

Around the World: New rules on digital antitrust, competition, and user protection

Audio



On today's podcast episode, host Bill Fisher is joined by our analysts Paul Briggs, Evelyn Mitchell-Wolf, and Carina Perkins to discuss the implications of new digital legislations that

recently came into force in the EU. Could they be a template for tighter digital laws elsewhere in the world?

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Episode Transcript:

Speaker 1:

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Bill Fisher:

Hello, everybody. Welcome to Behind the Numbers Around the World, an EMARKETER podcast made possible by Nielsen. It's Thursday, March 28th. I'm your host, Bill Fisher, and it's my absolute pleasure to welcome you all to Around The World with new rules on digital antitrust competition and user protection.

Welcome folks, to a Behind the Numbers show that takes you around the world looking at what various countries are doing in the worlds of commerce, media, and advertising. Each month, I give you a global news recap. Then I speak with a few of our regional experts to get their take on the main theme for today's show, which this month is all about digital legislation around the world. Particularly, we're going to concentrate, at least at the beginning, on the Digital Services Act, the DSA, and the Digital Markets Act, the DMA, in the EU, the European Union. We will be asking, what exactly is this new legislation all about?

Evelyn Mitchell-Wolf:

It aims to reduce misinformation, harmful content, and puts the onus on the platforms to make sure that there are robust infrastructures in place to have user safety.

Bill Fisher:

What impact will it have on marketers and retailers?

Paul Briggs:

And that would help local artists. They would make sure that Canadian content is represented in a fair way in online streaming as well as in broadcasting.

Bill Fisher:

And why hasn't this blueprint worked everywhere?

Carina Perkins:

Some other governments take a slightly different approach, but I think eventually you do see them follow a lot of what the EU does in the first place.

Bill Fisher:

Right, I'm going to kick things off today with my Three In Three segment. I have three minutes to cover three interesting and related news stories we've seen in Around The World Towers this month. The timer is set. Let's go. We start in the European Union, with the launch of the DSA. That's the Digital Services Act. At the end of last month, February 17th, in fact, the European Commission fully implemented this new and core piece of digital legislation in the EU. Here's Margrethe Vestager, Executive Vice President of the European Commission, explaining the rationale for this act.

Margrethe Vestager:

Well, I think now in all European countries, now you have legislation saying that hate speech is forbidden, but you don't really have a mechanism to make sure that this is true. So now the Digital Services Act will ask every platform to have a system to deal with what is illegal, to take it down. But of course [inaudible 00:02:58]-

Bill Fisher:

This act has been in the works for a while actually. It entered into force in November 2022, and some large companies have been required to comply with it since the middle of last year. But full rollout to all businesses operating in the EU, with the very smallest excepted, is now live. Keeping consumers safe online is the aim. Will businesses play the game?

Next, we remain in the EU, this time talking about the DMA, that's the Digital Markets Act, and an about turn by Apple. This act is part of the bigger Digital Services Act package and came into force on March 7th. It concentrates on competition law and what it calls the gatekeepers of the internet, and it's having a fundamental impact on Apple, it seems, as outlined here by the Washington Post.

Speaker 7:

[inaudible 00:03:50] differently. For example, Apple now has to allow access to third party app stores like the Amazon App Store or even the Epic game store, which I know is its own

kind of situation and could be its own video. Google [inaudible 00:04:02]-

Bill Fisher:

The key news here is that on March 6th, Apple revoked Epic Games' developer license. Epic complained. The European Commission investigated, had a quiet word with Apple. Then on March 8th, Epic's CEO, Tim Sweeney, announced on X that Apple had backtracked and restored Epic's access. He cited the DMA specifically as the big winner, a V for the EC.

And for our final story, we're beginning in the EU but fanning out globally to consider the Brussels effect. This is a term that was coined by Columbia law professor Anu Bradford in early 2020. Here she is giving a broad definition of what it really means.

Anu Bradford:

[inaudible 00:04:45]. And by the Brussels effect, I refer to the European Union's unilateral ability to regulate the global marketplace. The EU is one of the largest and wealthiest consumer markets in the world, and there are very few global companies that can afford not to trade in the EU. So these companies [inaudible 00:05:06]-

Bill Fisher:

And when it comes to digital regulation, the EU's recent moves have very much had this effect. In Brazil, for example, there is a bill currently under discussion in Congress that seeks to establish the Brazilian Digital Markets Act. In Japan, meanwhile, legislation is due to Parliament early this year that would allow the Fair Trade Commission in the country to impose fines on digital companies that are keeping users locked in to their digital ecosystems. It all seems inevitable, the globalisation of regulation. And that was my three and three this month.

