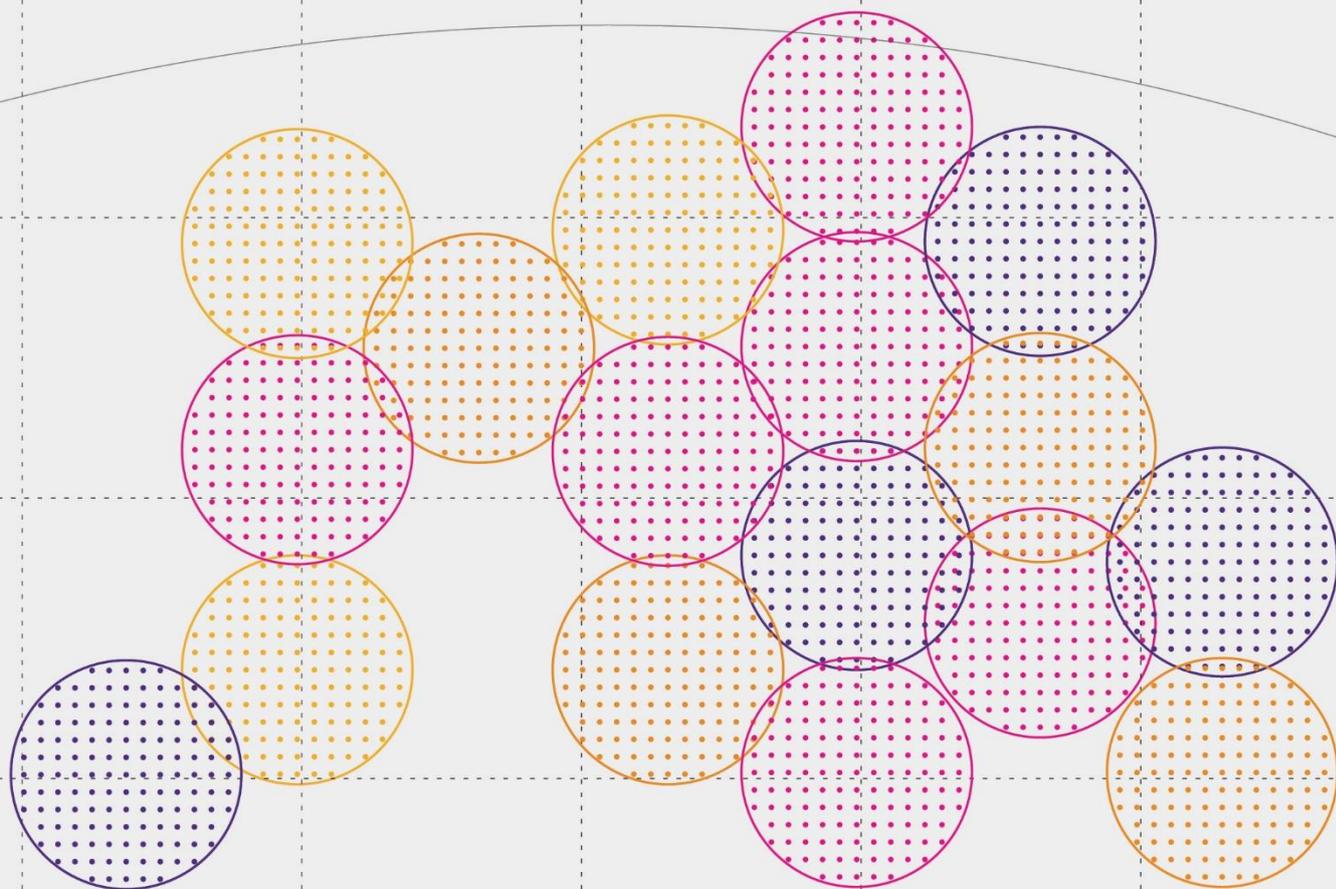


Understanding video-sharing platforms under UK jurisdiction

A report for the Department for Digital, Culture, Media & Sport

December 2019

Yi Shen Chan, Sam Wood, Stephen Adshead



About Plum

Plum is an independent consulting firm, focused on the telecommunications, media, technology, and adjacent sectors. We apply extensive industry knowledge, consulting experience, and rigorous analysis to address challenges and opportunities across regulatory, radio spectrum, economic, commercial, and technology domains.

About this study

This is a study for the Department for Digital, Culture, Media and Sport on video-sharing platforms. The research objectives are to understand the number and characteristics of video-sharing platforms under UK jurisdiction and the extent to which these platforms are compliant with the terms of the new regulations of the updated Audiovisual Media Services Directive.

Plum Consulting
10 Fitzroy Square
London
W1T 5HP

T +44 20 7047 1919
E info@plumconsulting.co.uk

Contents

Executive summary	4
1 Study objectives	9
1.1 Background to the study	9
1.2 DCMS objectives	9
2 Defining a video-sharing platform	11
3 Identifying VSPs under UK jurisdiction	12
3.1 Data sources	12
3.2 Approach	13
3.3 Results of assessment	19
4 The size and scope of VSPs under UK jurisdiction	21
4.1 The scope of the identified VSPs	21
4.2 The scale of the identified VSPs	23
4.3 Elements of the AVMSD which apply to video-sharing platforms	25
5 Assessment of compliance	27
5.1 The requirements of the AVMSD	27
5.2 Preliminary assessment	27
Appendix A Key themes from research	29
A.1 Gaps in data available	30
Appendix B Requirements of the AVMSD	32

Executive summary

Background and research objectives

The Audiovisual Media Services Directive (AVMSD) is the regulatory framework underpinning the audiovisual services single market in the European Union and currently applies to television broadcasts and on-demand services. In 2020 an updated version of the AVMSD will be brought under UK regulation, which will also bring video-sharing platforms (VSPs) into the scope of the Directive.

The new regulations will require VSPs to take appropriate measures to:

- protect minors from harmful content (which may seriously impair their physical, mental or moral development), and
- protect the general public from incitement to violence or hatred and from content constituting criminal offences (public provocation to commit terrorist offences, child sexual exploitation and abuse, and racism or xenophobia)

To help prepare for the implementation of the updated AVMSD, the Department for Digital, Culture, Media & Sport (DCMS) has commissioned Plum Consulting to carry out a research study to address three questions:

1. How many video-sharing platforms are currently under UK jurisdiction?
2. What is the size and scope of video-sharing platforms under UK jurisdiction (for example, the number of staff employed by the VSP and the target audience of the VSP)?
3. To what extent are VSPs under UK jurisdiction compliant with the requirements of the updated AVMSD?

The outcomes of this research study are intended to inform ongoing work by the DCMS. The final decision on whether a VSP is within UK jurisdiction will be made by the National Regulatory Authority (NRA).

Definition of a video-sharing platform

Under the updated AVMSD, a VSP is defined by the following characteristics:

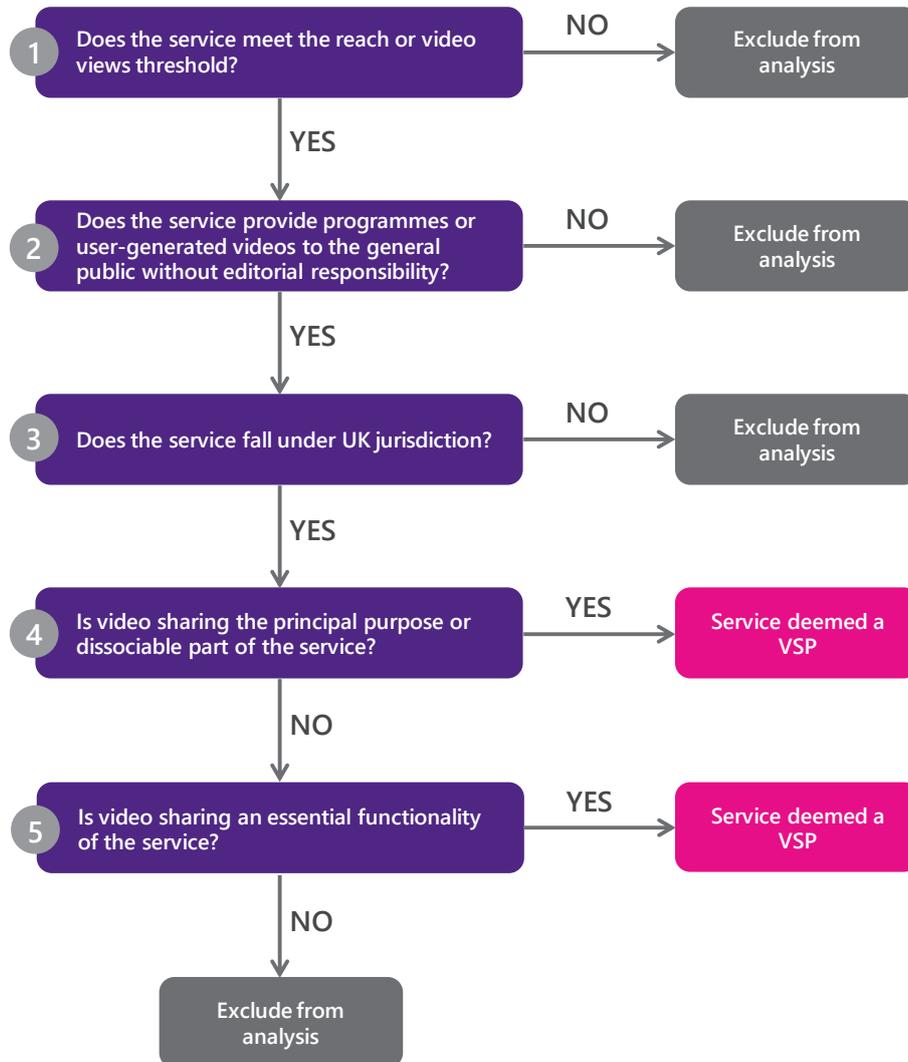
- the principal purpose of the service or of a dissociable section thereof, or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate;
- the service is made available by means of electronic communications networks; and
- the organisation of this content is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

Research approach

Video content is relatively pervasive and commonly provided on publisher, broadcaster, brand, social, commerce, adult and other categories of websites and apps across multiple devices. The starting point for our analysis was to develop a long list of services that provide video content to UK consumers. The main data source

used is the Comscore Video Metrix Multi-Platform which reports video viewing metrics (including monthly reach, video views and total minutes of video viewing) for some 1,500 services.¹ This data was supplemented with a small list of predominantly app-based services which were identified from daily app download rankings from App Annie. This list was then filtered to include only services that meet the definition of a VSP and fall under UK jurisdiction. The process is shown in Figure 1.

