

Antitrust investigation into prevailing 'monopoly power'



A 16-month antitrust investigation outlines need for vast changes to Facebook, Google, Apple and Amazon

A 16-month investigation by the House Antitrust Subcommittee has found that Facebook, Google, Amazon and Apple hold a 'monopoly power' in their respective markets.

The antitrust report concludes that the four technology companies are anti-competitive, and proposes significant changes to address the way they operate.

The long-awaited report recommends new laws that would potentially dilute the market dominance of Facebook, Google, Amazon and Apple, by operationally separating their key components. For Facebook, this could mean divesting Instagram and WhatsApp.

The Antitrust Subcommittee produced a 450-page document, representing a majority opinion from Democrats, and others from different Republican factions.

Lawmakers investigated whether or not the world-leading technology companies have abused their power, and whether or not legislative changes are needed to address operational activity.

The report cites numerous examples of Facebook, Google, Apple and Amazon engaging, in varying ways, in acts that lawmakers believe have negatively affected innovation and impeded competition. →

Australia supports news agency with USD3.7m funding

The Australian government has announced a grant of AUD5 million (USD3.7 million) to the national news agency as part of support to regional journalism amid market challenges caused by Covid-19.

Funding was announced on 18 September, just days after three senators, Jacqui Lambie, Rex Patrick and Stirling Griff, wrote to Prime Minister Scott Morrison urging him to support Australian Associated Press (AAP).

Senators urged that funding should be provided annually for three years to ensure sufficient support for the news agency, beyond the Covid-19 economic crisis.

The AAP has an 85-year history in providing services to more than 250 regional new mastheads across Australia, covering public-interest content on national and regional news for communities.

Communications Minister Paul Fletcher commented on pandemic-related challenges. He stated: 'Public interest journalism is important now more than ever. This AUD5 million in funding will allow AAP to continue delivering its important news service for communities Australia-wide.'

Mr Fletcher added: 'The Covid-19 pandemic has triggered unprecedented challenges for Australia's regional media sector, with severe declines in advertising revenue threatening the sustainability of many news outlets.'

Communications spokesperson for the opposition, Michelle Rowland, said that federal funding should have been provided months ago. ■

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E.W. Scripps agrees to buy ION Media in a USD2.65 billion deal backed by Berkshire Hathaway

American broadcasting network E.W. Scripps Company has agreed to buy broadcast network ION Media in a USD2.65 billion deal, creating a full-scale national television business.

The deal, which was announced on 24 September, increases the operational scale of the broadcaster as part of plans to counter the rise in online streaming.

E.W. Scripps Company shares increased after the local broadcaster announced its acquisition of ION Media, a deal backed by Warren Buffett's Berkshire Hathaway.

Berkshire will make a USD600 million preferred equity investment in E.W. Scripps

Company to finance the deal and will receive a warrant to purchase 23.1 million Class A shares, at a rate of USD13 per share.

Analysts say that Berkshire's backing is seen as the "best seal of approval" in the equity market.

E.W. Scripps Company President and CEO, Adam Symson, commented "This evolution of Scripps' national television networks business, through the combination of ION, the Katz networks and Newsy, repositions the company in the television landscape."

Mr Symson added: "ION will make Scripps a more powerful and durable media business with significant near-term benefit." ■

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← The report outlines recommendations that must be considered by Congress. These recommendations are only high-level guidance to Congress for potential legislative changes and will not lead to immediate action against these companies.

As part of its conclusion, the report outlines changes that would have a significant effect on the systems behind each company, and the digital economy as a whole.

Outcomes of the investigation include the following: 'The implementation of structural separation regulations, which would limit the major tech players from acquiring businesses in distinctly different areas from their main operation. This would also include the potential separation of major apps, like YouTube, WhatsApp and Instagram.'

'All new acquisition proposals should be considered anticompetitive, with the onus

Vivendi secures ECJ victory in Mediaset case

French media company Vivendi has won a case in the European Court of Justice following legal disputes with Mediaset over ownership restrictions.

