

Trends and issues in online video regulation in the Americas

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Introduction

Discussions about online content regulation—and specifically regulation of online video services—are on the rise, sparking debates from multiple stakeholders. This report examines proposed and adopted online video regulation up to March 2021, focusing on policies in the Americas, as well as highlighting other jurisdictions, in order to identify the various trends, issues, and challenges of these developing frameworks. Among the challenges is that, due to the emerging nature of online video services, simply extending traditional broadcasting and pay TV regulation to online video services risks harmful, unintended consequences that may impede development of these nascent services.

To begin, the report identifies the various ways countries have defined “online video,” ranging from broad definitions that include online video to more specific content-based or revenue-based definitions. Next, the report addresses the benefits of online video services, emphasizing how all players along the value chain benefit from online video services in a less regulated environment, including increased choice for consumers, promotion of local content production, increased revenues across distribution platforms, and higher demand for broadband Internet access services.

Despite these benefits, countries in the Americas and other jurisdictions have proposed or introduced various online video regulatory measures intended to remedy perceived issues, such as “leveling the playing field” between online providers and traditional content providers; mandating local content obligations; controlling access to content; and imposing tax measures on online video service providers. As discussed, these regulatory actions may not fully consider the potential risks and harms associated with expanding regulatory frameworks to these new types of services.

The report further analyzes fundamental differences, including technical and functional differences, between traditional broadcasting/pay TV services and new online video services, identifying reasons to refrain from expanding traditional regulation to new online services while offering alternative solutions.

To provide deeper background into legislative and regulatory developments, the report includes seven case studies covering Argentina, Brazil, Canada, Colombia, and Mexico in the Americas, along with the European Union and Australia for additional reference.

1. Defining Online Video

Online video services are multiplying in number and evolving in form. Simultaneously, broadcasting and pay TV players (together referred to as traditional audiovisual service providers or TASPs) are increasingly entering the online video market. While this makes drawing distinctions between different online video services more challenging, three broad categories of online video services are emerging:¹

- 1) over-the-top (OTT) media services that include online video;
- 2) content-based (e.g., video-on-demand (VOD) or user-generated video); and
- 3) revenue-based (e.g., subscription-based or advertising-based video).

These categories are not necessarily mutually exclusive. They may be combined to identify a more specific service. For example, differentiating between a subscription-based VOD (SVOD) and an advertising-based VOD (AVOD) defines a more specific type of service.

As detailed below, countries and organizations may also define online video based on specific policy goals. Consequently, rather than use a single definition, countries often use multiple definitions depending on the context. The following sections present definitions that various governmental bodies have proposed or adopted.

1.1. Overarching OTT definitions that include online video

Broad definitions of OTTs that include various types of online video services are often employed in situations where governments seek to clarify regulatory roles and frameworks for digital services. For example, the Indonesian government defined OTTs as all forms of digital information—such as writing, sounds, videos, and games—when it proposed a broad set of requirements for OTTs, including data retention, taxation, and agreements with operators.²

The Body of European Regulators for Electronic Communications (BEREC) established an overarching definition of OTTs to provide guidance on how the EU regulatory framework distinguishes between different types of OTTs, particularly which ones fall within or outside the definition of electronic communications services (ECS).³ Online video generally falls outside the scope of ECS. Likewise, the Commonwealth Telecommunications Organisation (CTO) included online video as part of an overarching definition of OTTs when it assessed framework options for both communications-based and audiovisual OTTs.⁴

¹ Note that countries and organizations are also defining over-the-top (OTT) media service broadly through over-arching definitions that address online video in addition to communications-based OTTs, such as voice over IP (VoIP) and instant messaging services. For purposes of this report, the focus is on online video definitions only.

² Government of Indonesia, “Circular of the Minister of Communication and Information Technology Number 3 of 2016,” March 31, 2016, https://jdih.kominfo.go.id/produk_hukum/view/id/517/t/surat+edaran+menteri+komunikasi+dan+informatika+nomor+3+tahun+2016+tanggal+31+maret+2016.

³ BEREC, “Report on OTT services,” January 2016, https://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/5751-berec-report-on-ott-services_0.pdf.

⁴ CTO, “Over-the-Top Services Understanding the Challenges and Opportunities,” June 2018, https://web.archive.org/web/20181101100005/https://cto.int/wp-content/uploads/2018/06/CTO-OTT-Study_Report-Final-Stakeholders-Copy-18-Jun-2018.pdf. This is an archived version of the CTO’s website, as the report is no longer available on the live version.

Table 1. Examples of overarching OTT definitions

Country/organization	Definition label	Year	Definition
	BEREC	2016	OTT service is defined as “content, a service or an application provided to the end user over the public Internet.’ Including in the definition that what is provided can be either content, a service or an application, means that <i>anything</i> provided over the public Internet is an OTT service.” (Emphasis in original.) BEREC further created an OTT taxonomy consisting of OTT-0 (an OTT service that qualifies as an electronic communications service); OTT-1 (OTT service that is not an ECS, but potentially competes with an ECS); OTT-2 (other OTT services), which includes “e-commerce, video and music streaming.”
	CTO	2018	Noting no generally agreed upon definition, Section 2.1 of the report adopts a definition of OTT as “online services which can potentially substitute traditional telecommunications services such as voice telephony and messaging (SMS) services. OTT services are grouped into three broad groups namely: 1. Voice over IP (VoIP) – for voice calling and video chatting services; 2. Instant Messaging services - chat application; and 3. Video and Audio Streaming services.”
	Indonesia	2016	Section 5.1.2 of the proposed rules defines content services over the Internet as the “provision of all forms of digital information consisting of text, sound, images, animation, music, videos, movies, games, or a combination of some and/or all, including in streaming form or downloaded form by utilizing telecommunications services through Internet protocol-based telecommunications networks.”

1.2. Content-based definitions

Broad definitions of OTTs are often narrowed down to capture more specific elements of online video services. Commonly, this is accomplished by specifically defining online video more in terms of how the content is delivered. As detailed below, online video services under the content-based category include online VOD, linear online video, and user-generated online video.

Video-on-demand (VOD). VOD-based classifications generally refer to online video services that offer a curated selection of audiovisual works—whether movies, TV shows, or other professionally created content—in an online catalog that users may stream or download. Users choose when to watch the content and on which devices, such as mobile phones, tablets, computers, or TV sets connected to the Internet (i.e., connected TVs). Countries across Latin America, as well as in Europe and Asia, have proposed or adopted various VOD definitions.

Table 2. Examples of VOD definitions

Country/organization	Definition label	Year	Definition
 Australia	Subscription streaming services	2020	Government consultation refers to “subscription streaming services” as online services providing “professionally produced content.”
 Colombia	Subscription video on demand and video on demand service over the Internet	2019	Without defining it further, Article 154 of Colombia’s National Development Plan for 2019-2021 mentions “on-demand services (Subscription Video on Demand—SVOD) that are provided through the Internet (Over the Top—OTT).” The implementing decree was adopted in May 2020, which defines VOD service as “[o]ne that allows the visualization of audiovisual works at the time chosen by the user, at individual request, on a catalog of audiovisual works that is made available exclusively by the service provider, without contribution from the user.” ⁵ The decree applies to VOD services over the Internet.
 EU	On-demand audiovisual media service	2018	The Audiovisual Media Services (AVMS) Directive defines “on-demand audiovisual media service” as a “non-linear audiovisual media service” that is “provided by a media service provider for the viewing of programs at the moment chosen by the user and at his individual request on the basis of a catalog of programs selected by the media service provider.”
 Turkey	On-demand broadcasting service over the Internet	2019	VOD is defined as an “on-demand broadcasting service over the Internet” that is “watched or listened to over the Internet through direct or conditional access [such as through a subscription], depending on a program catalog arranged by the media service provider at a time chosen by the user and upon individual request.”

Linear online video. Linear online video refers to real-time programming, including live content, in which the provider schedules the time and date that the program will be available. Traditionally, linear programming has been offered by TASPs. More recently, it has shifted online where traditional players and online platforms offer viewers real-time programming. Although countries in the region are only beginning to consider how to define and classify linear online video, varied approaches are emerging. In Brazil, for example, the National Telecommunications Agency (ANATEL) determined in September 2020 that linear online video is not a pay TV service subject to licensing and regulation, but rather a value-added service falling outside of ANATEL’s regulation.⁶ In contrast, the Pakistan Electronic Media Regulatory Authority (PEMRA) held a consultation in January 2020 proposing to define “Web TV” as the “equivalent

⁵ MINTIC, Decree 681 of 2020, May 21, 2020,

<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20681%20DEL%2021%20DE%20MAYO%20DE%202020.pdf>.

⁶ ANATEL, “ANATEL decides on framing paid content on the internet,” September 9, 2020, <https://www.anatel.gov.br/institucional/mais-noticias/2653-anatel-delibera-sobre-enquadramento-de-conteudos-pagos-na-internet>.

of traditional broadcast service whereby linear content can be streamed live and the service can be accessed free of cost by simply visiting the URL (website) of the service provider.”⁷ The consultation closed in February 2020 and PEMRA has not yet issued a decision on how Web TV, and other online video services, ultimately will be classified.

User-generated content. Online video services with business models built on user-generated content are typically addressed under the definition of social media networks. Although user-generated video platforms may be subject to some type of regulation, policymakers generally are not proposing to bring them under the traditional broadcasting regulatory framework. For example, the EU Audiovisual Media Services (AVMS) Directive defines “video-sharing platform services” as services “... providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility...”⁸ In addition to identifying user-generated video providers as not having editorial responsibility, the AVMS Directive also defines such providers as not controlling the organization of the content.⁹

1.3. Revenue-based definitions

Online video definitions may also distinguish between various types of services depending on how providers earn revenues. These revenue-based definitions generally fall into one of three models—subscription-based, advertising-supported, or transactional-based. However, an online video platform could combine any of these revenue sources. For example, Amazon Prime offers subscription-based access to online videos and enables viewers to separately purchase or rent videos. Similarly, Hulu may offer a subscription-based service that is simultaneously supported by advertising.¹⁰

⁷ Pakistan Electronic Media Regulatory Authority, “Consultation on Regulating the Web TV & Over the Top TV (OTT) Content Services,” January 8, 2020, http://site.pemra.gov.pk/uploads/cp/Regulating_the_Web_TV_OTT_CP.pdf. Notably, the consultation was met with criticism from a wide range of stakeholders, prompting PEMRA to issue a [clarification](#) on Twitter denying claims that the proposed rules would curtail the freedom of speech.

⁸ European Union, “Directive 2010/13/EU on audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018” November 14, 2018, <http://data.europa.eu/eli/dir/2010/13/2018-12-18>.

⁹ European Union, “Directive 2010/13/EU on audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018” November 14, 2018,

¹⁰ Disney has 67 percent ownership stake in and full control of Hulu, with the remainder held by Comcast’s NBC Universal (this 33 percent stake will be acquired by Disney as early as 2024. “Disney to Buy Comcast’s Hulu Stake and Take Full Control of Streaming Service, May 14, 2019,” <https://www.nytimes.com/2019/05/14/business/media/disney-hulu-comcast.html>.

2. Benefits of Online Video Services

Online video services of all types are transforming audiovisual markets, creating new mechanisms for content delivery and adding significant value to the digital economy. Consumers benefit from greatly expanded selections of curated and user-generated content, as well as multiple, convenient ways to view it. Content producers benefit as online platforms fuel production of new series, films, and other programming. Advertisers gain access to potentially huge audiences, increasing their revenue opportunities. And network operators enjoy spikes in demand for broadband access, with new Internet users joining and existing subscribers increasing their data plans. Online video presents opportunities for existing TASP to diversify their revenue streams while emerging online video players compete to engage and expand audiences.

To maximize the social and economic growth potential of online video, policymakers and regulators should continue letting markets flourish and refrain from extending outdated traditional broadcasting and other unnecessary regulations to online video platforms. Where warranted, a focus on self-regulatory codes of practice or well-considered co-regulatory approaches may help achieve public policy goals, such as protecting minors, while avoiding restrictions on consumer choice.

2.1. Consumer benefits of online video

According to various estimates, the consumer appetite for online video is accelerating. In January 2021, Statista reported that the gross number of SVOD subscribers worldwide increased from 508.44 million in 2018 to 642 million in 2019 and is expected to surpass 1.1 billion by 2025.¹¹ Also in January, Juniper Research predicted that there will be 1.9 billion active subscriptions to online SVOD services globally by 2025, driven by traditional broadcasters that increasingly move into the streaming services market.¹²

In Latin America alone, Digital TV Research predicted in March 2021 that the region will reach 116 million SVOD subscriptions by 2026, more than doubling the 53 million SVOD subscribers in Latin America at the end of 2020.¹³ Regional uptake of online video services will be fueled by increased Internet use. According to Cisco's Annual Internet Report, the number of Internet users continues to grow with 70 percent of Latin America's population expected to be online by 2023.¹⁴

With greater Internet access, more consumers will be able to enjoy online video, particularly online VOD. Online video offers greater convenience and choice of watching on-demand programs at the time and place of the viewer's choosing and on any device. It is also easy to use, flexible, and affordable. Signing up is as simple as logging into a website or app. Long-term contracts with potentially high early termination fees are not a concern. Instead, consumers may suspend or discontinue the SVOD service at any time and easily restart service. Relatively low costs allow consumers to subscribe to multiple platforms and enjoy a diverse and abundant variety of programming options. Additionally, consumers may subscribe to specific online channels or content providers, such as HBO Max or Disney+, on an a la carte basis. This offers more

¹¹ Statista, Video Streaming (SVoD) worldwide, January 13, 2021, <https://www.statista.com/statistics/949391/svod-subscribers-world/>.

¹² Juniper Research, OTT TV & video subscriptions to reach 2 billion globally by 2025, driven by services from traditional broadcasters, January 4, 2021, <https://www.juniperresearch.com/press/press-releases/ott-tv-video-subscriptions-to-reach-2-billion>.

¹³ Digital TV Research, Latin America OTT TV and Video Forecasts, March 2021, <https://www.digitaltvresearch.com/products/product?id=313>.

¹⁴ Cisco, Cisco Annual Internet Report (2018–2023) (updated March 9, 2020), <https://www.cisco.com/c/en/us/solutions/collateral/executive-perspectives/annual-internet-report/white-paper-c11-741490.pdf>.

freedom to consumers who are seeking specific content and may not want the hundreds of channels offered by traditional pay TV services. Within its first year of launching in November 2019, Disney+ reached 86.8 million paid subscribers worldwide.¹⁵ This far exceeded expectations, considering that the original forecast was to reach 90 million customers by its fourth year. The current projection is 260 million subscribers by the end of 2024.¹⁶

2.2. Online VOD promotes content production

Online VOD not only increases access to existing content, but also promotes new content production, including local content that may not have been picked up by TASP's due to more limited distribution channels. Online platforms can more quickly and effectively react to consumer interests and leverage low entry barriers for those entities seeking to produce and distribute original content or to continue existing shows that broadcasters choose to cancel. For instance, the popular U.S. show *Lucifer* originally aired on the Fox broadcasting network but was canceled in 2018 after three seasons. Due to customer demand, Netflix picked up the series and has since revived the show for two more seasons.²¹

Online VOD providers can promote the development of niche, specialty, and local content because they host large catalogs. Further, these offerings are made available across jurisdictions and globally. For example, content created in Chile and offered over online video platforms can easily reach anyone with an Internet connection

In 2017, Netflix chose Canada to establish its first permanent production presence outside of the United States after receiving approval from the Canadian government under the Investment Canada Act.¹⁷ Under the agreement, Netflix committed to investing at least CAD 500 million (USD 400 million) over five years in original productions, including to support Canadian French-language content and promote Canadian productions globally. Netflix selected Canada as a production hub due to abundant creative talent and the country's track record in creating films and television shows.¹⁸

In 2019 and 2020, Netflix set up production hubs in Toronto and Vancouver, which will lead to greater levels of content investment, as well as the expected creation of thousands of local jobs.¹⁹ In January 2019, Netflix noted that investment in production in Canada and Canadian content was at an all-time high with foreign financing of Canadian TV fiction tied with Canadian distributors as the top sources of financing for English-language TV fiction—each providing 22 percent of financing.²⁰ This was more than provincial tax credits (18%), federal tax credits (11%), and public and private broadcasters (14%).