Figure 1: Methodology for identifying VSPs under UK jurisdiction



In Step 1, we excluded any service that did not meet at least one of the following thresholds:

- Video reach of 0.5% of internet users in the UK (c.248k viewers).²
- Number of videos streamed per service at 1 million per month.³

In Step 2 we identified services that provide programmes and/or user-generated videos to the general public for which the provider does not have editorial responsibility. This allowed us to exclude the vast majority of

¹ There are a significant number of adult services in the Comscore data which are included in our analysis for completeness. However, more emphasis was given to mainstream (non-adult) services in our research.

² In the case of certain apps, video reach data was not available and we used app visitation reach as the nearest-equivalent data.

³ Note that user thresholds are not mandated by the AVMSD and this may not be how the NRA determines if a service is within scope.

services from providers such as broadcasters, publishers, brands and a range of other categories. This is followed by Step 3 in which services are, or could potentially be⁴, under UK jurisdiction are identified.

Steps 4 and 5 involved more detailed analysis of the remaining services including the 'essential functionality test' which is based on the criteria described in the draft guidelines by European Commission. These include a set of testable criteria to inform the judgement of whether or not a service can be deemed a VSP.

Results of assessment

Six mainstream VSPs which are, or could potentially be, under UK jurisdiction were identified.⁵ In addition, there are at least two adult VSPs which appear to be under UK jurisdiction.⁶ Of the long list of services providing video content, the vast majority have editorial responsibility for this content and are not VSPs. Of the remainder that facilitate video sharing, many major technology companies are under the jurisdiction of other EU member states, such as Ireland.⁷ Of the services under UK jurisdiction, in some cases video-sharing functionality is ancillary to the main purpose of the service, so they are not VSPs. Snapchat is a borderline case and its shared video content is primarily professionally produced by third-party publishers.

Figure 2 summarises the results of our assessment and the criteria through which services that qualify as VSPs. Our findings present a current snapshot of the video-sharing market. This market is fast-moving, with services, audiences, business models, revenues and company structures likely to change over the coming months and years.

⁴ These refer to services which do not have a European headquarters and could fall under UK jurisdiction should they nominate the UK as their European HQ.

⁵ The final decision on whether a VSP is within UK jurisdiction will be made by the NRA.

⁶ There are also another 36 adult VSPs that either did not have an EU HQ or we were not to find information on the location of their HQ. This means the total number of adult VSPs under UK jurisdiction could be higher.

⁷ The major video-sharing platforms which have their EU HQ in other Member States and thus do not fall under UK jurisdiction, include YouTube, Facebook, Instagram, Dailymotion and Twitter.

Figure 2: Results of assessment – VSPs under UK jurisdiction

Service	Principal purpose(s) of the service	European HQ	Is video sharing:		
			The principal purpose of the service?	A dissociable section of the service?	An essential functionality of the service?
Twitch.tv	Sharing live and recorded streams of video games play	UK/LU ⁽¹⁾	Yes	-	-
TikTok	Sharing short videos (<60 seconds) on a mobile app	UK	Yes	-	-
LiveLeak	Sharing videos – in some cases, controversial content	UK	Yes	-	-
Imgur	Sharing short videos and images, especially memes	None	Yes	-	-
Vimeo	Providing video hosting, distribution and monetisation software to businesses	UK	No	Yes	-
Snapchat	Providing a camera and messaging application	UK	No	No	Yes ⁽²⁾
Adult site 1	Sharing adult videos	UK	Yes	-	-
Adult site 2	Sharing adult videos	UK	Yes	-	-

Notes:

(1) It is unclear whether the Twitch.tv EU HQ is the UK (home to Twitch Interactive Ltd which appears to be the operational HQ of Twitch Inc, the provider of the service, in the EU) or Luxembourg (home to Amazon S.a.r.l., the immediate parent of Twitch Interactive Ltd).

(2) Snapchat may qualify as a VSP on the basis that video is an essential functionality, but it appears to be a relatively borderline case. The Discover section of the Snapchat services offers a large amount of shared video content, albeit from mainly professional publishers. Shared video is a relatively important part of the Snapchat service – Snap’s results announcements indicate that Discover is a strongly growing part of the service in terms of audience (35% YoY growth) and watch time (60% YoY growth). In addition, video content is monetised – either directly with video rolls or indirectly through Snap Ads, Collection Ads and Story Ads that appear between shared Stories.

Size and scope of VSPs identified

The size and scope of the VSPs vary enormously. Snapchat has the widest monthly reach – 23.1 million or 54% of the total UK audience based on mobile internet usage.⁸ The rest of the VSPs have substantially smaller audiences. As a comparison, YouTube reaches over 90% of the UK’s internet population.⁹ In terms of scope, Twitch, TikTok and LiveLeak focus on video sharing; Vimeo has pivoted into software provision but still offers video sharing; Imgur shares images and short videos; whilst Snapchat provides a camera and messaging service which also enables some video sharing.

The turnover of VSPs varies enormously, from Snap¹⁰ which has global annual revenues in excess of £1bn to LiveLeak which we estimate generates UK advertising revenues of less than £10,000 – most likely, substantially less. The number of employees of VSPs follows a similar pattern to revenues, with Snap having more employees than all the other VSPs put together. In most cases, less than 10% of global employees are based in the UK. The exception is TikTok which has between one-sixth and one-third of its global workforce in the UK. We do not have revenue or workforce data for adult services. Figure 3 provides a summary of our findings on the size and scope of the identified VSPs.

⁸ Based on Comscore’s Mobile Metrix, July 2019.

⁹ Based on Comscore’s Video Metrix Multi-Platform, July 2019.

¹⁰ Snapchat, the service, is operated by Snap Inc.

Figure 3: Size and scope of VSPs potentially under UK jurisdiction

Service	Monthly reach		Monthly video views VMX-MP (000)	Estimated annual revenue (£m) ⁽¹⁾	Estimated number employees ⁽²⁾
	VMX-MP (000)	MoMX (000)			
Twitch.tv	2,326	883	56,318	400 – 800	1,500
Vimeo	675	50	12,126	130	101 – 250
Imgur	344	N/A	9,279	5	98
TikTok	139	2,263	2,317	50 – 60	251 – 500
LiveLeak	74	N/A	1,147	<0.1	-
Snapchat	N/A	23,081	N/A	1,135	4,274
Adult site 1	187	N/A	28,486	N/A	N/A
Adult site 2	71	N/A	8,334	N/A	N/A

Source: Comscore Video Metrix Multi-Platform, Jul 2019, UK; Comscore Mobile Metrix, Jul 2019, UK; Plum analysis.

Notes:

(1) Global revenues for the latest available year based on company or news reports.

(2) Global employees based on company reports, industry sources or LinkedIn.

Preliminary views on compliance

As part of our research we also conducted a high-level scan of the extent to which the mainstream VSPs identified are likely to be fully, or in part, compliant with some of the measures outlined in the revised AVMSD.¹¹ We found that:¹²

- All of the VSPs reviewed had terms of service which prohibited sharing of illegal or inappropriate content but only some explicitly ruled out “content which may impair the development of minors”.
- Some VSPs explicitly prohibit the uploading of commercial communications in their terms of service.
- The mainstream VSPs were all found to operate some sort of system or procedure for flagging inappropriate content on their services.
- The VSPs assessed had different approaches to age verification, including the ability to flag mature content, a ‘safe’ mode option and requirement for users to state their age when registering.
- The majority of the VSPs employed a mechanism for users to rate content – typically a ‘like’ button on the video in question (and sometimes a ‘dislike’ button too).
- Several VSPs provide the ability to filter out mature content, though these filters were not explicitly labelled as parental control systems. Other VSPs did not appear to have a system-wide filter or control.
- The majority of the VSPs did not present a formalised process for handling complaints related to inappropriate content.

¹¹ Examples of such measures include: terms and conditions which prohibit uploading of inappropriate and illegal content, and content which may impair the development of minors; prohibition of inappropriate advertising; mechanisms for users to flag inappropriate content; age verification systems for age-sensitive content; transparent and effective complaints process, amongst others.

