

The audio-visual single market unravels - saying goodbye to the country of origin principle

Blog post by Practice Lead Conan D’Arcy, 25 April 2017

A vote today in the European Parliament’s Culture Committee on the reform of the Audio-Visual Media Services (AVMS) Directive signals a significant re-nationalisation of the EU’s single market in online broadcasting.

In the 1980s and 1990s, Europe’s broadcasting regulatory system was built around a classic EU trade-off. Culturally sensitive countries, such as France and Italy, secured EU-wide content quotas for European producers, thereby shielding domestic sectors from US competition. In return, export-orientated service economies, such as the UK, secured a single, internal market for audio-visual services. Under the ‘country of origin principle’, companies can broadcast across the whole of the EU under the approval of just one member state’s regulator without having to comply with strict local language quotas and hefty national production levies in other EU countries.

The amendments voted on today would fundamentally re-balance this grand bargain and have been primarily driven by a growing impatience within the EU institutions of the perceived dominance and tax avoidance of American tech platforms - in this instance, how the country of origin principle exempts them from paying levies that domestic broadcasters are subject to. While the legislative process will not conclude for many months, the levy proposals are set to remain intact due to the support of the Commission (which originally proposed the levy system) and likely support of a majority of EU governments.

Under the provisions, online streaming services would no longer be solely regulated under the regime of their home regulator but would also become subject to local production levies in host countries. In Spain and Italy, such levies can amount to 5% of revenues, while in France levies range from 15-26% of revenues.

For the audio-visual sector, online broadcasters will fundamentally reassess the value of the country of origin system. Whereas previously companies have been attracted to certain jurisdictions, such as the Netherlands, due to the promise of both an EU-wide licence and lighter local regulatory requirements, this offer appears fatally weakened. For online companies based in the UK, the near-inevitable loss of country of origin rights post-Brexit may now appear less significant.

As the European Commission finalises its mid-term review of the Digital Single Market agenda, today’s vote exposes a chasm between its liberalising rhetoric - in which cross-border content portability has been a major selling point - and the continuing influence of traditional producer and national interests. Far from creating a market of scale for European companies to start up, scale up

and launch globally to compete with vast US and Chinese tech platforms, these proposals are more likely to re-balkanise Europe's online audio-visual market. In some senses, the AVMS debate is simply catching up that of the Services Directive a decade ago when a proposed country of origin and mutual recognition system proved too contentious for services trade within the EU, let alone for trade with external countries.