Turkey regulates online streaming platforms

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Introduction

The video streaming industry is one of the most promising and fastest growing industries of the new era. By the end of 2023, the number of people around the world using over-the-top (OTT) video streaming services is anticipated to increase by over 85 per cent.[1] While OTT video streaming technology has disrupted the content distribution market, subscription-based video on-demand (SVOD) platforms have also disrupted the content production market as they have begun producing their own content. Concurrently, TV channels and content producers have started entering the online video streaming market and pulling their original content from third-party streaming platforms. This ongoing quarrel will escalate in November 2019 when the global SVOD market will welcome Disney+ and Apple TV+, which is expected to have a significant effect on the market shares of existing players. With the new Turkish broadcasting legislation now covering online video on-demand (VOD) services, it is inevitable that streaming platforms will endeavour further into the Turkish market in the current global content wars.

The Turkish Regulation on OTT audiovisual services

In 2018, after serious debate, the European Union amended its Audio-visual Media Services Directive 2010/13/EU (the 'EU AVMS Directive') to cover VOD streaming platforms such as Netflix and, in certain aspects, video-sharing platforms such as YouTube. The revised EU AVMS Directive introduced regulations concerning, among others, the monitoring of harmful content and commercial communications, more distinctly defined and extended the obligations to protect minors on video-sharing platforms, and required VOD media service providers to host at least 30 per cent European content in their catalogue. The Turkish 'Regulation on Radio, Television, and On-Demand Broadcasts on the Internet'[2] (the 'Regulation'), which came into force fully on 1 September 2019, follows the footsteps of the 2018 amendment to the EU AVMS Directive in certain respects. In addition to setting forth a significant range of requirements for service providers, two major highlights from the Regulation include introducing a licensing obligation necessary to provide on-demand content and subjecting all on-demand content to Turkish broadcasting rules and principles.

The Regulation introduces a licensing regime that covers two types of licences: internet broadcast licences for 'media service providers' who have an editorial responsibility to choose radio, television, and on-demand broadcast content and determine the manner in which such content is organised and broadcasted; and internet broadcast transmission authorisation for 'internet broadcasting platform operators' who transmit numerous radio, television, and/or on-demand broadcast services via their URL address and/or mobile applications.

While the definition of a 'media service provider' in the Regulation is almost identical to the same concept found in the EU AVMS Directive, 'internet broadcasting platform operators' is rather different from 'video-sharing platform operators' as defined in the Directive. This is because the term 'internet broadcasting platform operators' essentially covers all websites and applications that host or transmit numerous radio, television, or on-demand broadcasts, but only dedicated platforms are subject to the Regulation. The term could be interpreted to include both video-sharing platforms, such as YouTube, as well as OTT streaming platforms. This means that new generation SVOD providers that distribute third-party content and produce original content would be considered both media service providers and internet broadcasting platform operators depending on the content.

The Regulation extends to foreign providers

The Regulation applies to foreign media service providers and foreign internet broadcasting platform operators if:

1. the broadcast is in Turkish and targets Turkey;

2. the broadcast includes commercial communication aimed at Turkey; or

3. the Turkish Radio and Television Supreme Council (RTÜK) determines that such broadcasts are in violation of the Turkish Broadcasting Law or the relevant international treaties.

In other words, foreign media service providers and internet broadcasting platform operators are not subject to the Regulation provided that their broadcast is in compliance with the Turkish broadcasting legislation, the broadcast is not in Turkish, does not target Turkey, and does not include commercial communication in Turkish. Any foreign entity providing media services or internet broadcasting platform services that fall under the scope of the Regulation would be required to establish a company in Turkey in order to obtain a licence.

Broadcast licences are valid for ten years and the related fees are as follows:

- TRY 10,000 for radio broadcasts on the internet;
- TRY 100,000 for television broadcasts on the internet; and
- TRY 100,000 for on-demand broadcast services on the internet.

Broadcast transmission authorisation is valid for one year and the fee is TRY 100,000 per annum. Furthermore, media services providers and internet broadcasting platforms providing subscription-based services are required to pay 0.5 per cent of their annual net sales to the RTÜK.

