



Coimisiún
na Meán

Guidelines for Audiovisual On- Demand Media Service Providers

Updated 15 July 2024



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Preface

Coimisiún na Meán, (“the Commission”) having power pursuant to section 46H 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 made by the Commission.

These Guidelines are intended as an aid to understanding the provisions of the 2009 Act and therefore should not be viewed as a substitute for, or to alter the terms of, any particular statutory provision. The Guidelines also do not constitute legal advice. The Commission may amend or update these Guidelines from time to time as is considered to be appropriate. Media service providers that are subject to registration or are uncertain regarding whether they are subject to registration should consider obtaining their own independent legal advice upon their potential statutory obligations under the 2009 Act. It is the responsibility of media service providers to ensure their compliance with their 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:

“the 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 service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, 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, 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.
“audiovisual media service activity”	means an activity relating to the audiovisual media service concerned.
“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 programmes, and (b) over their organisation in a programme schedule or in a catalogue.
“Jurisdiction”	means that Pursuant to section 2A of the 2009 Act, a media service provider is “ <i>under the jurisdiction of the State</i> ” if it is established in the State.

A media service provider will be established in Ireland for the purposes of the 2009 Act in the following circumstances:

- i) If the provider has its head office in Ireland and the relevant editorial decisions are taken in Ireland; or
- ii) If the provider has its head office in Ireland but where the relevant editorial decisions are taken in another Member State, then the media service provider will be established in Ireland
 - if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in Ireland; or
 - if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in Ireland where relevant editorial decisions are taken; or
 - if the provider first began its activity in accordance with the law of Ireland and has maintained a stable and effective link with the economy of Ireland.
- iii) If the place where the media service provider has its head office and the place where the relevant editorial decisions are taken are different, and only one of these places is in Ireland, the provider will be considered to be established in Ireland provided a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Ireland.
- iv) If a media service provider is not established in Ireland under (i), (ii) or (iii) above, the provider will be under the jurisdiction of Ireland if the provider is established in Ireland within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union (“the TFEU”). As Article 54 of the TFEU provides that companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the EU shall be treated in the same way as nationals of Member States, a company incorporated in accordance with the law of Ireland and having its registered office, central office or principal place of business in Ireland will be established in Ireland for the purposes of the 2009 Act.

A further basis upon which a media service provider may be under the jurisdiction of Ireland applies to providers which use a satellite up-link or satellite capacity. Such a media service provider will be under the jurisdiction of Ireland if:

- The provider uses a satellite up-link situated in Ireland, or

- The provider uses satellite capacity appertaining to Ireland.

“media service provider”

means a person who provides an audiovisual media service.

“relevant editorial decisions”

means editorial decisions about the audiovisual media service concerned.

“relevant media service provider”

means a provider of an audiovisual on-demand media service who is –

- (a) a corporation, or a subsidiary of a corporation,
- (b) a broadcasting contractor, or
- (c) a person who meets one or more of the conditions in subsection (2) and whose annual sales derived from activities referred to in that subsection are greater than €2 million.

Subsection (2) stipulates that the conditions referred to in paragraph (c) are:

- (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” or “vlogger”

Video on-demand commercial media services distributing audiovisual media content through a third-party video platform service.

“video sharing platform service”

means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, 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,

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

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 organization, by automatic means or algorithms (including displaying, tagging or sequencing) or otherwise.

2. Introduction

One of the obligations conferred on the Commission by the 2009 Act was to establish and maintain a Register of Media Service Providers (“Register”). A lengthy transitional period was provided by the 2009 Act to allow media service providers to become informed of the statutory requirements for notification and thereafter to enable those media service providers who are subject to registration to make the required notifications to the Commission in accordance with section 46B of the 2009 Act.

Since the expiration of the transitional period, the Commission has been subject to a statutory duty to publish the Register of Media Service Providers that are subject to registration. The Commission published the first iteration of the Register on 30 November 2023, and the current Register, published on 2 January 2024 is available on the Commission’s website.² The Commission has a continuing statutory obligation to ensure that the Register is up-to-date and accurate which necessarily includes an obligation to ensure that all media service providers that are subject to registration have been included.

3. Duties of Media Service Providers to Notify the Commission

Pursuant to section 46A of the 2009 Act, the Commission is required to establish and maintain a Register of Media Service Providers.