Now it's time for the next three, my three guests for this week's show. First up, I'm so glad she's back on the show. It's been nearly a year, if you can believe it. She's our senior analyst covering digital advertising and media. It is of course, Evelyn Mitchell-Wolfe. Hello, Evelyn.

Evelyn Mitchell-Wolf:

Hi, Bill. Glad to be here.

Bill Fisher:

Great to have you back. And next we have our senior retail analyst covering the UK and sometimes Western Europe. She's been on the show a bit more recently than Evelyn. It's Carina Perkins. Hello, Carina.

Carina Perkins:

Hi, Bill. Good to be back again.

Bill Fisher:

Good to have you. And finally, the most recent guest on this show. He was on last month. I hope you're not getting bored of him. He's our principal analyst covering all things Canada. You can't get bored of Paul Briggs. It's Paul Briggs. Hello. How are you, Paul?

Paul Briggs:

I'm good, Bill. It's good to be back and I'll try and make it interesting this month.

Bill Fisher:

You always do. I was just being silly. Okay, before we do get in the topic at hand though, it's time for our culture shock. This is where I take you to various countries around the world, give you some cultural facts or introduce you to some culturally specific norms. And because we're concentrating on legislation and law this month, I have a few, let's call them, unique laws from around the world. And we're going to start in Canada, Paul, where it's against the law to play too many non-Canadian artists on the radio. Did you know that one?

Paul Briggs:

Right. It's part of the CanCon rules, which is Canadian Content, which is really a policy that goes back decades to really protect local artists so that they get their fair share of airtime, if you will, on the radio and on television. Making that applicable in the online world is a little bit more tricky, but the legislators are really trying to make it happen and trying to introduce new legislation that encompasses online streamers in this Canadian Content paradigm.

Bill Fisher:

Yeah. Well, at the moment they have to account for 35% of all airtime. So there you go. Next law for you. In Samoa, it's illegal to forget your wife's birthday. You can forget your husband's, that's fine-

Carina Perkins:

Good.

Bill Fisher:

... but you can't forget your wife's.

Carina Perkins:

As it should be.

Evelyn Mitchell-Wolf:

It's only fair. Yeah.

Bill Fisher:

Correct. I agree. And then finally, if you live in Scotland and somebody knocks on the door and asks to use the bathroom, by law, you cannot deny them. This derives from old Scottish common law regarding hospitality. It's technically still enforceable, but I don't know about you, Carina, if you head up to Scotland any time soon, I'm not going to be trying that one.

Carina Perkins:

Probably not.

Bill Fisher:

No. Especially not in Glasgow. Apologies to any listeners in Glasgow, but there you go. Right. Let's look at some more conventional laws, shall we, and the actual topic of discussion today. We're going to kick off, as I promised, by looking at the DSA and the DMA first of all, in a little bit more detail. Evelyn, you're the real expert on the show today in this area. So I wonder if you can just give us a real brief intro into what this legislation is and what's the difference between the DSA and the DMA?

Evelyn Mitchell-Wolf:

I think your Three and Three was a nice kind of introduction there. The DSA and the DMA, like you mentioned, are part of a larger Digital Services Act package passed in the EU. They are both laws regulating digital platforms that operate in the EU. And the DMA, I'll start with that one, is a piece of antitrust legislation that aims to promote competition in the digital sector by

establishing clear criteria to identify and regulate gatekeeper platforms, which I'll take this opportunity to define what those are, for our listeners.

Bill Fisher:

Thank you.

Evelyn Mitchell-Wolf:

Per the DMA, gatekeepers have a significant impact on the internal market, serve as an important gateway for business users to reach their end users, and enjoy, or will foreseeably enjoy, an entrenched and durable position. So that's kind of a three-pronged approach to identifying gatekeeper platforms. And the EEC confirmed back in September that gatekeeper platforms include Alphabet, Meta, Amazon, Apple, Microsoft, and ByteDance. I would consider those the usual suspects. So probably not surprising to anyone here. And within that, there are individual platforms operated by those entities that fall under the DMA. So that's the DMA in short.

