CONTENT TAXES IN THE DIGITAL AGE

How can policymakers tax digital content?

KIT KOWOL and **ROBERT PICARD** discuss the options

The digital revolution of the last 20 years has led to a transformation in how print and audiovisual content is both produced and consumed. While this digital revolution has brought considerable benefits, it has also created challenges for traditional content creators and the means by which they are financed.[1] In particular, the rise of content aggregators, online search firms, and social media enterprises has severely disrupted the advertising based business models of existing print and broadcast news organisations.[2]

Yet, the increased competition between 'old' and 'new' media would be welcomed if it were leading to better and more varied content, but this is largely not the case. Entrants such as Google, Yahoo!, Facebook and Apple, while deriving huge advertising and product sales revenues, produce little news and audiovisual content themselves. Rather, such firms rely primarily on content created by others, such as film-makers, recording companies, broadcasters and print news organisations. Some of these firms provide direct compensation to content creators, yet many do not and, as a result, a particular problem has emerged for news producers that are arguably least able to react to the changes taking place.[3]

> **There is growing support for the introduction of taxes and levies that would be used to compensate content creators.**

Within this emerging commercial and technological environment two interconnected questions stand out as needing sustained attention if society is to continue to enjoy the social, political, and cultural benefits that high quality and diverse news media bring. First, how to encourage the creation of a broad range of high quality content in an increasingly digital environment. Second, how to ensure that those who generate this content are fairly rewarded. In both cases regulators will undoubtedly be at the forefront when it comes to providing, and likely enforcing, answers.

In this context, there is growing support for the introduction of taxes and levies that would be used to compensate content creators.[4] Indeed, a number of European nations and their media regulators have already been asked to consider such 'content taxes' as a means to compensate existing content creators and create incentives for new entrants into the digital marketplace. Yet, while much attention has been paid to these context taxes little research exists into their possible impact – particularly as regards to who would enforce and collect them. This article begins a conversation on the potential benefits and drawbacks of context taxes and in particular to underline their long history within Europe as well as the mixed results of their previous application.

CONTENT TAXES IN HISTORICAL PERSPECTIVE

The term 'content tax' is a catch-all description for ways to raise revenue for the production or distribution of original content. Currently, the content taxes proposed to support news production take one of two forms: either a 'levy' where funds are collected and then redistributed directly to content providers (usually through a collecting society or television licence fee collection agency) or a 'tax' where revenue is collected and distributed by government.[5] Such levies and taxes have four frequently cited advantages:

- By providing an alternative revenue stream, content organisations will have less need to introduce 'paywalls' or seek more stringent copyright protection of their work, which imposes significant enforcement costs on society
- By introducing a tax or levy onto those who benefit from content production, but do not support it financially, content taxes are said to provide greater equity among and between media organisations
- Revenues from content taxes would reduce producers' dependence on advertisers and open opportunities for more innovative content and content that is critical of dominant elements in society
- Alongside these theoretical advantages another oft-asserted benefit of content taxes is the fact that they have a long history within the European and indeed global media landscape.

The most recognised existing content taxes are arguably broadcast licence fees that go towards paying for some or all of the production and distribution of content. Introduced initially on radio these fees are used throughout Europe and tend to fund public service broadcasters (PSBs). Nonetheless, while less well known, alongside broadcast licence fees other forms of content tax also have a long history of application in Europe; among them cinema admissions taxes, private copying levies and private broadcaster levies and it is to these that we now turn.

After the Second World War, and in response to the growing dominance of the US film industry, a

number of European nations including France, Britain, Italy, Belgium, and Sweden, introduced taxes on cinema admissions as a means to boost their domestic film production. Introduced in 1948 the French taxe spéciale additionnelle (TSA) is the most famous of these cinema levies and is credited with helping France develop a large and self-sustaining film industry. Today the TSA stands at 11% and is accompanied by a similar tax on video sales and rentals (the rate is higher for pornographic films and films deemed to promote violence). The revenue raised from TSA is primarily used to fund a cinema support fund, which redistributes the TSA revenue to producers whose films are made in France and in the French language with the amount each producer receives calculated on the basis of box office receipts.[6]

Despite its success to date, the TSA is an increasingly ineffective revenue tool in a world where films are often consumed on PCs and mobile devices rather than in cinemas. Moreover, the funding model TSA supports has been criticised for being highly defensive, favouring existing successful production firms as well as failing to incentivise export orientated film-making.[7]

Less well known, a similar cinema admissions tax was introduced in Britain in 1950. Formalised in 1957 the so-called 'Eady Levy' added a charge of a quarter penny to cinema tickets with the receipts going to the British Film Production Fund.[8] As in France this fund redistributed levy revenues to films which had been produced and made in Britain. The scheme was notable for its success in attracting American film production to Britain in the 1950s and 1960s but was less successful in nurturing British film talent and was, as a result, wound up in 1985.

