

Act 132/2010 on on-demand Audiovisual Media Services

Date of adoption: 13 April 2010

PART ONE: ON-DEMAND AUDIOVIDUAL MEDIA SERVICES

Section 1 Subject of regulation

This Act transposes the relevant regulations of the European Union and regulates the conditions of the provision of on-demand audiovisual media services.

Section 2 Definitions

(1) In this Act:

a) On-demand audiovisual media service means an information society service²⁾, which is under the editorial responsibility of an on-demand audiovisual media service provider and the principal objective of which is the provision of programmes to the public in order to inform, entertain or educate, which allows for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes established by the on-demand audiovisual media service provider (hereinafter referred to as the “catalogue of programmes”);

b) Programme means a set of moving images with or without sound constituting an individual item in the catalogue of programmes, and the form and content of which are comparable to the form and content of television broadcasting, including, without limitation, feature-length films, recordings of sports events, situation comedies, documentaries, children’s programmes and original television drama;

c) Editorial responsibility means the exercise of effective control over the selection of programmes and over their organisation in the catalogue of programmes;

d) On-demand audiovisual media service provider means a natural person engaged in business or a legal person who determines the manner in which an on-demand

audiovisual media service is organised and has editorial responsibility for that service;

e) Audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or public image of a person pursuing an economic activity, and which accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes; audiovisual commercial communications may take the form, in particular, of advertising, sponsorship or product placement;

f) Surreptitious audiovisual commercial communication means the oral or visual presentation of goods, services, the name, trade mark or activity of a producer of goods or provider of services, included by the on-demand audiovisual media service provider in a programme, if such a presentation intentionally follows an advertising objective and if it may mislead the public as to the nature of the presentation; such a presentation is considered as intentional when it is provided in return for payment or similar consideration;

g) Sponsorship means any contribution made by a natural or legal person not engaged in the provision of an on-demand audiovisual media service, the operation of television broadcasting, or the production of audiovisual works, to the direct or indirect financing of an on-demand audiovisual media service or programmes with a view to promoting the sponsor's personal name or business name, trade mark, products, services, activities or public image;

h) Product placement means any form of audiovisual commercial communication consisting of the inclusion of a product, a service or the trade mark thereof, or reference to a product or service, so that it is featured within a programme in return for payment or for similar consideration.

(2) The following shall not be regarded as an on-demand audiovisual media service:

a) A service which is primarily non-economic or which is not in competition with television broadcasting;

- b) A service which is not intended for public reception;
- c) A service whose principal purpose is not the provision of programmes or;
- d) A service which cannot be received directly or indirectly by the public in any Member State of the European Union by means of a device technically capable of the individually selectable reproduction of an on-demand audiovisual media service, available in the retail network.

Section 3 Scope of the Act

(1) This Act applies to on-demand audiovisual media service providers established in the Czech Republic pursuant to paragraph (2) or subject to paragraph (3) of this Section.

(2) It shall be understood that an on-demand audiovisual media service provider is established in the Czech Republic, if:

a) Its registered office or place of business is in the Czech Republic and it makes decisions in the Czech Republic on the selection of programmes and their organisation in the catalogue of programmes (hereinafter referred to as “editorial decisions”),

b) Its registered office or place of business is in the Czech Republic but it makes editorial decisions in another Member State of the European Union, provided that:

1. A substantial part of its workforce involved in providing an on-demand audiovisual media service operates in the Czech Republic;
2. A substantial part of its workforce involved in providing an on-demand audiovisual media service operates both in the Czech Republic and in that other Member State of the European Union or;

3. A substantial part of its workforce involved in providing an on-demand audiovisual media service operates in neither the Czech Republic nor that other Member State of the European Union, on condition that it first began the provision of the on-demand audiovisual media service in the Czech Republic in accordance with Czech law and that it maintains a stable and effective link with economic life in the Czech Republic or;

c) Its registered office or place of business is in the Czech Republic but it makes decisions on the on-demand audiovisual media service in a State which is not a Member State of the European Union, or vice versa, on condition that a significant part of the workforce involved in providing the on-demand audiovisual media service operates in the Czech Republic.

