



# *Striking the right c(h)ord?*

## New EU rules on audiovisual content online

Moscow, 29 October 2019

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European Audiovisual Observatory

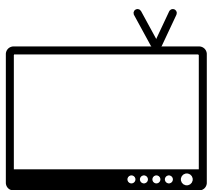


# Overview

- 1. The regulatory framework of the audiovisual sector in Europe**
2. The revision of the AVMS Directive
3. The Copyright Directive

# New ways of consuming **audiovisual content**

## Audiovisual media services

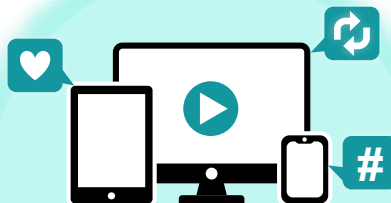


TV broadcasting



VOD services

## Online services



Video-sharing platforms (VSP)



ISPs



Hosting services



Social media



ecommerce services



Search engines

1.

**Legislation is slower than reality...**

## Information society services

- **not liable** for the information stored at the request of a recipient of the service **as long as the provider**
- **does not have actual knowledge** of illegal activity or information
- **Is not aware** of facts or circumstances from which the illegal activity or information is apparent
- If the provider obtains such **knowledge or awareness**, it has to **act expeditiously to remove or to disable access** to the information

## e-Commerce Directive (2000)

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**No monitoring!!!**

## Before 2017

**Sat-Cab Directive (1993)**

**Directive on conditional access (1998)**

**e-Commerce Directive (2000)**

**Directive on Copyright and Information  
society services (2001)**

**AVMS Directive (2010)**

## Under the **Digital Single Market**

**Portability Regulation (2017)**

**AVMS Directive (revised 2018)**

**Geo-blocking Regulation (2018)**

**Electronic communications code (2018)**

**Sat-Cab Directive (2019)**

**Copyright Directive (2019)**



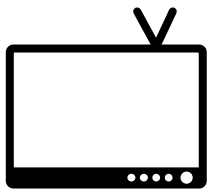
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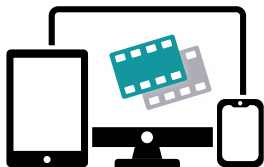
# 2.

## Audiovisual Media Services Directive

Audiovisual media services



TV broadcasting



VOD services

## eCommerce Directive



The rest...

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e-Commerce services



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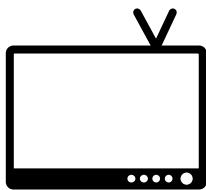


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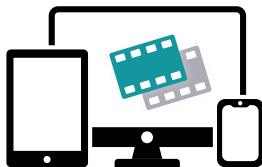
## Audiovisual Media Services Directive

## e-Commerce Directive

### Audiovisual media services



TV broadcasting



VOD services



### Video-sharing platforms (VSP)

### The rest...



ISPs



Hosting services



Social media



e-Commerce services



Search engines



# 2.

## Definition – video-sharing platform

- Content **created by users**
- **VSP** provider has **no editorial responsibility**
- the **organisation of the stored content** is determined by the provider of the service
- by **automatic means** or **algorithms**
- Including by **displaying, tagging** and **sequencing**

### + definitions of

- **VSP provider**
- **User-generated content**
- **Editorial responsibility**



Establishment



Jurisdiction



## Obligations of video sharing platforms (1/2)

VSP shall take appropriate measures for the protection of:



### Minors – Art. 28b(1)(a)

- Content which may impair their physical, mental or moral development



### The public – Art. 28b(1)(b)-(c)

- Content inciting to violence or hatred
- Content which constitutes a criminal offence under EU law

## Obligations of video sharing platforms (2/2)



### VSPs and commercial communications – Art. 28b(2)

Commercial communications marketed, sold or arranged:

- by VSP providers → take appropriate measures to comply with Article 9(1)
- by users → take appropriate measures considering VSPs **limited control** over content

Fulfilling these obligation should be accomplished by using appropriate measures...

