

ADDITIONAL COMMENTS TO THE DFA CONSULTATION

BACKGROUND

ACT is the voice of commercial television & VoD in Brussels and directly represents 26 commercial broadcasters that operate throughout the European Union and beyond. ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms.

ACT welcomes the Commission's consultation Digital Fairness Act consultation. Below, we provide additional comments on a number of sections.

SECTION 1 – DARK PATTERNS

To start, we would like to stress that Audiovisual Media Services (AVMS), whether linear or on-demand, already operate in a highly regulated environment under the Audiovisual Media Services Directive (AVMSD). AVMS providers are editorially responsible, legally accountable, and bound by strict obligations that ensure a high level of consumer protection, including:

- Robust safeguards for minors, preventing harmful or manipulative content
- Clear advertising standards, with explicit bans on subliminal and surreptitious techniques
- Transparency rules ensuring that all commercial communications are readily recognisable

These obligations are enforced by independent national regulators and supported by co- and self-regulatory frameworks. As a result, AVMS environments are curated, safe, and transparent, and we are not aware of any systemic use of dark patterns among reputable providers in our sector.

We recognise the concerns with issues related to dark patterns in certain parts of the digital ecosystem. These practices are rightly a concern in the digital environment and risk undermining consumer trust. However, in our view, the existing EU legal framework already provides strong protections against these practices, notably through the Unfair Commercial Practices Directive (UCPD).

It would therefore be more effective for the Commission to focus enforcement on online environments, such as social media and video sharing platforms, which are higher-risk environments, rather than applying broad, horizontal obligations across all sectors.

Many of the examples of practices identified in this consultation as “dark patterns – such as false urgency or scarcity claims, sneaking items into a basket, ambiguous wording, confirm-shaming, or making cancellation unduly difficult – can already be addressed through this framework. Some of these practices are explicitly covered by Annex I, while others fall under the Directive's general prohibitions on misleading and aggressive practices. For other practices, however, such a qualification is questionable. For example, we reject the assumption that showing consumers the benefits of a subscription for AV content or making them a retention offer as part of the cancellation process lead to anti-consumer outcomes. This is a case in point that a one-size-fits-all approach to user interface design would be harmful and not necessarily achieve consumer protection goals.

We would therefore recommend that the Commission focuses on more consistent enforcement rather than pursuing new binding and overly prescriptive rules. This could be achieved through updated guidance on dark patterns, ensuring consistent interpretation of the UCPD across Member States and providing clarity and flexibility for businesses. The creation of an entirely new regulatory

layer could inadvertently cause harm to non-problematic sectors and practices, such as in the audiovisual sector.

In conclusion, we would recommend that the Commission prioritise stronger enforcement of the UCPD and updated guidance, focusing problematic online environments. This approach would address dark patterns issues without imposing disproportionate burdens on sectors, such as AVMS, that already demonstrate high levels of consumer protection and regulatory compliance.

SECTION 2 - ADDICTIVE DESIGN

The current debate on "addictive design" fails to distinguish between fundamentally different digital environments, creating a problematic one-size-fits-all narrative.

The persistent regulatory asymmetry between AVMS providers on the one hand and VSPs and other similar online services other hand is particularly relevant when assessing the risks associated with "addictive design" features such as recommender systems and autoplay.

On algorithm-driven, engagement-maximising platforms – where content is typically generated, ranked, and presented without editorial responsibility – such functionalities can indeed create problematic usage patterns, including compulsive scrolling and prolonged screen time. These concerns are well-documented in the context of short-form content feeds on social media, where recommender systems may prioritise extreme or emotive content to maximise engagement.

By contrast, in the context of editorially responsible AVMS, these same features serve fundamentally different purposes: autoplay is typically limited to continuing a linear narrative (e.g. the next episode in a series) and reflects established consumer expectations rooted in traditional broadcasting.

Similarly, recommender systems in AVMS environments are designed to enhance user choice and discovery, not to drive excessive engagement. Recommender systems are used by AVMS as means to curate content offering and are an extension of audiovisual media's editorial control and responsibility in the digital environment. Restrictions to it are ultimately akin to restrictions on editorial choices of AVMS, and therefore undermine editorial independence (in contradiction with the objectives of the European Media Freedom Act).