Private copying levies (PCLs), first introduced in Germany in the 1960s, are special levies charged on the purchase of particular types of media and copying devices. The levy is an attempt to provide fair compensation for music copyright holders for the private copying of protected works. Charges on blank media and copying technology are primarily redistributed to rights holders through collecting societies. Adopted by 25 EU members – the exceptions being the UK, Malta, Cyprus and Ireland – the levies produce about €500m annually.[9]

> **"The TSA cinema levy is an increasingly ineffective revenue tool in a world where films are often consumed on PCs and mobile devices."**

Initially considered a feasible and fair means of compensating rights holders both morally and economically, today PCLs are viewed as increasingly anachronistic in the digital age. First, in terms of fairness, PCLs do not take into account the wide variety of non-copyrighted material stored on blank media, particularly external hard drives, nor the legitimate copying of material licensed using DRM (digital rights management) mechanisms.[10] Second, the efficacy of PCLs is being called into question as more content is either streamed or stored 'in the cloud' and cross-border flows become normal.[11] Moreover, there is concern about the efficiency in which such levies are handled because they often entail high administrative and compliance costs that significantly reduce the amounts that reach those who created content and often provide compensation to only the most successful producers.

Given the frequently large revenues of private television and radio broadcasters, some European nations have attempted to tap their success as a means of funding other cultural content, in particular PSBs, through so-called private broadcaster levies. For example, in Finland between 1999 and 2013 a levy on private broadcasters' turnover – calculated on a progressive scale – was used to provide revenues for the state television and radio fund. Along with supporting broadcasting regulatory functions this fund also financed the nation's

PSB, the YLE organisation, which in turn agreed not to run advertisements on its channels.[12]

A similar scheme was also introduced in Estonia when the nation's PSB (ETV) voluntarily gave up advertising in exchange for financial compensation from the nation's commercial broadcasters. The scheme, however, was a failure as the commercial broadcasters defaulted on their payments.[13] By contrast, following proposals in 2008, France has successfully transitioned its television PSB funding to an advertising free model during peak times by imposing a 3% tax on advertising revenue from commercial providers and adding state support to meet any shortfall from lost advertising revenue.[14]

As the varied introduction and removal of broadcaster levies reveal, the merits of such a content tax are highly debatable. Within a well-developed media market they offer the potential to generate significant revenues but are nonetheless subject to considerable fluctuation as the market for advertising alters. Indeed, the general trend towards online advertising and the growth of video on demand services such as Netflix has called into question the long-term viability of relying on such a funding mechanism.

PROPOSALS FOR NEW OR REFORMED CONTENT TAXES

Given the necessity of updating existing content taxes for the digital age and growing fears about the funding models of the press and other advertising supported cultural products, a number of new or reformed content taxes have been proposed.

Supported by a number of journalistic organisations and media scholars perhaps the most important of these proposals are the plans to introduce a tax on so-called 'news aggregators', which are websites or apps which present news content to users based on pre-defined preferences. These sites, such as Google News, Yahoo! News, and the Huffington Post, generate large advertising revenues but do not produce much of their own content and instead collect stories from other news organisations. As a result of this perceived injustice and the supposed 'churnalism' it has produced, a number of proposals have been made to tax such aggregators. The most prominent of these proposals was contained in the 2010 Zelnik Report proposals to the French cultural ministry.[15] Referred to as the 'Google tax' the report envisioned a tax of one to two per cent on revenues generated by displaying adverts to users in France.[16] This, the report suggested, would largely affect only the largest web portals (Google, Yahoo!, MSN, AOL) and could yield between €10m to €20m yearly to be used on funding the press. Described in less detail, a similar proposal was made in the UK in 2010 by Geoff Mulgan.[17]

With the continued growth in online advertising, which in 2012 overtook newspaper advertising, such a tax would likely continue raising revenue well into the medium term. Indeed, Google alone generated €15.5bn in revenue from its European operations last year. Nonetheless, despite the attractiveness of these proposals a number of issues need to be considered, particularly by regulators, chief among them the issue of distribution method.