¹² The full assessment of compliance will be carried out by the NRA.

1 Study objectives

1.1 Background to the study

The Audiovisual Media Services Directive (AVMSD) is the regulatory framework underpinning the audiovisual services single market in the EU. Its main objective is to create and ensure the proper functioning of a single European market for audiovisual media services, while contributing to the promotion of European cultural diversity, providing an adequate level of consumer protection and safeguarding media pluralism.¹³

The AVMSD currently applies to television broadcasts and on-demand services¹⁴. However, in 2020 an updated version of the AVMSD will be brought under UK regulation, which will also bring video-sharing platforms (VSPs) into the scope of the Directive.¹⁵ Member States are required to adopt the provisions necessary to comply with the updated AVMSD by 19th September 2020.

Among the key changes under the updated AVMSD are new regulations on VSPs. These regulations will require VSPs to take appropriate measures to:

- **protect minors from harmful content** (which may seriously impair their physical, mental or moral development), and
- **protect the general public from incitement to violence or hatred and from content constituting criminal offences** (such as public provocation to commit terrorist offences, child sexual exploitation and abuse, and racism or xenophobia)

Paragraph 28b(3) of the updated AVMSD provides a number of measures which VSPs might apply (or be required to apply) in order to ensure appropriate levels of protection on their platform. These include having mechanisms for users to flag inappropriate content and introducing parental control processes.

We understand that the UK Government intends to implement the VSP provisions of the updated AVMSD via the 'duty of care' regulatory framework proposed in the Online Harms White Paper.¹⁶ However, an interim approach will be needed ahead of this framework coming into force.

1.2 DCMS objectives

This research is intended to provide DCMS with an assessment of the number of video-sharing platforms likely to fall under the scope of the updated AVMSD which will then allow DCMS to estimate the cost to business of the new regulations as part of an impact assessment exercise. The final decision on whether a VSP is within UK jurisdiction will be made by the National Regulatory Authority (NRA).

¹³ The cornerstone of the AVMSD is the 'country of origin principle' ("COO"). Under COO, audiovisual media service providers are subject only to the rules of the Member State where they are established. By abiding by these rules, they can freely provide services across the EU.

¹⁴ Subject to all the following conditions being met (i) providers have editorial responsibility, (ii) providers have as their principal business purpose the provision of programmes to inform, entertain or educate the general public; and (iii) these programmes are comparable, in form and content, to television ("TV-like").

¹⁵ Directive (EU) 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) in view of changing market realities. Available at <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

¹⁶ HM Government. Online Harms White Paper. April 2019. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf

The research answers three questions:

1. How many video-sharing platforms are currently under UK jurisdiction?
2. What is the size and scope of video-sharing platforms in the UK (for example, the number of staff employed by the VSP and the target audience of the VSP)?
3. To what extent are VSPs under UK jurisdiction compliant with the requirements of the updated AVMSD?

2 Defining a video-sharing platform

We understand the European Commission's definition of VSPs to include the following criteria:

- 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;
- the service is made available by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; and
- the organisation of this content is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.¹⁷

The European Commission has also made clear that audiovisual content shared on social networks will fall within the scope of the revised Directive.¹⁸

A key question raised by the definition is how to determine whether video sharing constitutes an 'essential functionality' of the service. We also understand that further guidance from the European Commission is due in Autumn 2019. For this study, a draft version of the guidelines was provided to Plum by the DCMS for reference. We have drawn upon the European Commission's definition to develop an 'essential functionality test'. This consists of a set of testable criteria to inform the judgement of whether or not a service can be deemed a VSP. The test is discussed further in Section 3.2.5.

¹⁷ Directive (EU) 2018/1808. Available at <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

¹⁸ European Commission. Digital Single Market: updated audiovisual rules. MEMO/18/4093, 7 June 2018. Available at https://europa.eu/rapid/press-release_MEMO-18-4093_en.htm

3 Identifying VSPs under UK jurisdiction

3.1 Data sources

The starting point for our analysis was to develop a long list of services that provide video content to UK consumers. We gathered data about the reach, number of video views and viewing time of these services, where available, to give an indication of the relative scale of service audiences. Given that there is no comprehensive single source of viewing data across platforms and websites, we synthesised data from three different data sources and supplementary research, as follows.

Comscore Video Metrix Multi-Platform

The Comscore Video Metrix Multi-Platform¹⁹ (VMX-MP) reports video viewing metrics (including monthly reach, video views and total minutes of video viewing) for some 1,500 services that offer video content.²⁰ This data is based on measurement of a panel of UK internet users consuming video from desktop computers or mobile devices. The VMX-MP captures services that range in scale from major international platforms, such as YouTube, to small services attracting as few as 2,000 unique visitors per month. The dataset should therefore capture any VSPs operating at reasonable scale in the UK.

There are two main limitations to the Comscore VMX-MP data. First, Comscore is not able to collect video viewing data on sites which stream encrypted video. However, users of encryption are generally broadcaster services, such as BBC iPlayer and ITV Hub, and subscription video-on-demand services, such as Netflix and Amazon Prime, which are not VSPs because they have editorial responsibility over their content. Second, Video Metrix has limited coverage of in-app video viewing – Comscore is only able to collect video viewing data for apps that have been ‘tagged’. Video viewing on many of the major video apps, such as TikTok and Snapchat, is not included in the data due to a lack of a tag. Consequently, we used additional data sources to identify mobile apps that may be used for video sharing.

We obtained data for July 2019 to give an up-to-date assessment of video viewing. It is possible that certain services performed especially strongly or weakly in this month due to seasonal trends. It should also be noted that the services captured by Comscore, and consequently the VSPs under UK jurisdiction, may evolve over time in line with changes in video viewing and the potential emergence of new services.

App Annie

App Annie produces rankings of the top 100 daily app downloads by device, operating system/app store, category and region. We gathered these rankings for UK downloads on iOS and Google Play (Android) in relevant categories such as ‘photo and video’ and ‘social networking’. We then manually screened apps in these rankings, based on app store descriptions, to identify any apps that might provide video-sharing services. Although rankings are relatively volatile from day to day, the list of apps is likely to capture all significant services. The App Annie data did not provide data about usage of apps in terms of reach or viewing. We identified 35 apps that might facilitate video sharing and were not included in the Comscore Video Metrix Multi-Platform data.

¹⁹ For more information, see <https://ukom.uk.net/comscore-video-metrix.php>

²⁰ The VMX-MP captures some 1,200 media properties, each of which comprises one or more video services.

Comscore Mobile Metrix

We used Comscore Mobile Metrix (MoMX) data to provide an indication of the relative usage of apps identified in the App Annie data. The Mobile Metrix is based on measurement of a panel of UK mobile users consuming video from smartphones and tablets, and provides visitation data for apps, including reach and number of visits, but not video viewing. For apps that focus on video, this data provides a good indication of the scale of the video service. For apps that provide video and non-video services, this data shows only overall usage and does not measure usage of the video element of the service. However, this data was sufficient to screen out apps with especially low levels of usage.

Supplementary research

To complement the list developed using these data sources, we conducted research to identify any other potential VSPs. This research included searches of Angellist, CrunchBase and similar resources to identify start-up VSPs, as well as keyword searches and reviews of articles in the technology and advertising press. In practice, potential VSPs identified in this way tended to be well below the eligibility thresholds used in the analysis (see Section 3.2.1).²¹

