

S.I. No. 258/2010 — European Communities (Audiovisual Media Services) Regulations 2010.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th June, 2010.

I, EAMON RYAN, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 89/552/EEC of 3 October 1989¹ as amended by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007², hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Audiovisual Media Services) Regulations 2010.

2. (1) In these Regulations—

“audiovisual commercial communication” means images with or without sound which—

(a) are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity, and

(b) accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes.

Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement, but do not include public service announcements and charity appeals broadcast free of charge;

“audiovisual media service” means—

(a) a service as defined by Articles 56 and 57 of the Treaty of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002³, and is either a television broadcast or an on-demand audiovisual media service, or

(b) an audiovisual commercial communication;

“BAI” means Broadcasting Authority of Ireland;

“broadcaster” means a media service provider of television broadcasts;

“Directive” means Council Directive 89/552/EEC of 3 October 1989¹ on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997⁴ and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007²;

“editorial⁴ responsibility” means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services;

“European works” means the following:

(a) works originating in the State or another Member State,

(b) works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of Regulation 2(2),

(c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements;

“media service provider” means the person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

“Member State” includes a state that is a contracting state to the EEA Agreement;

“Minister” means Minister for Communications, Energy and Natural Resources;

“on-demand audiovisual media service” (being a nonlinear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his or her individual request on the basis of a catalogue of programmes selected by the media service provider and where the following characteristics are also present at the same time—

(a) the service is under the editorial control or responsibility of a service provider,

(b) the service has as its principle purpose the provision of television like content to the general public in order to inform, entertain or educate, and

(c) the service is intended for reception by and which could have a clear impact on a significant proportion of the general public, but excludes—

(i) services which are primarily non-economic,

(ii) services which are not in competition with or akin to broadcasting services,

(iii) private websites or e-mails,

(iv) services consisting primarily of the hosting or distribution of content generated by third party users of the service for sharing within communities of interest, where editorial control over that content remains with such users,

(v) electronic versions of newspapers and magazines,

(vi) services where the audiovisual content is incidental to the main purpose of the service, or

(vii) gaming, gambling, online games, and search engines;

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

“programme” means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama;

“sponsorship” means any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products;

“surreptitious audiovisual commercial communication” means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;

“teleshopping” means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

“television advertising” means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

“television broadcasting” or “television broadcast” (being a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous or quasi simultaneous viewing of programmes on the basis of a programme schedule;

“website” means a website maintained on the Internet.

(2) (a) The works referred to in paragraphs (a) and (b) of the definition of “European works” are works mainly made with authors and workers residing in one or more of the States referred to in these paragraphs provided that they comply with one of the following 3 conditions:

(i) they are made by one or more producers established in one or more of those states,

(ii) production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or

(iii) the contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(b) Works that are not European works within the meaning of the definition of “European works” but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

(c) The application of paragraphs (b) and (c) of this definition shall be conditional on works originating in the State or another Member State not being the subject of discriminatory measures in the third country concerned.

(3) A word or expression that is used in these Regulations and is also used in the Directive shall, unless the contrary intention appears, have the same meaning in these Regulations as it has in the Directive.

3. (1) These Regulations apply to media service providers established in the State in accordance with Article 2(3) of the Directive or under the jurisdiction of the State in accordance with Article 2(4).

4. (1) The BAI shall comply with the State’s obligations under Article 3 of the Directive.

(2) In cases where the BAI assesses that a Broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards the State and is in breach of its codes or rules of general public interest it may contact the appropriate regulatory authority of that Member State with a view to achieving a mutually satisfactory solution to any problems posed.

(3) In a case where the BAI receives under Article 3 of the Directive a request relating to a broadcaster and consider that the request is substantiated they must ask that broadcaster to comply with the rule in question.

5. Audiovisual media service providers shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

(a) the name of the media service provider;

(b) the address at which the media service provider is established;

(c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;

(d) the name, address, and electronic address of the competent regulatory or supervisory bodies.

6. (1) Media service providers shall not transmit cinematographic works outside periods agreed with the rights holders.

