The Challenge of Managing Digital Content

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*"**Content is King**. Content is where I expect much of the real money will be made on the Internet, just as it was in broadcasting…*

When it comes to an interactive network such as the Internet, the definition of "content" becomes very wide… But the broad opportunities for most companies involve supplying information or entertainment. No company is too small to participate. One of the exciting things about the Internet is that anyone .. Can publish whatever content they can create…

The Internet also allows information to be distributed worldwide at basically zero marginal cost to the publisher… Over time, the breadth of information on the Internet will be enormous, which will make it compelling…"

Bill Gates, 1 March 1996

1. Introduction

Content is a very important and broad area where money is being made on the Internet.

What was forecast 20 years ago by Bill Gates has become a reality, especially in the last five years with the proliferation of affordable smartphones, and increasingly ubiquitous wireless broadband networks.

This has resulted in enormous disruption of the traditional content delivery models of newspapers, and now broadcasters by digital content providers.

Currently digital creators, both commercial and user-generated, lay predominantly outside the scope of specific national regulation that applies to ‘traditional’ broadcasters and other content service providers.

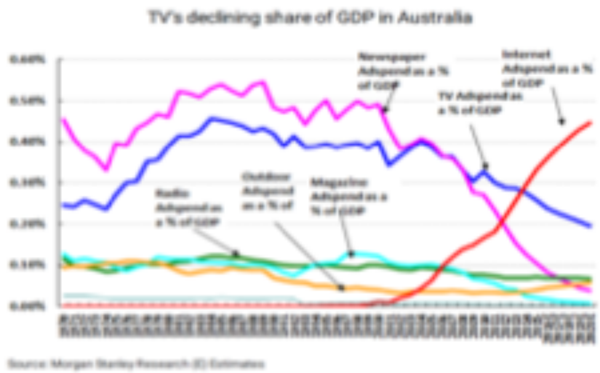
Certainly, the nature and scope of regulatory issues encompassed by the impact of digital content on traditional telecommunications and media, particularly broadcasting, seems at best challenging and at worst baffling.

2. Digital Content: Disrupting and Empowering

The last decade has been unusually spectacular and disruptive, with digital content providers causing intense pressure by **challenging the established industry value chain**, **redefining the rules of competition** and **altering traditional key success factors.**

For example, **Google** is now the largest recipient of global ad revenue, taking in USD79 billion in 2016, three times as much as the second biggest ad revenue recipient, **Facebook**, which earnt nearly USD 27 billion in ad revenue last year.

In addition, the enormous scale of the video streaming revolution on commercial free-to-air television can be seen i the graph below depicting TV's declining share of GDP in Australia over a 50-year period.



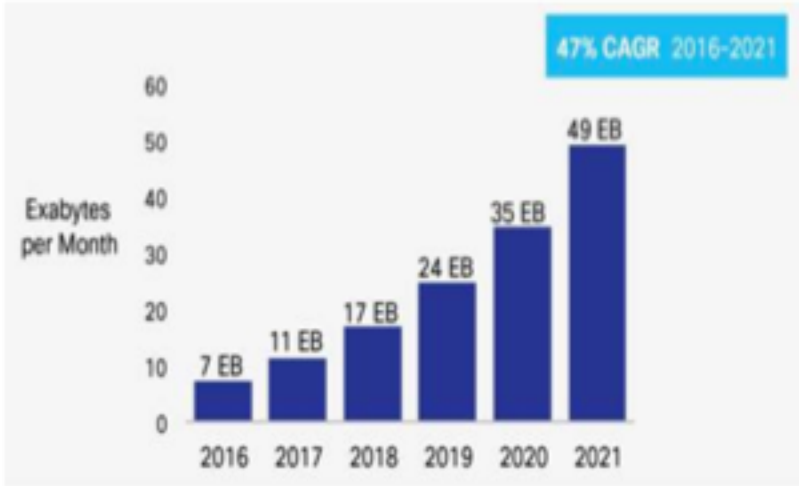
2. Digital Content: Disrupting and Empowering

The disruption that the app economy and digital content has caused has also, in turn, revolutionized the world and empowered consumers.

By the year 2021, there will be **4.6 billion global internet users** and **27.1 billion network devices and connections.**

As shown below, global mobile data traffic is expected to grow to **49 exabytes per month by 2021**, a sevenfold increase over 2016.

These trends alongside disruptive innovations have enabled consumers to become empowered along technological, social, economic and legal dimensions.



Source: Cisco VNI Mobile, 2017

3. Challenges for Traditional Content Regulatory Regimes in a Digital Environment

For the purposes of analysis, digital content available to consumers can be divided into two categories, namely:

i) **Commercial content** (such as that provided by broadcasters online, as well as OTT providers like Netflix, Hulu, iflix and other regional competitors); and

ii) **User-generated content** (such as that available on social media platforms like Facebook, Twitter, YouTube, Sina Weibo and others).

