



## 5.8. DK – Denmark – National legal summary<sup>145</sup>

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Act amending the Danish Act on radio and television broadcasting and the Film Act (the Amending Act), and statutory instruments issued with reference to the Danish Act on radio and television broadcasting.

### 5.8.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act amending the Danish Act on radio and television broadcasting and the Film Act (*LOV nr 805 af 09/06/2020*).<sup>146</sup>
- The Danish Act on radio and television broadcasting, after the amendments (the Broadcasting Act).<sup>147</sup>
- The Film Act, after the amendments.<sup>148</sup>

Secondary legislation:

- Statutory instrument on video-sharing platform services, issued with reference to the Danish Act on radio and television broadcasting sec. 51 a(5) and 51 b(2-4) (*Bekendtgørelse om videodelingsplatformstjenester*).<sup>149</sup>

### 5.8.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

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<sup>145</sup> The factsheet on Denmark incorporates feedback received from Sabrina Amtrup and Marie Frank-Nielsen, Legal Officers from the Danish Agency for Culture and Palaces during the 2021 checking round with the national media regulatory authorities and Søren F Jensen, Senior Legal Advisor from the Danish Agency for Culture and Palaces during the 2022 checking round.

<sup>146</sup> <https://www.retsinformation.dk/eli/lta/2020/805>.

<sup>147</sup> <https://www.retsinformation.dk/eli/lta/2020/1350>.

<sup>148</sup> <https://www.retsinformation.dk/eli/lta/2020/1354>.

<sup>149</sup> <https://www.retsinformation.dk/eli/lta/2020/1158>.



**Table 28. Definition of the main concepts related to VSPs**

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	Yes.

Source: Danish response to European Audiovisual Observatory standardised survey

#### 5.8.2.1. VSP service

Section 51 a (2) of the Broadcasting Act defines the term “video-sharing platform service” by transposing the definition provided by the revised AVMSD almost verbatim, as follows:

*A video-sharing platform service means a service where the main purpose of the service or a part of it that can be separated from it, or a significant function in the service consists in offering to the public image programmes, see section 2 (6), user-generated videos or both for which the provider of the video-sharing platform has no editorial responsibility, for the purpose of informing, entertaining or informing via electronic communications networks as defined in the Electronic Communications Networks and Services Act and the organisation of which is determined by the provider of the video-sharing platform, including through the use of automated methods and algorithms and in particular through display, tagging and sequencing.*

The Statutory instrument on video-sharing platform services sec. 2, 1) defines similarly the term video-sharing platform service.

#### 5.8.2.2. VSP provider

Section 51 a (3) of the Broadcasting Act defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows:

*A provider of a video-sharing platform service means a natural or legal person providing a video-sharing platform service.*

The Statutory instrument on video-sharing platform services sec. 2, 2) similarly defines the term provider of a video-sharing platform service.



### 5.8.2.3. User-generated video

Section 51 a of the Broadcasting Act defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

*A user-generated video is a set of live images, with or without sound, that constitutes an individual element, regardless of its length, created by a user and uploaded to a video-sharing platform by that user or by any other user.*

The Statutory instrument on video-sharing platform services sec. 2, 4) defines the term user-generated video similarly.

### 5.8.2.4. “Principal purpose” or “dissociable section” of a VSP service

The Statutory instrument, Section 3, states the following:

*(1) The definition of a video-sharing platform service, see section 2, no. 1, does not cover non-financial activities, including offers of audiovisual content on private websites and non-commercial interest groups.*

*(2) When a part that can be separated from the service constitutes a video-sharing platform service as defined in section 2, no. 1, only that part is covered by the statutory instrument, and only in respect of programmes and user-generated videos. Video clips embedded in editorial content in electronic editions of newspapers and magazines, and animations such as GIFs, are not covered by the statutory instrument.*

### 5.8.2.5. “Essential functionality” of a VSP service

The Statutory instrument, Section 4, states the following:

*(1) A social media service is covered by the provisions of the statutory instrument if the offering to the public of audio-visual programmes, user-generated videos or both constitutes an essential function of the service, see section 2 (1).*

*(2) The offering of audio-visual programmes, user-generated videos or both constitutes an essential function of the service under subsection 1 if the audio-visual content is not only a supplement to or constitutes a small part of the activities of the social media service.*

*(3) The Ministry of Culture sets out the guidelines for the assessment of when the offering of audio-visual programmes, user-generated videos or both constitutes an essential function under subsections 1 and 2.*



### 5.8.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.

#### 5.8.3.1. General provisions

Prohibitions related to discrimination, incitement to hatred, protection of minors and commercial communications stem from legislative acts (such as the Criminal Code, the Marketing Act and the statutory instruments on advertisements and sponsorship, etc., of programmes on radio, television and on-demand audiovisual media services, and entering into partnerships). Provisions in the Marketing Act and the said statutory instruments specifically protect children and young people and require commercial intent to be disclosed. This is backed up by guidelines on marketing towards children and young people issued by the Consumer Ombudsman. There are also references in the Data Protection Act, relative to the protection of the data of minors, as well as provisions in the Criminal Code relating to the unlawful forwarding of information or pictures relating to another person's private life or other pictures of the person in question in circumstances which can obviously be expected to be withheld from the public.

The Statutory Instrument on video-sharing platform services provides for obligations of VSPs stemming directly from the AVMSD, and recalling the relevant provisions of legislative acts, such as the Criminal Code, in the following manner:

*Section 11 (1) Providers of video-sharing platform services (see section 8 (1)) shall take appropriate measures to protect minors from programmes, user-generated videos, advertisements, sponsorship and product placement that may harm their physical, mental or moral development.*

*2. Video-sharing platform service providers shall take appropriate measures to protect the public from programmes, user-generated videos, advertising, sponsorship and product placement that encourage violence or hatred against a group of persons or a member of a group for any of the reasons referred to in Article 21 of the EU Charter of Fundamental Rights.*



*3. Providers of video-sharing platform services shall take appropriate measures to protect the public from programmes, user-generated videos, advertisements, sponsorship and product placement, the disclosure of which constitutes a criminal offence in connection with public incitement to commit terrorist acts as referred to in section 114 (1) of the Criminal Code, offences in connection with child pornography as referred to in section 235 (1) of the Criminal Code and offences in connection with racism and xenophobia as referred to in section 266 b of the Criminal Code.*

The Statutory instrument on video-sharing platform services further elaborates on the obligations related to measures against harmful and illegal content, and reads:

*“Section 12. Measures pursuant to Section 11 include, as appropriate:*

- (1) Inclusion and use as part of the video-sharing platform services' general terms and conditions for use of the service of the conditions regarding harmful or unlawful content treated in section 11.*
  - (2) Establishment and maintenance of transparent and user-friendly mechanisms that users of a video-sharing platform service may use for reporting to the offeror of the platform any content covered by section 11 that is offered on the platform. (3) Establishment and maintenance of systems through which the offerors of video-sharing platforms may explain to their users how the reporting mentioned in no. 2 has been followed up.*
  - (4) Establishment and maintenance of systems for age control of users of video-sharing platforms with respect to content that may harm the physical, mental or moral development of minors.*
  - (5) Establishment and maintenance of systems that are easy to use and enable the users of video-sharing platforms to rate content covered by section 11...*
  - (6) Ensuring parental control systems managed by the end user with respect to content that may harm the physical, mental or moral development of minors.*
  - (7) Establishment and maintenance of transparent procedures that are easy to follow and effective for the handling and decision of complaints from users against the offeror of video-sharing platforms in connection with the implementation of the measures set out in nos. 2-6.*
  - (8) Ensuring effective measures and tools to promote media awareness and launch information campaigns aimed at users about these measures and tools.*
- 2. In order to protect minors in accordance with section 11 (1), the most harmful content must be subject to the strictest access control measures.*
  - 3. Personal data of minors collected or otherwise generated by providers of video-sharing platform services in pursuance of with the age control and parental control systems referred to in subsection 1, nos. 4 and 6, may not be processed for commercial purposes such as direct marketing, profiling and behavioural advertising.*



