

The Necessity of the Digital Single Market Strategy for Small Media Markets: Case of the Biggest Video-on-Demand Platforms in Lithuania and Estonia

Audrius Dabrovolskas

*The Department of Screen and Performative Communication
Faculty of Communication, Vilnius University
Saulėtekio Ave. 9, 1st Building, LT-10222 Vilnius
Email: audrius.dabrovolskas@kf.vu.lt*

Abstract. *This article analyzes the biggest Lithuanian and Estonian video-on-demand (VOD) platforms including Telia, their capabilities for fostering European film production and mass media in general. It is important to accentuate that non-linear TV and VOD services are attracting more and more users in Europe, and it is even considered that VOD could become a strong competitor for theatrical releases in film distribution, while, in the context of mass media, the growth of users might be associated with potential threats of propaganda, which still has its own distribution mechanisms within linear TV. However, the audiovisual content that is being supplied for the users of VOD platforms and TV is also regulated by the Audiovisual Media Service Directive (AVMSD). Without regulation, the users of VOD platforms and TV might face a limited choice of audiovisual content. Therefore, the Digital Single Market (DSM) strategy is aimed at creating a single market in Europe and eliminating the geo-blocking that limits user abilities to use VOD services during travel across borders while also establishing better access to digital goods and services at the same time. Looking from the perspective of the VOD platform, a DSM strategy might bring about a monopolization of VOD services in Europe; in that case, the little markets of the Baltic States would suffer. Another important issue that small media markets come across is related to the level of propaganda that is being transmitted from Russian TV channels that are registered in different EU coun-*

tries. The article argues, and the research results show, that a DSM strategy and the elimination of geo-blocking do not eliminate the problem of fostering European audiovisual content that is and could be available to the users of VOD platforms in Lithuania and Estonia, and that these measures do not pay significant attention to EU's consumer protection issues.

Keywords: Digital Single Market, film distribution, VOD, Audiovisual Media Service Directive, propaganda.

1. Introduction

Digital technologies such as computers, satellite TV, the internet and mobile phones began to transform the media world during the 1990s because they became more easily available and common. The same transformations occurred in the context of home video systems when the DVD digital format was introduced to the market, which surpassed the analogue format of VHS.¹ Precisely in the beginning of the 2000s, the DVD format was very popular among the film audience and was one of the most important revenue streams for film industries in general.²

Later, the internet, social media and various VOD services influenced the audience's behavior toward information and its audiovisual material consumption habits in a way that highly has affected and still affects film distribution throughout the whole world.³ We are now experiencing

¹ SCHATZ, Thomas. "Film Industry Studies and Hollywood History." In *Media Industries: History, Theory, and Method*. Chichester, 2009, p. 47.

² RAVID, Abraham S. "Film Production in the Digital Age – What Do We Know about the Past and the Future?" In *A Concise Handbook of Movie Industry Economics*. Cambridge, 2005, p. 53; GUBBINS, Michael. "Digital Revolution: Active Audiences and Fragmented Consumption." In *Digital Disruption: Cinema Moves On-line*. St Andrews, 2012, p. 73.

³ For example, UK film revenues from physical rental and retail fell by 564 million pounds between 2003 and 2010, while the internet and TV VOD revenues have risen in 101 million pounds during the same period (Franklin, Michael; Searle, Nicola; Stoyanova, Dimitrinka; Townley, Barbara. "Innovation in the Application of Digital Tools for Managing Uncertainty: The Case of UK Independent Film." In *Creativity and Innovation Management*, 2013, No. 22, 3, pp. 320–333.

what Tryon refers to as platform mobility – when the same audiovisual content is available through different platforms: iPods, laptops, tablets, TVs, game consoles, smartphones.⁴

In analyzing mass media in a broader sense, media systems are constantly challenged by changes in news production routines, the commercialization of content and the marketization of politics.⁵ This becomes an important issue when the abilities of the active user are questioned in the sense of critically evaluating the information that mass media produces. For a user of mass media, it is important to have access to various audiovisual content using different platforms and whenever the user wishes to; for the film industry, however, it is important to secure revenue streams for its production, and this is only possible when film distribution and exploitation rights are sold.

It is important to stress that film distribution was always problematic in Europe because of the fragmented markets and the dominant position of the Hollywood industry.⁶ While Hollywood functions as a vertically and horizontally integrated oligopolistic industry, Europe hasn't had a united market for film production, distribution and exhibition.⁷ Hollywood's domination in Western European cinema theatres has a long "tradition": for example, Guback notes that "by 1925, American films had captured 95 percent of the British market and 70 percent of the French market. In Italy during this same period, American films accounted for 68 percent of screen time."⁸ During the period of

⁴ TRYON, Chuck. *On-Demand Culture: Digital Delivery and the Future of Movies*. New Jersey: Rutgers University Press, 2013.

⁵ BALČYTIENĖ, Aukse. "Challenges for Professional Journalism." In *Informacijos mokslai*, 2008, No. 47, pp. 44–45.

⁶ PARDO, Alejandro; TABERNERO, Alfonso Sanchez. "Effects of Market Concentration in Theatrical Distribution: The Case of the Big Five Western European Countries." In *International Journal on Media Management*, 2012, No. 14, 1, p. 55; JÄCKEL, Anne. *European Film Industries*. London: BFI, 2003, pp. 91–93.

⁷ *Ibid.*, p. 67, 103, 124.

⁸ GUBACK, Thomas H. *The International Film Industry: Western Europe and America since 1945*. Indiana: Indiana University Press, 1969, pp. 8–9.

1989–2000, the percentage of US films in Italy and the UK remained similar compared to 1925 – US films made up 46.7 to 70% in Italy and 75.3 to 94.2% in the UK.⁹ Only France managed to reduce the market share of US films to 62.9 percent in the year 2000.

The situation in the Baltic States was relatively similar: in 1993, for example, American films accounted for 78 percent of the distributed films in Estonia. In Lithuania, a total of 177 films were distributed in 1994, including 100 films from the US, which made up 56.5 percent of the total films distributed that year.¹⁰ Looking at the more recent film distribution market in Europe, US films in the European market accounted for an average of 63.4 percent between 2005 and 2009.¹¹

The dominant position that Hollywood’s film production has held in Europe has led to a market concentration problem.¹² In addition, according to the report *The Development of the European Market for On-Demand Audiovisual Services*, “feature films are the genre which originates from non-European productions in the case of more than half the catalogues. Almost 60% are of non-European origin” in the catalogues of the VOD services.¹³ In this context, it is important to critically assess the role of VOD platforms in promoting European films, because in general, on-demand services are services that are commercially and mass media-oriented. This means that such services could have a clear impact on a significant proportion of the general

⁹ JÄCKEL, Anne. *European Film Industries*, p. 70.

