

## **Executive Summary**

In the many years since the Audiovisual Media Services Directive (“AVMSD”) was adopted, the media landscape has shifted considerably. Global technology platforms have become, for many Europeans, the primary environment in which audiovisual content is encountered; a role once associated with broadcasters operating under comprehensive public-interest obligations. Whether, and to what extent, this shift calls for a regulatory response is one of the central questions this hearing invites us to consider.

This submission does not purport to offer definitive answers. It attempts instead to identify questions that seem important to ask about the purpose of the directive, the values it should protect, and whether the tools it currently deploys remain well matched to those purposes. The AVMSD was built around the broadcaster. Today, much of the public’s (audiovisual) content experience is mediated by algorithmically driven platforms whose regulatory status and obligations differ markedly from those of the broadcasters it was designed to regulate. Whether this gap is a problem, and if so, how it might be addressed, deserves careful examination.

The observations that follow are grouped around four themes that recur throughout the hearing debate: the founding purposes of the directive and whether they remain fit for the current environment; the technological shifts that have altered how content is created, distributed, and discovered; the question of fair competition between editorial media and global platforms; and the adequacy of existing protections for children and viewers more generally.

### **1. Background and Scope**

The AVMSD has, since its origins in the Television Without Frontiers Directive of 1989, sought to translate a set of enduring public-interest values into workable regulatory obligations.

#### **1.1 Supporting a Free and Pluralistic Press and Media**

Media pluralism is widely recognised as a value the AVMSD is designed to support. It is worth asking, however, whether the conditions necessary for pluralism have changed in ways that affect how this objective should be pursued. When a small number of global platforms serve as the primary gateway through which many Europeans encounter news and information, does the existing regulatory framework adequately protect the diversity of voices that pluralism requires?

Algorithmic curation should not be treated as a neutral technical process as it involves choices — about what to surface, what to suppress, what to recommend — that have consequences for which voices are heard and which outlets remain viable. If platforms do exercise a form of editorial influence through their recommendation systems, does the current regulatory framework adequately account for this? And if not, what would an appropriate response look like?

#### **1.2 Protecting Viewers from Harmful Content**

The directive has long sought to protect viewers, and in particular children, from content that may harm them. These protections have generally operated reasonably well in the broadcast environment for which they were designed. The harder question is whether equivalent protections are being achieved in the platform environment, where the same audiences now spend much of their time. There is reason to ask whether current obligations on video-sharing platforms are sufficient, whether they are being effectively enforced, and whether the tools available to national regulators are proportionate to the challenge.

Content that would not be permissible on a regulated broadcaster, whether age-inappropriate material, health misinformation, hate speech or fraudulent advertising, circulate widely on platforms that many citizens, including children, use daily. Whether this reflects a gap in the law itself, a gap in enforcement, or some combination of both is a question the reform process should examine carefully.

#### **1.3 Diverse and European Content Creation**

The directive’s provisions on European works - catalogue quotas, prominence requirements, and financial contribution obligations - reflect a long-standing view that cultural diversity in (audiovisual) content does not arise spontaneously from market forces alone. It seems worth asking whether these mechanisms continue to function as intended in a world where the primary discovery of content often happens not through catalogues or programme guides but through personalised algorithmic feeds. Are the current tools well matched to the way audiences encounter content today?

There is also a question about geographic scope. If a platform generates substantial revenues by reaching audiences in a given Member State, is it reasonable that its regulatory obligations should be determined primarily by its place of establishment which may be a jurisdiction with lighter regulatory requirements or enforcement?

#### **1.4 Strengthening Competitiveness of the European Media Sector**

European broadcasters, publishers, and independent producers operate under a comprehensive set of regulatory obligations, content standards, public-interest requirements, advertising restrictions, GDPR, and investment mandates which developed into a broader social contract between media and society. Global technology platforms, which now reach larger audiences, generally do not bear equivalent obligations. This asymmetry constitutes an unfair competitive disadvantage for European media, and whether it is the kind of disadvantage that the AVMSD is the appropriate instrument to address, are questions that seem important to explore openly.

It is worth being honest about the difficulty here. Extending obligations to global platforms could help level the playing field for European media. But it could also risk placing additional burdens on services that many European citizens value, and the practical enforceability of any new requirements would need to be assessed carefully. Is there a version of regulatory reform that genuinely levels the playing field without simply adding complexity or creating new opportunities for regulatory arbitrage?

