

Commercial media services on demand

Introduction

This brochure provides information about the registration of a commercial media service on demand with the Commissariaat voor de Media (Media Authority) and the requirements that must be met by the media service offered and the media service provider offering this service.

Commercial media service provider

The Dutch Media Act of 2008 describes a commercial media service provider as a 'natural person or legal person that provides a commercial media service and that falls under the authority of the Netherlands for the application of this act'. 'Commercial' does not necessarily mean that the media service provider must be oriented to making profit or that the media service must include advertising messages. The Media Act only recognizes *commercial* media service providers as opposed to *public* media service providers (PSB)¹.

Technology neutral

On 19 December 2009 the Dutch Media Act was harmonized with the European Audiovisual Media Services Directive. In following this Directive, the Dutch legislature has decided to take a 'platform neutral and technology-independent approach' to the concept of a media service. This means that it does not depend on the distribution platform or the distribution technology (cable, airwaves, satellite, internet or a combination of these) to be considered a media service. By doing this, the legislature aims to create a level playing field between providers of comparable services via different platforms. The consumer must also be able to rely on a certain level of protection, regardless of the type of platform or the distribution technology.

Broadcast service (linear) or media service on demand (non linear)

The Media Act makes a distinction between the provision of a commercial broadcast service (linear) and a commercial media service on demand (non linear).

A **commercial broadcast service** provides programs that are distributed on the basis of a chronological programming schedule. This is an overview of the programming offered by the service provider at least stating the starting times and the titles of a number of programs. The media service provider determines this schedule. The programs are distributed for simultaneous reception by the general public or a part of the public. The provision of a commercial broadcast service is only permitted with approval of the Media Authority.

A **commercial media service on demand** provides a video offer that people can view by individual demand and at any desired moment. Users can choose videos from a catalogue. The offer concerns products with moving image content, with or without sound. A media service provider that provides a commercial media service on demand must register this service with the Media Authority.

This brochure only provides information about the provision of a commercial media service on demand (non linear). For information about the provision of a commercial broadcast service (linear), please consult the brochure of the same name on the website of the Dutch Media Authority.

¹ Public media service providers have a special license and are financed by the government

1. Register

1.1 Who?

In principle, any natural or legal person can register a commercial on-demand media service. A registration will **not** be processed if:

- the natural or legal person does not fall under the jurisdiction of the Netherlands;
- the natural person is a minor;
- the legal person is in the process of being established;
- the applicant is a national, regional or local public media service provider.

1.2 How?

A commercial media service provider must register an on-demand media service **within two weeks of starting** with the Dutch Media Authority by means of the [registration form](#) (in Dutch). In this, the following information must be provided:

If the registration is being made by a **natural person**:

- name, address and contact information of the applicant;
- date of birth of the applicant;
- internet address or platform upon which the media service is distributed;
- a short description of the media service and its target audience

If the registration is being made on behalf of a **legal person**:

- name, address and contact information of the applicant;
- legal form of the applicant;
- registration number in the register of companies of the Chamber of Commerce;
- internet address or platform upon which the media service is distributed;
- a short description of the media service and its target audience

1.3 Assessment

The media service provider will receive a confirmation of receipt of the registration of the media service.

Once the Dutch Media Authority has received all the necessary information, the Media Authority assesses whether the registered service actually is an on-demand media service on the basis of the 2008 Media Act. The Media Authority will inform the applicant of the result of this assessment.

A media service is considered to be an on demand media service if all the criteria below are met:

- it is distributed via a public electronic communication network;
- it is based on a catalogue²;
- it consists of videos and has the primary purpose of offering videos;
- it falls under the editorial responsibility of the provider (with regard to selection and organization of the video content);
- it has a mass media character;
- it can be seen as an economic service.

The above criteria are being further developed by the Media Authority in the 'Policy rules for classification of commercial media services' (under development).

² A catalogue is a database, which may be provided with a search engine, in which a number of videos are offered. The videos are made accessible in the database on the basis of classification that ensures good findability.

