- if these obligations apply to video-sharing platforms (such as YouTube)
- a definition/qualification of OTT services exists
- there are plans to adopt OTT specific regulation.

YouTube's video sharing platform is expected to prevail in number of users by 2020 (Cullen International based on Forbes, 2017)



Netflix streaming subscribers in the Americas (in millions, end 2015) (Cullen International based on data from e-Marketer)



## Situation in Europe

In the European Union minimum rules apply to OTT service providers

## Developments in the major markets in the Americas

According to recent statistics, the United States remains by far the largest market for on-demand video services. Canada had almost four million streaming subscribers at end 2015. In 2016, the so-called 'discretionary and on-demand' sector was the main source of the growth of television revenues, with reported revenues of CAD 4.40bn (US\$3.36bn).

Netflix launched its services in Latin America in 2011 and is expanding across the region. Amazon launched its prime video subscription services in the main Latin American markets in December 2016, but the company started offering the possibility to subscribe in local currencies and languages only a year later. Hulu is available to stream from the US and US military bases. Users cannot currently use Hulu without an US-issued payment source.

Mexico and Brazil are the largest Latin American markets for OTT audiovisual content. Mexico is the only Latin American country where YouTube's SVOD services (YouTube Red) are available. Televisa, the largest national media conglomerate, launched its SVOD service in 2016, competing with Netflix also by means of offering Televisa's content with exclusivity. In August 2017, Blim was the third largest platform in number of users in Mexico.

In Brazil, a market research from 2016 by the Brazilian pay TV association (ABTA) showed that 11.5% of the total pay TV subscribers had cancelled their pay TV services and migrated back to open TV, complemented by a SVOD service. According to sector experts, the country's recent financial crisis may have contributed to this scenario as consumers are prioritising internet to pay TV access.

## Overview by country

Cullen International's research shows that, although there is no OTT specific regulation in any of the countries covered, in some countries OTT providers are subject to obligations that are imposed to audiovisual market players:

- In Argentina OTT providers must register as film distributors.
- In Brazil they must pay a tax aimed at funding national production of audiovisual content (currently not levied on Netflix and other players). In addition, new regulatory debates have recently addressed the need for future regulation of OTT services.

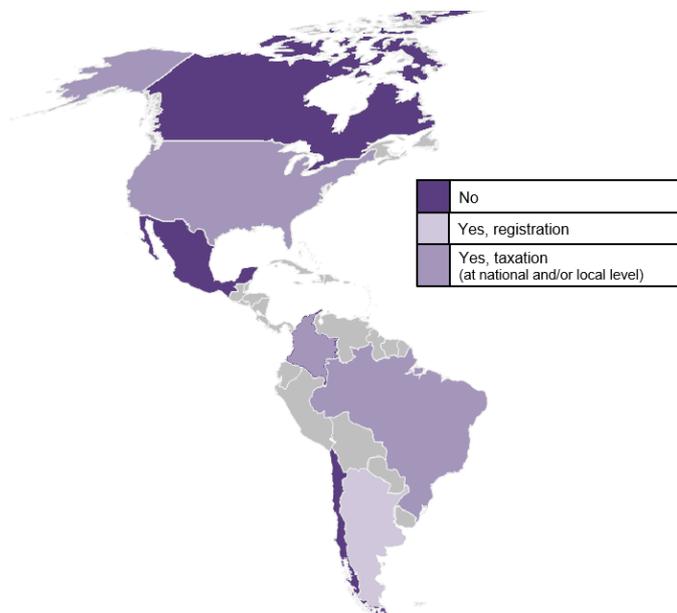
In Colombia a draft law, which is currently under discussion, proposes to regulate any audiovisual communication service (including OTTs) in the same way, independently of the network or device used to provide or access audiovisual content.

In Canada, the US, and Mexico OTT services are unregulated.

Are audiovisual OTT providers regulated in any way? If so, what is the main focus of the regulation? (Cullen International)

established in Europe (such as iTunes and Netflix), although the level of these rules may vary according to the country where providers are established.

No rules apply to providers that transmit from outside the European Union (e.g. Google Play Movies) (unless they are established in the EU). Video-sharing websites (including social network websites) will be subject to certain minimum rules as from mid 2020.



**Tr** **Compromise agreement on a revised Audiovisual Media Services Directive**  
19 June 2018 - Laura Sboarina

The European Commission proposes to clarify the material scope of the existing directive and to require video-sharing platforms to put in place measures to protect minors and to avoid exposure to certain forms of incitement to hatred and violence. The also proposal aims to achieve a better level-playing field between TV (linear) broadcasting and on-demand services.

**Cc** **Major over-the-top service providers - Geographic coverage and regulation**  
30 June 2016 - Jerome Dheur

The table shows if major over-the-top (OTT) media players have launched services in the member states.

**Cc** **Regulation of video-on-demand providers**  
21 Dec. 2017 - Jerome Dheur

This table shows whether an authorisation or notification is needed to provide VOD services, who is the competent authority and whether fees have to be paid.

