



The New Framework for Audiovisual Production in Spain: Minority or Minoritised Languages?

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INTRODUCTION

Because cultural artefacts are conditioned and made permeable by the environment in which they are produced, a whole series of economic, identity, symbolic and even linguistic tropes materialise in audiovisual productions (Kutnicki, 2020: 24).

Article 3 of the Spanish Constitution establishes that Spanish is the official language of the State and that the other Spanish languages are also official in the respective Autonomous Communities in accordance with their Statutes: Galician in Galicia, Basque in the Basque Country and the Basque-speaking areas of Navarre, Valencian in the Valencian Community

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and Catalan in Catalonia and the Balearic Islands. Throughout this chapter, we analyse the impact of the current Law 13/2022 on the audiovisual industry, proposing for modifications to combat the digital exclusion of the co-official languages.

This international project, coordinated from the University of Santiago de Compostela by the Competitive Reference Research Group “Estudios Audiovisuais” (hereafter GEA), is funded by the State Research Agency (Ministry of Science, Innovation and Universities, ref. PID2022-142353OB-I00). The aim of the project is the quantitative and qualitative evaluation of the impact on the audiovisual sector of Law 13/2022, of 7 July, or the *General Law on Audiovisual Communication*, with a special focus on independent audiovisual production in those geographical and linguistic frameworks that share official status with the Spanish language; specifically, the Basque Country and Galician, Valencian and Catalonia Communities.

The aim is to determine the main strengths and weaknesses of the Law, proposing as many improvements as possible with a view to consolidating a linguistically diverse and digitally inclusive society. As a complementary objective to the previous one, we put forward proposals for improvement of the European audiovisual sector (a particularly complex and diversified sector, characterised by different technological, economic and professional profile dynamics) that the Law has ignored.

It should also be noted that this project maintains continuity with previous research carried out by GEA, which was developed around institutional policies related to European cinema conceived, produced and distributed in minority languages. As a result of this trajectory, an academic, economic and civil symposium was organised by the GEA under the title: *Ante la nueva Ley del Audiovisual: Análisis y perspectivas (About the New Audiovisual Law: Analysis and Perspectives)*. This symposium was held at the Faculty of Communication Sciences of the Universidade de Santiago de Compostela (Galicia, Spain) in September 2022 (following the approval of the new Law 13/2022) and was conceived as a thinktank of academics, professionals and civil associations with a common goal. This is: to defend digital linguistic inclusion in the face of a law that ignores the existence of a diverse linguistic and production environment such as the Spanish one. On the other hand, our project is part of the GEA’s previous research work on institutional policies (at the Ibero-American, Lusophone and European levels) related to cinema conceived, produced and distributed in minority/minoritised languages.

The research methodology consists of the creation of a theoretical conceptual framework and in-depth interviews with experts. This is followed by an analysis of compliance with Law 13/2022 in the Spanish audiovisual sector, with particular emphasis on its guarantees regarding the maintenance of a genuine linguistic, cultural and creative plurality. Finally, conclusions will be drawn and results will be disseminated in the form of recommendations aimed at mitigating and redirecting the negative impact of Law 13/2022.

Our last and most important objective will be to avoid the exclusion of all audiovisual production in the co-official languages of the Spanish state (in addition to the aforementioned languages, recognised as co-official in Article 3 of the Spanish Constitution as Galician in Galicia, Basque in the Basque Country and Basque-speaking areas of Navarre, Valencian in the Valencian Community and Catalan in Catalonia and the Balearic Islands, there are also Aranese, Bable and Silbo-Gomero), as well as the exclusion of these languages as a tool for access (through dubbing and/or subtitling) to audiovisual content in foreign languages.

NO SENSE OF PLACE

The paradoxical and conflicting relationship between media and prosumers has been a constant in their long history: in the midst of the OTT / Over-The-Top era, the media are oblivious to any geographical or cultural boundaries that hinder their inexorable aspiration for globalisation (Hoelck & Ranaivoson, 2017: 18–19), while prosumers are conditioned by the geostrategic, socio-economic and cultural framework in which they live.

Among those studies aimed at analysing the impact of the media on the socialisation process and its relationship with the space occupied by individuals on a territorial, social, cultural, economic and identity level (as an example of the hegemonic influence of television production on the social construction of reality), the contributions of Meyrowitz (1985) stand out. After four decades, Meyrowitzian approaches remain valid in the current landscape of media studies in general, as well as in the perspective that situates the media as first-order agents of socialisation, as a line of research that has been constantly updated (Kukkakorpi & Pantti, 2020) since its first formulations with Goffman's *Sociology of Interaction* (Gonnet, 2020).