¹⁰ EBERT, Mathias. “The Audio-Visual Industry in Estonia, Latvia and Lithuania.” In *Understanding the Media in the Baltic Countries*. Dusseldorf: Mediafact, 1998, p. 221.

¹¹ PARDO, Alejandro; TABERNEIRO, Alfonso Sanchez. “Effects of Market Concentration in Theatrical Distribution: The Case of the Big Five Western European Countries.” 2012, p. 52.

¹² *Ibid.*, p. 58.

¹³ GRECE, Christian; LANGE, Andre; SCHNEEBERGER, Agnes; VALAIS, Sophie. *The Development of the European Market for On-Demand Audiovisual Services. European Commission*, 2015, p. 230. URL: <https://ec.europa.eu/digital-single-market/en/news/development-european-market-demand-audiovisual-services> (retrieved 04.28.2017). It is important to note that this source doesn’t include the analysis of Lithuanian and Estonian feature film catalogues of VOD platforms.

public.¹⁴ Moreover, VOD services are “fundamentally transforming media environments and media use,”¹⁵ and the development of such new technologies is also an object of general media policy in Europe, because “on-demand audiovisual media services have the potential to partially replace television broadcasting.”¹⁶ Linear television in the Baltic States is still one of the most important channels of information,¹⁷ wherefore more attention should be paid to the development of on-demand platforms in the case of film and TV and news production.

Therefore, the main problem, which is being researched in this article, is the promotion of European film production in the case of smaller VOD markets in Lithuania and Estonia, because the development of VOD markets in Europe is affected by the development of the DSM strategy (European Commission 2015), which has the goal to provide better access to digital goods and services for consumers and businesses. The regulatory instrument that is implemented for achieving this goal is the AVMSD, which also regulates on-demand audiovisual services.¹⁸ The regulation is performed in order to promote the production and distribution of European works and actively contribute in promoting cultural diversity (European Commission 2010).

Consequently, the research question of this article is: how does the DSM strategy and AVMS directive influence film content supply in the biggest VOD platforms in Lithuania and Estonia? The supply of the films on VOD catalogues is important, because if the catalogues

¹⁴ SIMON, Eva. “Methods of Implementing Rules Relating to On-Demand Services.” In *Media Policy Challenges in the Enlarged Europe*. Budapest: Central European University Press, 2010, p. 70.

¹⁵ KLIMKIEVICZ, Beata. “Media Freedom and Pluralism.” In *Media Policy Challenges in the Enlarged Europe*. Budapest, 2010, xi.

¹⁶ Herold, Anna. “The New Audiovisual Media Service Directive. Empowering Cultural Diversity in the EU Internal Market.” In *Rethinking European Media and Communications Policy*, Brussels: Brussels University Press, 2009, p. 111.

¹⁷ BALČYTIENĖ, Aukšė; VINCIŪNIENĖ, Aušra. “Baltic Media in Times of Change.” In *Media Transformations*, No. 7, 2012, p. 7.

¹⁸ SIMON, Eva. “Methods of Implementing Rules Relating to On-Demand Services,” pp. 66–67.

are dominated by Hollywood film production, the user's options for diverse content are limited, and cultural diversity is not enhanced then. Therefore, it is important to analyze the supply of films on the biggest Lithuanian and Estonian VOD platforms and to assess if the regulation is effective and how it will be affected after the implementation of the DSM strategy. Accordingly, the case of the biggest Lithuanian and Estonian VOD platforms was selected.¹⁹

To date, there are several reports that have analyzed the development of the European market for on-demand audiovisual services (Grece, Lange, Schneeberger 2015), the origin of films and TV content in VOD catalogues in the EU (Fontaine, Grece 2016), the legal rules for exploitation windows (Ranaivoson, De Vinck, Van Rompuy 2014a), the fragmentation of the single market for online video-on-demand services (Ranaivoson, De Vinck, Van Rompuy 2014b) and the European film sector in general (Lindmark, De Vinck 2012). These reports mainly represent the results from these European countries: France, the United Kingdom, Germany, Italy, Sweden, Switzerland, Spain, Poland, Portugal, Croatia, the Czech Republic and Slovenia. Little is known about the development of VOD services in the Baltic States and how this development influences the promotion of European films.

In order to conduct research on the film supply of VOD services in the Baltic States, the case study method was used. According to Wimmer and Dominick, the case study method is a qualitative research technique that uses multiple data sources to systematically investigate individuals, groups, organizations or events.²⁰ To collect data about the biggest Lithuanian and Estonian VOD platforms, two sources were selected – data from the VOD platform internet web pages and interviews with the representatives of those VOD platforms.

¹⁹ The Lithuanian company Telia and the Estonian company Telia are controlled by the same telecommunication company TeliaSonera, which was founded after the merger of Swedish telecommunication company Telia and Finnish telecommunication company Sonera in 2002.

²⁰ Wimmer, Roger.; Dominick, Joseph. *Mass Media Research: An Introduction*. Belmont: Wadsworth, 1997, p. 102.

First, using a descriptive statistics method, a film title analysis of the VOD services was performed; later, semistructured, expert interviews with the representatives of the VOD companies were conducted and analyzed. While the interviews enabled researchers to obtain information they couldn't have gained by observation alone,²¹ descriptive statistics, in the context of communication research, allow us to summarize and describe the data.²² In order to critically assess the role of the biggest Lithuanian and Estonian VOD platforms in promoting European films, therefore, it is important to determine the following aspects: (1) the exact content that is available to the consumers of the VOD platforms in Lithuania and Estonia, (2) the phase of the VOD service development, (3) the situation of the legislation and (4) what new trends the DSM strategy might bring for the VOD platforms in Lithuania and Estonia.

2. The Market Concentration Problem

Platform mobility culture, as Tryon notes, allows the individualized consumer to control his or her viewing experience – for example, starting to watch a movie on one platform and continuing to watch it on another.²³ These new environment and user habits show that there is a high risk of uncertainty for film distribution, because users tend to navigate within a wide range of platforms and services.²⁴ Media conglomerates, therefore, put considerably efforts into developing “better mechanisms for controlling where, when, and how content is circulated.”²⁵

²¹ Berger, Arthur Asa. *Media and Communication Research Methods: an Introduction to Qualitative and Quantitative Approaches*. Los Angeles: Sage, 2014, p. 159.

²² Vaughan, Liwen. *Statistical Methods for the Information Professional. A Practical, Painless Approach to Understanding, Using, and Interpreting Statistics*. Medford: Information today, 2001, p. 45.

