

Platforms and new forms of commercial communication aimed at minors:

A playground under legislative reform?

I. Lambrecht & V. Verdoodt

Today's audiovisual media services (AVMS) landscape is characterised by an increased convergence between traditional broadcasting and the delivery of audiovisual content over the internet. This convergence raises important new questions regarding the scope of the existing regulatory frameworks. In particular, it is becoming ever more difficult to delineate the responsibilities of certain service providers (e.g. video-sharing platforms) under the different frameworks of AVMS and e-Commerce for new forms of commercial communications that appear on their platforms, not excluding they are also "processors" within the meaning of the EU data protection framework.

The scope of the AVMS Directive has expanded significantly over time. Where the Directive originally focused solely on traditional broadcasting and later on included video-on-demand, the new proposal acknowledges the influence of new online video-sharing platforms that, despite not having editorial responsibility, still have an impact on the delivery of AVMS content through their technical competences.¹ For this reason, the European Commission (EC) has a specific role in mind for such players when it comes to protecting minors. More specifically, the proposal encourages AVMS providers to implement regulatory tools, e.g. technology that may foster empowerment of minors on the AVMS playground.² In order to implement such tools in the regulatory framework, the proposal prefers solid self- and/or co-regulatory mechanisms, including coordination and support by ERGA on the European level.³ Such mechanisms should also involve video-sharing platforms, in light of the proposed extensions of the scope of the AVMS to certain internet players.

In addition, the proposal allows for more flexibility in relation to certain commercial communication rules (e.g. the liberalisation of product placement and the abolishment of hour limits for traditional broadcasters), so as to create a level playing field for traditional and new forms of audiovisual commercial communication.

As mentioned earlier, these platforms do not only trigger the application of the AVMS Directive, but may also come within reach of the e-Commerce and EU Data Protection frameworks. Accordingly, they may need to keep in mind additional yet distinct responsibilities, when their commercial communications target minors (e.g. sponsored games and vloggers are especially popular with a youthful audience).⁴

¹ ERGA report on material jurisdiction in a converged environment, 16 January 2016, <https://ec.europa.eu/digital-singlemarket/en/news/erga-report-material-jurisdiction-converged-environment>.

² It mentions, for instance, a system of content descriptors is explicitly mentioned, to assist minors and their parents in selecting appropriate content (Recital 9).

³ Explanatory memorandum p.13; Recitals 35 and 36.

⁴ Zarouali, B., De Pauw, P., Walrave, M., Poels, K., Ponnet, K., Panic, K., Hudders, L. & Cauberghe, V. (2015). Mediabezit en – gebruik bij minderjarigen.



It is therefore time to consider the potential impact of the ongoing legislative reform for both traditional and new players on the AVMS playground, in order to better understand their shared impact and responsibility. As such, this paper will analyse the different responsibilities these new internet platforms will face when directing their commercial communications at a young audience. For this purpose, it will analyse the interplay between the different legislative frameworks mentioned above, in order to discover any gaps or clarify any overlaps, which could ultimately have a negative impact on the empowerment of minors

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