¹⁵ Variety, Disney Plus to increase prices in early 2021, eyes up to 260 million subscribers by the end of 2024, December 10, 2020, <https://variety.com/2020/digital/news/disney-plus-hits-86-8-million-subscribers-1234850846/>.

¹⁶ Variety, Disney Plus to increase prices in early 2021, eyes up to 260 million subscribers by the end of 2024, December 10, 2020, <https://variety.com/2020/digital/news/disney-plus-hits-86-8-million-subscribers-1234850846/>.

¹⁷ Department of Canadian Heritage, Launch of Netflix Canada: a recognition of Canada's creative talent and its strong track record in creating films and television (September 28, 2017), https://www.canada.ca/en/canadian-heritage/news/2017/09/launch_of_netflixcanadaarecognitionofcanadascreativetalentandits.html.

¹⁸ Netflix, What Netflix's half a billion CAD investment in Canada is really about (October 10, 2017), <https://about.netflix.com/en/news/what-netflixs-half-a-billion-cad-investment-in-canada-is-really-about>.

¹⁹ The Toronto Star, Netflix is setting up a Toronto production hub in the Port Lands (February 19, 2019), <https://www.thestar.com/news/gta/2019/02/19/netflix-announces-creation-of-production-hub-in-toronto.html>. Hollywood Reporter, Netflix Launches Latest Production Hub in Vancouver, (September 24, 2020), <https://www.hollywoodreporter.com/news/netflix-launches-latest-production-hub-in-vancouver>.

²⁰ Netflix, Comments Submitted to the Broadcasting and Telecommunications Legislative Review Panel (January 11, 2019), [https://www.ic.gc.ca/eic/site/110.nsf/vwap/887_Netflix_3a_EN_IN.pdf/\\$file/887_Netflix_3a_EN_IN.pdf](https://www.ic.gc.ca/eic/site/110.nsf/vwap/887_Netflix_3a_EN_IN.pdf/$file/887_Netflix_3a_EN_IN.pdf).

²¹ Hollywood Reporter, 'Lucifer' Renewed for Season 6 as Netflix Reverses Course, June 23, 2020, <https://www.hollywoodreporter.com/live-feed/lucifer-renewed-season-6-as-netflix-reverses-course-1296445#:~:text=Lucifer%20has%20new%20life%20%E2%80%94%20again,has%20renewed%20the%20Warner%20Bros.&text=Netflix%20picked%20up%20Lucifer%20in, five%2C%20Netflix%20had%20second%20thoughts>.

anywhere in the world, thereby expanding the potential market of locally produced content beyond Chile's borders.

A March 2019 study by NERA Economic Consulting found that overall video content output for both user-generated and professionally curated content is growing worldwide, particularly for local content creation.²² The study found that the number of video content production companies in the European Union increased 28 percent between 2011 and 2015. In Canada, content production increased 40 percent between 2011 and 2016, from CAD 6.0 billion (USD 4.3 billion) to CAD 8.4 billion (USD 6 billion). In 2018, budgets for Canadian productions hit a record CAD 8.9 billion (USD 6.4 billion). Netflix alone spends at least CAD 100 million (USD 80 million) funding and licensing original Canadian shows, which involves massive, voluntary direct investments into the local production market.²³

Although COVID-19 effectively halted all TV and film production globally, online video created opportunities for local producers. Quickly adapting to the new environment, local producers shifted to shorter programs, shooting with fewer on-set cameras, and incorporating quarantine-friendly formats, such as virtual interactions.²⁴ User-generated content platforms saw big increases in content creation and viewership, particularly as TV show hosts shifted to social media platforms to reach their audiences while production studios closed during the pandemic.

Many online video service providers took additional steps to make their content more accessible, including offering free upgrades to current subscribers and extending free trial periods. As the European Audiovisual Observatory noted, Amazon Prime was available free of charge in the northern Italy "red zone" at the beginning of the pandemic lockdowns and was later extended to the entire country.²⁵

Other online platforms, such as Netflix, directly funded content. Netflix voluntarily donated to or created hardship funds to support various TV and film industries during the pandemic in Brazil, Canada, France, Italy, Mexico, Netherlands, Spain, and the United States.²⁶ In total, Netflix committed USD 150 million to supporting its production partners, with USD 30 million of it earmarked for the broader industry. It provided the third-party funds as donations to be distributed by entities such as the Polish Producers Alliance and the Argentine Academy of Cinematography Arts and Sciences. Additionally, to recoup their costs, some production studios released films directly to streaming platforms, skipping theaters altogether and further driving demand for OTTs. This included studios, such as Paramount, Sony, Universal, Lionsgate, Roadside, and United Artists. While these measures may not have been ideal or as lucrative for content producers as releasing their films to theaters, online platforms provided a crucial mechanism for films to be viewed during the COVID-19 pandemic that otherwise would have been completely unavailable to audiences as theaters went into lockdown.

Countries may also consider tax incentives to attract local content production rather than impose stringent content quotas or production obligations. In Brazil, the government is considering rules to

²² NERA Economic Consulting, *The Impact of Online Video Distribution on the Global Market for Digital Content*, p. 1, March 2019, <https://www.nera.com/content/dam/nera/publications/2019/NERA-The-Impact-of-Online-Video-Distribution.pdf>.

²³ The Toronto Star, *Netflix is no cultural imperialist — it's helping to save Canadian TV* (June 29, 2019), <https://www.thestar.com/business/opinion/2019/06/29/netflix-is-no-cultural-imperialist-its-helping-to-save-canadian-tv.html>.

²⁴ Forbes, *Online Video Companies Find New Audiences—And New Challenges—In Pandemic* (April 14, 2020), <https://www.forbes.com/sites/dbloom/2020/04/14/online-video-complex-stirr-studio71-coronavirus-challenges-viewership-tubular-labs/#3051753349a6>.

²⁵ European Audiovisual Observatory, *"The European audiovisual industry in the time of COVID-19," IRIS Plus Report*, p. 72, September 22, 2020.

²⁶ Netflix, *"Letter to shareholders,"* April 21, 2020, https://s22.q4cdn.com/959853165/files/doc_financials/2020/q1/updated/FINAL-Q1-20-Shareholder-Letter.pdf.

exempt online video service providers from proposed content fund contribution requirements if they invest in national productions. As addressed in section 5.2, Argentina adopted tax incentives for design, pre-production, and post-production in the audiovisual sector that online video service providers may take advantage of if traditional broadcasting regulation is extended to them.

2.3. Online video increases revenues across distribution platforms

According to the NERA study, “the primary effect of OVDs [online video distribution platforms] is to increase overall consumption, not simply shift consumption from one modality to another.”²⁷ Globally, pay TV operators continue to see increasing subscriber levels. In 2018, the total number of pay TV subscribers exceeded 1 billion globally for the first time, a year-on-year increase of 26 million subscribers.²⁸ As of the end of December 2020, there were over 1.1 billion pay TV subscriptions worldwide, which is expected to surpass 1.2 billion subscribers by 2024.²⁹

Along with increased subscriber levels, traditional platforms continue to see substantial advertising revenues. According to some pre-COVID measures, global television advertising revenues were expected to reach USD 177.7 billion in 2023, up from USD 161.3 billion in 2017.³⁰ However, because the pandemic caused sharp declines in advertising worldwide, these figures were revised with TV advertising generating USD 142 billion in 2020 and projected to reach USD 159 billion in 2022.³¹

During the first several months of the COVID-19 pandemic, advertising revenues dropped as advertisers cut spending due to the suspension of content production and overall economic uncertainty. However, falling advertising revenue hit across all platforms during that period—not only TASP— with digital advertising also suffering.³² The digital advertising industry began to rebound in the second half of 2020, with several large digital players reporting strong earnings, particularly in the fourth quarter.³³ In 2021, the advertising industry is expected to continue its recovery from the initial COVID-19 shock, with various estimates ranging from 5.6 percent to 10.2 percent year-on-year increases, totaling between USD 612 billion to USD 652 billion globally.³⁴ Spending on digital advertising is expected to grow at a faster pace than traditional media, accounting for more than half of all ad spending in 2021.

²⁷ NERA Economic Consulting, *The Impact of Online Video Distribution on the Global Market for Digital Content*, p. 17, March 2019, <https://www.nera.com/content/dam/nera/publications/2019/NERA-The-Impact-of-Online-Video-Distribution.pdf>

²⁸ Digital TV Research, *Pay TV subscriptions exceed 1 billion* (September 2019), https://www.digitaltvresearch.com/ugc/Pay%20TV%20Databook%202019%20TOC_toc_245.pdf.

²⁹ S&P Global Market Intelligence, *Global pay TV penetration to peak in 2020 at 60.7%; revenues continue declining*, December 11, 2020, <https://www.spglobal.com/marketintelligence/en/news-insights/blog/global-pay-tv-penetration-to-peak-in-2020-at-60-7-revenues-continue-declining>.

³⁰ Statista, *Global television advertising revenue from 2018 to 2022* (October 2019), <https://www.statista.com/statistics/237803/global-tv-advertising-revenue/>.

³¹ Statista, *“Global television advertising revenue 2015-2024* (February 12, 2021), <https://www.statista.com/statistics/237803/global-tv-advertising-revenue/>.

³² Variety, *Facebook, Google Could Lose Over \$44 Billion in Ad Revenue in 2020 Because of Coronavirus* (March 25, 2020), <https://variety.com/2020/digital/news/facebook-google-ad-revenue-loss-coronavirus-1203544502/>.

³³ CNBC, *Amazon and Google reaped big rewards from a rebound in Q4 ad spend*, February 3, 2021, <https://www.cnbc.com/2021/02/03/amazon-and-google-earnings-showed-big-rewards-rebound-in-q4-ad-spend.html>.

³⁴ Forbes, *Ad Agency Forecast: Expect the Advertising Market to Rebound in 2021*, December 14, 2020, <https://www.forbes.com/sites/bradadgate/2020/12/14/ad-agency-forecast-expect-the-advertising-market-to-rebound-in-2021/?sh=439340d06adb>.



2.4. Online video boosts broadband uptake and deployment

Between 2017 and 2022, global Internet traffic is expected to more than triple, from 122 exabytes (over 130 billion gigabytes) per month in 2017 to nearly 400 exabytes (430 billion gigabytes) per month by 2022.³⁵ Of the total global traffic in 2022, online video is predicted to account for 82 percent. A June 2020 report from IEA showed that global Internet traffic grew 12-fold since 2010, at a rate of roughly 30 percent per year, and is expected to double by 2022 to 4.2 zettabytes (4.2 trillion gigabytes) per year.³⁶

According to a May 2020 report on Internet traffic during the early part of the COVID-19 pandemic, YouTube, Netflix, Facebook Video, and TikTok were in the top five video services by total traffic during the early months of the pandemic.³⁷ The number three slot was a generic “HTTP media stream” category that covered all smaller video service platforms, reflecting the long tail of online video services. The top 10 video services by total traffic, as identified in report are highlighted in Table 3.

Table 3. Top 10 video services by total traffic (March to May 2020)

1	YouTube	6	Amazon Prime
2	Netflix	7	Hulu
3	HTTP Media Stream (catch-all category)	8	Disney+
4	Facebook Video	9	Twitch
5	TikTok	10	Operator IPTV

Demand for all forms of online video is therefore a key driver of broadband expansion. To keep pace with this demand, Cisco predicted that fixed broadband speeds will more than double between 2018 and 2023, reaching a global average of 110.4 Mbps and mobile broadband speeds will more than triple in speed during the same period, with a global average of 43.9 Mbps by 2023.³⁸ However, according to other measures, the pace may be faster. In January 2021, Speedtest Global Index found that the average download speed over fixed broadband was 96.98 Mbps while average download speeds over mobile broadband was 46.74 Mbps.³⁹ These increased demands for speed and bandwidth require massive network investments across existing and new technologies, including fiber deployments, emerging satellite technologies, 5G networks, and undersea cable connectivity.

Operators, including most TASPs, have traditionally focused on building out network infrastructure, particularly last-mile connectivity to end users. However, online players are increasingly investing in middle mile and backbone infrastructure as they seek to provide optimal service and remain competitive. For example, online players often invest in data centers to manage vast increases in data transfers and ensure that their content is located close to viewers in order to reduce latency and improve performance.

³⁵ Cisco, Cisco Predicts More IP Traffic in the Next Five Years Than in the History of the Internet (November 27, 2018), <https://investor.cisco.com/news/news-details/2018/Cisco-Predicts-More-IP-Traffic-in-the-Next-Five-Years--Than-in-the-History-of-the-Internet/default.aspx>.

³⁶ IEA, Data Centres and Data Transmission Networks, June 2020, <https://www.iea.org/reports/data-centres-and-data-transmission-networks>.

³⁷ Sandvine, COVID Internet Phenomena Spotlight Report (May 2020), https://www.sandvine.com/hubfs/Sandvine_Redesign_2019/Downloads/2020/Phenomena/COVID%20Internet%20Phenomena%20Report%20200507.pdf.

³⁸ Cisco, Cisco Annual Internet Report (2018–2023) White Paper (updated March 9, 2020), <https://www.cisco.com/c/en/us/solutions/collateral/executive-perspectives/annual-internet-report/white-paper-c11-741490.html>.

³⁹ Speedtest, Speedtest Global Index January 2021, <https://www.speedtest.net/global-index>.

Online service providers are directly investing in self-owned infrastructure, such as data centers, fiber transmission equipment, submarine cable systems, private peering infrastructure, and in-house content delivery networks (CDNs). Between 2014 and 2018, online service providers invested more than USD 300 billion in Internet infrastructure, with about 90 percent of that investment toward hosting infrastructure and data centers.⁴⁰ Such investments have not slowed since. For example, the Telecom Infra Project (a Facebook-led industry initiative) announced a new Community Lab and Centre of Excellence in Indonesia in February 2021, while Amazon announced plans to launch a second infrastructure initiative in India in November 2020.⁴¹ In 2020, Google and Facebook each also made multi-billion-dollar investments in India's Jio Platforms, which operates the Jio Infocomm telecommunications network.⁴²

Many online players are also investing in data transport, such as submarine cable projects. For example, Google has invested in over a dozen submarine cable infrastructure projects, either solo or in a consortium, in all parts of the world.⁴³ In Africa, Facebook partnered with telecommunications companies to build one of the longest subsea cable systems in the world, equal to almost the Earth's circumference.⁴⁴ It will be ready for use by 2024 and will deliver three times the capacity of all current submarine cables currently serving Africa. Facebook's development of a new subsea cable connecting Florida with Cancun, Mexico was announced in late February 2021. The cable is expected to be completed in 2022 and is specifically intended to meet the rapidly expanding demand for video streaming, social media, and cloud services in the Americas region.⁴⁵

These investments contribute to the greater growth and integrity of the Internet as a whole, benefitting all levels of society, including the TSAPs, businesses, and consumers. Imposing traditional broadcasting regulation on online video services would ultimately hinder these investments and growth in network deployments by forcing online providers to shift financial and technical resources to burdensome regulatory compliance rather than development and value creation in networks and services.

