

[IE] Irish High Court confirms designation of Reddit and Tumblr as VSPs

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On 20 June 2024, the High Court of Ireland confirmed the designation by Coimisiún na Meán (the Commission), the Irish media regulator, of online platforms Reddit and Tumblr as video-sharing platform (VSP) services. Under the Online Safety and Media Regulation Act of 2022 (OSMR Act), the Commission was granted the power to designate online services as VSPs, to which the online safety code to be drafted by the Commission may apply.

The Commission issued ten designation notices (Facebook, Instagram, YouTube, Udemy, TikTok, LinkedIn, X, Pinterest, Tumblr and Reddit) at the end of 2023, in accordance with Section 139H(3)(a). Reddit and Tumblr were among platforms that received designation notices but challenged the designation.

On 15 January 2024, Reddit launched High Court proceedings, arguing that Reddit should not fall under the VSP category. A key argument by the platform was that it was a predominantly text-based discussion platform, where the videos were often not hosted on Reddit directly but rather shared in the form of links to other platforms. Tumblr, a microblogging platform, argued that it was not a VSP and that its designation as such amounted to a legal error. While the platform offers the possibility to include videos, it argued that it was a minor and ancillary feature.

In its conclusions, the High Court indicated that Reddit's arguments with regard to jurisdiction were based on a misunderstanding of the framework governing the determination of jurisdiction under the OSMR Act, which provides that the Commission has jurisdiction over Ireland-based subsidiary undertakings of VSP service providers not established in the EU, as is the case with Reddit. The judge further indicated that the provision of links to videos hosted on other platforms could still be considered user-generated videos within the meaning of the revised AVMS Directive. Given the presence of “native” video content hosted directly on Reddit, it was not necessary to further assess if the provision of links was sufficient to designate Reddit as a VSP.

In the case of Tumblr, the High Court concluded that the Commission's designation decision was based on proper consideration of relevant factors and characteristics of the service and that the size of the platform was irrelevant with

regard to it being designated as a VSP.

In a press release welcoming the High Court's conclusions, the Commission indicated that work on their draft Online Safety Code is progressing and that they are hoping to have it operational later this year.

High Court judicial review - Tumblr Incorporated -v- Commisiun na Mean

https://www.courts.ie/view/Judgments/d7f2f4a8-24b3-46c3-906e-3ed777e7198a/007734a5-3318-414f-b2fe-5301f9608d3a/2024_IEHC_366.pdf/pdf

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