## 5.23. NO - Norway - National legal summary<sup>265</sup>

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have not been implemented in the EEA-agreement yet, but the Norwegian Government produced an EEA position note<sup>266</sup> on 29 April 2019 on the changes in the AVMS Directive. Revisions of the relevant laws pertaining to audiovisual services are currently in process with the Norwegian Ministry of Culture. A revision of the Broadcasting Act is currently taking place (a public consultation is ongoing as to the changes to implement the revised AVMSD).

## 5.23.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act relating to broadcasting and audiovisual on-demand services (the Broadcasting Act – LOV-1992-12-04-17 Lov om kringkasting og audiovisuelle bestillingstjenester (kringkastingsloven)).<sup>267</sup>
- Act relating to the protection of minors against harmful audiovisual programmes (LOV-2015-02-06-7 Lov om beskyttelse av mindreårige mot skadelige bildeprogram mv).<sup>268</sup>
- Act relating to the editorial independence and liability of editor-controlled journalistic media (the Media Liability Act – LOV-2020-05-29-59 Lov om redaksjonell uavhengighet og ansvar i redaktørstyrte journalistiske medier – Medieansvarsloven).<sup>269</sup>

<sup>&</sup>lt;sup>265</sup> The factsheet on Norway incorporates feedback received from Linda Andersen, Gudbrand Guthus and Hanne Sekkelsten, from the Norwegian Media Authority (Medietilsynet), as well as Harald Høiby from the Ministry of Culture, during the 2021 and 2022 checking rounds with the national media regulatory authorities.

<sup>&</sup>lt;sup>266</sup> In case the revised AVMSD is to be incorporated, the Norwegian Government has signalled the changes needed in the law, while, in parallel to the implementation of the AVMSD, the Norwegian Government appointed the Freedom of Expression Commission in 2020 to review the social, technological, legal and economic frameworks for freedom of expression in today's society. The Commission's report in the form of an Official Norwegian Report is to be presented to the Ministry of Culture by 1 March 2022.

https://lovdata.no/dokument/NL/lov/1992-12-04-127.

<sup>&</sup>lt;sup>268</sup> https://lovdata.no/dokument/NL/lov/2015-02-06-7 English version available at:

https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/act-relating-to-the-protection-of-minors-against-harmful-audiovisual-programmes-norway-unofficial-translation-february-2015.pdf

https://lovdata.no/dokument/NL/lov/2020-05-29-59 English version is available at:

https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/210216-unoff-210216\_engversionact-relating-to-the-editorial-independence-and-liability-of-editor.pdf, English version available at: https://lovdata.no/dokument/NLE/lov/2005-05-20-28/\*#&#x2a.

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- The Penal Code (LOV-2005-05-20-28 Lov om straff Straffeloven).<sup>270</sup>
- Act on the sale of alcoholic beverages, etc. (LOV-1989-02-27 Lov om omsetning av alkoholholdig drikke m.v. – Alkoholloven).<sup>271</sup>
- Act relating to protection against tobacco damage (LOV-1973-03-09-14 Lov om vern mot tobakksskader – Tobaksskadeloven).<sup>272</sup>
- The Norwegian Copyright Act (LOV-2018-06-15-40 Lov om opphavsrett til åndsverk åndsverksloven).<sup>273</sup>
- Act relating to the control of marketing and contract terms and conditions, etc. (the Marketing Control Act – LOV-2009-01-09-2 Lov om kontroll med markedsføring og avtalevilkår mv – markedsføringsloven).<sup>274</sup>
- Act relating to certain aspects of electronic commerce and other information society services (the Electronic Commerce Act – LOV-2003-05-23-35 Lov om visse sider av elektronisk handel og andre informasjonssamfunnstjenester – Ehandelsloven).<sup>275</sup>
- Regulation relating to broadcasting and audiovisual on-demand services (FOR-1997-02-28-153 Forskrift om kringkasting og audiovisuelle medietjenester).<sup>276</sup>
- Regulations on the protection of minors against harmful audiovisual programmes (FOR-2015-06-26-800 Forskrift om beskyttelse av mindreårige mot skadelige bildeprogram).<sup>277</sup>
- Regulations on medical products (FOR-2009-12-19-1839 Forskrift om legemidler – legemiddelforskriften).<sup>278</sup>
- Regulations on subsidies for audiovisual production (FOR-2016-10-31-164 Forskrift om tilskudd til audiovisuell produksjon).