⁴⁰ Analysys Mason, Infrastructure Investment by Online Service Providers, December 2018, <http://www.analysismason.com/contentassets/7f0a13bfc9744806ae8424c4df834ba1/infrastructure-investment-by-online-service-providers---20-dec-2018---web.pdf>.

⁴¹ TIP, The Telecom Infra Project inaugurates New Community Lab in Indonesia, February 1, 2021, <https://telecominfraproject.com/telecom-infra-project-inaugurates-new-community-lab-in-indonesia/>; AWS, AWS Announces Plans to Launch a Second Region in India, November 6, 2020, <https://press.aboutamazon.com/news-releases/news-release-details/aws-announces-plans-launch-second-region-india>.

⁴² CNBC, Google confirms it's investing \$4.5 billion in India's Jio Platforms four months after Facebook's bet on the company, July 15, 2020, <https://www.cnbc.com/2020/07/15/google-jio-platforms-deal.html>.

⁴³ VentureBeat, How Google is building its huge subsea cable infrastructure (April 24, 2019), <https://venturebeat.com/2019/04/24/how-google-is-building-its-huge-subsea-cable-infrastructure/>.

⁴⁴ BBC, Facebook to build internet cable 'circumference of Earth' (May 15, 2020), <https://www.bbc.com/news/technology-52676253>.

⁴⁵ Business Wire, FB Submarine Partners, LLC Announces New Subsea Cable Between Florida and Cancun, Mexico, February 23, 2021, <https://www.businesswire.com/news/home/20210223006053/en/FB-Submarine-Partners-LLC-Announces-New-Subsea-Cable-Between-Florida-and-Cancun-Mexico>.



3. Trends in Online Video Regulation in the Americas

As usage and proliferation of online video services increase, governments are questioning whether they should be addressed from a regulatory perspective. For online video, these questions tend to center around four issues:

1. establishing a level playing field;
2. supporting local content, industry, and culture;
3. controlling access to content; and
4. increasing tax revenue.

Although regulators in the Americas have undertaken similar reviews and considered the need for regulation, they have manifested differently due to regional and country-level priorities. As addressed below, these reviews have focused largely on how to classify online video services vis-à-vis TASP services, potential content-related requirements, and taxation of digital services, including online video. This section examines these regulatory actions and identifies potential challenges they may pose to the growth of digital services in the Americas and around the world.

3.1. Trends and issues with using regulation to establish a “level playing field”

As in other regions, calls for a “level playing field” between traditional and new online video service providers have sparked industry petitions and government inquiries in the Americas regarding the need for proposed online video regulation.⁴⁶ “Level playing field” proponents argue that online video service providers hold an unfair business advantage because they are not subject to traditional broadcasting rules. For example, in December 2018, Claro Brasil petitioned Brazil’s regulator, ANATEL, to request injunctive relief against Fox+, calling for online linear video service to be categorized as a pay TV service and subject to the same regulation because Fox+ offers real-time programming. As ANATEL was considering the case, Brazil’s National Cinema Agency (ANCINE) held a consultation in 2020 on potentially classifying online linear video services as a pay TV service to reduce supposed regulatory asymmetries and foster competition.⁴⁷

After investigation and consultation, in September 2020, ANATEL expressly declined to classify online video as a pay TV service subject to traditional regulation. It determined that online video—whether linear or VOD—is a value-added service (SVA) under the telecommunications law, and thus is not subject to telecommunications regulation.⁴⁸

A key point in ANATEL’s reasoning was that online video services are fundamentally different from pay TV services —operating within different markets and according to different competitive pressures. In particular, ANATEL noted that online video services require users to contract for a telecommunications service whereas pay TV is a standalone service that does not require users to purchase Internet access in order to watch cable or satellite TV programming. That is, pay TV providers distribute programming and

⁴⁶ See, for example, Fundación Telefónica, *Las reglas del juego en el ecosistema digital—Level playing field*, May 2016, <https://www.fundaciontelefonica.com/cultura-digital/publicaciones/501/>.

⁴⁷ Agência Nacional do Cinema (ANCINE), “SERVIÇO DE OFERTA DE CONTEÚDO AUDIOVISUAL EM PROGRAMAÇÃO LINEAR VIA INTERNET,” April 8, 2020, <https://www.ancine.gov.br/sites/default/files/consultas-publicas/nr.pdf>.

⁴⁸ ANATEL, “ANATEL decides on framing paid content on the internet,” September 9, 2020, <https://www.anatel.gov.br/institucional/mais-noticias/2653-anatel-delibera-sobre-enquadramento-de-conteudos-pagos-na-internet>.

are granted access to telecommunications network infrastructure to do so, which starkly contrasts with the OTT model. ANATEL emphasized that online video is inherently an SVA because the end user must subscribe to an Internet access service in order to subsequently subscribe to online linear or VOD services.

Additionally, ANATEL noted that simply because some may consider online video and pay TV to be substitutes or part of the same relevant market does not necessarily imply that they should be subject to symmetrical regulation. Due to the distribution differences and separation of telecommunications network connectivity from the OTT service, ANATEL recognized that it would be excessive and against regulatory simplification according to international best practices to extend pay TV regulatory measures to online video. However, to replace pay TV, online video would first need to overcome certain bottlenecks regarding price, availability, and quality of broadband across the country. Section 0 details this case and overall proposed online video regulation in Brazil.

Rather than establish a level playing field, extending pay TV regulation to online video services could potentially harm technological development. To this end, ANATEL highlighted that certain sectors must restructure or even reinvent themselves in the face of technological progress. Thus, ANATEL stated that its duty is not to interfere with new products in order to protect existing technologies, services, or business plans. Instead, the regulator should ensure technological neutrality and analyze all retail markets to identify market failures and promote effective competition under the law.

Other Latin American countries are also taking a more measured approach. As further detailed in Section 5.6, Colombia's Communications Regulation Commission (CRC) examined how online video services are impacting the market, including whether online video services were replacing traditional broadcast services. In 2017, the CRC concluded that online video complements, and does not replace, traditional TV services.⁴⁹ The CRC's findings are in line with discussions in Section 4 below regarding how traditional audiovisual services and online video services are complementary, but they have inherent technical and functional differences and a different viewer experience, thereby not warranting extending traditional regulation to online video services.

Canada appears to be taking a different approach. In November 2020, Canada's Minister of Canadian Heritage introduced a bill to amend the Broadcasting Act by expanding the definition of broadcasting undertaking to include online video service providers.⁵⁰ Although the bill would permit the Canadian Radio-television and Telecommunications Commission (CRTC) to extend certain broadcasting rules to online video services, such as content restrictions and quotas or contributions to industry levies, the proposed legislation differentiates between online video and TASPs. For example, Section 6(1) of the bill would establish a class of licenses for broadcasting undertakings, with the express exemption of online video service providers from licensing obligations. Where the CRTC may impose measures on online video, such conditions must be appropriate for the implementation of the broadcasting policy. Further, the bill authorizes the CRTC to exempt any class of broadcasting undertaking from the rules. Despite the minister calling for a "level playing field" in 2019, the draft bill ultimately recognizes that online video and TASPs are fundamentally different and warrant different regulatory treatment from TASPs in at least some

⁴⁹ Comisión de Regulación de Comunicaciones, "Mercados audiovisuales en un entorno convergente," August 30, 2017, https://www.crcm.gov.co/recursos_usuario/2017/actividades_regulatorias/mercados_audiov/170830_Mercados_Audiovisuales.pdf. In May 2020, the CRC reiterated its position in "El rol de los servicios OTT en el sector de las comunicaciones en Colombia: Año 2019, May 2020, <https://www.crcm.gov.co/uploads/images/files/CRC-EstudioOTT-2020-publicar-vf.pdf>. Since then, the CRC has sought to streamline the TASP regulatory framework but has thus far continued to keep online video outside of the traditional regulatory framework.

⁵⁰ Minister of Canadian Heritage, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts, C-10, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=10926636&Language=E>.

aspects.⁵¹ Discussion of the bill is ongoing and subject to change. The case study on Canada is addressed in Section 0.

Outside of the Americas, governments are examining similar issues. In Australia, the government held a consultation in 2020 on a potential regulatory framework for online video services, which proposed four possible models. The first would maintain the status quo, in which online video services remain outside of the broadcasting regulatory framework. Other options included varying levels of regulation for online video services. Another alternative proposed a completely deregulatory approach of traditional broadcasting services in order to “level the playing field” with online video services.⁵² In September 2020, the government opted to refrain from extending traditional broadcasting regulation to online video service providers while simultaneously granting broadcasters greater flexibility in meeting regulatory obligations.⁵³ Although the government is currently consulting on imposing local investment and reporting requirements on SVOD and AVOD services, online video would largely continue outside the scope of traditional broadcasting regulation.⁵⁴ See Section 5.3 for the Australia case study.

In Europe, where countries may decide to apply more traditional broadcasting regulation to online platforms, potential for self-regulatory models remain. In the European Union, for example, the current AVMS Directive, revised in 2018, promotes co-regulatory and self-regulatory models at the national level despite expanding the scope of the directive’s mandate in certain areas, as detailed in Section 5.1.⁵⁵

3.2. Trends and issues with local content requirements

The increasing popularity of online video services is prompting discussions about expanding local content and production requirements to online video service providers. In some cases, governments, such as Canada, may seek to expand legacy regulation to new online players to preserve cultural heritage while other regulators appear more interested in bolstering the local media industry, as with Brazil and Colombia. This goal of supporting local industry, content, and culture results in three general types of regulatory efforts: (i) quota/prominence requirements; (ii) fees to support local content funds; and (iii) local production and/or language requirements.

⁵¹ The Star, Tony Wong, “‘No more free rides’ for Big Tech, heritage minister says,” September 2, 2019, <https://www.thestar.com/news/canada/2019/09/02/no-more-free-rides-for-big-tech-heritage-minister-says.html>.

⁵² DITRDC, Options Paper: Supporting Australian stories on our screens (April 15, 2020), <https://www.communications.gov.au/have-your-say/supporting-australian-stories-our-screens-options-paper>.

⁵³ DITRDC, Modernizing Australian screen content settings, September 30, 2020, <https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings>.

⁵⁴ DITRDC, New rules for a new media landscape—modernizing television regulation in Australia, December 21, 2020, <https://www.communications.gov.au/have-your-say/new-rules-new-media-landscape-modernising-television-regulation-australia>.

⁵⁵ European Union, “Directive 2010/13/EU on audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018” November 14, 2018, Preambles 4-5, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

Figure 1. Three main types of local content regulatory efforts

<p>Local content quota/prominence</p> <ul style="list-style-type: none"> • Must include a minimum percentage of local content in the online catalog and display prominently.
<p>Local content fees</p> <ul style="list-style-type: none"> • Must pay into the local content contribution fund and/or contribute investments into local content production.
<p>Local production/language</p> <ul style="list-style-type: none"> • Must produce a certain amount of content locally and/or in the local language.

Importantly, the local content requirements imposed on TASPs often stem from legacy broadcasting laws that arose when viewers had limited selection over content options. These rules are rooted in decades-old public interest doctrines when over-the-air broadcasting was the main way for citizens to access television programming and broadcasters often received licenses—including for scarce spectrum resources—at low or no cost.

Quota/prominence requirements. A range of countries in the Americas, including Argentina, Brazil, Colombia, and Mexico, have either proposed or approved regulations requiring online video service providers to include a minimum percentage of local content in their online catalogs and/or display local content in a prominent and accessible manner. See the case studies in Section 5 of this report for further details.

In Mexico, a bill proposing a 30 percent local content quota for online video catalogs, along with registration requirements for online video service providers, was introduced to the Senate in March 2020.⁵⁶ As detailed in section 5.7, a second bill was tabled in the legislature in February 2021 that includes a 15 percent local content quota with prominence requirements and other obligations.⁵⁷ A broad range of stakeholders have criticized the bills. For example, Mexican digital rights group R3D called the first proposal “problematic” by poorly defining the subjects to be regulated.⁵⁸ R3D further criticized the bill as risking a drastic reduction of overall content available on VOD catalogs to meet the quota requirement, along with potential imposition of blocks to Mexican content in other jurisdictions and an overall reduction of competition, plurality, and diversity of online audiovisual content. Notably, current provisions in the Federal Telecommunications and Broadcasting Law only incentivize, but do not require, distribution of local content by traditional broadcasters.⁵⁹

⁵⁶ El Economista, “Comisión del Senado aprueba dictamen para que plataformas digitales tengan 30% de contenido nacional,” March 18, 2020, <https://www.eleconomista.com.mx/politica/Comision-del-Senado-aprueba-dictamen-para-que-plataformas-digitales-tengan-30-de-contenido-nacional-20200318-0118.html>.

⁵⁷ Senate, Federal Law of Cinematography and Audiovisual, https://www.senado.gob.mx/64/gaceta_del_senado/documento/115383.

⁵⁸ R3D, Comisiones en el Senado votarán (de nuevo) dictamen problemático sobre plataformas de video en línea, March 23, 2020, <https://r3d.mx/2020/03/23/comisiones-en-el-senado-votaran-de-nuevo-dictamen-problematico-sobre-plataformas-de-video-en-linea/>.

⁵⁹ Government of Mexico, “Federal de Telecomunicaciones y Radiodifusión,” July 14, 2014, http://www.diputados.gob.mx/LeyesBiblio/ref/lftr/LFTR_orig_14jul14.pdf.

In June 2019, Argentina considered a bill and draft decree that would impose national content quotas of 10 percent on video on demand services and foreign subscription-based broadcast services.⁶⁰ The bill and draft decree, which did not pass, would have extended existing quotas for TASPs to online video service providers.⁶¹ This is addressed in the Argentina case study in Section 5.2.

In the European Union, the revised AVMS Directive requires online VOD providers to ensure that their catalogs contain at least 30 percent European content and display local content prominently.⁶² Traditional broadcasters are not subject to the local content requirement; instead, they must meet a 10 percent quota for European works created by independent producers.⁶³

A key difference between local content quotas under the EU's AVMS Directive and those proposed in the Americas is that the EU quotas are on a pan-European basis rather than a country-specific basis. Thus, online VOD platforms may fulfill these requirements by offering content from dozens of countries covering a population of nearly 450 million. In contrast, content quotas in Latin America would be country-specific, making it more challenging for online VOD providers to comply with narrower market parameters.

