



Coimisiún
na Meán

Guidelines for Media Service Providers

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Preface

Coimisiún na Meán, (the “Commission”) pursuant to section 46H(2) of the Broadcasting Act 2009 as amended (the “2009 Act”), issues the following Guidelines which may be referred to as the “*Guidelines for Media Service Providers.*”

These Guidelines are issued by the Commission to assist in the operation and understanding of the registration processes under Part 3A of the 2009 Act and pursuant to the Registration Rules for Media Service Providers made by the Commission.

These Guidelines may be amended or updated from time to time as the Commission considers appropriate. They are not a substitute for any statutory provision(s) and do not constitute legal advice. Providers of audiovisual on-demand media services that are, or that may be, subject to registration are advised to obtain their own independent legal advice on the relevant statutory provisions.

It is the responsibility of media service providers to ensure compliance with the applicable statutory obligations. The Commission will not be liable for any loss or damage which may be sustained as a consequence of any reliance which may be placed upon these Guidelines, upon any published Rules or upon any informal guidance and/or advice which the staff of the Commission may provide.

If you require further information or clarification relating to these Guidelines, please contact VODregistration@cnam.ie and a member of staff will assist.

1. Interpretation

In these Guidelines, the following definitions apply:

“2009 Act”	means the Broadcasting Act 2009 as amended.
“audiovisual broadcasting service”	means an audiovisual media service provided for simultaneous or near-simultaneous viewing of audiovisual programmes on the basis of a programme schedule.
“audiovisual media service”	means: (a) a service, within the meaning of Articles 56 and 57 of the TFEU, where - (i) the principal purpose of the service is devoted to, or (ii) the principal purpose of a dissociable section of the service is devoted to, providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate; or (b) an audiovisual commercial communication (as defined in the 2009 Act).
“audiovisual on-demand media service”	means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service.
“audiovisual programme”	means a set of moving images with or without sound which, in the case of an audiovisual media service, constitutes an individual item, irrespective of its length, within a programme schedule or a catalogue.
“AVMS Directive”	means the Audiovisual Media Services Directive being Directive 2010/13/EU as amended by Directive (EU) 2018/1808.
“Commission”	means Coimisiún na Meán.
“editorial responsibility” in relation to providing programmes	means effective control — (a) over the selection of the programmes, and (b) over their organisation in a programme schedule or in a catalogue.

“media service provider”	means a person who provides an audiovisual media service.
“Register”	means the register of media service providers established and maintained by the Commission pursuant to section 46A of the 2009 Act.
“Registration Rules”	means the rules made by the Commission pursuant to section 46H of the Act, and references to “a Rule” shall be construed accordingly.
“relevant media service provider”	<p>means a provider of an audiovisual on-demand media service who is –</p> <ul style="list-style-type: none"> (a) a corporation, or a subsidiary of a corporation (as defined in the 2009 Act), (b) a broadcasting contractor (as defined in the 2009 Act), or (c) a person who meets one or more of the conditions below and whose annual sales derived from activities referred to in that subsection are greater than €2 million. <p>The conditions referred to in paragraph (c) are:</p> <ul style="list-style-type: none"> (a) that the person or a related person¹ publishes a newspaper or periodical consisting substantially of news and comment on current affairs; (b) that the person or a related person is a broadcaster; (c) that the person or a related person provides programme material consisting substantially of news and comment on current affairs to a broadcaster; or (d) that the person or a related person makes available on an electronic communications network any written, audio, audiovisual or photographic material, consisting substantially of news and comment on current affairs, that is under his or her editorial control.
“TFEU”	means the Treaty on the Functioning of the European Union.
“video uploader”	means a person who provides an audiovisual on-demand media service by means of an account with a video-sharing platform service or other platform hosted by a third party.

¹ A person is a related person if the person is part of the same group of companies (within the meaning given to that term by section 8 of the Companies Act 2014).

“video sharing platform service”

means a service, within the meaning of Articles 56 and 57 of the TFEU, where –

- (a) the principal purpose of the service is devoted to, or
- (b) the principal purpose of a dissociable section of the service is devoted to, or
- (c) an essential functionality of the service is devoted to,

providing audiovisual programmes or user-generated videos, or both, by electronic communications networks, to the general public, in order to inform, entertain or educate.

