



## **Technology Ireland's submission to Coimisiún na Meán's consultation on the proposed designation of video-sharing platform services (VSPs) as a category of relevant online services**

**26 July 2023**

Technology Ireland, the Ibec group representing the technology industry, welcomes the opportunity to respond to Coimisiún na Meán's (CnaM) consultation on the proposed designation of video-sharing platform services (VSPs) as a category of relevant online services. Continued engagement with industry regarding rules governing online services is essential to delivering a workable framework for both providers and users.

Since March 2019, when the Government first announced its intention to bring forward online safety legislation, as seen in the development of the Online Safety and Media Regulation (OSMR) Act transposing the revised Audio-Visual Media Services Directive (AVMSD) into Irish law, Technology Ireland has been consistent in supporting its goals to promote online safety through a systemic approach to oversight of online platforms and digital services.

We repeatedly called for early implementation of the AVMSD in Ireland, given Ireland's unique position as the EU HQ of many leading technology companies and video-sharing platform providers. The designation of video-sharing platforms (VSPs) is an important next step in this implementation, which will see CnaM taking a central role in the regulation of online services and enhancing Ireland's role as a regulatory hub and trusted partner in implementing the EU's framework of digital rules.

The operation of CnaM's powers should ensure alignment with current EU legislative frameworks and, moreover, should take into account updates and developments of EU laws and codes to ensure intermediary services are regulated in Ireland in a manner which is consistent with the rest of the EU and supports the achievement of a Digital Single Market through the harmonisation of regulation across the EU.

Technology Ireland looks forward to responding to further consultations on the regulation of online services operated by our members and welcomes future engagement with Coimisiún na Meán.

Google welcomes the opportunity to engage with Coimisiún na Meán's (CnaM) request for input on the designation of Video Sharing Platform Services (VSPSs). Our response relates to YouTube, our video-sharing platform, which is provided to European users by Google Ireland Limited. At Google our mission is to organize the world's information and make it universally accessible and useful, and at YouTube our mission is to give everyone a voice and show them the world. To achieve these goals, the safety of our creators, viewers and partners is our highest priority.

The definition of VSPS that was adopted under the revised AVMSD was the result of complex negotiations among the EU institutions, which deliberated for more than two years to carefully shape and balance that notion in order to ensure maximum protection for childrens' and users' rights over the internet.

Open platforms such as YouTube are a benefit to a thriving audiovisual sector, and have enabled great things for creators and viewers in Europe. YouTube is an important driver for creativity, facilitating freedom of expression and enabling people to share their talents across Europe, and around the world. YouTube partners are using the platform to communicate, entertain, educate, promote tolerance and understanding, and make a living. We expect that YouTube will be designated as a VSPS under any designation criteria drafted by CnaM under the AVMSD, and we believe that there are a number of principles that this designation should adhere to:

- **Legal Clarity:** To ensure cohesion, legal clarity, and to avoid potential patchwork implementation across the EU, Ireland should avoid deviating from the substance and spirit of the AVMS Directive.
- **Uniform Application:** Implementing the definition of VSPS in a verbatim way allows a uniform application of EU Law and ensures that the revised Directive's key objectives of protecting children and tackling unlawful audiovisual content can be ensured throughout the EU in an effective, consistent manner.
- **Avoiding Conflicts:** To avoid potential conflicts and undermining of EU Digital Single Market rules, the regulation of intermediary services should be consistent with EU frameworks such as the DSA and the E-Commerce Directive.
- **Transparency:** To ensure transparency and consistency, the process of evaluating and designating intermediary services as VSPSs should be open, clear, and based on objective criteria.

Thank you for your consideration of our input to this consultation and we look forward to our continued engagement with CnaM.

FAO: Caroline Keville  
VSPS Category Designation  
Coimisiún na Meán  
2-5 Warrington Place  
Dublin 2

**By Email to:** [VSPSdesignation@cnam.ie](mailto:VSPSdesignation@cnam.ie)

26 July 2023

Dear Ms Keville

We refer to the *Consultation on the proposed designation of video-sharing platform services as a category of relevant online services under the Broadcasting Act 2009 as amended*, published on 28 June 2023 (**the Consultation Document**) by Coimisiún na Meán (**the Commission**).