A media service provider is subject registration if:

- a. it is “*under the jurisdiction of the State*”, and
- b. it provides “*an audiovisual on-demand media service*”.

These terms are explained in Section 1 “Interpretation” of these Guidelines. Media service providers have corresponding obligations to provide notifications to the Commission of specified information for the purposes of the registration process.

4. Registration

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

Pursuant to Rule 2 of the Registration Rules, the Register of Media Service Providers established and maintained by the Commission 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 as notified to the Commission.
- (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.

² <https://www.cnam.ie/broadcasting>

³ <https://www.cnam.ie/broadcasting>

- (e) A statement of the basis upon which the media service provider considers that it is under the jurisdiction of the State.
- (f) Such further or other matters as may be further prescribed by the Commission.

5. Notification

The Commission has also prescribed in Rule 3 of the Registration Rules that each media service provider is required to provide a notification, in writing, to the Commission which contains the same information as is listed in Rule 2(a) to (f) above and such information will be included in the Register. This mandatory information which must be included in a notification 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. A Microsoft Word version of the Notification Form is available on the Commission's website.⁴

The Registration Rules also contain relevant information regarding the duties that service providers are required to comply with and regarding the Commission's statutory powers in relation to the registration process.

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

6.1 Principal Purpose

As outlined above in these Guidelines, section 2 of the 2009 Act defines an “*audiovisual media service*” to mean:

“...a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, 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,*

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 does envisage 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. As the intention of the Directive is to regulate audiovisual content, the European Court has expressed the view that the “*principal purpose*” requirement does not mean that an operator which provides multiple services, including some audiovisual content, will not be subject to the Directive unless the audiovisual service is the primary or dominant service of the operator.⁵ If this was the case, multimedia operators that

⁴ <https://www.cnam.ie/broadcasting>

⁵ [New Media Online GmbH](#); C-347/14, 2015; 709

provide an on-demand audiovisual media service could avoid the requirements of the Directive by providing other services which do not involve audiovisual programmes.

The Commission will therefore generally adopt an individualised approach based upon the particular characteristics of the operator and will consider all of the services offered by the operator 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 operator.

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;
- 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.

The “*principal purpose*” criterion further entails that the purpose of the audiovisual media content is to inform, entertain, or educate the general public. For this reason, purely commercial videos, such as commercials or other short advertising video content that are separate from and do not form part of any other media content, will not generally come within the definition of an “*audiovisual media service*”.

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 variable. 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.

Whilst newspaper websites⁶ are generally outside the scope of the Directive, increasingly such websites 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.⁷ 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 audiovisual media service.

6.3 Editorial responsibility

Editorial responsibility is defined to mean:

*“effective control – (a) over the **selection** of the programmes, and
(b) over their **organisation** in a programme schedule or in a catalogue”.*

The two elements of the definition are therefore selection and organisation.

“Selection” requires that the provider has the power or authority to decide the nature or type of audiovisual content which will be available to be broadcast on its service. On the other hand, *“organisation”* requires the provider to have the power or authority to determine how such content will be placed or will appear within its service. Neither of these aspects of the definition require the provider to exercise actual control over any particular programme or content which is broadcast in any individual case nor to have expressly authorised all programming which is broadcast. Editorial responsibility for the purposes of the 2009 Act is most appropriately determined at the point of the selection and organisation of the content. It therefore does not require control over the content of individual programmes or over the distribution of the service. Effective control also does not mean that the provider must personally exercise its control by making all programming or content decisions. 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. It is also of relevance that the definition of *“editorial responsibility”* in Article 19(c) of the AVMS Directive includes the clarification that *“Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided.”*

6.4 General Public

Neither the relevant provisions of the 2009 Act nor the articles of the AVMS Directive require that an on-demand audiovisual media service is 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 does not require that there are 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 affect the statutory definition of an audiovisual on-demand media service. However, intended private communications between friends on video-based social media sites are unlikely to come within the scope of the legislation. Similarly,

⁶ Where the provider of the newspaper website is not a ‘relevant media service provider’ as this is defined in the 2009 Act.

⁷ Provided 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.

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.