The DSA is more about content moderation. It has a much broader scope in terms of which platforms, which companies are being regulated here. But essentially it aims to reduce misinformation, harmful content, and puts the onus on the platforms to make sure that there are robust infrastructures in place to have user safety be top of mind.

Bill Fisher:

So they both essentially benefit consumers at the end of the day, but the DMA is more about encouraging competition, right?

Evelyn Mitchell-Wolf:

Right.

Bill Fisher:

Okay. Great explanation. What does this legislation running out mean? What are some of the real world effects? I mentioned in the news there that the DMA has had an almost instantaneous impact with the whole Apple Epic story. I don't know, can we talk a little bit about that and maybe some other examples of how these bills might impact advertisers, platforms and retailers as well, Carina? I mean, obviously they're going to be impacted quite heavily by these laws.

Carina Perkins:

Absolutely, yeah. And Amazon and Zalando have both filed complaints with EU law courts over their designation as VLOPS. VLOPS, Very Large Online Platforms, however we're referring to them.

Bill Fisher:

We've had some debate as to what we call these things. We're going for VLOPS.

Carina Perkins:

They've both claimed that their inclusion as VLOPS is discriminatory. Amazon says it's not the largest retailer in any of the EU countries where it operates and that big rivals in those countries haven't been designated as VLOPS. Zalando is claiming that the 60% of its business which is direct retail shouldn't come under the DSA, and if you take the remaining part of its partner business, so that's the third party marketplace element, it's only got 27 million customers, and the threshold for a VLOP under the DSA is that it's a business which is large enough to reach 10% of the EU population or around 45 million people. So both of them have filed complaints. The EU hasn't really responded in a huge amount, other than to say that it believes that it's fairly clear that they do come under the definition.

Bill Fisher:

They're trying it on. Amazon's saying it's not the biggest... Well, okay, it's not the biggest retailer, but it's the biggest digital retailer.

Carina Perkins:

Yeah, I think my favorite headline from this was, "Obscure internet boutique Amazon sues EU for calling it a very large online platform," which is very true. I think both of them are trying to insist that they're primarily retailers. They think the legislation is aimed more at advertisers, and therefore because they mainly sell goods, not advertising, they shouldn't come under it. Again, with Amazon, a fair amount of its business is also advertising. So it's an interesting one to see how it'll all play out.

Evelyn Mitchell-Wolf:

Yeah, absolutely. And we think about the spirit of the law, that kind of back and forth seems a little bit... Again, it just kind of seems like Amazon doesn't have a ton of ground to stand on,

because consumers absolutely can encounter harmful content on Amazon. I mean, just think about the number of counterfeit products that are on that marketplace. And it's not the same thing necessarily as hate speech on a social platform, but it's certainly harmful content. So we'll see how this rolls out, how platforms bid to change their status under the DSA rollout, or do or do not succeed, and how then enforcement kind of shapes and reshapes how this law actually... the real world effects of the DSA.

And then to your point earlier, Bill, the DMA has kind of come out swinging. There has been a lot of action, a lot more action than I would have anticipated, just immediately after it went into effect in early March. I think that's because there are fewer platforms involved that are being regulated with the DMA. Like I mentioned, there are six gatekeepers identified by the EC, and so that's seven entities total, if you count all six gatekeepers plus the EC that are involved in duking it out over this regulation.

So it's been immediate. It has been swift. Apple has been the subject of a lot of that drama, and Epic has also been involved there. Those are the two entities that were involved in a couple of... Well, Epic, Google and Apple had a nice couple of lawsuits here in the US revolving around app stores. So the Apple and Google Epic trials were really interesting, still a couple of threads to pull on there here in the US, but for the DMA, Apple's been at the heart of it. And actually, as of our recording, the EC also put it out there that they're going to probe the compliance strategies of Apple, Google and Meta.

So there's a lot going on. It has been those platforms, all the gatekeepers had spent a lot of time over the last year or so putting together their strategies and putting it out there into the market, seeing how the market reacted to what their plans were to come into compliance with the DMA. So perhaps it's not that surprising that once the DMA was fully into effect, there was already enough information for the EC to decide whether they were going to go deeper on any of that. But it's been immediate and we should expect those investigations by the EC to wrap up within the year per the DMA. So, expect more to come.