<sup>&</sup>lt;sup>270</sup> https://lovdata.no/dokument/NL/lov/2005-05-20-28. Unofficial English version is available at:

https://www.helsedirektoratet.no/tema/alkohol/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages, %20etc.%20(Alcohol%20Act)%20-%20Unofficial%20version.pdf/\_/attachment/inline/cf610698-d822-4e67-9c64-

<sup>803</sup>a2939971f:1aa4342cb2f3893cbb5b436fa29e18d25a161b7b/Act%20on%20the%20Sale%20of%20Alcoholicohol

<sup>&</sup>lt;sup>271</sup> https://lovdata.no/dokument/NL/lov/1989-06-02-27.

https://lovdata.no/dokument/NL/lov/1973-03-09-14.

<sup>273</sup> https://lovdata.no/dokument/NL/lov/2018-06-15-40.

<sup>274</sup> https://lovdata.no/dokument/NLE/lov/2009-01-09-2.

<sup>&</sup>lt;sup>275</sup> https://lovdata.no/dokument/NL/lov/2003-05-23-35?q=ehandel.

<sup>&</sup>lt;sup>276</sup>https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/180418-regulation-relating-to-broadcasting-and-audiovisual-on-demand-services.pdf.

<sup>&</sup>lt;sup>277</sup> https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/engelsk-bildeprogramforskrift.pdf.

<sup>&</sup>lt;sup>278</sup> https://lovdata.no/dokument/SF/forskrift/2009-12-18-1839.

<sup>279</sup> https://lovdata.no/dokument/SF/forskrift/2016-10-31-1264.

### Secondary legislation:

- EEA position note 29.04.2019 on the changes in the revised AVMS Directive (*EØS-notat 29.04.2019 Endringer i AMT-direktivet*).<sup>280</sup>
- The Norwegian Media Authority: Guide for Youtubers and Video Bloggers about Labelling of Advertisements.<sup>281</sup>
- The Norwegian Media Authority: Guidelines Age Classification of Audiovisual Programmes.<sup>282</sup>

## 5.23.2. 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.

Table 43. Definition of the main concepts related to VSPs

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

Source: Norwegian response to European Audiovisual Observatory standardised survey

#### 5.23.2.1. VSP service

The EEA position note provides for the following definition:

Video-sharing platform means services whose main purpose (or essential functionality) is to a) offer programmes and user-generated videos to the public for information, entertainment and education, b) are offered through electronic communications networks and c) the

<sup>&</sup>lt;sup>280</sup> https://www.regjeringen.no/no/sub/eos-notatbasen/notatene/2016/juni/forslag-til-endringer-i-amt-direktivet-/id2503512/.

<sup>&</sup>lt;sup>281</sup> https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/engelsk-youtube-veileder.pdf.

<sup>&</sup>lt;sup>282</sup>https://www.medietilsynet.no/globalassets/aldersgrense-ikoner-og-veiledning-no-og-eng/200423-retningslinjer\_aldersklassifisering\_engelsk\_pages.pdf.

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organisation of content are determined by the service provider, in particular by displaying, tagging and sequencing the content.

Further definitions are expected as a result of the EEA process.

### 5.23.2.2. VSP provider

There are no relevant definitions in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.). EEA process pending.

## 5.23.2.3. User-generated video

Section 3 of the Media Liability Act defines user-generated content as: "a statement published by a media user outside the editor's management and control".

Further definitions are expected as a result of the EEA process.

## 5.23.2.4. "Principal purpose" or "dissociable section" of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, bylaws, recommendations, case law, etc.) on how to interpret these concepts; EEA process pending.