### **2. Fit for Purpose: The Technological Development Challenge**

#### **2.1 Global Technology Platforms as Dominant Gatekeepers**

One of the more striking developments since 2018 has been the growth of global technology platforms - YouTube, TikTok, Instagram, Facebook, and others - as environments in which many European citizens spend a significant share of their media time.

It is worth asking whether the influence these platforms exercise over content discovery, audience reach, and the commercial prospects of media organisations represents the kind of infrastructural power that the directive's existing framework was designed to address or whether it calls for a different regulatory approach altogether. A broadcaster whose content loses visibility on a major platform may find its reach substantially affected.

The question the Commission may wish to consider is whether the current calibration of the directive with its heaviest obligations falling on broadcasters and lighter obligations on platforms continues to reflect the actual distribution of influence in the audiovisual ecosystem, or whether a rebalancing is warranted.

#### **2.2 Outdated Definitional Frameworks?**

The AVMSD's existing categorisation, distinguishing broadly between television broadcasting services, on-demand audiovisual media services, and video-sharing platforms, reflected a reasonable approximation of the market at the time of the 2018 revision. Whether that categorisation remains adequate today, given changes in how platforms operate and how audiences behave, seems worth asking.

#### **The editorial platform versus the video-sharing platform**

The distinction between a video-sharing platform and an on-demand audiovisual media service was designed to reflect a meaningful functional difference: passive hosting on one side, active editorial curation on the other. A question worth exploring is whether this distinction retains its clarity in practice, given that modern platforms curate content for individual users through algorithmic recommendation systems that determine, to a significant degree, what those users see often without any active search by the user themselves.

Platforms do not only store and transmit content. Through algorithmic recommendation, they shape what users encounter suggesting content based on inferred preferences, often without any explicit search by the user. Whether this constitutes a form of editorial activity, with corresponding regulatory implications, is a genuinely contested question. It goes to the heart of how "editorial responsibility" should be understood in a digital environment. And platforms do also produce (AI) content.

This point has received important recent judicial elaboration. In the pending case before the Court of Justice of the European Union, Case C-797/23, the Advocate General's Opinion addressed the nature of platform activity in terms directly relevant to this discussion, sec. 29:

*However, as several participants at the hearing pointed out, the Facebook network is not merely a passive place for sharing content between users. By means of sophisticated algorithms, it suggests specific content to users according to their supposed centres of interest, without those users having carried out any search for that content or it being suggested to them by other users. Facebook is, therefore, a truly autonomous content provider, whose specific characteristic is that the content is neither created nor purchased by it: that content is uploaded by users and Facebook is then responsible for offering it to users. Such use cannot, in my view, be attributed to users, but must be regarded as being carried out by the ISSP, namely Meta, and, therefore, in so far as it concerns press publications, as falling within the exclusive rights of publishers.*

This analysis raises questions that are directly relevant to any AVMSD reform. If algorithmic curation is, in some meaningful sense, an editorial act, does it follow that the services which employ it should bear some of the regulatory responsibilities historically associated with editorial media?

### **On-demand services, streaming, and the blurring of categories**

The growth of heavily audiovisual social media feeds - Instagram Reels, TikTok, YouTube Shorts - alongside the expansion of traditional on-demand services into live events and sports has made the existing categorical boundaries harder to maintain with confidence. One possible approach would be to move towards function-based criteria focusing on the degree of editorial influence exercised and the scale of the audience affected rather than on technical form. Whether this would produce greater clarity or simply shift the definitional ambiguities elsewhere is worth thinking through carefully.

One approach worth considering and the Commission may have others would be a function-based definitional framework that distinguishes:

- Services that primarily host and algorithmically curate user-generated audiovisual content at scale (platforms exercising de facto editorial control);
- Services that offer a curated catalogue of professionally produced content (traditional video-on-demand);
- Services that transmit linear scheduled programming (broadcast and linear streaming); and
- Hybrid services combining elements of the above, with obligations calibrated to the relative weight of each element.

### **2.3 Prominence, Accessibility, Discoverability, and the Shift from Broadcast to Platform**

One of the changes most often cited in discussions of the directive is the shift in how audiences - and especially younger audiences - access audiovisual content. For a growing share of European citizens, the primary interface with audiovisual media is a platform feed or a recommendation engine rather than a broadcast schedule or a programme guide. A shift raises important questions about whether regulatory tools designed around the broadcast model continue to serve the purposes for which they were created.