Meyrowitz proposes that, in a pre-media world, most of the differences perceived by individuals depended on their territorial location, their membership of different social groups, their participation in different stages of

socialisation or their position in different levels of the social hierarchy. In other words, the position occupied by a given individual in the rigid social compartmentalisation determined, in turn, their access to information, to cultural shaping and, in short, to their experiential environment from which they made a series of life decisions that they consider personal and non-transferable:

Put very simply, the basic argument here is that many of the traditionally perceived differences among people of different social groups, different stages of socialization, and different levels of authority were supported by the division of people into a very different experiential world. The separation of people into different situations (or different *sets* of situations) fostered different world views, allowed sharp distinctions between people's "on-stage" and "backstage" behaviors, and permitted people to play complementary—rather than reciprocal—roles (Meyrowitz, 1985: 5).

According to Meyrowitz, the advent of the electronic media completely blurs the boundaries of social situations and, consequently, of social segmentation itself. In other words, access to information about social behaviour, which outlines the competence of subjects with respect to traditional social roles, abandons its absolute dependence on the experiential structuring that stems from any process of social segmentation. Consequently, the cumulative effects of the massive irradiation of the social fabric with media content are clear (in the short, medium and long term) in a profound mutation of what Meyrowitz defines as the 'Situational Geography of Social Life':

By changing the boundaries of social situations, electronic media do not simply give us quicker or more thorough access to events and behaviors. They give us, instead, new events and new behaviors (Meyrowitz, 1985: 43).

Following this suggestive line of thought, it could be deduced that until the advent of mass media, the life experiences of each individual or community were firmly determined by their geographical, political, social, cultural or educational situation. A social and historical limitation that generated constant social tensions between those citizens with full access to all kinds of privileged information (which allowed them to make decisions of greater depth and quality which, in turn, translated into an increase in their economic and political power) and those who, with no

access or with very restricted access to such a wealth of information, automatically became mere hostages or subordinate agents of the privileged class, thus perpetuating social positions (Dahrendorf, 1990). Thus, many of the great social revolutions of the modern and contemporary era, such as the social upheavals that took place in the so-called European Revolutionary Cycle, from 1820 to 1848, can be explained largely by a new historical approach in which access to information had become a contested capital resource (Berger & Spoerer, 2001: 295–296).

Meyrowitz (1985) suggests that the most logical thing would be to think that equal access to information, triggered by the irruption of the mass media (initially electronic and later digital), would be the main guarantor of social harmony and peace. In other words, if the individual or the community is able to break down the walls that condition their access to information and, consequently, their decisions no longer depend on or are no longer linked to their belonging to a certain environment, scene of interaction or relative social role, we would be (surely for the first time in the history of humanity) facing the model that is closest to the absolute democratic ideal: all citizens on the same level in terms of access to information and its consequences, sharing duties and rights in their respective decision-making, without any discrimination of a classist, racist, sexist, ageist or xenophobic nature, to name but a few of the forms of exclusion between human beings and, unfortunately, not the only ones.

However, it is Meyrowitz himself (1985: 133) who, after proposing this utopian, liberating and homeostatic vision of the media, immediately throws cold water on any pretence of democratic utopia. In fact, what Meyrowitz warns is that the preliminary results of the massive integration of information promoted by the mass media provoke, against all odds, a paradoxical increase in social tension:

Information integration makes social integration seem more possible and desirable. Distinctions in status generally require distinctions in access to situations. The more people share similar information systems, the greater the demand for consistency of treatment. The merging of information systems, however, does not necessarily lead to instant integration or to social harmony. In fact, the initial outcome of information integration heightens one's awareness of physical, social and legal segregation. The formerly excluded no longer accept 'their place'; they try to gain equality, while many of the privileged try to maintain the old exclusionary ways (Meyrowitz, 1985: 133).

At this point, it is time to apply this absence of an understanding of a sense of place to the confrontation or integration, as the case may be, between transnational OTTs and local or regional media: if an identical volume of information is shared, the differences become as unnecessary as they are unsupportable, since the integration of the different communicative instances at the planetary level (following the utopia that would guarantee the media) would seem more and more possible and desirable.

Let us be a little more concrete. Let us imagine now that a global instance marks a difference in status with respect to a local or regional one, for example, by questioning or even violating its minority/minoritised cultural or linguistic identity with mainstream audiovisual content. In this case, this mainstream content that has greater impetus than the local one would pose a difference in the production capacity and, therefore, in the access to certain content by local or regional audiences, linked to a certain territory, which would thus become integrated as a global audience (Lobato & Sarkar, 2019). For example, when so-called ‘Nordic Noir’ fiction series achieve success on OTT platforms such as Netflix, both their specific cultural traits and their audiences become part of a global mainstream: even if the toll they have to pay is precisely to make those identity traits (which are almost always so difficult to transfer) fluid. Consequently, the greater the number of territories that have the same access to the production and broadcasting of their audiovisual content, the greater will be their demand for consistency when it comes to demanding equal treatment on a global level, which is not usually the case in the current map of OTTs. These massive broadcasting platforms often escape the specific legal, regulatory and fiscal pressures of each territory—pressures that local and regional production and distribution companies and distributors, however, must bear (Szczepanik, 2020).