²³ TRYON, Chuck. *On-Demand Culture: Digital Delivery and the Future of Movies*, p. 4.

²⁴ GUBBINS, Michael. “Digital Revolution: Active Audiences and Fragmented Consumption”, 2012, p. 81.

²⁵ TRYON, Chuck. *On-Demand Culture: Digital Delivery and the Future of Movies*, p. 4.

Also, the control of content distribution is relevant in the context of the information war, because new technologies are being used for the establishment of new media channels, which transgress state borders.²⁶ For example, the Russian media, which are controlled by the government, use several ways of entering different foreign TV markets: first by establishing radio and TV channels in Russia the signal of which is transmittable to the nearest countries and second by establishing radio and TV channels in foreign countries as independent media channels (using the Television Without Frontiers Directive); at the same time, however, the purpose of these radio and TV channels is related mostly with the repetition of information transmitted by the Russian media.²⁷

Media company control crystallizes into a market concentration problem, which is noticeable in the film distribution sector across Europe. Hollywood film production dominates not only in European cinema multiplexes but also in some VOD services across Europe: for example, a recent study on films and TV content in VOD catalogues in the EU reveals that “the share of US films among films promoted was 58%, ranging from 51% in France to 62% in the United Kingdom and the Netherlands.”²⁸

Market concentration occurs because of the asymmetry that emerges from the power of the participants who function in the market.²⁹ Hardy highlights these economic characteristics of media markets that tend to encourage concentration: economies of scale and scope.³⁰ He explains that film industries, as well as TV broadcasting

²⁶ MARTIŠIUS, Mantas. „Rusiško informacinio karo bruožai“. In *Informacijos mokslai*, No. 69, 2014, p. 20.

²⁷ Ibid.

²⁸ FONTAINE, Gilles; GRECE, Christian. *Origin of Films and TV Content in VOD Catalogues in the EU&Visibility of films on VOD Services. European Commission*, 2016, p. 192. URL: <https://ec.europa.eu/digital-single-market/en/news/demand-audiovisual-markets-european-union-2016> (retrieved 04.28.2017).

²⁹ HARDY, Jonathan. *Critical political economy of the media: an introduction*. London: Routledge, 2014, p. 61.

³⁰ Ibid, p. 89.

and publishing, are all “characterised by high ‘first copy costs,’ while the cost of bringing additional copies to the market is low, falling to zero. When the gap between first copy and second copy costs is large, there tend to be economies of scale.”³¹ Additionally, economies of scope can occur when different activities can generate different outcomes across different platforms, and when disparities can be regulated because of product or service diversification. Moreover, digital content can be re-purposed.³²

Economies of scope can also drive the integration of media companies, and this trend is becoming more visible because of the development of the VOD and EST (Electronic Sell Through) services. For example, Sony Pictures still focuses on TV content in the pay/subscription model, but one can already download, stream, make copies of and remotely access one’s selected audiovisual content even from the service of one’s choice with the model of *UltraViolet*, because the digital rights are stored in the cloud.³³ Other Hollywood studios focus more on a direct-to-consumer digital strategy – like Disney, which aims to provide access to all Disney features within the Disney.com webpage.³⁴

There are also content aggregators (Netflix, Amazon and Hulu) that are already in the film and TV content distribution business worldwide.³⁵ For example, Netflix entered the Baltic States film and TV content distribution market in 2016 (Eastern Europe SVOD Forecasts 2016).

Nevertheless, companies producing and providing digital content are constantly challenged not only by economies of scale and scope but also by network effects or – to put it more precisely – network

³¹ Ibid.

³² Ibid.

³³ CURTIN, Michael; HOLT, Jennifer; SANSON, Kevin. *Distribution Revolution: Conversations about the Digital Future of Film and Television*. Oakland: University of California Press, 2014, p. 43.

³⁴ Ibid, p. 54

³⁵ CUNNINGHAM, Stuart; SILVER, Jon. *Screen Distribution and the New King Kongs of the Online World*. Basingstoke: Palgrave Macmillan, 2013, pp. 80–93.

externalities. According to Katz and Shapiro, markets exhibit network effects or network externalities when “the value of membership to one user is positively affected when another user joins and enlarges the network.”³⁶ This becomes a crucial point if we connect indirect network externalities³⁷ with the possible growth of users who are using VOD services, because companies providing VOD services might be challenged by the limits of content diversity, since “the greater the content diversity, the more similarly will members of different identity groups value the technology”³⁸ and, by the standardization, compatibility (Katz, Shapiro 1994) and pricing strategy as well.³⁹

From a network effects perspective, it could be acknowledged that not only economies of scale and scope but also the actions of the users are important when the behavior of the companies operating in the market is considered. Even the individual action, which is not “self-consciously cooperative, produces the coordinate effect of a new and rich information environment.”⁴⁰ Keeping this in consideration, the latest worldwide development of VOD services encourages us to look at the commercial logic of the online distribution and the EU regulation impact for the growth of the VOD market.

According to Cunningham and Silver, the industry lifecycle, which is also relevant to VOD services, is typically mapped in four

³⁶ KATZ, Michael L.; SHAPIRO, Carl. “Systems Competition and Network Effects”. In *Journal of Economic Perspectives*, No. 8, 2, 1994, p. 94.

³⁷ With reference to Birke: “Indirect network effects are generated by complementary relations between goods” (2013, p. 17). For example, VOD services might be complementary with TV services.

³⁸ DiMAGGIO, Paul; COHEN, Joseph. “Information inequality and network externalities: A comparative study of the diffusion of television and the Internet”. In *The Economic Sociology of Capitalism*, New Jersey, 2005, p. 18.

³⁹ BIRKE, Daniel. *Social Networks and their Economics: Influencing Consumer Choice*. Chichester: Wiley, 2013, p. 22.

⁴⁰ BENKLER, Yochai. *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. New Haven, 2006, pp. 4–5.

stages: pioneering (fragmentation), shakeout, maturity and decline.⁴¹ The pioneering stage is characterized by low market entry barriers when many small start-up firms start competing for the exploitation of business opportunities. This stage is followed by a shakeout when barriers-to-entry begin to rise and “mergers and acquisitions become more common as aspiring market leaders pursue growth and fight for an increased market share by establishing larger operations that can yield scale efficiencies and increased profitability.”⁴² The maturity stage evolves when an oligopoly of companies dominates a market, and this unfolds into the last stage of the decline, where big players are challenged by new innovations and new entrants.⁴³

The shakeout stage – during which big companies enter the VOD market and begin to grow – could be recognized in the case of Netflix.⁴⁴ Therefore, the EU’s reaction to this constant development of US-based VOD services and to the ongoing domination of media conglomerates could be interpreted as the adoption of the Digital Single Market strategy, which might also affect the AVMS directive in a sense that more European audiovisual productions should be fostered (at least 10% of content should be commissioned from independent producers; VOD providers would have to make sure that 20% of their content is of European origin).⁴⁵

For commercially strong audiovisual service providers, it is easier when the country of origin isn’t important, and when businesses

⁴¹ CUNNINGHAM, Stuart; SILVER, Jon. *Screen Distribution and the New King Kongs of the Online World*, p. 15.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 16.