TikTok appreciates and values the opportunity to participate in this consultation.

Having reviewed the Consultation Document, and in particular the issues for consideration and response outlined in section 4, as well as the Broadcasting Act 2009 (as amended) (**the 2009 Act**), we do not have any comments on:

- (1) the Commission's proposal to discharge its statutory obligation pursuant to Section 139G of the 2009 Act to designate, as a category of relevant online services under section 139E of the 2009 Act as amended, video-sharing platform services, the providers of which are under the jurisdiction of the State; or
- (2) the draft Notice of Video-Sharing Platform Services Category Designation at Appendix 2 of the Consultation Document.

We look forward to continuing engagement with the Commission in its work to implement the 2009 Act.

Yours sincerely,

Susan Moss

Head of Public Policy and Government Relations, TikTok Ireland

From: [REDACTED]@pinterest.com>  
Sent: Monday, July 24, 2023 9:13 PM  
To: VSPS Regulation <vspsregulation@cnam.ie>  
Cc: [REDACTED]@pinterest.com>  
Subject: Re: Consultation Document on Video Sharing Platform Services Category Designation

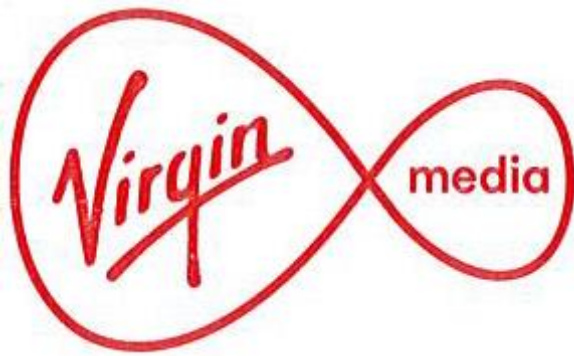
You don't often get email from [REDACTED]@pinterest.com. Learn why this is important

Dear Caroline,

Thank you for the opportunity to participate in the consultation on designating video-sharing platform services as a category of relevant online services under the Broadcasting Act. We have considered the consultation document and determined that Pinterest does not have any comment at this time. Please keep us apprised, though, of any subsequent consultations that may be relevant to Pinterest.

Thank you,

[REDACTED]  
Pinterest | [REDACTED]@pinterest.com



## **Virgin Media response to:**

Coimisiún na Meán's Consultation on the proposed designation of video-sharing platform services.

July 2023

Non-Confidential Version

## Foreword

This is Virgin Media's ('Virgin Media') response to Coimisiún na Meán's consultation on the proposed designation of video-sharing platform services.

This response is non-confidential.

## **1. Introduction**

Virgin Media welcomes the opportunity to respond to this first consultation paper issued by the Commission and looks forward to engaging with the Commission through the consultative process in the coming years on the many important matters that fall under the remit of the Commission.

## **2. Comments on the following matters:**

1. The Commission's proposal to discharge its statutory obligation pursuant to Section 139G to designate, as a category of relevant online services under section 139E of the 2009 Act as amended, video-sharing platform services, the providers of which are under the jurisdiction of the State.
2. The draft Notice of Video-Sharing Platform Services Category Designation at Appendix 2.

Virgin Media agrees that Appendix 1 provides a clear explanation of the legal basis for designating video sharing platforms who are under the jurisdiction of the State. It is helpful that the Commission has set out its legal basis in such detail and is consulting on this matter as a first step in the process before consulting further with specific organisations on individual designations.

Virgin Media agrees with the draft Notice at Appendix 2 as it relates to video sharing platforms.