Content must be directly or indirectly available to the general public in one or more Member States by consumers using standard equipment.⁸ This applies equally to audiovisual media services, whether or not distributed on the Internet, to which access is gained through distribution platforms, such as digital cable, mobile data networks or IPTV and services that 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 mass media nature of a media service also means that it must be capable of 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 not self-evident, even if they use a video 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, the audiovisual content can be accessed via a repertoire of programmes from which the user can choose when and what to watch. The requirement that an 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. The term catalogue is interpreted broadly, meaning that a catalogue can exist where a video uploader posts content on a video platform service and where the video uploader enjoys less influence over the exact categorisation and indexation.

The existence of a catalogue will in any event be accepted if 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 on-demand commercial media service must be an economic service, meaning that the provision of the service will normally be for a monetary payment or other material advantage. This follows from Article 1(a) of the AVMS Directive, which defines the term “*audiovisual media service*” as a service within the meaning of Articles 56 and 57 of the TFEU. Article 57 provides that services are considered to be “*services*” where they are provided for remuneration. Remuneration may include 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

⁸ 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.

as providers that make their media content available for payment. It is also important to note that it is not required that the provider of a service has a profit motive.

6.7 Catch-up Service

Catch-up television services have long been considered to be an important and substantial segment of the video-on-demand services available in Europe.⁹ The definition used by the MAVISE database 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 enables 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 meets the definition of an on-demand audiovisual media service. The time period that content is made available does not impact on the definition of an audiovisual on-demand media service.

6.8 Convergence of video 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 its organisation within that range (VODS), while for the other, the provider controls the organisation of that content but not its selection (VSPS).
- A video-sharing platform may have a dissociable section that is a VODS.
- 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 video-sharing platform, 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 unrealistic to provide a simple checklist for determining the services that will come within the statutory definition. Each media service provider must make their own assessment of the application of the statutory criteria in consultation with the Rules and Guidelines published by the Commission. It is the responsibility of service providers, in the first instance, to assess whether their service is subject to registration and to comply with the regulatory framework for audiovisual on-demand media services. As a general guide, the following types of services can be expected to generally come within the scope of the definition:

- Subscription-based audiovisual on-demand media services containing proprietary and/or third party content.

⁹ The report of the European Audiovisual Observatory entitled “Origin and Availability of On-Demand Services in the European Union” published in November 2015 stated that catch-up television services accounted for 25% of all on-demand audiovisual media services in the EU.

- Transactional-based services offering programmes to stream and/or download on an individual/bundle basis.
- Aggregated services that “aggregate” a range of audiovisual on-demand services and make these accessible through a single user interface, website, app, or platform.¹⁰
- ‘Media players’ that are usually 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.
- Vlogger or video uploader content which constitutes video commercial or other audiovisual on-demand media services distributing audiovisual media content through a third-party video platform service.
- Dissociable sections of news websites/apps that provide a catalogue of separate audiovisual content.

Please note that this list is not exhaustive and merely illustrates the types of services that may fall within the statutory definition and would therefore be subject to registration provided the service provider is under the jurisdiction of the State.

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

Registered media service providers will be subject to the following duties, codes and rules as listed in Part 3B of the 2009 Act.

7.1 Duties

- **Harm, offence, incitement, and authority of State¹¹**
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; likely to promote or incite to crime, conduct falling within Article 5 of Directive (EU) 2017/541¹² 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.
- **Privacy¹³**
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 affairs¹⁴**
Providers of audiovisual on-demand media services shall ensure, in programmes made available in a catalogue of the relevant service:

¹⁰ 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 it 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.

¹¹ Section 46J

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L0541>

¹³ Section 46K

¹⁴ Section 46L

- (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.

- **Advertising¹⁵**

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 a 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.

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

The Commission is authorised to make codes ("*Media Service Codes*") governing the standards and practices of broadcasters and providers of audiovisual on-demand media services.¹⁶ Codes that will apply exclusively to media service providers are currently being finalised and it is anticipated these codes will be commenced during the latter half of 2024. The areas which these codes are described above.¹⁷ The codes may provide 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

¹⁵ Section 46M of the 2009 Act.

¹⁶ In accordance with section 46N of the 2009 Act.

¹⁷ In accordance with sections 46J, 46K and 46L of the 2009 Act.