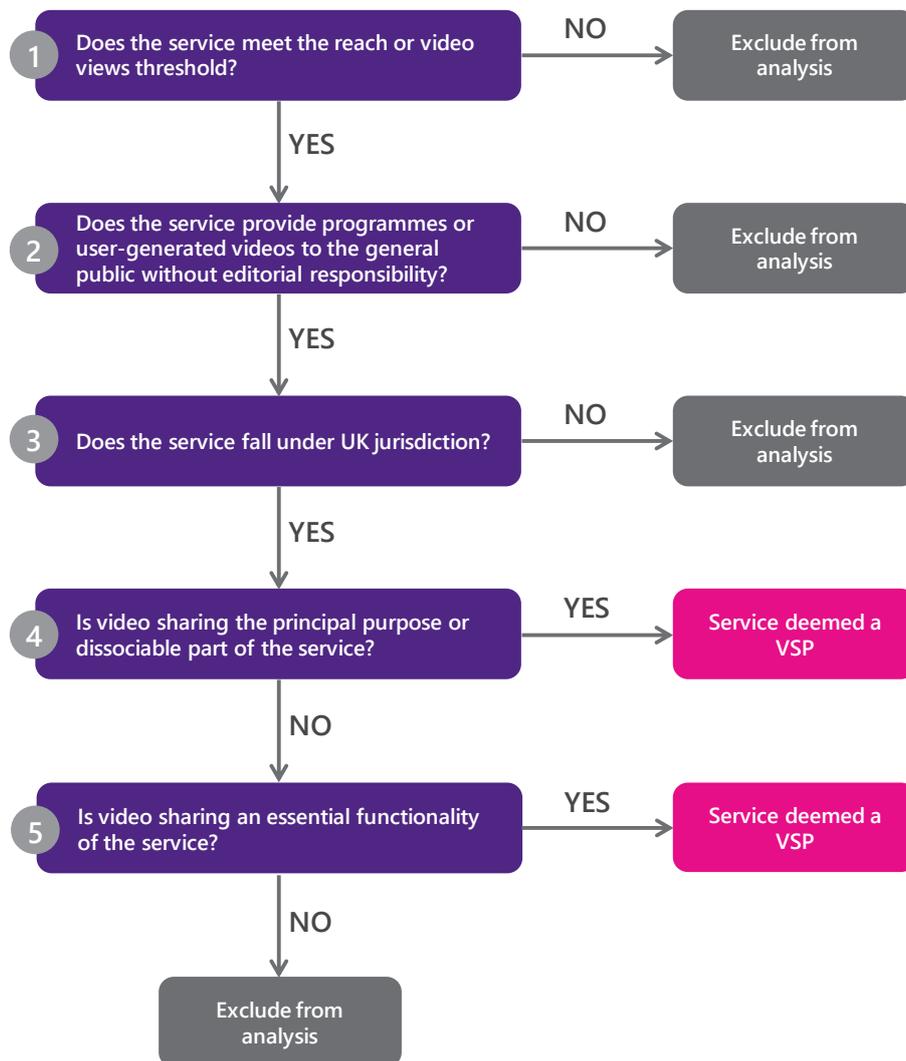
3.2 Approach

We identified VSPs likely to be under UK jurisdiction by developing a long list of services that provide video content to UK consumers and filtering this list to include only services that meet the definition of a VSP and fall under UK jurisdiction. This process shown in Figure 3.1 below involved assessing around 1,500 services. Predominantly, these services were captured by the Comscore VMX-MP data, and included mainstream and adult services.²² In addition, we identified a further 35 app-based services that might facilitate video sharing.

²¹ Examples of such services are break.com and metacafe.com

²² Around 350 out of the 1200 properties captured under the Comscore VMX-MP were classed as adult services.

Figure 3.1: Methodology for identifying VSPs under UK jurisdiction



3.2.1 Step 1: Identify services that meet the threshold for inclusion

A key element of the regulatory approach under the AVMSD is the principle of proportionality, namely that regulatory measures must be limited to what is necessary to achieve the objectives. This requires the regulator to assess companies according to their size and resources, and to take a risk-based approach with an initial focus on those whose services pose the biggest risk of harm to users based on factors such as the scale of the service, characteristics of its user base or the known prevalence of harm.²³

We agreed with the DCMS to set thresholds for monthly video reach and video views as follows, and to include any service that exceeded either one or both of these thresholds.

- Video reach of 0.5% of internet users in the UK²⁴ (c.248k viewers) – lower than the 1% threshold applied for VOD regulation to take account of the potential for certain services to generate additional reach on apps which are not captured by Comscore.

²³ DCMS. Audiovisual Media Services: Consultation Document, May 2019.

²⁴ UK online users connecting to internet at least once a month.

- Number of videos streamed per service at 1 million per month – services exceeding this threshold represent 99.2% of the total video consumption measured by Comscore VMX-MP.

It should be noted that user thresholds are not mandated by the AVMSD and this may not be how the NRA determines if a service is within scope.

We assessed services against these thresholds using Comscore VMX-MP data, where available, otherwise Comscore MoMX reach data. The latter was applied as if it were video reach, not overall reach of a service. Comparable video views data was not available for apps not tagged by the Comscore VMX-MP.

Step 1 allowed us to reduce the number of services from some 1,500 to around 500, of which 65 were adult sites.

3.2.2 Step 2: Identify services that facilitate video sharing

We performed a screen of the long list of services developed in Step 1 to identify services that provide programmes and/or user-generated videos to the general public for which the provider does not have editorial responsibility. This is a high-level assessment based on the definition of a video-sharing platform described in Section 2.

At this stage, we were able to eliminate from the analysis a large number of services including:

- Publisher, broadcaster and brand services where the provider takes editorial responsibility²⁵ for video content.
- File transfer/cloud storage/P2P file sharing services – whilst these services facilitate the storage or sharing of videos, these are essentially private services whose primary purpose is not the provision of videos to the general public.
- Pirate services which host pirated video content.²⁶
- E-commerce platforms – these platforms would fall under the E-Commerce Directive and any audiovisual content or functionality mainly serves as a support for other economic transactions.

Step 2 allowed us to narrow the list to 85 services which appear to facilitate video sharing; of these, 60 were adult sites.

3.2.3 Step 3: Assessment of jurisdiction

We determined whether providers of services are under UK jurisdiction, given the provisions of Article 28(a) of the AVMSD. We developed the following simplified test for determining jurisdiction, based on guidance from the DCMS as shown in Figure 3.2.

²⁵ For our assessment, service providers with editorial responsibility are those who exercise effective control both over the selection of the programmes and over their organisation. These include video content provided by media companies and publishers, such as Comcast NBCUniversal, Conde Nast, Discovery Inc. and The Walt Disney Company.

²⁶ These would be addressed through copyright legislation rather than the AVMSD.

Figure 3.2: Jurisdiction test

Entity	Under UK jurisdiction?	Notes
Provider is established in the UK	Yes	
Provider is established in another EU Member State	No	The provider is deemed to fall under the jurisdiction of the Member State in question.
Provider is established outside the EU and has its EU HQ in the UK	Yes	
Provider is established outside the EU and has its EU HQ in another EU Member State	No	The provider is deemed to fall under the jurisdiction of the Member State in question.
Provider is established outside the EU and does not have an EU HQ	Potentially	Providers in this position may nominate an EU Member State for the purpose of regulatory compliance while operating in the EU.

For the purposes of this test, we first defined the provider as the organisation named in the terms, privacy notice and/or domain register for the service. In some cases, the provider is a subsidiary of the ultimate parent. For example, Twitch.tv is a service provided by Twitch Interactive Inc (parent Amazon) and, in the EU, LinkedIn is a service provided by LinkedIn Ireland Unlimited (ultimate parent Microsoft). In the case of LiveLeak, no provider is named, but its Wikipedia entry suggests that the service was set up by an individual in the UK.

We then determined the country of establishment of providers based on addresses supplied in the terms, privacy notices or the domain register, and web research, where required. In cases that the country of establishment is outside the EU, we reviewed the following information to determine the member state of the EU HQ, if any:

- Company websites and reports. Some providers explicitly name a location as their EU HQ or indicate in their annual reports that a certain location is their main centre of activity in the EU. In other cases, the provider lists only one EU office, which we determined to be the EU HQ.
- Media coverage. Some reports of new office developments or openings state that a location is the EU HQ of a provider. We note that these reports might refer, without clarification, to a particular division of the provider, or the operational headquarters not the legal headquarters as defined in the provisions of Article 29 (a) of the AVMSD. Consequently, there is potential for discrepancy between information from this and other sources.
- LinkedIn. We identified member states in which the provider has employees, based on the locations stated on LinkedIn profiles. This information enabled us to identify locations in which the provider is likely to have EU operations, which in some cases included locations not listed in company reports or websites. The EU member state in which a provider has the largest workforce is not necessarily the location of its EU HQ.
- UK Companies House filings to determine whether the provider has a same-name subsidiary in the UK and whether the direct parent of this company is a subsidiary of the provider established in another EU member state, in which case we assumed that the UK subsidiary is not the EU HQ.

In some cases, there was ambiguity about the location of the EU HQ. For example, Twitch.tv is a service provided by Twitch Interactive Inc. – a company established in the USA. Media coverage and LinkedIn employee location data suggest that the UK is the EU HQ. However, the immediate parent company of Twitch UK Limited

is Amazon Europe Core S.a.r.l. which is incorporated in Luxembourg, not Twitch Interactive Inc. In these cases, we have flagged that the UK or another member state may be the EU HQ.

Step 3 enabled us to identify the services which fall under UK jurisdiction or could potentially do so as they do not have an EU HQ. This list comprised around 30 services.²⁷ The focus of the next two steps were on these remaining services.

3.2.4 Step 4: Assessment of whether video sharing is the principal purpose, or a dissociable part, of the service

We then assessed whether the principal purpose or dissociable section of the service is devoted to providing programmes and/or user-generated videos to the general public for which the video-sharing platform provider does not have editorial responsibility.

The AVMSD and the draft Commission Guidelines do not provide a technical definition of “principal purpose”. We have conducted our assessment with regard to the following indicators:

- Whether any features or services other than video sharing are provided by the service;
- Whether the majority or entirety of the home page or opening screen of the service is devoted to shared videos;
- Whether the service refers to itself as a video-sharing service;
- Whether the service is referred to by others (for example, in the technology press) as a video-sharing service.

Some services provide shared video as well as other content or services, which may appear on the same page/screen or in separate sections of the service.²⁸ In these cases, we assessed the proportion of content items on a page/screen that were shared video or the proportion of sections involving shared video, taking into account the relative prominence of these content items or sections. Generally, we were not able to assess the proportion of total available content on a service that is shared video or the usage of this content relative to other content or services.

We interpreted ‘dissociable section’ to mean a section listed in the navigation of a website or accessible from a link or icon on an app home screen.

At this stage, we identified several ‘obvious’ VSPs²⁹, and a list of other services that required further assessment to determine whether or not they are VSPs.

3.2.5 Step 5: Full assessment based on essential functionality criteria

If video sharing is not the principal purpose or dissociable part of a service, we assess whether it is an *essential functionality* of the service.

²⁷ These also included a number of adult sites for which we were not able to determine the location of their HQ due to the lack of information.