This is unfair and self-interested competition that advocates full access to any public across any border, regardless of the territory in which it is located, invoking the free movement of goods in a free market, but which nevertheless invokes territoriality to evade compliance with regional obligations. Thus, a London-based OTT will demand only benefits and not obligations: the benefit of having its content viewed by a Madrid audience and the benefit of being covered by the UK’s non-EU rules. This injustice provokes an inevitable tension, which is of course is the antithesis of that longed-for social harmony facilitated by the media. We can therefore conclude that this No Sense of Place and, above all, the perception and awareness of this unequal treatment, definitely increases the awareness of social and legal

segregation between some actors in the audiovisual production process. While the large, privileged corporations do everything possible to perpetuate those forms of exclusion that, to date, have ensured their hegemony, those instances of production and dissemination that previously accepted their subaltern position no longer accept *their place*, as they are now aware of their unjust situation, and are now claiming *de facto* equality, which increases conflict at the transnational level (Imre, 2018).

BACKGROUND AND CURRENT STATE OF PLAY OF EUROPEAN LEGISLATION

Law 13/2022, of 7 July, approved by the Spanish Parliament under the generic name of “Ley General de la Comunicación Audiovisual” (“General Law on Audiovisual Communication” <https://www.boe.es/eli/es/l/2022/07/07/13>), is a clear response to the dynamics of cross-border cooperation between the member states of the European Union, which we propose to contextualise in this section in a brief and operative manner.

Article 167 of the Treaty on the Functioning of the European Union encourages the most intense cooperation between the members of the Union also in those areas that are strategic to their economy and culture, such as artistic, literary and audiovisual creation. In the case of the audiovisual field, the European Union aims to generate, maintain and expand a single European market for audiovisual communication services, while at the same time guaranteeing each and every one of the cultural diversity policies promoted by the European Union (Guichot-Reina, 2023). As Law 13/2022 itself describes in its exhaustive preamble, one of the main points of reference for legal regulation in the European audiovisual environment can be found in Directive 89/552/EEC. This directive, enacted by the European Parliament and the Council on 3 October 1989, promoted the homologation of the regulations on television broadcasting that had been applied to date in the different Member States.

The regulation known as “The Television Without Frontiers Directive” (hereinafter, TWFD) established a set of measures, which were completed in successive revisions, relating to several areas of influence, thus laying the foundations of an incipient European audiovisual policy (Katsirea, 2014): the creation of a homogeneous European audiovisual space in terms of advertising communication, the protection of children and young audiences, and the promotion of what could be understood as “European audiovisual

content”. It is often forgotten that the original version of TWFD is as important as its successive revisions in 1997, 2007 and 2010 (Woods, 2016), which corrected, in successive formulations, the defects or inaccuracies of the original law. Thus, in the first revision of 1997, the TWFD attempts to regulate (without much success, it must be said) one of its most controversial principles: the nationality of broadcasting entities, cultural industries and their audiovisual content. It must be recognized that the challenge facing the TWFD was far from simple: with Europe globalising fast (and thus, by definition, neither knowing nor wishing to know geopolitical borders), the debate was whether these cultural industries and the audiovisual content should be subject to the sovereignty of the Member State in which they are distributed or to that of the country in which they are headquartered.

Beyond nationalistic approaches or the preservation of Europe’s tangible and intangible cultural heritage, as defined by the EU, this seemingly trivial issue determines nothing less than the fiscal and labour treatment of companies (as well as the audiovisual content they produce) and their access to certain public subsidy packages, whether state or European (Kulyk, 2020). In short, it is a matter of answering an apparently simple question, but one that has generated rivers of legal ink: What do we consider and what do we exclude under the term “European audiovisual work”?

In addition to the uncertain context in 1989, when the first version of the TWFD was enacted, this controversial definition of the European nationality of an audiovisual work already entailed two distinct historical problems:

1. After the Second World War, the European market developed under the tutelage, and often the commercial pressure, of the big American majors, which imposed a series of film distribution formats, hardly in line with the free audiovisual market, such as blind-booking or block-booking exhibition practices (Biltereyst et al., 2019).
2. The flood of co-productions between different film industries in the European market in the 1970s, which found its most obvious embodiment in the so-called “Europudding” production formula (Hammett-Jamart et al. 2018), the results of which, over time, had negligible effect on the quality of the European film heritage.

The most obvious proof of the complexity of granting European nationality to any audiovisual production is the profuse legislation that, year after year, is generated on this subject: regulations, programmes and rules that (correcting inaccuracies as they go along) complete the definition of “European nationality” even contradicting each other. Starting with the regulation of the Creative Europe programme of 11 December 2013 (Ref. 1295/2013 of the European Parliament and the Council of Europe), which will later be completed and clarified by two other regulations with reference numbers 1295/2013 COM/2018/366 and 2018/0190 (COD), the territorial issue will also be addressed under the Media subprogramme.