⁴⁴ By the end of 2016, Netflix was expected to expand to about 200 countries worldwide, while increasingly shifting content spending toward original programming and demanding global rights for it (Spangler 2015). This means that the company will work toward the direction of acquiring more and more global licenses.

⁴⁵ Ibrus, Indrek; Rohn, Ulrike. “Sharing Killed the AVMSD Star: the Impossibility of European Audiovisual Media Regulation in the Era of the Sharing Economy”. In *Internet Policy Review*, No. 5, 2, 2016, pp. 7–8.

can easily function on the international scale. As it was mentioned earlier – TV service providers already cross national boundaries for the retransmission of audiovisual content. It is worth emphasizing that one of the most important goals of the AVMSD is to overcome the fragmentation of the European media market, and this is possible by constructing a single European market. But, as Ibrus and Rohn argue, a single digital market can lead to a market concentration in Europe; then, smaller audiovisual markets would face a negative impact from the oligopolistic structure, which would be harmful to cultural diversity.⁴⁶ In the context of VOD platforms, “the problem is not specifically about who owns these companies, but simply about the nature of their existing business conduct, which does not seem to be oriented to facilitating cultural diversity in Europe.”⁴⁷

But an issue emerges when we inspect the logic of Russian TV service providers, who acquire licences in different EU countries, such as Sweden, and aim to influence the societies of the Baltic States when at the same time they “deliberately transmit hate speech and propaganda content aimed at destabilizing their societies by influencing their significant Russian-speaking minorities.”⁴⁸ Anda Rožukalne’s research has showed, for example, that the Russian-speaking population in Latvia does not feel any need for additional information channels, as they are satisfied with the information that the Russian TV channels and radio provide.⁴⁹ Therefore, the origin of content or territorial copyright opens a wider debate in the field of various media consumption forms and cultural diversity that the EU media policy is trying to maintain.

⁴⁶ Ibid, p. 1.

⁴⁷ Ibid, p. 9.

⁴⁸ IBRUS, Indrek. “The EU Digital Single Market as a Mission Impossible: Audio-visual policy conflicts for Estonia”. In *International Journal of Digital Television*, No. 7–1, p. 13.

⁴⁹ ROŽUKALNE, Anda. “All the necessary information is provided by Russia’s channels. Russian-language Radio and TV in Latvia: audiences and content”. In *Baltic Screen Media Review*, No. 4, 2016, p. 107.

3. The Necessity of the Digital Single Market Strategy for the Growth of VOD Platforms

The aim of maintaining cultural diversity in the audiovisual sector also depends on industrial policy, which is shaped by the “rapid proliferation of new technologies coupled with the decline of the role of governments in regulating national broadcasting and telecommunications.”⁵⁰ It means that the range of choices for consumers are expanded and current global communication and media policy speak of governance in a way, where the centralized state intervention, which was focused on domestic performance of the national economy, have changed and now is more oriented to “partnerships between private actors, non-governmental organizations and state bodies to coordinate the delivery of social goods and the services at the local level.”⁵¹ If countries were to enforce national laws, private investment has already become important in shaping social policy.⁵²

The digital market is growing rapidly, but the EU internal market couldn't benefit economically if the single market wouldn't be maintained.⁵³ This means that the “EU market integration has to be ‘established,’”⁵⁴ but the establishment of the internal market results into two policy processes: “cross-border intra-EU liberalisation in several market types (like goods and services) and what is termed ‘harmonisation’ or approximation of national laws.”⁵⁵

Different market types reveal that there are some limits to achieving the free movement of goods and services across Europe. For example,

⁵⁰ CHAKRAVARTY, Paula; SARIKAKIS, Katharine. *Media Policy and Globalization*. Edinburgh: Edinburgh University Press, 2006, p. 6.

⁵¹ Ibid.

⁵² Ibid.

⁵³ PELKMANS, Jacques. “Why the Single Market Remains the EU’s Core Business”. In *West European Politics*, No. 39, 5, 2016, p. 1096.

⁵⁴ Ibid, p. 1097.

⁵⁵ Ibid, p. 1098.

geo-blocking⁵⁶ creates a fragmentation of the internal digital market and is an obstacle in the goal of a digital single market.⁵⁷ Therefore, the DSM Strategy was announced in 2015 by the European Commission, which is based on three pillars: Access, Environment, Economy and Society (European Commission 2015). The DSM Strategy seeks to improve access to digital content and services, promote the expansion of digital networks and develop the digital economy of the EU.⁵⁸ One of the goals in achieving better access to digital content and services that the DSM strategy is aimed at is the elimination of geo-blocking.

Therefore, it is important to emphasize that this strategy is also very related to the AVMSD, which, as Ibrus and Rohn note, is the EU's regulatory instrument for designing a single market for audiovisual media. We can identify an important problem when dealing with the different aims of the AVMSD, which lightly regulates VOD services in the way that media services are licensed by member states and that all audiovisual media should have a "country of origin," while the E-Commerce Directive "maintains that business in the internet should not be based on member states issuing licenses."⁵⁹ This problem exists because the E-Commerce Directive was adopted when the digital market was still in its infancy,⁶⁰ and now "the expansion of the digital market is occurring at a rapid pace."⁶¹

⁵⁶ According to the information provided by the *European Commission* (2016a), "[g]eo-blocking and other geographically-based restrictions undermine online shopping and cross-border sales by limiting the possibility for consumers and businesses to benefit from the advantages of online commerce."

⁵⁷ HOFFMAN, Jacklyn. "Crossing Borders In The Digital Market: A Proposal To End Copyright Territoriality And Geo-Blocking In The European Union". In *The George Washington International Law Review*, No. 49, 2016, p. 162.

⁵⁸ *Ibid*, p. 158.

⁵⁹ Ibrus, Indrek; Rohn, Ulrike. "Sharing Killed the AVMSD Star: the Impossibility of European Audiovisual Media Regulation in the Era of the Sharing Economy", pp. 7–8.

⁶⁰ HOFFMAN, Jacklyn. "Crossing Borders In The Digital Market: A Proposal To End Copyright Territoriality And Geo-Blocking In The European Union", p. 158.

⁶¹ *Ibid*, p. 168.

