

# Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

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## *Abstract*

This article offers an analysis of one small-nation market's perspective on the current and expected changes of digital distribution and its intermediaries. It demonstrates how key stakeholders in the Czech audiovisual distribution sector are reacting to regulatory processes at the EU level and how they are reconsidering their existing business practices, strategic plans, and structural positions vis-à-vis new global trends and competition in the evolving sphere of digital distribution. The article is not a full-fledged analysis of the Digital Single Market's (DSM) potential impacts: instead, it considers DSM as just one factor in the strategic thinking of stakeholders, a factor that functions as a catalyst and a focal point in both business operations and policy-making.

Virtually all key stakeholders in European screen industries have been involved on some level in a heated debate over the last two years, ever since the Juncker Commission (hereafter, 'the Commission') announced its strategy for the EU Digital Single Market (DSM).<sup>2</sup> From an outside perspective, it would seem that most traditional players remain united in opposition to the DSM and are consequently voicing their strong criticism via professional associations that have been lobbying both national and EU policy-makers. These associations perceive DSM as an existential threat, and they have worked hard to minimize the impact

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<sup>2</sup> See European Commission, 'Shaping the Digital Single Market', <<https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market>> [accessed 28 August 2017]. Within the framework of the strategy, the European Commission proposed, among others, three key regulations and directives between 2015 and 2016 to eliminate or reduce barriers to the cross-border portability and availability of digital content: 1) the proposal for a regulation on ensuring the cross-border portability of online content services in the internal market (COM[2015] 627); 2) the proposal for a regulation on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes (COM[2016] 594); 3) the proposal for a directive on copyright in the Digital Single Market (COM[2016] 593).

of what they see as a risk to their established business models and practices: the potential undermining of the territory-by-territory licensing system. However, this image of seeming unity begins to fracture as soon as we move our examination to the more specific local and intrasectoral levels.

This article offers an analysis of one small-nation market's perspective on the current and expected changes with regard to digital distribution and its intermediaries. It demonstrates how key stakeholders in the Czech audiovisual distribution sector are reacting to regulatory processes at the EU level and how they are reconsidering their existing business practices, strategic plans, and structural positions vis-à-vis new global trends and competition in the evolving sphere of digital distribution. The article is not a full-fledged analysis of the DSM's potential impacts: instead, it considers it as just one factor in the strategic thinking of stakeholders, a factor that functions as a catalyst and a focal point in both business operations and policy making.

Digitalization has contributed to significant transformations in audiovisual distribution, but it is also locked into a relationship with and influenced by established practices and business models in home video, broadcasting, and cinema exhibition, as well as the established viewing habits related to them.<sup>3</sup> Commentators often focus on issues of the shortening or merging of distribution windows, online piracy and informal economies, or the supposed disappearance of traditional intermediaries and their replacement with direct-to-consumer approaches.<sup>4</sup> Using the Czech Republic as a case study, I concentrate on the changes that are directly or indirectly connected to the socio-economic and structural features of media industries in small EU countries (i.e. countries with small markets, populations, and languages).

Recent literature on small-nation media has demonstrated that the size of a market has an impact on its key institutional and cultural characteristics.<sup>5</sup> It is presumed here that these specific features make small-nation media systems more dependent on decisions made elsewhere and vulnerable to foreign market dynamics and competition, as well as to structural changes like globalization and concentration. A nation's smallness limits its resources and business opportunities (e.g., the shortage of creative talent and capital, small audience market, and advertisement investment) as well as policy options. However, EU media policy does not take these limitations into account sufficiently.<sup>6</sup> The Estonian media

<sup>3</sup> See Virginia Crisp, *Film Distribution in the Digital Age: Pirates and Professionals* (Basingstoke: Palgrave Macmillan, 2015), p. 56.

<sup>4</sup> See e.g. *Digital Disruption: Cinema Moves On-line*, ed. by Dina Iordanova and Stuart Cunningham (St. Andrews: St. Andrews Film Studies, 2012).

<sup>5</sup> See e.g. *The Cinema of Small Nations*, ed. by Mette Hjort and Duncan Petrie (Edinburgh: Edinburgh University Press, 2007).

<sup>6</sup> Josef Trappel, 'Small States and European Media Policy', in *The Palgrave Handbook of European Media Policy*, ed. by Karen Donders, Caroline Pauwels and Jan Loisen (Basingstoke: Palgrave Macmillan, 2014), pp. 239–53. See Trappel also for the discussion of how 'small country' is defined in relevant literature.

## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

scholar Indrek Ibrus recently claimed this vulnerability is made even more visible by the Commission's DSM initiative, because of 'the limited degrees of freedom' small states are granted in directing their own audiovisual policies.<sup>7</sup>

Critical media industry studies face many challenges when analysing the DSM, since the whole set of legislative measures is extremely complex, still evolving, and places screen industries in a broad context of international trade of digital goods and services. After observing or attending various kinds of consultation sessions and meetings held by different policy-making and cultural institutions on both the national and EU level, I was pushed as a scholar to revise my understanding of what screen industries are by including a number of previously unaccounted agents. I have also had to revise my understanding of the work that distributors actually do today: to accept that they have assumed more complex roles, including involvement in rights aggregation, digital curating, and internet television.