A service is a video-sharing platform service only if the provider of the service:

- (a) does not have effective control over the selection of programmes and videos, but
- (b) determines their organisation, by automatic means or algorithms (including displaying, tagging, or sequencing) or otherwise.

2. Introduction

The Commission is required to establish and maintain a register of media service providers (the “Register”). The 2009 Act contained a transitional period to allow media service providers to familiarise themselves with the statutory requirements for notification and thereafter to enable those subject to registration to notify the Commission in accordance with the 2009 Act.

The Register was first published on 30 November 2023. It is subject to updates and amendments on a continuing basis. The current version is available on the Commission’s website.²

3. Media Service Providers “subject to registration”

A media service provider is subject to registration if (a) it is “*under the jurisdiction of the State*”, and (b) it provides “*an audiovisual on-demand media service*”.

Whether a media service provider is under the jurisdiction of the State is determined in accordance with section 2A of the 2009 Act, which is set out in the Schedule to these Guidelines. The elements of providing an “audiovisual on-demand media service” are defined in Section 1 (“Interpretation”) of these Guidelines.

4. Registration process

The Commission has prescribed Registration Rules for Media Service Providers (the “Registration Rules”). The Registration Rules may be viewed on the Commission’s website.³

Pursuant to Rule 2 of the Registration Rules, the Register shall include the following information in respect of each media service provider subject to registration:

- (a) The name or names of the media service provider.
- (b) The contact details of the media service provider.
- (c) The name or names of each audiovisual on-demand media service provided by the media service provider.
- (d) In each case, a description of the nature of the service and the nature of the content provided by the service.
- (e) A statement of the basis upon which the media service provider is under the jurisdiction of the State.
- (f) Such further or other matters as may be prescribed by the Commission under section 46H.

² <https://www.cnam.ie/industry-and-professionals/licensing-registration/registration-of-media-service-providers/register-of-media-service-providers/>

³ [Video-on-demand - Coimisiún na Meán](#)



5. Notification

Rule 3 of the Registration Rules and the associated Notification Form set out the information that must be included in a media service provider's notification to the Commission. A Microsoft Word version of the Notification Form is available on the Commission's website.⁴

This prescribed information does not limit or prevent a media service provider from providing additional information to the Commission which is considered to be relevant to its notification.

The Registration Rules also contain relevant information regarding a media service provider's obligations and the Commission's statutory powers in relation to the registration process.

6. Audiovisual On-Demand Media Services – Criteria and Scope

6.1 Principal Purpose

A service can be an "audiovisual media service" either where its principal purpose is devoted to, or where the principal purpose of a dissociable section is devoted to, providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate.

The "*principal purpose*" requirement will generally refer to the main activity of the service or to a dissociable section of the service. The main purpose is required to be the provision of audiovisual programmes to the general public which are intended to inform, entertain, or educate and thereby requires consideration of the extent to which the offering is built around the provision of audiovisual programmes.

The definition envisages that a media service provider may provide a number of services which have different purposes and/or may provide a dissociable section or sections which comprise an audiovisual offering.

The Commission will therefore generally adopt an individualised approach based upon the particular characteristics of the provider and will consider all of the services offered by the provider in order to weigh their respective purposes and to thereby determine whether the audiovisual programming is merely incidental or ancillary to the other services offered or whether the form and content of the audiovisual programming is independent of, and distinct from, the other services offered by the provider.

The Commission will have regard to the following indicators (a non-exhaustive list) when assessing the principal purpose of the service or a dissociable section thereof:

- a) whether the service or a dissociable section of the service refers to itself as providing programmes, and how it markets itself with respect to its competitors;
- b) the nature and extent of any linkage between the programmes and the other content available on the broader service, and particularly the extent to which the programming content is an incidental or ancillary element of the broader offering rather than a standalone service;

⁴ [Registration of Media Service Providers - Coimisiún na Meán](#)

- c) the extent to which the programmes need to be viewed in order to receive the information, education or entertainment being offered;
- d) the prominence of the programmes within the broader service having regard particularly to the presentation and organisation of the service;
- e) the quantity and proportion of the programming content in comparison to the other forms of content which is part of the broader service, in terms of both absolute numbers and viewing time; and
- f) the significance, particularly to the consumer, of the programmes within the service or dissociable section – for example, whether the programming content is a primary attraction of the service or a key benefit of a subscription.