The ruling on 03 September overturns a decision by Italy's Communications Regulatory Authority that prevented Vivendi from simultaneously holding shares in Mediaset and Telecom Italia.

In a statement, Vivendi commented that it "welcomes with great satisfaction the judgment pronounced today by the Court of Justice of the European Union and is delighted that the highest European legal authority today has ruled fully in its favour."

Vivendi, led by French billionaire Vincent Bollore, has been in long-standing disputes with Mediaset since 2016, after Vivendi withdrew from a deal to buy Mediaset's pay-television unit.

Mediaset had successfully prevented Vivendi from participating in shareholder meetings, limiting its voting power to the 9.6% share it holds directly.

The French media firm commented that it is maintaining "its commitment towards Italy and confirms its willingness to be a long-term investor in this beautiful country".

The Italian company commented that the ECJ's findings "must be examined in the subsequent stages of judgment before the competent national judge and on which it is hoped that the [AGCOM – the Italian communications regulator] can provide any appropriate clarification". ■

then put on the acquiring business to show why such a merger would be in the public's benefit, not an expansion of its market power.'

'New regulations on data portability, enabling users to more easily shift between apps and tools without penalty.'

'New laws which would stop the big tech platforms from preferencing their own products, ensuring equal opportunity for all players in the market.' ■

UAE: Filming back to normal? Well... By Mark Hill, Charles Russell Speechlys

Filming begins post-pandemic as industry reviews best practice

Mark Hill



Production houses review government recommendations for shooting in region

And so it is official - the UAE is supposedly back to normal as far as sets and filming are concerned.

Bollywood film producer Gaurang Doshi and the star-studded cast of his Hindi web show, 7th Sense, were the first Bollywood production staff to be allowed to film in Dubai post-pandemic.

Dubai has been among the first countries in the world to allow a large production (with a film crew of over 100) to begin shooting.

Lead actor on the show, R Madhavan, commented: "Dubai has set an example (to the rest of the world) by allowing us to shoot a show on such a large scale. There have been shootings in other parts of the world but hats off to Dubai... who made it possible for such a huge ensemble to get together during Covid times."

The cast and crew have been following the mandatory safety protocols, including every member of the cast and crew undergoing a

Covid swab test once a week. Production on the show was expected to run for another 60 days to complete the filming, with the show due by December 2020.

Actor Rohit Roy was also all praise for Dubai. He said: "It is a pleasure to be in Dubai. I feel safer here than anywhere else. You know the good thing about this place is that people here are sticklers for safety, life is going on smoothly and this gives us the confidence to shoot in the city."

It is interesting to note that 7th Sense is being shot across some of Dubai's iconic locations such as the Dubai Opera, The World Islands, Al Seef Waterfront and the Underwater Villas.

So is this it, a return to work? In the past seven-to-eight months, as with many of the creative industries, income has stopped. A return to work is of course what many are looking for. However, what of the regulations for the recommencement

of production work? We have had a number of announcements during the pandemic period from the Dubai and Abu Dhabi governments, and similar has been happening elsewhere in other markets where we are involved in production work (UK, Eastern Europe, South Africa).

The latest announcement from Film Dubai refers to best practices and guidelines as Covid numbers continue to increase within the region. These best practices and guidelines are:

- Working hours for cast and crew members should be in shifts that are 12 hours or less, with a clear arrival and departure schedule (a challenge on previous practices for many productions)
- Temperature checks at all entry points (which raises questions regarding open sets)
- Two metres social distancing (clearly a challenge on the sets I have seen recently)
- Face masks mandatory
- Hand sanitisers available at all entry points and in common areas
- Anyone showing symptoms or unwell should not attend set
- "Essential" cast and crew on set only.

This announcement has prompted a lot of discussion in the industry recently as to whether or not this is a recommendation or a requirement and what the government sanctions would be for perceived non-compliance.

This is a crucial area for productions seeking to recommence during difficult times. We, at Charles Russell Speechlys, are therefore providing a real-time support function to assist with queries for the return to work.