## **Explanation of Categorisation of Video Sharing Platforms; Information Relevant under Irish law**

The inclusion of obligations in the AVMSD 2018 for Internet Service Providers (ISPs) housed in European member states is significant and indicative of the broader step change occurring in the EU's digital policy strategy. The information provided in this summary is primarily based on the consideration of European law; namely, the Audiovisual Media Services Directive (AVMSD) and those guidelines published by the European Commission related to the defining video sharing platforms. The purpose of the piece is to outline in clear terms, relevant information to the published request by Coimisiún na Meán regarding the categorisation VSPS under Irish statutory law.<sup>1</sup>

According to Kukliš, the former chair of the European Regulators Group for Audiovisual Media Services (ERGA), the new regulations under the AVMSD 2018 are notable for two reasons, namely; *'Either because its implementation would lead to a more satisfactory rearrangement of the current situation in the EU media environment, or because of some tough lessons learned.'*<sup>2</sup> The bulk of the reforms in this area come under article 28 (b) (1) of the directive and generally put comprise of obligation for VSPs which make explicit the obligation to protect the general public against instances of online harm.<sup>3</sup> The obligation is specific and applies to certain types of audiovisual media, including user-generated video, programmes and commercial communications. The measures vary in their objective and range from specific protections for minors and against terrorism; to a more general set of obligations that seek to ensure NRAs and associated bodies prevent the dissemination of incitement to violence and or hatred on programmes user-generated content and commercial communications.<sup>4</sup>

Moreover, the framing and scope of the obligations are directly relatable to the principle of non-discrimination contained under article 21 of the charter of fundamental rights<sup>5</sup> Thus, as a first observation, the bandwidth of the article can be seen as rather extensive considering the substantive content of the above, which includes a varied list of protected grounds, including; gender, racial ethnicity and sexual

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<sup>1</sup> The author of this piece is currently engaged in a project funded by the University of Luxembourg; which seeks to understand the reforms brought about by the AVMSD 2018. For further reference and publications please use the following email handle; [arron.mcardle@uni.lu](mailto:arron.mcardle@uni.lu)

<sup>2</sup> L. Kukliš, *Media Regulation at a Distance: Video-Sharing Platforms in AVMS Directive and the Future of Content Regulation*, MediaLaws 2/2020 (2020) p. 16.

<sup>3</sup> *Ibid.* (See Annex 1 for tabular formulation of core AVMSD reforms specific to VSPS).

<sup>4</sup> L. Kukliš, *Video-Sharing Platforms in AVMSD: A New Kind of Content Regulation*, Research Handbook on EU Media Law and Policy, Edward Elgar Publishing (2021) p. 84 - 88.

<sup>5</sup> E. Carolan, A. O'Neill, *Media Law in Ireland*, Bloomsbury Professional (2019); See Article 28b of Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (2018) OJ L 303/28. See for broader contextual discussion D. Kaye, *A Human Rights Approach to Platform Content Regulation*, Report of the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, 2018.



orientation, to name but a few. The explicit reference to the charter signals a specific type of regulatory intent that seeks to place the charter of fundamental rights at the centre of online protections, meaning fundamental European rights are as applicable online as offline. Therefore, it is germane to understand the parameters of change brought about by the directive.<sup>6</sup>

As such, the directive's scope has been widened beyond its traditional linear and Video on Demand (VoD) categorisations and includes three additional points of legislative reference, namely *video-sharing platform service*, *user-generated videos* and *video sharing platform provider*.<sup>7</sup> Before discussing the substantive content of the AVMSD reform package, it is important to consider the definitional parameters of certain aspects of the above terms; in synthesised terms defining a video sharing platform provider and service sees three key basic legal elements, 1. The presence of natural or legal persons 2. The provision of a service, and 3. The provision of said service on a VSP. On this basis, it is possible to construe the meaning of both a video sharing platform provider and a video sharing platform service. Thus, the question turns to understand the meaning of VSPs. In this context Article 1 (1) (aa) states;

*'video-sharing platform service' means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.'*<sup>8</sup>

In dissecting the definitional parameters of VSPs under the directive, there are several key elements to consider, namely; a service within the meaning of Articles 56 & 57 of the TFEU; as a start point, this aspect of the definition is rather self-explanatory in that it follows the general meaning of audiovisual media services under the directive.<sup>9</sup> Moreover, recital 6 indicates that the definition of VSPs does not include non – economic activities.<sup>10</sup> The secondary element of the definition again relies on concepts common to the directive as a whole.<sup>11</sup>

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Supra* note 11 (Audiovisual Media Services Directive) (2018).