Bill Fisher:

Because it was very staged. And I mentioned, they're now fully enforced, both the DMA and the DSA, but these have been in the works for years and they've been sort rolled out in stages. So for Apple and Meta and the other gatekeepers to not be ready now is kind of inexcusable, which I guess is why the EC has come down so hard on them.

Evelyn Mitchell-Wolf:

It's classic, though for, I'll call them, big tech. That's what we call them over here in the US. I mean the gatekeeper under the law, they're called gatekeepers, but you can also call them big tech. And it's classic that they push boundaries. They're trying to do as little as they can to bring themselves into compliance with the law without totally disrupting their business models. Whether that will be as successful remains to be seen. There is a lot of discourse around whether the compliance measures introduced adhere to even the letter of the law, to say nothing of the spirit of the law. So it's really interesting.

Bill Fisher:

It is. Okay. I want to move outside the EU for a moment, because there's been a lot of digital legislation happening elsewhere around the world. I mentioned a couple of places in the news there, in Brazil and Japan. There's stuff that's already happened in Canada, Paul. Why don't you introduce us to some of the legislation that's been passed over there and just fill us in on how successful or unsuccessful it's been?

Paul Briggs:

Sure. In prepping for the podcast, I did a little bit of homework here. Obviously I've been following it on a weekly basis, but it's a slow moving machine when it comes to regulating digital players or big tech and their involvement in a local market like Canada. So over the past five years, the government has introduced a variety of bills to legislate how these big tech companies operate in Canada and how the local publishers or the local players are protected against unfair competition. So the real short answer is that nothing concrete has come yet except for a few things that have made headlines around the world.

The first one that I'll talk about is the Online News Act, which came into force in 2023. Meta stopped sharing news links because they did not want to be subject to that law. There's only two platforms in Canada that were subject to it. It's based on the size of their operations in Canada. So it was Google and Meta. Meta stopped sharing news links on Facebook and Instagram, and Google, late last year, struck a deal with the government to pay a hundred million dollars annually into a fund that is distributed among local publishers. So as part of that deal, they were exempt from the law.

The law took a couple years to come into effect, and in the end it was rewritten at the last moment to exempt Google. And to this day, Meta is still not sharing news in Canada. So it's

hard to say that that was a successful implementation of digital policy, and that's really reflective of other new regulations that the government's trying to put in place. The other one that also passed last year was the Online Streaming Act. We talked about Canadian content earlier, Bill. That one really is requiring big VLOPS, as we're calling them here, to pay for local production.

And that would help local artists. It would make sure that Canadian content is represented in a fair way in online streaming as well as in broadcasting. That's still subject to regulatory definition. It's passed, but we really won't know how much money those companies are going to pay, how it's going to be distributed to local artists. So it's really a couple years away from understanding how that policy actually takes effect. So I guess the takeaway here is that the government of Canada is really trying to modernize legislation to encompass all the big tech players and how they influence media consumption in the country, and it's taking a long, long time.

It looks like the policymakers are having a hard time understanding the dynamics of the market and how to encompass and make sure that everybody is paying their fair share, protecting the local industry so that they can compete with big tech companies from abroad. So it's really quite a long process here to try to modernize legislation, and the first returns that most people are seeing are pretty ill-defined and not effective at this point in time.

Bill Fisher:

Is the EU getting ahead on this sort of thing? Why is it this far ahead? Is it just market size? What other things are at play here?

Evelyn Mitchell-Wolf:

Well, the EU is typically ahead on these kinds of things. We saw it with the GDPR privacy regulation. It was kind of first out of the gate and the rest of the world followed behind, the Brussels effect. And this is another area, I think AI is another one too, where the EU is regulating these difficult topics ahead of everyone else, providing a blueprint for everyone else to come in and try and replicate. If it's successful, we'll see. But yeah.

Carina Perkins:

The EU takes a very staunch pro-consumer approach, and it's not afraid to protect the consumer and disadvantage businesses, I guess, in the process. And some other governments

take a slightly different approach, but I think eventually you do see them follow a lot of what the EU does in the first place.