Must-carry and prominence frameworks were built around the broadcast environment. If audiences are accessing content primarily through platforms where those frameworks do not apply, it is at least worth asking whether must-carry obligations continue to achieve their intended purpose ensuring that citizens can access public-interest content or whether equivalent mechanisms are needed in the platform environment. Whether must-carry and must-offer obligations translate coherently to the platform context, and what they would look like in practice, should be explored. Focus should be easy access to and prominence of quality content from media services of general interest.

Discoverability and algorithmic prominence should play a role in the platform environment analogous to the role that must-carry played in the broadcast environment. Whether this analogy holds up under scrutiny, and whether it justifies equivalent regulatory intervention, is a question on which reasonable people disagree. The risk of systematic deprioritisation of public-interest content by recommendation algorithms is real and documented.

Platforms like YouTube are today many people's - especially young people's - gateway to news. YouTube is Denmark's largest streaming service, yet it is not covered by the Cultural Contribution Act. YouTube has also refused to enter into an agreement with DPCMO regarding press publishers' rights. More than 80 percent of the population is on Facebook, which has likewise refused to enter into an agreement with DPCMO, despite unsuccessful attempts at mediation and arbitration. Google Search is the dominant search engine and has launched Google AI Overview and AI Mode in Denmark without an agreement with Danish media. The aim is to keep users within Google's ecosystem. OpenAI has trained on Danish media content

without agreement and creates fictitious links to Danish media, thereby both exploiting their credibility and undermining trust when users find that the links do not work. OpenAI has also refused mediation, so DPCMO has been forced to start lengthy and costly litigation.

Digital platforms have become critical infrastructure, and Danes use them extensively. So how do the major tech platforms manage the responsibility that comes with their reach? Facebook changes its algorithms at will and deprioritizes credible news. When countries attempt to impose responsibilities on the service that reflect its dominance, Facebook responds by blocking news. Google has done the same. News has most recently been blocked in Denmark and six other EU countries. When will it happen again? Ahead of the next election?

Would it be possible and appropriate to require platforms such as Facebook, Instagram, TikTok, and YouTube to ensure that, for example, every fifth item on a platform's homepage comes from an editorial media outlet as a form of "must offer"? In this way, several goals could be achieved. Users of YouTube would encounter a diverse range of content not solely optimized for YouTube's commercial interests. Users could still choose what they want to watch - no one can be forced to consume specific content, but they must encounter it to choose it. This is also why, among other things, the AVMSD includes the rules on "prominence." It is about making it easy to find and access trustworthy news content. An informed public is an essential prerequisite for the health of our European democracies. Moreover, as content distributors, platforms would also contribute financially through rights payments to the content ecosystem they profit from.

Social media algorithms do not only spread extreme content; they also spread misinformation and disinformation, while at the same time resisting effective content moderation. It is therefore not surprising that research shows a correlation between distrust in societal institutions and the use of social platforms. Of course, the use of social media is not exclusively negative - for example, there is a positive correlation with political participation, but the overall picture is clear: the major platforms are not fulfilling their societal responsibility. This is critical, as more citizens rely on these platforms as news sources.

It is neither new nor unusual to regulate distribution platforms with the aim of ensuring a diverse range of content and that citizens encounter it. The concept of "must carry" obligation is based precisely on the cultural policy objective of ensuring that the population has access to local content of general interest. Behind these rules are democratic considerations (all citizens must have access to news, debate, and information) and cultural considerations (all citizens must have access to Danish-language quality content).

Streaming services in the EU are required to promote European productions. No citizen is forced to watch European films, but the opportunity must be there, meaning the content must be accessible. In Denmark the media agreement stipulates that the population should encounter more Danish-produced quality content, whether reading news articles, streaming films and series, or listening to podcasts. As Denmark is a small language area, the agreement emphasizes that it is up to us to ensure the conditions for producing high-quality Danish content that unites us, challenges us, enlightens us, and binds us together.

### **The democratic imperative: quality journalism and the fight against disinformation**

There is a body of research suggesting that access to reliable, professionally produced journalism is associated with better-informed citizens and greater engagement in democratic processes. If platforms are the primary means through which a growing share of the population encounters news and information, it seems worth asking what role, if any, audiovisual media regulation should play in ensuring that citizens can access quality journalism through those platforms. Whether the AVMSD is the right instrument for this, and how any such obligation could be made effective without compromising editorial independence or unduly privileging established outlets, are questions that deserve careful consideration.