As one commentator pointed out quite correctly recently, it would seem to be up to the production houses and their clients, the brands and the production producers to ensure and demand that safety measures are met and taken before proceeding with any shoots. Hopefully this will be a busy period coming up. But a safe and compliant one too! ■

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Copyright Considerations for Turkish TV Industry



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Cetinkaya's leading lawyers outline developments in copyright in Turkey's television industry, taking into account changes in age of streaming

In 1981, the Turkish-made TV series *Aşk-ı Memnu* was exported to France, and thus began the journey of exporting Turkish content. Since then, Turkey has developed into an important and prominent exporter of TV content and, according to figures collated by Anadolu Agency in 2019, has become the second-largest exporter of such content after the US.

Handsome actors, talented screenwriters and directors have played an important part in Turkish TV content's rise to prominence. However, developments in the establishment and protection of copyright and

intellectual property rights in Turkey, under the Law on Intellectual and Artistic Works, should not be overlooked as an underlying basis that provides the certainty and clarity that has allowed this industry to thrive.

However, despite the positive effect of the applicable legislation, particularly with the utilisation of streaming platforms and the increased global reach they provide, certain areas that require development have become apparent.

Publishing Content on Digital Platforms

Digital platforms have provided increased opportunities to introduce Turkish content to new audiences.

The Turkish content market has also benefited from competition between established international streaming platforms and newer Turkish rivals.

Netflix has been particularly active in this area, commissioning a number of original Turkish works exclusive to them, such as *Atiye (the Gift)* and *Hakan: Muhafiz (the Protector)*.

However, moving to streaming platforms and providing them with "exclusive" content has led to an increase in online piracy that detrimentally affects the works' rights holders.

The Law on Intellectual and Artistic Works provides methods of addressing these acts of infringement and the necessary rights of recourse.

As per Temporary Article 4 of the Law, a notice and takedown model is implemented to remove such infringing content. At first instance a request is made to the content provider.

However, if the content provider does not respond within three days, the rights holder can make an application to the prosecutor's office to prevent access to the relevant platforms.

In practice, as the infringing content is most frequently distributed by content providers that are outside of Turkey, an application for the prevention of access is required in order to prevent such infringing distribution.

In addition to the application to prevent access, rights holders can claim compensation.

Furthermore, with recent developments introduced in Turkey through the Social Media Law amendment, increased opportunities to issue content removal orders are now available. Stricter obligations have also been imposed on social network providers to respond to any claims of infringement.

These new opportunities may also be utilised by rights holders to ensure quicker takedown of infringing content.

Shortcomings Exposed by Increased Content Export Opportunities and Streaming

The increasing volume and value of Turkish content exported and exploited globally has required a re-evaluation of the framework provided by the Law on Intellectual and Artistic Works, particularly regarding the rights of performing artists.

Neighboring rights of performing artists were first recognised in Turkey with a change to the law introduced in 1995.

{ Copyright Considerations for Turkish TV Industry

Since then, the implementation and interpretation of this provision has taken shape and while it has provided a number of neighboring rights, the complicated nature of content production frequently leads to performers being disadvantaged.

In practice, mainly due to longstanding convention, performers transfer their rights to producers. This usually happens at the point of the content's conception.

Signing away such rights before a work has been created is considered null, according to the applicable legislation in Turkey. Despite this, there are frequent examples in the industry.

Therefore, performers whose efforts constitute an integral part of a work are unable to receive separate residual payments due when the content is rebroadcast or broadcast on different platforms.

The opportunities and scope for rebroadcast provided by streaming platforms has led to increased complaints that the model creates an unfair imbalance within the industry, with some performers labelling it exploitative.

There have been increased demands for more detailed provisions in the Law on Intellectual and Artistic Works that will provide increased protection to stakeholders, such as screenwriters and actors when works are re-broadcast on any platforms after the transfer of their material rights.

Performing rights societies are active in the area of musical works. However, the existence of such rights societies is another aspect that must be considered given the more extensive broadcast and re-broadcast of certain content.

The practical implication and existence of rights societies, for musical works integrated into such content, are often overlooked. This leads to issues regarding rights ownership or the issuance of additional license fees.

