

Screen windows: Talking about a revolution

Disruptions, regulatory
dilemmas and opportunities
for the audiovisual industry

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Foretelling the present

Projeto Paradiso is a private foundation dedicated to the growth of Brazil's audiovisual industry. To celebrate our launch in 2019, we invited Johanna Koljonen to deliver her annual Cannes Marché du Film lecture. For the past decade, she has been documenting and analyzing the film industry. Her predictions for the future of film are published each year at the Gothenburg Festival under the title: *Nostradamus Report*. On that occasion, Koljonen shared with her Brazilian audience her perspective on the future of the global film industry.

It's 2022, a year pregnant with important political changes in our country, and we are slowly emerging from the pandemic. We are inspired by Johanna's exercise and set ourselves a challenge: if it seems impossible to predict what will happen, can we at least shed light on the present situation and capture the most pressing issues facing our industry? Is it possible to establish a shared understanding of that which has gotten us to this point?

Josephine Bourgois

EXECUTIVE DIRECTOR PROJETO PARADISO

Our initial plan was to cover many areas of interest for the screen industry. It soon proved too ambitious. We chose, then, to focus on one of the bottlenecks that we see as the most urgent for the market: the challenges for exhibition, production and distribution in the post-pandemic industry.

We all know that in the last three years the audiovisual sector has gone through fast-forward metamorphosis: technological advances, shortening of windows, concentration of players, redefinition of roles in the production chain, acceleration of the transformation of consumption modes, new budget dimensions, among others. All the components of this industry are impacted, in some way, by this ongoing revolution.

Therefore, it seemed important to us to take a step back and process all that has transpired. Just the effort to understand what is happening seems valuable and not at all obvious: we need to see the new contours

of this powerful global industry to reflect on the decisions that both public and private actors must take for sustainability and impact.

This is how the e-book you are reading was conceived. Brazilian specialist, Ana Paula Sousa, edited, as well as wrote, the following three papers, with the help of journalist Guilherme Ravache. Paula Gastaud, an expert in streaming distribution, served as an advisor. Throughout the process, 21 professionals from the national and international market were interviewed to try and unravel the nuances of regulation, consumption, and distribution in this new audiovisual era. The last paper is a case study on Brazilian regulation which we think will be of interest for a global audience as it highlights the struggles between a state-based regulatory approach and the challenges set by the market itself. The questions it raises seem absolutely relevant for any self-doubting screen industry player at the moment.

We decided to use infographics to help tell this story: the visualization of trends in an ever-changing market makes it easier to understand. Lastly, we are very happy to count on an introduction written by Johanna Koljonen, an inspiration in trend analysis. She points out similarities and differences within the international market and indicates the critical points and perspectives she sees for the Brazilian film industry.

More than an exercise in predicting the future, we hope this material helps launch a discussion - one that is as urgent as it is complicated.

Two questions

Monitoring the present and extrapolating possible future directions is of vital importance in every industry, but particularly so in the audiovisual sector right now. We are a decade into the profound structural changes brought about by digitalisation, and the new normal will soon find its form. Everyone in the audiovisual value chain can be part of shaping that reality, but to negotiate, innovate, and regulate efficiently, we need to understand the viewpoints and realities of the other stakeholders.

This timely and necessary report centres Brazilian perspectives and experiences in the context of the international landscape, and I found it fascinating reading. From my northern European perspective, I have only one point of criticism: that the prospects of the Brazilian industry might in fact be slightly more hopeful than what the bleak facts suggest overall.

As I write this, late in 2022, the global streaming market is facing a number of tension points. Production investment is still growing relative to previous years – but it seems to be levelling out, and stockholders are increasingly demanding profitability from multinationals whose historical expansion was based on debt.

Johanna Koljonen

AUTHOR OF THE *NOSTRADAMUS REPORT*

When it comes to regulation and negotiations for rights ownership, European markets demonstrate fruitful examples of win-win scenarios – but also the disastrous example of Denmark, where a failure to coordinate demands of the creative guilds with a very ambitious governmental streaming levy led to the internationals cancelling all local productions until further notice. The local industry, historically the strongest and most internationally successful among the Nordic countries, was thrown into crisis overnight. Production companies that had in the last years reoriented themselves entirely towards serial production were affected particularly hard.

There is also a creative tension between local production environments and global audiences. On one hand there is concern, and some very real examples, of streaming commissioners demanding changes to make content more palatable to global (often honestly just American) tastes, a tendency that can over time make content homogenous and bland. On the one hand there is the experience

that extremely well-produced locally specific content – in local languages and speaking to local cultures and concerns – can travel to build enormous international audiences. It admittedly helps if the local story is scaffolded by a familiar genre structure or has a universal human conundrum at its heart, but on the other hand that is also true for the local markets. In fact the best films and TV shows tend to combine generic elements with genuine, honest, and emotionally truthful storytelling, resulting in the very opposite, in fact, of washed-out and meaningless “globalised” commercial film.

Each of these observations offers possibilities as well as threats. When it comes to production investment, for instance, Netflix is currently expected to stabilise at about USD17 bn annually. This is an astronomical sum, although it is worth noting that inflation and increasing costs of many aspects of production and of acquisitions (as discussed in a later chapter) makes it effectively somewhat lower. Most importantly, however, there are strong signals that a great deal of

this money will not be invested in the company’s mature markets – the US and Europe. Elsewhere in the world, the money will stretch further and contribute to growing local audiences (especially now that more and more streamers including Netflix are introducing more affordable advertising-financed or advertising-supported pricing tiers).

This strategy only makes sense if the streamers are confident in their ability to leverage content from developing markets into global hits. Depending on the platform and on the taste of the individual commissioners, this will probably promote both the silliest, most commercial high concept projects – and the most qualitative, gripping, and complex elevated filmmaking.

Which countries will benefit from these increasing investments, however, depends on a number of factors. Certainly the maturity and diversity of the production landscape, but also the ability of the local stakeholders to negotiate agreements about rights, fees, and investment

obligations that are mutually sustainable. A multinational media company will obviously never admit this, but levies or similar structures might be in their interest too, as production markets in which they operate need to be stable at least in the medium term.

Additionally, a growing local audience for streaming content is a strong incentive for international investment. In the following chapters, many data points suggest enormous potential for Brazilian storytelling for Brazilian audiences: tens of millions of monthly viewers of YouTube specifically on television sets, increasing investment from local services, the number of people who currently do not have broadband internet, but might. Further accelerating the digitalisation of the country overall would benefit the economy in any number of ways, and as a side effect, support the local audiovisual industries.

Because of course, in the end, we are sustainable as an industry only when we are

beloved by our true audiences, who are not the commissioners, the film funds, or the foreign investors, but our neighbours and our cousins, and the superfans at a university film club, and the kids of the bureaucrats at the Department of Culture, and a schoolteacher or hairdresser or builder in a small town at the other end of the country.

In this way an uneven but enormous economy like Brazil is not different from the wealthy but tiny country like Finland, where I am originally from. The local market will always feel too small to support our film industries, and to build and sustain a local film industry, we do require at least moderate amounts of public funding, and ideally a fair bit of foreign investment. But paradoxically, once we exist as an industry, once we are working, when we manage to truly move the audience a hit can have enormous impact, and that impact comes with economic and creative freedom down

the line. Especially in a country like Brazil, where even a modest audience is enormous in absolute numbers!

The challenge then, is to keep at least two questions in mind at the same time. One is about how we build a sustainable, professional industry in the short term: an industry capable of predictably producing works to the same international standard our audiences enjoy on TV and in the cinema every day. The other is about how we leverage those skills, and the new digital business environment, to tell stories that matter to our primary audiences, their dreams and their fears. In the end it is that direct relationship is what will cushion us from political changes affecting public investments, and from fluctuations in the global economy that will unpredictably change the priorities of multinational companies.

This report offers excellent input to start thinking about these issues, and I hope it will be read not just by those working on a structural level, but also by producers, distributors and talent, whose contributions

to the sustainable industry are just as necessary and vital.

A new scenario: the big techs are here to stay

Introduction

The world will never be the same as it was prior to COVID-19. Experts from all sectors are still trying to understand the impact of the changes brought about by the pandemic and the opportunities that this revolution will generate. The audiovisual sector is no exception.

Will movie theaters die? Will streaming kill TV? Will we all work for a half-dozen technology companies in the world? Will new narratives take place in the metaverse? Will films be produced by receiving investments from fans who buy NFTs (non-fungible tokens, which are the topic of the next article) using intelligent contracts based on networks like Ethereum?

As the pandemic has proven, our predictions are fragile in the face of reality. Trying to predict the future says more about who makes the predictions than about the future itself. As financier Howard Marks says, “everyone today has the same data about the present and the same ignorance about the future.”

If predicting the future is an exercise that usually results in error, analyzing the present can be a good way to prepare

for it. Researching patterns and applying them to our decisions is what Marc Lipsitch, a Harvard epidemiologist, called “informed extrapolation” and is what we do when we try to understand how humanity has and will continue to adapt to COVID-19.

Although epidemiology and investments are fields of knowledge seemingly far removed from the audiovisual sector, they can help us create a framework for understanding how the entertainment industry is being impacted and transformed.

New players, new techniques

One example of the ongoing change was *Coda*'s win as Best Picture at the Academy Awards. Apple TV+ was the first streaming platform to win what, for many, is the film industry's biggest award.

The movement began in 2016, when Amazon's *Manchester by the Sea* became

the first film from a streaming company to be nominated for Best Picture. In 2022, Netflix's *Don't Look Up* and *Attack of the Dogs* were both nominated for it. Netflix has tried, over the years, to win Best Picture, but in the end it was Apple who did it first, showing that a big tech can be a major player in Hollywood.

Apple paid \$25 million for the distribution rights to *Coda* - a record for Sundance, but almost nothing for a company that makes \$400 billion a year. Apple put the film, which cost less than \$10 million to produce, on Apple TV+ and in a limited number of movie theaters for a brief period.

The investment in the Oscar campaign would have cost between \$20 and \$25 million. Netflix spent even more to promote *Attack of the Dogs*, which received 12 nominations. Even though the Oscars' audience is declining, the awards have taken on huge importance for platforms seeking to prove that they deserve to be taken seriously within the film industry.

In Apple's case, the Oscar win has increased the notoriety of the company's streaming service, which competes for subscribers with Netflix, Disney+, and HBO Max. The competition for major awards and red carpets also helps convince producers that Apple TV+ is the appropriate “home” for high-profile movies and TV shows. This logic holds true for Netflix and other platforms not associated with the studios.

Lisa Taback is a film awards campaign specialist whose company was acquired by Netflix in 2018. She is the one leading the efforts of the streaming giant which, in 2020, came very close to taking the dream statuette with *The Irishman*. Taback worked for Harvey Weinstein in the 1990s and helped create campaigns for a number of winners, such as *The English Patient* and *Shakespeare in Love*, and later, as head of her own company, *Spotlight*.

The resistance of some Academy members to giving the industry's top prize to a streaming company seems to have diminished with the COVID pandemic,

not least because all the studios have also turned to a new way of producing and distributing films.

In 2022, the platforms' wide advantage in awards nominations pointed to the weakening of the traditional Hollywood studio model in favor of the big techs and their platforms. *Dune* and *King Richard*, other strong contenders, premiered simultaneously in theaters and on HBO Max.

It is worth recalling that even before the pandemic, in 2019, *Roma*, by Alfonso Cuarón, generated controversy in the Academy by winning three statuettes. The prevailing theory at the time was that resistance to Netflix, seen as a threat to movie theaters, cost *Roma* the Oscar for Best Picture. Netflix had then broken tradition by releasing the film in select theaters three weeks before the premiere in streaming.

Academy members, such as Steven Spielberg, advocated for the in-theater experience. Spielberg, one of the most

influential figures in Hollywood, campaigned for *Green Book* - which took the award - arguing that a vote for that production was a vote for cinema. The director openly defended the value of a movie theater experience and suggested that Netflix 'movies' should be considered for Emmys and not Oscars. And he wasn't the only one in the Academy with that opinion.

The fact that in 2021 Spielberg signed a contract with Netflix to produce several new films for the platform each year highlights just how much Hollywood has been forced to embrace the platforms. Ironically, Spielberg's *West Side Story* competed with *Coda* for the Best Picture award.

It is curious to note how even the campaigns for the Oscars have changed. The streaming platforms have focused on the volume of awards. Categories formerly less competitive, such as Best Short, now have films with a production budget of \$5,000 spending more than \$40,000 on the campaign. The amounts have become so high that the streaming giants can hardly compete.

Last February, Apple rented movie theaters in the United States to show *Coda* for free. Some executives from rival studios complained about the decision, since this strategy allowed Apple to avoid disclosing box office revenues. A film's poor performance in ticket sales can diminish its momentum in the Oscar race. *West Side Story*, which was considered an early contender, lost momentum when it grossed only \$38 million in the United States and Canada.

Amazon's recent acquisition of MGM Studios and its catalog for \$8 billion (priced well above the company's market value) is another milestone. In addition to the catalog of over 4,000 movies and 17,000 TV episodes, Amazon has taken over one of Hollywood's best-known brands.

But while technology companies invest, traditional media and communication groups review their strategies. Telecommunications giant AT&T has sold all its media properties, including the colossal WarnerMedia and its Warner Bros. Studio. The logic behind the deal, which

led them to be acquired by a "smaller" competitor, Discovery, is that AT&T would not be sufficiently capitalized for the new phase of the media business.

For AT&T, originally a telecom company, investing in 5G is a more lucrative opportunity than investing in audiovisual productions.

In streaming there are always more and more competitors with smaller and smaller margins. In the United States, the estimate is that there are already over 300 streaming providers.

Changing the focus of the business and giving up content production are options for AT&T and other conglomerates that use the audiovisual sector as a means to diversify revenue sources or get close to the big stars. The same cannot be said for most media groups, which are still poorly diversified and depend on audiovisual productions. Netflix itself has become, to a greater extent, hostage to subscriptions.

Together, WarnerMedia and Discovery can cut costs and increase investment in content production. David Zaslav, CEO of Warner Bros. Discovery (the company's new name), in his first presentation on earnings after the merger of the two media giants, said he would have extreme fiscal discipline and vowed "not to win the war on spending with content production." The executive reiterated that the company plans to cut \$15 billion in costs over the next two years.

But Zaslav denied that these cuts will impact content. The goal is to keep attracting new subscribers to the company's streaming services and draw viewers to theaters, since the company owns Warner Bros. one of the five major Hollywood studios.

2021 registered history's highest investment in productions for streaming services globally. In 2022, led by Netflix, streaming companies are expected to invest together more than \$1.3 trillion in content, a 14% increase over 2021, according to Ampere Analysis. It will be

the largest investment in productions for streaming services in history.

In 2021, Netflix invested \$14 billion in its own content. By 2022, it should reach \$17 billion. But competitors can play this game as well. Disney is expected to reach \$33 billion and WarnerMedia, after its merger with Discovery, will top \$20 billion. Today, reducing investments in content production means losing subscribers and slowing down growth.