(2) On-demand audiovisual media services provided by media service providers which might seriously impair the physical, mental or moral development of minors can only be made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.

7. (1) Audiovisual commercial communications provided by media service providers of on-demand audiovisual media services shall comply with the requirements:

(a) audiovisual commercial communications shall be readily recognisable as such and shall not be surreptitious;

(b) audiovisual commercial communications shall not use subliminal techniques;

(c) audiovisual commercial communications shall not—

(i) prejudice respect for human dignity,

- (ii) encourage behaviour prejudicial to health or safety, or
- (iii) encourage behaviour grossly prejudicial to the protection of the environment;
- (d) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
- (e) audiovisual commercial communications shall not be for medicinal products and medical treatment available only on prescription in the State;
- (f) audiovisual commercial communications shall not cause physical or moral detriment to minors and shall not—
 - (i) directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity,
 - (ii) directly encourage them to persuade their parents or others to purchase the goods or services being advertised, or
 - (iii) exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

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

- (a) their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the 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) viewers shall be clearly informed of the existence of a sponsorship agreement.

(3) Sponsored programmes in an on-demand audiovisual media service shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product or service or a distinctive sign thereof in an appropriate way for programmes at the beginning, during or the end of the programmes.

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

(5) The sponsorship of on-demand audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the State.

(6) On-demand audiovisual media services or programmes of news and current affairs programmes shall not be sponsored.

(7) Sponsorship logo shall not be displayed during children's programmes, documentaries and religious programmes in an on-demand audiovisual media service.

(8) On-demand audiovisual media service providers shall develop codes of conduct aimed at ensuring that on-demand audiovisual media services do not contain inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

8. (1) Subject to this Regulation, product placement in an on-demand audiovisual media service is prohibited.

(2) Product placement is admissible—

- (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes but not in children's programmes, or
- (b) where there is no payment for the placement of the product but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

(3) Programmes shown on an on-demand audiovisual media service that contain product placement shall

meet at least all of the following requirements:

- (a) their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the 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,
- (c) they shall not give undue prominence to the product in question, and
- (d) viewers shall be clearly informed of the existence of product placement.

(4) Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and where practicable, except where the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider, when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

9. Programmes shown on an on-demand audiovisual media service shall not contain product placement of—

- (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or
- (b) specific medicinal products or medical treatments available only on prescription in the State.

10. Regulations 8 and 9 apply only to programmes produced after 19 December 2009.

11. (1) On-demand audiovisual media services provided by media service providers shall promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

(2) Where a request is made by the Minister or relevant regulatory body to an audiovisual media service provider for information necessary to enable the Minister to make a report referred to in Article 3i of the Directive, it shall be complied with by the audiovisual media service provider.

(3) Audiovisual Media Service providers of on-demand audiovisual media services shall notify the Minister or the relevant regulatory body of their intention to provide or continue to provide such services in such manner as the Minister or the relevant regulatory body decides.

12. Media service providers of on-demand audiovisual media services shall endeavour to ensure that their services are gradually made accessible to people with a visual or hearing disability.

13. (1) Media service providers of on-demand audiovisual media services shall, in co-operation with the BAI, and other relevant bodies develop codes of conduct relating to Regulations 5, 6, 7, 8, 9, 10 and 12.

(2) On demand audiovisual media service providers may engage or assign tasks to existing bodies with supervisory functions on these matters or in related areas.

(3) Codes of conduct shall be prepared in co-operation with and subject to approval by the BAI.

(4) Codes of conduct shall contain a complaints procedure.

(5) On-demand audiovisual media service providers shall comply with codes of conduct and any revision of those codes.

(6) A copy of a code of conduct shall be presented to the Minister as soon as may be after it is made.

(7) The relevant body shall report to the Minister on the operation of codes of conduct on an annual basis or at such times as the Minister may otherwise direct and in such manner as the Minister may direct.

(8) Codes of conduct shall be prepared initially, within 3 months of the making of these Regulations, and revised on a regular basis or as occasion requires thereafter.

