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Democracy in Flux

Order, Dynamics and Voices in Digital Public Spheres

**Media Literacy and the Protection of
Minors in the Digital Age**

Intermediary initiatives during the transposition of the AVMS
Directive in Spain

Mutu, Adriana

Departamento de Comunicación

Universitat Abat Oliba CEU

Barcelona, Spain

amutu@uao.es

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The Audiovisual Media Services Directive (AVMSD) was adopted on 28 November 2018 and published in the Official Journal of the European Union (EU). The consolidated text of came into force on December 19, 2018. The revised AVMSD aims to adapt to the new digital media ecosystem, market developments and technological advances, and applies to broadcasters, video-on-demand and video-sharing platforms. It aims to ensure enhanced protection of minors against harmful content, improved accessibility of audiovisual communications for persons with disabilities, redefined limits of commercial communications, promotion of European works on video-on-demand platforms' catalogues, self-regulatory initiatives, and strengthened independence of national media regulatory authorities (Mutu, 2018).

In the light of these legal changes, this study aims to discuss the regulatory responses and initiatives undertaken by relevant public authorities and intermediaries during the transposition of the AVMSD into Spanish domestic law. Specifically, the analysis focuses on the activities undertaken by the competent state and regional media regulatory authorities and various stakeholders (defined as regulatory intermediaries) in relation to the amendments of the AVMSD aiming at strengthening the protection of minors and viewers in general from potentially harmful and prejudicial content on linear audiovisual programmes, video-sharing platforms, and social networks. As the study shows, intermediaries played an important role in the elaboration of the Spanish Draft General Law on Audiovisual Media (LGCA) by providing information, issuing statements, positions or taken other initiatives regarding the transposition of the AVMSD.

Stakeholders situated outside the public regulatory arrangement are defined in prior research as regulatory intermediaries or meta-regulators (Havinga & Verbruggen, 2017; Levi-Faur & Starobin, 2014; Abbott et al. 2017). Recent academic work advanced theoretical models to explain the role played by intermediaries (Graeme & Renckens, 2017; Jordana, 2017; Van der, Heijden, 2017), including the R (regulator) → I (intermediary) → T (target) basic model. R represents the regulators with authority to regulate the target T. The intermediary is defined 'as any actor that acts directly or indirectly in conjunction with a regulator to affect the behavior of a target. (...) Its role can be formal or informal; its participation can be driven by functional or power considerations; and it can serve public or private interests' (Abbott et al., 2017: 9). Intermediaries 'can be facilitators and mediators, enhancing trust and strengthening 'regulatory dialogues' between regulators and targets, and helping them to collaborate in improving the effectiveness of regulation while lowering its costs and adverse implications' (Abbott et al., 2017: 17-18). The role played by stakeholders/intermediaries in audiovisual media regulation can be best discussed in relation to the rise of regulatory pressure on industry-driven actors including internet intermediaries such as search engines (Google), video-sharing platforms (YouTube) and social media networks (Facebook, Instagram, Twitter) that were given editorial duties and responsibilities under the AVMSD. 'Meta-regulators' are entrusted with self-regulatory decision-making power in regulating 'the online media content concerning hate speech, protection of minors, viral spreading of fake news on social media and the fight against copyright infringement on video-sharing platforms' (Rozgonyi, 2018: 18). Under the revised AVMSD, platform providers are set to become co-regulatory guardians of the public interest, entrusted with editorial decisions 'made by automated or artificially intelligent algorithmic systems' (Rozgonyi, 2018: 22).

This case-study analysis based on a qualitative longitudinal design sheds light on the Spanish transposition stages of the AVMSD after the date of entering into force up to the transposition deadline on September 19, 2020. Data is taken from multiple publicly available sources such as central

government information, ministerial data, and regional agencies. As of today, the transposition of the AVMSD in the Spanish legislation is ongoing. State audiovisual authorities with jurisdiction over audiovisual policy and responsible for the supervision of video-sharing platforms (the Ministry of Economic Affairs and Digital Transformation and the National Authority for Markets and Competition), and regional authorities (the Audiovisual Council of Catalonia and the Audiovisual Council of Andalusia) have initiated various formal procedures, including public consultations and public hearings. Participation was sought from stakeholders in the industry, digital platforms, advertisers, agencies, regulators, consumers and other experts and agents interested in the sector. The input gathered prior to the preparation of the draft General Law on Audiovisual Media was classified into thematic areas (Legislative Impact Analysis Report for the LGCA 2020: 42) and addressed, among others, the amendments to the AVMSD on accessibility, media literacy, VSPs, protection of minors and the general public from harmful or inappropriate content. The thematic areas ‘video-sharing platform services and ‘protection of minors and the general public’ received 37 and 36 responses out of 60 contributions. The main issues raised were related to the application of audiovisual regulations to new media and new forms of consuming audiovisual services, the criteria for rating content by age, the use of descriptors reporting content that is harmful to children and information on screen by all types of service providers, parental control mechanisms and age verification systems for services provided over the internet, enhanced protection schedules, and the review/strengthening of the penalty system (Legislative Impact Analysis Report for the LGCA 2020: 43).

Results show that various initiatives were undertaken with the aim to reinforce the protection of minors and viewers in general. As an example, the initiatives undertaken by the Audiovisual Council of Catalonia (CAC) include: the launch of the Platform for Media Education aiming at promoting digital media literacy; the signed cooperation agreement with various medical associations and colleges of physicians aiming at combating fake news related to health issues and promoting research into the effects of online gambling and gambling advertisements. The ‘#AMiNoMenganyen’ (#theycantfoolme) campaign was launched by the CAC, the Catalan Broadcasting Corporation and ‘la Caixa’ Social Welfare Center aiming at promoting critical thinking, a responsible usage of technology, news information and social networks, and at warning about the dangers of cyberbullying, fake news, and threats to digital privacy. In addition, in May 2019 the Audiovisual Council of Catalonia¹ asked for the withdrawal of 12 videos from YouTube that featured cybercontrol in teen dating. YouTube responded to the request and withdrew 11 of the 12 videos.

Various actions and initiatives were also undertaken by stakeholders including civil society organizations, NGO’s, academia, news media outlets, industry associations and other public interest groups, regarding the promotion of media literacy, the protection of minors on the internet, the protection of children and youth exposed to online gambling and subliminal advertising etc.

To sum up, the analysis reveals that Spanish domestic authorities and intermediaries have been successful in framing the main issues related to the revised Audiovisual Directive and that, consequently, various initiatives and actions have emerged. Further research is needed to evaluate the transposition and implementation process.

¹ The press releases are available at <https://www.cac.cat/es/actualitat/cac-pide-la-retirada-12-videos-youtube-que-justifican-cibercontrol-las-mujeres-ambito-la>.

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