²⁸ For example, sites which also provide some form of e-commerce service.

²⁹ Most adult sites also fell into this category. Due to the nature of the content on adult sites, our assessment was conducted through a private web browser with images disabled. This allowed us to quickly establish whether the sites where video sharing was the primary purpose of the service.

We have drawn upon the European Commission’s definition and guidance to develop an ‘essential functionality test’. This consists of a set of testable criteria to inform the judgement of whether or not a service can be deemed to be a VSP. These criteria are shown in Figure 3.3.

Figure 3.3: Essential functionality test

Topic	Criteria
Is shared video core to the business?	Does the service interface allow users to upload, share or download videos as standalone items?
	Does the platform encourage users to share video?
	Is there an auto-play functionality or a video suggestion/recommendation mechanism?
	Does the platform identify itself as a VSP?
	Are videos featured on the main or landing page of the service?
Is video relatively important to the service?	Is there a significant number of videos on the platform?
	Is the video significant relative to other types of content on the platform (text, image, audio)?
	Is the video content aimed at a general audience?
Is the shared video monetised?	Are there adverts on the video content itself?
	Is the video content pay-to-access?
	Is the video a driver for other types of advertising?
	Are users tracked on the platform for the purpose of behavioural/contextual advertising?
Is engagement with shared video promoted?	Is there a search function for video content on the service?
	If yes, does this allow filtering of video content?
	Are there tools to encourage engagement and interaction?
	Is there a smart TV app?
	Are there tools allowing users to select the audiovisual content they wish to be offered?
	Are there systems to track performance and manage video content uploaded on the platform - e.g. video view counts?

The above criteria are not exhaustive and are not intended to be applied cumulatively: a service might still be deemed to be a VSP even if not all the criteria are fulfilled. The intention of the test is to inform the judgement of whether video-sharing constitutes an essential functionality of the service.

At this stage, we eliminated services including:

- Marketplaces that allow users to post video of products for sale. The video is ancillary to the main purpose of these websites. In the case of Videohive, a marketplace for stock video, video is the product for sale and watermarked preview videos are shared for every item for sale, but this activity is ancillary to the principal purpose of selling stock video.
- Nextdoor, a social networking service for neighbourhoods. Users have the option to include video content in their posts, but this content is not prevalent on the service, is not monetised directly and is not specifically promoted.

3.3 Results of assessment

We found that the vast majority of these services have editorial responsibility for video content and are not VSPs. Of the remainder that facilitate video sharing, many services are provided by major technology companies under the jurisdiction of other EU member states, such as Ireland³⁰. And of services under UK jurisdiction, in some cases video sharing functionality is ancillary to the main purpose of the service, so they are not VSPs.

We identified five mainstream services which appear to be VSPs under UK jurisdiction and one other mainstream VSP with no EU presence and might possibly choose to be regulated in the UK. In addition there are at least two adult VSPs which appear to be under UK jurisdiction.³¹ Figure 3.4 provides an overview of the findings based on the assessment steps described above.³² Appendix A provides further discussion on our research.

Figure 3.4: Overview of assessment and findings

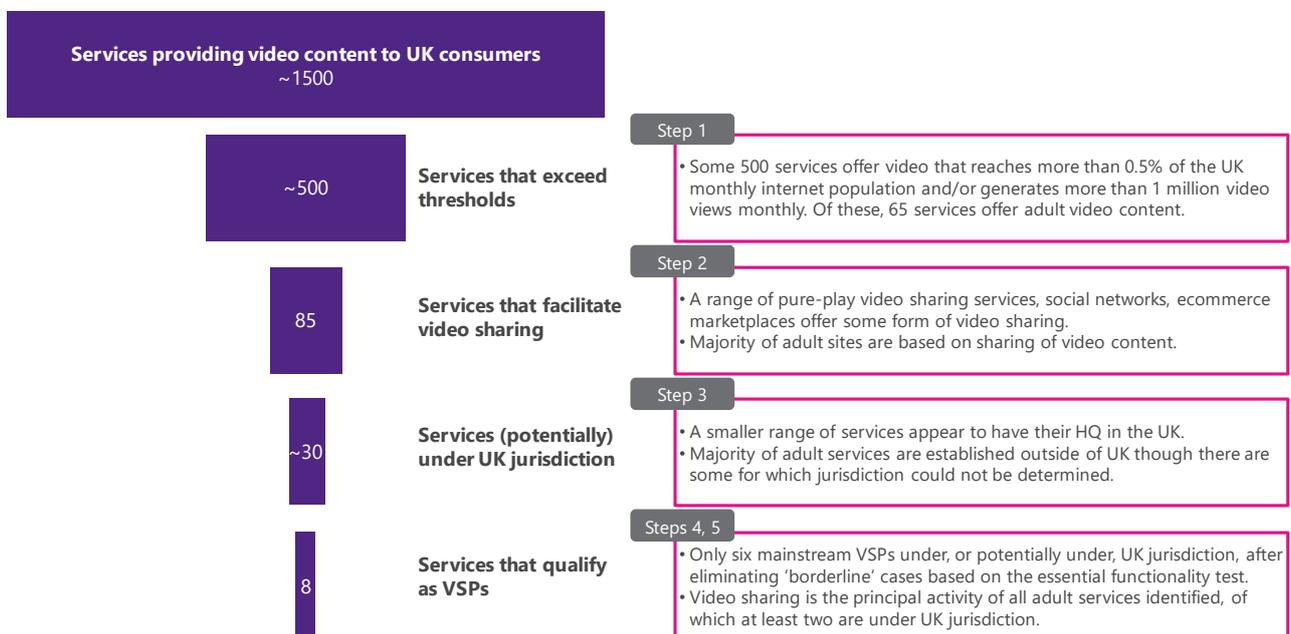


Figure 3.5 below lists the services identified as VSPs that are under (or are potentially under) UK jurisdiction and the criteria through which they qualify as VSPs based on our approach outlined in Section 3.2.

³⁰ It is worth noting that a number of the major video-sharing platforms, including YouTube, Facebook, Instagram, Dailymotion and Twitter, have their EU HQ in other Member States and thus do not fall under UK jurisdiction.

³¹ There are another 36 adult VSPs which did not have an EU HQ or for which we were not able to determine the location of their HQ. Thus, the total number of adult VSPs under UK jurisdiction could be higher.

³² The final decision on whether a VSP is within UK jurisdiction will be made by the NRA.

Figure 3.5: VSPs potentially under UK jurisdiction

Service	Monthly reach ⁽¹⁾		Monthly video views VMX-MP (000)	European HQ	Is video sharing:		
	VMX-MP (000)	MoMX (000)			The principal purpose of the service?	A dissociable section of the service?	An essential functionality of the service?
Twitch.tv	2,326	883	56,318	UK/LU ⁽²⁾	Yes	-	-
Vimeo	675	50	12,126	UK	No	Yes	-
Imgur	344	N/A	9,279	None	Yes ⁽³⁾	-	-
TikTok	139	2,263	2,317	UK	Yes	-	-
LiveLeak	74	N/A	1,147	UK ⁽⁴⁾	Yes	-	-
Snapchat	N/A	23,081	N/A	UK	No	No	Yes ⁽⁵⁾
Adult site 1	187	N/A	28,486	UK	Yes	-	-
Adult site 2	71	N/A	8,334	UK	Yes	-	-

Source: Comscore Video Metrix Multi-Platform, Jul 2019, UK; Comscore Mobile Metrix, Jul 2019, UK; Plum analysis.

Notes:

(1) The total audience for Comscore's VMX-MP and MoMX are 49.5 million and 42.4 million respectively.

(2) It is unclear whether the Twitch.tv EU HQ is the UK (home to Twitch Interactive Ltd which appears to be the operational HQ of Twitch Inc, the provider of the service, in the EU) or Luxembourg (home to Amazon S.a.r.l., the immediate parent of Twitch Interactive Ltd).

(3) About half of the content items on the home page of Imgur.com are videos. Although services sharing animated images such as GIFs are not defined as VSPs, videos on Imgur.com are mainly in .mp4 file format.

(4) The LiveLeak website does not state who the provider is or where it is established. However, Wikipedia states that LiveLeak is UK based and the LiveLeak site links to a sister site, Gearpress.co.uk, that sells merchandise. Gearpress is operated by Sinister Ltd, a company established in the UK.

(5) Snapchat may qualify as a VSP on the basis that video is an essential functionality, but it appears to be a relatively borderline case. The Discover section of the Snapchat services offers a large amount of shared video content, albeit from mainly professional publishers. Shared video is a relatively important part of the Snapchat service - Snap's results announcements indicate that Discover is a strongly growing part of the service in terms of audience (35% YoY growth) and watch time (60% YoY growth). In addition, video content is monetised – either directly with video rolls or indirectly through Snap Ads, Collection Ads and Story Ads that appear between shared Stories.

4 The size and scope of VSPs under UK jurisdiction

Having identified the VSPs under UK jurisdiction, the next step involves assessing the size and scope of these service providers. The focus on our research here is on the mainstream VSPs identified in Section 3.3.

4.1 The scope of the identified VSPs

Purposes

The principal purposes of the services qualifying as VSPs can extend beyond video sharing to include, for example, the provision of video software as a service. Figure 4.1 sets out these purposes and an indicative proportion of each service that involves video sharing.