Evelyn Mitchell-Wolf:

Yeah, we're definitely seeing that over here in the US, to use the privacy legislation kind of lens as well. I think the last time I was on this show, we talked about privacy legislation around the world, and we're still in progress over here in the US. It's kind of going state by state where privacy legislation is being passed and enacted. Still no federal law yet, and there doesn't really even seem to be one in the offing. And same with the Digital Services Act and the DMA. I mean, there's been a couple of shoots here and there in Congress for similar kinds of legislation, but nothing has really gained a ton of traction. So we'll see how long it takes the US to follow.

I will say though, although we don't have an antitrust law that is specific to the digital sector, which I think we should, it is a wholly different beast than the businesses that our current antitrust laws were configured to regulate, that being big railroad systems and big oil, so different kind of ecosystem here that we're dealing with. There has been though, based on these really old antitrust laws here in the US, there has been an uptick in regulators cracking down on big tech platforms.

The DOJ has two cases currently ongoing that are against Google, one for search, one for ad tech, and there's one from the FTC against Amazon, and then another, the DOJ just filed a case against Apple last week. So there's a lot going on, even though we don't have an analogous law to the DMA. So I think it's kind of like we're along the arc to follow the EU with legislation, but not quite there yet. It doesn't mean nothing's happening. We're just kind of behind.

Bill Fisher:

Really interesting stuff. This is a great conversation, but it's time to put an end to it, because it's really important we get to the last part of today's show, because it's my favorite bit. It's the recap stats quiz.

Evelyn Mitchell-Wolf:

Oh boy.

Carina Perkins:

Oh no.

Evelyn Mitchell-Wolf:

I forgot about this.

Bill Fisher:

This is where we recap today's theme with a few related usually stats questions. I'm sort of pushing that definition today. There's no prize. It's all about bragging rights. There are only three questions, so it's nice and quick, and it's multi choice, so I'm making it reasonably easy for you anyway. Okay, so first question is a memory question. I mentioned this in the news. We've mentioned it a couple of times in the episode as well. Who was paying attention? The DMA came into force as of March 7th. So it was actually from midnight March 6th, but March 7th it came into force. How long did it take for Apple to alter its practices in order to comply? Did it take zero days, did it take one day, or did it take four days? So how long did it take for Apple to fall into line with the DMA from the day it came into force, zero days, one day or four days? And I'm going to start by asking Evelyn, what do you think?

Evelyn Mitchell-Wolf:

Well, if we're talking about the Epic squabble, it would have been one day.

Bill Fisher:

Okay. Carina?

Carina Perkins:

I was going to go for one day, but since Evelyn's taken it, I'll go for-

Bill Fisher:

You can pick the same answer. That's fine. I have to explain this all the time.

Carina Perkins:

No, I feel like we should have different ones. It's more exciting. I'm going to go zero days.

Bill Fisher:

Okay, Paul?

Paul Briggs:

I'll take the single day option.

Bill Fisher:

One day. You see, that's what you should have have done, Carina, because that's correct. It was one day. Apple closed Epic's developer account on the 6th, and then it came into law on the 7th. So one day after. If they'd waited over the weekend, that would've been four days.

Okay. Second question. The EU, as we've discussed, has previous experience with tight regulations. The GDPR, which you just mentioned at the end there, Evelyn, or General Data Protection Regulation, came into force at the end of May 2018. But how long did it take for the first fine to be imposed as a result of a GDPR breach? So it came into force May 18. When was the first fine imposed? Was it one month, two months, or eight months? I'm going to ask Carina first this time.

Carina Perkins:

Eight months.

Bill Fisher:

Okay. Paul, what do you say?

Paul Briggs:

I think it was the early option, one month. I think they were chomping at the bit to do something.

Bill Fisher:

Yeah. Evelyn, what do you think?

Evelyn Mitchell-Wolf:

I think it was eight months.

Bill Fisher:

Okay. If you'd said one month, somebody did, Paul, you'd be wrong. Nothing happened in the first month at all. Two of you said eight months, and you also would be wrong. Eight months.

Carina Perkins:

Too long.

Bill Fisher:

This was the first time that cumulative fines passed one million euros. Two months, that was when the first fund was imposed. It was for 400,000 euros, so nearly half a million. So then it took a further six months for another 600,000 worth of fines. So it was relatively slow-going. And the fine, it was for a Portuguese hospital, if you're interested. I think they were sharing patient information.