Importantly, there is no evidence to suggest that autoplay or recommender systems, when implemented within the regulated AVMS environment, pose specific risks to minors or contribute to problematic usage patterns. Editorially responsible AVMS providers implement robust parental controls and content curation to ensure appropriate viewing experiences. Furthermore, many AVMS already do offer the option to switch-off autoplay via setting, thus giving viewers control over their viewing experience. Conflating well-curated and accountable AVMS with the algorithmic, uncurated practices of certain online platforms risks regulatory overreach and could undermine well-functioning, low-risk ecosystems that already ensure a high level of consumer protection.

SECTION 4 – UNFAIR PERSONALISATION PRACTICES

ACT fully supports the goal of protecting consumers from unfair personalisation practices. The General Data Protection Regulation, e-Privacy Directive, Digital Services Act, but also the AVMSD, already comprehensively address data use and personalisation. However, if proper enforcement of

these instruments proves insufficient, and specific practices remain inadequately covered, such gaps should be clearly identified and thoroughly documented before proceeding with new legislation.

We strongly oppose current proposals suggesting blanket restrictions on targeted advertising and personalised pricing, without distinguishing between well-regulated audiovisual media providers and problematic online platforms. Such a one-size-fits-all approach risks disproportionate consequences for the former, while failing to effectively address the latter.

Targeted advertising—when managed and delivered responsibly—is essential for the sustainability of audiovisual media service providers. It remains a key source of funding, particularly for free-to-air, ad-supported, and on-demand services. For our industry, ensuring that EU citizens’ data is handled lawfully and securely is non-negotiable. Privacy, transparency, and respect for personal data are fundamental to maintaining audience trust and our business model.

Personalised pricing—when implemented transparently and in full compliance with data protection rules—represents a legitimate and consumer-friendly practice. Such offers, including ad-supported models, enable more affordable access to content for consumers with limited financial means, who might otherwise be excluded from quality audiovisual content.

We therefore caution against proposals that would undermine the ability of editorially accountable broadcasters and VoD platforms to optimise services, diversify revenue streams, or offer free access to quality content and trusted news. This is especially critical in light of the upcoming European Democracy Shield, which seeks to reinforce the sustainability and resilience of media as a cornerstone of democratic societies.

SECTION 7 – ISSUES WITH DIGITAL CONTRACTS

Simple cancellation option

We support the principle that consumers should be able to terminate contracts easily, transparently, and without undue restrictions. AVMS providers already offer user-friendly, easy and secure cancellation mechanisms, typically accessible through account or app settings. This is because they recognise that positive user experience drives customer retention better than contractual barriers. We therefore do not believe there is a need for further regulatory intervention in this area. The specific nature of audiovisual services also means that one-size-fits-all approaches to cancellation are problematic, as it undermines existing, well-functioning models.

When it comes to our sector, the following aspects should be kept into consideration:

- AVMS are typically sold as curated content packages, often linked to contractual terms such as minimum subscription periods or bundled hardware. These contractual commitments are essential to enabling AVMS providers to plan and sustain ongoing investments in high-quality content.
- A mandatory cancellation button could be abused by malicious actors or bots, enabling repeated, unauthorised access and undermining monetisation
- Pay-TV and similar services often involve upfront hardware or installation costs, which are normally recouped over time, through subscription fees. Over-simplified cancellation models risk distorting this commercial logic and limiting pricing flexibility for consumers.
- Secure verification processes (e.g. login credentials, customer service channels) are necessary to prevent fraud and unauthorised cancellations

Reminder before renewal or trial conversion

We acknowledge the importance of transparency regarding automatic renewals and trial-to-paid conversions. Any transition from free to paid or a higher fee must already be fully transparent, based on explicit consent, and accompanied by clear pre-contractual information. These principles are already enshrined in current EU consumer law. It is already standard practice for AVMS providers to send reminders, recognising that informed and satisfied customers are more likely to remain loyal over the long term.