With more than thirty years of support for European audiovisual content, media extends the recognition of the European business entity (and of the audiovisual content produced by it) to that which is registered in the European Union or is owned by citizens who are nationals of one of its member states (De Turégano, 2018). We insist that this is something of critical value for an audiovisual production in permanent crisis, if we take into account that, once recognized as European, the company in question and its audiovisual production automatically become candidates for financial subsidies from the European Media programme. In this sense, Betz (2001) warned that this growing consideration of the nationality of the European audiovisual work, so closely linked to its territory of production, obviates other aspects, undoubtedly more relevant, such as the choice of the language in which the actors speak: a much more relevant fact, since it conditions the cultural integrity of an entire audiovisual production.

The successive deliveries of green papers are evidence of the EU’s willingness to face the challenges of a European audiovisual sector in full transformation in its mode of production and consumption in the face of technological advances and new consumption habits. Similarly, these Green Papers reflect the growing concern and desire to achieve the best European positioning in the face of the diversification of audiovisual formats and an audience that, fragmented and globalized, can choose between national and global audiovisual service providers, whose delocalization is presented as a disturbing destabilizing factor.

LEXCAV: AN ALTERNATIVE TO LAW 13/2022 AND THE EUROPEAN AUDIOVISUAL APPROACH

A group of researchers based in Galician, Welsh, Catalan and Basque universities, who had already participated in different projects in the last quarter century (Castelló-Mayo, 2023) and who met at the international meeting held on 15 September 2022 in Santiago de Compostela entitled “The new Audiovisual Law: analysis and perspectives”, shared the need to analyse the impact of European communication policies and their legal transpositions to the regulations of each member country and (where necessary) propose possible alternatives for their improvement.

At this international meeting, which was the result of close collaboration between the university, the audiovisual sector and citizens’ groups, the consequences that the new *General Law on Audiovisual Communication* would have for the Spanish audiovisual sector and its cultural and linguistic diversity were analysed critically. The transfer of knowledge to society and the recommendations to public institutions that emerged from that symposium were collected in a volume, coordinated by Barreiro-González (2022). This is how, in September 2022, the initiative arose to undertake the research project presented here. The main objectives of this international project are the quantitative and qualitative evaluation of the impact of Law 13/2022 on the audiovisual sector, paying special attention to independent audiovisual production in those regions of Spain with co-official languages, such as Galician, Basque and Catalan.

Once its fundamental objectives had been defined, we had to find an eloquent name for the project. After successive brainstorming among the members of the promoter group, it was decided to baptize the project with the acronym “LexCAV”:

1. “Lex”, because it is the Latin term that (although it has a pecuniary etymological origin, since the word ‘Lex’ originally defined the formula or the precise canon for the mixing of metals, referring especially to the amount of gold to be added to each Roman coin) usually heads the currencies of public and private institutions linked to the legislative or legal world. We thus understood that “Lex” was a term “hijacked” by the institutions that deserved to be restored to the citizenry, according to the Aristotelian maxim by which the Law is the common consent of the citizenry of the Polis. In this way, LexCAV aims to be a (modest, though militant and critical)

alternative to other hegemonic European institutions, such as EUR-Lex (<https://eur-lex.europa.eu/>), the repository par excellence of EU legal documents. Available in the 24 official languages of the EU, EUR-Lex updates daily all the jurisprudence of the Union, its international agreements and the national implementation measures in each of its member states. EUR-Lex is managed by the Publications Office of the European Union (<https://op.europa.eu/es/web/about-us/about-publication-office-of-the-european-union>), which establishes itself as an European institution of excellence for information management, available to the European political class and citizens, although the participatory governance of citizens in the conception, processing and parliamentary approval of European regulations is rather scarce, if not non-existent.

2. “CAV”, an acronym alluding to the “Ley General de la Comunicación Audiovisual” (“General Law of Audiovisual Communication”), which would be the focus of our project. In Spanish, the acronym “CAV” also defines the university studies and faculties that train their students in the professional and academic disciplines related to cinema, television, radio, photography and multimedia.

Fortunately, our project obtained competitive funding, in the public call 2022 of the State Research Agency of the Ministry of Science, Innovation and Universities. The Evaluating Commission of the Program for knowledge generation projects, oriented to advance the search for solutions to the current challenges of society, pondered the variety of contexts (normative, socioeconomic, cultural and creative) that the project involves, starting with its attention to gender studies, and for its broad transdisciplinary approach that is a faithful reflection of the scientific-technical synergies in the generation of knowledge of the GEA and its European research partners over the last twenty-five years.

LexCAV starts from those critical studies rooted in the Political Economy of Communication (Zallo-Elguezábal, 2021) as a line of critical analysis of media power relations, which place special emphasis on linguistic diversity. To this end, LexCAV proposes a series of specific measures, regarding those aspects included and excluded from the General Law on Audiovisual Communication and its treatment of all those co-official languages existing in Spain, as common languages of audiovisual communication.

