

EBU publishes position papers on the interpretation and application of new AVMSD rules

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In April of this year, the European Broadcasting Union (EBU), an alliance of 72 public service broadcasters in 56 countries in Europe, North Africa and the Near East, published two position papers on the interpretation and application of new EU rules on video-sharing platforms (VSPs) and support for European audiovisual works. In particular, the papers are intended to influence the guidelines that the European Commission is required to publish concerning the practical application of the new rules.

Directive (EU) 2018/1808 amending Directive 2010/13/EU on audiovisual media services (Audiovisual Media Services Directive) must be transposed into national law by the member states by September 2020. The extension of certain rules to cover VSPs and the amendment of the provisions on support for European works are among the most important changes introduced under the Directive. VSPs are made subject to a series of obligations, especially in the fields of youth protection and audiovisual commercial communication. The Directive essentially defines VSP services as services 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 or user-generated videos, for which the VSP provider does not have editorial responsibility, to the general public. In order to ensure clarity, effectiveness and consistency of implementation, the European Commission should, according to recital 5, where necessary, issue guidelines on the practical application of the “essential functionality” criterion. An obligation to publish guidelines regarding the calculation of the share of European works that on-demand audiovisual media services should include in their catalogues is also contained in the new Article 13(7). The EBU’s recently published position papers concern the areas to be covered by these guidelines.

With regard to the “essential functionality” criterion of a service, the EBU proposes a two-step assessment. In the first step, platforms which obviously include audiovisual content and therefore fall under the scope of VSP services could be identified with the help of some specific indicators. The EBU suggests that such indicators could include the use of audiovisual components as marketing tools. The presence and prominence of audiovisual content on the user interface, the tailoring of technical features for audiovisual content (for example, auto-play) to user requirements, and the curation and monetisation of audiovisual content are also suggested. In a second step, platforms that do not fulfil any of

the aforementioned indicators could be subject to an overall assessment on the basis of general indicators such as the quantity, quality and type of audiovisual content offered, the number of users of the content and the amount or intensity of the use.

As regards the calculation of the share of European works that VOD service providers should include in their catalogues, the EBU proposes a calculation system based on the duration of programmes (hours/minutes) as opposed to a method that is merely based on the number of titles or episodes. A calculation system based on duration seems more objective and reliable and avoids the dilemma of having to decide between titles and episodes (in the case of series, for example). It also fits in with systems already applied to linear services. The EBU therefore favours a calculation based not on providers, but on catalogues, the equivalent of channels offered by linear service providers.

Position paper on the interpretation of the “essential functionality” criterion of 19 March 2019

https://www.ebu.ch/files/live/sites/ebu/files/Publications/Position%20papers/EBU-Position-EN_%20Essential%20Functionality%20Criterion%20in%20Definition%20of%20VSP%20Services.pdf

Position paper on the calculation of the share of European works of 14 March 2019

https://www.ebu.ch/files/live/sites/ebu/files/Publications/Position%20papers/EBU-Position-EN_CalculationEuropeanWorks.pdf