6.2 Dissociable Section

A single service may be an audiovisual on-demand media service in its entirety, or a service may consist of a separate section or sections which have the principal purpose of providing programmes and thereby the section/s constitute an audiovisual on-demand media service. A dissociable section may include a subdomain of the web property, a separate tab or web page, a distinct part of an app or other such variables. However, technical features or product design are not the decisive factors in determining whether part of a service constitutes a dissociable section.

Each service must be examined on a case-by-case basis. It may be of significance to consider the extent to which programmes within a particular section of the service are provided for their own value as a standalone feature, rather than being incidental or supplementary to other forms of content on the service. The overall architecture and layout of a dissociable section may be designed primarily to encourage users to consume video content rather than other forms of content. It may also be relevant to consider the user's perspective of the service including, for example, whether the dissociable section is qualitatively different from the other parts of the service in respect of its purpose, content, and form.

The 2018 revisions to the AVMS Directive recognised that newspaper websites increasingly provide a dissociable video on-demand section which is capable of constituting an audiovisual on-demand service. Where the video section of such a website has autonomous or independent content and function from the written articles upon the service, the video content is likely to be viewed as a dissociable audiovisual on-demand service.⁵ On the other hand, where the video content is embedded in the editorial content such that it is ancillary to or is an indissociable complement to the main activity of providing news in a written form, the video content would not come within the definition of an audiovisual media service.

6.3 Editorial responsibility

Editorial responsibility has two elements here: effective control (a) over the selection of programmes, and (b) over their organisation in a programme schedule or catalogue.

“*Selection*” requires the provider to have the power or authority to decide the nature or type of audiovisual content which will be available on its service. On the other hand, “*organisation*” requires

⁵ Provided the other aspects of the definition are met, i.e. the principal purpose of the **dissociable section** of the service is devoted to providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate.

the provider to have the power or authority to determine how such content will be placed or will appear within its service.

Editorial responsibility for the purposes of the 2009 Act is most appropriately determined at the point of the selection and organisation of the content. Neither aspect of the definition requires the provider to exercise actual control over any particular programme or content which is made available in any individual case, nor to have expressly authorised all programming made available. Control over the content of individual programmes or over the distribution of the service is not required. Rather, effective control is broad enough to encompass situations where the provider has the power or authority to make selection and organisation decisions, although the provider may not exercise that power in individual cases.

The AVMS Directive is clear that editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided.

6.4 General Public

The requirement that an audiovisual on-demand media service be provided “to the general public” does not require it to be accessible to all members of the public. Programmes are available to the general public if the content is accessible to the public at large rather than to specific individuals. It is not necessary that there be no restrictions to, or conditions on, such access.

For example, it is common for access to particular types of programming to be restricted by age requirements and for access to some content to be subject to the payment of fees or a subscription. Such restrictions do not preclude a service from being an audiovisual on-demand media service. However, video content which is narrowly focused upon the dissemination of information about an organisation to its members is unlikely to be considered to be available to the general public.

To be provided “to the general public”, an audiovisual media service must be directly or indirectly available to consumers using standard equipment.⁶ This applies where the service is distributed on the internet, to which access is gained through distribution platforms, such as digital cable, mobile data networks or IPTV, and where services can only be received using devices such as a set-top box, tablet computer or video game player.

Assessments in this area will be guided by the particular facts of each case. It may be appropriate to look at the number of people who access the content, as well as the capacity for the content to be accessed more widely. The service must be capable of reception by, and having a clear impact on, a significant proportion of the public. Providers which have their own platforms, given the set-up and purpose of their service, may easily meet this criterion. For video uploaders however, this is less clear, even if they use a video-sharing platform service which, in principle, is accessible to anyone.

6.5 Catalogue

The term “*catalogue*” is used to describe the arrangement of items of content ordered in such a way that they can be easily accessed to a recognised method by the user, for example, where the audiovisual content can be accessed via a repertoire of programmes from which the user can choose when and what to watch.

⁶ Standard consumer equipment is understood as equipment that is available to the consumer, depending on the state of the art, the cost price and the availability of the necessary software and hardware. Equipment that - for example due to the high cost price or connections, technology or required software that are available to a limited extent only - is normally used only by professional parties is, in principle, not considered to be standard consumer equipment.