Another effect of the prevalence of streaming platforms has been a corresponding increase in created works, some of which have started to

resemble each other in tone or form as producers aim to produce content in successful formats. Works that have been adapted from other media such as novels have benefited from copyright protection. However, issues surrounding the ability to copyright a format or general type of content has led to concerns from content producers unable to protect original works or concepts.

As original content and exclusive content become even more important, a potential trend may be an increase in take down or content removal orders. Particularly with important Turkish players strengthening their positions in the area of streaming, Turkish courts may take a more protective approach.

Conclusion

Turkish content production industry has gained significant prominence given the increase of content production in Turkey and record-breaking viewing figures abroad.

Shifting content distribution channels to online streaming platforms will only contribute to this upward trajectory.

However, as highlighted above, it is important that the multinational distribution considerations are taken into account by the producers, and that ongoing issues relating to other rights holders are addressed. This would help to ensure that expansion in the content market benefits all in this industry.

These factors will help to maintain the satisfaction and productivity of what will continue to be a cornerstone industry for Turkey.

This article was written by Bentley Yaffe, Sila Sayli, Bengisu Incikli and Enes Polat



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He has extensive experience in the fields of media and entertainment and technology, advising a range of clients on the establishment of IP TV services, VOIP services, and telecommunication services, such as in-car internet.

Bentley manages intellectual property portfolios, supporting clients in trademark, copyright and patent law. In addition to working with Turkey's leading law firms, he previously served as in-house counsel.

Bentley regularly writes legal analysis articles on developments in media and entertainment law.



Sila Sayli works in a number of areas of law including corporate advisory and contentious issues. She provides legal advice to domestic and international clients in relation to commercial litigation, compliance, corporate, intellectual property, consumer protection and financial crime.

Sila regularly files petitions before regulatory bodies including the Turkish Competition Authority, the Turkish Office of Radio and Television, and the Turkish Office of Information and Technology. She continues to gain valuable experience as a court advocate standing at trials for commercial issues including shareholder disputes, distributor and portfolio conflicts.

Sila works with broadcasters, platform owners and media and production companies, allocating a considerable amount of her time to drafting, negotiating and concluding copyright agreements in the media and entertainment sector.

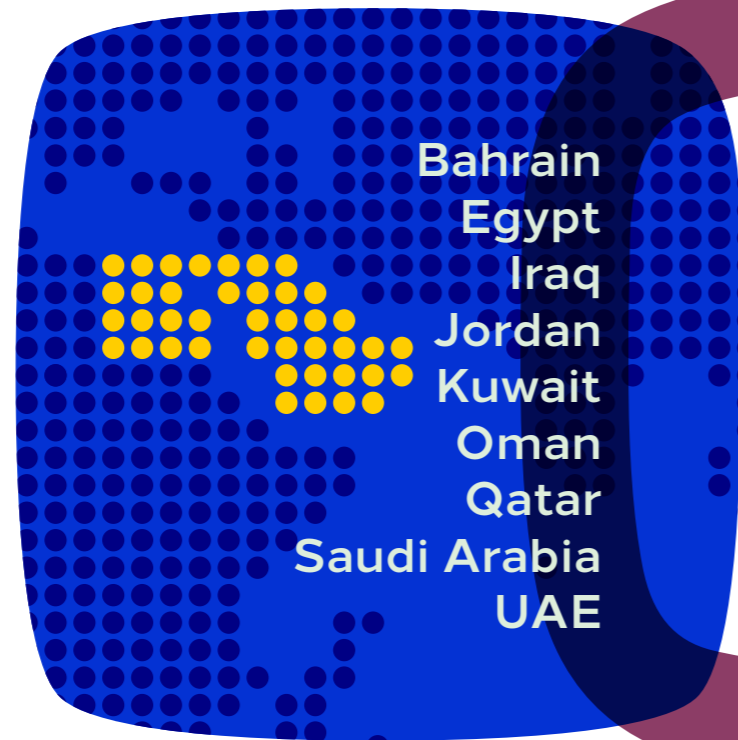
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