## 2.

### Appropriate measures to be implemented by VSPs include:



Terms and conditions



Indication of commercial communications in UGC



Reporting or flagging content



Feedback and transparency



Age-verification systems



Content rating



Parental control



Complaint resolution



Media literacy

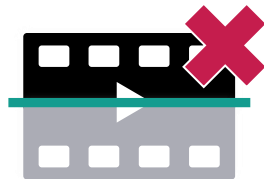


Protection of minors' data

## 2.

### VSPs limited liability

Such measures shall take into account the **size** of the VSP and the **nature** of the service, and ...



... “shall not lead to any **ex-ante control** measures or **upload-filtering** of content”...

... in accordance with Art. 15 of the **e-Commerce Directive**.



# 2.

## Promotion and investment obligations in European works

### Linear services

Art. 16-17



of transmission time to European works



of transmission time or programming budget to independent European works

### Non-linear services

Art. 13 (rev)



minimum share in catalogues



**Financial contribution:**

- Production
- Direct investments
- National funds

Including targeting services

### Video sharing-platforms



## AVMS Directive:

- **Implementation** by 19 September 2020
- **Reporting** 2 years after the implementation and then every 3 years
- **Evaluation** 19 December 2026

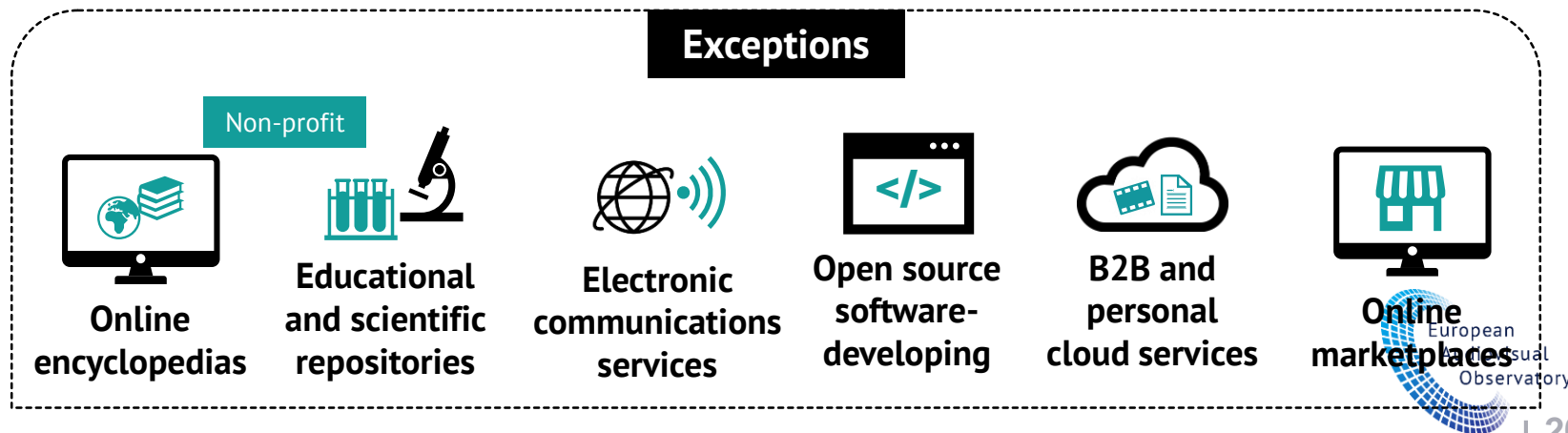
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# 3.

## Definition – **online content-sharing service provider** Art. 2(6)

- Provider of an **information society service**
- **Stores** and **gives the public access**
- To a **large amount of copyright-protected works uploaded by its users**
- Which it **organises** and **promotes** for **profit-making purposes**



# 3.

## The obligations of online content sharing services **Art. 17(1)-(4)**

Prior to performing an **act of communication to the public** or an **act of making available to the public**:



Obtain rightholders' authorisation

■ No liability exemption ... unless:



Best efforts for authorisation are made



Act expeditiously



Remove/disable access to notified content



Shall be subject to human review



Best efforts to prevent future uploading



Complaint and redress mechanism for users

**Rightholders are expected to**



Duly justify the reasons for their requests for action



Provide relevant and necessary information for tackling unauthorised use of content



# Copyright Directive

- Implementation **by 7 June 2021**
- Review by the European Commission no sooner than **7 June 2026**

# Thank you!

For any queries:  
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