The requirement that an audiovisual on-demand media service must be based upon a catalogue presumes that the provider is responsible for indexing or categorising the audiovisual media content provided. However, the term catalogue is interpreted broadly: for example, a catalogue could exist where a video uploader posts content on a video-sharing platform service and enjoys less influence over the exact categorisation and indexation.

A catalogue may also exist where there is a search function, a certain categorisation (for example on the basis of content such as film genre, sports, news, entertainment, etc., or in alphabetical or chronological order), or a categorisation on the basis of popularity, date of posting of the media content, or based on content previously viewed by the user (algorithm-based). As such, setting up a catalogue presumes a certain amount of audiovisual media content and thus, the need to make it accessible with a tool. A provider of an on-demand media service may have more than one catalogue. An example are the catalogues of certain streaming services, which may be composed differently for each national market targeted.

6.6 Economic service

An audiovisual on-demand media service is a “service” within the meaning of Articles 56 and 57 of the TFEU, and therefore must be an economic activity. This captures services provided for remuneration which may be a monetary payment or other material advantage but extends to other forms that represent value in trade such as the provision of free products and services or other payments in kind. Providers that generate income by including advertising or sponsoring in or around their media content provide just as much an economic service as providers that make their media content available for payment. It is not required that the provider of a service has a profit motive.

6.7 Catch-up Services

Catch-up television services remain an important and substantial segment of the video-on-demand services available in Europe. The definition used by the MAVISE database⁷ for catch-up TV services is “provision of recent programmes by a broadcaster after their initial broadcasting and during a limited period of time.”

Catch-up TV services therefore enable users to view TV programmes of their own choice at the time of their choosing for a short period of time — typically 7 to 30 days — after transmission. A catch-up service of broadcasting on a television channel, whether programmes are made available from the broadcaster’s own branded website, on an online aggregated media player service, or through a ‘television platform’ to a set top box linked to a television is capable of meeting the definition of an on-demand audiovisual media service. The time period for which content is made available does not impact on the definition of an audiovisual on-demand media service.

6.8 Convergence of on-demand media services and video-sharing platform services

There may be cases where audiovisual on-demand media services (VODS) and video sharing platform services (VSPS) converge. Examples include the following:

- A provider may offer two services – for one service, the provider both selects the range of audiovisual content available and determines its organisation within that range (a VODS), while for the other, the provider controls the organisation of that content but not its selection (a VSPS).
- A VSPS may have a dissociable section that is a VODS.

⁷ <https://mavise.obs.coe.int/>

- A VSPS may carry the same content as a VODS, for example, where media organisations upload individual videos to a VSPS like any other user.
- In specific cases, a VODS may be hosted on a VSPS. For example, a VODS provided by a media organisation may be offered via a VSPS, or a video uploader may provide a VODS on a separate channel hosted by the VSPS.

6.9 Types of services within scope

The wide variety of content, services, and business models available to media service providers make it unfeasible to provide a simple checklist for determining the services that will come within the statutory definition. As a general guide, the following types of services may come within the scope of the definition:

- Subscription-based services containing proprietary and/or third-party content.
- Transactional-based services offering programmes to stream and/or download on an individual/bundle basis.
- Services that “aggregate” a range of audiovisual on-demand services and make these accessible through a single user interface, website, app, or platform.⁸
- ‘Media players’ that have been typically associated with broadcasters that offer a catch-up service of content already broadcast, and/or content only available on the player, and/or box sets etc.
- Video uploader content which constitutes video, commercial, or other audiovisual on-demand media services distributing audiovisual media content through a third-party video sharing platform service.
- Dissociable sections of news websites/apps that provide a catalogue of separate audiovisual content.

Please note that this list is not exhaustive.

7. Duties, Codes, and Rules applying to Media Service Providers

Media service providers are subject to the following duties as set out in Part 3B of the 2009 Act.

7.1 Duties

- **Harm, offence, incitement, and authority of State⁹**
Providers of audiovisual on-demand media services shall not make available, in a catalogue of a service, anything which may reasonably be regarded as: causing harm or undue offence,

⁸ The Commission considers that a content aggregator service may include a number of different audiovisual on-demand media services or dissociable sections/channels which each offer their own distinct content, whether on a subscription or transactional basis. A content aggregator may also be an audiovisual on-demand service in its own right if the provider has editorial responsibility over its content. Whether particular content or a dissociable section/channel available through an aggregator service constitutes an audiovisual on-demand media service in its own right must be examined on a case-by case basis with the nature and content of the potential service being assessed to determine whether it is sufficiently distinguishable from the aggregator service to be regarded as a service in its own right.