1.4 Termination

The media service provider shall report the termination of an on-demand media service to the Media Authority within two weeks of termination.

2. Requirements for the video offer provided

The Media Act 2008 sets less strict requirements for on demand media services than for linear media services. Among others³, the following requirements apply for the video offer provided by commercial media service providers:

Advertising

Requirements with regard to advertising messages initially only apply to the video content, not for the design, such as banner ads on a website.

- Advertising messages must be recognizable as such by their form and content.
- Advertising messages must be clearly distinguishable from the remaining content. They are to be preceded by and ended with visible and/or audible bookends with the statement of «advertising», «advertisement» or words to that effect.
- Clandestine (surreptitious) advertising is prohibited in all cases.
- Advertising for medical treatments is not permitted.

Sponsorship and product placement

- For sponsored media content, all sponsors must in all cases be listed at the beginning or at the end, in order to inform the audience. The sponsorship reference (credit) is not solicitous.
- Sponsorship credits are also permitted in the interruptions, provided that these sponsors are also mentioned at the beginning or at the end of the video.
- The editorial statute protects the editorial independence of the employees who are involved in the delivery and composition of the media content.
- Video content that consists of news, current events or political information may not be sponsored.
- Product placement (the inclusion of a product in a program for payment) is permitted for films, series, sports programs and light entertainment programs, except if this media content is intended for children under the age of twelve. The public must be informed in the same way as for sponsorship. For product placement, however, there is a stricter information requirement: the public must not only be informed at the beginning and at the end of the video, but also at the beginning or end of the advertising messages that interrupt the video.

European quota

- The production of and access to European productions is promoted.

³ The complete requirements can be found in [the Dutch Media Act 2008](#) (in Dutch) and [the policy rules drawn up by the Media Authority](#) (in Dutch).

3. Requirements the media service provider must fulfil

- A commercial media service provider shall create an editorial statute in agreement with the employees who are charged with the provision and composition of the media content in which the journalistic rights and obligations of these employees are established.
- The media service provider only broadcasts advertising messages if they are affiliated to the Dutch Advertising Code and subject to supervision of the Dutch Advertising Code Authority.
- On-demand media services do not contain images that are seriously harmful for persons under the age of sixteen. These images may only be offered if they are not accessible for young viewers. This can be done using access checks or coded subscription services.
- No films are included in the media content outside the periods agreed upon with the copyright holders.
- The media service provider keeps its media content for two weeks from the time the content is no longer available on demand and makes it available upon request of the Media Authority.
- The media service provider clearly states its contact information on its website. In this, it declares the Dutch Media Authority as the responsible regulatory service provider. The Media Authority will indicate the way in which a media service provider is to do this (under development).

4. Regulatory fees

Media service providers that offer commercial media services on demand shall owe the Dutch Media Authority a fixed amount for each individual media service on demand. This amount will be set by the Minister of Education, Culture and Science. Media service providers that have registered will receive an invoice for this from the Media Authority at the end of each calendar year.

5. European Directive

The starting point of the European harmonisation of rules by the [European Audiovisual Media Services Directive](#) is that a provider of a media service only has to obey to the rules of the member state that has jurisdiction over this media service provider.

Every media service provider is therefore subject to the national legislation and the regulation of one member state. Subsequently the receipt and distribution of the media service on demand may in principle not be hindered in the other member states.

Which country is authorized to set rules and to exercise regulation is initially determined on the basis of the place where the provider is established. To determine the place of establishment, the country where the headquarters of the provider are located is decisive, where the programming decisions are made and where a significant part of the employees work. If there is ambiguity about the jurisdiction of the Netherlands, the provider must supply additional information to the Media Authority.

Useful addresses

Dutch Advertising Code Authority
PO Box 12352
NL-1100 AJ Amsterdam
tel. +31 (0)20 696 00 19
www.reclamecode.nl

Dutch Media Authority
PO Box 1426
NL-1200 BK Hilversum
Hoge Naarderweg 78
NL-1217 AH Hilversum
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Disclaimer

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