One demonstration of the need for growth for streaming companies was the impact of Netflix's falling subscribers. In 2022, for the first time, the company lost subscribers. Netflix closed the first quarter with 200,000 fewer subscribers, a negligible drop from 222 million subscribers, but still, the effect was devastating for the company's stock value.

In a single day, Netflix lost 35% of its market value. The company, once worth \$306 billion, in less than six months is now worth a little over \$80 billion. The market expectation (and Netflix itself)

was of more than 500 million subscribers worldwide, but if Netflix parks itself at just over 200 million, the associated costs and time to recoup their investment will have to be recalculated. If the scenario for the audiovisual industry was already difficult, it has become even more complicated.

The borders are less and less clear

In this new stage of the media industry, the ability to make huge investments in the development of intellectual property and technology will define the dominant companies.

The use of data and investments in new forms of interaction will also determine what will be produced and consumed. At a time when Netflix is adding games to its platform and stepping up its efforts to buy independent game studios, the boundaries are becoming increasingly blurred. Disney, for its part, has accelerated investments in augmented

reality (AR) initiatives and is looking for ways to digitize the sensory experiences it offers in its parks to create immersive attractions in the metaverse.

The classic concept of filmmaking has changed more in the last five years than in the previous five decades. The production and distribution processes, previously limited, as were the cinema, linear free-to-air and pay TV, and electronic games, have given way to a cacophony of new players - not all of which have the audiovisual industry as the essence of their business.

If Disney used to release movies and create intellectual property to attract families to its parks and resorts, today the model has gained new versions accelerated by digital technologies. The video game industry is on track to more than double its revenue over the next few years, according to a report by game development tools maker Unity.

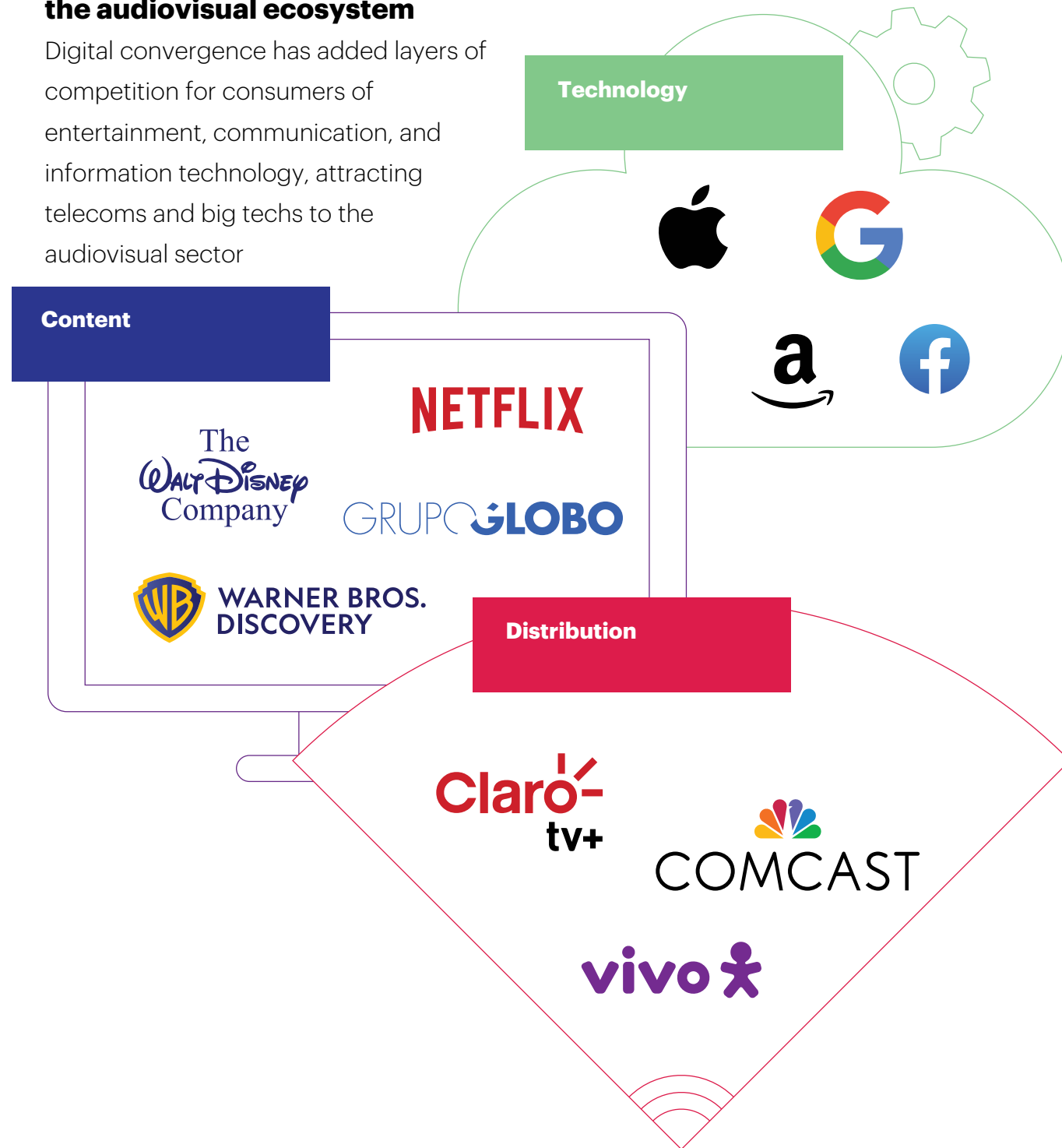
The estimate is that the games industry will make more than \$300 billion per year until 2027. Currently, the industry already makes \$180 billion a year, making it bigger than Hollywood and the music industry combined.

The best games are making more money than the big blockbusters. *Grand Theft Auto V* has grossed more than \$6 billion, according to a Marketwatch research. *Avatar*, the highest-grossing movie of all time, grossed \$2.8 billion. Productions like Netflix's *The Witcher* and Paramount+'s *Halo* show that the gaming industry can also benefit audiovisual productions in a growing symbiotic relationship, and the opposite path is also possible.

Netflix, for example, seeks to be an entertainment leader. The effort is centered on building multiplatform franchises. *Stranger Things*, one of the platform's most successful productions, has given rise to products sold even in Netflix's new online store, like video games and a curious in-person project in which the audience can participate in

► **Telecoms and big techs boost the audiovisual ecosystem**

Digital convergence has added layers of competition for consumers of entertainment, communication, and information technology, attracting telecoms and big techs to the audiovisual sector



an immersive experience with the series' characters. The experiment started in New York, San Francisco, and London.

Over the last decade, the tech giants have found in entertainment, and particularly in content creation and distribution, an opportunity to continue expanding their billion-dollar businesses.

When we talk about Apple, finding a sector with significant size to make a difference in the bottom line is challenging. Apple's market value is nearly \$2.5 trillion and the company is soon expected to reach the \$400 billion mark in yearly sales. The same challenge is faced by Google, Amazon, Tencent, and Alibaba.

The entertainment industry is big enough to make a difference in a big tech account. According to data from the Bureau of Economic Analysis (BEA), in the United States alone, arts and culture economic activity accounted for 4.2% of gross domestic product (GDP), or \$876.7 billion in 2020.

At Apple, the services segment (which includes Apple TV+, App Store, Apple Pay, Apple Music, iCloud, AppleCare and other subscription businesses) already answers for the company's second largest revenue and increased 24% in the last quarter of 202 - a record. It currently loses only to the sale of iPhones.

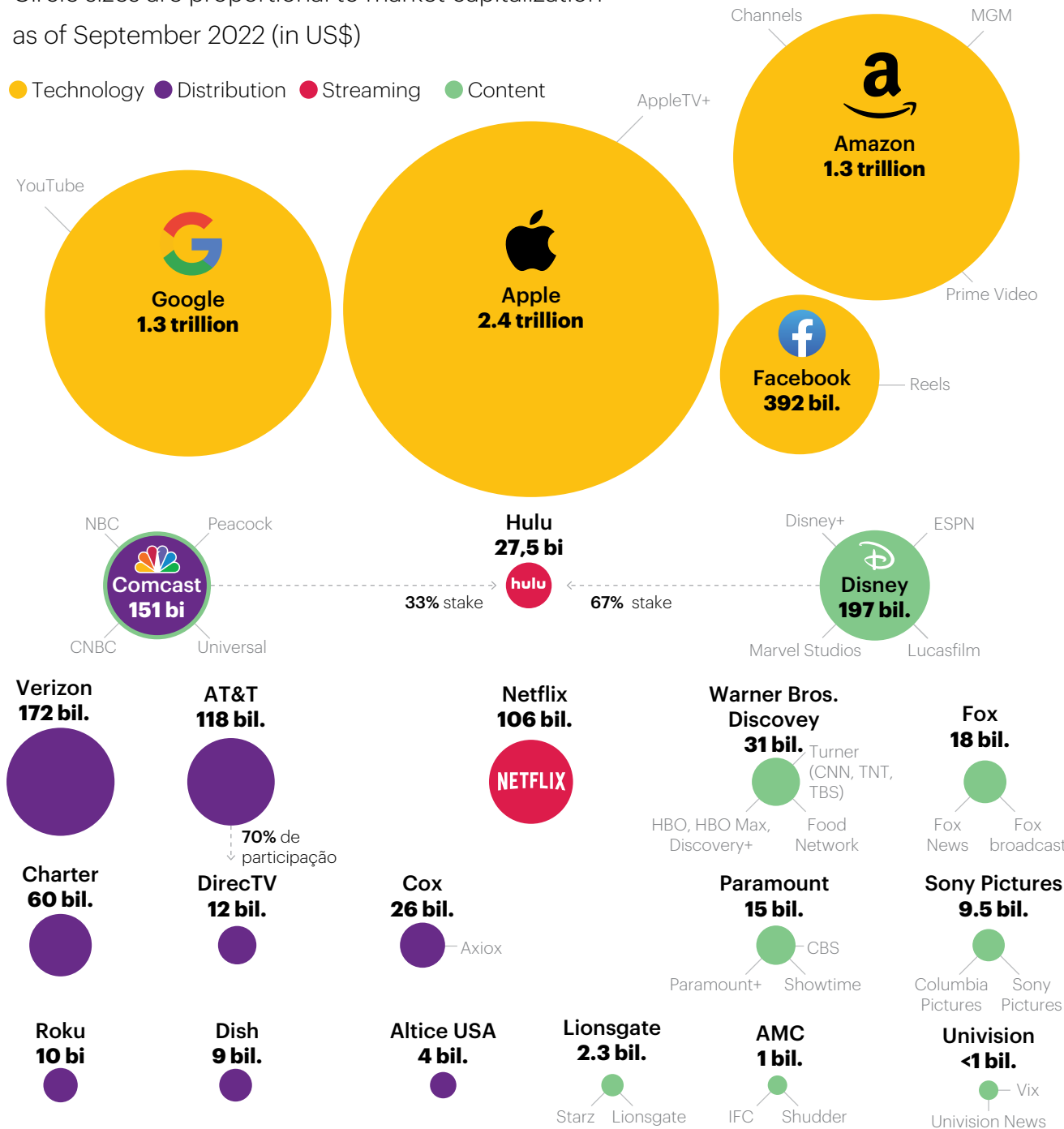
At the end of 2021, Apple had 785 million paying subscribers globally across all its services, an increase of 165 million (or 27%) compared to 2020. Apple has 1.8 billion devices worldwide. That, of course, creates new competitive dynamics. At the same time that the entertainment industry is too big to be ignored by tech companies, the big techs cannot be ignored by those producing for the audiovisual sector.

Erick Brêtas is the director of digital products and services at Globo. Globoplay, Globo's streaming platform, recently closed deals with Apple, Amazon, Google, and Disney. He explains:

► US media landscape

Circle sizes are proportional to market capitalization as of September 2022 (in US\$)

● Technology ● Distribution ● Streaming ● Content



Minimum based on 2019 agreements. Source: Recode report published by Vox

“We have a belief that we live in a world of frenemies (friends and enemies at the same time). Twenty years ago, my competitor was my competitor and I had no frenemies. The most I could do was go to a formal event or discuss some common regulatory interest”, Globoplay, Globo’s streaming platform, has recently entered into partnerships with Apple, Amazon, Google and Disney. “Today, Google is our biggest competitor in the advertising market. But we have many deals with Google. We moved all our digital infrastructure to the Google cloud. We sell Globoplay through the Play Store. We develop Globoplay for Android TV. It is a great partner and competitor,” he explains. “Amazon is the same thing. It is a fierce competitor in streaming and e-commerce, but it was interested in entering the soccer market and did so through a partnership with Globo.”

Globoplay is one of the fastest growing streaming services in the world and is the main growth engine for the Globo group. The billions invested in Globoplay show that the company is betting on a different future than the past that made it the absolute leader in Brazilian entertainment.

Compared to Netflix, Globo is late to the streaming race. But it is worth noting that Globo’s American peers, giants Disney, Warner, and Discovery, entered the race in earnest, years after Globoplay.

Whether the business model of Globo and other streaming competitors is sustainable is the question all media executives and investors are trying to answer. NBC, one of the largest TV networks in the United States, lost more than \$400 million in the third quarter of 2021 because of its investments in Peacock, its new streaming platform.

Paramount - which even dropped the ViacomCBS name to show the market it is more focused on streaming - lost \$480 million in the last quarter of 2021. Disney loses up to \$1 billion every year on Disney+, while seeing its TV results fall (the company owns several channels such as ABC, ESPN, and Fox). Also in 2021, Disney announced that it would shut down more than 100 TV channels around the world to focus on streaming.

Following the example of its international peers, Globo has been investing billions in Globoplay for years. For specialists, the future of TV is streaming. And this is the bet of Globo, but also of all the big media and technology players both in Brazil and abroad. With increasingly tighter margins and more competition, mergers and acquisitions are an inevitable path.

The reinvention of the business model

Disney's flywheel design was sketched in 1957 and had content at the center of everything. Parks fueled by content, merchandising, licensing, movies, and television shows made Disney's wheel spin.

This strategy, centered on intellectual property, made Disney the most iconic and impactful media company in the world.

Disney's strict control of its intellectual property gave the company a global

advantage that lasted for decades.

Another aspect central to the company's success was the facilitation of "reproducibility," driven by technological advances such as digital projection and the popularization of air-conditioning in movie theaters, as well as the cheapening of vinyl records and increased access to home entertainment, first with home video and DVDs.

Disney reinvented itself several times in the past 65 years. Its ability to accumulate capital and finance acquisitions at low cost has become evident over time. The billions invested in the purchase of Pixar (2006), Marvel (2009), Lucasfilm (2012), and 21st Century Fox (2019) remind us that, in film, access to venture capital to produce more and spend more on marketing is quite a competitive advantage.

But few challenges have been as great as those brought on by the digitization of distribution platforms. Firstly, in the way that piracy of content is made

available over the Internet. Secondly, in the very way that this content is consumed, less in movies and TV and more in streaming, social networks, and video platforms like YouTube and TikTok.