Relative to commercial communications, Sections 13 and 14 of the Statutory instrument on video-sharing platform services provides for the obligation of VSPs to respect the obligations stemming from the AVMSD, as follows:

*Section 13 (1) Providers of video-sharing platform services, see section 8 (1), must comply with the requirements (...) with respect to advertising, sponsorship and product placement marketed, sold or organised by the providers.*

*2. Advertising, sponsorship and product placement must be clearly identifiable as such: covert advertising, sponsorship and product placement are prohibited.*

*3. Subliminal techniques must not be used in advertising, sponsorship or product placement.*

*4. Advertising, sponsorship and product placement must not:*

*(1) damage respect for human dignity;*

*(2) contain or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;*

*(3) encourage behaviour that is detrimental to health or safety; and*

*(4) encourage behaviour that is highly detrimental to environmental protection.*

*(...)*

*6. Advertising, sponsorship and product placement aimed at promoting the sale of alcoholic beverages may not be directed specifically at minors and may not encourage excessive consumption of such beverages*

*(...)*

*8. Advertising, sponsorship and product placement must not harm minors physically, mentally or morally. Advertising, sponsorship and product placement must not directly encourage minors to purchase or rent a product or service by exploiting their lack of experience or their credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit minors' special trust in parents, teachers or other persons, or for no reason show minors in dangerous situations.*

*(...)*

*Section 14 (1) Providers of video-sharing platform services, (...) shall take appropriate measures to meet the requirements (...), as regards advertising, sponsorship and product placement that is not marketed, sold or organised by the providers. In this context, the limited control exercised by providers over such advertising, sponsorship and product placement must be taken into account.*

*2. Measures pursuant to subsection 1 include, as appropriate:*



*1) Inclusion and use as part of the video-sharing platform services' general terms and conditions for use of the service of the requirements for advertising, sponsorship and product placement mentioned in section 13 (2-8).*

*2) A feature that allows users who upload user-generated videos to indicate whether such videos, as far as they know or can reasonably be expected to know, contain advertising, sponsorship and product placement.*

*3. Providers shall inform users if programmes and user-generated videos contain advertising, sponsorship and product placement, provided that information to this end is provided via the function mentioned in subsection 2, or if the provider is aware that programmes and user-generated videos contain advertising, sponsorship and product placement.*

The Statutory instrument on video-sharing platform services is issued in accordance with the Danish Act on radio and television broadcasting that allows (in sec. 48) the Ministry of Culture to set rules on the protection of minors and to set out that the programmes may not in any way encourage violence or hatred for any of the reasons set out in Article 21 of the EU Charter of Fundamental Rights, and that programmes may not in any way promote terrorism.

#### 5.8.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 5.8.3.1, the Statutory instrument on video-sharing platform services lays down in secs. 12(1) 1) and 14(2) 1) (cited above) that they should be included in the general terms and conditions for the service as appropriate.

#### 5.8.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, the aforementioned Section 14(3) lays down that providers shall inform users of other users' upload information on advertising, sponsorship and product placement or if the provider is aware that programmes and user-generated videos contain advertising, sponsorship and product placement.





5.8.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 14(2) 2) (cited above).

5.8.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, the Statutory instrument on video-sharing platform services lays down rules to this effect in secs. 12(1) 2) and 5) (cited above).

5.8.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(1) 3) (cited above).

5.8.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(1) 4) (cited above), and see also 12(2) (cited above) laying down that the most harmful content must be subject to the strictest access control measures.