Fees to support local content funds. Local content levies are often part of legacy audiovisual regulations requiring cinemas and broadcasters to pay fees that help fund local content production. In the Americas, Argentina, Brazil, Colombia, and Costa Rica, among others, have considered extending such contribution obligations to online video service providers but have not yet adopted them.

In 2018, Paraguay's Federal Law of Cinematography and Audiovisual created a National Audiovisual Fund to be funded solely by foreign online video service providers of "audiovisual services obtained via the Internet from abroad."⁶⁴ The law requires the National Institute of Paraguayan Audiovisual (INAP) to administer the fund. However, the government has not yet set or begun collecting the fee because the INAP has not been established.⁶⁵ In January 2021, the government restarted the process to establish the INAP, which is moving forward with the selection of the INAP's executive director and is expected to be completed in 2021.⁶⁶

While content fees seek to support local or independent productions, they can increase production costs and distort incentives, potentially nullifying their objective. Such contribution requirements overlook "the fact that one of the success factors of online platforms is their ability to lower distribution costs and increase the reach of video productions."⁶⁷ These reduced distribution costs enable online video service

⁶⁰ Parliament of Argentina, Bill 709/19, <https://www.senado.gov.ar/parlamentario/parlamentaria/418567/downloadPdf>.

⁶¹ Government of Argentina, "Ley 26.522," article 65, October 10, 2009, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/155000-159999/158649/norma.htm>.

⁶² European Union, "Directive 2010/13/EU on audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018" November 14, 2018.

⁶³ European Union, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (2010 Audiovisual Media Services Directive), Article 17.

⁶⁴ Biblioteca y Archivo del Congreso de la Nación, "Ley Nº 6106 / DE FOMENTO AL AUDIOVISUAL," July 6, 2018, <http://www.bacn.gov.py/leyes-paraguayas/8426/ley-n-6106-de-fomento-al-audiovisual>.

⁶⁵ La Nación, Preparan llamado para elegir director del instituto de cine, July 1, 2020, <https://www.lanacion.com.py/espectaculo/2020/07/01/preparan-llamado-para-elegir-director-del-instituto-de-cine/>.

⁶⁶ Ministry of Culture, Tender for Executive Director, May 3, 2021, <http://www.cultura.gov.py/convocatorias/concurso-publico-de-oposicion-para-el-inap/>.

⁶⁷ NERA Economic Consulting, The Impact of Online Video Distribution on the Global Market for Digital Content, p. 42, March 2019, <https://www.nera.com/content/dam/nera/publications/2019/NERA-The-Impact-of-Online-Video-Distribution.pdf>.

providers to ultimately support niche and local producers directly for content that otherwise would not be profitable for TASPs.

In particular, the AVMS Directive does not directly impose contribution requirements on online linear or VOD providers. Instead, Article 13 of the AVMS Directive permits Member States to voluntarily adopt contribution measures to financially support European works, which must be proportionate and non-discriminatory. Such requirements can only be based on the revenues earned in that Member State and must consider any financial contributions providers may pay in other Member States.

Many EU Member States, such as Austria and Denmark, as well as the United Kingdom, have so far opted against imposing contribution requirements while others are taking a moderate approach. In Spain, for example, the Ministry of Economic Affairs and Digital Transformation (MINECO) opened a public consultation in November 2020 to transpose the AVMS Directive into national law.⁶⁸ The proposal included creating a new obligation for online linear and VOD providers to support European audiovisual production. However, rather than contribute to a fund as has been proposed in certain Latin American countries, the draft law would require online video streaming platforms meeting a certain revenue threshold to allocate 5 percent of their revenues to finance European content.

Local production and/or language requirements. Within some of the local content quotas, certain governments in Latin America have proposed additional requirements related to the production of that content. Argentina's current local content quotas, which were to be expanded to online services in 2019, define local and national productions as productions where at least 60 percent of those involved are from Argentina.⁶⁹ There has been no movement on the proposed bill in Argentina's senate since the measure was introduced.⁷⁰

Local language requirements are not explicitly required by any quotas in the Americas, but they may be implied in the concept of a local production. As with local content quotas and fund requirements, minimum local production obligations may have the opposite of the intended effect by increasing production costs and reducing local investment.

3.3. Trends and issues with controlling access to content

Although controlling access to content has not been a top priority in the Americas, other countries and regions are considering measures that require online video service providers to comply with advertising, rating, and other rules commonly imposed on TASPs. These measures generally are intended to protect minors from harmful content in various ways.

For example, the EU's revised AVMS Directive imposed a range of obligations on VOD providers relating to how they may engage in marketing and advertisement, such as product placement restrictions, especially for children. There are restrictions specific to video-sharing platforms in terms of protecting minors from violent or other harmful content. Other measures include providing parental control mechanisms that specify the conditions for parents to restrict access to various programs.

⁶⁸ MINECO, Audiencia e información públicas sobre el Anteproyecto de Ley General de Comunicación Audiovisual, November 3, 2020, <https://avancedigital.gob.es/es-es/Participacion/Paginas/DetalleParticipacionPublica.aspx?k=355>.

⁶⁹ Parliament of Argentina, Bill 709/19, <https://www.senado.gov.ar/parlamentario/parlamentaria/418567/downloadPdf>.

⁷⁰ Senate, Bill Search, FILE NUMBER 709/19, <https://www.senado.gov.ar/parlamentario/comisiones/verExp/709.19/S/PL>.

Despite these measures, the AVMS Directive encourages Member States to foster self-regulation of the industry by using codes of conduct that would protect children and limit harmful advertising, as well as promote other consumer protection goals. If policymakers in the Americas potentially examine access to content matters, self-regulatory models may be reviewed as a first step to prevent market distortions and possibly limit free speech and expression.

3.4. Trends and issues with online video taxes

As in other regions, countries in the Americas are grappling with whether and how to tax digital services and their providers, particularly digital services provided by foreign entities. Two primary taxation approaches are emerging. The first is an income tax for multinational tech companies, often referred to as a digital service tax (DST). The second is a specific tax on digital services, including online video, which primarily takes the form of a value-added tax (VAT).

Many countries are refraining from imposing DSTs and are supporting a harmonized global approach spearheaded by the Organisation for Economic Cooperation and Development. Currently, 135 countries have agreed to embrace this framework, including most countries in the Americas. This framework was expected to be implemented by 2020 but has been delayed by the COVID-19 pandemic.⁷¹

In contrast, countries throughout the Americas have proposed or adopted VATs on specific digital services targeting foreign providers without an established in-country presence. In Mexico, for instance, the legislature began working on how to collect tax revenue from international digital services companies since at least mid-2018. In early-2018, Representative Javier Salinas Navaez highlighted the difficulty in taxing non-resident digital companies without having an adverse impact on individuals because the goal is to tax the companies not individuals.⁷² Subsequently, in September 2019, Mexico updated the VAT Law that approved a 16 percent VAT on digital services, which came into effect in June 2020.⁷³

To enforce compliance with Mexico's VAT, the legislature introduced a "kill switch" provision in 2019 requiring Internet service providers (ISPs) to block the websites and apps of non-resident online providers that did not register and pay the VAT.⁷⁴ This earlier version of the bill failed due to widespread criticism that such an extreme measure was disproportionate, would violate principles of net neutrality, and unfairly restrict freedom of expression.⁷⁵ However, the "kill switch" provision was reintroduced in October

⁷¹ Organisation for Economic Cooperation and Development, "Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy," January 2020, <http://www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf>.

⁷² Mexico Chamber of Deputies, "Bulletin No. 0616," April 12, 2018, <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2018/Diciembre/04/0616-Necesario-legislar-en-Mexico-para-que-companias-de-servicios-digitales-paguen-impuestos>.

⁷³ Mexico Chamber of Deputies, "Ley del Impuesto al Valor Agregado," December 9, 2019, https://www.dof.gob.mx/nota_detalle.php?codigo=5581292&fecha=09/12/2019.

⁷⁴ See, for example, http://www.diputados.gob.mx/LeyesBiblio/iniclave/64/CD-LXIV-II-1P-093/01_modificacion_093_17oct19.pdf

⁷⁵ El Universal, Impuestos, ¿amenazan internet?, October 4, 2019, <https://www.eluniversal.com.mx/opinion/octavio-islas/impuestos-amenazan-internet>.

2020 under the 2021 Economic (Budget) Package.⁷⁶ In November 2020, the provisions passed both houses and came into effect on January 1, 2021.⁷⁷

Collection and remittance of the tax is another issue for governments to tackle. In Latin America, they are generally opting to either require digital platforms to remit the tax directly or to require indirect payment through financial intermediaries. As highlighted below, Mexico and Chile are two countries that require platforms to pay the tax directly. One challenge with this approach is that it can impose a high compliance burden on digital platforms, which must adapt their IT systems, among other back-end duties. This also risks restricting cross-border trade and limiting access for local digital platforms that expand into international markets if other countries adopt reciprocal obligations.

Mexico	Chile
<ul style="list-style-type: none"> • The law requires foreign digital platforms to register with and remit the VAT directly to the tax authority. • A digital platform customer is deemed to be based in Mexico if any of the following are true: (1) the customer's home address is in Mexico; (2) payment is made using a Mexico-based intermediary; or (3) the IP address used to access the digital service is located in Mexico. 	<ul style="list-style-type: none"> • The law requires foreign digital platforms must register for and collect VAT. • To identify whether a customer is subject to VAT, the rules rely on a combination of: (1) the purchaser's IP address; (2) billing address; (3) credit/bank account location; and (4) SIM card to establish whether the individual is located in Chile and the sale should therefore be covered by the VAT.

Other VATs in the region lack a viable way of identifying the entity that owes the tax and how to collect it. Argentina, Chile, Colombia, Costa Rica, among others, all approved such VATs, but have encountered difficulties in determining whether a sale could be attributed to a user in their country and in establishing a mechanism to collect it. Costa Rica's 13 percent VAT, for example, was slated to come into effect in July 2019, but the government decided to delay its enforcement indefinitely until it could work out issues with determining the origin of the party being charged.

Left with limited options on how to collect, most countries in the Americas have targeted payment processors as the entities responsible for collecting and remitting the VAT, straining credit card companies, banks, and other processors. This mechanism makes enforcement challenging with additional burdensome requirements imposed on payment processors, which are subject to intermediary responsibilities of tracking, collecting, and paying the tax to the government. Ultimately, the taxes are passed to consumers who must pay higher prices for online video services.

⁷⁶ Mexico Chamber of Deputies, Cámara de Diputados aprueba, en lo general, Miscelánea Fiscal 2021, October 20, 2020, <https://comunicacionnoticias.diputados.gob.mx/comunicacion/index.php/boletines/camara-de-diputados-aprueba-en-lo-general-miscelanea-fiscal-2021#gsc.tab=0>.

⁷⁷ Mexico Chamber of Deputies, Gaceta Parlamentaria, año XXIII, número 5646, jueves 5 de noviembre de 2020, Anexo III, <http://gaceta.diputados.gob.mx/PDF/64/2020/nov/20201105-III.pdf>.

4. Analysis of expanding traditional regulation to OTTs

As policymakers and regulators examine potential measures to address online video services, it is crucial to understand the fundamental differences between online VOD and more traditional services and avoid unintended harmful impacts on socio-economic progress.

4.1. Technical and functional differences between online video and TASP

The inherent technical and functional differences of online video services and TASPs should be considered in any discussion of potentially extending broadcasting regulation to digital players. Providers of over-the-air broadcasting, cable TV, satellite TV and Internet protocol TV (IPTV) are also the operators of the transmission infrastructure. TASPs often must obtain radio frequency authorizations in order to offer their services or, at a minimum, obtain rights of way and other land-use permits to deploy their networks.

Broadcasters often receive spectrum resources at no or low cost in exchange for serving the public interest. Content obligations and advertising restrictions effectively serve as “in-kind” payments for free or deeply discounted access to large swathes of highly valuable spectrum. Thus, the rationales for licensing, content regulation, and advertising restrictions that underpin TASP rules do not apply to online video platforms, as they do not use scarce resources or rights of way. Aside from access to public resources, unlike traditional operators, online video service providers do not own or control the underlying network infrastructure. This is a key technical difference between OTTs and TASPs. TASPs have greater control over the quality of service because they operate—or at least have access to—the underlying network, particularly the last-mile connection to end users. Because online video service providers do not control the end-user’s network access, they cannot guarantee the same quality of service levels and must instead rely on the viewer’s broadband connection. This separation from the network undermines a public interest rationale for subjecting online video service providers to licensing and other compliance obligations, such as mandatory quotas. As mentioned previously, this separation was the key element in ANATEL’s decision in Brazil to classify online video services as value-added services not subject to regulation, as opposed to pay TV services subject to licensing and other regulatory obligations.

The need for access to scarce resources is one of the main rationales underpinning licensing and other regulatory obligations imposed on traditional broadcasters and pay TV providers. A rationale that, by definition, does not apply to OTTs because they ride “over the top” of networks.

4.2. Differences in user experiences between online video and traditional television

TASPs also differ from online VOD services from the viewer’s perspective. Viewers value online, non-linear programming to catch up on television series or watch on-demand content at their convenience. Particularly for SVOD, viewers appreciate the high volume of available content, original series, and the personalized, customizable nature of VOD in terms of identifying programming of interest to a specific viewer.

Although most older viewers tend to prefer TASP programming, younger and more tech-engaged viewers of all ages continue to use a wide range of platforms, including both online linear and on-demand services. These various preferences show that viewers understand the different purposes of traditional versus on-demand services and seek them out based on their functionalities.

In this context, it is important to consider the impacts on viewers if online VOD services are subject to the same regulatory obligations as traditional television. For example, local content quotas for TASPs may

serve public interest goals, especially in terms of event-based, real-time programming. However, in an online VOD context, a local content quota is likely to result in unintended negative consequences.

An online SVOD provider may offer a wide selection of local content in terms of the *number* of programs, but their on-demand catalogs are so vast that the *percentage* of local content is relatively low compared to TASPs that do not match the breadth of programming options. In Australia’s “Media Reform Green Paper” consultation reviewing potential online video investment obligations, the government noted that in June 2020, local content comprised only 1.7 percent of Netflix’s catalog and 2.7 percent of Amazon Prime Video’s catalog.⁷⁸ However, because Amazon Prime Video’s catalog contains over 12,800 titles and Netflix carries nearly 7,000 titles, the *percentage* of Australian titles appears low. When looking at the *number* of programs in their catalogs, Amazon Prime Video offered 347 distinct Australian titles while Netflix offered 132 distinct Australian titles as of June 2020.⁷⁹

Holding online SVOD providers to local content quotas imposed on broadcasters would risk an outcome contrary to the intended result in two key ways. First, online providers would be incentivized to reduce the number of overall titles in the catalogs to meet a mandatory minimum quota. This reduction would harm consumers by reducing the choice and availability of the vast number of titles available in an SVOD provider’s catalog. Specialized or niche content, such as little-watched but classic TV shows or films about indigenous groups, would likely be deleted to comply with such quotas. Not only would viewer choice be reduced, but programming with historical or cultural value would be lost.

Secondly, online providers would be motivated to churn out local content simply to meet an arbitrary quota without focusing on developing high-quality programming of interest to viewers. The reputation of local content producers may be diminished as viewers are turned off by poor quality shows.