⁹ Section 46J of the 2009 Act. Guidance in relation to “harm” and “undue offence” in the broadcasting context has been issued in the Commission’s Code of Programme Standards applicable to broadcasters. See <https://www.cnam.ie/wp-content/uploads/2024/11/Code-of-Programme-Standards-November-2024.pdf>

likely to promote or incite to crime, conduct falling within Article 5 of Directive (EU) 2017/541¹⁰ on combating terrorism, likely to incite to violence or hatred directed against a group of persons or a member of a group, or tending to undermine the authority of the State.

- **Privacy¹¹**

Providers of audiovisual on-demand media services shall ensure that in programmes included in a catalogue, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

- **News and current affairs¹²**

“Relevant media service providers” shall ensure, in programmes made available in a catalogue of the relevant service:

- (a) that news is reported and presented in an objective and impartial manner and without any expression of the provider’s own views, and
- (b) that the treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and is presented in an objective and impartial manner and without any expression of the provider’s own views.

If it is not practicable to comply with the obligations in (b) above in a single programme, two or more related programmes may be considered as a whole if the programmes are made available in the same way on the relevant service within a reasonable period of each other.

The above obligations in relation to news and current affairs do not prevent a provider from making available party political programmes in a relevant catalogue provided that unfair preference is not given to any political party in the positioning of such programmes in the catalogue of the relevant service.

- **Advertising¹³**

A programme made available in a catalogue of an audiovisual on-demand media service may include advertisements.

However, a “relevant media service provider” is not permitted to make available in a catalogue of the relevant service the following types of advertisements:

- an advertisement directed towards a political end,
- an advertisement with any relation to an industrial dispute, or
- an advertisement addressing the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

The prohibition on advertisements directed towards a political end or having any relation to an industrial dispute does not:

- prevent a relevant media service provider from making available party political programmes in a catalogue of a relevant service provided that an unfair preference is not given to any political party by the relevant media service provider in the positioning of such programmes in the catalogue of the relevant service, or

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L0541>

¹¹ Section 46K of the 2009 Act.

¹² Section 46L of the 2009 Act.

¹³ Section 46M of the 2009 Act.

- apply to advertisements made available in a catalogue of a relevant media service provider at the request of An Coimisiún Toghcháin in relation to referenda (pursuant to section 31 of the Electoral Reform Act 2022).

7.2 Media Service Codes and Rules

The Commission is authorised to make codes¹⁴ and rules¹⁵ (*“media service codes” and “media service rules”*) governing the standards and practices of providers of audiovisual on-demand media services. The Commission published Media Service Code and Rules on 4 November 2024.

7.2.1 Media Service Code

The Code provides for standards and practices to ensure that:

- audiences are protected from anything harmful or unduly offensive and, in particular, that programme material relating to gratuitous violence or sexual conduct is presented with due sensitivity to the convictions and feelings of the audience and in such a way that children will not normally hear or see anything which may impair their physical, mental or moral development; and
- commercial communications protect the interests of the audience and, where they relate to matters likely to be of direct or indirect interest to children, protect the interests of children.

The Commission is required to have regard to the following matters in making or amending a media service code:

- a. the degree of harm or offence likely to be caused by the inclusion of a particular matter in programme material;
- b. the likely size and composition of the potential audience for programme material;
- c. the likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential members of the audience;
- d. the likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions;
- e. the desirability of securing that the provider of an audiovisual on-demand media service informs the Commission of any change affecting the nature of the service and, in particular, of any change relevant to the application of media service codes; and
- f. the desirability of maintaining the independence of editorial control over programmes.

¹⁴ In accordance with section 46N of the 2009 Act.

¹⁵ In accordance with section 46O of the 2009 Act.

7.2.2 Media Service Rules

The Commission's Media Service Code and Rules, set out *inter alia* the requirements for media service providers, with respect to programmes made available in the catalogue of their services, to promote the understanding and enjoyment of those programmes by:

- persons who are deaf or hard of hearing,
- persons who are blind or vision impaired, and
- persons who are hard of hearing and are vision impaired.