But why is this critical analysis necessary at this very moment? A superficial analysis of the Law is enough to realise the pyrrhic quota of audiovisual content produced in co-official languages required of streaming platforms: barely 6%. Similarly, Law 13/2022 seems to be limited to a set of updates with respect to previous laws, without daring to address the urgent redefinition of the figure of the independent producer, which has been the object of constant demand from the audiovisual sector. This diffuse definition of the figure of the independent producer generates strong controversy in the audiovisual sector, as it opens the door to large multimedia groups being able to slip through the cracks of the Law by stating that productions are by ‘independent producers’, thus making use of the fiscal subsidies for this category.

Another aspect to highlight is the consideration of territories as places of socio-cultural and socio-communicative interconnection, which require communication policies that compensate for external communicative irradiation, in accordance with Philip Schlessinger’s (2016) epistemological approach: precisely the opposite of a Law that, like Law 13/2022, reduces linguistic pluralism, which is a constitutional right, minimising the media broadcasting quotas of minority languages to pyrrhic quotas, as has already been specified. The same applies to the effective implementation of gender equality in cultural policies. Although the gender perspective is foreseen in Article 26 of Law 5/2007 for the effective equality of men and women (as well as its transposition in Law 55/2007 on Cinema, in its Articles 19 and 25), the effective application of its content is pending a concrete normative development.

For all the above reasons, we believe that our proposal is innovative and necessary: a law that covers the cultural policy of a country or of the European Union cannot be limited to the negotiation of percentages that are always insufficient, always tokenistic. Europe must ask itself what audiovisual model it wants for itself and put into practice its ultimate consequences: the constant threats of ‘commercial warfare’ by transnational mass media groups cannot be the eternal excuse for submission and the renunciation of a genuinely European model. In this sense, the professional, citizen, cultural and linguistic groups that will be directly affected should be actively involved in the generation of any draft law, prior to its parliamentary processing, and not only the political class, which is currently the only protagonist and main actor in the legislative process.

Law 13/2022 also regulates the provision of audiovisual communication services and video sharing services through OTT, as a state transposition of the European Directive 2018/1808 of the European Parliament and the Council of Europe, enacted on November 14, 2018. It is striking that both the European Directive and Law 13/2022 avoid legislating for the worrying phenomenon that Kornai (2013) called “Digital Language Death”: the share of Internet access using minority/minoritized languages does not reach five per cent, a percentage that plummets even more among the youngest Internet users. Nor does transposition 13/2022 guarantee a sufficient presence of the co-official languages on the major OTT platforms, blurring the territorial link between the cultural industries and their products.

We insist, it is not a matter of reducing the debate to a war of percentages. However, the results are the best proof that Law 13/2022 has missed the opportunity to guarantee the fundamental role of the co-official languages, throughout the length and breadth of Spanish territory. Consequently, the creative and identity-based contribution of these co-official languages and cultures, their singularity in the dialogues of fictional works, in the scenic setting and in the creation of empathetic characters, is also lost. Instead, the Law has given in to a homogenising approach that reduces audiovisual content to a mere consumable, predictable and, therefore, dispensable entertainment.

Far from apocalyptic and dystopian predictions, the real problem with regulations such as Law 13/2022 is that their ultimate consequences will only be observable in the very long term. This does not prevent us from concluding that, in view of the rate of digital exclusion of minority languages in the face of the hegemonic languages, this neglect of responsibility will have incalculable effects on future generations (Castelló-Mayo et al., 2021). Similarly, the lack of ambition of Law 13/2022 in achieving gender equality through a series of mechanisms favouring diverse inclusion will perpetuate the marginalisation of women in certain professional routines in the audiovisual sector at the national and European level.

In short, it must be acknowledged that, once again, the European Union’s communication policies have been largely overwhelmed by the impetus of a market that thrives in the breeding ground of a globalised environment, which has radically modified the patterns of production, circulation and access to audiovisual content. Therefore, together with Ledo-Andión et al. (2016), we ask ourselves how these communication policies could facilitate the coexistence between a model of economic

growth (based on cultural and technological expansionism) and the safeguarding of diversity in those cultures with more limited territorial contexts.

SOME CONCLUSIONS AND HOPES FOR IMPROVEMENT

The Spanish General Law 13/2022 of Audiovisual Communication theoretically seeks the protection of minority languages but, practically, it fails in three main aspects: screen presence of each type of production, global VOD services versus local VOD services and transparency requirements for the platforms. In the following argument, we will describe the issues related to each of these aspects.