The more countries that adopt local content and production quotas, the more fragmented and limited offerings would become. If these obligations are extrapolated on a global basis, then the range of content available in each county would be reduced as online video service providers struggle to comply with a patchwork of regulations. The result would be country-based siloed catalogues with viewers outside of major markets losing out on valuable international content.

4.3. Lack of data to support online video regulation

Aside from inherent technical, functional, and viewer-experience differences between TASPs and online video services, there are overarching procedural challenges with countries simply expanding traditional regulation to OTT players. Few, if any, comprehensive studies demonstrate that extending traditional broadcasting and pay TV regulation to online video, such as content quotas, is warranted. Further, relatively few studies and little empirical or qualitative data exists to thoroughly assess how viewers perceive and value different video programming platforms.

⁷⁸ DITRDC, Media Reform Green Paper, November 27, 2020, <https://www.communications.gov.au/file/51136/download?token= QipLViF>.

⁷⁹ DITRDC, Media Reform Green Paper, November 27, 2020, <https://www.communications.gov.au/file/51136/download?token= QipLViF>.

In contrast, at least one empirical study recently found that local content quotas on online video catalogues negatively impact the diversity and number of titles available in that country, erode the quality of the programming content, and reduce the country's production of audiovisual content.⁸¹ The study found that in a statistical analysis of 60 countries, those jurisdictions without content quotas that took a "developmental" approach including economic incentives, such as tax exemptions for local production, had an average release of 1.96 audiovisual productions per 100,000 in 2018.⁸² In contrast, countries adopting "protectionist" approach, including content quotas, released an average of only 0.26 productions per 100,000 in the same year.

One of the study's key conclusions was that imposing a local content quota on online video platforms was associated with a 10 percent reduction in local audiovisual production. This was due largely to increasing the costs of production and distorting the balance of supply and demand, which leads the audiovisual industry to reduce investment in local content development.⁸³

The study found that in a statistical analysis of 60 countries, those jurisdictions without content quotas that took a more "developmental" approach, such as economic incentives like tax exemptions for local production, had an average release of 1.96 audiovisual productions per 100,000 in 2018.⁸⁰ In contrast, countries adopting "protectionist" approach, including content quotas, released an average of only 0.26 productions per 100,000 in the same year.

Because online video services are a nascent and evolving market, imposing regulation without clear evidence that it is warranted or necessary risks harming market development. Evidence-based decision making is a key element of an effective regulator in the digital era, as the International Telecommunication Union (ITU) highlighted in the Global ICT Regulatory Outlook 2020, the ITU underscored the need for clear metrics in considering regulation in the digital environment, stating that "[r]ules and decisions must find their logic in current, detailed evidence and in market data rather than in wishful thinking, opinion, and theory."⁸⁴ The ITU also stated that this includes conducting a "combination of quantitative and qualitative econometric studies based on reliable data" and regulatory impact assessments (RIAs) to "allow for better decision making."⁸⁵ Expanding the traditional broadcasting regulatory framework to online players without sufficient data, including RIAs, justifying such regulation is not in line with the evidence-based, collaborative decision-making models that the ITU highlights as crucial in a digital environment.

4.4. Alternatives to expanding traditional regulation to online video

As the ITU noted, rather than the command-and-control approach to regulations found in traditional regulatory frameworks, regulators should consider a principles-based approach that includes incentive-

⁸⁰ Raúl Katz and Juan Jung, Telecom Advisory Services, Cuotas o incentivos para el desarrollo de la producción audiovisual nacional: tendencias y análisis de impacto económico, p. 7, July 2020, <http://www.teleadvs.com/wp-content/uploads/CUOTAS-O-INCENTIVOS-PARA-EL.pdf>.

⁸¹ Raúl Katz and Juan Jung, Telecom Advisory Services, Cuotas o incentivos para el desarrollo de la producción audiovisual nacional: tendencias y análisis de impacto económico, July 2020, <http://www.teleadvs.com/wp-content/uploads/CUOTAS-O-INCENTIVOS-PARA-EL.pdf>.

⁸² Raúl Katz and Juan Jung, Telecom Advisory Services, Cuotas o incentivos para el desarrollo de la producción audiovisual nacional: tendencias y análisis de impacto económico, p. 7, July 2020, <http://www.teleadvs.com/wp-content/uploads/CUOTAS-O-INCENTIVOS-PARA-EL.pdf>.

⁸³ Raúl Katz and Juan Jung, Telecom Advisory Services, Cuotas o incentivos para el desarrollo de la producción audiovisual nacional: tendencias y análisis de impacto económico, p. 19, July 2020, <http://www.teleadvs.com/wp-content/uploads/CUOTAS-O-INCENTIVOS-PARA-EL.pdf>.

⁸⁴ ITU, Global ICT Regulatory Outlook 2020, p. 20 (April 2020), https://www.itu.int/dms_pub/itu-d/opb/pref/D-PREF-BB.REG_OUT01-2020-PDF-E.pdf.

⁸⁵ ITU, Digital Regulation Platform, <https://digitalregulation.org/gsr-best-practices-guidelines-on-the-gold-standard-for-digital-regulation-2020-and-to-fast-forward-digital-connectivity-2019/>.

based mechanisms to encourage experimentation and innovation.⁸⁶ This approach should examine existing and potential rules, including deregulation of traditional players along with a more self-regulatory model for online players.

Australia's recent consultation on developing an appropriate content development framework offers an example of how countries may consider these issues.⁸⁷ As detailed above, the Australian government sought input on four possible ways forward, including "minimal" changes to the existing framework that takes on a more self-regulatory approach in which online SVOD services are engaged on a voluntary basis. Broadcasters and pay TV providers would gain relief through revised quota requirements and other obligations. The government has even considered full deregulation that would remove existing obligations from broadcasters and pay TV providers.

In September 2020, the Australian government opted to maintain a largely unregulated approach to streaming video providers combined with a more flexible, deregulatory approach to TASP.s.⁸⁸ Large video streaming platforms operating in Australia may be requested to report their level of investment in Australian content to the ACMA, but would otherwise not be subject to broadcasting rules, such as local content quotas. Starting January 1, 2021, commercial broadcasters will enjoy more streamlined content rules that replace a strict 55 percent local content quota with a more flexible point-based system. For pay TV operators, their content expenditure obligations will be reduced from 10 percent to 5 percent for new drama programming starting July 1, 2021.

Industry-led self-regulatory codes of conduct can also provide a way forward. For example, the Asia Video Industry Association (AVIA) launched an SVOD Content Code in 2018 covering the Association of Southeast Asian Nations (ASEAN) Member States.⁸⁹ The SVOD Content Code identified principles to ensure that content offered over the platforms of participating providers is authentic, free from hate speech, hate crimes, and other forms of inappropriate content. The code also includes a pledge that providers will use their best efforts to offer customer control features for age-appropriate content throughout the ASEAN region. Ten entities signed onto the code initially, with others continuing to join.

In November 2020, the AVIA announced a new Governance Framework for Online Curated Content that provides additional recommendations and measures to encourage growth of online VOD streaming platforms while putting consumers in control of the content they watch.⁹⁰ The Governance Framework calls on governments to take a deregulatory approach to legacy pay TV regulations to eliminate excessive regulation while also refraining from imposing onerous obligations, conditions, or administrative burdens on online players. Instead of heavy regulation, the Governance Framework encourages governments to work collaboratively with industry to simultaneously promote investments and create a consumer-oriented environment.

⁸⁶ ITU, Global ICT Regulatory Outlook 2020, p. 20 (April 2020), https://www.itu.int/dms_pub/itu-d/opb/pref/D-PREF-BB.REG_OUT01-2020-PDF-E.pdf.

⁸⁷ DITRDC, Options Paper: Supporting Australian stories on our screens (April 15, 2020), <https://www.communications.gov.au/have-your-say/supporting-australian-stories-our-screens-options-paper>.

⁸⁸ DITRDC, Modernizing Australian screen content settings, September 30, 2020, <https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings>.

⁸⁹ CASBAA, Subscription Video-on-Demand Service Providers in ASEAN Introduce Content Code to Safeguard Consumer Interests (June 2018), <http://www.casbaa.com/news/casbaa-news/subscription-video-on-demand-service-providers-in-asean-introduce-content-code-to-safeguard-consumer-interests/>.

⁹⁰ AVIA, Asia Video Industry Announces New Governance Framework for Online Curated Content (OCC) Services (November 4, 2020), <https://avia.org/asia-video-industry-announces-new-governance-framework-for-online-curated-content-occ-services/>.

A combined deregulatory approach for TASPs and unregulated/self-regulated approach for online video service providers would incentivize investment, reduce unnecessary regulatory burdens, and promote new and innovative services well into the future.

For example, a 2018 Deloitte study examined various future scenarios for the television and video industry to help market players prepare for the next decade. Among the predictions was that “linear and on-demand content will be equally important and will coexist peacefully.”⁹¹ While online VOD will become more mainstream, linear television—especially sports and major events—will remain highly important among viewers. Another prediction was that traditional players will be regulated more moderately compared to today’s highly regulated media industry. Deloitte predicted that the “lower level of regulation for online and mobile offerings leads to a reduction of the regulatory pressure for all market players, especially for the traditional media companies.”⁹²

Heavy-handed regulatory proposals are often based on assertions that online video service providers, particularly foreign companies, have a competitive advantage over TASPs or that local viewers will suffer from a lack of locally produced content. However, TASPs are well-positioned in emerging online video markets to leverage existing market structures to compete in online markets. For example, TASPs can offer online streaming as a new service with their bundled packages, adding to existing triple or quadruple play plans that include Internet access, telephone (fixed and mobile), and pay TV.

Additionally, many TASPs are increasingly choosing to leverage their existing subscriber bases by offering their own streaming services or partnering with OTTs. For example, Brazil’s largest commercial broadcaster, Globo TV, launched its own SVOD service in 2015 called Globoplay.⁹³ ViacomCBS, under the name Telefe, a prominent national broadcaster in Argentina,⁹⁴ announced plans in 2020 to launch its own premium streaming platform in Argentina, Brazil, and Mexico in early 2021.⁹⁵ In the United States, IPTV provider AT&T launched an online platform called AT&T TV in March 2020 that enables subscribers to watch live programming, as well as video streaming services and apps.⁹⁶ Thus, they are evolving with shifting consumer preferences and technological developments and will also benefit from a light-touch regime.

When examining the online video market, policymakers and regulators should consider the various alternatives to expanding traditional regulation to online players. A more moderated framework for traditional players and a self-regulatory approach for online providers is in line with international best practices, emerging frameworks, and future predictions.

⁹¹ Deloitte, The future of the TV and video landscape by 2030, p. 11 (September 2018),

<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Technology-Media-Telecommunications/de-future-tv-and-video.pdf>

⁹² Deloitte, The future of the TV and video landscape by 2030, p. 12 (September 2018),

<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Technology-Media-Telecommunications/de-future-tv-and-video.pdf>

⁹³ Deadline, How Brazilian TV Giant Globo Is Planning To Compete With Netflix & Amazon In The Streaming War, January 19, 2021,

<https://deadline.com/2021/01/how-brazilian-tv-giant-globo-is-planning-to-compete-with-netflix-amazon-in-the-streaming-war-1234676055/>.

⁹⁴ Telefe, Viacom buys Telefe from Telefónica for US \$ 345 million (November 15, 2016), <https://telefe.com/telefe/novedades/viacom-compra-telefe-a-telefonica-por-us-345-millones-de-dolares/>.

⁹⁵ Variety, ViacomCBS to Launch Global Streamer in Early 2021, Headlined By Showtime, CBS All Access Originals (August 6, 2020),

<https://variety.com/2020/tv/news/viacombcs-global-streamer-svod-cbs-all-access-showtime-originals-1234727337/>.

⁹⁶ AT&T, AT&T TV Launches Nationwide (March 2, 2020), https://about.att.com/story/2020/att_tv.html.



5. Case studies of online video regulation

Below are case studies of the EU, Australia, Argentina, Brazil, Canada, and Colombia. These surveys analyze their approaches to online video regulation, which may come from the information and communication technology (ICT) regulator, the media/broadcasting authority, the competition authority, or the legislature.

5.1. European Union

The first Audiovisual Media Services (AVMS) Directive was initially adopted in 2010.⁹⁷ In 2015, the European Commission (EC) opened a consultation on updating the rules,⁹⁸ with the final revised directive adopted in 2018.⁹⁹ The 2018 AVMS Directive required EU Member States to transpose it into national law by September 19, 2020, although the vast majority of Member States missed that deadline. On November 23, 2020, the EC launched infringement proceedings against 23 Member States for failing to transpose the directive by the deadline.¹⁰⁰ Countries that fail to respond may be referred to the European Court of Justice (ECJ) and face financial penalties.

Although the 2010 AVMS Directive focused on linear audiovisual services with non-linear, on-demand services outside the scope of regulation, the revised directive expands the rules to bring VOD services under the regulatory framework and imposes new obligations on video-sharing platforms. Video-sharing platforms include user-generated video services, such as YouTube, but also include social media services “...if the provision of programmes and user-generated videos constitutes an essential functionality of that service.”¹⁰¹

The 2018 AVMS Directive states that national governments may impose more detailed or stricter obligations on audiovisual media services than provided in the EU rules. However, the directive also encourages Member States to use co-regulation and foster self-regulation through codes of conduct, stating:¹⁰²

Experience has shown that both self- and co-regulatory instruments, implemented in accordance with the different legal traditions of the Member States, can play an important role in delivering a high level of consumer protection. Measures aimed at achieving general public interest objectives in the emerging audiovisual media services sector are more effective if taken with the active support of the service providers themselves.

⁹⁷ European Union, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (2010 Audiovisual Media Services Directive), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0013:EN:NOT>.

⁹⁸ European Commission, Public consultation on Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century (July 6, 2015), <https://ec.europa.eu/digital-single-market/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>.

⁹⁹ European Union, Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (Revised AVMS Directive), <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

¹⁰⁰ EC, Audiovisual Media: Commission opens infringement procedures against 23 Member States for failing to transpose the Directive on audiovisual content (November 23, 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2165.

¹⁰¹ European Union, Revised AVMS Directive, Preambles 4-5, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

¹⁰² European Union, Revised AVMS Directive, Preamble 13, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

While Member States have flexibility when transposing the 2018 AVMS Directive into national law, the national legislation must include certain components. Key elements of the 2018 AVMS Directive that impact online video services include the following.

- **Content quotas and prominence.** Article 13 of the revised AVMS Directive requires Member states to ensure that media service providers of on-demand audiovisual media services offer at least a 30 percent share of European works in their catalogs as well as prominence of those works. VOD providers may establish prominence through various means, such as a dedicated section on the homepage for European works, ability to search for European works in the search tool, and by using banners or similar tools to highlight European works. This local content requirement was not imposed on broadcasters, which remain subject to the original obligation to reserve at least 10 percent of their transmission time (excluding news, sport events, advertising, teletext services, and teleshopping) to European works created by producers that are independent from broadcasters.¹⁰³ Alternately, the 2010 AVMS Directive enables Member States to require broadcasters to allot at least 10 percent of their programming budget to independently produced European works instead of complying with the 10 percent local content requirement.
- **Fees to promote local content development.** Article 13 also authorizes Member States to impose fees and other charges on media service providers, including online VOD platforms. These obligations may include mandatory contributions to national content funds and direct contributions to the production of and acquisition of rights in European works.
- **Advertising requirements.** The revised directive requires online VOD providers to comply with a host of restrictions on advertising (referred to as commercial communications), such as sponsorship and product placement of alcoholic beverages and a broad ban on tobacco advertising. As with traditional television services, the revised directive requires online VOD providers to ensure that advertising is easily recognizable and does not promote discrimination.
- **Specific obligations for video-sharing platforms.** Chapter IXA of the revised directive imposes new obligations specifically on video-sharing platforms. The rules apply to user-generated content, as well as advertising on these platforms. The obligations require platforms to protect minors from harmful content that “may impair their physical, mental or moral development” and protect the general public from illegal content or content that incites violence or hatred against any group of persons.