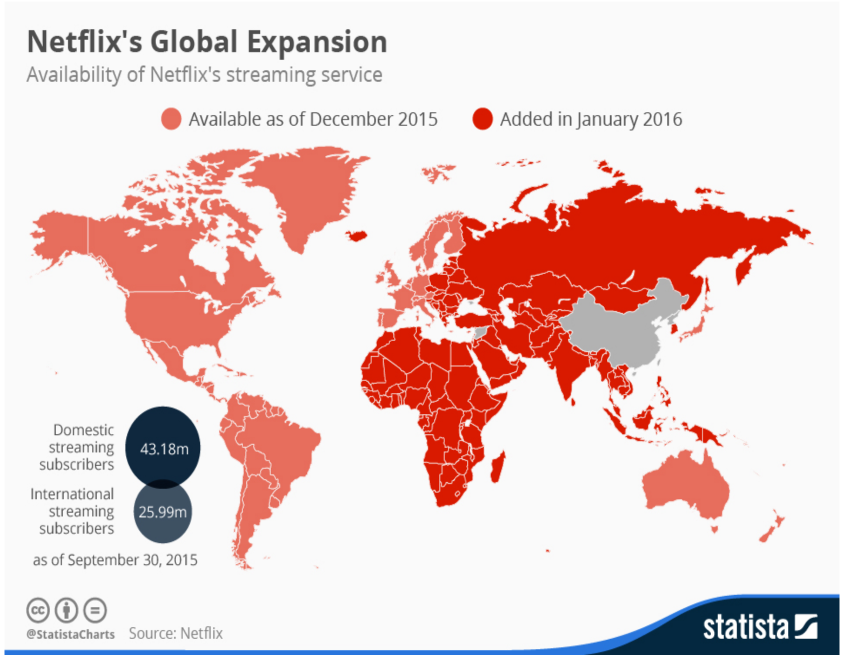
It should be noted however that commercial content and user-generated content platforms are not necessarily 2 mutually exclusive categories –
with YouTube becoming the de facto launch pad for today's celebrities.

Traditional and new channels are also not mutually exclusive, given the introduction of subscription content over social media platforms – such
as Google's 'YouTube Red' subscription service offering.

3. Challenges: Commercial Content and Content Regulation

Up until now, the regulation of content has been focused on traditional media platforms in domestic or regional settings, with rules enforced by regulators and industry.

However, the emergence and overwhelming popularity of global digital streaming services such as Netflix, outlined in the graph below, has led to a revaluation of key concepts used in the regulation of content - although a common, unified approach is yet to emerge.



3. Challenges: Commercial Content and Content Regulation

As a digital streaming service, it is understandably difficult to have a global product when there are widely differing regional classification systems and content standards.

For example, many countries have local content quotas for domestic broadcasters to encourage more work for locals in all aspects of television and part of their cultural policy.

In addition, some countries will place stricter limitations on certain content, based on cultural and moral standards.

- For example, streaming giant Netflix was blocked in Indonesia by Indonesia's largest telco Telekomunikasi Indonesia, having been accused of not submitting content for censorship approval and displaying 'violence and adult content'

The cost of dealing with these kinds of issues are reflected in the companies' results, which show that Netflix suffered a first-quarter operating loss of USD104.2 million for streaming video outside the U.S., partly because of higher marketing costs, and also showed that it is earning less per subscribers overseas than at home.

3. Challenges: Commercial Content and Taxation

In contrast to the obligations imposed on national operators, global online service providers and services are often not subject to the same taxation on revenue and profits.

Often having their principal place of business and registered office in the USA or a low-income tax country or haven, online service providers are able to put in place international tax optimization strategies given the variation in regimes applied by different countries in this regard.

- The strategies that exploit the difference in treatment of economically equivalent transactions between jurisdictions are known as base erosion and profit shifting ('BEPS').

The OECD estimates that between 4-10% of global revenue from corporate income tax is lost through BEPS by multinational enterprises, including a majority of online service providers.

The overall effect of this type of tax planning is to erode the corporate tax base of many countries in a manner that is not intended by domestic policy. This sort of activity also undermines the fairness and integrity of tax systems, alongside voluntary compliance by all tax payers.

3. Challenges: User Generated Content and the proliferation of Troubling Content

While social media platforms remain overwhelmingly a positive force connecting the world, these platforms can also be used to spread hate, violence, child sexual abuse and extremism.

Facebook's live video streaming service 'Facebook Live' has proven to be a popular platform for violent content, with a Thai man livestreaming himself killing his 11-month-old daughter in early 2017.

Despite these dangers, data shows that the main social media companies' responses to these complaints are less than adequate.

