NETFLIX, RIGHTHOLDERS AND USERS: LEGAL ANALYSIS

'Platforms and diversity: Netflix under debate'
Carlos III University of Madrid – November, 7th 2019

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I. VOD OR OTT PLATFORMS: THE CONCEPT AND BUSINESS MODEL

This kind of platforms could be analysed through different prisms.

The <u>OTT platforms</u> and the services they provide are defined as those that are broadcast through the open public network, unlike other pay per view, or cable, or satellite television services.

The <u>VOD platforms</u> and the services they provide are those that allow the user to choose the content to be displayed, the time and place.

These platforms occupy a non-existent market space so far.



II. LEGAL FRAMEWORK

VOD platforms will be affected by European and national legislation, given two scopes:

- > Territorial scope
- Objective scope

In connection with the latter scope, we find two types of applicable regulations:

- The one related to intellectual property: Primarily, Directive 2001/29/EC.
- The one related to the rights of consumers, supply contracts signed with the platforms, etc. *Inter alia*, Directive 2010/13/EU, Directive 2019/770, Regulation (EU) 2017/1128.



3. USER'S FACULTIES AND RESTRINCTIONS

The VOD platforms regulate his own functioning through a 'license' or in this case, a 'terms of use':

- > The user has the right to access and the right to see
- > The user hast the right to download

The user cannot:

- > Store
- Reproduce
- Distribute
- Modify
- > Show or publish
- > License or sell
- > The services are for personal use



4. WHAT ABOUT THE AGREEMENTS SIGNED BETWEEN NETFLIX AND THE RIGHTHOLDERS?

The content of the agreements signed between VOD platforms and the rightholders is confidential.

Notwithstanding with the above, we can try to make an approximation to its content, based on:

- > Intellectual Property legislation
- > The VOD business model
- > The faculties granted to the user



4. WHAT ABOUT THE AGREEMENTS SIGNED BETWEEN NETFLIX AND THE RIGHTHOLDERS?

Audio-visual Producer

The audio-visual producer promotes the creation and production of the audio-visual work. The possible rights object of the assignment are the following: <u>reproduction</u> and <u>communication to the public</u>.

> Author

The author is the centrepiece of Intellectual Property.

The possible right object of the assignment are the following: <u>reproduction</u> and <u>communication to the public</u>.

> Artist/Performer

They are defined as the person who represents, sing, read, recite, interpret or perform in any way a work.

The possible right object of the assignment are the following: <u>fixation</u>, <u>reproduction</u> and <u>communication to the public</u>.

5. FINAL CONCLUSIONS

Manly, it has been analyzed in this conference:

- User's faculties, based on the 'Terms of use'.
- Potential agreements between VOD platforms and rightholders and their content, based on Intellectual Property legislation, the VOD business model and the faculties granted to the user.

Besides, the state of play on the new audio-visual business model indicate:

- > Transition from the trading model to the services model.
- Adaptation of the classic concepts of Intellectual Property to new forms of exploitation of works.
- New regulations for these new exploitations with poor results.



Thank you for your attention!

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