The 2018 AVMS Directive directly overhauls regulation of online content throughout Europe, but also has a global impact. It has sparked regulatory discussions worldwide as policymakers consider whether to introduce or expand a range of new obligations. In Australia, there are new requirements to curb online hate speech. In Latin America, governments are increasingly proposing quota, prominence, and contribution requirements.

As addressed more below, local content quotas and prominence obligations are particularly challenging to meet in individual countries. The EU quota spans audiovisual content from 30 different countries covering more than two dozen languages. The same obligations in a single country risk severely limiting the availability of quality content because they require such intensive local content production that online

¹⁰³ European Union, 2010 Audiovisual Media Services Directive, Article 17, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0013:EN:NOT>

video service providers may need to reduce overall catalogue sizes or churn out low-quality content to meet the quota thresholds.

5.2. Argentina

In Argentina, online video services are not specifically regulated under existing laws and regulations, but the government is considering various online video regulatory frameworks. For example, Argentine authorities have actively pursued OTT taxation covering online video services through a series of laws, decrees, and regulations. The government has particularly focused on bringing foreign online providers under Argentina's tax rules.

5.2.1. Proposed OTT regulation in Argentina

In 2019, former President Mauricio Macri was expected to issue a new decree requiring online SVOD and online audio/music services to include local content in their catalogs. Although this proposed decree was not expected to contain a minimum quota for local content, it would have permitted the ICT regulator, National Entity of Communications (ENACOM), to regulate how local content must be included in catalogs, such as requiring a minimum percentage of the catalog and/or prominence. This decree was not released under the Macri presidency and it is uncertain whether the current administration plans to address it. However, the National Actors Association has been lobbying ENACOM and the national government to achieve local content regulations.

The Argentine legislature has also been active. For example, Bill 709S/19, called the "Short Content Law" (*Ley Corta de Contenidos*), was tabled in March 2019.¹⁰⁴ This bill would amend Argentina's audiovisual and telecommunications laws, including new provisions to require VOD and SVOD providers to ensure that at least 10 percent of their catalogs are national productions in order to promote local production. To date, representatives of the audiovisual industry have presented their comments to the Senate's committee, reportedly addressing the bill's proposal to include a quota system of national and independent production for both VOD and SVOD providers. Some stakeholders agreed with the new quota provision, such as the Chamber of Independent Television Producers (CAPIT), which called for a higher percentage quota for local production to be imposed. Others, such as the Argentine Internet Chamber (CABASE), did not agree with the new quota provision because it goes against technological development and discourages investment. As of March 2021, the Senate Committee on Systems, Media and Freedom of Speech is still considering the bill, but it will expire if not tabled again.¹⁰⁵

In October 2020, the Argentine Congress passed the Law 27.570¹⁰⁶ modifying Law 27.506, "Promotion of the Knowledge Economy." The new legislation promotes different digital and technological activities through tax incentives, subject to their development in Argentine territory and compliance with the criteria defined by the law. It has been enforced through Presidential Decree 1034/2020,¹⁰⁷ as well as

¹⁰⁴ Available at <https://www.senado.gov.ar/parlamentario/parlamentaria/418567/downloadPdf>.

¹⁰⁵ Available at: <https://www.senado.gov.ar/parlamentario/comisiones/verExp/709.19/S/PL>. As a general rule, bills expire in two years if not approved.

¹⁰⁶ Law 27.570 was published on October 26, 2020 and modifies Law 27.506, "Régimen de Promoción de la Economía del Conocimiento". Available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/236496/20201026>

¹⁰⁷ Decree 1034/2020 was published on December 21, 2020. Available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/238891/20201221>

Resolution 4/2021 Ministry of Productive Development.¹⁰⁸ According to Annex II of the Resolution, the activities promoted by tax incentives include design, pre-production, and post-production across a wide range of audiovisual content. This new regime and its tax incentives could benefit online video service providers if online video regulation with local content production and/or local content quota obligations are adopted.

5.2.2. Online taxation in Argentina

Various types of taxes for online services have been proposed or adopted in Argentina, both at the national and provincial levels. The following addresses national-level tax and fee efforts.

In 2017, the Argentine government enacted Law No. 27.430/17, which expanded collection of the VAT to include foreign providers of digital services that offer their services to users located in Argentina.¹⁰⁹ The VAT on digital services came into effect in June 2018. The law imposes a 21 percent VAT on a wide variety of online services, including VOD and SVOD such as Netflix, Amazon Video, and Apple TV.

In May 2018, the Federal Tax Authority of Argentina (AFIP) published Resolution 4240/18, which established further rules and procedures for implementing the VAT, including identifying the list of service providers to whom the tax applies and applicable procedures for various payment scenarios.¹¹⁰ This list targets OTT services provided from abroad to end users located in Argentina. The resolution also clarified that online providers would not be required to collect and remit the VAT. Instead, payment intermediaries, such as credit card companies, were designated to act as collection agents. In September 2018, the government issued Decree 813/2018 to fully incorporate the new tax into the overall VAT law.¹¹¹

Separate from the VAT, in December 2019, Argentina published Decree 99/2019 on the Law of Social Solidarity and Productive Reactivation in the Framework of Public Emergency.¹¹² The decree addresses a range of tax matters already regulated in the law, including a temporary 5-year tax for an Inclusive and Supportive Argentina (PAIS).¹¹³ The PAIS tax targets a variety of online services provided from abroad to end users located in Argentina, including audiovisual content (e.g., streaming) that involves access to and/or downloading of images, text, information, video, music, and games, and imposes an 8 percent tax over the total amount of each transaction.¹¹⁴ As with the VAT, credit card companies must collect the tax from end users and remit it to the government.

In addition, an online video fee is under consideration in Argentina. In April 2020, the National Institute of Cinema and Audiovisual Art (INCAA), a government agency responsible for promoting Argentina's film industry, began discussing a new tax that would apply specifically to online video-streaming platforms.¹¹⁵ Although the details of the proposed tax are unclear and subject to change, it would likely be similar to the country's existing 10 percent tax on movie theater tickets. Like the tax on cinema tickets, the online video-

¹⁰⁸ Resolution 4/2021 was published on January 14, 2021. Available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/239783/20210114>

¹⁰⁹ Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305262/norma.htm>.

¹¹⁰ Available at <https://www.boletinoficial.gob.ar/#!DetalleNorma/183569/20180514>.

¹¹¹ Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/314295/norma.htm>.

¹¹² Available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/224184/20191228>.

¹¹³ Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333564/lev27541.pdf>.

¹¹⁴ See article 17 of Decree 99 of 2019.

¹¹⁵ BAE Negocios, Impuesto Netflix: Avanza la creación de un nuevo tributo para las plataformas de streaming, April 4, 2020, available at <https://www.baenegocios.com/negocios/Avanza-la-creacion-de-un-nuevo-impuesto-para-las-plataformas-de-streaming-20200428-0021.html>.

streaming tax would be charged to users at the point of sale for the service. The tax would likely be imposed in addition to the VAT.

5.3. Australia

Currently, broadcasting regulations in Australia do not apply to digital platforms. In June 2019, the Australian Competition and Consumer Commission (ACCC) published the Digital Platforms Inquiry (DPI) Final Report that reviewed a range of online issues, including whether the Broadcasting Services Act (BSA) should be expanded to include online video.¹¹⁶ Broadcasters and pay TV providers in Australia are subject to a range of obligations, such as minimum quotas for Australian content, obligations for children's programming, and advertising restrictions.

Among the ACCC's recommendations was that a "new platform-neutral regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms."¹¹⁷ However, the ACCC urged consideration of appropriate roles for self-regulation and co-regulation in developing the platform-neutral framework, noting that many broadcasting, media, and content stakeholders "have expressed support for deregulation or maintaining existing self-regulatory models rather than more regulations."¹¹⁸

In April 2020, the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) opened a consultation on how to implement the DPI recommendations on the appropriate content development framework.¹¹⁹ The consultation paper, drafted by the Australian Communications and Media Authority (ACMA) and Screen Australia (the country's key funding body for Australian content), closed on July 3, 2020.¹²⁰

The consultation document noted that the current framework relies on broadcaster fees, quotas, expenditure obligations, direct funding, and platform-specific tax rebates to ensure Australian content is available to the public. However, online services are not subject to these obligations, meaning that there is no longer guaranteed local content development as SVOD uptake rises and broadcasting viewership declines. The government therefore sought input on which of the four potential models should be adopted, as highlighted in the following table.

¹¹⁶ ACCC, Digital Platforms Inquiry Final Report (June 2019), <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

¹¹⁷ ACCC, Digital Platforms Inquiry Final Report, p. 31 (June 2019), <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

¹¹⁸ ACCC, Digital Platforms Inquiry Final Report, p. 201 (June 2019), <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

¹¹⁹ DITRDC, Options Paper: Supporting Australian stories on our screens (April 15, 2020), <https://www.communications.gov.au/have-your-say/supporting-australian-stories-our-screens-options-paper>.

¹²⁰ DITRDC, Options Paper: Supporting Australian stories on our screens (April 15, 2020), <https://www.communications.gov.au/have-your-say/supporting-australian-stories-our-screens-options-paper>.

Table 4. Four options in Australia's proposed regulatory framework for online video

Option	Description
1. Status quo	Focus on traditional platforms by retaining existing regulations and incentives to create and air Australian programs.
2. Minimal	Fine tune and modernize existing regulations and funding arrangements to better reflect the contemporary media landscape. This model seeks to engage subscription streaming services to adopt self-regulation on a voluntary basis, potentially as a precursor to future regulation, if needed. Broadcasters and pay TV providers would see revised quota requirements and more flexible obligations.
3. Significant	Establish a fully platform-neutral regulatory framework that applies the same contribution and quota requirements to broadcasters, pay TV providers, and online SVOD providers that meet scale thresholds. This model contains various sub-options, but would ultimately entail fee contributions, quotas, or investment plans.
4. Deregulation	Support platform-neutral deregulation by removing all regulation and removing or revising incentives to make Australian programs.

Source: DITRDC, Options Paper: Supporting Australian stories on our screens (2020).

The DITRDC released its decision on the consultation in September 2020.¹²¹ At least in the near term, the Australian government will keep online VOD streaming services outside of the broadcasting regulatory framework. The ACMA will work with large streaming video platforms to obtain information on their level of investment in Australian content but otherwise they will remain outside of the broadcasting regulatory framework. Concurrently, commercial broadcasters and pay TV providers will see reduced regulatory obligations, particularly regarding local content quotas and investment requirements.

In December 2020, the DITRDC issued a public consultation on the Media Reform Green Paper.¹²² The paper broadly sets out proposals to harmonize content requirements across broadcast and digital platforms and specifically proposes a local investment obligation for subscription and advertising VOD services, potential prominence requirements, and annual reporting requirements for online streaming video platforms combined with a more deregulatory approach for commercial broadcasters. The consultation deadline, originally March 7, 2021, was subsequently extended to May 23, 2021. If the proposed reforms are adopted, the Media Reform Green Paper includes an indicative timetable suggesting that the first tranche of amending legislation could be introduced in the second half of 2021 and that the SVOD service investment obligation could commence for the 2022-2023 fiscal year.

5.4. Brazil

Over the last few years, Brazil has considered online video regulation, including potentially bringing online linear and VOD services under the pay TV framework, as well as implementing taxes that apply to online video. These proposals have come from the legislature and various government agencies, which creates a complex legal environment.

¹²¹ DITRDC, Modernizing Australian screen content settings, September 30, 2020, <https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings>.

¹²² DITRDC, New rules for a new media landscape—modernizing television regulation in Australia, December 21, 2020, <https://www.communications.gov.au/have-your-say/new-rules-new-media-landscape-modernising-television-regulation-australia>.

5.4.1. Proposed online video regulation in Brazil

Whether and how to regulate online video has been the subject of proceedings within multiple agencies and the legislature. In 2017, the National Cinema Agency (ANCINE), a federal regulatory agency tasked with regulating and supervising Brazil's audiovisual industry, released a report recommending a host of new regulatory obligations for all online VOD providers, including SVOD and AVOD. These recommendations were presented to the Superior Council of Cinema (CSC), audiovisual market stakeholders and the society in general to promote a public debate on the regulation of online VOD.¹²³

Among the recommendations was that the regulation should apply to "all economic agents that provide access to audiovisual content through on-demand audiovisual communication to users residing in Brazil." This approach would create extraterritorial application of the regulatory framework. Any video platform provider that enabled access to content within Brazil would be subject.

ANCINE also recommended that online VOD providers should:¹²⁴

- register with ANCINE as economic agents acting in Brazil's audiovisual market;
- offer a minimum of 20 percent of Brazilian audiovisual content in their catalogs;
- ensure that at least half of the local content is produced by an independent Brazilian producer;
- pay into the local content fund called Contribution for the Development of the National Film Industry (CONDECINE), which would be calculated based on the annual gross revenues related to advertising sales, subscriptions, and rental or sale of content; and
- make annual investments in production or licensing of independent Brazilian works, with percentages of compulsory investment calculated progressively on the basis of the company's gross revenues.

For the annual investment requirements, companies with gross revenues up to BRL 3.6 million (USD 650,000) would not be required to contribute while companies with over BRL 70 million (USD 12.5 million) would be required to invest 4 percent into local production or licensing.¹²⁵

Additionally, in its recommendations, ANCINE recognized that the appropriate process for development of an online VOD framework is through a specific law via the legislative process.

In August 2019, ANCINE launched a public consultation on the Report of Regulatory Impact Analysis for VOD Market, which considered potential regulation and taxation of online VOD services.¹²⁶ As in the 2017 report, ANCINE recommended a VOD separate regulatory framework to be implemented, which would include the general conditions for the provision of services; tax treatment; the provision of Brazilian content, and issues related to the editorial responsibility of providers and platforms. The purpose of this

¹²³ The CSC is a collegiate body part of the Chief of Staff of the presidency. Among its responsibilities are the formulation of national cinema policy, the approval of general guidelines for the development of the audiovisual industry and the promotion of Brazilian content in the various market segments.

¹²⁴ Available at https://antigo.ancine.gov.br/sites/default/files/Vod%20Documento%20P%C3%BAblico%20Final%20v3_1.pdf.

¹²⁵ The fees would be calculated progressively on the basis of the company's gross revenues, ranging between 0% based on revenues up to BRL 3.6 million (USD 650,000 million) and 4% based on revenues over BRL 70 million (USD 12.5 million).