This change in the media and entertainment business has made Disney's cash flow become relatively small compared to that of its new competitors. Disney grossed \$67.4 billion in 2021. Apple, \$378.3 billion.

Just like Disney's founder, Jeff Bezos, founder of Amazon, has also designed a business "wheel" whose power lies in its apparent simplicity. In 2021, the company grossed \$469 billion. The model is capable of incorporating the entire Disney wheel in the fields of customer experience, cost structure reduction, lower prices, selection, and traffic. But in addition, it has proven itself able to attract more sellers - studios and content producers in general looking for visibility for their products.

Part of Amazon's model is to allow any content producer to make their product available on Amazon, free of charge, and potentially reach millions of people. Following the example of what it did with Kindle, which brought the possibility of self-publishing, the e-commerce giant allows any producer to make his or her movie available on Amazon Prime, as long as they share the revenue.

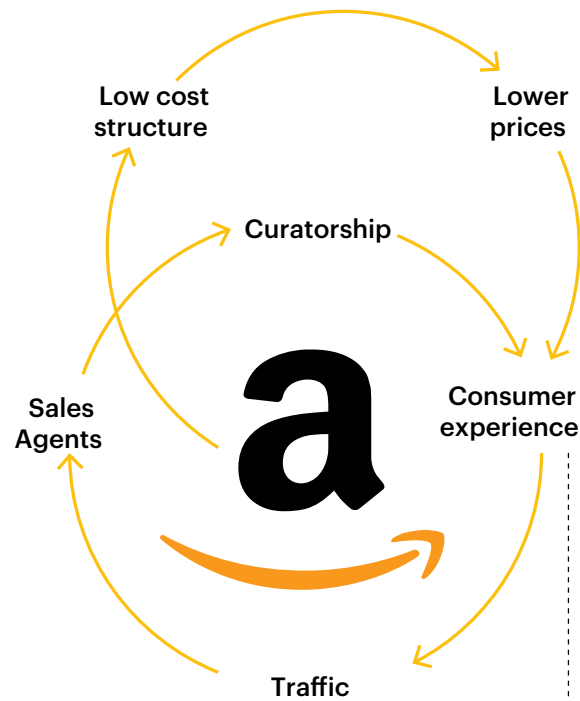
Digitalization, as we know, had a great impact on the publishing market and led to bookstores going out of business. But this reconfiguration has also led to the emergence of new bookstores, publishers, and authors.

Investments in marketing and promotion become higher and higher. In the so-called attention economy, in which viewers' time and resources are scarcer than supply, the war between the players has become increasingly fierce. And the ability to innovate will be an increasingly valuable asset.

In a disruptive business like entertainment,

one must constantly reinvent oneself. Competition, after all, comes from unexpected places. There are all sorts of things, from startups emerging, like Bytedance, owner of TikTok and one of the most innovative companies in the use of artificial intelligence, to traditional companies reinventing themselves, like

► **The business model of the decade**



From personalized offer menus to investments in multi-million productions, everything is influenced by the analysis of user-generated data from Amazon and other platforms

Disney, which, in the blink of an eye, became Disney+. Within 16 months, Disney+'s platform had passed the 100 million subscriber mark. It took Netflix 10 years to reach that milestone.

While Netflix grew slowly, investing in expanding its brand around the world, Disney used its capital and vast knowledge of acquisitions to buy strategic players in Asia. While this has reduced the profit margin per user, which is less than half compared to Netflix, it has accelerated subscriber growth.

The fact that Disney+ was born with big franchises like *Star Wars* and Marvel's heroes was also essential. Just as in movies, brand recognition helps create cultural phenomena, as was Baby Yoda in Disney's *Mandalorian*.

Netflix, meanwhile, is still trying to build its franchises from scratch. The company that sailed on its own for some time and became a media powerhouse, offering the same content as TVs and studios in a more convenient way, now finds itself threatened

by the growth of competitors. Some of them have taken back their licensed content from Netflix and increased their own productions for streaming.

Is Silicon Valley the new Hollywood?

At the same time that streaming platforms destroy traditional models, they create alternatives, in the best style of the creative destruction, as described by economist Joseph Schumpeter.

But as with all new technologies, regulation and sustainable practices only come as markets mature. In streaming, the choice of topics covered and their limits will be growing issues. One of the limitations of the streaming giants' model is the need for productions to work in more and more countries, among different cultures and markets.

In a way, streaming is falling into the same trap that Hollywood fell into years ago by changing its films to increase its acceptance in the Chinese market. The films became fake and artificial.

In streaming, language is no longer a barrier. Productions from different countries, such as Spain's *La Casa de Papel* and South Korea's *Round 6* are worldwide successes. But cultural differences, one of the essential values of intellectual production, become a risk for platforms.

How to make a film that appeals to audiences around the world? Or even more importantly, how to create works that do not displease minorities or political groups that may use the fact that these works are on major platforms as a pretext to create controversy and win media space?

Turkey is an example of a market where Netflix operates but faces increasing pressure from the government. In 2020, the company canceled a local production,

the drama *If Only*, after authorities said they would only authorize filming if the gay character was removed from the plot. The series *Designated Survivor* also had episodes censored for portraying a negative image of Turkey. With over 88 million inhabitants and a young population, the Turkish market is too relevant to ignore.

The pressure on streaming companies is not limited to moral and political dilemmas. A growing number of countries, particularly in Europe, have imposed strict local content quotas and investment requirements on local independent production. A major milestone for the platforms' investment in local originals was the *Round 6* phenomenon. The production was seen by 142 million subscribers in 90 countries (and finished by 87 million of them) in its first 23 days; more than 1.5 billion hours were watched in the first 28 days.

Netflix bought *Round 6* for \$22 million and generated \$900 million in value, according to internal company

documents leaked to Bloomberg. The figure shows a growing asymmetry of bargaining power between producers and platforms.

One of the big issues for those producing for streaming is the limited bargaining power. Any local company, even a large one, such as the Brazilian production company *Conspiração*, seems small when compared to the large media and technology conglomerates that dominate the market, as Luísa Barbosa, executive director at *Conspiração*, explains:

“We love cinema and want to make more films, but the market is not favorable. That is why we have increased our presence in productions for streaming,”

However, the current model of streaming platforms deprives content producers of intellectual property. In other words, when a production is sold to a platform, all rights go with it. Just as in the case of *Round 6*, this drastically reduces the production companies' possibilities of earning money.

Artists also see a certain “uberization” of the arts. Long-term contracts are being replaced by work-by-work contracts, thus limiting profit sharing. Not surprisingly, big names in film and TV are launching their own production companies to increase their bargaining power.

As the concentration of platforms increases, these negotiations tend to become more difficult, since there will be, on one side, movie theaters even more focused on blockbusters, and broadcast and cable TV channels focusing their attention and investments on the creation of their own streaming services.

It is worth remembering that the market is not limited to VoD streaming. Netflix's investments in content in 2021, to the tune of \$14 billion, represented 30% of the total spent in content by VoD providers based on the subscription model. But that investment represents only 6% of total content spending in 2021.

When investments in TV and other audiovisual platforms are taken into account, Netflix ranks third among the largest investors, behind Comcast and its subsidiaries (\$22.7 billion) and Disney (\$18.6 billion). Another move to take into account is Netflix's entry into the gaming market, something that further blurs the boundaries between different media and products.

Many years ago, media conglomerates strived to keep us at home, in front of the TV. The small screen of the cell phone seemed to be changing this dynamic, but with the pandemic, the consumption of connected TV (Smart TV connected to the internet) experienced notable growth. In the United States content more than doubled from 2020 to 2021. And in 2022, YouTube announced that it would begin streaming free-to-air TV programming on the platform.

New paths for monetization

The barrier to entry on YouTube is extremely low: anyone can post content there. And it is worth noting that some digital influencers have invested thousands of dollars in their productions, even mobilizing technical teams to do so. In other words, the boundary between cinema, TV, and social networks is murky. And ad-based VoD – AVoD, for advertising video on demand – seems to be gaining ground in this process.

Today, YouTube and streaming platforms compete with broadcast and pay TV to broadcast soccer championships and major sports events. Globo and Amazon have closed a deal for the sublicensing of the broadcasting rights of the Brazil Cup. In 2022, the championship will have games broadcast on TV Globo, SporTV, Premiere, and Amazon Prime Video.

In the United States, in 2021, the digital film market represented 72% of the combined film and home/mobile

entertainment market, a significant rise from the 46% in 2019, according to the Motion Picture Association's annual report. The number of original series in the U.S. market rose to 1,826, up from 1,646 in 2019, thanks to investments in original content by streaming companies.

Not surprisingly, costs are increasingly high for those producing audiovisual content. Demand has never been higher, and in this gold rush, acquisition costs have skyrocketed.

In 2021, Netflix shelled out over \$500 million for the rights to rebroadcast *Seinfeld*. Surprisingly, the amount can be seen as a bargain when you take into account that Netflix will be able to stream *Seinfeld* worldwide. NBCUniversal paid \$500 million for *The Office* and WarnerMedia bought *Friends* for \$425 million, although those deals only cover streaming in the United States.

The increased costs will certainly mean either increased subscription costs or reduced investments in content (or

more mergers and acquisitions). Not coincidentally, Netflix and Disney+ have announced that, after years of resistance, they are considering bringing advertising to their platforms. The idea is to offer cheaper subscription plans supported by ads.

In a country like Brazil, where purchasing power is a barrier for a large part of the population, millions of views achieved by short amateur videos with short narratives on platforms like TikTok and Kwai are irrefutable examples of the thirst for content.

These transformations will certainly not be limited to the current media. The metaverse is seen by many as the natural evolution of the Internet. In this new universe, narratives will become increasingly complex. "In addition to being the next generation of the Internet, the metaverse will also be the next chapter for us as a company," said Facebook CEO Mark Zuckerberg in late 2021. "In the coming years, I expect people to transition

from seeing us primarily as a social media company to seeing us as a metaverse company."

But the metaverse is not cinema, critics may argue. Saying that virtual environments are closer to video games than movies may make sense. But it doesn't hurt to remember that, a few years ago, we debated whether Cuarón's *Roma* was cinema or not because it had streaming as its platform.

This universe where we can circulate with our avatars will receive billions of dollars in investments in the coming years. And, as we know, a technology gains relevance to the extent that connections are formed between what already exists and new inventions. Just as the GPS in mobile phones allowed for the emergence of Uber and other apps that use geolocation, potential interactions between audiovisual narratives and the sensory possibilities of the metaverse should reinvent the consumption of stories as we know them.

Amidst so many possibilities and changes, the industry, two years after the pandemic began, seems to be suffering from a certain indigestion. While platforms try to launch a new global audience phenomenon every week, we on the other end spend more and more time looking at their menu with the feeling that there is nothing worth watching. This is what has been called “streaming fatigue”. We have so many choices that we become paralyzed - a phenomenon identified years ago in the field of economic psychology

Maybe we’ve just become unaccustomed to it. Going to the movies used to require the effort of leaving the house and the investment of buying a ticket. Today, consuming audiovisual products means sitting on the couch - or just picking up your mobile phone, wherever you are - and pressing a button. The platforms, in turn, are beginning to announce cost cuts

while the exhibition market is still trying to make ends meet.

Although there are bumps, it is a fact that the internationalization of productions and the expansion of new technologies will generate opportunities. If in 1957 Disney reinvented the entertainment industry with a drawing on a napkin, right now many entrepreneurs are probably scribbling plans with shared intellectual property models, film sponsorship by NFTs, and content distribution through streaming platforms, social networks, and even the metaverse.

The multiple unknowns of the future of this industry is intimidating. And those who produce content are watching - and experiencing - these transformations from the front row. The only certainty, so far, is that our need to consume stories remains intact.

The future under construction: distribution in the age of the algorithms

Ana Paula Sousa e Guilherme Ravache

Introduction

In 1947, 90 out of a total population of 151 million North Americans went to the movies every week. At that time, according to researcher Edward Epstein in *The Great Movie* (Summus, 2008), it was easier to find a movie theater than a bank in the country. Television, launched in the United States in 1939, was then in its infancy. It would take another five years for it to add color and more than 25 years after that to add a pay TV service, HBO, which launched in 1972.

Audiovisual content, it is well known, goes hand in hand with technology. However, technological changes, while expanding the possibilities for the production, distribution, and consumption of content, sometimes hover over well-established models like ghosts.

When people started to rent or buy VHS tapes, play video games at home, and watch shows on pay TV, the impact on movie theaters was enormous. If in the late 1980s most of Hollywood studios' revenue came from box offices, in 2003 home entertainment income – driven by the sale of one billion DVDs – surpassed fivefold that obtained from the movie theater circuit.

Two decades later, the impact on the audiovisual value chain would come from two intertwined events: the Covid-19 pandemic and the explosion of streaming services. The year 2020 irreversibly changed the historically established logic of theatrical windows and the trends for buying and selling content.

This new phase is guided by the growing need for investments in technology, the massive production and dissemination of series and films capable of attracting viewers to theaters and subscribers to platforms, and the end of a pre-established order of release windows, as shown in this infographic.

Release windows, yes, but with flexibility

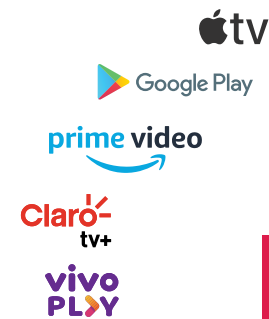
Bob Iger, former CEO at Disney, responsible for the company's major acquisitions, has always been a movie enthusiast. He often says that the purchase of Pixar, which revitalized Disney's animation business and put the company on the path to other successful investments, is a decision of which he is very proud. Since the release of *Toy Story* (1995), Pixar's first film, the studio has grossed a total of \$14.7 billion at the box office. According to Comscore, nearly 80% of its revenues came after the merger with Disney. Marvel, purchased in 2009, has earned more than \$26 billion at the box office for Disney.

It was therefore surprising that in September 2022 – with some blockbusters already performing well on the big screen – Iger declared that he did not believe that movie theaters would return to pre-pandemic levels. He said the success of streaming shows such as *House of the Dragon* and *The Mandalorian*

The different models of Video on Demand businesses

TVoD Transactional Video on Demand

Access to content through a temporary lease (Rental) or permanent purchase transaction, stored in the cloud (Electronic Sell Through - EST)



AVoD Advertising-Based Video on Demand

Free for the user, with advertising-based remuneration



SVoD Subscription Video on Demand

Subscription with periodic monthly or annual payment



FVoD Free Video on Demand

Free and open access, usually sponsored through cultural support systems, without commercial advertising



prompted him to rethink a decades-old thesis. “The film industry used to argue that you couldn’t create cultural impact without having people going to the movies around the world on the same weekend,” he said. “I no longer agree with that statement.”

This idea, rather than questioning the cinema itself, challenges the idea that all films must follow the same release logic. In the 1980s, when VHS was the apple of the eye of home video, an agreement was established between distributors and exhibitors that there would be a gap of time between the opening in theaters and the availability on video - the theatrical window. This timeframe has historically suffered major changes – starting at nine to twelve months and then decreasing constantly.