(3) Where an on-demand audiovisual media service provider can be regarded neither as established in the Czech Republic pursuant to paragraph (2) above, nor as established in another Member State of the European Union, the present Act shall apply to it, provided that it uses in the provision of an on-demand audiovisual media service:

a) Satellite up-link equipment situated in the Czech Republic or;

b) Satellite capacity pertaining to the Czech Republic, if it does not use satellite up-link equipment situated in the Czech Republic or in another Member State of the European Union.

(4) As to on-demand audiovisual media service providers who can be regarded neither as established in the Czech Republic pursuant to paragraph (2) nor as established in another Member State of the European Union and who do not meet any of the conditions referred to in paragraph (3) in the Czech Republic or another Member State of the European Union, the present Act shall apply to such providers if they can be regarded as established in the Czech Republic under the Treaty Establishing the European Community.

Section 4 Competences of the Council for Radio and Television Broadcasting

(1) The Council for Radio and Television Broadcasting (hereinafter referred to as the “Council”) is the administrative authority responsible for the supervision of compliance with the present Act.

(2) The Council shall:

- a) Keep a Register of On-demand Audiovisual Media Service Providers;
- b) Impose penalties under the present Act;
- c) Monitor the content of on-demand audiovisual media services;
- d) Carry out supervision in cases of cross-border cooperation and proceed in this respect in accordance with directly applicable legislation of the European Union⁵⁾ within the scope of subject-matter jurisdiction of other legislation transposing the Directives referred to in paragraph (4) of the Annex to such directly applicable legislation of the European Community;
- e) Cooperate with the institutions of the European Union and with the regulatory bodies of Member States of the European Union with similar subject-matter competences, particularly in the transfer and acquisition of data and information prescribed by law, decisions issued under the law or by acts of the European Union, and shall perform other tasks in the regulation of on-demand audiovisual media services arising from the Czech Republic’s membership of the European Union;
- f) Cooperate in the regulation of on-demand audiovisual media services with the competent authorities of states which are not Member States of the European Union.

Section 5 Register of On-demand Audiovisual Media Service Providers

(1) An on-demand audiovisual media service provider shall deliver to the Council, within 30 days of the inception of its trade authorization, a written notification, which shall contain:

- a) The name of the on-demand audiovisual media service;
- b) Information which the on-demand audiovisual media service provider shall make accessible to recipients of the service in accordance with Section 6(1)(a) and (b);

- c) Information about its incorporation – entry in the Companies Register or other similar register, including the file number, if assigned;
- d) The identification of the electronic communications network through which the on-demand audiovisual media service is to be provided, and information about access to the on-demand audiovisual media service, including, but not limited to, an Internet address and;
- e) The date on which the provision of the on-demand audiovisual media service is to commence.

(2) If the notification of the information as per paragraph (1) above is incomplete, the Council shall forthwith invite the person who made the notification to supplement the notification within 30 days of the date of service of such invitation; failure by such a person to do so shall mean that the registration obligation has not been fulfilled.

(3) The Council shall enter the information laid down in paragraph (1) above in the Register of On-demand Audiovisual Media Service Providers within 30 days of service of the notification and shall simultaneously send confirmation of such registration to the person who made the notification.

(4) An on-demand audiovisual media service provider shall notify the Council in writing of any change in the registered information or of the interruption or termination of its on-demand audiovisual media service within 30 days from the date of such change in the registered information or of the interruption or termination of the service. The Council shall enter this fact in the Register of On-demand Audiovisual Media Service Providers within 30 days of receipt of notification under the first sentence or of the date on which this fact is learned by other means.

(5) Where the provision of an on-demand audiovisual media service is not commenced within one year from the date of entry in the Register of On-demand Audiovisual Media Service Providers, or if such provision is interrupted for a period longer than one year, the provision of the on-demand audiovisual media service shall be deemed to have been terminated on the last day of that period. The Council shall enter this fact in the Register of On-demand Audiovisual Media Service Providers and shall notify the on-demand audiovisual media service provider to that effect.

(6) Any person shall be entitled to inspect, and to acquire extracts from or make copies of, the Register of On-demand Audiovisual Media Service Providers.