Figure 4.1: Principal purposes of VSPs

Service	Principal purpose(s) of the service	Is video sharing:			Indicative proportion of the service that involves video sharing ⁽¹⁾
		The principal purpose of the service?	A dissociable section of the service?	An essential functionality of the service?	
Twitch.tv	Sharing live and recorded streams of video games play	Yes	-	-	●
TikTok	Sharing short videos (<60 seconds) on a mobile app	Yes	-	-	●
LiveLeak	Sharing videos – in some cases, controversial content	Yes	-	-	●
Imgur	Sharing short videos and images, especially memes	Yes	-	-	◐
Vimeo	Providing video hosting, distribution and monetisation software to businesses	No	Yes	-	◑ ⁽²⁾
Snapchat	Providing a camera and messaging application	No	No	Yes	◑
Adult services	Sharing adult videos	Yes	-	-	●

Legend: ● = 100%, ◐ = 50%, ◑ = 25%; ○ = None.

Notes:

(1) We do not have access to data that would allow us to compare usage or revenue between video sharing and other parts of these services. Our assessment is based on the proportion of the user interface, such as number of sections, and/or proportion of content that is or relates to shared video. In the case of Vimeo, the video sharing and software services are not comparable on this basis and we present the proportion of revenues that are associated with video sharing.

(2) One of the four website home page navigation sections is devoted to watching shared video. However, Vimeo does not monetise shared video so the vast majority of Vimeo revenues come from other activities, primarily the provision of software as a service.

Of the services that qualify as VSPs, Twitch.tv, TikTok and LiveLeak are focused on video sharing. Twitch.tv allows sharing of streamed video game play content which can be viewed live or on-demand. TikTok facilitates the creation and sharing of short-form user-generated videos. LiveLeak specialises in citizen journalism and 'reality' footage, often including graphic content of accidents or shootings.

The purpose of Imgur is to share images, memes, GIFs, and visual stories. About half of the content items on the home page of Imgur.com are videos, although this proportion varies. In the case that this proportion exceeds half, Imgur qualifies as a VSP on the basis that video sharing is the principal purpose of the service. Otherwise, Imgur qualifies as a VSP because video sharing is an essential functionality of the service. Although services sharing animated images such as GIFs are not defined as VSPs³³, videos on Imgur.com are mainly in .mp4 file format.

Vimeo provides video hosting, distribution and monetisation software to video creators. At the end of Q2 2019, Vimeo had 1.2 million subscribers to its software-as-a-service video tools³⁴. Vimeo pivoted to this focus on software in 2017, before which its service provided a destination for consumers to watch high-end shared videos.³⁵ A section of Vimeo.com and the Vimeo app still facilitate video sharing. However, Vimeo does not monetise shared video with advertising and claims that the vast majority of revenues now come from its software business.³⁶

Snapchat is a camera and messaging app that enables users to create and share image and video content. It facilitates two forms of video sharing:

- Users are able to post video content on the Snapchat service in Snaps and Stories (collections of Snaps). Users may set this content to be viewable by everyone, instead of just friends, and/or submit this content to crowd-sourced services, including Our Story, in which cases this content is public.
- Publishers and other third parties post video content to the Discover section of the Snapchat service. Snapchat does not take editorial responsibility for this content.³⁷

Shared video content is not the primary purpose of the Snapchat service. The Snapchat service involves private communication, with users sharing Snaps and Stories with friends, not the public. Snaps and Stories can be created from static images – not only video content. There is not a dissociable section of the service that is devoted to video - the main sections of the app are 'Friends' (private communication), lenses (tools to create Snaps), and 'Discover' (public content).

Snapchat may qualify as a VSP on the basis that video is an essential functionality. The Discover section of the Snapchat services offers a large amount of shared video content, albeit from mainly professional publishers. Shared video is a relatively important part of the Snapchat service – Snap's results announcements indicate that Discover is a strongly growing part of the service in terms of audience (35% YoY growth) and watch time (60% YoY growth).³⁸ In addition, video content is monetised – either directly with video rolls or indirectly through Snap Ads, Collection Ads and Story Ads that appear between shared Stories.

³³ For the purposes of defining VSPs, animated images such as GIFs do not constitute videos. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN> – Paragraph 6. No specific guidance

³⁴ IAC, Q2 2019 Earnings, Supplemental Financial Information and Operating Metrics.

³⁵ Digiday (2019). How Vimeo shifted from being a YouTube alternative to a \$160m B2B player. Online article, 5 April 2019. Available at <https://digiday.com/media/vimeo-eyes-more-ott-programmers-marketers-as-it-aims-to-grow-160m-services-business/>

³⁶ Digiday (2019).

³⁷ Under section 4 of the Snap Group Limited Terms of Service (<https://www.snap.com/en-GB/terms#terms-row>) Snapchat states that 'the content is the sole responsibility of the person or organisation that submitted it'.

³⁸ Snap, Q2 2019 Earnings Slides. 23 July 2019. Available at <https://investor.snap.com/~media/Files/S/Snap-IR/reports-and-presentations/q2-19-earnings-slides.pdf>

As for the adult services identified, all the sites appear to be pure-play VSPs whose principal purpose is the sharing of pornographic content.

Target audiences

Usage of Snapchat, Twitch, TikTok and Imgur is skewed towards younger audiences, although these services target the mass market.

- Snapchat is among the top five favourite a children's apps with streaming capabilities in the 3-4, 5-7, 8-12 and 13-17 year-old categories in the UK³⁹. Snapchat accounts were held by 59% of 16-24 year-olds, 43% of 25-34 year-olds and 13% of 35-44 year olds in the UK in 2018⁴⁰. In January 2018, 18-24 year-olds accounted for 74% of Snapchat usage time in the UK, 25-34 year-olds 17%, and 35+ users 9%⁴¹.
- Twitch accounts were held by 9% of 16-24 year-olds, 2% of 25-34 year-olds and 4% of 35-44 year olds in the UK in 2018⁴². In 2017, 55% of Twitch users were between 18 and 34 years old⁴³.
- TikTok is popular among younger consumers, with 41% of TikTok users globally between 16 and 24 years old⁴⁴.
- Imgur also has a strong skew towards younger audiences, with 74% of users younger than 35⁴⁵.

We do not have access to demographic data for usage of LiveLeak or Vimeo, but these services appear to target mass market audiences, without any focus on younger audiences.

As for the adult services, it is clear that the content is aimed generally at adult audiences. No further investigation on the exact nature of the content available on these sites was carried out as part of our research.

4.2 The scale of the identified VSPs

The turnover of VSPs varies enormously, from Snap which has global revenues in excess of £1bn to LiveLeak which we estimate generates UK advertising revenues of less than £10,000 – most likely, substantially less. We do not have revenue data for adult services. Figure 4.2 provides the findings of our research on VSP revenues.

³⁹ Kids Insights, Q1 2019

⁴⁰ Ofcom. Adults' media use and attitudes report 2019. Available at <https://www.ofcom.org.uk/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes>

⁴¹ UKOM, Facebook & Snapchat: Age Profiles. Available at <https://ukom.uk.net/insights/36-facebook-snapchat-age-profiles.php>

⁴² Ofcom. Adults' media use and attitudes report 2019.

⁴³ Influencer Marketing Hub. 25 Useful Twitch Statistics for Influencer Marketing Managers. Online article, 15 May 2019. Available at <https://influencermarketinghub.com/25-useful-twitch-statistics/>

⁴⁴ Hootsuite, What is TikTok, Who Uses it, and Should Brands Care About It? Online article, 23 May 2019. Available at <https://blog.hootsuite.com/what-is-tiktok/>

⁴⁵ <https://imgurinc.com/advertise>

Figure 4.2: VSP revenues

Service	Annual revenue (£m)			Period	Sources	Notes
	Global	Europe	UK			
Twitch.tv	400 – 800	-	44	2018	<ul style="list-style-type: none"> Global - https://digiday.com/marketing/twitch-cro-walker-jacobs/ UK - Twitch UK Limited, Report and Financial Statements, 31 December 2018 	<ul style="list-style-type: none"> Twitch Inc. stated that 2018 ad revenues are about \$500m (£400m), but it has not disclosed its revenues from subscriptions – we assume that subscription revenues are no more than advertising revenues Twitch UK Limited reported £44m revenue but does not state which markets this revenue comes from.
TikTok	50 – 60	<5	<2	YE June 2019	<ul style="list-style-type: none"> Sensor Tower in-app revenue data - https://sensortower.com/blog/tiktok-revenue-july-2019 https://digiday.com/marketing/tiktok-quietly-testing-ads/ 	<ul style="list-style-type: none"> In 2018, TikTok generated revenue from in-app purchases. We estimate that at most 10% of global in-app purchases were made in the EU of which no more than 40% were in the UK. TikTok started selling advertising in 2019, but ad sales are relatively under-developed. We assume that ad revenues were negligible in the year to June 2019.
LiveLeak	<0.1	<0.01	<0.01	2018	<ul style="list-style-type: none"> Plum Consulting estimates based on industry benchmarks 	<ul style="list-style-type: none"> LiveLeak generates revenue from advertising and sales of merchandise. We have estimated advertising revenue based on traffic data and industry benchmarks. Our estimates exclude merchandising due to a lack of data.
Imgur	5	-	-	Not specified	<ul style="list-style-type: none"> Crunchbase, Owler - estimates 	<ul style="list-style-type: none"> Imgur does not publicly state its revenues
Vimeo	130	-	-	2018	<ul style="list-style-type: none"> IAC Q2 2019 Earnings https://www.marketwatch.com/story/how-vimeo-dropped-its-fight-with-youtube-and-turned-ad-free-videos-into-a-real-business-2019-07-05 	<ul style="list-style-type: none"> Vimeo no longer monetises video with advertising. The vast majority of revenues relate to the software subscriptions – not video-sharing revenue.⁴⁶
Snap	1,135	180	-	YE June 2019	<ul style="list-style-type: none"> Snap Inc., Q2 2019 Earnings Slides 	<ul style="list-style-type: none"> The EU figure is the Snap 'Europe' segment which also includes Turkey and Russia. Snap does not report UK revenues.

