



Guidelines on the practical application of the "essential functionality" criterion of the definition of a video-sharing platform service

Possible approaches and guiding questions

AVMSD Contact Committee
1st July 2019

This document has been drawn up by Commission services as basis for discussion with the AVMSD Contact Committee and does not engage the Commission as an Institution.

Relevant provisions

- Article 1(1)(b)(aa): definition of video-sharing platform service
 1. Principal purpose of the service
 2. Principal purpose of a dissociable section of the service
 - 3. Essential functionality of the service**
- Recital 4: platforms compete for the same audiences and revenues as audiovisual media services
- Recital 5: not merely ancillary to or a minor part of the activities of the service

Guiding principles

- Provide practical guidance on the application of the "essential functionality" criterion
- Ensure a balanced approach:
 - *Sufficient clarity and certainty*
 - *Flexibility to encompass current and future relevant services*
- Not based on a rigid definition but rather on a set of indicators

The main test: significant user exposure

Possible approach:

A service will meet the essential functionality criterion if it can be reasonably established that the users of the service are exposed to a significant extent to audiovisual content available on that service

This approach is consistent with:

- The aim of the revision: reinforcing the protection of users
- Recital 4: comparable obligations for comparable services
- Recital 5: relevance of the audiovisual content for the activities of the service concerned (ancillarity test)

Practical application

- Identification of a set of relevant indicators of users' exposure
- National regulatory authorities should assess the service against the relevant indicators
- Relevant indicators are non-cumulative and non-exhaustive
- Overall assessment: a sufficient number of indicators showing significant user exposure to audiovisual content

Three main categories of indicators (1)

1. Quantitative relevance of audiovisual content in the platform,
e.g.:

- amount of audiovisual content on the platform
- degree of user exposure to audiovisual content
- popularity of the service

Three main categories of indicators (2)

2. Non-ancillary nature of the audiovisual content uploaded by the user, e.g.:

- Uploading videos as stand-alone items (rather than e.g. as support of a commercial transaction)
- Specific functionalities to capture audience attention
- Practical usage of the service

Three main categories of indicators (3)

3. Tools enhancing the visibility or attractiveness of the audiovisual content, e.g.:
 - Search engines and/or filtering of results tailored to audiovisual content
 - Attracting users or encouraging their interaction in or around videos
 - Allowing users to select their preferred audiovisual content
 - Allowing uploaders to track the performance and manage their content

Complementary indicators

Revenues generated from the exposure of users to the audiovisual content, e.g.:

- Access to audiovisual content upon payment
- Allowing advertisers to place audiovisual commercial communications
- Other types of indirect benefits/revenue making

Guiding questions

In your view,

- 1. Would this approach strike the right balance between clarity and flexibility?*
- 2. Would this approach be practicable and fit for purpose?*
- 3. Would there be any additional indicators or features to be considered?*
- 4. Would more certainty be needed as regards the interplay among the various indicators?*
- 5. Would more certainty be needed as regards how national regulatory authorities should perform their assessment (e.g. minimum number of indicators)?*