> **Even if content taxes are introduced in Europe, global users could continue to enjoy the benefits of content produced by others.**

As with all content taxes, revenue generation is necessarily only half of the equation. New mechanisms to distribute the revenue will also be required, posing questions on the extent of government intervention in the media and how to share revenues within and between news organisations. Alongside this generic question, other more specific issues arise when it comes to introducing a news aggregator tax, chief among them technical feasibility, the problem of fluctuating revenue, and the fairness of such a proposal.

In terms of feasibility, to succeed such a system would require websites carrying advertising to collect, collate and distribute information on users' physical location. Both the technical feasibility of this as well as the willingness of websites to do so is questionable. Furthermore, identification of IP addresses and users in networks are protected by privacy rules at the European level that would need to be addressed. In addition, as was the case with taxing television broadcasters' revenue, this measure would necessarily fluctuate with the fortunes of the advertising market as well as potentially providing the least revenue (during recessions) when news organisations need it the most. Finally, there is the likelihood that news aggregators and web portals will simply pass on the cost of the levy to advertisers.

In part because of the problems of an aggregator tax other stakeholders have suggested that taxing internet service providers (ISPs) might be a more effective model. The rationale behind this proposal is that ISPs such as the UK's BT and France Telecom indirectly benefit from content generation because it acts as a driver for internet connectivity. Unlike a tax on news aggregators this revenue be relatively easy to collect and would fluctuate less.

As a result, a number of proposals for taxing ISPs have emerged both as a means for generating revenue for PSBs as well as for press support. Indeed, as of 2008 France collects a small levy primarily from ISPs to fund the development of public service electronic content. Moreover, opinion research undertaken by the UK's media regulator Ofcom suggests that the concept of such a levy – when used to fund PSBs – is potentially popular.

As with a tax on online advertising such a measure would likely generate considerable revenue. In 2012, European members of the OECD recorded over 137 million broadband connections and as such a hypothetical subscriber levy of €5 would therefore raise over €685m. Nonetheless, just like a news aggregator tax, such proposals suffer from not providing an easy answer when it comes to distributing the revenue generated as well as raising the issue of fairness given that such a tax might simply be passed on to consumers, many of whom already pay for online content subscription.

An additional problem with an ISP tax is growing deployment of high speed cellular connections across Europe, something which questions the viability of taxing fixed-line ISPs. For some, therefore, taxing cellular connections offers a better answer. Like an ISP tax, this tax could be applied to telecoms firms either on a per-subscriber or turnover basis or directly to their customers as an extra item on bills. However, in contrast to fixed monthly ISP charges, mobile customers are usually billed on the basis of how much data they use.

If applied on this basis a telecoms tax could potentially benefit from greater fairness in terms of the amount of content that is consumed. However, with this proposal not only do the perennial issues of distribution method and equity raise their heads but so does the question of policy conflict given that unlike fixed-line ISPs, mobile telecoms is a flexible and popular means of accessing the internet, particularly for poorer customers.

Would returning to device levies prove a way forward? Calculated as a percentage of the purchase price the levy would be included in the overall price of connected devices such as PCs, smartphones, tablets, e-book readers, games consoles and connected TVs. Proposals for distributing such a levy have taken the form either of compensating for private copying, as in France, where the scheme would replace lost revenues from the blank media levy, or funding content creation more generally through government subsidy.

To some, because major device makers such as Amazon and Apple also operate closed app ecosystems, the levy appears doubly beneficial. Yet, arguably, these proposals are out of step with the current trends within consumer technology. Today, an increasing range of devices now connected to the internet are unrelated to the consumption of content. In addition many devices which are focused on content consumption, particularly smartphones and tablets, already include a DRM mechanism, so negating the need to compensate for private copying.

CONCLUSION

As this briefing has shown, content taxes do have a number of advantages when it comes to funding the production of news and other content and they are particularly novel in Europe. However, when considering their application to the digital environment and generating funding for news production a number of practical and theoretical issues emerge of which regulators in particular need to be aware:

First, content taxes provide a revenue stream but not the solution for how to distribute revenue successfully. The example of cinema admissions taxes and private copying levies – where funds are distributed on the basis of past success – though easily comprehensible, demonstrate how such schemes can be manipulated and serve existing players rather than incentivise innovation.

Second, little consensus exists of where the point of collection should occur and the means by which it should be collected.