One approach sometimes proposed is a framework of must-carry or must-offer obligations adapted to the platform environment. The questions such a framework would need to answer include, but may not be limited to:

- How can public-service and quality journalistic content be made accessible and discoverable?
- What degree of transparency about algorithmic treatment of different content categories would be meaningful and enforceable?

- Would non-discrimination obligations — requiring platforms to offer fair and consistent terms for carriage and prominence — be a workable alternative to more prescriptive must-carry rules?
- And in crisis situations — elections, public health emergencies, major disasters — is there a case for specific obligations to ensure the rapid and prominent dissemination of verified public-interest content, and if so, how should “verified” be defined without creating a system susceptible to political pressure?

The AVMSD does not exist in isolation — the DSM Directive, the Digital Services Act and the European Media Freedom Act are also relevant — and any reform should consider how these instruments interact, whether they risk creating overlapping or inconsistent obligations, and whether the overall regulatory architecture remains coherent.

## **2.5 Effective Protection of Children and Minors**

The protection of children from harmful content is one of the directive’s most widely supported objectives, and one where the gap between regulatory intent and practical experience may be most worth examining.

### **The current state: significant and documented failures**

Available research suggests that children are, in practice, exposed through major platforms to content that would not be permitted on regulated broadcasters; including age-inappropriate material, content promoting self-harm, and exploitative advertising. Whether this reflects deficiencies in the law as written, in its enforcement, or in both, and how these deficiencies might be addressed, seems worth asking.

The enforcement dimension seems particularly important here. Even well-designed obligations are of limited value if they cannot be effectively monitored and enforced at scale. Do national regulatory authorities currently have the resources, jurisdiction, and tools they would need to hold global platforms to account? And if not, what changes - to the law, to institutional capacity, or to cross-border coordination - would be necessary to close that gap?

### **Informed and engaged citizens begin in childhood**

There is also a question about the longer-term consequences of how children engage with media today. Research has explored links between children’s media environments and their later development as citizens - their capacity for critical thinking, their resilience to misinformation, their engagement in civic life. Whether these findings have implications for how the directive should approach child protection - not just as a welfare issue but as a question with democratic dimensions - is worth reflecting on.

It may be worth asking whether an AVMSD reform that took children’s media environments seriously as a question of the future of our democracy - not only a welfare question - would look meaningfully different from one that did not.

How should enforcement obligations be structured to ensure that they cannot be circumvented through the choice of Member State of establishment and become effective in practise without undermining the country-of-origin principle in ways that create wider problems for the internal market? And what level and structure of sanctions would create genuine compliance incentives for large global platforms - proportionate to their scale - without risking disproportionate effects on smaller services?

## **3. Conclusion and Recommendations**

The European legislature face a genuine challenge: how to adapt a framework built around the broadcaster to an environment in which platforms play a central role in mediating the public’s audiovisual experience without creating obligations that cannot be enforced, distorting competition in ways that harm rather than help European free media, or undermining the values of freedom of expression and editorial independence that the directive is partly designed to protect.

There is a genuine question about regulatory symmetry. If the obligations that fall on European broadcasters and publishers reflect a social compact - an exchange of public-interest commitments for the right to reach large audiences - then it seems fair asking whether a comparable compact should apply to services that now reach larger audiences.

- Whether obligations might more usefully attach to the function a service performs - the nature and scale of its influence over what citizens see and hear - rather than to its technical category, which may shift in unpredictable ways as technology evolves;

- Whether proportionality - calibrating obligations to scale of influence rather than applying uniform requirements - could produce a fairer and more workable framework;
- Whether the current enforcement architecture, built around national regulatory authorities applying the country-of-origin principle, is adequate for the task of regulating services whose influence is pan-European and whose resources dwarf those of the authorities charged with overseeing them;
- Whether and how prominence and accessibility obligations can be adapted to ensure that citizens retain meaningful access to quality journalism and public-interest content in an environment where personalised algorithmic feeds are the primary discovery mechanism; and
- Whether child and consumer protection obligations can be made genuinely effective - enforceable in practice on a national level and not only in principle - across all services through which children access audiovisual content, regardless of how those services are categorised.