This study is based on ten semi-structured interviews with some of the major players in the on-demand market and covering all the relevant business models. The interviews focused on the respondents' business models, strategies and practices, and on the challenges they associate with the DSM strategy.<sup>8</sup> I am primarily interested in the way they reflect on their changing distribution practices, and more specifically on the new intermediary roles they have assumed with regard to the on-demand market. For the sake of this study, I understand digital distribution intermediaries in a broad sense as content-related services (content aggregation services and, in the realm of the informal economy, user-uploaded content platforms),<sup>9</sup> rather than media infrastructures (such as 'content delivery networks' or 'software infrastructure'), which also fulfill extremely important, albeit often 'invisible' intermediary roles.<sup>10</sup>

<sup>7</sup> Indrek Ibrus, 'The EU Digital Single Market as a Mission Impossible: Audio-Visual Policy Conflicts for Estonia', *International Journal of Digital Television*, 7.1 (2016), 23–38.

<sup>8</sup> The interviewees were first asked to describe their business model, their position on the cross-border accessibility of audiovisual content in the EU (with the focus on their company, the national production, and the role of territorial exclusivity), and their position on the principles of the DSM strategy. Since the DSM strategy is still being reshaped and their awareness of it was uneven, they were also presented with alternative model scenarios of the key legal norms. At the end, each respondent was given opportunity to articulate the most acute problems her/his business faced. The sample consists of executives of the companies Seznam.cz, Bontonfilm, CinemArt, Aerofilms, Doc Alliance Films, Prima, Česká televize, O2 Czech Republic, Banaxi Limited, and Film Europe. The interviews were conducted in late 2016 and early 2017 by myself and my colleague Pavel Zahrádka, with whom I co-wrote an analysis of these stakeholders' perspectives on DSM — See Pavel Zahrádka and Petr Szczepanik, 'Business Practices of Czech Audiovisual Distributors and Their Attitudes toward the Digital Single Market Strategy: Challenges, Risks, and Opportunities', in *The Cambridge Handbook of IP Law & Policy in Central & Eastern Europe*, ed. by Mira T. Sundara Rajan (Cambridge: Cambridge University Press, 2017) (forthcoming, submitted manuscript).

<sup>9</sup> See Gilles Fontaine and Patrizia Simone, *VOD Distribution and the Role of Aggregators* (Strasbourg: European Audiovisual Observatory, 2017), p. 33.

<sup>10</sup> For a discussion of invisibility or 'transparency' of these infrastructural intermediaries, see Joshua Braun, 'Transparent Intermediaries: Building the Infrastructures of Connected Viewing',

*Video-on-Demand in the Czech Republic: Market Context*

Before presenting the analysis of qualitative data derived from the interviews, observations, and policy documents, it is necessary to present a short overview of the national on-demand audiovisual market in the Czech Republic and its basic socioeconomic characteristics. Similarly to other European countries after 2010, on-demand services represent the smallest, but the fastest-growing segment of the Czech audiovisual market, with SVOD (subscription video-on-demand) being the most dynamic type of on-demand services in terms of consumer revenues. While the Czech Republic's share of the EU on-demand market is relatively low (in 2014, SVOD revenues were highly concentrated to the biggest EU markets: 47% in the UK, 23% the Nordic countries, 11% Benelux, 7% France, and 6% Germany), its compound annual growth rate is high (115% for SVOD between 2010 and 2014).<sup>11</sup> This growth is expected to continue in the upcoming years. While Czech VOD consumer revenues increased from €0.4 to €11.8 million between 2010 and 2014, the Commission's assessment indicates it will reach €55,3 million in 2017.<sup>12</sup> Although there are no official national statistics, an experienced CEO estimates that VOD revenues currently account for almost 50% of the shrinking physical video market, thus gradually compensating for the losses the home entertainment business suffered in previous years.<sup>13</sup>

The Czech on-demand market structure shows a clear division between international and domestic services, between mainstream and arthouse portals, and between long- and short-format, ad-supported videos. Mainstream VOD portals tend to be associated with other kinds of commercial services and cater to a pre-established base of consumers: the largest ones include Voyo (a SVOD owned by the largest domestic private TV network 'Nova' and serving in part as its online archive), O2TV (a transactional VOD of a major telecom operator), and Alza Media (an ancillary service of an internet-based retailer). Niche portals represent the second type of national on-demand services: the TVOD Aerofilms is linked to the strongest arthouse theater chain/distributor, while the SVOD DAFilms is a publicly subsidized documentary platform (founded as a partnership between seven European documentary festivals). The leaders

in *Connected Viewing: Selling, Streaming, & Sharing Media in the Digital Era*, ed. by Jennifer Holt and Kevin Sanson (London and New York: Routledge, 2014), pp. 124-143; for CDNs see e.g. Max Dawson, "Level Who?" Digital Distribution's Mysterious Middlemen', in *Media Industries Project*, 21 March 2011 <[www.carseywolf.ucsb.edu/files/Dawson\\_NetWorth.pdf](http://www.carseywolf.ucsb.edu/files/Dawson_NetWorth.pdf)> [accessed 28 August 2017]; for a broader discussion of 'media infrastructures' see *Signal Traffic: Critical Studies of Media Infrastructures*, ed. by Lisa Parks and Nicole Starosielski (Urbana, Chicago, and Springfield: University of Illinois Press, 2015).

<sup>11</sup> Laura Croce and Christian Grece, *Trends in Video-on-demand Revenues* (Strasbourg: European Audiovisual Observatory, 2015), pp. 10-11.

<sup>12</sup> See 'Impact assessment accompanying the Proposal for a Directive of the European Parliament and of the Council amending Directive, 2010/13/EU.' Bruxelles, 25 May 2016.

<sup>13</sup> Jan Hanzlík, 'Z VOD se stal životaschopný byznys. Rozhovor s Ondřejem Kulhánkem', *Illuminace*, 29.2 (2017), 105-13 (p. 106).

## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

among international VOD portals are HBO GO, iTunes, Netflix, and Google Play. The last, extremely dynamic group consists of AVOD (advertising-based VOD) portals or short-format internet television.