This agreement, albeit with pressure here and there, lasted until the pandemic – until 2020, the standard interval between movie theaters and the second release window was 90 days. When sanitary measures led to the closing of theaters and forced the

audiences to stay at home, the windows logic was shattered.

As movie theaters reopened, the theatrical window came into effect again, but without the pattern it used to follow or, as some prefer to say, with no straitjacket. Warner, for example, which had made several simultaneous releases in theaters and on HBO Max in 2021, adopted a 45-day window for *The Batman* in 2022 (see the infographics on page 38). Paramount opted for an 89-day window for *Top Gun: Maverick*. In short: the new watchword seems to be flexibility.

Teresa Penna is the director of Globoplay, the streaming platform operated by Globo, the leading media Brazilian conglomerate, which, like other international players, is present in different segments of the value chain. Her vision, aligned more with the theory of media evolution than with the idea of rupture, is that of the coexistence between old and new:

The pandemic, which closed cinemas and postponed film shoots, led to new business

models and new consumption habits, which must coexist. We have witnessed a general acceleration in the digital world, which has benefited streaming services such as Globoplay.

The platform’s demand was, in the first quarter of 2022, 8.6 times greater than in the first quarter of 2019. In comparison, between 2021 and 2020, we see a 66% increase in hours watched. What hasn’t changed is the public’s appetite for movies. We believe that movie theaters will continue to be strong, as a window that generates value for films.

The trend is towards more harmonized investments in theaters and streaming platforms. There is a huge value in the experience of immersing yourself in watching a movie in a movie theater. Streaming, on the other hand, greatly expands the potential audience of a work. It is a relationship of complementarity, feedback, and formation of an ever-increasing audience for audiovisual production as a whole.

Teresa says that currently all feature films of the group - including Globoplay’s

originals that will premiere in the coming years - have movie theaters as their first window. Globo Filmes, Globo’s studio for film production and distribution, has been trying not only to promote the movies inside the group, but also to launch campaigns to attract people to movie theaters, along with other producers and distributors.

The idea that the various release windows feed each other has been proven, this year, with *Executive Order*, a box-office hit directed by Brazilian star Lazaro Ramos. Launched on the streaming platform Globoplay three months after its movie theater premiere, in July 2022 the movie reached the top position as most watched feature film, with ten times more views than the next film in the ranking.

However, with new competition arriving in the content market, the group has already lost, for example, the streaming window. That was the case with *Monica and Friends: Lessons*, a Globo Filmes production that ended up being launched on Amazon Prime.

The international scenario is not, in the sense of competition between players – or between established groups and new streaming groups – very different. Rob Williams, Senior Vice President of Content Strategy at Participant Media, sees a time of market fit, in which distribution strategies must vary by project and contract type:

We will see a lot of movement in this space over the next year as everyone struggles to differentiate their offerings in the face of a consumer with so many choices. Perhaps some of them prefer, for example, to work with audience targets focused on different audience niches, instead of focusing on a single broader audience.

So that producers can take advantage of this opportunity, they need to seek partnerships with distributors earlier in the process. They should look for players with the ability to deliver the product and the ability to move quickly in decision-making in the midst of a varied and diversified distribution universe.

A release windows model capable of adapting to the audience and the content is key and there has never been more flexibility for this. There is no longer a one-size-fits-all formula. Even the biggest movie distributors are considering shorter windows for major releases.

Since the company's inception in 2004, Participant's films have received 85 Oscar nominations and 21 wins, including Best Picture for *Spotlight* and *Green Book*. This year, they got the historic triple nomination (Best Animation, Documentary and International Film) for *Flee*.

However, in the always complex and risky art of calculating P&A (promotion and advertising, which refers to launch costs), opening in theaters has not necessarily proven to be rewarding. This year, Scarlett Johansson filed a lawsuit against Disney, as the company decided to launch *Black Widow* simultaneously in movie theaters and on the Disney+ platform, via PVoD (Premium Video on Demand), for the amount of \$ 30. The actress argued that the company's decision cannibalized

revenue at theaters and, consequently, part of the remuneration provided for her in the contract.

João Worcman, CCO and VP of Acquisition and Sales at the aggregator Sofá Digital, points out that this type of option stems from the acute competition amongst streaming platforms fighting over subscribers:

Netflix entered the market having to offer, and delivering, a lot of value for the subscriber: low price, binge watching, exclusivity, and an extensive catalog. The other media groups (Disney, Warner, and Viacom) came in late and all pretty much at the same time, and this led to a very high level of competition.

Perhaps for these media groups it has become cheaper to "burn" windows and bring ultra relevant content to SVoD [subscription VoD] than to invest only in advertising, to enroll subscribers. For example, if a platform were planning to invest \$3 billion in advertising to bring in subscribers, it could eventually spend \$1

billion on advertising and choose to burn the theatrical and TVoD [transactional VoD] windows that would gross \$1 billion. The total cost to bring in subscribers would then be \$2 billion instead of \$3 billion.

Having no movie theaters in the pandemic may have made the above decision too easy. Disney and Warner's films, which went straight to streaming or which did not have a theatrical window before TVoD, when compared to Sony's *Spider-Man*, which had a seven-month theatrical window before the release on SVoD, makes these two distinct movements clear. The fact that Sony has no steaming platform and doesn't need to convert subscribers led it to respect theatrical release windows, maximizing film profitability.

Last September, The Walt Disney Company announced that the Disney+, Hulu, and ESPN+ platforms hit together the global mark of 221 million paid users, putting them, collectively, ahead of Netflix.

Via algorithms, the platforms know how many subscribers a given production has attracted. On the other hand, post-pandemic releases have shown that the buzz and media generated by the premiere in theaters – with previews for guests, debates, and reviews published in the press and on social networks – can contribute to attracting new subscribers (in the SVoD model) or pushing the purchase or rent of content (in the TVoD model).

The film *Executive Order*, for example, was in the Top 10 of Globoplay's "first play" – that is, it has proven to attract new subscribers to the platform. It is not by chance that both Teresa and Williams's points of view reflect a common hope that people will go back to watching movies on the big screen.

This desire is linked to economic issues, obviously, but not only. Jean-Thomas Bernardini, owner of a movie theater

in São Paulo and of the distribution company Imovision, thinks it's important not to lose sight of the value of the shared experience:

Screening in theaters allows people to discover a different movie and to talk about it at the end of the session, for example. In streaming this is almost impossible. In addition, what we see a lot in streaming is that people watch 20 minutes of a movie, interrupt, and move on to another. That doesn't happen in the screening rooms.

The change in habit changes the business for good

That the movie theater will continue to be part of the audiovisual value chain seems indisputable. But it is also indisputable that the pandemic has led to a change of habit with no return. A survey carried out in 2022 by a leading cultural institution (Itaú Cultural), in partnership with survey company Instituto Datafolha, showed

that the cultural habit that was most lost since social isolation was that of going to the movies.

While in 2020 52% of respondents reported a habit of going to the cinema before the pandemic, in 2022 only 26% of the people surveyed said they had gone to a movie theater in the previous year. Igor Kupstas, founder of the distribution company O2 Play, didn't need these numbers to know that this had happened. They are palpable in the company's day-to-day operations:

The pandemic hit so hard, and for so long, that we did have a change of habit. And the effect of that on the place that theaters occupy in our business is something that we will only understand with a little more time. Movie theaters didn't close for a month or two like in Europe. We had at least an entire year when they remained almost completely closed, with a withdrawal from people, in every way.

We are now living in an all-or-nothing world in the audiovisual industry. Maybe I can make

a very good sale of a project with exclusivity to a streaming platform, and everyone makes money. But it also happens that nobody wants to buy, nobody goes to the movies, and nobody rents it on digital platforms. In this case, I am left with the only option to make the film available on free platforms.

Before the pandemic, a Brazilian player would negotiate a title, basically, with Telecine and Canal Brasil, on pay TV, and with TV Globo, on open TV. Today, the range of commercialization and licensing possibilities is enormous. Kupstas says O2 Play speaks directly to at least 30 platforms:

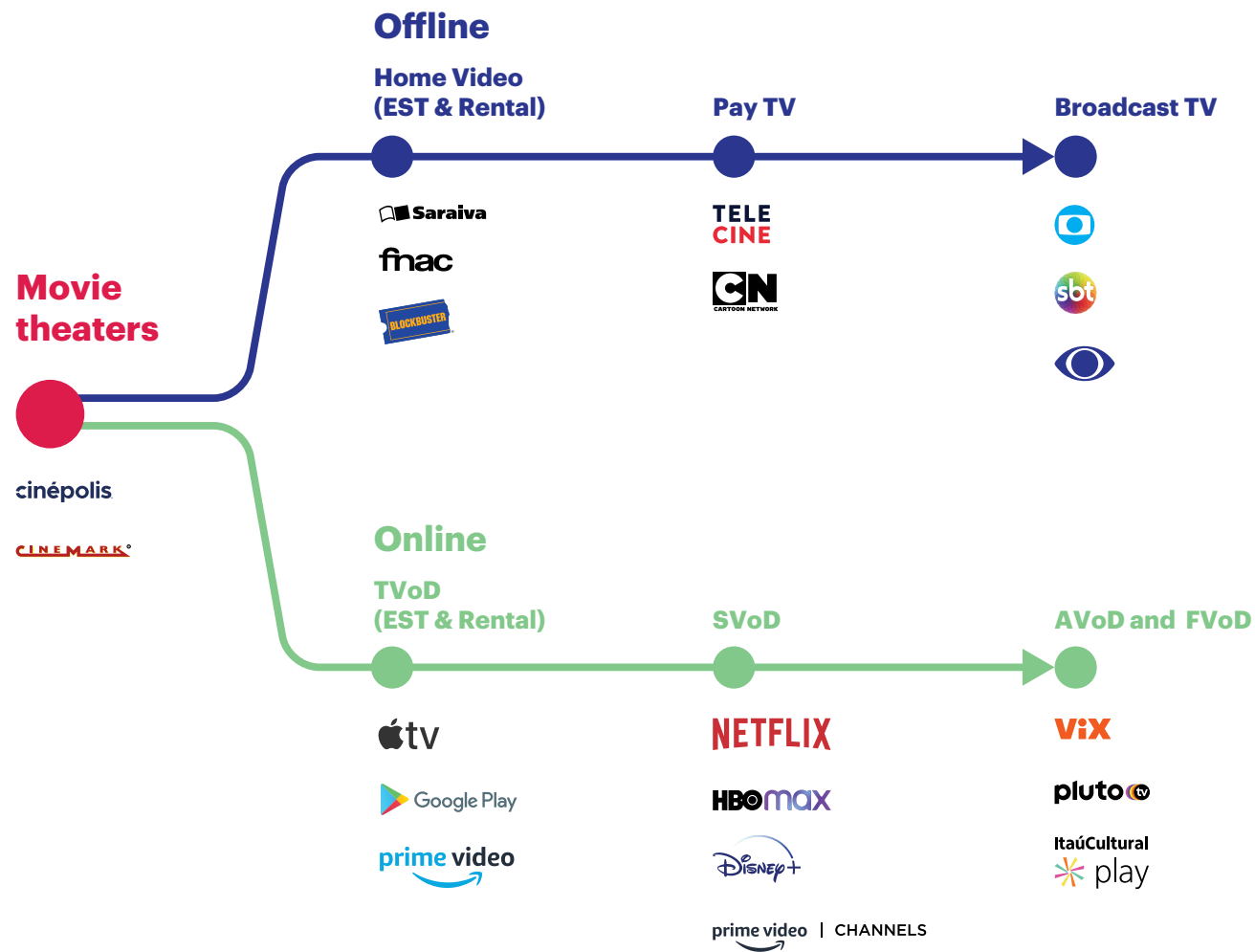
While some other distributors use aggregators to reach these platforms, I deliver a lot of direct content. We try, with each film, to understand the potential of the project through all windows. When it works, we get a big license, make a fuss, build a brand, make some money. When it goes wrong, no one wants it and I don't know what to do. It's part of the risk.

Before the pandemic, I had many small movies with assured sales. Today, forget it!

► **The Revolution of Windows**

Traditional

The chain of commercialization of a title follows an order pre-established by the players, whether in physical or digital distribution.



Flexible

Distribution strategies vary with each deal and range from simultaneous windows to cross-platform releases.

Film Studio	Theatrical premiere date	Streaming services	Time in days after film release		
			TVoD Premium VoD* (Rental)	TVoD Eletronic Sell Through (EST)	SVoD Streaming
Cruella Disney	May, 28, 2021	Disney+	0	28	91
Viúva Negra Disney	Jul, 9, 2021	Disney+	0	32	89
Candyman (2021) Universal/MGM	Aug, 27, 2021	prime video	21	67	287
Venom: Let There Be Carnage Sony Pictures	Oct, 1, 2021	STARZ	-	53	203
007 - No Time to Die MGM/Universal	Oct, 8, 2021	prime video	32	60	245
Spider Man: No Way Home Sony Pictures	Oct, 17, 2021	STARZ	-	88	210
The Batman Warner	Mar, 4, 2022	HBOmax	-	45	45
Morbius Sony Pictures	Apr, 1, 2022	NETFLIX	-	46	159

*Premium Vod (PVoD): Premium TVoD window in the Rental model, where the movie is available for a rental price equal to or greater than the movie ticket. In this strategy, the window between theatrical and TVoD releases should be a maximum of 45 days.
 *Movies with 0 days in this column were released in theaters and PVoD on the same date.

Source: Adapted from: <www.mediaplaynews.com>

Source: Stephen Follows

Productions that shine, shine bright. Many that don't have that shine end up being diluted in the ocean of content. And there was also a learning curve. A company eagerly pays for a project, plays it on its platform, and if it doesn't work, someone will say internally, 'Man, why did you pay all that for this movie?'

Brazilian production was marked, from the implementation of Law 12.485 onwards (Conditioned Access Law – SeAC, explained in detail in the case study on Brazil), by an injection of resources that led to a boom in production – with more than 150 feature films released annually, reaching 180 in some years. Needless to say, in this context, flopping cannot be considered an exception. If before a good part of the production had difficulties to find space in the exhibition market, what will happen now is that many films will have trouble making money through contracts with streaming platforms.

Silvia Cruz, at Vitrine Filmes, a company that was consolidated from a portfolio of auteur cinema – including the successful

projects by Kleber Mendonça Filho, a Cannes-prize winning director – recalls that, until 2019, when the crisis of Ancine (Brazil's National Film Agency) began, the country had advanced a lot in the production of independent cinema, but it had not solved the bottleneck of distribution.

Vitrine itself was then forced to think of alternatives to the traditional launch in the exhibition circuit. The digital, explains Silvia, was mandatory in this account, but not exclusively:

We moved a little away from movie theaters, which have a physical space, to a virtual place where distribution is more democratic. For independent cinema, we started to bet more and more on a second window closer to the first. Especially in Brazil, which is such a big country. Movie theaters don't exist in many, many cities, but cinephiles, thankfully, exist in all of them.