The first aspect that must be analysed is that of screen presence for each type of production. As previously mentioned, the establishment of a minimum broadcasting time for certain types of content seeks to protect them and promote local productions as opposed to more globalized content. However, the result is ridiculous percentages of content for minority cultures. This happens both in linear and VOD television. According to Law 13/2022 of Audiovisual Communication, in linear television 51% of annual broadcasting time must be devoted to European audiovisual works. From this 51% of European content, 50% (25.5% of total time) of the content must be in an official language of the whole country or the regions with recognized co-official languages.

This implies that all this content could be broadcast in Spanish and the rest of the languages need not be represented in the linear TV audiovisual offering. Only RTVE (Spanish public television) has the obligation of having a 15% of the total 25.5% reserved for co-official languages. This means a compulsory presence of only 3.825% of the total broadcasting time of public television. Moreover, each language must have a representation of 10% of this 3.825%. This means an obligation for RTVE of having, for example, a 0.3825% of its content broadcasted in Galician, a language that is spoken by more than three million people (about 6% of the population). As is obvious, these quotas are more than insufficient, as they are chimerical for private TV channels, and they do not represent Spanish society in public TV.

The case of VOD services is even worse, as only 30% of their content must be dedicated to European production. As in linear TV, 50% of this content (thus 15% of the total) must be in Spanish or any co-official language. Of this 15%, 40% (6% of the total) must be dedicated to productions in co-official

languages, having a minimum of 10% (0.6% of the total) in each of them, according to the population. However, these obligations only refer to those VOD service providers located in Spain. As we will see later, the main VOD platforms operating in Spain are not subject to these obligations, so even this pyrrhic protection for minority cultures and languages is chimerical in most cases.

Beyond percentages, the law establishes a series of principles and tools intended to protect co-official languages. It states that both the country and regional governments should promote the presence on TV of content produced, dubbed or subtitled in regional co-official languages. Moreover, the law says that the audiovisual companies will guarantee the incorporation of content dubbed in co-official languages for children below 12 years old, but it does not specify the number or percentage of content (it could be just one production and the companies would still be in compliance with the law).

The law also states that the country and the regions should encourage the creation of self-regulation agreements with VOD companies not based in Spain to incorporate dubbed and subtitled content in co-official languages, especially those contents that have a target audience below 12 years old. Words like encourage or self-regulation are far from implying an obligation or control of service providers by the authorities. Finally, it also encourages the creation of an aid fund to promote dubbing and subtitling in the co-official languages managed by the respective regions and financed both by the country and regional governments, in accordance with annually approved budgets.

Two main conclusions can be drawn from this part of the regulation. First, there is an issue present throughout the whole law: lack of definition. Words like promote, self-regulation agreements, guarantee (without specifying amounts or objectives), prominence or ease of access describe the regulator's wishes or objectives but do not imply enforceable obligations for content providers or protection for minorities. In some cases, an obligation is presented (not even for all the content providers) and then the cases in which this obligation may be ignored are described.

Generally, these cases are so broad that it is left to the television company's choice to comply with the original obligation. An example of this is the obligation for all the VOD providers located in Spain (not the foreign providers) to include the different linguistic versions of the contents that already have a subtitled or dubbed version in a co-official language. This statement seems reasonable as the content is already

existent, but the law presents four scenarios in which, if any of them is not met, the obligation can be ignored: because the subtitled and dubbed versions are free to the company their inclusion is technically viable. They have been financed by regional governments or are owned by regional public television stations, demonstrating a quality level verified by the competent authorities. In a real world case, these scenarios provide the legitimacy for the companies to include dubbed or subtitled content only when it is necessary to reach the quotas. Another example is the fund for dubbing and subtitling in co-official languages which is subject to annually approved budgets. This means that budget availability, at some point, may be totally inoperative, thus making the fund useless.

The second conclusion leads the discussion towards the second problematic aspect of the law: the different treatment of global VOD services versus local VOD services. Although the requirements for local VOD services, as it has been presented, are insufficient, they are better than nothing. Global VOD services are not obliged to do anything. This is an issue if we consider the data describing the number of subscribers of each VOD service in Spain. The Kantar Panel of Entertainment on Demand (González & Sunnebo, 2022) from July to September 2022, describes the scenario of VOD providers in Spain, in which 12.4 million homes access VOD content. 68% of these homes have access to Amazon Prime Video (this data could be distorted as Amazon Prime Video is offered with Amazon Prime and the Panel measures access not use, so there may be homes that have Amazon Prime but do not make use of Amazon Prime Video), 65% have access to Netflix, 27% to Movistar+, 25% to HBO Max, 24% to Disney+, 9% to DAZN and 3% to Filmin. The CNMC (Comisión Nacional de los Mercados y la Competencia) publishes each semester a panel with data of the use of VOD services by the Spanish population. The last panel presents the results of the last semester of 2023. It presents similar results to Kantar considering that it measures the use of these platforms which require a subscription. 39.8% of homes with access to a VOD platform have Netflix, 21.6% Amazon Prime Video, 17.6% Movistar+, 7.3% HBO Max, 7.4% Disney+ and 5.2% others. As can be seen, only one of the top five VOD providers in Spain is based locally. In practice, this means that the law does not affect the overwhelming majority of companies offering these services and local minority languages and cultures can be completely ignored by them. The main question that arises from this data is: is it possible to regulate global companies to protect local cultures?