#### 5.8.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(1) 5) (cited above).

#### 5.8.3.9. Providing for parental control systems that are under the control of the end user with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (h) AVMSD

Regarding the measure consisting in providing for parental control systems that are under the control of the end user with respect to content which may impair the physical, mental or moral development of minors, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(1) 6) (cited above).

#### 5.8.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(1) 7) (cited above).

#### 5.8.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(1) 8) (cited above).

#### 5.8.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, the Statutory instrument on video-sharing platform services lays down rules to this effect in sec. 12(3) (cited above).



#### 5.8.3.13. Other relevant provisions related to protection of minors

The Criminal Act, The Marketing Act and the Data Protection Act provide for various protective mechanisms related to minors, including protection against violence, the misuse of personal data, etc. Further guidelines on marketing towards children and young people issued by the Consumer Ombudsman are relevant in this respect.

#### 5.8.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The Statutory instrument on video-sharing platform services lays down further rules on commercial communications which may impair the physical, mental or moral development of minors in secs. 11(1) and 13(8) (cited above).

#### 5.8.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications:

The Statutory instrument on video-sharing platform services lays down rules on minors' exposure to advertising for alcohol products in sec. 13(6) (cited above), and sec. 13(4) 3) (cited above) holds a general ban against advertising etc. that is detrimental to health. There are no specific obligations regarding HFSS foods.

#### 5.8.3.16. Other relevant information

Legislative acts, including the Criminal Code, cover issues such as incitement to hatred, and penalties are relevant to social media, including public provocation to commit a terrorist offence (Article 114 e), the dissemination and possession of pornographic material by persons under the age of 18 (Article 235), libel (Articles 267-271), the protection of privacy (Article 264d), threats (Article 266), encouraging crimes (Article 136), incitement to commit acts of terrorism (Article 114e, etc.), facilitating, when media can be held liable, derogatory statements to groups and offences concerning racism and xenophobia (Article 266b). Relevant provisions are also found in the Marketing Act, etc. as stipulated above in Section 5.8.3.1.



## 5.8.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Section 15 of the Statutory instrument on video-sharing platform services lays down that:

*(1) Measures in accordance with sections 11, 12 and 14 must be feasible and proportionate and take into account the size of the video-sharing platform service and the nature of the service offered.*

*(2) The measures shall not lead to prior control measures or upload filtering of content that does not comply with the Directive of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.*

## 5.8.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

### 5.8.5.1. Regulatory body

The competent regulatory body is the Radio and Television Board.<sup>150</sup>

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<sup>150</sup> <https://slks.dk/omraader/medier/>.



#### 5.8.5.2. Existence of a registration/notification system

The obligation for VSPs to register is set down in Section 51 of the Broadcasting Act, which states:

*Providers of video-sharing platform services that fall under Danish authority must register with the Radio and TV Board.*

Further rules on the registration are provided in the Statutory instrument on video-sharing platform services, Section 8.

#### 5.8.5.3. Compliance, enforcement and sanctioning powers

The Radio and Television Board has the primary compliance, enforcement and sanctioning powers, stemming from Section 42a of the Broadcasting Act:

*The Radio and Television Board is in charge of the following in relation to video-sharing platform services:*

- (1) To register providers of video-sharing platform services and to supervise the activities, see section 51 a.*
- (2) To call attention to violation of the law and provisions under the law.*
- (3) To decide on measures for the protection of minors and the public against content that incites violence or hatred or to committing acts of terrorism, or against content that containing child pornography, racism or xenophobia, see section 51 b (2) and (3).*
- (4) To decide on measures and provisions concerning identification and content of advertisements, sponsorships and product placement on the video-sharing platform services. see section 51 b (4).*
- (5) To decide on the discontinuation of the activities, see section 51 c (1).*

#### 5.8.5.4. Development of self- or co-regulatory codes or schemes

While there are no direct references to self- and co-regulatory schemes, according to the Film Act, Section 19, the Minister of Culture has appointed the Media Council for Children and Young People to guide parents and others, as well as service providers, audiovisual media services, on the suitability of films, programmes, etc. for children and young people. The role of the Media Council is also to provide information and advice on the digital education of children and young people, including on the digital security, well-being and rights of children and young people.