Media service providers should refer to the 2009 Act and the published Media Service Code and Rules for more details regarding the application of Part 3B.¹⁶ A failure to comply with the duties imposed by, or with the codes and rules made under, Part 3B will constitute a “*contravention*” for the purposes of Part 8B of the 2009 Act.

7.3 Retention of copies of programme material

Media service providers are required to retain a copy of all programme material made available in a catalogue for such duration as may be determined by the Commission and published on its website pursuant to section 46P(3) of the 2009 Act. A failure to comply will constitute a “*contravention*” under Part 8B of the 2009 Act.

The Commission may require a media service provider to provide any programme material to which the obligation to retain under section 46P(2) applies within a specified period. Failure to comply without reasonable excuse is a category 2 offence.

8. Code of Practice – Complaints Handling

Media service providers are obliged to give due and adequate consideration to complaints which are made in writing and which concern alleged failures to comply with particular statutory duties or with media service codes and/or rules, provided the complaint is made not more than 30 days after the date upon which the programme material ceased to be available on the relevant audiovisual on-demand media service.

A provider may decide not to consider such a complaint where, in the opinion of the provider, the complaint is frivolous, vexatious or was not made in good faith.

Providers are required to prepare and implement a code of practice for the handling of such complaints and to make provision for the following matters –

- (a) an initial point of contact for complainants, including an email address,
- (b) the time period within which the provider is required to respond to complaints, and
- (c) the procedures to be followed by the provider in the resolution of complaints.

¹⁶ Media service providers of on-demand services shall take proportionate measures to ensure that programmes made available on their on-demand services are made continuously and progressively more accessible to persons with disabilities through the provision of access services as defined in the Code and Rules. There is also an obligation to develop an accessibility action plan.

Such codes of practice are required to be published on the media service provider's website and made generally available.

Media service providers are obliged to provide information regarding an initial point of contact for the making of complaints and the time period for responding to complaints to the Commission for publication on the Commission's website.

A media service provider is obliged to keep a record of complaints made under its Code of Practice, or referred to the provider by the Commission, and any responses provided to such complaints, for a period of two (2) years from the date of receipt of the complaint. Such complaint records must be made available to the Commission on request.

The Commission may prepare and publish guidance for providers in relation to the preparation and implementation of a code of practice for complaint handling.

9. Levy Model

Pursuant to section 21 of the 2009 Act, the Commission has the power to impose a levy on providers of audiovisual media services.

Levy income will be required to fund the discharge of the Commission's functions in relation to audiovisual media services, and the Commission is required to ensure that the levy income is sufficient to meet its expenses and working capital requirements throughout each levy period in so far as these expenses and working capital requirements are not met through other means.

Please see current levy order [here](#).

Please note that the levy model is subject to change in respect of future levy periods.

10. European Works

Pursuant to Article 13(1) of the AVMS Directive and Part 10A of the 2009 Act, media service providers are to ensure that not less than 30% of the programmes within a catalogue forming part of its audiovisual media service are European works and to ensure the prominence of European works in any catalogue of that service.¹⁷ The European Works requirements and exemptions are to be interpreted in accordance with the European Commission's Guidelines¹⁸ and include Share of European Works, Prominence of European Works, European Works Scheme, Exemptions, and the European Works Levy.

"European Works" are defined in section 159A of the 2009 Act.

The Commission may also make an additional levy order on media service providers to support the production of European works. These powers in section 159E of the 2009 Act make specific provision for the calculations of levies by media service providers which target audiences in States other than the Member State in which the provider is established. Any such levy must be calculated by reference to the revenue earned in the *"targeted"* State(s), must take into account any financial contribution imposed on the provider by that other State(s) and any levy imposed must *"be proportionate and non-discriminatory."*

The Commission intends to publish procedural rules that will be followed to monitor and determine compliance with the 30% European works requirements and the prominence obligations (which are

¹⁷ In accordance with sections 159B and 159C of the 2009 Act.

¹⁸ See EUR-Lex - 52020XC0707(03) - EN - EUR-Lex (europa.eu).

referred to further below). The Commission will consult with potentially affected parties in advance of the establishment of any potential European Works Levy.