- In March 2016, it was reported that **YouTube** was deleting 90 percent of reported content and 82 percent within 24 hours; Facebook was taken down only 39 percent of content reported, and 33 percent within 24 hours; and Twitter was removing only 1 percent of reported posts.

As it stands, existing broadcasters and news organisations globally are generally held accountable for everything that they broadcast or publish.

Despite the rising level of dangerous content prevalent, internationally there is limited liability for social media platforms who aid users distributing illegal content, leading to a mismatch of policy and an uneven playing field.

3. Challenges: User Generated Content and Copyright Infringement

Facebook Live has also caused copyright infringement issues, especially with live broadcasts of sporting events.

- In early 2017, two social media users faced fines of up to AUD60000 or five years' jail for using Facebook Live to stream a boxing match, attracting hundreds of thousands of viewers and consequently infringing Foxtel's broadcasting rights under Australian copyright law.

Notably, where YouTube has long had systems in place to detect infringement, the equivalent technologies for streaming content are still in their infancy.

In light of this, many television broadcasters have taken a proactive step to tap into the potential of live social media broadcasts to increase engagement with viewers in a way that can benefit rather than eat into the viewership of their televised content.

- For example in the U.S., Fox Sports and ESPN have begun using Live to supplement their sports coverage.

4. Possible Solutions: Online Child Protection (1)

Global partnerships such as the ITU's Online Child Protection ('COP') Initiative can aid regulators in the development of online child protection regulation.

In addition, a good example of a national regulator employing more efficient and effective complaint services can be seen in Australia with the creation of the Office of the eSafety Commissioner in 2015.

The eSafety Commissioner prioritizes investigations into online child sexual abuse material, and works with law enforcement and the INHOPE to remove this content wherever it is hosted.

Australian Government
Office of the Children's eSafety Commissioner

The Office in accordance with the National Classification Scheme also investigates complaints about other prohibited material including:

- Promotes matters of crime or violence;
- Provides instruction in pedophilia;
- Advocates terrorist acts;
- Depicts gratuitous depictions of violence and sexual violence; and
- Is sexually explicit.

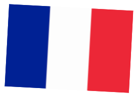
Notably, the eSafety Commissioner has the power to direct a social media organisation to take down offence material, with penalties of up to USD13,670 per day for delays

4. Possible Solutions: Social Media and Online Content Regulation (2)

It is recommended that regulators streamline content regulation and complaint-handling procedures to make them as efficient and effective as possible. All countries should have a clearly defined process, preferably involving a decision by judicial officer for the issuance of take-down notices and similar in relation to online material which breaches domestic law.

Such judicial mechanisms should be well-communicated to key global and regional social media companies ahead of time so there is no ambiguity as to the legal validity of the order and it is communicated. For example:

- The **European Council** is considering a more demanding approach on social media companies, by approving a set of proposals in May 2017 that would require social media companies to block videos containing hate speech and incitements to terrorism.



- The **UK** and **France** have joined forces in June 2017, with plans to explore the possibility of creating a new legal liability or social media companies if they fail to remove content

- In **South Korea**, an end-to-end regulatory model has been put in place, with the regulator empowered to direct can ISP to block
  content it deems inappropriate or harmful.

4. Possible Solutions: Industry self-regulation of content (3)

As pressure from governments heightens globally, social media companies and ISPs have also taken steps to further improve self-regulation.

For example, the Global Internet Forum to Counter Terrorism (including Facebook, Microsoft, Twitter and YouTube) launched in 2017 aims to scrub terrorist recruitment material from the internet and promote counter-narratives to potential recruits. The forum's core goals include:

- Improving technology for detecting terrorist material;
- Creating best practices for addressing 'extremism and online hate'; and
- Sharing information about members' respective counter-speech tools.

Social media companies have also stated that they are seeking algorithmic solutions to reducing harmful content.

- However, there remain serious questions as to the efficacy of such measures especially in relation to non-common internet languages.

4. Possible Solutions with respect to commercial content: Licensing of Providers (1)

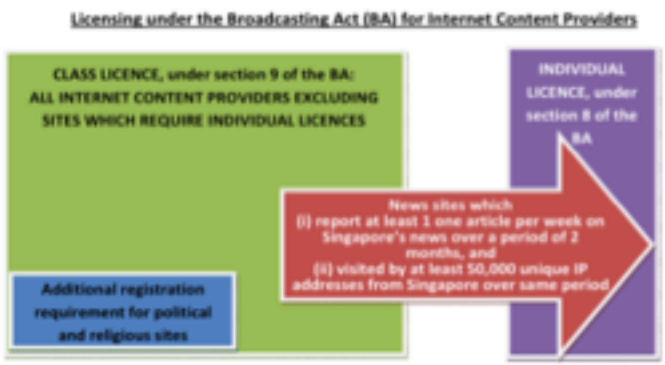
In a significant departure from the traditional licensing of broadcasters, having the mechanism in law to license internet content providers, if desired or warranted, should be considered by industry regulators and Governments.