The DSM strategy has been presented, among other things, as an answer to the notoriously low levels of cross-border availability of European audiovisual content, especially of European films. As the Commission stated in 2015, 'less than 4% of all video-on-demand content in the EU is accessible cross-border.'<sup>14</sup> A recent study showed that EU films are available on VOD in only 2.8 EU countries on average (and 50% of them are available only in one EU country), compared to 6.8 EU countries in the case of US films.<sup>15</sup> In the Czech Republic, the national orientation of the entire audiovisual industry seems even more significant than the EU average. Only 13% of 81 VOD services available in the country (in 2016) are non-national,<sup>16</sup> while 36% of respondents in a Eurobarometer study claimed that 'they would not be able to use or understand the content offered in other Member States' (the fourth highest percentage in the EU and the highest among the EU-13 countries). There is also a relatively low interest in content from other EU countries in Czech Republic.<sup>17</sup> The on-demand market's national orientation is in accord with other media industries. This can be illustrated, for example, by the relatively high market share of Czech films in theatrical exhibition,<sup>18</sup> or by statistical estimates showing that the largest Czech search engine and web platform Seznam.cz is a European exception in terms of being able to compete with Google in its domestic market. Although Google recently surpassed it in terms of full-text search, Seznam — exaggeratedly dubbed 'the only company in Europe that is beating Google' — is still stronger in other parameters, such as news and email.<sup>19</sup>

In terms of the origins of audiovisual content, VOD catalogues available in the country differ significantly between international and Czech platforms. While iTunes' and Netflix's Czech catalogues offer a below-EU-average share of both European and national titles (16% and 14% for EU28 titles, 2% and

<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Single Market Strategy for Europe' (COM[2015] 192), 6 May 2015.

<sup>15</sup> The difference is even greater in terms of cinema distribution: 2.6 countries for EU films and 9.7 for US films. See Christian Grece, *How Do Films Circulate on VOD Services and in Cinemas in the European Union?* (Strasbourg: European Audiovisual Observatory, 2016), p. 23.

<sup>16</sup> Bruno Zambardino, *AVMSD Refit or Reform? Audio Visual Media Services in the Digital Era* (Bruxelles: I-Com, 2016), pp. 27, 29.

<sup>17</sup> Flash Eurobarometer 411: Cross-Border Access to Online Content (European Union, 2015).

<sup>18</sup> Almost 30% in 2016, see a statistical overview of the Czech Producers Association: Asociace producentů v audiovizí, '2016: rok stabilizace financování kinematografie a rekordního zájmu o českou produkci u diváků', <[www.asociaceproducentu.cz/prispevek/33](http://www.asociaceproducentu.cz/prispevek/33)> [accessed 28 August 2017].

<sup>19</sup> See Czech internet statistics <[www.toplist.cz/stat/?a=history&type=4](http://www.toplist.cz/stat/?a=history&type=4)> [accessed 28 August 2017]; see also Lloyd Waldo, 'Meet the Only Company in Europe that is Beating Google', *Start Up Yard*, 3 January 2014, <<http://startupyard.com/meet-the-only-company-in-europe-that-is-beating-google-seznam-cz>> [accessed 28 August 2017].



close to zero for national titles respectively, in 2016/2017), domestic VOD catalogues show a much more European/national orientation: 48% from the EU28 and 11% of national origin in the catalogue of the ‘Nova’ network’s SVOD Voyo.<sup>20</sup> The largest national AVOD, Stream.cz, recently removed all foreign content acquisitions in order to concentrate solely on its original Czech production. The rapidly growing free online service of the Czech public-service broadcaster Česká televize is also limited to its own originally produced content.

### *Content Types*

Distributors operate in a number of various regimes corresponding to differences with regard to types of content, the rights they are buying, and the platforms to which they supply their titles. I distinguish the following ‘content types’ exclusively in terms of corresponding distribution practices, not by their internal characteristics.

The first, most lucrative and most expensive category consists of major US studios, who sell their titles directly or via European branches to individual territories and for individual distribution windows. The majors operate in a centralized and coordinated manner and sell different kinds of rights separately, while local distributors have a very little bargaining power to influence the rules of the game. When the majors decided to transfer theatrical rights from their long-time local partner Bontonfilm to its competitor Cinemart in 2013, this altered power relations in the entire field, and Cinemart replaced Bontonfilm as the undisputed theatrical market leader. However, Bontonfilm retained DVD/BD rights, which still represent its largest revenue source. Local cinema distributors have little control over the majors’ licensing of VOD rights, and there is not much room for local aggregators: with only a few exceptions, the studios manage their digital distribution directly or via their local branches.

The second category consists of US independents, who sell local distributors ‘all rights’ in a ‘bundle’ for both the Czech and Slovak markets (which are, from a business perspective, considered one territory). The local cinema distributors thus operate as aggregators of DVD/BD, television and VOD rights, too, with television rights comprising a very lucrative part of the bundle.

The third category are European and global arthouse titles that are similar to the US independents, but differ in terms of negotiating licenses. Licenses are negotiated on an individual basis at industry market fairs and festivals, and local

<sup>20</sup> Gilles Fontaine and Christian Grece, *Origin of Films and TV Content in VOD Catalogues in the EU & Visibility of Films on VOD Services* (Strasbourg: European Audiovisual Observatory, 2016). The Czech Netflix catalogue has grown rapidly in terms of volume since the company’s entry into the local market in early 2016, but of a total of 3276 titles (in October 2017), only four were of Czech origin. See <<http://unogs.com>> [accessed 17 October 2017].

## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

releases often occur long after their original premiere. The local production of DVDs and BDs has proven to be financially unprofitable for the most part, but a small portion of these titles are sold to the domestic public-service broadcaster (PSB) as well as to the local branch of HBO, and most appear on one or more VOD platforms. Arthouse films need to be carefully selected and localized, they require special expertise and sometimes special events (festivals) to build sufficient audience interest, and thus local distributors are not very worried about losing them to global players.

Czech films (both fiction and feature documentaries) form the most diverse category of content. Unlike foreign titles, they can be licensed either for the Czech or the Czech-Slovak market exclusively, if not for selected foreign territories, or even worldwide. Television rights are usually excluded from a bundle, because producers deal directly with the PSB or private networks, pre-selling broadcasting rights in exchange for some production or even development investment. (The PSB Česká televize has been the most frequent co-producer of Czech films since the 1990s.) VOD rights are usually traded as non-exclusive, and on a territorial basis, with multi-territorial licenses for worldwide VOD distribution limited to the titles whose commercial prospects abroad are relatively low. Direct-to-VOD or day-and-date distribution is very rare: Czech producers insist on having a theatrical release even with very low-budget films — even if it is only for a very short time with very low revenues (only several thousand viewers per film is not unusual).

Original short-format web videos, both fictional and non-fictional, comprise a very specific content type. Stream.cz, the strongest national internet television portal mentioned above, currently achieves very high numbers with its most successful shows, primarily satirical comedies, thus effectively competing with the most prominent programs of traditional broadcasters. Public reception has praised its innovative programs for filling a gap in the programming of the PSB, which has been wary of satirizing current political and social affairs. Copyrights to short-format videos are fully controlled by the internet platforms that produced them, which have shown no significant interest in cross-border distribution, apart from to Slovakia.

My examination of the local on-demand market revealed that the VOD business includes some players that would not fit the traditional definition of an audiovisual distributor: internet retailers, telecom operators, film festivals, a search engine, etc. At the same time, VOD rights are traded by the traditional cinema distributors and by broadcasters, too. In the following overview of the key stakeholders, I focus exclusively on the local players, leaving aside operations of global platforms that have so far provided only very weak localization of their catalogues. Netflix, which launched its Czech service in 2016, currently offers just over 130 titles with Czech subtitles and 10 with Czech dubbing,<sup>21</sup> and is widely considered a disappointment. However, there is one significant exception, which

<sup>21</sup> See <<http://unogs.com>> [accessed 17 October 2017].

would require a separate essay for proper examination: HBO Czech Republic, which is well-established on the local market (it debuted in 1994) and which has supported its pay-cable business and the recent launch of its OTT service HBO GO by producing high-end local programs, including the award-winning mini-series *Burning Bush*, directed by Agnieszka Holland.

### *Traditional Film Distributors*

Bontonfilm is a well-established cinema distributor (founded in 1994) with a 10% share of the domestic theatrical market and has been a local leader in home entertainment. Since the majors moved their theatrical rights to a competitor, it has focused on DVD/BD production. However, revenues from this segment have been steadily decreasing (by 35% between 2011 and 2014, in line with the global trend), and Bontonfilm has decided to be more proactive in the on-demand market. It became the strongest mainstream aggregator of VOD rights with the largest library on the Czech and Slovak market.<sup>22</sup> It tested its own VOD portal, but determined that this development was too risky, and instead decided to collaborate with almost all of the local platforms as well as some of their global counterparts. Similarly to some of its local competitors (Bluesky, Bioscop), it signed a direct aggregator contract with iTunes, which, unlike local VODs, stipulates full exclusivity. According to Bontonfilm representative Ondřej Kulháněk, the ‘direct aggregation’ contract with iTunes allows for almost complete control over release timing, pricing (within pre-set price limits), marketing, promotion, and to a certain extent over the graphic design of the product page.

Bontonfilm’s current distribution strategy aims at shortening holdbacks between paid distribution windows as much as possible. Bontonfilm is still obligated to respect a four-month holdback for first-run theatrical releases (due to the traditionally strong negotiating position of theatrical chains), but then the windows for DVD/BD and TVOD or EST (electronic sell-through) services open simultaneously, followed several months later by SVOD, which converges with pay-TV. The last window is FTA (free-to-air) television, followed in some cases by AVOD — Bontonfilm has also established its own YouTube channel ‘KoukeYTe’ for older titles in Czech-language versions.

Aerofilms, the strongest local player in the arthouse cinema sector (with a 3% share of the total theatrical market), benefits from its vertical integration with five prominent arthouse theaters and with an in-house TVOD platform Aerovod. It typically purchases all-rights bundles for the Czech and Slovak markets and effectively operates as a cinema distributor, exhibitor, VOD platform, and

<sup>22</sup> When a cinema distributor positions itself as an aggregator, this means that it compiles a catalogue of digital rights, it processes the digital file for the online platforms according to their technical requirements, and it can also provide marketing services and content curation. See Fontaine and Simone.



## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

aggregator at the same time. It is also a national leader in ‘alternative content’ for theaters (for example, it organizes live transmissions from the New York Metropolitan Opera), which accounts for 50% of its box office revenue.

Co-owner and CEO of Aerofilms Ivo Andrlé admits that in the beginning, VOD was just a cheap and relatively undemanding way to test the digital market for arthouse content. But in the last couple of years, revenues have boomed without any significant further investment from his company: ‘We do much more marketing work for theatrical releases than for VOD, but the internet grows on its own, just because online audience behavior has changed.’ While Aerofilms focuses its marketing campaigns on the exclusive event of the premiere release in its theaters, VOD generates revenues steadily, without any specific campaign. Aerofilms’ in-house portal Aerovod is growing rather slowly (700–300 transactions monthly after 5 years of existence), but VOD revenues have become more significant in combination with revenues from other portals.