We recommend that the Commission avoid prescriptive regulatory approaches, as these could have unintended consequences. Services such as live event streaming or short-term promotional trials do not always fit well with uniform reminder periods. Strict rules could therefore limit innovation in how offers are designed. Too many reminders may also cause “notification fatigue”, leading consumers to ignore important messages and reducing transparency instead of improving it.

A balanced approach is needed. Providers should have flexibility in how they send reminders—by email, in-app notifications, or account messages—so long as the information is clear, accessible, and provided within a reasonable timeframe.

Control over contract renewal and termination

By virtue of national and European regulations as well as interprofessional agreements, AVMS providers are subject to significant investment obligations. In addition, continuous investment in high quality content – often secured through multi-year deals with rightsholders (e.g. cinema and sports) – is key to retain subscribers and minimise churn. As a result, AVMS providers are key contributors to the audiovisual and cinema ecosystem, with cultural diversity at its heart, to the benefit of all EU citizens.

Contractual terms such as minimum subscription periods and fixed-term tacit renewals, insofar as they allow stable and predictable revenues, are crucial to enabling AVMS to meet the abovementioned obligations and secure premium content.

It is also important to note that consumers already have control over their subscriptions and benefit from a range of subscription options. Indeed, AVMS packages are typically available with and without commitment periods with the price being the sole differentiating (packages with commitment periods are generally offered at a more competitive rate). This structure already protects consumer choice as it ensures that consumers can select the option that best suits their needs, whether prioritising flexibility or cost-effectiveness.

As a result, mandating that consumers be able to terminate an automatically extended digital subscription anytime with a notice as short as one month or requiring explicit approval for each renewal would not improve consumer welfare. On the contrary, such measures would not only reduce consumer choice but would also undermine the economic model that allows for investment in premium content, likely resulting in higher prices and reduced program quality.

SECTION 9: HORIZONTAL ISSUES

First of all, we once again want to restate that Audiovisual Media Services (AVMS), be they linear or on-demand, already operate in a highly regulated environment under the Audiovisual Media Services Directive (AVMSD). AVMS providers are editorially responsible, legally accountable, and bound by strict obligations. This is particularly true when it comes to the protection of minors. AVMS providers actively collaborate with regulators and external experts to develop these

measures. Those range from restricted profiles/contents, parental controls, age verification, age-rating systems, watersheds, child-safe content production and media literacy/education.

We welcome the Commission's efforts to ensure the implementation of age verification measures across all online platforms, as these constitute the most problematic environment for minors.

However, we strongly oppose proposals put forward by certain players (e.g. by Meta, Snapchat, and other platforms) to implement mandatory age verification solutions at the app store or device level. While these measures may suit their platform, they are fundamentally incompatible with the multi-user, multi-device nature of VoD services and would therefore unnecessarily impair the consumer experience on our services. Indeed, this approach could not only weaken age verification processes, but may have unintended consequences for services with a much lower risk-profile and different architecture, such as VoD platforms. Our platforms are designed to support multiple viewer profiles ("multi-user services") within a single account and are accessed across various devices—from tablets to smart TVs—requiring granular, service-level controls rather than blanket device restrictions. Because our contracts are with adults (at household level), we empower parents to do what they think is best for their kids.

Such one-size fit-all app-store/device level verification would undermine the consumer experience on ACT members' services and could negate the effectiveness of investments that VOD app developers have made in age assurance, parental controls and compliant experiences for children. This approach would duplicate or potentially override the sophisticated parental controls that responsible VOD providers have already implemented. Furthermore, it would concentrate a key responsibility on players – many of whom are designated gatekeepers – who lack a proven track record of successful self-regulation in protecting minors.

Therefore, we strongly advise against proposals that would result in one-size-fits-all obligations. Any age verification requirements must recognise the fundamental differences between services, their existing safeguards, and risk profiles. Editorially responsible AVMS providers with proven child protection measures should not be subject to the same blanket requirements as unmoderated platforms. In short, a risk-based approach is essential.