Third, revenues from previous content taxes have fluctuated dramatically either because of changes in technology – as in the case of device and media levies – or due to wider economic shifts – as in the case of taxes on commercial broadcasters. So when considering future content taxes we need to explore how proposals that appear sound today may rapidly become outdated.

Fourth, given the widespread policy desire to increase the penetration of high speed internet the question of the effect of content taxes on internet uptake needs to be considered and, if a negative effect is produced, what remedies might be needed. Similarly, questions of how content taxes will interact with other measures to support the media needs investigation.

Fifth and finally, and arguably most importantly, the nature of the internet means that even if content taxes are introduced in Europe, global users could continue to enjoy the benefits of content produced by others without providing compensation or support. Whether European consumers and advertisers will simply be subsidising non-European internet users needs examination as does the potential for global agreements on content taxes.

KIT KOWOL *received his DPhil in politics from the department of politics and international relations, University of Oxford. His research focuses on British political history and policy. kit.kowol@gmail.com*

ROBERT PICARD *is director of research, Reuters Institute, department of politics and international relations, University of Oxford. His research focuses on media economics and government media policies.*

This article is a product of a workshop run by the Reuters Institute for the Study of Journalism (RISJ) at the University of Oxford. For a fuller discussion of the nature and impact of content taxes see, Kowol and Picard, Content taxes in the digital age, RISJ Working Papers Series, February 2014. Available online at: bit.ly/1jDY8Vr

REFERENCES

1 For a succinct overview of the opportunities as well as threats the 'digital revolution' has produced see the introduction, in: Lee-Wright P et al. (eds) Changing Journalism (2012). Abingdon: Routledge. **2** Picard RG (2011). Mapping digital media: digitization and media business models. Reference Series No. 5. London: Open Society Foundations Media Programme. **3** Fenton N (2010). Drowning or waving? New media, journalism and democracy. In Fenton N (ed), New media, old news: journalism and democracy in the digital age. London: Sage. **4** For academic overviews of such solutions see Benson R. Future of the news: international considerations and further reflections. In Fenton N (ed) (as ref 3); McChesney. The Crisis of journalism and the internet, p59; Phillips and Witschge. The changing business of news: sustainability of news journalism; van der Wurff. The economics of online journalism, pp243–50.
5 A tax is technically an involuntary contribution to public revenue that is not necessarily related to a benefit bestowed by government on a taxpayer, but provides for general public benefit (see Hildreth B (ed) (1999) fHandbook on taxation. p329. CRC Press); Levies refer to fixed or flat rate impositions on specific transactions, items, or events. See Julie Roger (ed) IBFD International Tax Glossary, p263. **6** Centre National de la Cinématographic et la Image Animée (CNC). KORDA. bit.ly/1nocXRq **7** Guerrieri P et al. (2005). Cultural diversity and international economic integration: the global governance of the audio-visual sector. p33. Cheltenham: Edward Elgar; Scott AJ (2000). French cinema economy, policy and place in the making of a cultural-products industry. Theory, Culture & Society 17 1: 1–38. **8** Stubbs J (2009). The Eady levy: a runaway bribe? Hollywood production and British subsidy in the early 1960s. Journal of British Cinema and Television 6 1: 6. **9** For a recent overview of European PCLs see, Kretschmer M (2011). Private copying and fair compensation: an empirical study of copyright levies in Europe. October. London: UK Intellectual Property Office. **10** Lu B (2011). Reconstructing copyright from 'copy-centric' to 'dissemination-centric' in the digital age. Journal of Information Science. 39 4: 483–4. **11** See Kretschmer (ref 10); Vitorino A (2013). Recommendations resulting from the mediation on private copying and reproduction levies. 31 January. European Commission, DG Internal Market. bit.ly/1mCXFIr **12** As of 2013 the funding arrangements have changed and YLE is now supported through a 0.68% PSB tax on income. **13** European Broadcasting Union Legal Department (2000). The funding of public service broadcasting. p15. Geneva: European Broadcasting Union. **14** Tar G (2013). Funding and organisation of public service broadcasting. Reuters Institute for the Study of Journalism. bit.ly/1jKFwm0. **15** Zelnik P et al. (2010). Création et Internet. bit.ly/Qxj606 **16** Lauter D (2010). France considers taxing Google and other internet portals. 8 January, Los Angeles Times. lat.ms/1k5SPjE **17** Making good society: final report of the Commission of Inquiry into the Future of Civil Society in the UK and Ireland (2010). p117. London: Carnegie UK Trust.