The answer is that it should be possible. A single country like Spain may not be able to regulate this content, but the European Union should give a more concise legislative framework which empowers the countries to protect their cultural heritage. Moreover, even from a philosophical point of view, what is a local and a global VOD provider? Why are VOD companies such as Netflix or HBO, whose content is different depending on the country, not considered local providers? It is obvious that they offer their content worldwide operating in multiple countries.

However, the content you can access differs depending on which country you have your subscription. If you subscribe to Netflix Spain, HBO Spain or any other VOD service offered in Spain, these platforms operate like local VOD providers from the point of view of the final consumer. Moreover, these platforms are subject to national regulations on child protection, accessibility or advertising. Why are they not under language protection regulation? All these questions arise when comparing the way these global companies operate in Spain with the local ones.

The main difference relates to the fact that the local providers must be registered in the register of providers, they only operate in Spain and they are subject to all the regulations that have been described previously. On the other hand, the legislator leaves the presence of co-official languages in the catalogues of global VOD providers to the goodwill of the companies, creating a disparity in the criteria applied and a lack of protection for these languages in the most important platforms in terms of number of users.

The third point of analysis is focused on the lack of transparency of the platforms. The law does not articulate any procedure or obligation for the companies to give clear information to users and regulators. How can the degree of compliance with a law be analysed if it is not possible to access the necessary data to do so? Under the law, the rights of the final users to know this information are completely ignored. The CNMC and the Ministry of Economic Affairs and Digital Transformation are the institutions responsible for controlling different aspects of how VOD companies operate in Spain.

To achieve this goal, the law states that both institutions must collaborate, and content providers are obliged to cooperate with these authorities. However, it is impossible for the final user to know if this collaboration is working or whether the law is being complied with as the results of this compliance analysis by the institutions (if there are any) are neither public nor accessible. As a result, several research groups such as GEA (Grupo de Estudios Audiovisuais from the University of Santiago de Compostela) or

NOR (from the University of the Basque Country) are trying to do this monitoring work but they are running into a brick wall.

As an example, neither Netflix, HBO Max, Disney+, Amazon Prime Video, Filmin, Movistar+ nor RTVE Play provide specific data on the total number of productions available in their catalogue in Spain or information about the productions available in each language (or both). Without this data it is impossible to calculate if the quotas are being met. Moreover, it is also impossible to determine the amount of European or Spanish content available on the platforms. This lack of information leads the researchers to asking the companies directly, getting no answer in most cases. As a result, unofficial repositories such as JustWatch or UNOGS (Unofficial Netflix Online Global Search) must be used to approximate a global view of the situation. The main issue with these sites is that it is not clear how they obtain their data or the level of accuracy and currency of their content. Thus, the conclusions reached from their data can be an approximation but not scientifically based information.

In conclusion, from the point of view of minority languages, the Spanish General Law 13/2022 of Audiovisual Communication claims to be a step forward in their protection but lacks clarity, verifiability and ambition. The quotas are insufficient (only 0.6% of the catalogue must be in each of the co-official languages) and only compulsory for local providers. Foreign providers have no obligation to follow any of the indications related to co-official languages and their collaboration in their preservation is based on self-regulation and agreements with regional government which are not compulsory.

Finally, it is impossible to determine the level of compliance with the law as VOD companies are not obliged to provide the necessary data for monitoring and the institutions, if they do have access to such data, do not make their compliance analysis available for the public.

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REFERENCES

Barreiro-González, M. S. (Ed.) (2022). *Perante a nova lei do audiovisual: análise e perspectivas* (Vol. 15). Axencia Gráfica.