Movie theaters would always be the place to start a film's career, but then we also understood that, often, distribution is

much more effective at film festivals, with crowded sessions, prettier screenings, and debates. There came a time when we did the math and saw that, putting together all the festivals and shows, the result was better than the distribution in movie theaters.

Silvia, who now runs Vitrine from Spain, points out that movie theaters live off the box office and that certain titles are just too risky.

She goes on to say that there are very few theaters that can tolerate more risky programming and bet on independent cinema – as is the case, for example, of cultural centers such as Instituto Moreira Salles, Itaú Cultural, and CineSesc. Some of these institutions now have their own platforms, in the Free VoD model, which is free for anyone who sees it, but can provide a fee for the producer. But the most prominent titles in Vitrine's catalog also aroused interest from commercial platforms. Between 2020 and 2021, after all, demand for content exploded.

The absence of new titles, generated by the interruption of film sets and the arrival of new players, resulted, in this period, in licensing contracts with much higher values. Bruno Wainer, from Downtown Filmes, the leading distribution company in Brazil for local content, who had several commercial titles ready to be released when the pandemic hit, says that in 2020 he closed deals that were previously unimaginable. He explains that not only the figures have changed, but the very logic of the agreements:

There was only one acquisition model in the market, which was the Globo model, based on the film's performance in theaters. It was a profit-sharing model. When the movie did well, the pay was good, but when the movie did poorly, the pay was lousy. As a distributor, if you thought you would sell 1 million tickets and you sold 100,000, you had no way of recovering the amount invested in P&A.

But with streaming, competition has arrived. In 2020, I was able to pre-order all my movies for the platforms, and in these packages, most of the titles had

the theatrical window preserved. With these pre-sales, I can release the movies in theaters without the risk of losing everything in P&A.

André Sturm, creator of the Petra Belas Artes streaming platform, also a distributor and exhibitor, looks at this situation from another point of view. He says that the greediness of international platforms can, over time, make independent distribution unfeasible:

When the platforms themselves produce what they show, we have a unique distribution logic, just for the streaming window. You can tell me that there will always be movies being made off-platform. Yes, but for any other window to exist, it needs scale and resources.

There are amazing films that go to festivals and are bought by platforms, no longer by the independent distributors who put them in theaters.

There is a predatory action, not least because the power of each one is

very different. We have international conglomerates and small companies. We talk about producers, but we also have to talk about distributors and smaller streamers. We must not allow ourselves to end up in a situation where three or four companies totally dominate the market.

Concentration, an indelible mark of the screen market, proved to be even greater after the pandemic. In the exhibition circuit, this is evident: the public's return was concentrated in the great Hollywood franchises. For small productions, the difficulty of finding space in the multiplexes' programming was compounded by another: the titles, as producer Rodrigo Teixeira from the production company RT Features explains, started to become easily available to moviegoers:

Art-house features, movies for cinophiles, have become very easy to access from home. Not those in catalog, because there are few channels that offer good catalogs, but the new releases. Art-house releases

enter directly into a streaming channel, which leads movie theaters to fill their space with the big productions that have money to spend on marketing, room occupancy, and that are still bringing audiences to movie theaters.

People are leaving their homes to see event films. 'I'm going out to see *Top Gun*'. 'I'm going out to see *Prey*'. 'I'm leaving the house to see *Captain America*'.

Streaming channels, on the other hand, are much more interested in producing serialized materials. So cinema suffers, and Brazilian cinema will suffer, because how do you finance a project? You finance it with the money of a streaming channel, and the streaming channel is not going to finance this huge amount of production companies that opened in the last 20 years thanks to public incentives. They will definitely finance only the biggest ones.

We cannot forget that the streaming model itself undergoes adjustments and has been announcing budget cuts and pulling the brakes on the volume of

productions. As João Worcman points out, it is natural that, with the drop in the number of new subscribers, there is also a drop in valuation:

The platforms only make the cash flow of productions for originals. It is rare for the platform to pre-license and start paying for the production otherwise. The producer or distributor will have to finance that production. The platform will only pay you when you deliver the product.

This further funnels resources to the larger production companies that work for the originals. In the case of productions made with public funds, executives don't want to take the risk of having productions stopped. We see cases where cable TV channels have put money into incentivized projects that are now stalled.

If you ask me how many recent movies of any relevance are available on the market, I'll tell you: very few. There are the catalogs from Downtown, from Paris Filmes, but not this royalty-free production.

As in other industries, audiovisual production has gone through an intense process of consolidation and, according to Teixeira, we will have ten or 15 global groups to finance all of film production in the world.

Technology expands the forms of distribution

While macro trends in audiovisual consumption and distribution, particularly online, may further centralize power into the hands of the streaming giants, they have also created opportunities for disruptive forms of creation, financing, and distribution.

With the help of tools and innovations driven by digital technology such as NFTs and blockchain, the next wave of content can be created and distributed in a more decentralized way. NFTs are assets created within a

blockchain that guarantee a unique identity to an item. If you have a movie token, you own a part of the work.

Although the recent crisis in the bitcoin and NFTs market has made the pipeline of projects based on the model disappear or become unattractive for studios, the thesis of how they can transform Hollywood and the art world is seductive. While there are still barriers regarding taxation and intellectual property issues, “tokenizing” a film is easy.

The new Hollywood production *Antara* has a budget of \$50 million and is being partially funded by NFTs. The holders of *Antara*’s NFTs will have a share of the digital rights to the film and, in doing so, will share its revenues.

The model can, in theory, be reproduced with an independent film, with fans owning small pieces of the work. And, if the work is successful, it may even yield rights for years on end. The NFTs also offer the promise of closer interaction between filmmakers

and their audience and a funding that is unfettered from the studios or, in the Brazilian case, from public resources.

In the world of online distribution, release potential has many new shortcuts. Actors and creators with many followers on social media, for example, are of value to any consumer-facing platform, as they represent a unique distribution model, with their followers and their communities. If the event movie continues to be central to the industry, the idea of “event” is more multi-faceted than in the past.

Actress Reese Witherspoon’s *Hello Sunshine* media company was recently bought by private equity firm Blackstone Group for \$1 billion and announced production of an unscripted TV series set in the world of NFTs. The deal was announced as part of a plan to build an independent entertainment company for Hollywood’s streaming era.

Hello Sunshine produces shorter-form shows, broadcast on platforms such as InstagramTV, podcasts, and talk shows,

and also manages a book club with over 2.2 million Instagram followers. Reese, who herself has more than 27.2 million followers, endorses the release of books that also represent intellectual property opportunities.

Many of the new monetization models seek to eliminate distribution intermediaries. In Web 2.0, the North American websites Patreon and Fanhouse are examples that are based on the idea of crowdfunding and community. On the other hand, in Web 3.0, defined as the Intelligent Web, new ways for creators to finance larger-scale projects emerge through so-called decentralized autonomous organizations (DAO).

Recently, former Hollywood executives and creatives started a community funding platform for movies and shows. With 11 initial members, the community dreams of reaching up to 10,000 members, making token sales and forming a governance structure.

These new distribution models seem to make sense, above all, for a purely online

ecosystem, in which streaming providers must compete with all other entertainment formats for subscribers and viewers. This includes video games, social media, and live streams of concerts and sports. In this environment, the fight is no longer for ticket sales, but for engagement and retention.

It is known that the video game sector expanded, significantly, during the pandemic: in 2020, it grew by 20% and drove \$165.9 billion in sales worldwide, a value 60% greater than the volume of the film and music industries combined. The rise of NFTs, online communities, and the practice of online gaming as standard behavior says a lot about how consumers experience virtual experiences today.

In a recent survey conducted jointly by Facebook and The Governance Lab, 77% of respondents said the most important group they belong to operates online. And streaming content, while empowering consumers to engage with the old linear TV content, is relatively static compared to what's offered on the vast menu of online entertainment.

It is only natural that, as time goes by, the distribution of films and series also migrates to the games themselves. We must simply remember that, shortly after the beginning of the pandemic, American rapper Travis Scott performed in Fortnite, a battle royale game, and mobilized 27.7 million players.

Although SVoD services – which are the ones that have injected resources not only in licensing, but in audiovisual production – tend to drain the attention of the traditional market, part of the public has migrated to another model: AVoD.

According to Jason Kilar, CEO of the former WarnerMedia until this year, about 50% of new HBO Max subscribers have opted for the ad-maintained model. According to the Wall Street Journal, global digital ad spending represents 64.4% of total advertising spending in 2021, up from 60.5% in 2020.

Vix, a free North American streaming platform, aimed at the Hispanic market in the US and the Latin American market,

receives, in Brazil, between 200,000 and 250,000 unique users per day and more than 3 million per month – a single user can make more than one visit to the site, but is counted only once in the period.

In 2021, according to Google, 113 million Brazilians over the age of 18 consumed YouTube monthly. And 33% of Brazilians who watch YouTube consume the content on their TV set. The platform brings together more than 2,000 channels with more than 1 million subscribers and another 20,000 channels with more than 100,000 subscribers.

How much is each film worth?

The online entertainment service iQIYI, a kind of Netflix from China, has announced the update of online movie distribution, which will now have two models: Cloud Cinema Premiere and Subscription Premiere.

Films released under the Cloud Cinema Premiere model will generate revenue both from premium transactions – buy or rent – and from subscription. In Subscription Premiere releases, revenue shared with producers will be based on user watch time and no longer prior ratings.

Previously, films were rated before they were released, and both revenue and promotion investments were defined based on this categorization. Now, as movies come online, iQIYI allocates promotional resources according to viewing time and user ratings.

This model, which establishes a direct relationship between the business and the consumer, makes it almost mandatory for creators to make films that can capture viewers' initial attention, but have enough quality to keep them watching.

“We are committed to continuing to build an internet-based online film commerce platform where a more mature business model can help boost the box office,” said Yang Xianghua, president of iQIYI for the

international market. “Our aim is to spread films on the Internet so that it becomes, alongside cinemas, a second pillar for the development and growth of China’s film industry.”

This statement echoes that of Bob Iger. It is because technology is changing the audiovisual industry, that its reinvention is inevitable. But, as history teaches, the entertainment industry is marked by several moments of “creative destruction.” Media is going to continue to adapt, change and transform the landscape. And companies will have to shed old business models if they want to preserve both their products and their essence.

► The future of audiovisual in Brazil

One certainty

The audiovisual market will continue to grow

The expansion of broadband, life in the virtual environment, the metaverse, and interaction through videos will make the production and consumption of images increasingly present

Growing online consumption

Even greater concentration

Opportunities in innovation

Greater connectivity with 5G

Many questions

The closing of movie theaters and the advancement of streaming in the pandemic forever changed the logic of viewing windows and the dynamics of buying, selling and consuming content

Regulation and public policy in the streaming era

In the global chess of entertainment, what are the possible and desirable models for protecting and fostering Brazilian production?

Disputes around intellectual property

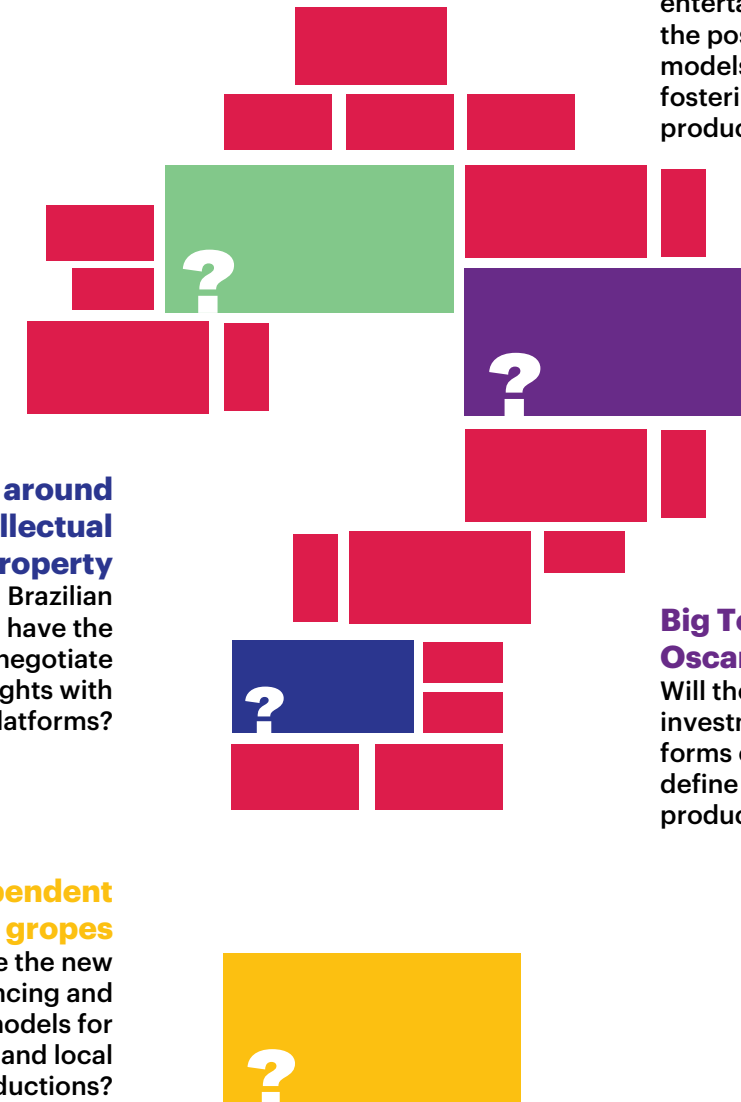
How can Brazilian companies have the strength to negotiate property rights with platforms?

Independent cinema gropes

What will be the new financing and distribution models for art films and local productions?

Big Techs on the Oscars' Red Carpet

Will the use of data and investments in new forms of interaction define what we will produce and watch?



The reign of streaming: the past and the future of regulation in Brazil

Ana Paula Sousa
JOURNALIST AND RESEARCHER

Introduction

The moment fiber optics guaranteed reliable video streaming over the Internet, the entire audiovisual distribution structure was called into question. If, before, only those who had an infrastructure network could take movies and series to the consumers' homes, now all forms of video entertainment could reach them "over the top" (OTT), the technical name for internet broadcasting.

Precisely because it requires only an Internet connection to distribute content, streaming occupies a unique place in the Brazilian legislation and market. OTT platforms fall outside the General Telecommunications Law (1997) and the Provisional Measure 2228-1 (2001), which govern audiovisual policy, as well as the Conditional Access Service Law (2011), which regulates pay TV.

Unlike what happens with movie theaters, broadcasting, and telecommunications, the universe of OTTs is decentralized, not answering to any specific regulatory agency. And its reach, as we know, is only growing. Videos already account for more than 80% of the world's IP (internet protocol) traffic and, with 5G and virtual reality, this percentage will only grow.

The new technological paradigms, accelerated and enhanced by the pandemic, have placed the audiovisual market in an even more complex and verticalized environment, in which global businesses, consumer habits, and cultural issues intersect. When the National Cinema Agency (Ancine) was created, in 2001, the sector included producers, distributors, and exhibitors - as well as free-to-air TV. When the Conditioned Access Law - SeAC (Law 12.485) was passed, in 2011, telcos and pay TV

companies joined the arena. Now, the big techs, listed among the world's largest corporations, play a role as well in the audiovisual sector - a trend that we will look into in the next chapter.

