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Research, analysis and opinion on international media law

Foreign investment in the US media sector expected to rise

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PwC's media report indicates "foreign buyers armed with cash, particularly from China" will be increasingly active in film and content sector

Foreign investment in the US media and entertainment industry is expected to increase during 2016 as PwC's latest report predicts a rise in business projects.

The report on merger and acquisition activity shows deal value was up by 6 per cent during the last quarter of 2015 rising to USD 18.3 billion, an increase from its lowest point in two years at the start of 2015 when deal value reached USD 10.4 billion.

The PwC report, *US Entertainment, Media & Communications Deal Insight*, highlights predictions of increased investment, notably from China, in the film and content sector.

The report states: "We expect foreign buyers armed with cash, particularly from China and the Middle East, will enter the scene in the coming quarters as Hollywood studios navigate complex international distribution rules, predominantly in these markets, for their piece of this growing [filmed entertainment] pie."

The first quarter of 2015 was marked by a slowdown in "megadeals"— those valued at USD1 billion or more—and a rise in large and middle-market deals. Wanda's acquisition of Legendary and Verizon's purchase of XO Communications are the quarter's two ➔

Print media delivers highest return for Ireland's advertisers

Print media advertising produces the highest rate of return on investment in Ireland, according to the most comprehensive study ever undertaken nationally.

Research conducted by Independent News and Media Ltd (INM), publisher of five national and 13 weekly regional newspapers in the Republic of Ireland, in association with Amarach Research, shows print media outperforms all other mediums including television and radio.

Key findings show advertising in print media is up to twice as effective as television advertising for the automotive sector, print advertising provides a return of EUR 35 for every EUR 1 spent in the retail sector and produces EUR 8.10 for every EUR 1 spent in the finance industry.

At a launch event in Dublin in May, INM Chief Executive Robert Pitt described print as an influential medium that drives potential customers to other channels as many online visits are prompted by print advertising.

Mr Pitt said: "If you're not in print - and if you're not in print with a strategy that goes across digital media as well, and other channels, you're letting your customer down."

The study shows that advertising drives 25 per cent of all sales delivered by the media.

Karen Preston, Group Advertising Director, said: "In recent years much of the conversation around print has been about its decline, however this extensive research demonstrates that the print channel plays a significant role in the marketing mix and cannot be underestimated in any manner." ■

What's inside

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Egyptian Media acquires prime satellite channel ON TV

Egyptian Media has signed a 100 per cent stock acquisition deal with telecoms billionaire Naguib Sawiris for his satellite television channel ON TV.

In an official statement issued on 15 May, Egyptian Media's CEO, Ahmed Abou Hashima, stated the deal will 'reinforce Egyptian status in the media sector and present a comprehensive and developed media that is both professional and attractive and also functions in accordance with the state and people's aspiration for growth and stability'.

Mr Abu Hashima, who is also chairman of the Egyptian Steel Group, said the move to acquire ON TV will "pump investment into domestic media" and has described the television station as having a "powerful fingerprint" in the media industry. He outlined plans which will lead to wider national expansion that includes more acquisitions and launches.

According to Mr Abu Hashima: "Buying ON TV is a first step in a plan that includes the purchase of another channel and other future media projects that include launching satellite channels, the production of TV series, and online streaming through a group of channels aimed at Egyptian youth."

Egyptian Media will launch English content as part of its expansion plan that aims to "reclaim Egypt's media standing in the Middle East and the world".

The steel tycoon is known for his financial support to the Future of the Homeland party, which is widely recognised for its support of the Egyptian government. ■

Greater recognition for gaming sector needed, say experts

As the UK games industry reaches more than GBP 4.1 billion in value, game developers call for greater recognition from the government and education sector.

Speaking at Insider's South East Gaming Technology Round Table, which was sponsored and hosted by Guildford law firm Charles Russell Speechlys, industry experts discussed principal areas such as office space for start-ups, funding for games development, collaboration between games developers and other technology companies and broadband connectivity.

The round table event held on 18 May brought together game developers, technology specialists and other professional experts who say there is still a perception, particularly in the education sector, that games are just "frivolous pursuits".

Jo Twist, CEO of the UK Interactive Entertainment, explained: "We need to break down the cultural bias that we still have from leaders in the education system and the narrative remains that games are a frivolous pursuit and this needs to change."

He added: "There is still a lack of understanding from leaders in schools, FE and HE about the power of the games industry and what it actually is. Unless we get the message across that games are not for young people only, things just won't change."

There are approximately 1,900 games studios and games companies across the UK with approximately 54 per cent of these based in the South East region. ■

Foreign investment in US media sector to rise continued from page 1

← megadeals, which have a combined deal value of USD 5.3 billion.

