



To:



Department for Digital, Culture, Media and Sport
100 Parliament Street, London
SW1 2BQ
avms-consultation@culture.gov.uk

RE: Comments on the Audiovisual Media Services: Consultation Document dated May 2019

22 August 2019

Dear ,

We write to provide separate comments on the *Audiovisual Media Services: Consultation Document* dated May 2019.

By way of context, SuperAwesome is the leading provider of 'kidtech', technology and services used by companies worldwide to enable safe, compliant (COPPA, GDPR) digital engagement with children. From our London headquarters, our team of 145 employees, including more than 40 software engineers, are developing and rolling out Privacy by Design technology focused on the needs of the kids' digital media ecosystem globally.

Our technology is used by content owners (websites, apps), kids' brands and agencies to comply with children's data privacy rules and appropriate content standards in each territory. Our advertising platform is connected to online services that serve an aggregate of 80M children and teenagers across the EU. Every advertisement delivered by our technology is watermarked with our [SafeAd](#) logo, which signifies that the ad (1) is not collecting any personal data (including persistent identifiers), and (2) has been reviewed by a human for age appropriateness.

In addition, our [KidAware](#) education programme is used extensively by brands and agencies to train their employees in children's data privacy laws and advertising standards—we educated well over 250 UK digital media professionals in 2018 and 2019.

As you can see, we have extensive experience in supporting digital media consumption by children and, as such, we are commenting on the proposed changes to the AVMS Directive in the spirit of ensuring a high standard of protection that enables an accessible and safe digital content environment for kids.

After thoroughly reviewing the AVMS Consultation Document, we have a few areas of concern regarding the UK's implementation of the revised AVMSD. In this case, we feel these are best addressed via formal letter to DCMS. Those areas are as follows:

Data Protection of "Minors":



We fully agree with the proposed restrictions on processing minors' personal data as outlined in Art 6a and Art 28b, and have advocated for such restrictions with the ICO in previous consultations. We note, however, that the DCMS appears to be crossing into a policy area that overlaps with the ICO's remit of data protection and privacy of individuals. As such, we hope that the DCMS is seeking appropriate input and agreement from the ICO on the application of the revised AVMSD.

The Definition of "Minors":

The AVMSD refers to the protection of "minors" including in connection with data protection measures but does not go any further to define the term "minor" in practice. We urge the DCMS to be clear on its definition, and would also like to see some harmonization and consistency with other policy areas. For example, if there is to be a further restriction on processing minors' personal data, there should be no conflict between the GDPR and/or DPA 2018, which refers to a "child" or "children" rather than a "minor", and which means someone under 16 (or lower, depending on national derogations, eg 13 in the UK).

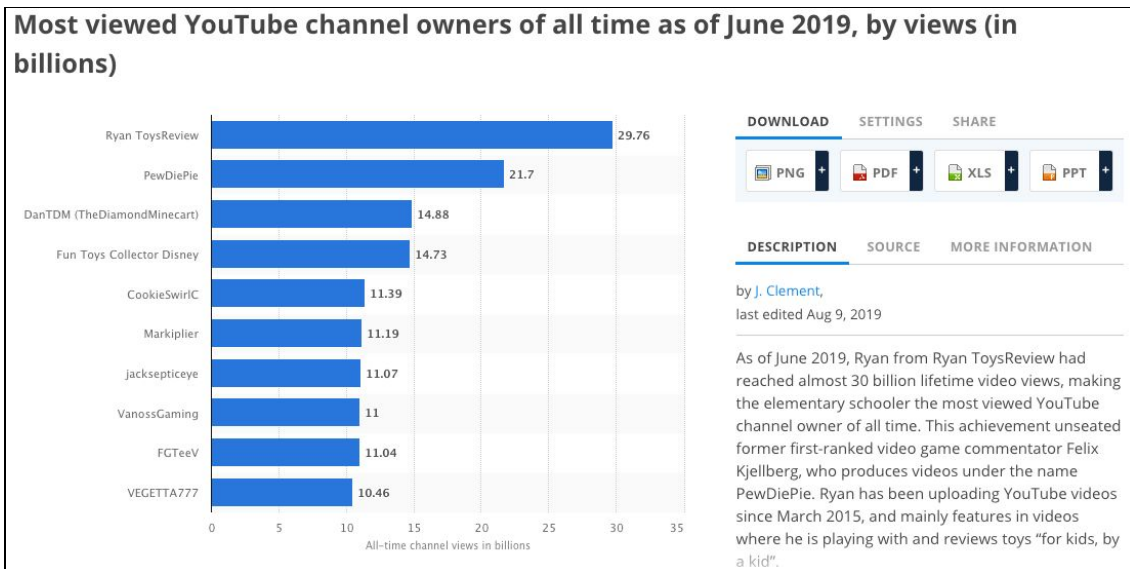
We would not only like to see the AVMSD's definition of a minor to be clear, but also remind the DCMS that this also must not conflict with any data protection principles.

Product Placement:

We have noted that the Consultation only briefly mentions product placement, but does not seek input on any practicable implementation of the provision. However, as currently written, the AVMSD's treatment of product placement creates several significant concerns:

1. The revised Directive expands the definition of "product placement" to include both programmes and user-generated videos. This would seem to be a transposition from the broadcast rules, where the definition of product placement is fairly clear. However, the rapid growth of influencer marketing has expanded the ways in which products are promoted in organic content. If it is the intention of the Directive to put all video-based influencer marketing activities under its regulatory umbrella, we urge the DCMS to align its implementation guidance with existing rules on influencer marketing promulgated by the ASA and other bodies.
2. The revised Directive prohibits product placement in "children's programmes" (Art.11.2), whilst providing no further criteria to determine what constitutes a 'children's programme', particularly in a non-programmed environment. This is of particular importance since the definition of a "programme" has also been revised in that it need not be comparable to TV and can be of any length. In our experience, the vast majority of video content consumed by children on VSPs is not obviously content created for and targeted at children, but rather family-friendly content that happens to appeal to a young audience, eg gaming, sports, talent shows, how-to videos, music, etc.

We would like to see DCMS proceed with caution to ensure that videos produced by young influencers, which are widely viewed by children (and represent nearly all of the top ten channels on YouTube, for example - see below) are *not* classified as "children's programmes."



Influencer marketing videos such as “unboxing” or “review” videos are a unique genre of content which should not be caught under the product placement definition. Instead, these should be treated as separate forms of marketing communications which are already subject to disclosure and transparency rules as set out and enforced by the ASA/CAP and the CMA in the UK.

Significant Value:

We understand that Recital 91 will still be applicable under the newly revised AVMSD which allows prop-based product placement if the products are not of a “significant value”. Having read and reviewed OFCOM’s Broadcaster Code, it is still unclear what “significant value” may mean and especially in the context of influencer marketing. We therefore ask whether this element will be further clarified, including its application to marketing communications such as “unboxing” videos.

We welcome DCMS’s approach to working with industry to ensure an appropriate and proportionate application of the revised AVMSD in the UK.

Yours Sincerely,

Max Bleyleben
Managing Director & Chief Privacy Officer
SuperAwesome