In the midst of this new configuration, independent production companies have the opportunity to work for the big platforms, but, at the same time, no longer hold the property rights to the works. In order to recover the creative property and guarantee the reservation

of space for local content, part of the sector wants to rely, once again, on the state for salvation. Another part fears that excessive regulation and rules will undermine the potential growth of a market in transformation.

In the new global entertainment scenario, what are the possible and desirable models for protecting and fostering local industries?

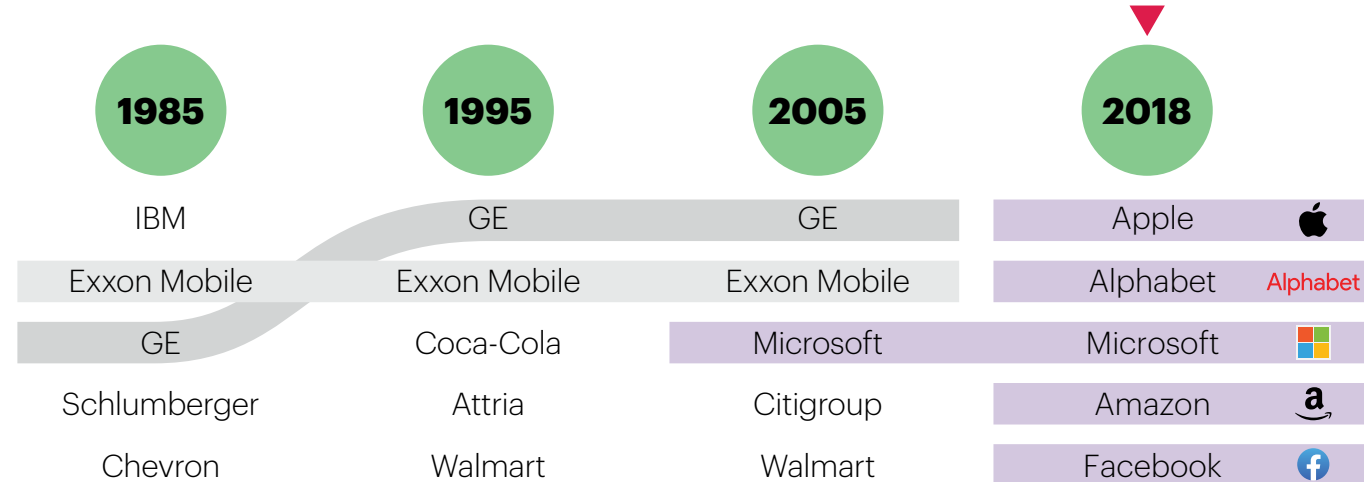
rect what in economic theory is called "market failure". The state, in these cases, should act in defense of the public interest, either by facilitating competition or by intervening in monopolies.

There are, roughly speaking, two models of governance in culture: one more in favor of the free market and the other in which state intervention is greater.

► **The creative industries dominate the market**

The five largest publicly traded companies in the US, according to the New York Stock Exchange's S&P 500 index, per year

The production and distribution of content is part of the business models of tech giants and intellectual property is a valuable asset on Wall Street.



Source: Ponemon Institute

Why, what, and how to regulate

Since its dawn, cinema has been marked by the art/industry duality. Films are, at the same time, commercial products and cultural goods. This dual existence is at the core of audiovisual policies and regulatory mechanisms adopted by different countries since the 1930s.

The premise of these policies is that it is up to governments to help ensure the survival of local products and cor-

Throughout the 20th century, the state has intervened via measures such as screen quotas, state financing for production, tariff barriers for incoming blockbusters, taxes on movie tickets for imported content, and protection of intellectual property. These measures are based on justifications ranging from cultural diversity to the potential for wealth generation.

Many of these measures are based on two concepts: cultural exception, which provides for differentiated treatment in international trade for films, books, and

the like, and cultural rights, which treats access to culture as a basic right.

At the beginning of the 21st century, a third concept emerged: that of diversity, indicated in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). The discourse of diversity, created to protect local productions against North-American domination, was adopted by the Motion Pictures Association (MPA) and is incorporated into the streaming business model.

If, for decades, it was necessary to create strategies to force Hollywood studios to invest in local productions - either through taxes levied on tickets or by acting as co-producers by using tax incentives, the VoD platforms' model broke this logic.

In the last two years, Netflix, HBO+, Amazon Prime Video, and Disney+ have invested their own resources in the production of Brazilian originals, hiring Brazilian companies and professionals. These same companies, however, do not

pay the same contributions that all other players in the sector pay, and do not fall under pay TV's regulation.

This regulation flaw has a name: Law No. 12.485 (2011). After this law, Ancine began to regulate, totally or partially, four segments: movie theaters, free-to-air TV, pay TV, and home video - represented by the inexpressive DVD. In terms of TV, the attributions are shared with the National Telecommunications Agency (Anatel) and the Ministry of Communications (MiniCom). This regulatory framework does not include, however, the most notable segment nowadays: video on demand (VoD).

Technological checkmate

VoD streaming, the technology for continuously transmitting media over the Internet, began in the mid-1990s but took a decade to advance. In 2005, YouTube was launched. In 2007, Netflix started streaming its catalog's products digitally. In 2011, the company arrived in Brazil. That same year, Law 12.485 was passed renowned for creating quotas for Brazilian content and guaranteeing resources for independent production.

By mandating that channels show a weekly minimum of hours of national content and carry Brazilian channels in their packages, the law inaugurated a new stage in film policy: for the first time, the screen quota was applied to a segment other than movie theaters, and a fee paid by telephone companies was incorporated into Brazil's Audiovisual Sector Fund (FSA).

But the continuity of the law, at this point, is threatened by its very nature: it

regulates the Conditional Access Services, which refers, specifically, to pay TV.

Pay TV was regulated in Brazil in 1995 through the Cable Law. For 20 years, international telecom companies, which arrived in the country during the privatization of Telebrás, stayed out of pay TV because this law limited the participation of foreign capital in the business to 49% and forbade foreigners from producing content.

But when digital convergence made it possible for movies, series, and games to be seen on any screen, anywhere, cable companies began to push for changes. In 2007, four bills on the subject were discussed in the Brazilian National Congress and two themes gained notoriety: the opening of the pay TV market to foreign capital and the protection of Brazilian content.

After four years of disputes between broadcast and pay TV providers, telcos, and independent producers, the SeAC law was passed. It has, among its principles,

the promotion of cultural diversity and incentives for independent and regional production. To this end, it foresees a Contribution for the Development of the Cinematographic Industry (Condecine) levied on each active mobile phone in the country¹.

The telcos swallowed the tax and screen quota law and, in exchange, gained the right to explore pay TV. The combos that include the bundle sales of landline, mobile, Internet access, and pay TV services were born.

Although there are three forms of Condecine, *Condecine Teles* (Telcos)

¹ Condecine, foreseen in PM 2228-1 (2001), is levied on the broadcasting, production, licensing and distribution, for commercial purposes, of audiovisual works and must also be paid by all those who exploit, acquire or import works from abroad. This fee exists in three formats. Condecine Title is charged for the broadcasting, production, licensing and distribution of audiovisual works by market segment to which they are destined, i.e., one pays the fee for exhibition in movie theaters and then pays again for TV broadcast. Condecine Remessa is charged on the payment or remittance, to companies abroad, of amounts related to the income from works acquired abroad and shown here. Finally, Condecine Teles is paid by telecom service providers who distribute audiovisual content.

represents 90% of the amount collected by the FSA. It so happens that, since then, consumers have started using the Internet to access VoD and leaving pay TV.

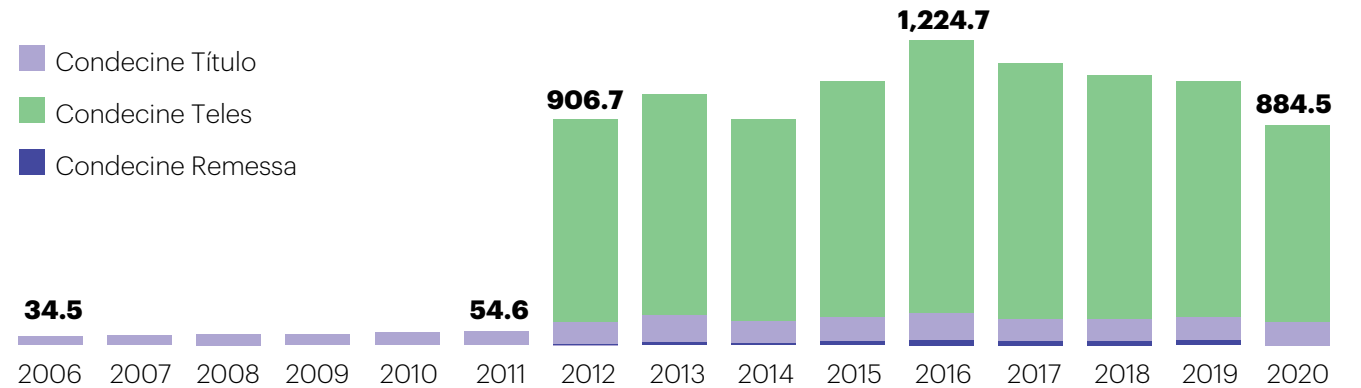
While free-to-air TV uses the broadcasting spectrum to show content, and pay TV uses the so-called conditional access - provided by satellite and cable technologies - the platforms make an over the top transmission. Because they use the Internet, they bypass all the laws that regulate the distribution of content in Brazil.

The first movements to regulate VoD took place soon after the approval of Law 12.495. In 2011 and 2012, under Manoel Rangel's management as head of Ancine, Normative Instructions No. 95 and No. 105 were published, which inserted platforms under the category of "other markets," something that would oblige them to collect *Condecine Título* (Title) per title exhibited.

When the Normative Instructions were published, the only platform operating in Brazil was Netflix. But neither it nor any

► **Condecine collection**

Net amounts **without the deduction from the Untying of Union Revenues (Desvinculação de Receitas da União, or DRU in Portuguese)**, in R\$ million



Source: Ancine

other streaming service that has entered the Brazilian market since, pays the tax. Some were even notified by Ancine with past due invoices, but their lawyers instructed them not to pay.

Due to the very nature of streaming, marked by the vast offer and the direct relationship with the consumer, charging per title was always seen as problematic. Indeed, this option does not take into consideration the many business models used by streaming services, which can be based on rental and subscriptions, as well as on gratuity (as shown in the second article of this publication).

Although one always thinks of the Netflix model when talking about regulation, YouTube is also a streaming service - similar to both a social network based on community interactions and to a free TV with a business model based on advertisement.

Charging per title would also be a barrier that stops small providers and, ultimately, could end up restricting the catalogs of the big ones.

A decade after the INs were published, the National Congress approved an amendment that defined that VoD services

were not liable to Condecine because they were not included in the “other markets” category, and were not, therefore, subject to pay Condecide Título (Title). What happens in practice is that, for a lack of definition as to how the tax should be paid, it is not charged.

Fábio Lima, from the aggregator Sofá Digital, one of the first to voice the inconsistency of the INs, thinks it is important to remember this episode because it shows how the market sometimes stands against or in favor of measures whose real meaning escapes them:

“The Normative Instructions rendered the video on demand business unfeasible in Brazil for years - especially those not based on subscription. How was it possible to offer a transactional model with this tax? I am amazed, ten years later, to see people who seem not to have understood that the competitive environment has changed and that regulation models have to change as well. Before the arrival of streaming, distribution channels were the bottleneck. Now, we no longer have a physical limit to

the distribution of content. Why did Brazil spend ten years tied up in two Normative Instructions that would limit supply? I think the debate around *Condecine Título* for VoD shows how little we understand of what is being debated.”

Another debate that ended with the defeat of independent production was the one around the possibility of TV channels offering linear content via OTT. Linear content is that which has a schedule grid, organized by a programmer - it can be watched on either free or pay TV. Non-linear content is offered in a catalog and selected by the consumer.

This issue came to Anatel from a complaint filed by Claro in 2018 against programmers Fox and Turner, which began to offer their services directly to consumers via the Internet. Claro argued that the two companies were circumventing the SeAC Law.

The debates involved Ancine, the Federal Attorney General (AGU), and the National Secretariat of Economic Affairs. In the

end, all the bodies understood that offering content over the Internet is not a Conditional Access Service, but an Added Value Service (AVS), according to the Telecommunications Law. This same division exists, for example, in France. In 2020, Anatel authorized the transmission of linear programming, via OTT, without submission to the pay TV rules.

Days before the decision, Manoel Rangel said in an article in the *Folha de S.Paulo* newspaper that the SeAC law was being trampled to serve “the large foreign media and telecommunications conglomerates.”

Also a few days earlier, Globo launched its linear channels on Globoplay. Marcelo Bechara, former director of ANATEL and director of institutional relations of Grupo Globo, was one of those who tried to overthrow Claro’s thesis:

“Telecommunication networks are physical infrastructures. The Internet, despite being a protocol that operates with telecom structures, is not to be confused with them

and is, therefore, a Value-Added Service (VAS). VAS is a service that adds something to the telecom service: the alarm clock, which in the old days could be hired by those who had a landline, is an example. Globoplay, just like Disney+, does not have an infrastructure, it does not operate a network. They are, technically, Internet applications. You download the application and access the content. Linearity does not define what telecommunication is. How can you categorize a cloud service, accessed through a terminal connected to the Internet, as telecommunications? This episode would demonstrate that there is no point in trying to regulate VoD by copy-pasting the SeAC Law.”

The law firms involved in the dispute today prefer to keep quiet about the dispute, as does the Brazilian pay TV Association (ABTA). But at the time, the argument used by the law firm that defended Claro was that the OTTs should be seen as service providers and not as simple technological tools.

The fact is that, based on Anatel’s interpretation, the SeAC Law was weakened.

Currently, those who transmit content via OTT do not have to pay Condecine, provide audience data, or comply with quotas - rules present in pay TV.

What is, then, the best way to equalize the regulatory burden of VoD and SeAC? The paradigms are new, but the tug-of-war is age old, and takes place between the free market and state intervention.

Independent production in streaming

There are at least eight bills in the National Congress that deal with the SeAC Law and the regulation of VoD, ranging from the discussion of quotas to proposals regarding cross-ownership. In addition, the SeAC Working Group (GT SeAC) was set up by MiniCom in 2021, to produce an extensive report illustrating the degree of dispute. Contrary to what happened when the regulation of pay TV was discussed,

not even independent production is unanimous today.

André Sturm, owner of the distribution company Pandora and of the Belas Artes à La Carte platform, and president of the Audiovisual Industry Union of the State of São Paulo (Siaesp), thinks that the sector itself doesn't have a full understanding of the interests at stake:

“In the clashes around Law 12.485, the dispute was with international companies that operate in certain areas. Now, it is with global companies, with infinite capital. Furthermore, large companies that are prejudiced in one aspect or another are prevented from positioning themselves because the businesses are transversal. In the case of Brazilian production companies, as many have contracts with streamings, it is also more difficult to adopt a final position. In the case of film, specifically, what has also changed is that there is a greater number of entities representing the sector and the agendas have been diluted. There are many agendas and, as a result, it is difficult to unite around any given theme.