Access to digital content in particular is limited due to copyright licensing. In order to distribute content across EU member states, “a company must acquire a license in and abide by the copyright law of each individual state.”⁶² The principle of territoriality creates an obstacle for the development of VOD services across Europe, because it is very expensive to acquire rights in each European country for the distribution of audiovisual production. As Hoffman suggests, the territorial copyright problem in the digital market could end if a universal EU copyright and a pan-EU licensing scheme would be adopted.⁶³ Nevertheless, it might be difficult to achieve, because “the most conspicuous aspect of the EU internal market is regulation.”⁶⁴ Even if geo-blocking “has led to an increase in Internet piracy and lost profits to right holders”⁶⁵ and to a dissatisfaction of the consumers who cannot use their VOD services while travelling across Europe, territorial copyright in the EU is still an instrument that regulates and protects the audiovisual production market from monopolization.

The light regulation of VOD services and the aim of the DSM Strategy to remove geo-blocking might have a negative impact on EU national players: both the VOD platforms and public service media.⁶⁶ First, it could mean that these private and public institutions would not be well-placed to compete for licences; second, “they will not be able to compete for audience attention when they may want to offer unique European content to audiences,” and that is considered as a threat for cultural diversity in Europe.⁶⁷

⁶² Ibid, p. 144.

⁶³ Ibid, p. 172.

⁶⁴ PELKMANS, Jacques. “Why the Single Market Remains the EU’s Core Business”, p. 1098.

⁶⁵ HOFFMAN, Jacklyn. “Crossing Borders In The Digital Market: A Proposal To End Copyright Territoriality And Geo-Blocking In The European Union”, p. 172.

⁶⁶ Ibrus, Indrek; Rohn, Ulrike. “Sharing Killed the AVMSD Star: the Impossibility of European Audiovisual Media Regulation in the Era of the Sharing Economy”, p. 10.

⁶⁷ Ibid.

As Ibrus points out, the AVMSD was established not only for facilitating the internal EU market for audiovisual services but also to “warrant the free flow of information and freedom of speech within Europe,” and it is for this reason that it is hard to legally restrict the retransmission of TV channels from other member states.⁶⁸ It means that if certain Russian television channels acquire licences in other EU member states for TV program retransmissions, the functioning of these channels and the content that they produce are also the object of EU audiovisual policy legislation. Considering the tense geopolitical situation in Eastern Europe (for example, Lithuania had stopped the retransmission of different Russian TV channels in 2014 and 2015), the AVMSD must be updated for supporting the national security of the member states.

However, Karppinen proposes that the concept of cultural diversity in Europe “has been defined and employed not as an end in itself but as a resource for economic development.”⁶⁹ In terms of communication and media policy, it means that “previous national policy objectives – cultural sovereignty, universal service, national integration, national employment schemes – are subordinated to labour market flexibility and or to the constraints of international competition.”⁷⁰

On the other hand, Herold disagrees that market logic cannot have any positive impact on cultural diversity in the audiovisual sector by stating that “market forces and market integration can well play a positive role in enhancing diversity in audiovisual industry.”⁷¹ Herold explains that European audiovisual production must find an audience in the market in order to be successful, because “the promotion of works with no prospect of commercial success has no future, not in Europe, nor elsewhere.”⁷²

⁶⁸ IBRUS, I. “The EU Digital Single Market as a Mission Impossible“, p. 13.

⁶⁹ KARPPINEN, Kari. *Rethinking Media Pluralism*. New York: Fordham University Press, 2013, p. 135.

⁷⁰ Ibid, p. 392.

⁷¹ Herold, Anna. “The New Audiovisual Media Service Directive. Empowering Cultural Diversity in the EU Internal Market”, p. 102.

⁷² Ibid, p. 120.

Then, however, market concentration could be left only as an internal market issue,⁷³ where small media markets, according to Puppis, must deal with the following hardships: (1) the shortage of resources, (2) a small audience and small advertising, (3) dependence and (4) vulnerability.⁷⁴ First, small media markets face limitations on the production side, and then there are limits on the sales side, because the production costs are similar in small and in big countries, and the revenues realized from the sales of audiovisual production and advertising are too small for the development of audiovisual production.⁷⁵ As Balčytienė and Vinciūnienė state, the Baltic media “scene seems to be heterogeneous and polarized, with each media sector operating under its own logic,”⁷⁶ and while small media systems are affected by the developments of commercialization and globalization, they “are less able to influence these developments than big countries.”⁷⁷ Given all this, we can acknowledge that audiovisual market regulation can contribute in maintaining media pluralism.

According to Karppinen, the satisfaction of consumers from having access to a sufficiently broad choice of media products and services should not be the most important aspect when considering media pluralism.⁷⁸ The larger problem is the regulation, which is performed not only to satisfy public tastes but to also influence and cultivate media use.⁷⁹ Here, an important example of the Nordic Model (see Syvertsen, Enli, Mjøs, Moe 2014) serves as a good example, where cultural policy measures (a cultural policy that extends to the media in the form of content obligations) for the media are set up to positively influence

⁷³ KARPPINEN, Kari. *Rethinking Media Pluralism*, p. 142.

⁷⁴ PUPPIS, Manuel. “Media Regulation in Small States”. In *The International Communication Gazette*, No. 71, 1–2, 2009, pp. 10-11.

⁷⁵ Ibid.

⁷⁶ BALČYTIENĖ, A.; VINCIŪNIENĖ, A. “Baltic Media in Times of Change”, p. 8.

⁷⁷ Ibid.

⁷⁸ KARPPINEN, Kari. *Rethinking Media Pluralism*, p. 122.

⁷⁹ Ibid.

media content.⁸⁰ In this case, the Nordic States take advantage of global market opportunities while at the same time benefitting from protective policies that intend to defend domestic media and foster cultural diversity.⁸¹

It should also be emphasized that it is not easy to construct a single digital market for VOD services in Europe, and it is because of the rights acquisition of the film exploitation (Hollywood studios have their own distribution divisions); the cinema release windows system is also more favorable to cinema theatres (in the Baltic States, multiplexes are also controlled by AMC Theatres, which operate to promote Hollywood film production)⁸² and changes in the release windows system (for instance, a film may be released simultaneously in a cinema theatre and in a VOD service) is “a domain in which competitive forces are currently very much felt, as new balances are being sought between new and old stakeholders, new and old “windows.”⁸³ This aim to leave the existing release windows system intact or at least not radically attacked⁸⁴ could be interpreted as favorable to the cinema theatres, especially multiplexes, because of the revenue streams.