The vertically integrated Aerofilms strategically focuses on cultivating a strong brand presence and taking advantage of promotional synergy across distribution channels: first by cultivating loyal audiences for its theaters, then using its unique reputation as a reliable niche selector to sell its titles not only via its own TVOD, but also to a number of other platforms. Its basic know-how and competitive advantage consists of an intimate relationship with and deep knowledge of its regular theatrical customers, who partly overlap with Aerovod’s online users. As opposed to the ‘long-tail’ approach of more mainstream VODs, which is based on exploiting vast catalogues of diverse titles, Aerofilms carefully cultivates a narrow selection, intended to be followed by its audiences and business customers as a whole. In this context, the in-house VOD portal is understood as not only an extension of the theatrical distribution strategy, but also as an additional branding instrument, serving to support B2B sales to other VOD portals. Andrlé hopes that having such a strong brand means that Aerofilms is better prepared for incoming global competition and for the potential disruption of existing business practices by the DSM.

### *Broadcasters*

Television networks moved into digital distribution in several different ways: by establishing their own catch-up services, by partnering with IPTV (internet protocol television) providers (mostly telecom operators), who introduced time-shifting, or by launching standard VOD portals. Audience numbers in this segment are booming, in line with the global development. Recently, online viewing together with time-shift viewing represents up to 20% share of the total audience of PSB’s TV series.<sup>23</sup>

<sup>23</sup> See <[www.ceskatelevize.cz/vse-o-ct/sledovanost-a-spokojenost/co-ct-nabidla-analyzy](http://www.ceskatelevize.cz/vse-o-ct/sledovanost-a-spokojenost/co-ct-nabidla-analyzy)> [accessed 17 October 2017].

All the leading local broadcasters are focused on the national market, with very limited interest in cross-border digital distribution. The one exception is again Slovakia, the only foreign market that requires no specific linguistic localization. Slovaks can to a certain extent receive Czech FTA signals, but TV networks have started limiting IPTV access to their programming because it clashes with territorial licensing and coproduction agreements. In general, Czech broadcasters usually do not engage in territory-by-territory licensing (with the rare exceptions of international co-productions, e.g. with Arte), but instead choose between two kinds of rights: either domestic or global, with the latter reserved for their in-house productions.

As noted earlier, the strongest domestic commercial network Nova has launched its own SVOD called Voyo, which builds upon the network's well-established brand presence and audience base and serves as both its online archive and as a platform for independent Czech and foreign mainstream films and TV series. It has the largest domestic catalogue with over 2000 titles, including a proportionately large selection of recent Czech titles, and offers additional services like the live-streaming of sports transmissions.

The Czech PSB Česká televize employs its own free, partly advertisement-supported streaming portal 'iVysílání' as a potentially unlimited catch-up service. However, all non-internal acquisitions are excluded from the catch-up, while co-productions with independent producers have only limited catch-up. Independent co-producers can also negotiate to retain world-wide VOD rights if they think their title has export potential. But the PSB itself is generally uninterested in active cross-border distribution, because it is funded by the license fee collected from domestic television-viewing households.

### *New Players*

I define as 'new' those players, who either emerged in direct relation to the advent of digital distribution, or who entered audiovisual distribution as a result of digitalization. The largest and the most influential group of new entrants are telecommunication operators, who supplement their IPTV services with VOD portals. The largest of these and the only strong local TVOD, 'O2 Videotéka', is also the leader in the entire on-demand market (where the SVOD model dominates). O2's competitive advantage is based on having a large pre-existing consumer base (over 220,000 customers), and on its direct contracts with Hollywood majors. In its catalogue, O2 offers a mixture of Hollywood titles and content supplied by local distributors or by Czech producers. Despite being owned by an international financial group, O2's TVOD is limited to the Czech territory, and it does not declare any plans for international expansion. Some retailers operate similarly to telcos: offering their VOD services as a kind of benefit to their customers. Although Tesco Czech Republic closed its VOD portal in 2015, the electronics internet retailer Alza continues to offer TVOD/SVOD as a supplementary service to its customers.

## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

The second group of new entrants are rights aggregators. The strongest commercial standalone aggregator Banaxi, with historical background in brick-and-mortar video rentals, operates its own SVOD portal. However, according to its CEO Radek Přikryl, rather poor business results have led the company to focus instead on B2B services to large telcoms and international electronics producers, including passenger entertainment systems. Banaxi's equivalent in the arthouse sector is the aggregator Film Europe, which specializes in selling film rights to theatrical distributors, broadcasters, and VOD platforms (including global platforms), while at the same time operating its own internet television channels. Its strategy is to build marketing campaigns around special events, most prominently a festival called 'Be2Can', which specializes in presenting 'selected top-notch films from the world's three most prestigious festivals.'<sup>24</sup> Banaxi and Film Europe differ from all the other stakeholders in that they are planning for international expansion in the near future.

Although several unsustainable services (mostly mainstream stand-alone VODs) have already vanished and the on-demand market has matured over the past decade, there are still some mavericks trying their luck in the digital distribution business. The stand-alone VOD/internet television channel 'Obbod' was launched by a former energy entrepreneur, who chose to start his endeavor with the production of an original web series in the early 2017, a strategy that proved temporarily successful, with the most popular webisode attracting a million viewers. Obbod operates as an SVOD focusing on Czech titles selected from the libraries of large local distributors as well as the National Film Archive. Its approach of mixing original short-format web series with acquisitions consisting mostly of American feature films and its emphasis on localization thus makes it a hybrid between internet television and VOD.<sup>25</sup>

While add-on services generally appeal to broadly conceived mainstream audiences, stand-alone services tend to be distinguished by niche content and audiences, including alternatives to the mainstream.<sup>26</sup> This is best illustrated by the documentary SVOD 'DAFilms' initiated by Doc Alliance, a partnership of seven European documentary festivals and operated as a publicly subsidized platform. Although its revenues are still quite low, Doc Alliance has the advantage of close relationships with a dedicated international community of documentary producers, filmmakers, and festival-goers. Its potential and ambition in cross-border distribution is thus logically higher than with all mainstream VODs. DAFilms aims for global circulation whenever it is able to acquire a multi-territorial license. Its catalogue currently consists of over 1500

<sup>24</sup> See Be2Can, 'The Be2Can Manifesto' <[www.be2can.eu/en/about](http://www.be2can.eu/en/about)> [accessed 17 October 2017].