Bart Spiegel, media partner at PwC, explained: "We see companies across the entertainment, media and communications ecosystem strive to get ahead of the competition by acquiring content and capabilities for sums large and small."

Mr Spiegel added: "Changing consumer demographics (and, in turn, demands) coupled with rapid technological advancement make it essential for dealmakers to seek targets that help deliver the connected experiences consumers expect. Delivering video content is at the centre of this changing landscape."

The number of deals announced by companies in the US that acquired international firms during the first quarter of 2016 increased slightly, compared with the last quarter of 2015. Of these outbound deals, 31 per cent were in the UK, which was followed by Canada at 15 per cent.

Increases in the UK and Canada were offset by a decrease in outbound deal activity in almost all other regions. Latin America and the Asia Pacific are regions with the most significant declines. Advertising and marketing were the most active sectors for US investment internationally, followed by film and content deals. ■

Tax incentives trigger growth in foreign film production in Spain


Pilar Sanchez-Bleda

Reforms introduce tax structures that attract international investment in local film industry

Unlike previous years when the shadow of the crisis loomed over the film industry, these days more and more film makers are choosing to shoot in Spain given the diversity of its landscape, its infrastructure and the quality of its audio-visual professionals.

But what prompted this change? The shift away from the previous scenario was motivated by tax incentives for foreign productions, a scheme that has started to produce positive outcome.

Tax reforms under the incumbent Spanish government - the effects of which began to unfold in 2015 in an effort to stimulate not only the film industry but the economy in general - targeted international productions. The reform introduced a 15 per cent deduction on certain costs incurred in Spain by foreign productions. which could be received in advance up to a limit of EUR 2.5 million per production.

But in addition to attracting foreign investment, one of the audio-visual sector's most pressing needs is an upswing in domestic investment - this in a country whose cultural consumption accounts for roughly 3.5 per cent of GDP.

Within the framework of measures to boost domestic investment, the following have been undertaken:

(i) the investment tax credit was extended to 20 per cent for the first million euros, and 18 per cent for amounts in excess thereof (the amount of this deduction shall not exceed EUR 3 million). It is also worth bearing in mind that this deduction has been permanent since 2013, providing a degree of stability to industry investment, and that it must be analysed in the context of corporate taxes where the general tax rate has decreased from 30 per cent to 25 per cent.

(ii) a clear commitment to the animation industry, which can currently benefit from heavy corporate tax deductions for R+D+i.

(iii) legal certainty for the investor unrelated to the audio-visual sector (who merely provides financial resources to the project) by eliminating the figure of the "financial co-producer," which generated interpretation issues with the Tax Administration and whose deduction was limited to 5 per cent with a fixed incentive of 20 per cent of the investment.

Thorough knowledge of the media sector plus the design and implementation of a suitable tax structure are crucial to ensuring successful investment in the industry.

The media and technology department at Auren is presently engaged in designing tax structures for international film projects through co-productions by leveraging the advantages of AIEs that make the internal rate of return extremely attractive.

With circumstances as they are, in a period of flux, the time has come to do new things, to take advantage of Spain's existing legal and fiscal framework and understand the new environment in which we operate.

If we combine these factors, the film industry presents interesting investment opportunities both for the investor, who provides funding and aims to recoup it through operating profits, and for the investor who provides funding and whose profits translate into tax benefits.

Film making will continue to walk the tightrope in a business environment of budgetary restrictions, but as Albert Einstein said: "The definition of insanity is doing the same thing over and over again and expecting different results." ■

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Russian Regulator focusses on enforcement

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While Russia's controversial personal data localisation law led to global debate, 2016 demonstrates a high rate of compliance following inspections

While Russia is just one of the countries that decided to introduce a data localisation requirement, the Russian Data Localisation Law, in force since 01 September 2015, has received exceptional attention from global and local businesses and has caused contentious public discussion.

The new law is extremely concise and states that data operators collecting personal data of Russian citizens, whether online or offline, are obliged to ensure a record, systematisation, accumulation, storage, updating, changing and retrieval of such data in databases located within the territory of Russia.

Not surprisingly, data operators have many questions on how compliance with the new law can be secured and what are the regulator's enforcement plans. Predicting this, the Russian Data Protection Authority (Roskomnadzor) held several meetings with different industry sectors including insurance companies and online reservation systems between March and April 2015. Further, on 03 August 2015 the Russian Ministry of Communication, the agency that oversees Roskomnadzor, published non-binding clarifications on its website.

These clarifications provide a broader view of how the Ministry believes personal data operators can comply with the Data Localisation Law. To date these clarifications remain the only published regulatory guidance on the Data Localisation Law which may be used by the data operators as a basis for development of compliance solutions.

Who is affected?