### 5.23.2.5. "Essential functionality" of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret this concept; EEA process pending.

## 5.23.3. 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.

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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 for other additional relevant information about the measures and concepts at stake.

### 5.23.3.1. General provisions

Current regulation does not include VSPs. However, the Broadcasting Act includes several provisions covering audiovisual media services and video on demand (VOD), including provisions on advertising in children's programmes or advertising directed at children (section §3-1), hidden advertising/marketing (section §3-3), sponsorship (section §3-4), and product placement (section §3-6).

The Act relating to the protection of minors against harmful audiovisual programmes regulates content that may impair the physical, mental or moral development of minors, in both linear and on-demand audiovisual media services. Harmful content is defined in section 2 h) and seriously harmful content is defined in section 2 i). The Act applies to the making available of audiovisual programmes and related material to the general public through: a) television broadcasts and audiovisual on-demand media services covered by the Broadcasting Act, b) screening at a public gathering in Norway, including at a cinema or other screening facility, and c) making videograms available in Norway when the audiovisual programme is made available either by a company registered in Norway or one which has it business address in Norway, by a person who is a Norwegian citizen or domiciled in Norway, or when the decision to make it available is made in Norway. The Act furthermore states that an audiovisual programme cannot be made available without being given an age limit following the age classification system, and this age limit must be made available for the public in a clear and neutral manner. These provisions also cover videos posted by Norwegian YouTubers and vloggers on a Norwegian YouTube channel, however, not if the videos are accessed by friends and family only, or if the YouTuber/vlogger does not earn any income or receive any benefits to market products or services. Audiovisual programmes with seriously harmful content may not be broadcast on television, and the watershed, technical measures (PIN codes, passwords or other solutions) and content classification systems are used by the service providers.

Further, section 6 of the Media Liability Act regulates duties related to usergenerated content. It states:

The editor must maintain a clear distinction between user-generated content and editorial content in the medium and state what content is user-generated.

If the medium has rules for user-generated content, the editor must provide information about the rules and how they are enforced.

The editor must facilitate the reporting of illegal user-generated content. If user-generated content is removed or access to the content is barred because it is considered illegal, the

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editor must, to the extent possible, notify the author of the content and inform him/her of opportunities to appeal.

Section 185 of the Penal Code regulates hate speech, while in Chapter 18, it further regulates terrorist acts and terrorism-related acts; section 134 deals with terrorist threats, section 136 concerns inciting terrorist acts, including recruiting and training for acts of terrorism. Section 309 prohibits the purchase of sexual services from minors, section 310 prohibits showing sexual abuse of a child or shows which sexualise children, and section 311 prohibits the depiction of sexual abuse of children or depictions which sexualise children. Finally, section 185 regulates racism and xenophobia. According to section 13 of the Act relating to Equality and Anti-Discrimination<sup>283</sup> (LOV-2017-06-16-51), harassment on the basis of, e.g. gender, ethnicity, religion, age or belief are prohibited.

While the revised AVMSD is not yet implemented in Norwegian legislation, the rules on marketing (including advertising, sponsorship and product placement) in the Marketing Control Act apply to all marketing directed at consumers in Norway, including marketing posted on VSPs. Section 3 states that "[a]ll marketing shall be designed and presented in such a way that it is clear that it is marketing". Furthermore, more detailed provisions on advertising, sponsorship and product placement for audiovisual media services (linear broadcasting and on-demand audiovisual media services) are stipulated in the Broadcasting Act Chapter 3 and the Broadcasting Regulations Chapter 3. Audiovisual media services breaking these rules risk having to pay a violation fee, a fine or they risk a ban on displaying advertising.

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

There are no details in the primary legislation or in other texts (secondary legislation, bylaws, recommendations, case law, etc.) on how to interpret these concepts. EEA process pending.

5.23.3.3. 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

Please see under general provisions 5.23.3.1 and 5.23.3.2.

https://lovdata.no/pro/#document/NLE/lov/2017-06-16-51?searchResultContext=3322&rowNumber=1&totalHits=12

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

Please see under 5.23.3.2.