<sup>25</sup> 'Kamil Ouška (Obbod): Jeden díl Vyšehradu má milion přehraní. Lavický je jako Cimrman' *Lupa.cz*, 25 January 2017, <[www.lupa.cz/clanky/kamil-ouska-obbod-jeden-dil-vysehradu-ma-milion-prehrani-lavicky-je-jako-cimrman](http://www.lupa.cz/clanky/kamil-ouska-obbod-jeden-dil-vysehradu-ma-milion-prehrani-lavicky-je-jako-cimrman)> [accessed 28 August 2017].

<sup>26</sup> See Elizabeth Evans and Paul McDonald, 'Online Distribution of Film and Television in the UK', in *Connected Viewing: Selling, Streaming, & Sharing Media in the Digital Era*, ed. by Jennifer Holt and Kevin Sanson (London and New York: Routledge, 2014), pp. 158–79 (p. 163).

titles, and it regularly offers carefully curated programs (e.g., festival selections, retrospectives) and organizes its own awards.

As mentioned above, one of the most dynamic segments of digital distribution is short-format video streaming, dominated by Stream.cz, an internet television portal fully owned by the domestic equivalent of Google and the strongest Czech platform, Seznam.cz.<sup>27</sup> The recent boom in this last segment is seen by insiders as a direct result of the development in the online advertising market over the last seven years. The AVOD segment used to suffer from competition with linear TV, which traditionally attracted a larger share of video ad spending. However, the Czech Republic has had the highest online ad spending ratio per capita among the EU13, and it continues to grow at a faster rate than TV ad spending.<sup>28</sup> The recent successes of Stream's original series production, with its top hits reaching hundreds of thousands of views, have made it a serious competitor to both private and PSB networks. Short video streaming is the only formal-economy segment of digital distribution where disintermediation, i.e. the disappearance or collusion of traditional distribution windows and intermediaries (distributors, exhibitors, and broadcasters)<sup>29</sup> seems to be indeed taking place: the online television portal itself acts as sole producer, distributor, and exhibitor of its own content; and it also holds all copyrights. However, even Stream makes use of traditional distribution channels: it launched its own smart TV app in 2014, as of 2017 it is being integrated into the linear television programming of 'Seznam.cz TV' (a HbbTV service of its mother company), and it is experimenting with special theatrical premieres of its new series.

### *Informal Economy Channels*

The sector that Ramon Lobato has called the 'informal economy' — which includes file-sharing platforms of various kinds — is very diverse and has many links and overlaps with the 'formal' distribution channels.<sup>30</sup> Its broad and global offering of immediately accessible free content is extremely attractive for users who are not used to paying for online video, especially in the context of fragmented local markets. YouTube's Content ID, a proprietary copyright

<sup>27</sup> For Seznam's own estimate of its market share see <<https://ec.europa.eu/futurium/en/content/digital-single-market-perspective-only-european-competitor-google>> [accessed 28 August 2017].

<sup>28</sup> The Czech Republic is among the nine EU countries where online advertising surpassed TV advertising in 2015 — see Christian Grece, *The Online Advertising Market in the EU* (Strasbourg: European Audiovisual Observatory, 2016), p. 18. Interviews with Stream.cz executives and producers were conducted by my student Dorota Vašíčková for her thesis *Stream.cz and Its Original Series Production* (Charles University, 2017).

<sup>29</sup> See Dina Iordanova, 'Digital Disruption: Technological Innovation and Global Film Circulation', in *Digital Disruption: Cinema Moves On-line*, ed. by Dina Iordanova and Stuart Cunningham, pp. 1–32.

<sup>30</sup> Ramon Lobato and Julian Thomas, *The Informal Media Economy* (Cambridge: Polity Press, 2015).

## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

management system allowing rights-holders to identify and monetize user-uploaded content, illustrates how an efficient ‘formalization’ of an informal economy looks like.<sup>31</sup> Local file-sharing platforms such as Ulozto.cz, on the other hand, oppose the pressure to monitor user-uploaded content or to enter into agreements with rights-holders,<sup>32</sup> because this would destroy their business model (which is based on providing file-hosting services under the ‘Safe Harbor’ framework, while profiting from subscriptions and advertising) and because the expense of developing an equivalent of Google’s Content ID supposedly exceeds their financial possibilities. As a consequence, there is an ongoing fundamental conflict between them and the rights-holders, which is made clearly visible in DSM-related consultations. The platforms’ proposals for legalizing user-uploaded content generally transfer responsibilities for the identification and policing of content to the rights-holders, and they are typically rejected for this reason. The file-sharing platforms prefer to continue operating under the ‘notice-and-takedown’ regime, which rights-holders consider an unreliable and insufficient form of protection.