(7) The Council shall publish the information referred to in paragraph (1) (a) and (b) in a manner enabling remote access.

Section 6 Obligations of On-demand Audiovisual Media Service Providers

(1) An on-demand audiovisual media service provider shall ensure easy, direct and permanent access for recipients of the service at least to:

a) Basic information on the on-demand audiovisual media service provider, i.e. its name and registered number, if assigned, the address of the registered office if a legal person, or residence if a natural person, and, in the case of foreign persons, also the address of the undertaking or organisational unit in the Czech Republic, if established;

b) The details of the on-demand audiovisual media service provider, including, but not limited to, its postal address for service, telephone number, or address for the delivery of electronic mail, which allow it to be contacted rapidly in a direct and effective manner and;

c) Information that the Council is the authority supervising the provision of on-demand audiovisual media services.

(2) An on-demand audiovisual media service provider shall ensure that the on-demand audiovisual media service does not contain any communication intentionally manipulated in order to affect the subconscious of a natural person without consciously being perceived by that person, and that it does not incite hatred on grounds of sex, race, colour, language, faith and religion, political or other opinion, national or social origin, nationality or ethnicity, property, birth or other status.

(3) An on-demand audiovisual media service provider shall ensure that an on-demand audiovisual media service, the contents of which might seriously impair the physical, mental or moral development of minors, in particular by containing pornography and gross gratuitous violence, is made available only in such a way that ensures that minors will not normally see or hear the content of such an on-demand audiovisual media service.

(4) An on-demand audiovisual media service provider shall, where appropriate, provide a programme with open or closed captioning or with interpreting into Czech sign language for persons with hearing impairments, and with a sound track for persons with visual impairments, if available, or shall otherwise ensure that certain programmes provided via an on-demand audiovisual media service are accessible to persons with hearing impairments and persons with visual impairments.

(5) An on-demand audiovisual media service provider shall ensure that recordings of all programmes and audiovisual commercial communications accompanying programmes or included in programmes and broadcast as part of an on-demand audiovisual media service are stored at an appropriate technical quality at least for 30 days from the completion of the provision of the programme or for 30 days from the completion of the broadcasting of the audiovisual commercial communication, and shall lend them to the Council upon written request; an on-demand audiovisual media service provider shall be entitled to compensation from the Council for necessary costs associated with the lending of recordings of programmes and audiovisual commercial communications.

(6) If proceedings are brought before a public authority in respect of a specific programme or audiovisual commercial communication, the on-demand audiovisual media service provider, at the written request of the competent public authority, shall store the recording of the programme or audiovisual commercial communication in the form in which it was provided and at an appropriate technical quality until a final decision is reached in the case.

(7) An on-demand audiovisual media service provider shall, upon written request, provide the Council with observations and information necessary for the Council to discharge its duties under Section 4(2)(d) to (f) and Section 15.

Section 7 Promotion of European works

(1) An on-demand audiovisual media service provider shall, where practicable, reserve for European works⁸⁾ at least 10% of the total number of programmes offered in its service's catalogue of programmes during a reporting period. The total number of programmes forming the basis for determining the proportion of European works shall not include news programmes, recordings of sports events, or competitive programmes.

(2) The obligation under paragraph (1) above shall be regarded as satisfied if an on-demand audiovisual media service provider spends at least 1% of total revenues generated by the service in a reporting period on:

- a) The production of European works or;
- b) The paid acquisition of rights to use European works through the on-demand audiovisual media service.

(3) An on-demand audiovisual media service provider shall, within 30 days of the end of the reporting period, submit a report to the Council on how it has complied with the obligation under paragraph (1) or (2) above in the reporting period, in which report it indicates the method selected for the promotion of European works and provides specific data on compliance with the obligation under paragraph (1) or (2) above.

(4) For the purposes of paragraphs (1) to (3) above, the "reporting period" means the calendar year.