¹²⁶ Available at https://antigo.ancine.gov.br/sites/default/files/AIR_VoD_versao_final_PUBLICA_12.08.2019-editado-p%C3%A1ginas-exclu%C3%ADdas-mesclado-p%C3%A1ginas-exclu%C3%ADdas.pdf.

report was to gather technical information, which it was expected would enrich the WG discussions on online VOD regulation.

Some of the report's key points included a broad definition of VOD services; identification of various VOD business models, including transaction, subscription, and advertising-based VOD services; and ANCINE's recommendations for a unique regulatory framework for VOD addressing its legal organization, tax treatment and the provision of independent Brazilian content, as well as issues related to the editorial responsibility of providers and platforms.¹²⁷

Regarding Brazilian content, ANCINE identified three types of measures that it could take:

- restrictive measures regarding the provision of foreign content, such as the imposition of differentiated tax burdens on foreign content;
- the adoption of incentives for voluntary licensing of national content, such as financing, tax incentives, and public procurement; and/or
- mandatory provision of national and independent securities by providers.

Separately from ANCINE's proceedings, Brazil's telecommunications regulator, ANATEL, reviewed the online video services market to determine whether regulation would be warranted. In January 2019, telecommunications network operator Claro filed a complaint against online video service provider Fox+, claiming that Fox+'s provision of linear channels to non-subscribers over the Internet should be considered a pay TV service subject to the pay TV law, referred to as the Law on Conditional Access Services (SeAC law).

In June 2019, ANATEL issued a preliminary injunction instructing Fox+ to limit online access to linear channels to only authenticated pay TV subscribers. Although ANATEL initially determined that the service constituted a value-added service and therefore was not regulated by ANATEL, Claro requested a procedural discovery phase that resulted in ANATEL adopting a preliminary injunctive relief against Fox+'s service. In July 2019, a Brazilian federal appeals court repealed the decision that had placed an injunction on Fox+.¹²⁸ The court's decision reaffirmed that online linear video services are not pay TV services and thus not subject to pay TV laws and regulation.

In September 2020, ANATEL determined that online video—whether linear or VOD—should be classified as value-added services (SVA) under the telecom law, which is not subject to telecommunications regulation, rather than a pay TV service subject to regulation under the SeAC law.¹²⁹ ANATEL's decision was based on how online video services are necessarily separate from the Internet network access service, which users must subscribe to separately. In contrast, pay TV is a standalone service that involves both the network access and programming components. ANATEL emphasized that online video is inherently a value-added service because it is necessary for the end user to subscribe to Internet access service to subsequently subscribe to online linear or VOD services. Despite the court's July 2019 decision and

¹²⁷ VOD services are defined as: (a) an audiovisual communication service, (b) provided by providers, directly or through the mediation of internet platforms or television packers, (c) based on the non-linear offering and transmission (d) of separate or cataloged audiovisual content, (e) for the enjoyment of the general public, (f) by means of dedicated or non-dedicated electronic communication networks/ service that (g) has a commercial purpose, paid by the user, through purchases or subscriptions, and / or by advertisements; and (h) implies some level of editorial responsibility of the provider for the selection, licensing, organization and display of the content.

¹²⁸ Available at <http://pje2g.trf1.jus.br/consultapublica/Processo/ConsultaDocumento/listView.seam?x=19073012093175800000020786942>.

¹²⁹ ANATEL, "ANATEL decides on framing paid content on the internet," September 9, 2020, <https://www.gov.br/anatel/pt-br/assuntos/noticias/anatel-delibera-sobre-enquadramento-de-conteudos-pagos-na-internet>.

ANATEL's ongoing proceeding, ANCINE opened a public consultation in April 2020 to separately determine whether online linear video should be categorized as a pay TV service and subject to the SeAC law, effectively covering the same question that ANATEL was reviewing.¹³⁰

According to ANCINE, the first option would, from a regulatory perspective, establish a level playing field between online linear video services and existing pay TV services. The consultation closed in June 2020, receiving 24 comments from different stakeholders. Based on the results of the public consultation, on September 18, 2020, the board of ANCINE deliberated in agreement with ANATEL that online video would not be subject to the SeAC law.¹³¹ However, in the same decision ANCINE indicated that online video services deserved their own "regulatory treatment" in a specific legislation and forwarded the issue to the CSC. There are no items related to VOD in the ANCINE's Annual Regulation Plan for 2021.¹³²

The legislature is also considering proposals to bring online video under the pay TV framework. In August 2019, Deputy Paulo Teixeira of the Worker's Party introduced a bill to amend the pay TV law by clarifying that the law would apply to content regardless of the technology through which it is distributed.¹³³ The bill would require online linear video providers to comply with the SeAC law, which includes local content quotas, such as at least 3.5 hours per week of content broadcasted during prime time must be Brazilian and at least half of it must be produced by a Brazilian producer with no links to traditional broadcasting groups.¹³⁴ The bill remains in the Brazilian Chamber of Deputies, and has not had any activity since March 2020.

5.4.2. Online taxation in Brazil

In December 2016, the Brazilian government passed Federal Complementary Law No. 157,¹³⁵ which amended Federal Complementary Law No. 116.¹³⁶ The law required municipalities and the Federal District to impose a tax (Imposto Sobre Servicos de Qualquer Natureza, or ISS) of between 2 percent and 5 percent on all video, audio, image, and text content that is delivered via the Internet (except for online books, newspapers, and periodicals). For online video services, the tax applies to VOD and SVOD.

The ISS tax applies to relevant services provided to users in the respective municipalities, regardless of where the online video service provider is located and includes foreign OTTs. Municipalities have set a wide range of tax rates. The municipality of Rio de Janeiro's ISS tax rate is 2 percent;¹³⁷ the municipality of Sao Paulo's ISS tax rate is 2.9 percent;¹³⁸ and the municipality of Araguaina set the ISS tax rate at 5 percent.¹³⁹

¹³⁰ Available at <https://www.gov.br/ancine/pt-br/assuntos/noticias/noticia-regulatoria-ancine-faz-consulta-publica-sobre-servico-de-programacao-linear-via-internet>.

¹³¹ Available at <https://www.gov.br/ancine/pt-br/assuntos/noticias/ancine-defende-tratamento-legislativo-especifico-para-servico-de-programacao-linear-via-internet>.

¹³² Available at <https://www.gov.br/ancine/pt-br/assuntos/noticias/PAREG2021propostaaprovadapelaDC.pdf>

¹³³ Available at <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2213953>.

¹³⁴ SeAC law and ANCINE's Normative Instruction No 100 of 2012, available at http://www.planalto.gov.br/ccivil_03/Ato2011-2014/2011/Lei/L12485.htm, and <https://www.gov.br/ancine/pt-br/acao-a-informacao/legislacao/instrucoes-normativas/instrucao-normativa-no-100>.

¹³⁵ Available at http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp157.htm.

¹³⁶ Available at https://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp116.htm.

¹³⁷ Available at http://smaonline.rio.rj.gov.br/legis_consulta/55587Lei%206263_2017.pdf.

¹³⁸ Available at <http://documentacao.camara.sp.gov.br/iah/fulltext/leis/L16757.pdf>.

¹³⁹ Available at <http://diariooficial.araguaina.to.gov.br/Arquivo/DiarioOficial/pdf/1477.pdf>.

Separately from the ISS tax, there are ongoing discussions to bring online video services under the CONDECINE contribution framework. In addition to ANCINE's recommendations mentioned above, a bill was tabled in the legislature in 2017 to require online VOD services to contribute to the CONDECINE fund and comply with local content quotas. The bill would also require online VOD providers to finance independent producers, among other obligations. In November 2019, the bill was approved by the Culture Commission of the Chamber of Deputies but has not had any activity since then.¹⁴⁰

In May 2020, the CSC presented a new proposal for online VOD contribution to the CONDECINE fund.¹⁴¹ This proposal would subject only subscription-based (SVOD) or transaction-based (TVOD) online video service models to the contribution requirement. Ad-based VOD, such as YouTube, and the catch-up TV model would be exempt. Another difference between the CSC and previous proposals from the legislature and ANCINE is that Article 39 of the CSC's draft rules would establish a tiered structure for contributions, exempting providers from payments if they directly invest in national content production. Under this proposal, online platforms that with revenues up to BRL 200 million (USD 35.8 million) would pay 0.75 percent of their revenues into the CONDECINE fund, while companies with higher revenues would pay 1 percent of their revenues to the fund. If they opt for the exemption, companies that meet the lower revenue threshold must invest 0.20 percent and those exceeding the threshold must invest 0.27 percent of their revenues in national content production. The CSC did not have a meeting in 2020, so discussions on the new proposal for the VOD contribution to CONDECINE are expected to continue in 2021.

5.5. Canada

In June 2018, the Minister of Innovation, Science, and Economic Development (now the Minister of Innovation, Science and Industry) and the Minister of Canadian Heritage tasked a private-sector Broadcasting and Telecommunications Legislative Review Panel (Review Panel) with reviewing Canada's decades-old communications legislative framework. After public consultation, the Review Panel submitted its final report and recommendations to the government in January 2020, which analyzed the Broadcasting Act, the Telecommunications Act, and the Radiocommunication Act.¹⁴² Among the report's recommendations was that the Broadcasting Act should be amended to include online video service obligations, such as prominence in online video catalogs, as well as ensure that the legislation applies to all platforms offering service in Canada, regardless of whether they have a place of business in Canada.

The Review Panel also weighed in on the importance of continuing to promote Canada's official languages, primarily English and French. This would entail enabling the Canadian Radio-television and Telecommunications Commission (CRTC), which regulates the broadcasting and telecommunications sectors, to adapt the regulatory framework to each language market.

In November 2020, the Minister of Canadian Heritage submitted the proposed bill—Bill C-10—to the legislature to amend the Broadcasting Act.¹⁴³ A central part of the bill would redefine the term broadcasting undertaking to include online video service providers. The bill would not subject online video

¹⁴⁰ Available at <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2157806>

¹⁴¹ CSC, Relatório Preliminar do Grupo de Trabalho para elaboração de proposição legislativa para regulamentação dos serviços de Vídeo sob Demanda (VoD) (May 28, 2020), <https://telaviva.com.br/wp-content/uploads/2020/05/Relato%C3%A9rio-Final-do-GT.docx.pdf>.

¹⁴² Broadcasting and Telecommunications Legislative Review Panel, Canada's Communications Future: Time to Act, January 2020, www.ic.gc.ca/eic/site/110.nsf/eng/00012.html.

¹⁴³ Minister of Canadian Heritage, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts, C-10, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=10926636&Language=E>.

services to specific broadcasting obligations but would grant wide leeway to modify broadcasting rules at a later date, which could include expanding content restrictions or quotas to online video services. However, the proposed legislation differentiates between online video and TASP services in several respects. For example, Section 6(1) of the bill would establish a class of licenses for broadcasting undertakings, which would explicitly exempt online video.

In February 2021, Bill C-10 had its second reading in the House of Commons and was referred to the Standing Committee on Canadian Heritage where committee meetings are ongoing.¹⁴⁴

5.6. Colombia

Colombia has been contemplating taxes and a potential regulatory framework for online video and other OTTs over the past few years. These discussions have taken place at multiple levels of government, focusing on a VAT and prominence requirements for local content, as well as examining the differences between online video and traditional services. Although the legislature imposed a prominence obligation, Colombia's ICT regulator, the Communications Regulatory Commission (CRC), concurrently determined that online video is complementary to—rather than a substitute of—TASP services and that regulation of online video services is not currently warranted.

5.6.1. Adopted online video regulation in Colombia

In May 2019, Colombia's Congress approved the National Development Plan (NDP) for 2018-2022.¹⁴⁵ Article 154 of the NDP included a prominence requirement that online SVOD providers must make a section for audiovisual works of national origin easily accessible to Colombian users.¹⁴⁶ Note that the obligation was for prominence only and did not include a local content quota. Additionally, the NDP required the national government to issue implementing rules by May 2020, taking into account international treaties that Colombia has signed.

Accordingly, in March 2020, the Colombian ICT Ministry (MinTIC) presented a draft decree to implement Article 154 of the NDP.¹⁴⁷ The draft decree clarified that providers must have a prominent and exclusive section for local content available in their catalogs. Additionally, it stated that online SVOD providers must implement available technical mechanisms to determine if users are accessing the service from Colombia. Providers must also use those technical mechanisms to identify the content that should be included in the local section.¹⁴⁸ The draft decree was open for comments until April 11, 2020 and the MinTIC issued Decree 681/2020 in May 2020.¹⁴⁹ The final decree maintains the prominence requirement, requiring online VOD providers to ensure users in Colombia "have an easily accessible and clearly identified section" for audiovisual works of national origin.

¹⁴⁴ House Government, C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10926636>.

¹⁴⁵ Available at http://www.secretariassenado.gov.co/senado/basedoc/ley_1955_2019_pr003.html#154.

¹⁴⁶ Article 154 of the NDP.

¹⁴⁷ Available at https://www.mintic.gov.co/portal/604/articles-126136_proy_recreto_reglamenta_art_154_pnd.docx.

¹⁴⁸ The decree was published along with a technical support document, which includes background information, legal viability arguments, and potential economic impacts. This document is available at https://www.mintic.gov.co/portal/604/articles-126136_soporte_tecnico_art_154_pnd.docx.

¹⁴⁹ MinTIC, Decreto Único Reglamentario del Sector de Tecnologías de la Información y las Comunicaciones, para establecer las reglas para implementar el artículo 154 de la Ley 1955 de 2019 (May 21, 2020), https://normograma.mintic.gov.co/mintic/docs/decreto_0681_2020.htm.

5.6.2. Review of online video regulatory framework in Colombia

The CRC has conducted multiple reviews of online video services over the last few years. In May 2019, the CRC released the results of a study it conducted in the second quarter of 2018 entitled “The Role of OTT Services in the Communications Sector in Colombia.”¹⁵⁰ The study broadly compared OTT services with traditional services, including in the audiovisual service market. Overall, the study found that, despite the rise in use of OTT services, there is no evidence of a substitution effect between traditional services and online applications. Regarding audiovisual services, the study found that although 42 percent of Colombians use applications to consume audiovisual content, only 2 percent of users have canceled their traditional services in favor of online video platforms. Given these findings, the CRC determined that online video is a complement of TASP and is not replacing traditional services. Thus, the CRC used an evidence-based decision-making process to conclude that, at this time, it is not necessary to revise the communications market framework, nor is it warranted to expand the scope of traditional regulation to include online video.

In May 2020, the CRC published the results of a second study on OTT services entitled “The Role of OTT Services in the Communications Sector in Colombia – Year 2019.”¹⁵¹ This report built on the previous year’s findings discussed above, presenting the results of the annual monitoring of the OTT services and traditional service markets. The CRC study indicated that the level of penetration of both traditional audiovisual services and free and paid OTT services remained relatively unchanged between 2018 and 2019. According to the CRC, in 2019 only 2.2 percent of users canceled their traditional services. Additionally, homes using online video services were more likely to have pay TV subscriptions, especially in segments of the population with high purchasing power. Moreover, the study revealed that users’ content consumption choices suggest a complementary relationship between traditional paid services and paid OTT services. Finally, the CRC concluded that traditional audiovisual services and OTTs are not competing in terms of price but in terms of people’s time, which can involve greater competition for advertising revenues. The CRC will continue annual monitoring of these markets.