<sup>8</sup> *Supra* note 11 (Audiovisual Media Services Directive) (2018).

<sup>9</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) (2016) OJ C202/1, Art. 56, 57.

<sup>10</sup> *Supra* note 11 (Audiovisual Media Services Directive) (2018), Recital 6.

<sup>11</sup> *Ibid.*

There ought to exist a lack of editorial responsibility on the VSPs behalf. Thus, in practical terms, this essentially means the service provider has no control over the content provided on the platform. As such, it is a central point distinction between what is considered a VSP and audiovisual media service, in that the latter must have full editorial responsibility.<sup>12</sup> Somewhat connected to this element of the definition is the provision of content; under the directive, it stipulates that the VSP must provide content the purpose of which is to inform, entertain or educate, again this aspect is simultaneously reflected in the more general definitional terms of what constitutes an audiovisual media service. However, there exists some ambiguity as to how this applies in practice. For instance, some commentators have highlighted the obvious question of what a service outside of the purpose might look like. This brings into play certain discussion points on the relevance channels of a promotional nature; one need only look to CJEU's judgement in the *Peugeot case* to understand the issue at play. Summarily put, the Court in this instance held that channels containing promotional videos do not constitute programmes or commercial communications within the meaning of the AVSMD.<sup>13</sup> However, there exist certain caveats to this point given the decision was taken under the remit of what was then the AVMSD 2007, and as such, the role of YouTube was not assessed in this case.<sup>14</sup>

As seen in the definitional formula for VSP, purpose and functionality are central. Understanding each application requires engaging with other regulatory sources, including the Commission's guidelines and ERGA's various commentaries on the directive. This is precisely how the EU seeks to set out and differentiate between the different regulatory definitions for VSPs under the revised 2018 directive. Thus, reverting to Article 1(1) (aa) of the Directive, the Commissions guidelines uses this as the basis of VSP criterion and includes the following;

*(1) Services whose principal purpose is to provide programmes, user-generated videos, or both, to the general public;*

*(2) Services of a wider nature offering, amongst other elements, a dissociable section whose principal purpose is to provide programmes, user-generated videos, or both, to the general public;*

*(3) Services for which an essential functionality is devoted to the provision of programmes, user-generated videos, or both to the general public.<sup>15</sup>*

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Peugeot Deutschland GmbH v Deutsche Umwelthilfe eV*, C-132/17 (2018), ECLI:EU:C:2018:85 [*Peugeot Deutschland*]

<sup>14</sup> *Ibid.*

<sup>15</sup> *Supra* note 13; See also Commission's guidelines.

On review of the Commission's guidelines on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service', the following Articles and Directive recitals are of relevance; Article 1(1) (aa), 28 (b) and recitals 4, 5 and 6 each combined form the substantive definition of VSPs under the directive. Article 1(1) (aa) refers directly to VSPs and defines it as a service under EU law that provides certain functionalities.<sup>16</sup> There are several points of discussion concerning the definition provided under the above article; firstly, in defining VSPs as a service, the regulatory rhetoric immediately becomes connected to the fundamentals of EU law, which makes rationalising the role of EU regulation a much easier task.<sup>17</sup> Secondly, there is a clear regulatory link between functionality, purpose and the general nature of VSPs, all of which have implications for the VSP criterion, as will be seen later in this section.<sup>18</sup> Thirdly, the definition of VSPs is interesting from a broader EU policy perspective. It seeks to amalgamate the complexities of technical IT language with the regulatory pros of EU law.<sup>19</sup> On this point, it is important to note recital 5 of the directive, which makes plain the distinction between certain technical terms; for instance, there are, according to the recital differences between the more generalised social media platforms (SMPs) and VSPs. This is important as the directive's aim is not specifically concerned with the regulation of social media. Still, more specifically, the audiovisual content shared via VSPs and social media platforms. Therefore, SMPs do fall within the remit of the directive insofar as audiovisual media content is part of its functionality.<sup>20</sup>