Looking from the perspective of a cinema spectator or an audiovisual media user, it is better to have access to one’s selected films using only one VOD service, and films should be also available on different personal technologies: PCs and tablets, TVs, game consoles or smartphones. Currently, this situation is complicated for the users of VOD services

⁸⁰ SYVERTSEN, Trine; ENLI, Gunn; MJOS, Ole J.; MOE, Hallvard. *The Media Welfare State: Nordic Media in the Digital Era*. Michigan, 2014, p. 18, 131.

⁸¹ Ibid, p. 20.

⁸² In early 2017, AMC Theatres acquired Finnkinno, which controlled Forum Cinemas and Forum Distribution in the Baltic States (Szalai 2017).

⁸³ RANAIVOSON, Heritiana; DE VINCK, Sophie; VAN ROMPUY, Ben. *Analysis of the Legal Rules for Exploitation Windows and Commercial Practices in EU Member States and of the Importance of Exploitation Windows for New Business Practices*. European Commission, 2014, p. 3. URL: <https://ec.europa.eu/digital-single-market/en/news/analysis-legal-rules-exploitation-windows-and-commercial-practices-eu-member-states> (retrieved 04.28.2017).

⁸⁴ Ibid.

in the Baltic States, because the users of VOD platforms cannot use this service when travelling across Europe. The DSM strategy aims to eliminate geo-blocking, and this decision, if adopted, would benefit the users of VOD platforms across Europe only as an opportunity for users to access their VOD services while they're travelling. But if geo-blocking will be eliminated in the case of VOD services in the Baltic States, it wouldn't guarantee that such powerful content aggregators as Netflix won't use their financial capabilities to buy pan-European film exploitation rights and put other European VOD services into a worse situation while competing for licences. All in all, this perspective shows the possible illusion of the benefits that the elimination of geo-blocking might bring for the VOD service providers and users in Europe.

4. The Role of Lithuanian and Estonian VOD Platforms in Promoting European Film Production

In order to analyze what content is being provided to the user by these two VOD service providers, all film titles were selected from each VOD service provider webpage⁸⁵ that were available online (2976 in total): 1485 film titles were selected from the Telia VOD platform in Lithuania and 1491 film titles were selected from the Telia VOD platform⁸⁶ in Estonia. Film titles were counted in an alphabetical order, checked and analyzed in December 2016.

The most important criterion while identifying what content is being provided to the users was the country of origin. Only the United States and Canada are distinguished in the charts, while other countries in Europe, Asia, South America, Africa and Australia are presented generally, because the main aim was to compare the general proportion of the films produced in the US and European countries.

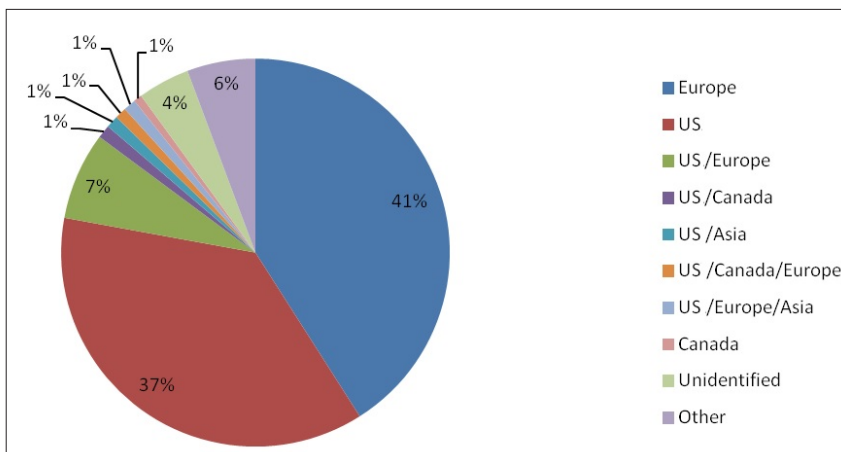
⁸⁵ We provide links to the Lithuanian VOD platform Telia (<https://www.telia.lt/pri-vatiems/televizija/ismanioji/video-filmu-nuoma/>) and the Estonian VOD platform Telia (<https://www.telia.ee/era/tv/lisateenused/videolaenutus>).

⁸⁶ Only film titles were selected excluding TV series and TV programs.

In total, 2976 film titles were checked in the International Movie Database webpage (www.imdb.com), the Estonian Film Database (<http://www.efis.ee/en>) and other sources that were available on the internet (the personal webpages of the films, film festival webpages). It was important to compare the film titles statistically: how many films were produced in Europe, the US, co-produced between the US and European countries and how many were produced and co-produced in other geographical areas of the world.

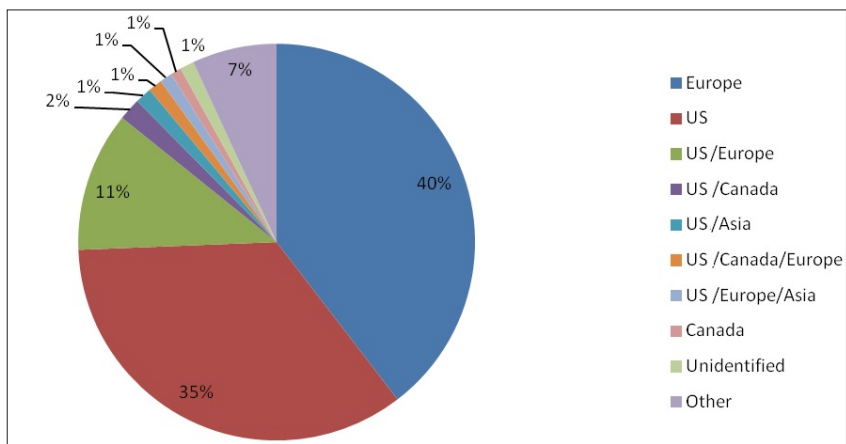
Graphs 1 and 2 have 10 uniform categories and show how many films were produced in Europe, the United States, Canada, co-produced between the US and Europe, between the US and Canada, between the US and Asian countries and co-produced between Europe and other continents.

A data analysis showed that there are 596 films in the Lithuanian VOD platform that were produced in Europe, which account for 41% of the total number of titles. The Estonian VOD platform *Telia* provides 590 European films for the users and these account for 40% of the total number of titles. Films produced in the United States account for



GRAPH 1. Films available in the Telia Lithuanian VOD platform by country and continent of origin.

Source: Author's calculations.



GRAPH 2. Films available in the Telia Estonian VOD platform by country and continent of origin.

Source: Author's calculations.

37% (537 films) in the Lithuanian VOD platform and for 35% (519 films) in the Estonian VOD platform. The third biggest category in the charts represents the co-productions between the US and Europe. The Lithuanian VOD platform has 106 films (7% of the total number of titles) and the Estonian VOD platform has 170 films (11% of the total number of titles).