10.1 Exemptions

Section 159B of the 2009 Act sets out the following circumstances where the requirement to have a 30% share of European works does not apply:

- (a) Where a media service provider has a low turnover or low audience, or
- (b) Where a service is exempted by rules made under section 159I.

Section 159I provides that the Commission may make rules providing that the obligations under section 159B(1) [the 30% European works requirement] or section 159C(1) [the prominence of European works requirement] shall not apply to a media service provider in respect of an audiovisual media service where it would be impracticable or unjustified by reason of the nature of the service, or the general theme of audiovisual programmes provided by the service, to impose those obligations.

Under section 159B(3), the Commission is required to make rules for determining –

- (a) whether an audiovisual on-demand media service has a catalogue in which the share of European works is less than 30 per cent, and
- (b) whether a media service provider has a low turnover or low audience.

In making these rules, the Commission is required to have regard to any guidelines issued by the European Commission in accordance with Article 13(7) of the AVMS Directive,¹⁹ and any relevant reports produced by the European Regulators Group for Audiovisual Media Services (“ERGA”) established by Article 30b of the AVMS Directive.²⁰

In making rules for determining whether a media service provider has a low turnover or low audience, the Commission is also required to have regard to any characteristics of the market in which the provider is providing an audiovisual on-demand media service, including:

- (a) the turnover of the provider from the service in the market, as a proportion of the total turnover of providers of audiovisual on-demand media services from those services in the market, and
- (b) the number of audience members of the service in the market, as a proportion of the total number of audience members for audiovisual on-demand media services in the market.

10.2 Prominence Obligations

Section 159C(1) of the 2009 Act requires a media service provider to take any steps required by rules made under that section to ensure the prominence of European works in any catalogue of its service, unless it has a low turnover or low audience, or the service is exempted by rules made under section 159I.

¹⁹ See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.223.01.0010.01.ENG&toc=OJ:C:2020:223:TOC.

²⁰ For example, https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Article-13_1.pdf.

The Commission is required under section 159C(3) to make rules setting out the steps which media service providers must take to ensure the prominence of European works. These may relate to: -

- (a) the visibility and presentation of European works within a catalogue;
- (b) the inclusion of information in a catalogue in relation to whether or not a work is a European work and the placement of that information;
- (c) the accessibility of European works within a catalogue, including the configuration of search tools;
- (d) references to European works in advertising for the service;
- (e) the promotion of minimum percentages of European works within a catalogue to the audience of the service and the means to be used for such promotion.

Section 159C(5) also specifies that in making such rules, the Commission is to have regard to –

- (a) the objective of cultural diversity,
- (b) the desirability of providing European works to the widest possible audience,
- (c) technological developments,
- (d) developments in audiovisual on-demand media service markets, and
- (e) any relevant reports produced by ERGA.



Schedule

Section 2A (Meaning of “under the jurisdiction of the State”)

- (1) For the purposes of this Act, the question whether a media service provider is under the jurisdiction of the State (or another Member State) is to be determined in accordance with this section.
- (2) A media service provider is under the jurisdiction of a Member State if under subsection (5) it is established in that state.
- (3) If a media service provider is not, under subsection (5), established in a Member State, then the provider is under the jurisdiction of a Member State if –
 - (a) it uses a satellite up-link situated in that state, or
 - (b) it uses satellite capacity appertaining to that state.
- (4) If subsections (2) and (3) do not determine the question in relation to a media service provider, then the provider is under the jurisdiction of the Member State in which it is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.
- (5) The following provisions apply to a media service provider for the purposes of subsections (2) and (3):
 - (a) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in the same Member State, the provider is established in that Member State;
 - (b) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in another Member State, then—
 - (i) if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where the provider has its head office, the provider is established in that Member State,
 - (ii) if subparagraph (i) does not apply but a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where relevant editorial decisions are taken, the provider is established in that Member State, and
 - (iii) if neither subparagraph (i) nor subparagraph (ii) applies, the provider is established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;
 - (c) if the place where the provider has its head office and the place where the relevant editorial decisions are taken are different, and only one of them is in a Member State, the provider is established in that Member State, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.
- (6) In this section—

“audiovisual media service activity” means activity relating to the audiovisual media service concerned;

“relevant editorial decisions” means editorial decisions about the audiovisual media service concerned.