Evelyn Mitchell-Wolf:

Yikes.

Bill Fisher:

Indeed.

Evelyn Mitchell-Wolf:

That's a big no-no.

Bill Fisher:

Okay. For our final question, all to play for. The Digital Services Act is, as you might expect, quite long. It's around 60,000 words long, in fact. But how many articles do you think it's made up of? Is it made up of 41, is it made up of 93 articles, or is it made up of 156 articles? So we've got 41, 93, or 156. Paul, what do you think?

Paul Briggs:

Well, it's been a while since I've fully read legislation, but I'm going to guess. I'm going to go with 150 something.

Bill Fisher:

Okay. 156. Evelyn, what do you think?

Evelyn Mitchell-Wolf:

I'll go with the middle option. 90 something, 93.

Bill Fisher:

Carina?

Carina Perkins:

I'll go with the top option as well, I think.

Bill Fisher:

156.

Carina Perkins:

Yeah.

Bill Fisher:

Okay.

Evelyn Mitchell-Wolf:

I think Paul wins.

Bill Fisher:

If you said 41, that would be incorrect. That's the number of footnotes to the Act. 156 is the number of explanatory clauses there are before the first article is even introduced.

Evelyn Mitchell-Wolf:

Oh my goodness.

Bill Fisher:

That's what I thought. So the correct answer is actually 93.

Evelyn Mitchell-Wolf:

Oh, really?

Bill Fisher:

So Evelyn, as I would've expected, given you're the expert in this area and you've obviously read the entirety-

Evelyn Mitchell-Wolf:

Oh, yes.

Bill Fisher:

... of all these digital acts, you are today's winner. You got two out of three. Well done.

Evelyn Mitchell-Wolf:

That's fun, because last time I completely bombed this, so I'm glad I did better on this one.

Bill Fisher:

[inaudible 00:27:45]. Well done. I always have a tiebreaker lined up just in case we have a tie. Let's do it just for fun. So sticking with the lengthy Digital Services Act, I mentioned it's around 60,000 words long, but how many times do you think the phrase General Data Protection Regulation or its initialism, GDPR, how many times do you think that appears in the documentation? And this is a free form. Just give me any number. Closest one wins.

Evelyn Mitchell-Wolf:

244.

Bill Fisher:

Okay. That's very specific. Carina?

Carina Perkins:

3,000.

Bill Fisher:

3,000. Okay. Less specific, but much higher. Paul?

Paul Briggs:

173.

Bill Fisher:

Another very specific number, and all specifically incorrect. And this was very surprising to me.

Carina Perkins:

Is it zero?

Bill Fisher:

It appears once in the footnotes.

Carina Perkins:

Wow.

Evelyn Mitchell-Wolf:

I almost went zero.

Bill Fisher:

I think the EC is very, very definite about the fact that the DSA and the DMA are entirely different things to the GDPR, even though there's obviously overlap. But yeah, just once.

Carina Perkins:

Oh, I wasn't paying attention there. I thought you meant in the GDPR.

Bill Fisher:

Oh, yeah, yeah. I thought you weren't listening. It's your fault. You've just lost this week, unfortunately.

Carina Perkins:

Yeah, I have.

Bill Fisher:

But we do have a winner, and we always end this show with a winner, and it is time to end the show, unfortunately. But that winner is Evelyn. Congratulations, Evelyn, and thanks for speaking with us today.

Evelyn Mitchell-Wolf:

Thanks, Bill. I'll take my bragging rights all the way through this week with me.

Bill Fisher:

Good for you, and great to have you on the show again. Carina, I'll just repeat, you lost the competition today, but thanks for being on the show.

Carina Perkins:

Thanks, Bill. Thanks. It's been a joy.

Bill Fisher:

And Paul, thanks, as ever, for joining us.

Paul Briggs:

Thanks, Bill.

Bill Fisher:

And thanks to all of you for listening in today to Around the World, an EMARKETER podcast made possible by Nielsen. Tune in tomorrow for our weekly Listen Show with Marcus. If you want to ask us any questions, you can of course email us at podcast@emarketer.com. I hope to see all of you next month for another edition of Behind the Numbers Around the World. And while there's no legal requirement for you to tune in, I suggest that you do all the same. Bye for now.