Over the last year, the CRC has been working to update and streamline the television and audiovisual content regulatory frameworks. In July 2020, the CRC held a public consultation to gather initial stakeholder views,¹⁵² with a subsequent consultation in December 2020 on the draft regulation to simplify the television regulatory framework.¹⁵³ On March 29, 2021, the CRC issued the final resolution, which focused solely on compiling and streamlining the regulations for broadcast and pay TV operators.¹⁵⁴ The resolution did not extend obligations to online video service providers.

In 2021, the CRC plans to continue this work, focusing on the review the regulatory framework for audiovisual content. Although the CRC’s work so far has addressed TASP only, it is unclear whether future proposals may extend obligations on audiovisual content to online video service providers. Notably, the

¹⁵⁰ Available at <https://www.crcom.gov.co/uploads/images/files/ESTUDIO-OTT-COLOMBIA.pdf>.

¹⁵¹ Available at <https://www.crcom.gov.co/uploads/images/files/CRC-EstudioOTT-2020-publicar-vf.pdf>.

¹⁵² A description of the process for the review of both the broadcast and TV , and the audiovisual content regulatory framework can be found here: <https://www.crcom.gov.co/es/pagina/compilacion-simplificacion-en-materia-de-television-y-compilacion-normativa-en-materia-contenidos>.

¹⁵³ The draft regulation on TV services is available at <https://www.crcom.gov.co/es/pagina/compilacion-simplificacion-en-materia-de-television-y-compilacion-normativa-en-materia-contenidos>.

¹⁵⁴ CRC, Resolution No. 6261 of 2021, <https://www.crcom.gov.co/uploads/images/files/2021/Resoluci%C3%B3n%200006261-2021.pdf>.

CRC regulatory agenda 2020-2021 focuses on the economic recovery from the COVID-19 pandemic and does not include additional plans to develop or review regulations for online video content.¹⁵⁵

5.6.3. Online taxation in Colombia

In December 2016, Colombia overhauled its tax regime in an effort to raise billions of dollars to offset its fiscal deficit in the coming years.¹⁵⁶ Among the reforms was the imposition of a 19 percent VAT on foreigner-supplied digital services provided to users in Colombia, including online audiovisual services providers.¹⁵⁷ The tax came into effect in July 2018 and although the providers are ultimately responsible for the tax, credit card companies and other payment processors are designated as withholding agents of digital or electronic services provided from abroad.¹⁵⁸

5.7. Mexico

Mexico has recently begun reviewing potential taxation and regulation of online video services, both at the legislative level and the regulatory level through the Federal Institute of Telecommunications (IFT). Although the government has adopted a VAT, which went into effect on July 1, 2020, online content legislation and a regulatory framework for online video remain under review.

5.7.1. Legislative proposals for online video regulation in Mexico

Two proposals to regulate online video have been proposed in Mexico—one in March 2020 and the other in February 2021.

March 2020 proposal

In March 2020, the Senate Finance and Public Credit Committee and the Legislative Studies Committee approved a bill that would require online SVOD providers in Mexico to ensure at least 30 percent of their content is of national origin.¹⁵⁹ Importantly, under the proposed changes to the Telecommunications and Broadcasting Federal Law, online SVOD would be considered restricted TV and audio services. As such, they would require prior authorization from the IFT in order to provide services.

Discussions of the bill stalled in late spring 2020 due to COVID-19 shutdowns.¹⁶⁰ While legislative bodies have restarted their sessions since then, there have been no further updates on the bill as of March 2021. In October 2020, the acting IFT President Adolfo Cuevas cautioned on how to phrase any content quota

¹⁵⁵ CRC regulatory agenda 2020 – 2021, <https://www.crcom.gov.co/uploads/images/files/201229%20AR%202021-22%20VPUB.pdf>

¹⁵⁶ Law 1819 of 2016, available at http://www.secretariasenado.gov.co/senado/basedoc/ley_1819_2016_pr003.html#180.

¹⁵⁷ As established by the 2016 tax reform, the tax will affect a wide range of foreign service providers, including all providers of audiovisual services (including providers of music, videos, movies, and games of any type, as well as those broadcasting events), distributors of digital mobile apps, and the companies providing online publicity or teaching services.

¹⁵⁸ Resolutions 049 and 051, issued by National Office of Taxes and Customs (DIAN), completed the implementation process of the tax that was started with Law 1819 of 2016. Resolutions available at

<https://www.dian.gov.co/normatividad/Normatividad/Resolución%20000049%20de%2001-08-2019.pdf> and

<https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000051%20de%2006-08-2019.pdf>.

¹⁵⁹ El Economista, Comisión del Senado aprueba dictamen para que plataformas digitales tengan 30% de contenido nacional, March 18, 2020, <https://www.eleconomista.com.mx/politica/Comision-del-Senado-aprueba-dictamen-para-que-plataformas-digitales-tengan-30-de-contenido-nacional-20200318-0118.html>

¹⁶⁰ Senado de la Republica de México, En acato de las indicaciones del sector salud, Senado suspende el periodo de sesiones, March 24, 2020, <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/47925-en-acato-a-las-indicaciones-del-sector-salud-senado-suspende-el-periodo-de-sesiones.html>

rules, stating the “obligation of quotas can be counterproductive for competition,” particularly in terms of start-ups versus large platforms.¹⁶¹

February 2021 proposal

On February 16, 2021, Senator Ricardo Monreal presented an 80-page [draft decree](#) that would create a new [Federal Law of Cinematography and Audiovisual](#) to replace the existing Law of Cinematography.¹⁶² The Senate has until April 30—when the current period of sessions ends—to adopt the draft decree and reach an agreement with the Chamber of Deputies.

Similar to the March 2020 bill, the draft decree proposes local content obligations. Article 20 requires digital platforms to reserve at least 15 percent of their catalogs for national cinematographic and audiovisual works produced within the past 25 years, as well as requires this content to be prominently displayed. Further, platforms would be prohibited from also controlling any national producer of the corresponding local content. Additionally, Articles 25 and 26 would impose a content classification system for cinematographic films exhibited on digital platforms.

The draft decree would also establish new oversight powers. Article 41 creates the Sistema Nacional de Información de la Industria Cinematográfica y Audiovisual Nacional (National Industry Information System of the National Cinematography and Audiovisual) to be in charge of the Instituto Mexicano de Cinematografía y el Audiovisual (Mexican Institute of Cinematography and Audiovisual), which would be responsible for collecting and monitoring national works and reviewing tax incentives. Under Article 50, the Ministry of Interior, through the Directorate General of Radio, Television, Cinematography, and Audiovisual, will oversee and enforce the local content quota. Under Article 63, sanctions for non-compliance range from a warning to a fine of 6,000 to 15,000 times the Measurement and Update Unit (currently set at MXN 89.62 or USD 4.34), and complete withdrawal of the exhibited works. Thus, the fine for each offense would be MXN 537,720 (USD 26,035) to MXN 1,344,300 (USD 65,088). Repeat offenses could lead to a new fine of double the previous amount.

Potential conflicts with the USMCA

Some civil society groups, such as Internet.Mx and Asociación Latinoamericana de Internet, oppose the proposals. Internet.Mx stated that local content quotas could negatively affect the development of new services and should be discussed within the framework of the United States–Mexico–Canada Free Trade Agreement (USMCA).¹⁶³

In particular, there are concerns that the bill would violate Chapters 14 and 19 of the USMCA.¹⁶⁴ Chapter 14.10 prohibits signatory countries from imposing “a given level or percentage of domestic content.” Both the March 2020 and February 2021 proposals impose percentages of domestic content, 30 percent and 15 percent, respectively. Chapter 19.4 of the USMCA requires Mexico to ensure non-discriminatory treatment of digital products by according no “less favorable treatment to a digital product created,

¹⁶¹ IFT, Presidente de IFT México, Adolfo Cuevas, sobre regulación de OTT audiovisuales: el principal desafío es proteger el interés público, October 1, 2020, <https://www.observacom.org/presidente-de-ift-mexico-adolfo-cuevas-sobre-regulacion-de-ott-audiovisuales-el-principal-desafio-es-proteger-el-interes-publico/>.

¹⁶² Senate, Federal Law of Cinematography and Audiovisual, https://www.senado.gob.mx/64/gaceta_del_senado/documento/115383.

¹⁶³ El Economista, Comisión del Senado aprueba dictamen para que plataformas digitales tengan 30% de contenido nacional, March 18, 2020, <https://www.eleconomista.com.mx/politica/Comision-del-Senado-aprueba-dictamen-para-que-plataformas-digitales-tengan-30-de-contenido-nacional-20200318-0118.html>

¹⁶⁴ Office of the U.S. Trade Representative, United States-Mexico-Canada Agreement, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.

produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products.” Local content quotas may be considered as treating U.S. digital products—such as U.S. online video content—less favorably than Mexican digital products.

5.7.2. Review of online video regulatory framework in Mexico

In addition to legislative proposals, the IFT has been examining a potential new regulatory framework to address a convergent ICT market over the last few years. In September 2018, the IFT published its Regulatory Vision of Telecommunications and Broadcasting 2019-2023.¹⁶⁵ The vision paper included a specific section on potential regulation of various types of OTT services, including telecommunications and content. The IFT noted that although operators invest more in network buildout than OTT providers, OTTs stimulate consumer demand for broadband access with greater speed and quality. Thus, the IFT stated that it is “important to analyze the implications of the growth of OTT services in the markets of the telecommunications and broadcasting sectors.”¹⁶⁶ Additionally, the IFT highlighted its interest in examining the possibility that OTT services complement or are substitutes for traditional services in both sectors. Analyzing these issues would be crucial to developing frameworks that acknowledge the importance of OTTs services in the digital ecosystem, and their influence in aspects such as cybersecurity, digital economy, and the definition of digital relevant markets.

According to the IFT’s “conceptual map of OTT services,” the IFT intends to conduct studies of OTT services, including the economic impact of OTTs on telecommunications and broadcasting services, as well as consumer degree of satisfaction with OTT services. Finally, the IFT pointed out that it would also evaluate the regulatory impact of OTTs and potentially develop “regulations applicable to regulated OTT service providers and regulatory adaptation for traditional services.”¹⁶⁷

In February 2021, the IFT reiterated its interest in reviewing OTT services. The IFT’s 2021 work calendar includes plans for the Economic Competition Unit to conduct and publish a study on OTT audio and audiovisual services by the fourth quarter of 2021.¹⁶⁸ The study will explore the economic conditions and market competition implications surrounding the recent growth of OTTs relative to traditional media.

5.7.3. Online taxation in Mexico

In December 2019, Mexico’s Tax Administration Service (SAT), together with the Treasury Secretariat, published the first group of administrative rules requiring digital platform providers—including online video platforms—to register as tax withholders in Mexico. In January 2020, the SAT published the final operational rules.¹⁶⁹ The rules require audiovisual platforms to withhold VAT of 16 percent, which must

¹⁶⁵ IFT, Visión regulatoria de las telecomunicaciones y la radiodifusión, 2019-2023, September 2018,

<http://www.ift.org.mx/sites/default/files/contenidogeneral/transparencia/1vision19-23.pdf>

¹⁶⁶ IFT, Visión regulatoria de las telecomunicaciones y la radiodifusión, 2019-2023, September 2018, p. 33,

<http://www.ift.org.mx/sites/default/files/contenidogeneral/transparencia/1vision19-23.pdf>

¹⁶⁷ IFT, Visión regulatoria de las telecomunicaciones y la radiodifusión, 2019-2023, September 2018, p. 33,

<http://www.ift.org.mx/sites/default/files/contenidogeneral/transparencia/1vision19-23.pdf>

¹⁶⁸ IFT, 2021 work calendar, February 6, 2021, <http://www.ift.org.mx/sites/default/files/contenidogeneral/transparencia/pat2021.pdf>.

¹⁶⁹ Secretaría de Hacienda y Crédito Público, Resolución Miscelánea Fiscal para 2020, December 28, 2019, <https://www.dof.gob.mx/20191228-2.pdf>; Also see Gobierno de México, Comunicación No. 001, Publicación de las reglas operativas para plataformas digitales, January 3, 2020, <https://www.gob.mx/shcp/prensa/comunicado-no-109-publicacion-de-la-reglas-operativas-para-plataformas-digitales>.

be paid directly to the SAT. In addition, the rules require digital platform providers that receive income directly from the purchase of online services to withhold and remit income tax—referred to as the ISR.

Remittance of the VAT went into effect on June 1, 2020.¹⁷⁰ There was initial confusion regarding how the rules would be implemented and which companies have to pay taxes.¹⁷¹ However, the Miscellaneous Tax Resolution for 2021 adopted in December 2020 appeared to clarify the tax registration processes for non-resident digital service providers.¹⁷² Despite the clarifications not coming into effect until January 1, 2021, local media reported that the new rules resulted in a nearly tenfold increase of VAT revenue from digital service providers in 2020.¹⁷³

Additionally, a controversial “kill switch” provision had been removed from the 2019-2020 budget bill,¹⁷⁴ but was reinserted into the 2020-2021 budget bill.¹⁷⁵ The kill switch provision requires Internet service providers (ISPs) to block access to digital platforms that do not register and remit the VAT. This provision was widely criticized by civil society and industry groups, which called it an extreme measure that violates principles of net neutrality, unfairly restricts freedom of expression, and will be difficult to enforce. Nonetheless, the legislature formally approved it in December 2020 and took effect on January 1, 2021.¹⁷⁶

¹⁷⁰ Gobierno de México, Comunicación No. 001, Publicación de las reglas operativas para plataformas digitales, January 3, 2020, <https://www.gob.mx/shcp/prensa/comunicado-no-109-publicacion-de-la-reglas-operativas-para-plataformas-digitales>

¹⁷¹ <https://news.bloombergtax.com/daily-tax-report-international/mexicos-digital-vat-grab-creates-confusion-for-companies-2>.

¹⁷² Official Gazette, Miscellaneous Tax Resolution for 2021, Title 12 on the provision of digital services, December 29, 2020, https://www.dof.gob.mx/2020/SHCP/Resolucion_Miscelanea_Fiscal_2021.pdf.

¹⁷³ El Economista, Ingresos del fisco por servicios digitales crecen 915%, February 23, 2021,

<https://www.eleconomista.com.mx/economia/Ingresos-del-fisco-por-servicios-digitales-crecen-915-20210223-0071.html>

¹⁷⁴ Chamber of Deputies, Pleno aprueba en lo general y particular la miscelánea fiscal 2020; turna dictamen al Senado, Note No. 3425, <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2019/Octubre/18/3425-Pleno-aprueba-en-lo-general-y-particular-la-miscelanea-fiscal-2020-turna-dictamen-al-Senado>.

¹⁷⁵ Chamber of Deputies, Cámara de Diputados aprueba, en lo general, Miscelánea Fiscal 2021, October 20, 2020, <https://comunicacionnoticias.diputados.gob.mx/comunicacion/index.php/boletines/camara-de-diputados-aprueba-en-lo-general-miscelanea-fiscal-2021#gsc.tab=0>.

¹⁷⁶ BDO, New additions to the VAT Law for digital service providers, December, 2020, <https://www.bdo.global/en-gb/microsites/tax-newsletters/indirect-tax-news/issue-4-2020/mexico-new-additions-to-the-vat-law-for-digital-service-providers>.



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