

The playing field between YouTube and television will be a bit fairer, but still far from level



On 2 October MEP Sabine Verheyen announced: “we have established a fair, level playing field,” celebrating the adoption of the revision to the Audiovisual Media Services Directive (AVMSD), which now will also cover “video sharing platforms” (VSPs). This was an overstatement: the Directive may make things a bit fairer, but can do very little to even out competition for the advertising revenues upon which much content production depends.

The playing field that Verheyen spoke of is the one on which traditional broadcasters, video on demand (VOD) services (e.g. Netflix), and platforms for user-generated content (UGC) (e.g. YouTube) compete for audiences, and on which those that are advertising dependent compete for advertising budgets. In the lead-up to the revision, [commercial broadcasters](#) and their [sales houses](#) called for changes to address competition from online services.

Balancing out the content burden

Once the Council approves [the revision](#), all of these services will have to protect minors from content deemed harmful, and protect all citizens from incitement to hatred and violence, and from illegal content. In defining VSPs, article 1 states that they provide content over which they do NOT have editorial responsibility. Nevertheless, as the recitals explain, VSPs have responsibility stemming from their organisation of content, and thus will have to ensure the content and advertising they carry follows rules designed to protect consumers, using measures such as including certain requirements in terms and conditions, setting up flagging mechanisms, age verification and parental controls, and establishing complaints procedures (article 28a).

In addition to following the consumer protection rules, linear audiovisual media services have had to broadcast at least 50% European works since 1989. Under the new Directive, VOD services will have to include 30% European works in their catalogues. Given that most television broadcasters fulfil their quotas with domestic content that is not likely to be sold on an international market, this provision might make some European film producers happy, but it not likely to affect competition between television channels and vast on-demand catalogues of premium and niche content.

Member states will be allowed to require services in their territory or those that target their territory (e.g. [Netflix offer to France from Luxembourg](#)) to invest in the production of domestic works or contribute to production support funds. This is an admirable attempt to balance things out for the traditional broadcasters who remain the biggest investors in European content production, but it could be used to force them to contribute as well: something that might be abused in some member states.

Fairness in advertising rules

The AVMSD will now require member states to ensure VSPs and VOD services also follow all the qualitative rules on commercial communications (article 9), which require that ads be distinct and prohibit surreptitious advertising and advertising of tobacco products and medicines. VSPs will also have to join codes of conducts to limit the advertising of unhealthy foods around content aimed at children, something the traditional audiovisual media services already have in place.

The revised Directive also makes clear that the VSPs are responsible for the advertising inventory they sell directly and that which is sold by others. They may get away with just adjusting the terms and conditions to which those posting content and selling advertising must comply. For example, some of the rules on advertising are already included in Google's [AdSense terms](#), which govern the advertising on YouTube. However, the revised Directive also encourages member states to use co-regulation to ensure that VSPs are following the rules, and spells out some criteria for that co-regulation (article 4a).

The fact that the AVMSD will now require VSPs to follow the same rules for advertising as audiovisual media services is fairer, and depending on how co-regulatory systems are set up there could be some evening out of the compliance burden with the services that are regulated by national regulatory authorities. However, it will likely have little effect in terms of levelling the playing field in the competition for advertising budgets.

Some steps forward on the data imbalance?

The main cause of the imbalance in the playing field among advertising dependent services is the fact that VSPs like YouTube can draw upon a vast amount of data on its users, who have granted wide reaching consent, and match it to an almost limitless supply of advertising inventory. Audiovisual media services have been trying to catch up with sign-ins for their on-demand and catch-up services, and by gaining consent to gather data through set top boxes and connected TVs, but they are far off. Addressable advertising in television does exist but remains nascent and far from rivalling the kind of targeting available in online video advertising.

Audience and user data did not figure highly in the debates leading to the AVMSD revision, and did not figure at all in the [Commission's original proposal](#) made in May 2016. It does in a small way appear in the adopted version, because of GDPR. Recital 38 of the GDPR points out that the personal data of minors deserves special protection particularly in its use "for the purposes of marketing or creating personality or user profiles." Recognizing that the various mechanisms that will be employed to protect minors will also gather data about them, the AVMSD will now ban audiovisual media service providers (article 6a) and VSPs (article 28b (3)) from using the data gathered for marketing, profiling or targeted advertising.

The effect of this on competition will depend on how it is interpreted and implemented. The UK's advertising self-regulator's [guidance for online advertising and children](#) actually instructs platforms to use the multiple data points to create a profile of a user who might be a child in order to ensure age restricted advertising is not shown, rather than trust minors to accurately report their age. With the ban in place will that count as a protection, but if the user profiled is then shown ads for Lego, does this count as a violation? What will be the expectations on audiovisual media services that are largely gathering data on a household rather than an individual? If parental controls are in place on a SmartTV, can they then not use that information to address the household as one with children?

Implementation

It is fairer that all services providing audiovisual content to audiences have to follow similar rules for protecting audiences. The larger VSPs will not find this challenging as they already have appropriate mechanisms in place. And two years from now, when co-regulatory systems are set up, there might be some more fairness introduced in terms of the regulatory burden placed on the various services. However, the AVMSD cannot deal with the root causes of the uneven playing field for advertising dependent services, and where it does deal with data for legitimate public interest reasons, there are risks that even more imbalances could be introduced if implementation is not done in a careful, evidence based, and forward looking way.



Notes:

-
- *This blog post appeared originally on [LSE Media Policy Project](#).*
 - *The post gives the views of its author(s), not the position of the institutions they represent, the LSE Business Review or the London School of Economics.*
 - *Featured image credit: [Photo](#) by [TymonOziemlewski](#), under a [CC0](#) licence*
 - *When you leave a comment, you're agreeing to our [Comment Policy](#).*
-



Sally Broughton Micova is lecturer in communications policy and politics at the University of East Anglia and a visiting fellow at LSE. She is a member of UEA's Centre for Competition Policy (CCP). Prior to joining UEA she was an LSE Fellow in Media Governance and Policy and Deputy Director of the LSE Media Policy Project, where she completed her PhD in December 2013. She remains a visiting fellow at the LSE and since 2012 is also a visiting lecturer at the Institute of Communications in Skopje, Macedonia. Her research focuses on media and communications policy in Europe. She is currently concerned with new locations for potential control in communications with the progression of convergence in technology and services and the rise of competitive authoritarianism. Twitter: [@BroughtonMicova](#)