Besides serving as a coordinator for the Safer Internet Centre Denmark (SIC DK)<sup>151</sup>, the key objective of the awareness centre (MCDK) is to establish partnerships with stakeholders (e.g., industry, NGOs, educational institutions), to advocate youth perspectives

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<sup>151</sup> <https://sikkertinternet.dk/english>



in national and international forums, and to devise events, dialogue campaigns and tools to empower and raise awareness among children and young people, professionals, parents and the public in general.

#### 5.8.5.5. Out-of-court redress mechanisms for users

Pursuant to the Statutory instrument on video-sharing platform services, Section 16, the Radio and Television Board monitors the extent to which VSP service providers take appropriate measures in accordance with the rules. According to Section 17, the Radio and Television Board deals with complaints in the event of disagreement between VSP service providers and users about the appropriate measures that the providers are obliged to take in accordance with the rules.

#### 5.8.5.6. Rights before a court for users

The Danish implementation of AVMSD includes no specific provisions on rights before a court for users, but nothing prevents users from asserting their rights before a court.

### 5.8.6. Studies, reports and research

- Report on the development of media in Denmark 2021, by the Danish Ministry of Culture, 2022<sup>152</sup>
- Marketing in Media, article in “Festskrift til Palle Bo Madsen”, 2021.
- Surreptitious advertising – an analysis of various forms of hidden advertising and commercial communication in various media, article in “Juristen” issue 2/6 2020.
- Criminal liability for the content of online media – About intermediary responsibility for media not covered by the Media Liability Act (Strafansvar for indholdet af onlinemedier: Om formidleransvar for medier, der ikke er omfattet af medieansvarsloven), April, 2016.<sup>153</sup>
- Analysis of social media responsibilities. Cases of sharing homicide videos, suicide notes, nude photos and assaults give rise to questions: Who is responsible for the content that is spread on social media – and what responsibility do we in Denmark want social media to have? (Analyse af desociale mediersansvar Sager om deling af drabsvideoer, selvmordsbreve, nøgenbilleder og overgreb giver anledning til at stille spørgsmålene), August 2019.<sup>154</sup>

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[https://mediernesudvikling.kum.dk/fileadmin/user\\_upload/dokumenter/medier/Mediernes\\_udvikling/2021/Branche/Annonceomsaetning/Annonceomsaetning\\_2021\\_ny.pdf](https://mediernesudvikling.kum.dk/fileadmin/user_upload/dokumenter/medier/Mediernes_udvikling/2021/Branche/Annonceomsaetning/Annonceomsaetning_2021_ny.pdf).

<sup>153</sup> <https://portal.findresearcher.sdu.dk/en/publications/strafansvar-for-indholdet-af-onlinemedier-om-formidleransvar-for->.

<sup>154</sup> <https://www.ft.dk/samling/20182/almdelel/REU/bilag/105/2077890/index.htm>.



- Recommendations on better protection on social media (Lovgivning for sociale Medier), November 2019.<sup>155</sup>

### 5.8.7. Data compilation

This factsheet is based on the 2021 data compiled by Mie Oehlenschläger, External Lecturer/Independent Consultant. The 2022 update data was compiled by Terese Foged, Attorney and Partner at Lassen Ricard Law.

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<sup>155</sup> [https://digitaltansvar.dk/wp-content/uploads/2019/12/Anbefalinger-til-lovgivning\\_Digitalt-Ansvar-nov.-2019.pdf](https://digitaltansvar.dk/wp-content/uploads/2019/12/Anbefalinger-til-lovgivning_Digitalt-Ansvar-nov.-2019.pdf).