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

Please see under 5.23.3.2.

5.23.3.6. 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

Please see under 5.23.3.2.

5.23.3.7. 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

Please see under general provisions 5.23.3.1 and 5.23.3.2.

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

Please see under 5.23.3.2.

It should be noted that Youtubers and vloggers sharing content which is accessible to anyone other than friends and family and receiving income or other benefits, must mark videos with age limits.

5.23.3.9. 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

Please see under 5.23.3.2.

It should be noted that parental control systems apply to audiovisual media services according to the Regulations on the protection of minors against harmful audiovisual programmes.

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

Please see under 5.23.3.2.

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

Please see under 5.23.3.2.

It should be noted that the Norwegian Media Authority also works to increase media literacy. The Authority conducts a survey every two years on critical media understanding in the population. Areas that are mapped include fake news, knowledge of the media's commercial pages, privacy, trust in the media, and understanding sources.

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

Please see under 5.23.3.2.

5.23.3.13. Other relevant provisions related to the protection of minors

N/A.

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

The Broadcasting Act includes rules concerning the labelling of advertisements (sections 3-1 and 3-3), sponsorships (section 3-4), and product placements (sections 3-6 and 3-7), and these rules apply to those who post videos on their own YouTube channel (provided the channel is considered to be an on-demand audiovisual media service according to the definition in the Broadcasting Act, section 1-1 d)). Please see also under general provisions 5.23.3.1.

The Norwegian Media Authority has issued a guide for Youtubers and video bloggers about the labelling of advertising. The guidelines state:

If you produce videos that contain advertising and publish them on YouTube or other video-sharing platforms, you are obligated to label them. This applies if you earn money from or receive other benefits from presenting products or services in the videos. The viewers must



be aware of which videos contain advertising so they know that someone wants to influence them to purchase something.

The Norwegian Consumer Authority has produced guidelines on marketing beauty products and treatments on social media, and also issued general guidelines on labelling of advertising in social media.<sup>284</sup> These guidelines apply to Norwegians who publish commercial content on social media, such as on TikTok, Snapchat, Instagram or Facebook.

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

There is a general ban on advertising for alcohol and tobacco, according to section 9-2 of the Act on the sale of alcoholic beverages, as well as on the advertising and sponsorship of tobacco products, according to the Act relating to protection against tobacco damage. There is also a ban on advertising in children programmes and in programmes aimed at children, according to section 3-1 of the Broadcasting Act.

In Norway, a self-regulatory body - the Food and Drink Industry Professional Practices Committee (MFU), has been set up. The MFU<sup>285</sup> ensures compliance and handles complaints based on the Code for marketing of food and drink aimed at children. The Code is accompanied by guidance.286

### 5.23.3.16. Other relevant information

N/A.

# 5.23.4. 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.

<sup>&</sup>lt;sup>284</sup>file:///C:/Users/uh18/Downloads/The-Consumer-Ombudsmans-guidance-on-labelling-advertising-in-socialmedia%20(2).pdf.

<sup>285</sup> https://mfu.as/english/.

<sup>286</sup> https://nye.mfu.as/quidance-on-the-code-for-marketing-of-food-and-drink-aimed-at-children/.

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

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts. EEA process pending.

## 5.23.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard 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 28b (7) of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to video-sharing platform providers (as required by Article 28b (8) of the AVMS Directive).

## 5.23.5.1. Regulatory body

The Norwegian Media Authority<sup>287</sup> is responsible for the supervision of regulations on advertising, sponsorship and product placement in audiovisual media services, age limits for audiovisual programmes, as well as provisions that aim to ensure that minors are not able to access seriously harmful content in audiovisual programmes. The Norwegian Consumer Authority<sup>288</sup> is responsible for supervising the Marketing Control Act. This regulation includes advertising in social media (blogs, Facebook, Instagram, Twitter and Snapchat) where primarily text or photos are used.

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

There are no details in the primary legislation or in other texts (secondary legislation, bylaws, recommendations, case law, etc.) on the existence of such systems. EEA process pending.