The excess of demands and the attachment to some previous achievements make positioning difficult.”

A long-time advocate of public policies to support Brazilian production, producer Mariza Leão admits that she has started to reassess her earlier claims in relation to what type of regulation is appropriate today:

“I have no doubt that the balance in the negotiations between the Brazilian producer and the platforms will depend on public policy and funding. But I also no longer see a public policy that is anachronistic by imposing itself by force, without recognizing the identities of the different players. I no longer believe in authoritative things, as we did, as a sector, when the Audiovisual Law [in 1993] or Ancine was created. Even the quota... I no longer believe in the effectiveness of the traditional quota in this fast-paced and abundant platform environment. Everything has become more complex.”

Technology, by changing the production, diffusion, and consumption, has brought

into the audiovisual market not only the telcos, but the big techs. A symbol of this tendency is the Academy Award for Best Picture in 2022 going to a production from Apple TV.

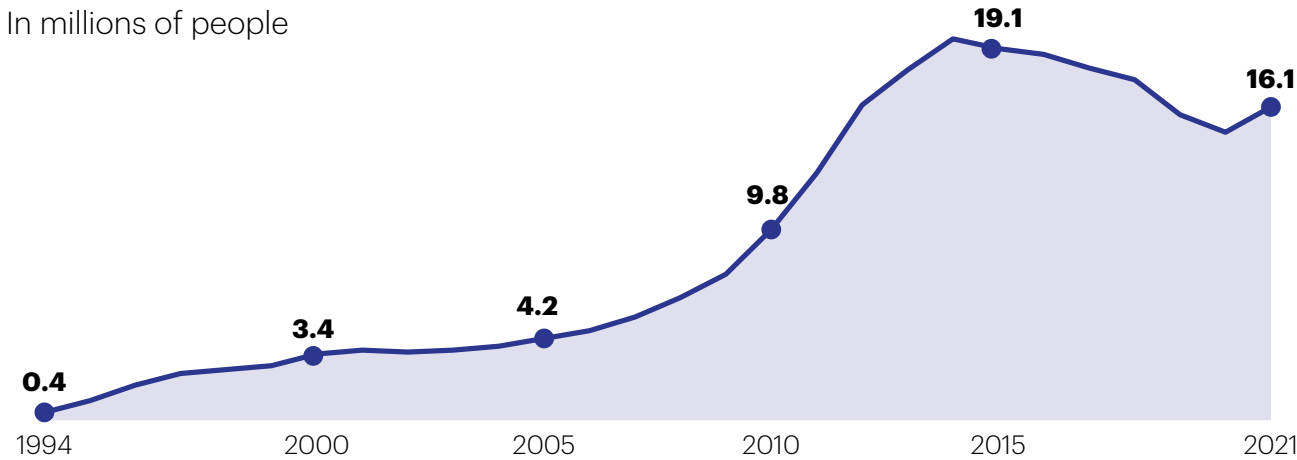
As infrastructure owners, telecom companies have acted as intermediaries in the pay TV business since 2011. In the case of OTT services, the consumer can subscribe directly to Netflix or Disney+. The remuneration of the telcos will, in these cases, depend exclusively on data traffic. In 2019, the number of Netflix subscribers had already surpassed that of Net/Claro subscribers.

According to Anatel, the SeAC ended 2021 with 16.4 million subscribers (see pay TV chart on the next page). Broadband, in turn, is available in 30.2 million homes and Netflix's subscriber base in Brazil is estimated at 15 million.²

² Due to a change in Anatel's definition of pay TV - subscribers are those who own their own device to access default channels, but do not pay for pay TV packages specifically - the number of subscribers grew exponentially between 2020 and 2021.

► **Pay TV subscribers**

In millions of people



Source: Anatel

Even at its best, pay TV has never surpassed 20 million viewers. But because a pay TV package is much more expensive than a Netflix subscription, the revenue is far from negligible. Pay TV still moves 20 billion reais annually.

It is important to keep in mind, however, that while the network structure dedicated to the distribution of SeAC content is available throughout the national territory, 985 cities don't have access to fiber optic cable, and in 2000 municipalities the connection speed is still insufficient to fully enjoy videos streamed from the internet.

Pay TV is still perceived as having better quality than streaming and part of the users, especially among the older age groups, like the programming logic. VoD, on the other hand, offers advantages from the consumer's point of view, such as the price and the access through different devices.

When these two services are analyzed through the perspective of movies and series production, one detail stands out: in the United States, the main reason for keeping pay TV is the access to sports events and news programs. When it comes to streaming, on the other hand, movies and series are the draw.

Both services are, in any case, getting closer and closer. Today, pay TV offers content that can be saved and watched later and most channels have versions for Internet access. OTTs, on the other hand, are beginning to incorporate free-to-air and pay TV features.

Apart from screen quota, some of the SeAC's rules are: prohibitions to cross-ownership (Art. 5 and Art. 6) and³ to hiring national artistic talents; obligations to include Brazilian channels and to broadcast the indicative rating; data disclosure requirements; and taxation with ICMS rates that vary from 25 to 37%.

Internet video streaming, on the other hand, is not subject to competition rules, can freely hire Brazilian talent, is taxed

³ The law foresees the prohibition of cross ownership (Art. 5) and verticalization (Art. 6). From the moment global media conglomerates started to distribute content, far outpacing local companies in their ability to invest in technology and production, the competition got fiercer. Ancine, Anatel and the Administrative Council for Economic Defense (CADE), together, rule on issues at stake in Art 5 and 6 which, in turn, have had direct implications for the merger of AT&T and Warner.

by ISS, with a maximum rate of 5%, and doesn't need to disclose audience data.

The large companies, led by the MPA, are trying to take advantage of the revision of the SeAC to try to unburden the sector as a whole. The independent production sector, on the other hand, depends on Condecine to maintain funding sources.

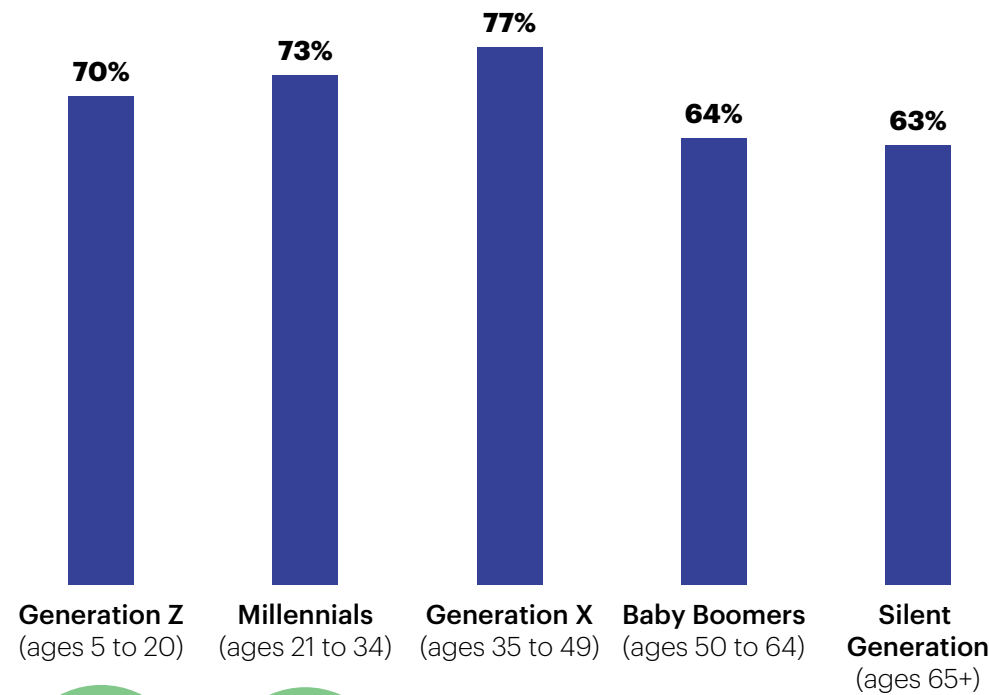
In 2019, 30% of Brazilian productions shown on pay TV were made with FSA resources. But there is no line to finance works made for streaming. What there has been, especially after the pandemic, is the direct investment of platforms in local content. The inexistence of financing lines that contemplate this new window has caused, very quickly, distortions in the production sector as well.

"How will these two worlds coexist?", wonders producer Mayra Lucas, from Glaz Entretenimento, who has worked for several VoD platforms:

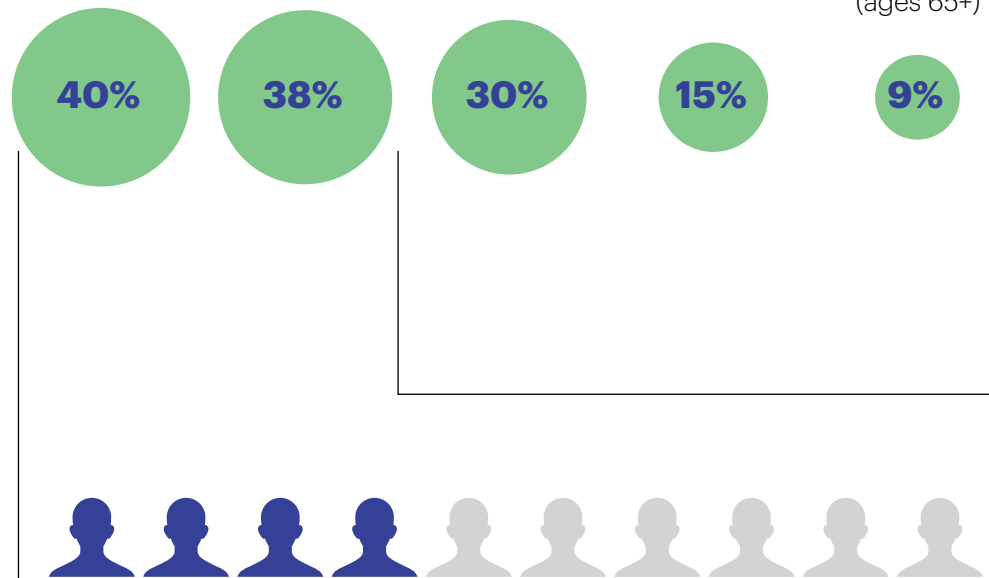
"How are we going to balance the amounts paid for crews from the international

► **Young people are more likely to use an online service and cancel subscriptions**

Paid services
Interviewees that pay for a provider



Pay TV
Percentage of those who plan to cancel the service and replace it with streaming



Approximately 4 out of 10 plan to cancel

Source: IE Market Research Corp.

platforms and for audiovisual productions made only with national public funding? Portugal already works with two tables: one for national productions and another for international productions. And when I see that this is not even close to being solved here, I am afraid that we will try, once again, to reinvent the wheel.”

For now, the forms of support considered are: mandatory investment, by the platforms, of part of their revenues in the production, acquisition, and development of works of independent Brazilian production; incentives, in the form of Art. 39, for investment in Brazilian production; creation of quotas so that part of the catalog is composed of local productions; the guarantee of prominence for this content; and the establishment of a new tax, Condecine VoD.

These requirements are modeled on legal frameworks adopted around the world and take as inspiration the Audiovisual and Media Services Directive, published in Europe in 2018.

So much so that the percentage of revenues proposed is not the result of any specific study. It only reproduces percentages adopted in other countries. Some defend 5%, others 10%, and others still, a progressive percentage.

Of all the proposed legislation, Congressman Paulo Teixeira's law project 8889 best represents the demands of independent production companies. Here, Congressman Teixeira (PT-SP) introduces the term *audiovisual content on demand* (CAvD). But this doesn't mean that the project won't divide the independent production sector itself. One of its sensitive points is the establishment of quotas.

The screen quota is, both here and internationally, a milestone of public policies and, in the opinion of João Brant, director of the Culture and Democracy Institute, should by no means be suppressed:

“The establishment of quotas is important to correct an asymmetry of bargaining power of the producers with the platforms.

We are dealing with a market in which one layer maintains power over the others. The quotas not only open a space for Brazilian production, but also increase the negotiation power. The European Union has simplified quotas to 30%. Here, we could work with different ranges and with a cap, so as not to create a disincentive for large catalogs. Based on the size of the catalogs, minimum ranges would be created for the presence of obligatory Brazilian production, half bought, half hired. Even if a mandatory investment is established for the platforms, if there are no quotas we will only see Brazilian content from one point of view, which is that of platforms.”

Even though it is restricted to pay TV, the quota for Brazilian content had an important impact on the Brazilian audiovisual market. The demand for more than one thousand hours of programming per year has enabled the emergence of new agents, exponentially expanded the labor market, and made some production companies work according to the international parameters required by platforms.

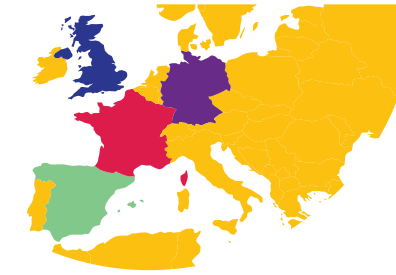
One of these production companies is Gullane Entretenimento, which produced for HBO even before Law 12.485 and expanded with the increase in public funding and quotas. Fabiano Gullane says that, today, the company works for all platforms:

“Law 12.485 established a model that made Brazilian productions’ pay TV audience go from 3% to 18%. This concerns cultural identity, but also the wealth generation. In this sense, I defend that the presence of Brazilian production and of independent Brazilian production be guaranteed in the platforms as well. Another relevant aspect of the quota is that it opens the market to smaller companies. In this first phase, the ones that managed to plug themselves into this internationalized production system were the big companies, like Gullane, Conspiração, Fábrica, Prodigio, and O2. But by increasing demand, the quota allows the smaller ones to participate in this market as well.”

Despite the fact that, historically, producers have always defended the quota, today

▶ Regulation in Europe

The legislation in transformation



	 United Kingdom	 Spain	 France	 Germany
	Audiovisual Media Services Regulation (2020)	Propostas no Anteproyecto de Ley General Audiovisual*	Service de Médias Audiovisuelles à La Demande (2021)	Medienstaatsvertrag (2020)
Obligations	<ul style="list-style-type: none"> Requirement of at least 30% of the platform catalog to be of European content and that these services ensure the prominence of European content; Suspension of obligations if the platform proves that they have resulted in a significant reduction in audience and revenue, or that they are impractical. 	<ul style="list-style-type: none"> Requirement that platforms allocate 5.5% of their revenue to independent productions in languages spoken in Spain; Platforms with revenue over 50,000 euros per year must allocate an additional 5% to the Fondo de Protección de la Cinematografía; Allocation of at least 30% of the streaming platform catalog to European content. 	<ul style="list-style-type: none"> Reinvestment in French content of 20 to 25% of the revenue obtained with content viewed in France; Required contribution to the Centre National du Cinéma (CNC) in the amount of 2% of the revenue in the country; Guarantee that the catalogs have at least 60% European content and 40% spoken in French. 	<ul style="list-style-type: none"> VoD services must produce content in German, without a pre-established percentage; Platforms with annual revenue over 500,000 euros and services housed in another country must pay a contribution of 1.8% to 2.5% of the annual revenue to finance German cinema.
Incentives	<ul style="list-style-type: none"> Production incentives of up to 25% for British film production. For this, the production must add 18 to 35 points in a test that evaluates the importance and cultural relevance of the film. 	<ul style="list-style-type: none"> Tax Rebate of up to 30% of costs in Spain, provided that the total amount spent exceeds 1 million euros and the production employs a percentage of Spanish workers. 	<ul style="list-style-type: none"> There are incentive mechanisms for international productions that spend at least 250,000 euros or 50% of the total budget in France, with at least five days of shooting in the country. 	<ul style="list-style-type: none"> There is a production incentive mechanism for up to 20% of production costs spent in the country, with a cap of 4 million euros per project.