Section 8 Obligations of On-demand Audiovisual Media Service Providers Related to Audiovisual Commercial Communications

(1) An on-demand audiovisual media service provider shall ensure that audiovisual commercial communications contained in the on-demand audiovisual media service it provides:

- a) Are readily recognisable as such;
- b) Do not prejudice respect for human dignity;
- c) Do not contain or do not promote discrimination on grounds of sex, race, colour, language, faith and religion, political or other opinion, national or social origin, nationality or ethnicity, property, birth or other status;
- d) Do not encourage behaviour prejudicial to health or to safety;
- e) Do not encourage behaviour seriously prejudicial to the protection of the environment.

(2) The following shall be prohibited:

- a) Surreptitious audiovisual commercial communications;
- b) Audiovisual commercial communications for cigarettes or other tobacco products;
- c) Audiovisual commercial communications for medicinal products or medical treatment available only on prescription in the Czech Republic.

(3) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages

(4) Audiovisual commercial communications shall not cause physical or moral detriment to minors by:

- a) Directly exhorting minors to buy or hire a product or service by exploiting their inexperience or credulity;

- b) Directly encouraging minors to persuade their parents or others to purchase the goods or services being offered;
- c) Exploiting the special trust minors place in parents, teachers or other persons or;
- d) Unreasonably showing minors in dangerous situations.

Section 9 Obligations of On-demand Audiovisual Media Service Providers Related to Sponsored On-demand Audiovisual Media Services and Programmes

(1) On-demand audiovisual media services and programmes that are sponsored shall meet the following requirements:

- a) Their content shall not be influenced in such a way as to affect the editorial responsibility and independence of the on-demand audiovisual media service provider;
- b) They shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.

(2) On-demand audiovisual media services and programmes shall not be sponsored by persons whose principal activity is the manufacture or sale of cigarettes or other tobacco products.

(3) The sponsorship of on-demand audiovisual media services and programmes by persons whose activities include the manufacture or distribution of medicinal products and medical treatment may promote the name or image of the sponsor, but shall not promote medicinal products or medical treatments available only on prescription in the Czech Republic.

(4) An on-demand audiovisual media service provider shall clearly identify any fully or partially sponsored programme at the beginning and subsequently during or at the end of the programme by the name, visual symbol (logo) or any other symbol of the sponsor, including, but not limited to, a reference to its products, services or their characteristics. Where an on-demand audiovisual media service is sponsored, the service provider shall notify the existence of the sponsorship contribution in the offer

of the catalogue of programmes, identify the sponsor's name and specify its principal activity; such notification shall be clearly indicated in the offer of the catalogue of programmes for at least 30 days.

(5) News and current affairs programmes shall not be sponsored.

Section 10 Obligations of On-demand Audiovisual Media Service Providers Related to Product Placement

(1) Product placement in programmes shall be admissible only:

- a) In cinematographic works, films and series made for on-demand audiovisual media services or for television broadcasting, and in sports and entertainment programmes, provided that they are not children's programmes;
- b) Where there is no payment but only the provision of certain goods or services free of charge, including, but not limited to, production props and prizes for competitors, with a view to their use in a programme.

(2) Programmes containing product placement shall meet the following requirements:

- a) Their content shall not be influenced in such a way as to affect the editorial responsibility and independence of the on-demand audiovisual media service provider;
- b) They shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services and;
- c) They shall not give undue prominence to the product in question.

(3) Programmes containing product placement shall be clearly identified as programmes containing product placement at the start and end of the programme and when a programme resumes after an advertising break in order to avoid any confusion on the part of the viewer as to the nature of these programmes. The obligation under the first sentence shall not apply to programmes which have not been produced or commissioned by the on-demand audiovisual media service

provider or a person affiliated to the on-demand audiovisual media service provider as a controlling or controlled entity under other legislation.

(4) Programmes shall not contain product placement of:

- a) Cigarettes or other tobacco products or product placement from persons whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
- b) Medicinal products or medical treatments available only on prescription in the Czech Republic.

Section 11 Corrective Action

(1) Where an on-demand audiovisual media service provider infringes the obligations laid down in the present Act, the Council shall draw that provider's attention to the infringement of the present Act and set it a time limit in which to take corrective action.

(2) The time limit for corrective action under the preceding paragraph (1) shall be proportionate to the nature of the infringement.