There is a question which immediately strikes each foreign business' privacy specialist who looks at the Russian Data Localisation Law. Do I, as a data operator, need to comply with the Data Localisation Law if I have no presence in Russia?

The Data Localisation law does not indicate whether or not it applies to foreign persons. Under the Ministry's clarifications, following the fundamental Russian jurisdictional rules, Russian laws apply only within the territory of Russia and, therefore, the Data Localisation Law should not apply to non-residents of Russia, including foreign businesses.

The Ministry's clarifications, however, further stipulate that because of the internet's trans-border nature, certain internet activity may be considered to be conducted within the territory of Russia, and therefore, is subject to compliance with the Data Localisation Law.

For example, a website may be deemed subject to the data localisation requirements if it includes a Russian language option (except where the website is translated with the help of an automatic online translator) or uses a Russian top-level domain such as, for example, .ru, .su, .moscow.

Other examples incldue instances when there is other evidence confirming that the data operator is interested to include the territory of the Russian Federation into the scope of its business area (e.g. performance of the services agreements concluded online within the territory of Russia, indicating prices in local currency, distribution of advertisements in Russian, etc.).

The Ministry's clarifications establish two types of organisations that are likely targets of enforcement, reflecting the practical realities of jurisdiction: (1) organisations with a physical presence in Russia (which e.g. can be subject to on-site inspections), and (2) organisations with internet activity directed to Russian users (whose websites can be blocked in the event of non-compliance).

Foreign businesses with less of a physical connection to Russia, or without a website specifically targeted to Russia ➔

Featured Firm: Preu Bohlig & Partner

Russia: Personal Data Localisation

← users, appear to be less likely to be enforcement targets under the Ministry's clarifications. That said, Russian courts have the final say and while the Ministry's clarifications are helpful in determining likely enforcement targets, they do not definitively exempt any organisations from the localisation requirements.

Foreign Database vs. Local Database

The Data Localisation Law does not clarify the term "databases located within the territory of Russia" and does not cover whether a "primary" or a "secondary" database should be located in Russia.

In Roskomnadzor's view expressed in the meetings with the industry groups, the "primary" database where all personal data processing, including updating, is done, should be located within Russian territory.

After the "primary" processing of personal data in Russia the data may then be transferred abroad under applicable cross-border transfer rules, where it may be further processed under the applicable regulation of the destination country.

The Ministry's clarifications stipulate that it is permitted to use a foreign database provided that such foreign database is used for processing of personal data which is the same or a part of personal data processed with the use of a Russian database.

Therefore, based on the above Roskomnadzor's and Ministry's interpretation, after ensuring the processing and storage of the personal data in a database located in Russia, such personal data may be transferred abroad to any other databases. Such transfer must be performed in compliance with applicable cross-border transfer regulations.

Fines vs. Website Blocking

The Data Localisation Law does not provide for specific fines for breach of its provisions, and general fines for violating personal data regulations apply. The fines are small and do not currently exceed equivalent of EUR 150.

For violations committed by companies, most often the fine is imposed on a company, although there are cases where companies' officers (e.g. the CEOs) were brought to liability.

There is no express official clarification as to whether the fine should be introduced per person or per violation. We note that under current practice the fines are applied per aggregate violations, and not per person or per act-of-processing.

While the fines are small, a new enforcement tool was introduced. The regulator may block access to internet websites containing data processed in violation of Russian data protection laws, including of Data Localisation Law.

Such blocking is made on the basis of a court ruling under specific procedures whereby Roskomnadzor adds a data operator that violates the law into the registry and arranges for restriction of access to that operator's website containing data processed in violation of Russian data protection laws.

What's New?

Since 01 September 2015 Roskomnadzor has been conducting inspections according to its plans, as well as ad hoc inspections. The planned inspections schedule is publicly available and needs to be closely monitored to ensure there is sufficient time for preparation for the inspection once the date of inspection is known.

According to a presentation in November 2015 by Roskomnadzor's representative made during the Personal Data Conference, in 2016 the regulator would focus its enforcement efforts on organisations acting via the internet (e.g. social media sites, online retailers, financial institutions).

Available news reports state that Roskomnadzor has found most of the companies that it has inspected in 2016 to be compliant with the Data Localisation Law; and has imposed administrative fines on those companies which have been found to be non-compliant.

Currently there is no information on blocking of websites due to violation of the Data Localisation Law.In addition to its inspections, Roskomnadzor has also announced on various occasions that it continues to have ongoing dialogue with prominent online businesses to ensure their compliance with the Data Localisation law.

Based on this, we expect that during the coming months there will be more information on the approaches used by Roskomnadzor in the course of inspections and on interpretation of the Data Localisation Law applied by the Roskomnadzor for enforcement activities. We also expect to see first court precedents confirming or dismissing the Roskomnadzor's decisions made on the basis of inspections. ■

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