Moreover, recital 5 of the directive stipulates that for the provision of audiovisual content to constitute an essential functionality of the service, the content in question cannot be viewed as "*ancillary to or a minor part of the activities.*" As can be ascertained from the above, the potential regulation of a VSP under the directive is connected to functionality essential otherwise, meaning the Commission's guidance is centred wholly on defining a typology of functionality which can then be applied to defining more specifically VSPs. In addition to this criterion, the Commission's guidance further stipulates what ought to be regarded as essential or ancillary in terms of a VSPs functionality. According to the stated guidelines, the distinction rests on several factors, including; *'the nature and the particular role played by user-generated*

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<sup>16</sup> J. Barata, *The New Audiovisual Media Services Directive: Turning Video Hosting Platforms into Private Media Regulatory Bodies* [Blog post]. Stanford Centre for Internet and Society blog (October 24, 2018), accessed 15<sup>th</sup> October 2021.

<sup>17</sup> S. Kinga, *The Video-Sharing Platform Paradox: Applicability of the New European Rules in the Intersection of Globalisation and Distinct Member State Implementation*, *Journal of Computer, Media and Telecommunications Law* 26.3 (2020) p. 21.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* note 23.

<sup>20</sup> S. B. Micova, *The Audiovisual Media Services Directive: Balancing Liberalisation and Protection*, in I. Brogi, P.L. Parcu (Eds.) *Handbook on EU Media Law and Policy*, Edward Elgar Publishing (2020), p. 78 – 80.

*videos, videos and programmes in the service offered by the platform.*<sup>21</sup> Premised on this general formula, the Commission has devised several more specific indicators to aid NRAs in determining the regulatory status of VSPs under the directive.

*a. Explanation of Four Functionality Indicators under the Commissions Guidelines*

The mentioned list includes broad indicators encompassing certain key observables that seek to ascertain whether the VSPs viable economic activities and functionality can be linked. The first of the four precepts are fairly self-explanatory. It focuses on the '*Relationship between the audiovisual content and the service's main economic activity or activities.*'<sup>22</sup> As per the Commission's guidance, when audiovisual material has a value of its own on the platform and users may avail of content such as videos and programs without regard to any underlying economic activity, such audiovisual content is likely to be deemed an 'essential functionality' under the directive. Therefore, the Member States and those NRAs concerned with regulatory compliance ought to consider several additional factors, including; the overall architecture and external layout of the platform, the stand-alone nature of the audiovisual content, specific functionalities of the service tailored for or specific to, audiovisual content and the way the service positions itself on the market and the market segment it addresses.<sup>23</sup> Taking each of these sub-indicators in turn, the first seeks to attain whether the overall structure and design of the platform are centred on the uploading and sharing of content by users. In a contextual sense, a paradigmatic example of such criterion can be found on platforms such as YouTube. However, applying the same criterion to other platforms such as Facebook may prove complicated because its primary function is that of connectivity between individuals. Yet, the sharing of audiovisual content forms part of Facebook's services menu. Thus, an indication that the VSPs come within the first category's remit is if the content uploaded or shared on the platform is "stand-alone," rather than being watched by users for its intrinsic information, entertainment, or education value than to facilitate an economic transaction.<sup>24</sup>

The question then turns to how one quantifies adequate regulatory thresholds for ancillary and essential functionality terms. In part, one might argue from a qualitative perspective that those sub factors attached to this indicator might aid some aspects of defining VSPs. For instance, reviewing whether specific service functionalities are tailored for or specific to audiovisual content may reveal whether the audio–

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<sup>21</sup> Communication from the Commission Guidelines on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service' under the Audiovisual Media Services Directive (2020) OJ 223/02 [*Commission Guidelines*], para 25.