According to section 2-1 of the current Broadcasting Act, the duty to register or to apply for a licence only applies to broadcasting services.

<sup>&</sup>lt;sup>287</sup> https://www.medietilsynet.no/en/about-medietilsynet/.

<sup>&</sup>lt;sup>288</sup> https://www.forbrukertilsynet.no/english.



## 5.23.5.3. Compliance, enforcement and sanctioning powers

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) about these powers. EEA process pending.

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

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) about these codes or schemes. EEA process pending.

In 2020, the Professional Committee for Influence Marketing was established by the Norwegian Advertisers' Association and the Norwegian Association of Media Companies. The Professional Committee for Influence Marketing intends to contribute to responsible practices for those who practice influencer marketing and to reduce body appearance pressure. Anyone can file a case for the Committee. Decisions are published on social media and in the daily press.

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

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on such mechanisms. EEA process pending.

## 5.23.5.6. Rights before a court for users

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on such rights. EEA process pending.

## 5.23.6. Studies, reports and research

- The Digital Services Act explained (Ytringsfrihetskommisjonen Digital Services Act forklart), 2021.<sup>289</sup>
- Children's lives in front of, behind and on the screen preliminary edition. Green paper. (NOU 2021: 3 Barneliv foran, bak og i skjermen – Foreløpig utgave).
- Guide for Youtubers and Video Bloggers about Aabelling of Advertisements, Fredrikstad: Medietilsynet.<sup>291</sup>

<sup>289</sup> https://www.ykom.no/2021/03/03/digital-services-act-forklart/.

<sup>&</sup>lt;sup>290</sup> https://www.regjeringen.no/no/dokumenter/nou-2021-3/id2838679/.

<sup>&</sup>lt;sup>291</sup> https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/engelsk-youtube-veileder.pdf.

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- A study of cash flows in the value chain for Norwegian films and series (Utredning av pengestrømmene i verdikjeden for norske filmer og serier), Oslo: Menon 2018.<sup>292</sup>
- The availability of Norwegian films on VOD platforms (Norsk films tilgjengelighet på VOD-plattformer), Oslo: NFI 2017.<sup>293</sup>
- How to protect Norwegian and European content in the future? (Hvordan ivareta norsk og europeisk innhold i fremtiden?), Oslo: NFI 2017.<sup>294</sup>
- Internet Policy Review, "Sharing Killed the AVMSD Star: The Impossibility of European Audiovisual Media Regulation in the Era of Sharing Economy", academic article by Indrek Ibrus and Ulrike Rohn, 2016<sup>295</sup>
- Communication Rights in the Digital Age, "The Functions of Data in the Competition between Audiovisual Media and Video Sharing Platforms for Advertising", academic article by Sally Broughton Micova and Sabine Jacques, 2020<sup>296</sup>
- Journal of Internet Law, "Leaving the European Safe Harbor, Sailing Towards Algorithmic Content Regulation", academic article by Thomas Riis and Sebastian Felix Schwemer, 2020<sup>297</sup>

## 5.23.7. Data compilation

This factsheet is based on the 2021 data compiled by Vilde Schanke Sundet, Researcher at the Department of Media and Communication, University of Oslo. The 2022 update data was compiled by Terje Colbjørnsen, Associate professor at the Oslo Metropolitan University.

<sup>&</sup>lt;sup>292</sup> https://www.menon.no/wp-content/uploads/2018-5-Utredning-av-pengestr%C3%B8mmer-i-verdikjeden-for-norske-filmer-og-serier-2.pdf.

<sup>&</sup>lt;sup>293</sup> https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter.

<sup>&</sup>lt;sup>294</sup> https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter.

https://policyreview.info/articles/analysis/sharing-killed-avmsd-star-impossibility-european-audiovisual-media-regulation-era.

<sup>&</sup>lt;sup>296</sup> https://doi.org/10.5325/jinfopoli.10.2020.0514.

<sup>297 &</sup>lt;a href="https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3300159">https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3300159</a>