14. (1) Subject to paragraph (2), a broadcaster, where practicable and by appropriate means, shall reserve for European works a majority proportion of its transmission time, excluding the time appointed to news, sporting events, games, advertising, teletext services and teleshopping.

(2) The apportionment of transmission time by a broadcaster for the purposes of paragraph (1) shall be made having regard to the broadcaster's informational, educational, cultural and entertainment

responsibilities to its viewing public and shall be achieved progressively on the basis of suitable criteria.

(3) Where the proportion of transmission time laid down in paragraph 14(1) cannot be attained, it shall not be lower than the average proportion of transmission time devoted to European works if any in 1988.

15. (1) Subject to paragraph (2), a broadcaster where practicable and by appropriate means, shall reserve at least 10 per cent of its transmission time for European works created by producers who are independent of broadcasters under the jurisdiction of the State or any other state, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping or, reserve 10 per cent of its programming budget for European works which are created by producers who are independent of such broadcasters. This may include co-produced European works or European works of non-domestic origin.

(2) The apportionment of the transmission time or the programming budget of a broadcaster shall have regard to a broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public and shall be achieved progressively, on the basis of suitable criteria.

(3) An adequate proportion of works referred to in paragraph (1) shall comprise works which are transmitted within 5 years of their production.

16. Where a request is made by the Minister to the BAI, for information necessary to enable the Minister to make a report referred to in Article 4 of the Directive, it shall be complied with by the BAI.

17. (1) For the purpose of short news reports, any broadcaster established in the State or another Member State shall have access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under the jurisdiction of the State.

(2) If another broadcaster established in the same Member State as the broadcaster seeking access has acquired exclusive rights to the event of high interest to the public, access shall be sought from that broadcaster.

(3) Access is guaranteed by allowing broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.

(4) As an alternative to paragraph (3), the Minister may encourage or encourage the establishment of an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.

(5) Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.

(6) Without prejudice to this Regulation, broadcasters or audiovisual media service providers may ensure, that the modalities and conditions regarding the provision of such short extracts are defined, in particular with regard to any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission by the development of a self regulatory code of practice. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.

18. (1) Subject to paragraph (2), a broadcaster shall not broadcast programmes that might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence.

(2) Programmes (not being those that involve pornography or gratuitous violence) which might impair the physical mental or moral development of minors may only be shown—

(a) where the broadcaster ensures, by selecting the time of the broadcast or by any technical means, that minors would not normally be expected to hear or see such broadcasts, and

(b) if broadcast in unencoded form, where the broadcaster ensures that such programmes are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

19. (1) Regulations 14, 15 and 16 do not apply to an audiovisual media service—

(a) that is intended for local audiences and does not form part of a national network, or

(b) by a channel exclusively devoted to advertising, teleshopping or self-promotion.

20. (1) In this Regulation “Court” means High Court.

(2) Where—

(a) on application to the Court by any person directly affected by any activity or conduct of an audiovisual media service provider established in or under the jurisdiction of the State which results or would result in a failure by an audiovisual media service provider to comply with these Regulations, and

(b) the Court is satisfied that such failure is occurring or is likely to occur or reoccur, then the Court may make an order directing the audiovisual media service provider to refrain from carrying on or attempting to carry on that activity or conduct and to comply with these Regulations.

(3) The Court may make such order as to the costs of the parties to or heard by the Court in proceedings relating to an application for an order under this Regulation as it considers appropriate.

(4) Nothing in this Regulation shall be construed as affecting any right to damages or other remedy against an audiovisual media service provider.



GIVEN under my Official Seal,

3 June 2010.

EAMON RYAN,

Minister for Communications, Energy and Natural Resources.

1 OJ No. L298, 17.10.1989. p.23

2 OJ No. L332, 18.12.2007, p.27

3 OJ No. L108, 24.4.2002, p.33

1 OJ No. L298, 17.10.1989. p.23

2 OJ No. L332, 18.12.2007, p.27

4 OJ No. L202, 30.07.1997, p.60