To sum up, it is important to emphasize that the dominance of Hollywood film production in the catalogues of the biggest Lithuanian and Estonian VOD platforms could neither be recognized or approved. According to the AVMSD, film co-production between the US and European countries could be interpreted as European work, because “works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the condition defined in each of those agreements” (European Commission 2010). This means that the US and European co-produced films can be added to the category *Europe* in the chart, but, in order to show that this information cannot change the general

proportion of the US produced films and films produced in Europe, it was distinguished separately.

While a descriptive film title analysis shows what films and from which countries and continents are available to the users of the VOD platforms in Lithuania and Estonia, interviews with experts from those VOD platforms reveal why the specific films are available.

5. The Development of the Telia VOD Platforms in Lithuania and Estonia

In order to critically assess the role of the biggest Lithuanian and Estonian VOD platform services in promoting European films in the Baltic States and to analyze how these platforms are influenced by the AVMSD and will be affected by the Digital Single Market strategy, two semistructured expert interviews with the representatives of VOD companies in the Baltic States were conducted. In Lithuania, the interview took place with Armantas Pranaitis, Head of the Content and Product Team at Telia. In Estonia, the interview was conducted with Karl Anton, the TV and Multimedia Area Manager at Telia.

The interviews were analyzed and the most common categories of the current situation of the development of VOD services in the Baltic States were constructed. First, the situation of the *Telia* VOD services is described according to the theory of industry life cycles, which are typically mapped in four stages: pioneering (fragmentation), shakeout, maturity and decline.⁸⁷ Second, the influence of the Digital Single Market strategy and the AVMSD for VOD development, and other factors that influence VOD development in the Baltic States, were constructed.

After analyzing the expert interviews, it could be stated that:

- 1) The current development of VOD platforms could be described as being between the shakeout and maturity stages, because the number of users is still growing but not as rapidly as it had several

⁸⁷ CUNNINGHAM, Stuart; SILVER, Jon. *Screen Distribution and the New King Kongs of the Online World*, p. 15.

years ago. In Estonia, the growth of VOD users, with reference to Anton, is interpreted as related to the use of time-shifted TV and video recordings, which gradually change the habits of watching linear TV. Another important factor that increases the number of VOD users in Estonia is the sales of mobile phones. As the screen of an average mobile phone has increased in size, it affects the VOD market in a sense that people consume more media on their screens in general. In Lithuania, the growth of users is associated with the audiences' understanding that good audiovisual content requires paying for the services.

- 2) The market of VOD services in the Baltic States has an oligopolistic structure, because the largest companies, such as Telia, are still dominating, but another enterprise, Netflix, has entered this market in 2016 and did not encounter any high barriers-to-entry. Moreover, it started to operate using local infrastructure – the internet. Netflix also did not have to reissue any licences related to retransmission, because unlike Telia in Lithuania and Estonia, it didn't have to register as a supplier of multimedia. On the other hand, Netflix still isn't perceived as a competitor for VOD services in the Baltic States, because the market in the Baltic States is much smaller than in Western European countries and currently Netflix is not very concerned with the enlargement of its user base. Anton from the Estonian Telia argues that Netflix is not targeted to a mass market yet because "Telia provide a combination of linear and regular TV with included VOD." Pranaitis from the Lithuanian Telia, however, has a different opinion, and he points out that "Netflix came to the Baltic States for the expansion to India. Therefore, Netflix had to acquire as many European content rights as possible." This is also an important reason of why there isn't enough video content in Netflix that is available in the Baltic States, while Telia in Lithuania and Estonia are constantly trying to expand their audience by offering new video content and even experimenting with their own produced content.

- 3) The production of original content is considered as a future trend and as an opportunity to expand an audience of the VOD services in the Baltic States, because at the moment, the licences to show audiovisual content on Telia in Lithuania and Estonia are being bought mostly from the same film distribution companies, like Acme, and other content aggregators, such as SF Anytime. Also, another benefit of the own-produced content on VOD platforms is the ability to release content when applicable despite the usual release windows system (from 3 to 6 months), which is more favorable to multiplexes.
- 4) The main problem that the VOD platforms in Lithuania and Estonia are facing at the moment is the high cost of content acquisition rights. Expert from the Estonian Telia emphasize that “it is very hard to negotiate contents in a way that consumer actually wants to consume it.” This problem occurs because content acquisition rights in Europe are being sold differently than in the United States. For example, Estonia is sometimes considered to be a Nordic country, and sometimes as a Central European country. Plus, the rights for each country in Europe are being sold separately. Anton explores the problem by stating that “it is a very complex problem to solve, because there are many companies in the value chain. First is the producer who produces the movie, then there is the studio who finances the movie, then there is the seller who sells the movie and then there is the aggregator who provides the service and there is the end user who consumes it. There are many steps and between those steps there are different legal requirements and different value points for each participant in that chain.” This problem creates difficulties in acquiring the necessary content and providing it to the users. Another important problem is related to the AVMSD. The Directive is criticized in the sense of fostering European content, because there are not enough good quality film productions in Europe. Pranaitis highlights that “there is not enough financing

for European film industries and the regulation cannot make European content more appealing.” Therefore, VOD service providers aren’t capable of solving this issue by investing money into film production.

- 5) In comparing the regulation of VOD services in Lithuania and Estonia, content monitoring is only performed in Lithuania where The Radio and Television Commission of Lithuania (see *Lietuvos Respublikos visuomenės informavimo įstatymas 2015*) is the institution responsible for the supervision of radio, television and VOD services as well. As expressed by Pranaitis, in Lithuania, VOD content supervision is assessed as a problem, because “if you operate in Lithuania – you have a territorial restriction and an internal regulation, too.” Internal regulation might also have significant importance later on if Netflix are to offer more audiovisual production to its users in the Baltic States, but at the moment, it is more important in Lithuania than in Estonia. It was also found that neither Estonia nor Lithuania have institutions that collect information about the market share of VOD services. It means that the regulation of VOD services in the Baltic States is still in the formation phase, where only content supervision is being monitored in the case of Lithuanian Telia. Increasingly, the information about the market share of VOD services will be more important, because the growth of the VOD market will raise new challenges for the regulation of audiovisual content production and distribution.
- 6) The representatives of the VOD platforms in Lithuania and Estonia perceive the (DSM) strategy positively, because it will help in liberating the VOD market in the sense of acquiring content geographically. A plausible monopolization of the VOD market in Europe isn’t considered at all or at least negatively. Another important issue related to the DSM strategy is that it aimed at eliminating geo-blocking. For VOD services in the Baltic States, that means that a user will be able to travel with

his VOD service across Europe. This aspect is getting more important, because the number of users that want to use their VOD services in other countries is increasing.