(3) If corrective action is taken in the set time limit, the Council shall not initiate proceedings on an administrative offence.

(4) The provisions of paragraphs (1) to (3) shall not apply if an on-demand audiovisual media service provider infringes any of the obligations set out in Section 6(2) and (3) and Section (8) in a particularly serious manner.

Section 12 Administrative Offences

(1) An on-demand audiovisual media service provider shall commit an administrative offence by:

- a) Failing to comply with notification requirements under Section 5(1) or (2) or Section 19(1);

- b) Failing to comply with any of the obligations laid down in Section 5(4);
- c) Failing to comply with any of the obligations laid down in Section 6(1), (4), (5), (6) or (7);
- d) Failing to comply with any of the obligations laid down in Section 6(2) or (3);
- e) Failing to comply with any of the obligations laid down in Section 7(1), (2) or (3);
- f) Failing to comply with any of the obligations laid down in Section 8(1), (2), (3) or (4);
- g) Failing to comply with any of the obligations laid down in Section 9(1), (2), (3), (4) or (5);
- h) Failing to comply with any of the obligations laid down in Section 10.

(2) A fine of up to CZK 1,000,000 shall be imposed for an administrative offence under paragraph (1) (a), (b), (c), (e), (g) or (h); a fine of up to CZK 2,000,000 shall be imposed for an administrative offence under paragraph (1) (d) or (f).

Section 13 Common Provisions on Administrative Offences

- (1) Administrative offences under the present Act shall be considered by the Council.
- (2) A legal person shall not be held liable for an administrative offence if it proves that it made all efforts that could reasonably be expected of it to prevent the infringement of the legal obligation.
- (3) In determining the amount of a fine to be imposed on a legal person, the Council shall take into account the seriousness of the administrative offence, including, but not limited to, the manner in which it was committed, its consequences and the circumstances under which it was committed, and the opinion of the self-regulatory body with physical jurisdiction in the case as referred to in the register of collaborating self-regulatory bodies¹⁰⁾, if this opinion is received in writing within 10 working days from the date of initiation of the administrative offence proceedings.
- (4) A legal person shall not be held liable for an administrative offence if the administrative body fails to initiate proceedings within one year of the date on which it

learned of the administrative offence, but no later than three years from the date on which the administrative offence was committed.

(5) The provisions of the legislation regulating the liability and penalization of legal persons shall also apply to the conduct of natural persons pursuing business activities or their conduct directly related to such activities.

(6) The filing of a complaint against a decision to impose a fine shall have suspensive effect.

Section 14

The Council, upon discovering illegal conduct within the European Union under directly applicable legislation of the European Union¹²⁾, which has been committed by an on-demand audiovisual media service provider in the territory of the European Union or in another State in the European Economic Area and which harms or could harm the collective interests of consumers¹³⁾ shall issue a decision prohibiting such conduct.

COMMON AND TRANSITIONAL PROVISIONS

Section 15

The Ministry of Culture may seek information from the Council necessary to comply with the Czech Republic's commitments under international treaties or arising from its membership in international organisations. The Council shall provide such information to the Ministry of Culture.

Section 16

Unless otherwise provided in the present Act, the Rules of Administrative Procedure shall be followed, except for the provisions therein on appellate procedure, procedure for appeals on a point of law, review procedure and revision.

Section 17

Unless otherwise provided in the present Act, the regulation of advertising and sponsorship shall be subject to Act No 40/1995 on the regulation of advertising and amending Act No 468/1991 on radio and television broadcasting, as amended, as amended.

Section 18

Unless otherwise provided in the present Act, the rights and obligations provided for under Act No 480/2004 on certain information society services and amending certain laws (the Information Society Services Act), as amended, shall not be prejudiced.

Section 19

(1) A legal or natural person who, as of the effective date of this Act, provides a service which, as of the effective date of this Act, is regarded as an on-demand audiovisual media service, shall notify the Council, within 60 days from the effective date of this Act, of the information for the Register of On-demand Audiovisual Media Service Providers as set forth in Section 5(1) and (2).

(2) The provisions of Section 10 shall not apply to programmes produced before the end of 2009.