- Berger, H., & Spoerer, M. (2001). Economic crises and the European revolutions of 1848. *The Journal of Economic History*, 61(2), 293–326. <https://doi.org/10.1017/S0022050701028029>
- Betz, M. (2001). The name above the (sub)title: Internationalism, coproduction, and polyglot European art cinema. *Camera Obscura*, 16(1), iv–45. Retrieved April 17, 2024, from https://doi.org/10.1215/02705346-16-1_46-1
- Biltereyst, D., Maltby, R., & Meers, P. (Eds.) (2019). *The Routledge companion to new cinema history*. Routledge. Retrieved March 12, 2024, from <https://doi.org/10.4324/9781315666051>
- Castelló-Mayo, E. (Ed.). (2023). *EUVOS: la aportación de las pequeñas cinematografías al patrimonio cultural inmaterial europeo*. Tirant Lo Blanch (Humanidades).
- Castelló-Mayo, E., Ledo-Andión, M., & López-Gómez, A. M. (2021). Making room inside the doughnut: European audiovisual subtitling in non-hegemonic languages as an opportunity for global language justice. *Language and Communication*, 81, 93–102. Retrieved April 16, 2024, from <https://doi.org/10.1016/j.langcom.2021.10.001>
- Dahrendorf, R. (1990). *The modern social conflict: An essay on the politics of liberty*. University of California Press.
- De Turégano, T. H. (2018). European Union initiatives for independent filmmakers across Europe. In D. Baltruschat & M. P. Erickson (Eds.), *Independent filmmaking around the globe* (pp. 39–52). University of Toronto Press. Retrieved February 23, 2024, from <https://doi.org/10.3138/9781442620377-006>
- Gonnet, J. P. (2020). Why interaction? A reconstruction of Erving Goffman's early works. *Revista Reflexiones*, 99(1), 168–188. Retrieved January 15, 2024, from https://www.scielo.sa.cr/scielo.php?pid=S1659-28592020000100168&script=sci_arttext&tlng=en
- González, M., & Sunnebo, D. (2022). Newly launched service shows Spanish streaming market to be hyper competitive. *Kantar Inspiration*. <https://www.kantar.com/inspiration/technology/newly-launched-service-shows-spanish-streaming-market-to-be-hyper-competitive>
- Guichot-Reina, E. (2023). Introducción a la reforma y ámbito de aplicación de la LGCA. *Revista General de Derecho Administrativo*, (63), 1–33.
- Hammett-Jamart, J., Mitric, P., Redvall, E. N. (2018). Introduction: European film and television co-production. In J. Hammett-Jamart, P. Mitric, E. N. Redvall (Eds.), *European film and television co-production*. Palgrave European Film and Media Studies. Palgrave Macmillan. https://doi.org/10.1007/978-3-319-97157-5_1
- Hoelck, K., & Ranaivoson, H. (2017). Threat or opportunity? Cultural diversity in the era of digital platforms in the EU. *Quadern Del Cac*, 43(24 May), 17–28.
- Imre, A. (2018). HBO's e-Eutopia. *Media Industries Journal*, 5(2). Retrieved May 30, 2024, from <https://doi.org/10.3998/mij.15031809.0005.204>

- Katsirea, I. (2014). The television without frontiers directive. In K. Donders, C. Pauwels, & J. Loisen (Eds.), *The Palgrave handbook of European media policy*. Palgrave Macmillan. Retrieved April 2, 2024, from https://doi.org/10.1057/9781137032195_16
- Kornai, A. (2013). Digital language death. *PLoS ONE*, 8(10), e77056. <https://doi.org/10.1371/journal.pone.0077056>
- Kukkakorpi, M., & Pantti, M. (2020). A sense of place: VR journalism and emotional engagement. *Journalism Practice*, 15(6), 785–802. Retrieved February 9, 2024, from <https://doi.org/10.1080/17512786.2020.1799237>
- Kulyk, L. (2020). Film nationality: The relevance of this concept in Europe. *The Journal of Arts Management, Law, and Society*, 50(2), 71–84. Retrieved January 17, 2024, from <https://doi.org/10.1080/10632921.2019.1698482>
- Kutnicki, S. (2020). *Impermanent cinema: A Rhetorical History of Decline* (Doctoral Dissertations & Theses 27959437) Department of Communication and Culture, Indiana University, Bloomington.
- Ledo-Andión, M., López-Gómez, A. M., & Pérez-Pereiro, M. (2016). European cinema in the languages of stateless and small nations. *Revista Latina de Comunicación Social*, 71, 309–331. <https://doi.org/10.4185/RLCS-2016-1097en>
- Lobato, R., & Sarkar, P. (2019). The OTT TV box as a diasporic media platform. *Media Industries Journal*, 6(2). Retrieved April 17, 2024, from <https://doi.org/10.3998/mij.15031809.0006.208>
- Meyrowitz, J. (1985). *No sense of place: The impact of electronic media on social behavior*. Oxford University Press.
- Schlesinger, P. (2016). The creative economy: Invention of a global orthodoxy. *Innovation the European Journal of Social Science Research*, 30(1), 1–18. Retrieved March 2, 2024, from <https://doi.org/10.1080/13511610.2016.1201651>
- Szczepanik, P. (2020). HBO Europe's original programming in the era of streaming wars. In L. Barra & M. Scaglioni (Eds.), *A European television fiction renaissance: Premium production models and transcultural circulation* (pp. 243–261). Routledge.
- Woods, L. (2016). Jurisdiction in the television without frontiers directive. In D. Ward (Ed.), *The European union and the culture industries: Regulation and the public interest* (pp. 145–163). Routledge.
- Zallo-Elguezábal, R. (2021). El anteproyecto de Ley General de Comunicación Audiovisual: una guía crítica de lectura. Retrieved February 15, 2024, from https://repositorio.consejodecomunicacion.gob.ec//handle/CONSEJO_REP/4012

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