

The Common minimum rules for all audiovisual services : a checklist for service providers



Conseil supérieur de l'audiovisuel

Jean-François Furnémont, Director, CSA

jean-francois.furnemont@csa.be

www.csa.be



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Plan

1. What is a media service (MS)
2. What is a media service provider (MSP) ?
3. What are the rules for the audiovisual media services (AVMS) ?



1. What is a media service?

- Extension of the scope of the directive from TV services to AVMS
- Definition of AVMS :
 - « service as defined by articles 49 and 50 Treaty, which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programs in order to inform, entertain or educate, to the general public by electronic communications networks » OR
 - « audiovisual commercial communications ».





- Six **cumulative** criteria :
 - **service** as defined by the treaty (exclude non-economic activities)
 - which is under the **editorial responsibility** of a SP (exclude services which are a under the responsibility of a third party)
 - and the **principal** purpose of which is the provision of programs (exclude non-mainly AV services)
 - in order to **inform, entertain or educate** (mass media)
 - to the **general public** (exclude non-public communications)
 - by **electronic communications** networks (exclude cinema or DVD)





ELECTRONIC
COMM.

AVMS

OUT OF
AVMS

TV BROADCAST
(CONTROL OF
PROVIDER)

TV
NVOD

TV ON DEMAND
(CONTROL
OF USER)

VOD
« Television-like »

NON
ECONOMIC
ACTIVITIES

Private web sites

NON
PUBLIC
ACTIVITIES

E-mail

SERVICES
WITH INCIDENTAL
AV CONTENT

Web sites
of newspapers,
of travel agencies,
of gambling services

RADIO

2. What is a media service provider?

- Definition of a MSP :
 - « the natural or legal 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 ».





- Definition of editorial responsibility :
 - « the exercise of **effective control** both of the selection of 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 services ».





- Exemptions of liability (electronic commerce directive, art. 12) :
 - « Where an information society service is provided, [...] Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider :
 - does not initiate the transmission
 - does not select the receiver of the transmission and
 - does not select or modify the information contained in the transmission. »



Legislation	Providers	Functions	Services
AVMS Directive	Editor	Editorial (SP)	Content (producer + provider)
	Distributor	Editorial (MSP)	Access (with control?)
Telecom Directives	Distributor	Economical (SP)	Access (without control?)
	Operator	Technical	Transmission



3. What are the rules for the AVMS?

1. Transparency
2. Cultural diversity
3. Protection of minors and public order
4. Consumer protection



3.1. Transparency

- Public must have access « easily, directly and permanently » to the following information :
 - the name and adress of the MSP ;
 - a way to have a contact with the MSP « rapidly in a direct and effective manner » ;
 - the compentent regulatory or supervisory body.





- Cf. article 6 of the broadcasting act of the French Community of Belgium :
 - « media service providers must publish basic informations about them in order to allow the public to make its own opinion about the value to grant to informations and opinions broadcasted by these providers ».



3.2. Cultural diversity

- Rules maintained for LS (50% EU and 10% independant)
- Encouragement for NLS
 - « Member States shall ensure that on-demand AVMS promote, where applicable and by appropriate means, production of and access to European works ».



3.3. Protection of minors and public order

- Rules maintained for LS
- Extendend to the NLS, but :
 - on-demand AVMS « which might seriously impair the physical, mentalor moral development of minors are only made available in such a way that ensures that minors will not normally hear or see such on-demand AVMS ».



3.4. Consumer protection

- LS and NLS:
 - Identification rules are maintained
 - Most insertion rules are withdrawn
 - Product placement is authorised under certain conditions
 - Bans on advertising for tobacco, alcohol, medicinal products or medical treatments are maintained
 - Rules about protection of mineurs are maintained
 - Rules about sponsorship are maintained
 - « Junk food » : codes of conduct are encouraged
- LS :
 - Hourly limit : 20% limit is maintained
 - Daily limit : 15% limit is withdrawn





	LS	NLS
Jurisdiction	Green	Green
Transparency	Green	Green
Incitement to hatred	Green	Green
Accessibility	Dark Green	Dark Green
Respect of right holders	Green	Green
Cultural diversity (quotas)	Green	Dark Green
Protection of minors	Green	Dark Green
Events of major importance	Green	Blue
Access news	Green	Blue
Right of reply	Green	Blue



	LS	NLS
Advertising – identification		
Advertising – insertion		
Advertising – tobacco, alcohol, medicine		
Advertising – « junk food »		
Advertising – minors		
Sponsorship		
Product placement	???	???
Advertising – hourly limit		
Advertising – daily limit		



Transposition

- Article 249 al. 3 of EC Treaty : « A directive shall be binding , as to the result to be achieved upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods ».
- Article 3 al. 1 : « Members States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive **provided that such rules are in compliance with Community law** ».
- Recital 15 : « **No provision of this directive should require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of audiovisual media service** ».



Thank you for your attention.



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