⁴⁶ Vimeo revenue is derived primarily from annual and monthly SaaS subscription fees paid by creators for premium capabilities and, to a lesser extent, sales of live streaming hardware, software and professional services. IAC 2018 10K filing.

The number of employees of VSPs follows a similar pattern to revenues, with Snap having more employees than all the other VSPs put together. In most cases, less than 10% of global employees are based in the UK. The exception is TikTok which has between one-sixth and one-third of its global workforce in the UK – there is limited consistent data. Figure 4.3 provides the findings of our research on VSP employees. We do not have data for the number of employees for adult VSPs.

Figure 4.3: VSP employees

Service	Number of employees			Sources	Notes
	Global	Europe	UK		
Twitch.tv	1,500	86	72	<ul style="list-style-type: none"> Global - https://variety.com/2018/digital/news/twitch-layoff-two-dozen-employees-hiring-2018-1202740453/ EU – LinkedIn UK – LinkedIn and Twitch UK Limited, Report and Financial Statements, 31 December 2018 	<ul style="list-style-type: none"> Twitch UK annual report states that it had an average of 67 employees in 2018 - consistent with 72 employees listed on LinkedIn in October 2019, given growth. LinkedIn data for EU and UK filtered to exclude content creators who list Twitch as their employer.
TikTok	251-500	100	84	<ul style="list-style-type: none"> Global – Crunchbase EU and UK – LinkedIn 	<ul style="list-style-type: none"> LinkedIn data for EU and UK filtered to exclude content creators who list TikTok as their employer.
LiveLeak	-	-	-	-	<ul style="list-style-type: none"> No data available, given that LiveLeak is not a registered company.
Imgur	98	1	1	<ul style="list-style-type: none"> LinkedIn 	-
Vimeo	101 - 250	8	6	<ul style="list-style-type: none"> Global – Crunchbase EU and UK – LinkedIn 	<ul style="list-style-type: none"> LinkedIn data for EU and UK filtered to exclude content creators who list Vimeo as their employer.
Snap	4,274	373	237	<ul style="list-style-type: none"> LinkedIn 	-

4.3 Elements of the AVMSD which apply to video-sharing platforms

In most cases, VSPs are monetised with advertising. The exception is Vimeo, which does not carry advertising on shared video and generates revenue by providing software as a service to video creators. In some cases, VSPs have developed additional revenue streams, such as in-app payment and premium content.

The most prevalent form of advertising on VSPs is indirect – several VSPs place advertising or sponsored content adjacent to shared video and other content, such as sponsored posts appearing in-feed. In some cases, VSPs also offer direct advertising on shared video content – pre-roll or mid-roll video advertising placed within video streams of shared content items, picture-in-picture video advertising in video streams, or display advertising overlaid onto video streams.

Some VSPs have developed additional revenue streams, such as in-app payment, paid-for content and merchandising. There is also the potential for creators of shared videos to engage in influencer marketing – promoting products or services in return for payment. However, revenues from this activity do not tend to flow

through to VSPs. Figure 4.4 provides the findings of our research on VSP revenue models. Adult VSPs were not included in this analysis.

Figure 4.4: VSP revenue models

Service	Revenue model for shared video content			
	Direct advertising	Indirect advertising	Paid-for content	In-service payment
Twitch.tv	✓ Video rolls. Plans to introduce picture-in-picture video ads ⁽¹⁾	✓ Range of display and native advertising formats ⁽²⁾	✓ Subscription packages such as Twitch Prime ⁽³⁾	✓ Sales of “cheers” – virtual goods that users can donate to creators to show support for them ⁽⁴⁾
TikTok	✓ TikTok lists a post-roll video ad format, but ads not present when tested ⁽⁵⁾	✓ TikTok lists a video and image ads formats, but ads not present when tested ⁽⁵⁾	✗	✓ In-app sales of “coins” which users can use to tip creators ⁽⁶⁾
LiveLeak	✗ No video roll or overlay ads present when the service was tested	✓ Display advertising on the Liveleak.com website	✗	✗ LiveLeak branded merchandise is sold on gearpress.co.uk ⁽⁷⁾
Imgur	✗	✓ Promoted posts, a native ad format ⁽⁸⁾	✗	✗
Vimeo	✗	✗	✗	✗
Snap	✓ 6-second Commercials (video rolls) are placed in premium video – Stories provided by publishers ⁽⁹⁾	✓ Snap Ads, Collection Ads, and Story Ads appear between shared Stories and Sponsored Lenses ⁽⁹⁾	✗	✓ Users can create and purchase their own filters and lenses

Sources:

(1) <https://kotaku.com/twitch-is-making-ads-less-annoying-1838551012>

(2) <https://twitchadvertising.tv>

(3) <https://www.twitch.tv/p/partners/>

(4) https://help.twitch.tv/s/article/guide-to-cheering-with-bits?language=en_US

(5) <https://ads.tiktok.com/help/article?cid=6706825229508804614>

(6) <https://www.tiktok.com/en/virtual-items>

(7) Gearpress.co.uk is operated by Sinister Ltd

(8) <https://imgurinc.com/advertise>

(9) <https://forbusiness.snapchat.com/advertising#objectives>

5 Assessment of compliance

5.1 The requirements of the AVMSD

The revised AVMSD requires Member States to ensure that VSPs under their jurisdiction take appropriate measures to protect users on their platforms. The Directive provides examples of such measures – these examples are summarised in Figure 5.1 (and are set out in full in Appendix B).

Figure 5.1: Summary of the example measures detailed in the revised AVMSD

- a) *Having terms and conditions which prohibit uploading of inappropriate and illegal content, and content which may impair the development of minors;*
- b) *Having terms and conditions for users/advertisers which prohibit inappropriate advertising;*
- c) *Having functionality for video uploaders to declare whether their content contains commercial communication;*
- d) *Operating user-friendly mechanisms for users to flag inappropriate content on the service;*
- e) *Operating mechanisms in which the VSP explains to users what has been done about flagged content;*
- f) *Operating age verification systems for age-sensitive content;*
- g) *Operating a user-friendly system for users to rate content on the service;*
- h) *Providing effective parental control systems that can be activated by the end-user;*
- i) *Operating a transparent and effective complaints process for the implementation of measures referred to in (d) and (h);*
- j) *Providing for media literacy measures and tools, and raising users' awareness of these tools.*

Under the AVMSD it is anticipated that Member States will entrust the assessment of appropriateness of a measure to the national regulatory authority. This means that in some cases it is possible that some of the measures may not be deemed appropriate and therefore not deemed applicable.

5.2 Preliminary assessment

As part of our research we also conducted a high-level scan of the extent to which the mainstream VSPs identified in Section 3.3 are likely to be fully, or in part, compliant with the measures outlined in the revised AVMSD.⁴⁷ Adult VSPs were not part of this exercise. Our findings based on this preliminary assessment on compliance with respect to the example measures in Figure 5.1 are summarised below.

⁴⁷ The full assessment of compliance will be carried out by the NRA.

- All of the VSPs reviewed had terms of service which prohibited sharing of illegal or inappropriate content. However, only some explicitly ruled out “content which may impair the development of minors”.
- It was not always possible to find the terms of services for advertisers. Where we were able to find these (for some mainstream VSPs), the terms required compliance with all relevant laws and regulations (though they did not specifically state the requirements listed in Article 9 of the AVMSD). Some VSPs explicitly prohibit the uploading of commercial communications in their terms of service.
- The mainstream VSPs were all found to operate some sort of system or procedure for flagging inappropriate content on their services. In many cases this could be done on the video window itself. Others require the user to send an email referencing the content.
- Regarding measure (f), the VSPs assessed had different approaches to age verification, including the ability to flag mature content, a ‘safe’ mode option and requirement for users to state their age when registering.
- The majority of the VSPs employed a mechanism for users to rate content – typically a ‘like’ button on the video in question (and sometimes a ‘dislike’ button too).
- Regarding measure (h) several VSPs provide the ability to filter out mature content, though these were not explicitly labelled as parental control systems. Other VSPs did not appear to have a system-wide filter or control.
- In general, majority of the VSPs did not present a formalised process for handling complaints related to measures (d) and (h).
- None of the VSPs we assessed appeared to promote media literacy tools to the user in an obvious manner, and we were not able to find such tools.