**Cc** **Regulation of video sharing platforms**  
21 Dec. 2017 - Jerome Dheur

The table covers national initiatives taken to regulate video sharing platforms (like YouTube and Dailymotion).

	Are OTT service providers regulated in any way?	Any definition/qualification for OTT services?	Any debates/initiatives towards specific regulation for OTT services?
<b>Argentina</b>	<p>Registration and taxation</p> <p><b>Registration</b> OTT providers need to register online to INCAA (National Institute of Cinema and Audiovisual Arts) as film distributors. (Res. 2814/11 INCAA)</p> <p><b>Taxation</b></p> <ul style="list-style-type: none"> <li>• Tax reform approved in Dec. 2017 includes VAT application to digital services provided in Argentina (Argentinian phone number, IP address or payment method, Flash and Flash). In April 2018 government regulated VAT application, providers must report and pay the VAT and payment intermediaries (i.e. local credit card companies or banks) will act as a collection agents. Tax Authority (AFIP) published the list of digital service providers included in the regulation and set the terms and conditions for collecting and paying the VAT. Netflix, Amazon Prime Video, HBO are included in the list.</li> <li>• In Dec. 2016, the Santa Fe Province local congress approved the collection of a 3.6% of gross revenue tax on digital audiovisual service providers, including Netflix. 25% of collected funds will be used for cultural development (press release).</li> <li>• A 'cloud tax' focused on online entertainment was approved in Aug. 2014 in the city of Buenos Aires (Flash). This local tax, known as the 'Netflix tax' is a 3% tax collected on the revenues generated from the subscription or rental of streaming audiovisual media services, as well as on the revenues derived from the subscription, purchase or rental of digital content related with music, games, videos and similar products (art. 1, AGIP Resolution 593 of 2014).</li> </ul>	<p>Yes</p> <ul style="list-style-type: none"> <li>• Digital services are considered those that "are carried out through the Internet or any application of protocols, platforms or technology used over the Internet and that are provided essentially automated and involving minimal human intervention regardless of the device used for download, display or use" (Tax reform, art. 28).</li> <li>• Cloud tax applies to "(...) the subscription or rental of streaming audiovisual media services (including movies, TV series, and other types of audiovisual entertainment which are transmitted on the internet and accessed from TV sets, computers or other devices connected to the Internet) as well as for the subscription, purchase or rental of digital content related with music, games, videos and similar products" (AGIP Resolution 593 of 2014).</li> <li>• OTT regulation consultation defined OTT as "services offering audio, video or voice content through fixed or mobile internet that do not include transport and distribution to end users" (Update).</li> <li>• Video on Demand is defined as "a telecommunications service provided by telecommunications providers to access programs based on a catalogue or list of content, and regulated by telecommunications law" (Decree 267/15 of Dec. 2015; Flash).</li> </ul>	<p>Yes</p> <ul style="list-style-type: none"> <li>• The ministry of modernisation consulted until April 2018 on the draft convergent law and shared working documents of the government commission in charge of defining the new convergent law and proposed to open a new public consultation process. A draft and non-official version of the convergent law was shared on social media, but neither the commission nor the ministry has presented an official proposal yet (Update, Flash).</li> <li>• There is a strong call from industry and other stakeholders towards a level playing field with OTTs (Update).</li> <li>• In March 2017 the Ministry of Communications consulted on an OTT regulation (Update). The draft regulation proposed that services offering audio, video or voice content through fixed or mobile internet would not require authorisation but would have to pay the 'applicable taxes' (specific taxes unspecified). It is not clear what follow up will be given to this initiative.</li> </ul>
	<p>Taxation</p> <p><b>Federal level</b></p> <p>Like VOD providers, OTT providers are subject to the CONDECINE tax, which aims to contribute to the national production of audiovisual content.</p> <p>The amount of the tax depends on the length of the audiovisual work and can reach BRL 7,291.25 (US\$1,844.30):</p> <ul style="list-style-type: none"> <li>• less than 15 minutes: BRL 729.12 (US\$184.43)</li> <li>• from 15 to 50 minutes: BRL 1,071.29 (US\$270.98)</li> </ul>	<p>Yes</p> <p>In Brazil, the terms OTT and VOD are used as synonyms in the regulations.</p> <p>Normative Ruling No. 119/2015 only defines VOD as: "a set of linked activities, carried out by one or more economic agents, for the provision of the service offering of a set of audiovisual works in a catalogue, with its own editorial line, for non linear diffusion, at any time decided by the final consumer, in an onerous way."</p>	<p>Yes</p> <p><b>Federal level</b></p> <p>The Superior Cinema Council (CSC), within the Ministry of Culture, established a video on-demand (VOD) working group (Sept. 2017) responsible for discussing and preparing a bill to regulate the collection of Condecine in relation to video on-demand (VOD) services. (Flash).</p> <p>Two bills have been independently introduced in Congress:</p>