#### **4. Towards a Simpler, Fairer Directive?**

##### **On Simplification and Foundational Principles**

Could the core obligations of a reformed directive be expressed in a smaller number of clear, durable principles, rooted in the EU's fundamental values of human dignity, freedom of expression, democratic empowerment, and the protection of the vulnerable; principles robust enough to remain meaningful as technology continues to evolve?

There is also a practical question of futureproofing. If the directive's obligations are expressed in terms tied to the specific technical forms of today's services - video-sharing platforms, on-demand catalogues, linear streams - will they remain coherent when the next generation of services arrives? Or would a framework anchor in functional criteria; the nature and scale of editorial influence, the size and vulnerability of the audience reached prove more resilient across technological cycles?

##### **On a Level Playing Field and Fair Competition**

European broadcasters, publishers, and independent producers operate under a comprehensive set of regulatory obligations: content standards, public interest requirements, advertising restrictions, GDPR, investment mandates that reflect a long-standing social compact between media and society. Global technology platforms, which now reach larger audiences, generally do not bear equivalent obligations. Is this asymmetry defensible? And if not, what principle should govern where obligations attach — the legal form of the service, or the nature and scale of its influence over what citizens see and hear?

The regulatory complexity of any framework may itself be a source of competitive distortion. Large, well-resourced platforms can afford the legal expertise to navigate definitional grey areas; smaller European media organisations often cannot. Does the directive, unintentionally, confer an advantage on those least in need of one? And would simpler, more consistently applied rules do more for competition than the present layered architecture of obligations and exemptions?

##### **On Protecting Editorial Media and the Free Press**

The free press and independent editorial media are not simply one industry among others. They perform functions: empowering citizens, verification of information, the structuring of public debate, accountability journalism, holding power to account, etc. The question for any AVMSD reform is not whether this is true, but whether audiovisual media regulation is the appropriate instrument to protect it, and if so, how to do so without inadvertently entrenching incumbents or distorting the market in ways that harm the diversity it seeks to protect.

When platforms decide — through algorithmic design, commercial agreements, or content moderation policies — which journalistic sources are surfaced and which are suppressed, they are making choices with democratic consequences. Should a revised directive address this directly?

##### **On a Diverse Content Offer**

Algorithmic recommendation systems are designed to maximise engagement. A system optimised for watch-time will reliably surface content that is emotionally compelling, familiar, and confirmatory - not necessarily content that broadens horizons, introduces new voices, or reflects the range of European cultures and languages. Is this a market failure that regulation can and should address? And if so, can it be addressed through rules simple enough to be understood, applied, and enforced.

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The existing European works quotas and prominence requirements for on-demand services were a meaningful step. But do they translate meaningfully to a world in which the primary discovery mechanism is not a catalogue or an EPG, but a personalised feed or an agent? What would “appropriate prominence” for European and independent content look like on a platform whose interface is, by design, different for every user?

### **On Effective and Proportionate Enforcement**

A rule that cannot be enforced is not a rule — it is an aspiration. National regulatory authorities across the EU were built for an era of domestic broadcasters. What enforcement architecture would make a reformed AVMSD credible? Is the country-of-origin principle, which has served important functions in enabling the internal market, compatible with effective consumer protection when a small number of Member States host the European headquarters of the world’s largest platforms?

Simpler rules would help enforcement as well as compliance. An independent authority charged with monitoring whether a platform is applying its algorithmic systems in accordance with a clear, principle-based obligation has a more tractable task than one required to determine whether a complex, technically defined service category has been correctly self-assessed. Is there an argument, then, that simplification serves not only regulated entities but the regulators themselves — and ultimately the citizens in whose interest regulation exists?

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The pressures on our democracies - information manipulation, foreign interference, eroding public trust - are real and the number of democracies is declining globally. But our capacity to respond should also be real. Where others see vulnerability, Europe can demonstrate what resilient, values-driven democracy looks like in the 21st century. This is not a rearguard action. It is an opportunity to lead.

Strong regulatory frameworks, when built with precision and enforced with credibility, don't just protect; they set global standards. Clear rules create trust. Trust creates the conditions for innovation to flourish. And a citizenry that can navigate a complex information landscape is not just harder to manipulate, it is more engaged, more demanding, and more democratic.

Europe has done this before: turned fragmentation into frameworks, turned crisis into coordination. The digital age is no different.

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