* The country still doesn't have a specific regulation for VoD. The project has been under debate in Spain since 2020.

this issue divides them. Brasil Individual Independent (BRAVI), a key leadership in the approval of the SeAC Law, for example, has revised its discourse, as explained by director Mauro Garcia:

“As the discussions advanced, a consensus was reached in BRAVI around the idea that the quota is not, at this point, the most necessary element in public policy. We need to generate employment and income. The SeAC Law was fundamental, but the times are now different. Over time, we understood that the law, as it was constituted, imprisons the projects in the first window. After seven years of meeting the quota in a channel, your product no longer has value. The turning point brought about by streaming is that, with the platforms, the market has become truly international. The main discussion should no longer be about quotas, but about property rights.”

The main arguments against quotas are that they only made sense when there was a scarcity of screens - the movie theater and the TV grid have limited space - and that, since the new platforms that

grant access to content are pretty much bottomless, they can prove ineffective.

Another possibility of market reserve is prominence, which means highlighting local products on the platforms' home screen. Felipe Lopes, partner of Vitrine Filmes - which has the largest catalog of Brazilian auteur cinema - says that the benefits that the platforms have brought to some market segments should not overshadow issues that are central when talking about culture.

“Today, all platforms have our content. It is a very strong market and, with the growth in the number of subscribers, they have a much greater negotiation capacity. We have much better licensing values than we had in pay TV and we are able, because of the variety of players, to work with more auteur and independent works. One thing that makes me sad is not knowing the audience for these films. But, with all this, I think it's essential to maintain a space for the defense of Brazilian cinema and I defend its prominence. A lot of decisions are made when you access the application, and you don't want to grab the

remote control and keep typing the name of a movie. How many Brazilian movies are shown on the home screen?”

Halfway between the minimum production quota and prominence there is another problem: the place Brazilians occupy in the contracts.

In the dozens of productions made in the last two years with resources from the platforms, all the production companies were hired as service providers.

From the moment a production company does not own the property rights to the works, it is no longer considered an "independent producer" under SeAC Law.. And furthermore, in the case of originals produced by Netflix, Disney+, HBO Max, etc. in Brazil, all revenue stays with these companies.

The battle for property rights

Until 2011, free-to-air TV produced about 90% of the national content it aired internally, and pay TV filled less than 5% of the grid with Brazilian productions. One of the goals of the law was to allow the independent Brazilian sector to create productions for which they owned the property rights.

In 2011, the MPA reported to the US government that Brazil was causing channels to lose one of their main assets, since a program only meets the Brazilian screen quotas if the property rights holders are Brazilian.

Now, the entity is avoiding confrontation and adopting a conciliatory tone. Andressa Pappas, MPA's Institutional Relations director, is full of praise for Brazilian production and, in her view, the support it asks for is already granted and does not need to be imposed:

“Brazil is an important market for the MPA, so much so that we are developing investment attraction programs, which include the professional qualification of workers in our industry. Locally, Disney announced the production of 80 originals; HBO, almost one hundred works in the next two years; Netflix, in 2020 alone, invested 350 million reais and is committed to doubling that amount this year and the next. Everyone knows that the platforms are, internationally, investing billions in the production of local content. This is a strategic priority for the studios, and this investment is passed on directly to the producer, without the bureaucratic red tape that exists when the state is involved. The contracts will be made based on the business models of the independent producers, so that both sides have their benefits and provide conditions for the work to circulate both nationally and internationally. In this scenario, is it a tighter regulation of one window or another that will lead to the growth of the local industry?”

Although the investment is significant, we do not know an exact figure as VoD

platforms do not make their data public. But it is known that, already in 2018 in the United States, the production of content originating from the platforms numerically surpassed the combined output of free-to-air and pay TV stations.

In Brazil, when the pandemic coincided with Ancine's institutional crisis and the shutdown of FSA resources, producing original programming for the platforms was how several production companies survived.

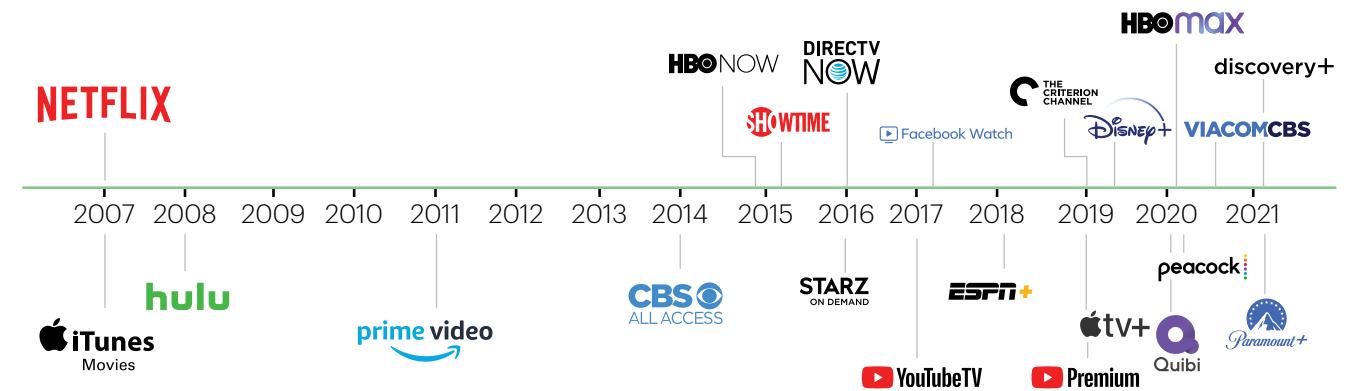
As the projects took off, the market began to fear a certain standardization of Brazilian production along the lines of platforms – with aesthetic, thematic, and production model implications.

This view is not necessarily shared by everyone. Mariza Leão, worked on projects with Netflix, Amazon Prime, and HBO Max, explains her experience in a more nuanced way:

► **The war of streaming**

Releases of the main streaming platforms in the US

Starting in 2020, there has been an explosion of services offered, leading to changes in consumption habits and to new competition landscapes



Source: Mentinno - Formación Gerencial

“I’m a beginner in this market, but what I’ve felt, so far, is that from a creative point of view, the exchange has been rich. From a creative and organizational point of view. There are compliance rules, for example, that we didn’t know about. I have learned a lot, or relearned a lot. What has changed is that the pendulum of decision is no longer with the producer. The decision is much more shared. But as long as there is respect, this doesn’t mean that the final result will be worse or less authentic. We also work with budgets that are five to six times larger. Another possibility opened up by the platforms is internationalization. In

the movie business, how many films went to foreign markets? We used to sell the films to Portugal and with the little money we got we’d manage to buy three pizzas. Today, the arrival of productions to other countries is a concrete possibility. The point is that, when the resources are totally private, discussing property rights has not been possible. We need public policies made with common sense to be able to start negotiating rights.”

Mayra Lucas echoes Mariza Leão’s opinion:

“Working for the platforms, I saw Glaz’s revenue triple. But my costs tripled as well.

The break even of the production companies has increased, and our earnings are limited to the provision of services. And it is no use saying that no producer earned intellectual property before. I did. There was always a little bit here and there, not to mention sales. Today, I have the idea, I develop this idea, and I get paid for a service rendered to a client. Some players negotiate a value for the creation, others don't. Anyway, that's where profitability ends. We no longer have the RLP [net producer revenue]. This is not financially fair, but it will only change when there is regulation. "

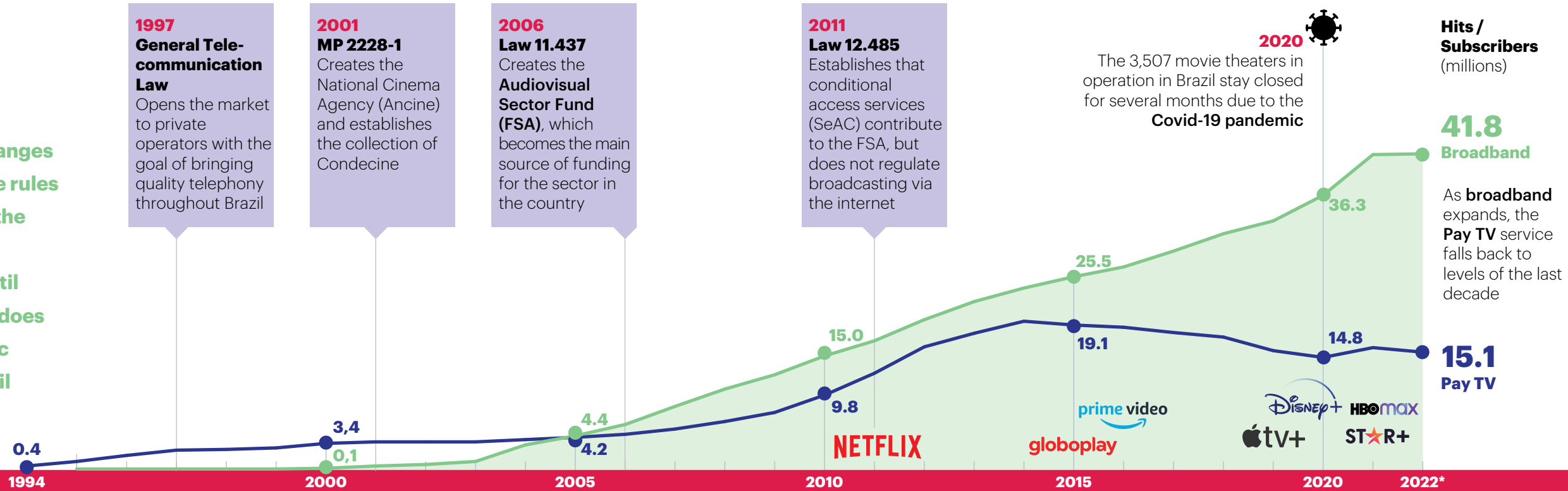
is that which requires regulation still has no defined form and is, more than ever, global and multi-pronged in scope.

Today, the main VoD platforms themselves understand that regulation is necessary. There are basically three possibilities on the horizon: the establishment of prominence and/or quotas; the creation of a *Condecine VoD*, accompanied by public notices to finance works made for streaming platforms; and the investment by the platforms via tax incentives, happening with Art. 3 and Art. 39.

Legislation, as always, fails to keep pace new technologies. What is new this time

► **Legislation chases innovation**

Technological changes have rendered the rules established over the past two decades anachronistic. Until today, streaming does not have a specific regulation in Brazil



1997 General Tele-communication Law
Opens the market to private operators with the goal of bringing quality telephony throughout Brazil

2001 MP 2228-1
Creates the National Cinema Agency (Ancine) and establishes the collection of Condecine

2006 Law 11.437
Creates the Audiovisual Sector Fund (FSA), which becomes the main source of funding for the sector in the country

2011 Law 12.485
Establishes that conditional access services (SeAC) contribute to the FSA, but does not regulate broadcasting via the internet

2020
The 3,507 movie theaters in operation in Brazil stay closed for several months due to the Covid-19 pandemic

Hits / Subscribers (millions)

41.8
Broadband

As broadband expands, the Pay TV service falls back to levels of the last decade

15.1
Pay TV

1990
The end of the state company **Embrafilme** leads to a near-total freeze of national feature films production in Brazil

1995
Embratel starts the commercial use of the internet in Brazil

YouTube
2005
The invention of YouTube consolidates the internet as the most popular means of distributing and showing videos

2008
End of VHS film distribution in Brazil

2011
The pioneering SVoD platform arrives in Brazil and in 42 other countries in Latin America

2015
The SVoD market expands and diversifies with the **Globo** and **Amazon** platforms

2016
There are now **46 VoD providers**, most of them small, registered with Ancine

2020
Streaming content consumption takes off in the pandemic, as does the VoD market, which becomes larger and more complex

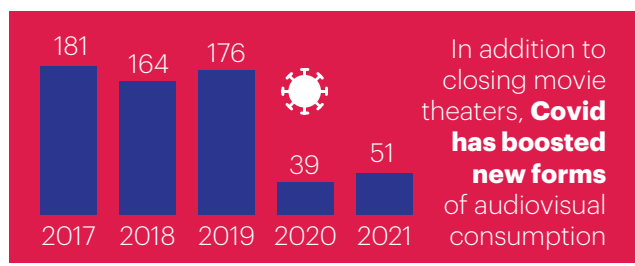
2006
Mass closure of VHS and DVD stores and distributors in Brazil

1993 Audiovisual Law
Allows for companies to apply their income taxes on films, leading to production resumption

1995 Pay TV Law
Establishes the operating rules of the service started in the previous decade

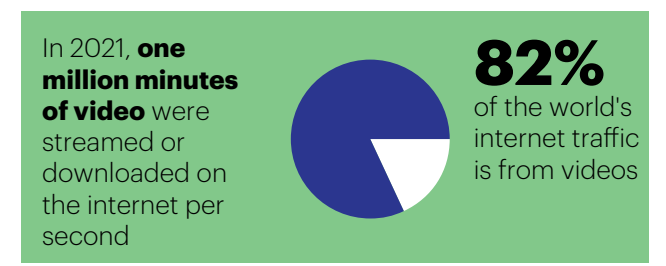
*Data up to July 2022
Sources: Anatel, Ancine, Ministry of Communications

Audience of movie theaters in Brazil (millions)



In addition to closing movie theaters, **Covid has boosted new forms** of audiovisual consumption

Videos dominate the internet



Source: Cisco

Screen windows: Talking about a revolution

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Projeto Paradiso is an initiative of the Olga Rabinovich Institute, a private Brazilian foundation that offers creative and strategic support for professionals in film and episodic. We invest in professional training and capacity building through fellowships, mentoring programs, workshops, seminars and studies, nurturing a network of professionals in Brazil.

Focused on internationalization, we partner with well-known global institutions, connecting national talent with training and business opportunities around the world.

One of our goals is to foster a culture of data and trends analysis, and promote a collective discussion on the industry in Brazil. We hope this publication will inform the decision-making process of players, both from the public and private sectors, who are currently faced with the ever-changing paradigms of a booming industry.



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