<sup>22</sup> *Ibid.*

<sup>23</sup> M. Le Roy, *Le Nouveau Droit Des Plateformes de Partage de Vidéos*, Légipresse n. 392 (2021), p. 204.

<sup>24</sup> *Commission Guidelines*, *supra* note 27.

visual element of a VSPs service goes beyond the ancillary threshold.<sup>25</sup> A similar conclusion may also be drawn from examining the way the service positions itself on the market and the market segment it addresses. To a degree, each is relevant and go a long way in providing a definitional basis for VSPs. However, given this aspect of the directive goes largely unimplemented among Member States, it remains to be seen whether the interpretation of said qualitative indicators will be consistent across the various NRAs, and what the consequence might be if there are inconsistencies among the Member States. This brings us quite aptly to the second relevant indicator, which allows NRAs to attain in a tangible sense of what qualitative and quantitative factors can be used to define VSPs under the directive further.

*b. Quantitative and qualitative relevance of audiovisual content for the activities of the service*

This section of the guidelines seeks to clarify the meaning of ancillary by referring to quantitative indicators, namely the importance and amount of audiovisual content that features on the VSP. This is further divided into categories that emphasise the connection between the platform's functionality and the amount of audio–visual content that features. In practice attaining this type of information will be a data driven process, the accurate evincing of which will be dependent on an independent examination of the VSPS functionality and the frequency of audio–visual content appearing on the platform. Turning to the latter sub indicator, which is premised on an examination of how the content is used, this suggests that NRAs are instructed to consider how the audio – visual content is used on the platform. Again, this is a data-driven process that will rely on statistical factors such as the number of clicks, shares, and views audio – visual content receives on the platform.<sup>26</sup> Finally, the indicator under this section refers to the reach of VSPs in the context of the sharing of audio–visual content, meaning if the platform has a significant amount of content that is aimed at users, this in some ways infers the content is not ancillary to the overall functionality of the VSP.<sup>27</sup>

*c. Monetisation or revenue generation from the audiovisual content*

As a quantitative indicator, this is the most essential in that the functionality of the VSP and the revenue gained from audiovisual content are linked in a bidirectional sense. Therefore, the explanation of monetisation under the guidelines includes extensive references to several sub-indicators. These include commercial communications connected to the accessibility of the audio – visual content, making the

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<sup>25</sup> L.M. Woods, *Video-Sharing Platforms in the Revised Audiovisual Media Services Directive*, 23 Communications Law (2018), p. 127, 128.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Commission Guidelines*, *supra* note 27.

content subject to a pay to view offers, evidence of sponsorship agreements between brands and content uploaders, and the tracking of user activity on the VSP.<sup>28</sup>

*d. Availability of tools aimed at enhancing the visibility or attractiveness of the audiovisual content*

This qualitative indicator seeks to connect the functionality of the VSP with those technical tools aimed at enhancing user interaction with audio – visual content. For example, suppose a VSP seeks to encourage users to interact with certain audiovisual offerings on the platform. In that case, likely, the content cannot be deemed an ancillary component of the VSP. Similarly, if the VSP allows the user to tailor the type of content they view, its functionality is connected to the audio–visual service.<sup>29</sup>