Appendix A Key themes from research

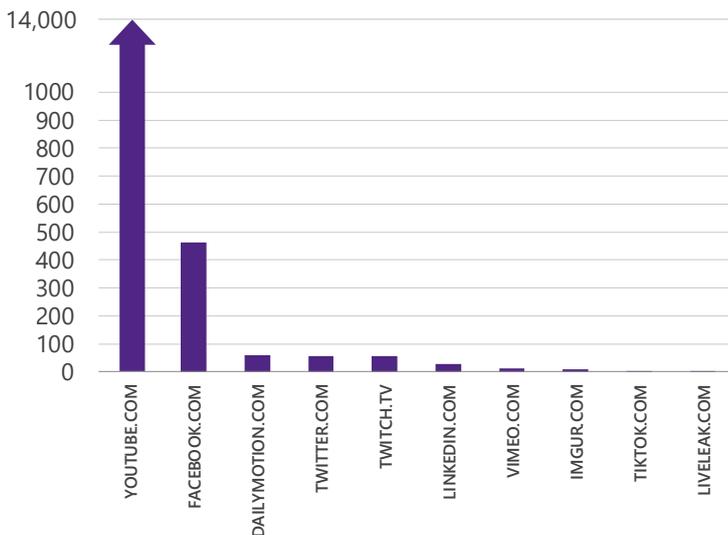
In conducting the assessment set out in Section 3.2 above, we have identified several key themes which are summarised below.

Universe of video services. Video content is relatively pervasive and commonly provided on publisher, broadcaster, brand, social, commerce, adult and other categories of websites and apps. The list of services providing video content in the UK exceeds 1,200.

Major vs. long tail services. Video viewing is extremely concentrated onto a few large services such as YouTube and Facebook (Figure A.1). This characteristic is particularly true of pure-play video-sharing platforms and social networks, which is likely to reflect the nature of two-sided platform markets.⁴⁸ The same can be said of reach as shown in Figure A.2.

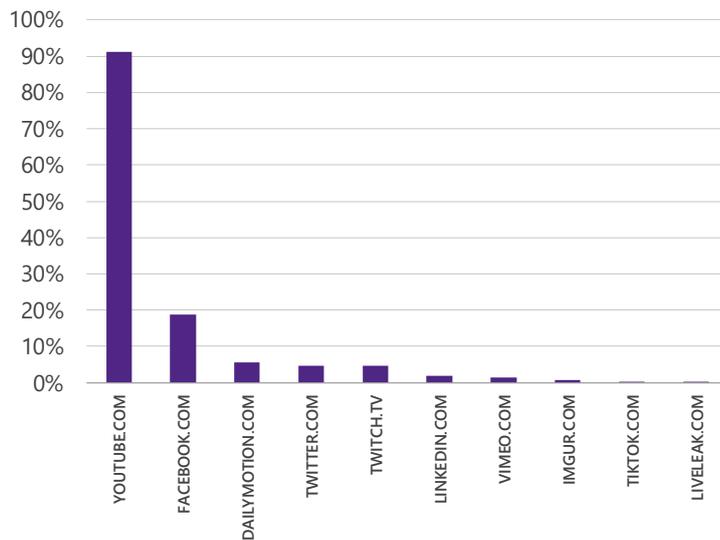
Consequently, the services eliminated due to the reach and views thresholds involves a long tail of very small-scale services. Services at the views threshold generated 14,000 times fewer monthly video views than YouTube. Examples of the services eliminated on this basis include Archive.org, a website that allows users to post historical videos for archiving, and Monkey, a social networking app that allows users to post short videos and to video chat.

Figure A.1: Monthly video views (millions), selected services, July 2019



Source: Comscore Video Metrix Multi-Platform

⁴⁸ VSPs are likely to exhibit strong indirect network effects: the value of the platform to viewers increases as the number of video creators increases (and vice versa). To become successful, platform businesses must attract sufficient numbers of both types of user to their platform (critical mass).

Figure A.2: Monthly reach (% of total audience), selected services, July 2019

Source: Comscore Video Metrix Multi-Platform

Editorial responsibility. The vast majority of services offering video content to consumers take editorial responsibility for this content. The providers of these services include broadcasters, publishers, brands and a range of other categories. The relatively small number of services that allow sharing of video content without the platform taking editorial responsibility include pure-play video-sharing platforms, social networking services, dating services, ecommerce marketplaces, and certain other providers. There is also a relatively large number of adult services that facilitate video sharing.

Jurisdiction. The providers of services that enable video sharing and exceed the audience threshold(s) include mainly major US technology companies and providers of adult services. In many cases, major technology companies have chosen Ireland or other EU member states as their EU headquarters (Google, Facebook, Twitter, Instagram, LinkedIn, Microsoft, Reddit, Tumblr). Amongst the global technology companies, only Snap and TikTok have an EU HQ in the UK. Notably, YouTube has an operational HQ in the UK, but its services are provided by Google which has an EU HQ in Ireland. Providers of adult services are generally established outside the EU, although in many cases we were not able to determine the provider or its country of establishment.

Principal purpose. Of the services under UK jurisdiction, or potentially so, only pure-play VSPs (Vimeo, Twitch, LiveLeak, Imgur) and a large number of adult services have a principal purpose of video sharing or a dissociable section thereof. Other services provide video sharing alongside other services, such as messaging and non-video content sharing.

Essential functionality. For several services and categories of services, video sharing is an ancillary function, not an essential functionality. Services eliminated on this basis include Videohive (stock video marketplace), Nextdoor (neighbourhood social network), Playbuzz (content creation and distribution service) and Wikihow (how-to content).

A.1 Gaps in data available

There are several gaps or issues with the available data which were identified in the course of our research. These are summarised in Figure A.3.

Figure A.3: Data gaps and implications on findings

Data gaps/issues	Implications on findings
Services which stream encrypted video – these are not captured by the Comscore Video Metrix Multi-Platform	Most services which currently use encryption are broadcaster services, such as BBC iPlayer and ITV Hub, and subscription video-on-demand services, such as Netflix and Amazon Prime. We expect there are very few VSPs, if any, that use encryption so this data gap will not have an impact on our findings.
Limited data of app-based consumption – data only available for services which are tagged by Comscore	There could be some VSPs which are exclusively or predominantly app based, which may not be captured in the Comscore Video Metrix Multi-Platform data. To address this gap, we have looked at data on app downloads from App Annie to identify potential app-based VSPs and these have been taken into account in our assessment.
Possible time variations in video consumption – analysis based on latest available data from Comscore and App Annie	It may be possible that certain VSPs performed especially strongly or weakly due to seasonal trends and may fall on either side of the Step 1 threshold. Our view is that the likelihood of this is small. We were not able to assess how the number of VSPs have changed in the last five years as our analysis was based only on a snapshot of the latest available data. Video consumption and user preferences change over time and there could also be new services that emerge which may qualify as VSPs.
Lack of an agreed register of the EU member state with jurisdiction over providers of VSPs.	We determined EU jurisdiction by piecing together various information sources, including press reports, company reports and LinkedIn data. In some cases, there were ambiguities and/or the available information falls short of an official record. It is possible that if more information had been available, certain VSPs would have been determined to be under different jurisdiction.
Lack of revenue data in some cases, or where revenue totals are available, lack of revenue broken down by region or video sharing vs. other activities.	Availability of revenue data is inconsistent across VSPs. In some cases, global revenues were available from annual reports, and/or UK revenues were available from Companies House filings. In the case of LiveLeak, we estimated revenues based on video traffic and industry benchmarks for monetisation, whilst TikTok and Imgur revenues were based on third-party estimates and may be inaccurate. In addition, services such as TikTok are developing their businesses at a fast pace and are likely to increase their revenues substantially in the near future.
Lack of consistent and comparable employee data – generally, VSPs do not report number of employees in total or broken down by region and we relied on LinkedIn data, press reports and third-party estimates.	There is the potential for error in the number of employees data, especially in global totals for Vimeo, Twitch and TikTok. In these cases, many social media creators list themselves on LinkedIn as employees of the platforms, rendering the LinkedIn data inaccurate. We relied on third-party estimates that may be out of date or inaccurate.
Difficulty in assessing jurisdiction of adult services due to lack of information	We had difficulty in determining the jurisdiction for a number of adult services. This is probably due to the nature of these services. For a significant number of adult services information such as the identity of the service provider, location of operation and ownership, is not available. In some instances, the terms or privacy notice reference a particular jurisdiction (e.g. these terms are governed by the laws of Poland) and we have assumed that this jurisdiction is the country of establishment and noted the uncertainty of our assessment. Otherwise we were unable to determine the jurisdiction of the service.

Appendix B Requirements of the AVMSD

These requirements are set out in Article 28b,⁴⁹ as below:

Those measures shall consist of, as appropriate:

- (a) *including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;*

Paragraph 1, Article 28b:

Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect:

- a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);*
- b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;*
- c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.*

- (b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1)⁵⁰ for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers;*
- (c) having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;*
- (d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;*
- (e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);*
- (f) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;*

⁴⁹ For the original text, please see Article 28b(3) of the revised AVMSD. <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

⁵⁰ Contains requirements for commercial advertising such as no subliminal advertising, no tobacco advertising, etc.

- (g) *establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;*
- (h) *providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;*
- (i) *establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);*
- (j) *providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.*

© 2019 Plum Consulting London LLP, all rights reserved.

This document has been commissioned by our client and has been compiled solely for their specific requirements and based on the information they have supplied. We accept no liability whatsoever to any party other than our commissioning client; no such third party may place any reliance on the content of this document; and any use it may make of the same is entirely at its own risk.