This can be done in a number of ways including inter alia:

(i) A flexible catch all licensing category – like in Cambodia;

(ii) Deemed class licensing – as considered in Malaysia;

(iii) Or specific amendments to licensing rules to require country specific internet news content within the individual licensing regime – as seen in Singapore, and outlined below.



4. Possible Solutions with respect to commercial content: Content Classification Schemes (2)

In terms of commercial content, classification schemes are key.

In light of the global nature of digital streaming services, it is recommended that a unified content rating system is attempted either regionally or globally, as seen with the Pan-European Game Information (PEGI) age rating system, which has replaced a number of national age rating systems with a single system now in 30 countries across Europe.

In addition, it is recommended that a self-regulatory classification approach is considered to make the process quicker and more efficient, such as the one currently being piloted in Australia.

- In Australia, the pilot will see Netflix itself applying the classification tool to classify its content for Australian audiences, which is expected to lead to content being classified quicker and more efficiently.
- A broad range of classification decisions will then be reviewed by the Classification Board to assess the integrity of the tool.

4. Possible Solutions with respect to commercial content: Local Content Rules (3)

In terms of local content quotas on global streaming services, some regulators believe that the time has come to create a level regulatory playing field that ensures responsible and fair engagement from both domestic and international businesses within the sector.

As part of an overhaul of broadcasting rules, the **European Council** has approved a set of proposals in 2017 that could force internet content TV content providers to devote at least 20 percent of their catalogues to European films and TV shows. The law would also require promotion of EU Content on homepages.

In response, Netflix has warned that the implementation of such rules could distort the market, with the requirement of rigid numerical quotas placing a risk of suffocating the market for on-demand audiovisual media services and may cause new players to struggle. Having said this, Netflix has ploughed billions into becoming more ‘local’ globally & in Europe to be ‘more European’.

In **India**, the industry view is that Amazon is a more concerted effort than Netflix – with the view that the companies is really intending to localising their content.

4. Possible Solutions with respect to commercial content: Recommendations on Taxation (4)

Global online service providers offering substitutable services should be subject to the same taxation on revenue and profits as broadcasters and local media companies. For this to occur, taxation regulations will need updates.

The **2013 OECD Action Plan on BEPS** seeks to close the gaps in international tax rules which allow MNEs to artificially shift profits and avoid paying taxes. Central arms of policy and reform that target digital economic business models such as online service providers include:

1. Updating the definition of a 'Permanent Establishment;
2. Reinforcing transfer pricing rules by upgrading the 'arm's length principle'
3. Bridging gaps among domestic laws by including model rules and provisions to tackle hybrid mismatch arrangements through more effective foreign corporation rules

In response to this OECD report, several countries and regions across the globe have attempted to bring global online service providers under their domestic tax regimes, including in Australia, EU, Latin America, South Africa and Japan.

BEPS

5. Conclusions

In conclusion, there is great potential for digital content but also inherent risks which must be recognised. Important safeguards are therefore needed to improve the quality of the consumer's online experience and their ability to harness the positive impact of these new technologies.

To recap, the **key recommended actions** in relation to managing of digital content are as followings:

(i) Ensure that country law **permits the regulation of undesirable content in breach of domestic law, including appropriate take-down procedures**

(ii) Review legacy country **classification systems**;

(iii) If there are existing **local content rules** for current broadcasters, consider whether they are appropriate going forward and whether any local content targets should apply with respect to internet content

(iv) If your country currently regulates newspapers and other media, then **review legacy regulation regimes** to assess whether they are appropriate going forward

(v) Legislate **to ensure a level playing field** to the extent possible for domestic broadcasters and global online service/content providers in terms of taxation, including committing to inter alia BEPS taxation reforms and ensuring that any VAT apply equally to domestic and international competitors.

6. The Future and Issues for Discussion: Augmented and Virtual Reality

However, when considering the regulation of digital content, it is important regulatory frameworks are as future-proofed as possible.

Although virtual and augmented reality are arguably some time away from mass-market adoption, once these really come into the market, they may change the world just as much as the iPhone has done over the past decade.

The regulation of these new technologies may be even more challenging than the regulation of current technologies available to consumers. In light of these future changes, it is proposed that a generic model of content regulation that is flexible with technologies and innovations should be broadly considered.

For example, in relation to violence: Under the proposed system, the level of restriction able to be exercised by regulators, under either a classification system or self-regulatory codes, would be dependent on three criteria, namely the level of violence the pervasiveness of the particular media, and the intensity of the particular media/technology.

Thank you

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