6. Cultural diversity, the DSM Strategy and Possible Future Trends for VOD Services in Lithuania and Estonia

Cultural diversity in the EU and its maintenance in the digital economy era are highly related to economic sustainability. To paraphrase Karppinen (2013), because cultural diversity is employed as a resource for economic development, the regulation of the audiovisual market and its development in the EU constitutes an important social, cultural, political and economic topic.

Increasingly new digital technologies and platform mobility are influencing individual and collective media consumption habits. Hollywood studios and content aggregators, such as Netflix and Amazon, are constantly trying to expand and preserve their impact by controlling when, how and what audiovisual production will be available for the consumers. From the industry lifecycle theory perspective, there are logic stages when firms are exploiting business opportunities and face different barriers-to-entry, growth, competition, mergers, innovation and decline (Cunningham, Silver 2013). But such factors as economies of scale on the supply-side and network effects as a demand-side of economies of scale are very interdependent (Birke 2013) and tend to be an issue for the business companies that are trying to achieve sufficient growth.

While the DSM strategy is being developed in order to improve access for the digital services and to develop the EU's economy, market concentration risks are still questionable in the light of political economy (Hardy 2014). Consequently, the debates about AVMSD (Ibrus, Rohn 2016), which is the instrument for the audiovisual production regulation in the EU, and the proportion of European and other audiovisual production in VOD catalogues are raising the issues that the small markets of the Baltic States would possibly face if geo-

blocking would be eliminated and the audiovisual content acquisition rights would be sold differently. Another important issue is related to the hate speech and propaganda that the Russian media are constantly spreading, especially in the Baltic States, through TV programs while using the mechanism of TV and radio media registration in different EU countries. While the DSM strategy is not very concerned with the possible threats of monopolization and the maintenance of media pluralism in small media markets, the establishment of this strategy and the update of AVMSD in the sense of the country of origin principle is still a very important subject when national security is being considered.

It has been shown that the dominant position of Hollywood films in Europe has led to a market concentration problem (Pardo, Tabernero 2012) and 60% of the VOD content already consists of non-European origin (Grece, Lange, Schneeberger, Valais 2015). This raises the possibility of a different future scenario for the Telia VOD services in Lithuania and Estonia in a sense of fostering more European film production rather than of any other origin. As the present analysis showed, the European film production supply of the Telia VOD services in Lithuania and Estonia is 4 to 5 percent higher (Graphs 1 and 2) than the supply of Hollywood production. According to the experts of Telia, the reasons are different: in Lithuania, internal regulation is performed and the audiovisual content supply is being monitored, but the growth of users of the VOD service allows the company to reach this proportion. In Estonia, on the other hand, there is no monitoring of VOD content, but the high content acquisition rights for the Hollywood film production impact the acquisition of more European films.

This proportion might change quickly if Netflix, which already operates in the Baltic States, will gain better financial possibilities to acquire rights for audiovisual content distribution and exhibition in Europe. While there are still positive network externalities in the case of Telia in Lithuania and Estonia, the situation might drastically change when the companies will enter the different stages of the industry lifecycle.

7. Conclusions

The worldwide development of VOD platforms raised the problem of audiovisual content regulation in Europe. From the EU perspective, the AVMSD is the instrument that was implemented in order to secure cultural diversity, but the growth of on-demand services in general encouraged the EU to respond to this growth by starting to implement the DSM strategy, which aims to improve access to digital content and services. Here, one of the goals has been the elimination of geo-blocking.

The elimination of geo-blocking would benefit VOD users in Europe by allowing them to use their VOD services while travelling across Europe. On the other hand, small media markets in Lithuania and Estonia might encounter monopolization and a reduced choice of European audiovisual content, because the share of US films is already ranging from 51 to 62 percent in the largest European countries (Fontaine, Grece 2016).

Such international aggregators of audiovisual content as Netflix already operate in Lithuania and Estonia, but the biggest VOD platform – Telia – does not yet consider this platform as a strong competitor. This may be due to the development stage of the Telia VOD services in Lithuania and Estonia, which remains between the shakeout and maturity stage, where Telia still retain the innovation and quality of the services.

A descriptive film title analysis revealed that the users of the VOD platforms in Lithuania and Estonia have been introduced to different film productions from the US, Canada, Europe, Asia and other countries and continents that could be found on the Lithuanian and Estonian Telia web pages. This analysis shows that users of the Telia VOD platforms are introduced to 40 percent of European film production in the case of the Lithuanian Telia and 41 percent of European film production in the case of the Estonian Telia. Film titles from the US were calculated and account for 37 percent of the total film catalogue in case of the Lithuanian Telia and 35 percent in case of the Estonian Telia. This statistical information allows us to conclude that in the case of the

biggest Lithuanian and Estonian VOD platforms, the dominant position held by the US film titles can neither be recognized or approved. In Lithuania and Estonia, the application of AVMSD can be evaluated as effective, because the catalogues aren't dominated by US film productions and the percentage of European film productions surpass the limit of regulation set in the AVMSD.

The establishment of the Digital Single Market strategy in the European Union reveals that better access to digital content and services might result in more choices of content and services for the users; however, it would not be because of the AVMSD regulation or the aim of fostering cultural diversity but rather because of European economic policy, which might use the expansion of VOD platforms for general economic development.

Therefore, while the AVMSD is targeted to regulate the amount of European film production available for the users of VOD platforms, it is also criticized as a regulatory instrument for fostering more European production, because there are not enough quality films produced in Europe and the VOD platforms aren't capable of solving this issue by investing their own financial resources – even though they are already becoming serious competitors for the cinema release window.

All in all, the biggest VOD platforms in Lithuania and Estonia aren't concerned with the DSM strategy and its implementation and what consequences it might bring for the small VOD markets in the Baltic States. A plausible monopolization of the VOD platforms due to a single market formation isn't perceived or considered to be a threat but more as an opportunity to liberate the market and to change how international video content is being acquired and distributed in the EU.

This article analyzed mostly the case of film production supply in Lithuanian and Estonian VOD catalogues of Telia as well as the proportions of European and Hollywood film content, but there is also another crucial problem that the small media markets must deal with – hate speech and propaganda that are constantly transmitted through Russian TV channels, which are registered in the EU. If we consider the dominant, Hollywood-produced film titles in the EU as

harmful for cultural diversity, the information that is being used to directly influence the Russian-speaking minorities in a way that is harmful for the Baltic States should be also taken into serious consideration while updating the AVMSD and implementing the Digital Single Market strategy.

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