*e. Social Media Service as Video-Sharing Platform Service*

Based on the above, the positioning of social media services within the definitional framing of VSPS is not always discernable; it is, however, apparent that social media platforms can, to a certain extent, be seen as a VSP. It is interesting to see this regulatory step, which seeks to address the granular aspects of the differences attached to certain types of online platforms. It is a significant step change compared to the code of conduct 2016, which offers little substantive analysis when defining the concept of a platform. This, of course, relates directly to the question of why the EU wishes to regulate this area. In short, it is a straightforward matter in that the EU acknowledges the importance of social and video sharing platforms in the communication sector, particularly among the younger European demographic, which warrants an increase in the level of regulatory oversight.<sup>30</sup> Secondly, to the extent, the future feasibility of the European single market is intertwined with the type of service industries that surround the online space. Thus, a regulatory foothold is necessary for ensuring the protection of EU economic interests.<sup>31</sup> The indicators within the guidelines are informative as a point of departure for NRAs; However, each raises various questions. For instance, the language used in the quantitative and qualitative indicators includes terms such as "significant" number of videos and reference to "substantial" use of videos available on the platform. Each is used to infer that the service's functionality is unlikely to fall within the definition of ancillary. Yet, the exact parameters of 'significant' or 'substantial' seem open to a considerable amount of interpretive scope. The Commission has noted the possibility of varying interpretations by Member States (particularly as the guidelines are non – binding, with the decision as to the contents and its essential functionality ultimately falling to the Member State having jurisdiction over such service). Thus, the

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<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> L. Kukliš, *European regulation of video-sharing platforms: what's new, and will it work?* [Blog post]. Media@LSE blog (November 29, 2018), accessed 28<sup>th</sup> October 2021.

<sup>31</sup> *Ibid.*

Commission has placed a considerable amount of emphasis on regulatory collaboration among Member State NRAs as means by which to avoid interpretive divergence.<sup>32</sup>

### **Concluding Remarks**

In view of the above observations; the author is of the opinion that when designating the video sharing platforms that Coimisiún na Meán should seek to align the designation and categorisation decisions related to VSPs with the AVMSD 2018 and the guideline issued by the European Commission as quoted above. The application of the European legal framework in this context; will allow for greater cohesion and uniformity within the Irish legal framing of such platforms. Moreover, understanding the fact that how the definition and categorisation of VSPs will impact the development of future legal and policy initiatives is essential; particularly given the obligations posed by the digital service act (DSA). Finally, the enjoyment of free and pluralistic media environments is closely linked to fundamentals of freedom of expression and thus, understanding the applicability and the relevance of fundamental rights should underpin the categorisation of VSPs under Irish law.

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<sup>32</sup> *Commission Guidelines, supra* note 27, para 34.

**From:** [REDACTED]  
**To:** [VSPSdesignation](#)  
**Subject:** VSPS Category Designation  
**Date:** Monday 24 July 2023 22:36:40

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Some people who received this message don't often get email from [REDACTED]. [Learn why this is important](#)

To whom it concerns,

Please consider adding automated commercially restricted (ACR) video-sharing platform services to VSPS category designation.

ACR's are video recording by automated systems shared online for use by a restricted list of commercial subscribers. Examples include door cameras from [ring.com](#) [1], delivery drones from manna [5], survey drones [4][2], and robotic services [3] like the roomba. Any of these services can easily breach Coco's law through recklessly capturing and distributing video in their normal operation.

The new recording bill allows all of these sources to be automatically available to An Garda Siochana. However there is no publicly held registry of these commercial platforms or the sensors that capture video shared on them. These online video networks are private, but anyone can purchase access. The video information may only be seen by an algorithm, but as can be seen below [3], all of these platforms are exploitable - this is a key point. So a register of any online ACR platform that uses captured video from drones, cctv or any other commercial source within Ireland should be covered within the category designation.

I suggest that VSPS is expanded to include all 'sensor capture sharing platform services' so as to future proof the proliferation of microphone or non-video (electro-chemical or bio-chemical sensors) sharing platform services. An example is <https://dublincityairandnoise.ie/>.

1. <https://www.theguardian.com/commentisfree/2021/may/18/amazon-ring-largest-civilian-surveillance-network-us>
2. <https://www.theguardian.com/lifeandstyle/lostinshowbiz/2016/apr/15/drone-hacking-scourge-sunbathing-celebrities-richard-mabeley>
3. <https://www.technologyreview.com/2022/12/19/1065306/roomba-irobot-robot-vacuums-artificial-intelligence-training-data-privacy/>
4. <https://www.tweaktown.com/news/41221/real-estate-drone-captures-topless-sunbather-accidentally-uses-pics/index.html>
5. <https://www.manna.aero/balbriggan>

Regards,