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 will protect the interests of the audience and protect the interests of children.

Media service codes may include standards and practices to promote balanced gender representation of participants in news and current affairs programmes made available by media service providers.

The Commission's Media Service Codes will also implement the requirements of the AVMS Directive.

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.

7.3 Media Service Rules

The Commission has powers to make media service rules are contained in Article 46O of the 2009 Act. The Commission has published media service rules to require¹⁸ programmes, in the catalogue of a media service provider, 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 for more details regarding the provisions of Part 3B. A failure to comply with the duties imposed or with the codes and rules made under Part 3B will constitute a "*contravention*" for the purposes of Part 8B of the 2009 Act and thereby may provide grounds for the imposition of an administrative financial sanction upon the relevant audiovisual media service provider.

¹⁸ Media Service Rules are currently being finalised and it is anticipated these rules will be commenced during the latter half of 2024.

7.4 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.

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.

A failure to comply with the retention of programme material obligations will constitute a “*contravention*” which thereby may provide grounds for an administrative financial sanction under Part 8B of the 2009 Act. A person who fails to comply with a requirement of the Commission to provide a copy of any programme material without reasonable excuse may be guilty of 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 the above-mentioned statutory duties, with media service codes and/or with media services 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.

Such codes of practice are required to be published on the media service provider’s website and to be 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.

Media service providers are obliged to keep a record of complaints made under its Code of Practice 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 are required to 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 order 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.

By way of general guidance, the Commission will have regard to the following considerations in determining the amount of the levy to be imposed upon providers of audiovisual media services:

- The levy will apply to the Media Service Providers entered in the current Register established under section 46A of the 2009 Act.
- The levy percentage will be calculated based on the estimated costs of regulation of the segment of providers of audiovisual media services and the qualifying income of that segment of audiovisual media service providers as a whole.
- Qualifying income¹⁹ will be EU-wide on the basis that the Commission's functions derive from the AVMS Directive. In addition, pursuant to the country-of-origin principle, the Commission regulates services received anywhere in the EU.
- Metrics will be based on actual amounts known at the beginning of the levy period and therefore, the levy for 2024 will be based upon audited qualifying income for the calendar year 2022.²⁰
- The levy will be charged on a per-service basis so that each service within a segment attracts the same levy, irrespective of its ownership.
- Any registered services with a qualifying income of less than €500,000 will be exempt from paying a levy - this is for reasons of administrative simplicity and to promote new and innovative services.
- Where a dissociable section of a service is the audiovisual on-demand service, the levy will only apply to the qualifying income of this section.

These considerations are not exhaustive and the Commission reserves its entitlement to take such further and additional matters into account in determining the appropriate levy to be charged as is considered to be reasonable and proportionate.

Please see link to Levy Order [here](#).

Please also note that the levy model may be subject to change for the 2025 period.

¹⁹ As this is defined in the Levy Order.

²⁰ In the calendar year for 2024, media service providers will only be subject to the levy for the period of 1 May to 31 December 2024.

10. European Works

Pursuant to Article 13 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. The European Works requirements and exemptions are to be interpreted in accordance with the European Commission's Guidelines²¹ 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. The relevant provisions that require any such levy to 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 publishes guidelines and procedures for compliance activities and this will include the procedural rules that will be followed to monitor and determine compliance with the 30% EU works requirements and the prominence obligations (which are 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 179B of the 2009 Act sets out the following circumstances where the 30% share 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 rules for determining whether a media service provider has a low turnover or low audience, the Commission is required to have regard to any characteristics of the market in which the provider is providing an audiovisual on-demand media service including:

²¹ [EUR-Lex - 52020XC0707\(03\) - EN - EUR-Lex \(europa.eu\)](#)

- (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

Pursuant to Article 13(1) of the AVMS Directive, Member States are required to ensure the prominence of European works in the catalogues of audiovisual on-demand media service providers under their jurisdiction.

Section 159C(1) of the 2009 Act requires audiovisual on-demand media service providers to take any steps required by rules made under this section to ensure the prominence of European works in any catalogue of its service. 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.

Section 159C(4) of the 2009 Act identifies the steps which media service providers may be required to take by the envisaged rules that 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 the European Regulators Group for Audiovisual Media Services established by Article 30b of the Directive.