### *The Digital Single Market from the Perspective of a Small Country*

The DSM-related consultations organized by the Czech Ministry of Culture and the Ministry of Industry and Trade are an opportunity to observe how the Commission’s regulatory proposals affect the strategic thinking of all the stakeholders. My colleague Pavel Zahrádka and I took part in some of the meetings (as consultants for the Czech Cinematography Fund), after which we proposed an analysis of the local stakeholders’ attitudes toward key elements of the EC DSM strategy.<sup>33</sup> Here I will summarize briefly the key patterns specifically linked to the small-nation market and the concept of cultural intermediation.

Local distributors mostly restrict their operations to the Czech and Slovak markets, and they are not interested in increasing the cross-border circulation of their content. Some of them acknowledge that the DSM may be a legitimate response to consumer frustration with digital barriers that limit legal access to audiovisual content, and that the DSM is in line with the idea of a unified Europe. They accept the necessity of certain minor elements of the strategy (mainly the ‘portability’ principle allowing cross-border travelers to access their online services abroad), but they do not welcome the long-term strategic goal of the DSM: removing obstacles to the circulation of works and achieving ‘full cross-border

<sup>31</sup> For corporate statistics on Content ID see the new version of Google’s PR brochure *How Google Fights Piracy* (July 2016).

<sup>32</sup> See the Article 13 on the ‘use of protected content by information society service providers’ in the Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM(2016) 593.

<sup>33</sup> See Pavel Zahrádka and Petr Szczepanik.



access for all types of content across Europe'. If the most radical scenario of the DSM is to be implemented (i.e. mandatory pan-European licensing replacing the territory-by-territory system),<sup>34</sup> the local distributors fear they would then lose the segments of independent production to more powerful international competitors. They believe that the all-rights bundles would be divided, license prices for certain content types would increase (especially where natural language barriers do not limit the potential market to the domestic territory), and the DSM would thereby strengthen global competitors and oligopolies. It would complicate their vital collaboration with Slovak partners, both in terms of cross-border cannibalization of distribution windows and the loss of foreign co-production investment. Production investment in Czech films and Czech majority co-productions would be riskier if distributors lose territorial exclusivity.

Stakeholders are not interested in what would theoretically be DSM's key benefits: whether 'passive sales' (accepting cross-border sales from outside the licensed territory, without actively promoting or advertising the concerned services)<sup>35</sup> or saving on transaction costs through a decrease in the number of licensing parties. This is because such costs supposedly do not play any significant role in the process of distributing Czech titles – virtually the only content category that they can hope to sell across Europe.<sup>36</sup> They do not consider the poor cross-border circulation of Czech audiovisual content to be the result of the market barriers that the DSM addresses, but rather a product of the local producers' insufficient resources and lacking motivation to develop internationally marketable products.<sup>37</sup>

<sup>34</sup> The DSM strategy declares its 'ultimate objective' of 'full cross-border access for all types of content across Europe' can be achieved only via a 'gradual approach', because such a goal 'needs to be balanced with the readiness of markets to respond rapidly to legal and policy changes and the need to ensure viable financing models for those who are primarily responsible for content creation'. See COM(2015) 626, 9 December 2015. The Commission does not currently explicitly propose obligatory pan-European licensing, nor a ban of territory-by-territory licensing. However, opponents of the DSM are afraid that the proposal to extend the 'Country-of-Origin' principle to online TV-services and the prohibition of geoblocking would mean a de-facto introduction of pan-European licensing. See e.g. Audiovisual Sector Coalition Position Paper on the European Commission Draft Regulation Applying the Country of Origin Principle to Licensing of Certain Broadcasters' Rights Online <[www.europa-distribution.org/assets/AV-Coalition-Country-of-Origin-Paper\\_November-2016.pdf](http://www.europa-distribution.org/assets/AV-Coalition-Country-of-Origin-Paper_November-2016.pdf)> [accessed 28 August 2017].

<sup>35</sup> They do not believe there is significant interest in Czech films outside the Czech or Slovak markets.

<sup>36</sup> Copyrights are typically aggregated in the hands of producers, which hypothetically allow producers to grant distributors a multi-territory license; this is why distributors or broadcasters could clear the rights within a single transaction. The Czech producers, however, still prefer traditional territory-by-territory licensing, while direct deals with aggregators or platforms, granting them multi-territory licenses, are an exception. (Only recently did a Czech producer pre-sell global rights to Netflix in exchange for some production investment — the film will be released in the late 2017 under the title *Milada*.) This practice is in line with findings in other European countries — see Gregor Langus, Damien Neven and Sophie Poukens, *Economic Analysis of the Territoriality of the Making Available Right in the EU* (Bruxelles: Charles River Associates, 2014), pp. 96–97.

<sup>37</sup> For an industry analysis of Czech producers' business models and the role of public subsidies in

### Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

At the same time, local stakeholders are not as worried as their larger West-European counterparts about losing their market share. The main reason for their restrained approach is the belief that local market specificity and the localization of content will play a crucial role in the on-demand market in the near future. They are not preparing to compete with Netflix by expanding on an international scale, but rather by taking advantage of their intimate knowledge of local audiences — their habits, tastes and preferences — as well as the local media infrastructure, legal system, and industry networks. It is not merely the shared Czech language, but also familiar user interfaces and distributor brands that — according to local distributors — account for the strong loyalty of Czech online audiences. The confident attitude that national orientation and specialization will help to compete with intensifying global competition is typical not only for the add-on VOD services of telcoms or broadcasters, but is even present among arthouse theatrical distributors. Niche distributors like Aerofilms (whose strategy and brand is built on the cultivation of their own chain of specialty movie theaters) or Film Europe (which does the same via several small festivals specializing in award-winning films) feel more secure than their mainstream counterparts like Bontonfilm or Cinemart, who are compelled to search for new allies, to build their digital operations with the help of established local VODs or under the auspices of iTunes, Google Play, and YouTube, rather than establishing their own, stand-alone services. Mainstream distribution seems to be more volatile than that of non-mainstream-oriented content. The common knowledge among industry players is that local, mainstream, on-demand services can survive only through add-on services that build on established consumer bases, or through collaboration with global platforms.