Non-compliance may result in internet access bans or criminal penalties

If media service providers or internet broadcasting platform operators are found operating without a licence and/or authorisation, the RTÜK will publish a warning notice stating that the offender may apply for a licence/authorisation and may continue broadcasting if a three-month licence/authorisation fee is paid in advance. If no application is filed and the broadcast does not cease within 72 hours, the RTÜK may ask a criminal judgeship of peace to remove the content and/or ban internet access to the broadcast, and in the case of media service providers, may file a criminal complaint against the company officials on the grounds of broadcasting without a licence.

OTTs are now subject to linear TV regulations

In addition to the licensing requirements, further requirements for media service providers and internet broadcasting platforms are imposed under the Regulation, which include enabling parental control over broadcasts that might harm children and complying with the Turkish Broadcasting Law (eg, applying the RTÜK's broadcast content rules as well as disclosing information to the RTÜK regarding their broadcasts and revenue).

Following the entry into force of the Regulation, the President of the RTÜK announced that they have received more than 600 licence/authorisation applications from service providers including Netflix, BluTV, PuhuTV, Vodafone TV, Turkcell TV+, Digitürk, and Tivibu.[3] Meanwhile, a cancellation action has been filed by the Ankara Bar Association arguing that the Regulation violates the freedom of expression and the freedom of the press by potentially causing arbitrary censorship.

Turkey may be a pioneer in regulating OTT streaming services under the conventional broadcasting legislation, establishing a licensing regime, and setting out financial obligations for OTT streaming services providers, but recent developments demonstrate that Turkey is likely to be joined by other countries rather soon.[4]

On the horizon: digital services tax

The Turkish regulatory trend of adopting conventional regulations for new generation services is also apparent in other fields. Turkey proposed a law on 24 October 2019 setting the groundwork for a digital services tax following France's three per cent digital services tax adopted in July 2019 and the United Kingdom's proposed two per cent digital services tax. The proposal covers online streaming services as well as digital advertising and marketing services, application stores, online social platforms and online marketplaces. The suggested digital service tax obligation has been set at 7.5 per cent for gross revenue accumulated in relation to services demonstrating a territorial connection with Turkey; that is, services provided, or benefited from, in Turkey; targeted at people in Turkey; or if the remuneration is made in Turkey. The digital services tax is only payable if the gross revenue for digital services provided in connection with Turkey is over TRY 20m and if the global revenue is over EUR 750m, similar to the models embraced in France and the UK. Considering that the digital service tax regulations in France and the UK predominantly concern American online tech giants, the United States has engaged in serious debates with France[5] and the UK,[6] and reached an agreement with France in August 2019.[7] Turkey may also face similar challenges, considering that the proposed Turkish regulation seeks an even higher tax rate and goes as far as to ban internet access to digital services that fail to pay the proposed tax. Although an international debate has yet to take place, both the RTÜK regulation and the proposed digital tax regulation are likely to increase the financial burden on Turkish consumers.

Notes

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[2] Official Gazette No: 30849 1 August 2019.

[3] Eda Ozdener, 'Netflix applies for broadcast license in Turkey' (*aa*, 3 September 2019) **www.aa.com.tr/en/culture/netflix-applies-for-broadcast-license-in-turkey/1572336 (http://www.aa.com.tr/en/culture/netflix-applies-for-broadcast-license-in-turkey/1572336)**.

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[5] Patrick Wintour, 'France will not back down on digital tax despite US legal threats' (*The Guardian,* 16 July 2019) **www.theguardian.com/world/2019/jul/16/france-will-not-back-down-on-digital-tax-despite-us-legal-threats (http://www.theguardian.com/world/2019/jul/16/france-will-not-back-down-on-digital-tax-despite-us-legal-threats)**.

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[7] Elizabeth Schulz, 'US and France have reached a deal on digital tax, Macron says' (CNBC, 26 August 2019) **www.cnbc.com/2019/08/27/france-and-us-reach-draft-compromise-on-french-digital-tax.html (http://www.cnbc.com/2019/08/27/france-and-us-reach-draft-compromise-on-french-digital-tax.html)**.

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