Seen from this perspective, the DSM, although still awaiting its final form, is having quite a different effect than expected by its proponents. Instead of expanding cross-border circulation, supporting cultural diversity, and stimulating innovative business models, it is rather pushing local players to solidify their national orientation as the most reliable survival strategy. Instead of harnessing new opportunities for expansion and export, the main focus of local distributors is pressing policy-makers to preserve the existing system and to implement more efficient regulation of the informal economy. One possible explanation for this centripetal tendency lies with the structural features and limitations of small-country media markets outlined in the introduction to this article. While globally circulating media products and services are developed with the resources of the large markets and adapted to the tastes of large-state audiences (see for example the composition of the local Netflix catalogue), small-nation media systems tend to react by developing strongly localized content and services that do not travel across borders. These are adapted to the limited local resources (including

limiting their motivation to market films abroad, see Petr Szczepanik et al., *Studie vývoje českého hraného kinematografického díla* [A Study of Czech Feature Film Development] (Prague: Státní fond kinematografie, 2015).

public support), and thus not internationally competitive, but able to meet the culturally specific preferences and behaviors of domestic consumers. The prospect of weakening the principles of territory-by-territory licensing compels local stakeholders to adhere to this strategy even more tightly. It seems that the limited bargaining power of small countries has led proponents of the DSM to disregard these specificities of small media markets, which may eventually endanger the strategic goals of the regulatory framework.

*Conclusion: Localizing Intermediaries*

The outlined descriptive typology of products, practices, and stakeholders indicates that the advent of digital distribution has not erased traditional intermediaries (with the exception of short-format internet television and informal channels), but rather added new layers of intermediation. Instead of resulting in the disintermediation of traditional players, it has expanded the spectrum of intermediaries. Each of the ‘players’ fulfills a more complex intermediary role than before: film exhibitors are providing much-needed publicity for subsequent VOD releases; cinema distributors are assuming the function of aggregators of digital rights; stand-alone aggregators are moving into various other business activities such as internet television, passenger entertainment systems, or festivals; there are a number of new entrants who have begun to play new intermediary roles via their add-on online services (broadcasters, festivals, telcoms, retailers, search engines, media groups, etc.). Thus, the process of ‘re-intermediation’ operates not just through new intermediaries that are specific to digital distribution, such as stand-alone aggregators,<sup>38</sup> but across the whole spectrum of distribution agents, including traditional cinema distributors and broadcasters.

A market’s small size increases the importance of the state’s cultural policy as an external factor of intermediation. Public institutions like the Czech Cinematography Fund (with a special support scheme aimed at distribution), the public-service broadcaster (which has launched a successful online service), the National Film Archive (with its extensive plan to digitally restore the national film heritage, with a broad portfolio of older Czech films), or other policy-making institutions (responsible for implementing European regulatory frameworks, including EU copyright reform) influence the way audiovisual content circulates — more significantly than in the case of larger territories where free-market principles function more autonomously.<sup>39</sup> The regulatory proposals of the DSM strategy have so far not led to any significant reconsiderations of the existing business models in the Czech Republic: on the contrary, local stakeholders who entered the domestic or European negotiation processes have articulated

<sup>38</sup> See Patrick Vonderau, ‘The Politics of Content Aggregators’, *Television and New Media*, 16.8 (2015), 717–33 (p. 720).

<sup>39</sup> See Trappel.

## Localize or Die: Intermediaries in a Small East-Central European On-Demand Market

a primary interest in serving the local market. They are pressing local policy-making institutions to limit the strategy's impact on the territory-by-territory licensing system, although their opposition is not as strong as with their West-European counterparts.

The common denominator of most of these tendencies in both business operations and policy-making is localization. Conservative consumer behavior, the local language, well-established (non-audiovisual) commercial services, special events and physical spaces, trusted tastemakers and selectors seem to play more crucial role in digital distribution than the size of and access to a VOD catalogue. The Czech Netflix catalogue currently consists of almost twice as many titles as its largest local counterpart, Voyo, but this does not translate to an advantage in terms of subscription numbers. This is also true with regard to the under-regulated online environment where consumption of an unlimited range of pirated content seems to be a widely accepted practice, and where local file-hosting services play a crucial intermediary role.<sup>40</sup> Local intermediaries with specialized knowledge of the local market, legal system, and distribution infrastructure, equipped with specialized skills for selecting and curating content for local audiences, will — according to the key stakeholders — play a fundamental role in digital distribution in the near future. They will be more important for the survival of local distributors than more quantitative parameters such as the scope of VOD catalogues. The most powerful of these intermediaries, which control what we watch and when, are still traditional players: film distributors and FTA broadcasters. Local stakeholders do not fear technological changes and global competition as much as we might expect — what they perceive as a greater danger to their localized business model is under-regulated online piracy and, in the case of the PSB, the apparent unpredictability of local policy-makers and their susceptibility to political pressures.<sup>41</sup>

<sup>40</sup> See Jakub Macek and Pavel Zahrádka, 'Online Piracy and the Transformation of the Audiences' Practices: The Case of the Czech Republic', in *The Aesthetics and Ethics of Copying*, ed. by Darren H. Hick and Reinold Schmücker (London: Bloomsbury Publishing, 2016), pp. 335–58.

<sup>41</sup> After the 2017 Czech legislative election, the fourth strongest party, the right-wing populist SPD, proposed to nationalize all public-service media in the country, which was met with strong resistance from the public-service management.