

# **Commercial Broadcast Services**

# Introduction

This brochure provides information about the commercial broadcast service license application, the requirements that must be met by the commercial media service provider and the content of the provided media, in addition to the fees that must be paid to the Commissariaat voor de Media (Dutch Media Authority) by the commercial media service provider.

## **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 which is subject to the authority of the Netherlands for the application of this act'. 'Commercial' does not necessarily mean that the media service provider is profit-oriented or that the media service must convey advertising messages. The Media Act only recognizes *commercial* media service providers as opposed to *public* media service providers (PSB)<sup>1</sup>.

## **Technology Neutral**

On December 19, 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 the definition of a media service is not related to the distribution platform or the distribution technology (cable, airwaves, satellite, internet or a combination of these). The legislature has made this choice in order to create a level playing field for all 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 programmes 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 programmes. The media service provider determines this schedule. The programmes 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 media service that users can view upon individual request at such time as they desire. 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 broadcast service (linear). For information about the provision of a commercial media service on demand (non linear), please consult the brochure of the same name on the website of the Dutch Media Authority.

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<sup>1</sup> Public media service providers have a special license and are financed by the government

# 1. License Application

## 1.1 Who?

In principle, any natural or legal person can obtain a license for providing a commercial broadcast service. Applications 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?

For a commercial broadcast service, **prior** permission from the Dutch Media Authority is required. You must always submit a signed application in writing.

In order to evaluate an application, the Media Authority requires the following information:

If the application is submitted by a **natural person**:

- proof of registration in the municipal personal records database (GBA);
- the indication of the type of programming supply for which permission is requested: radio or television;
- the name of the programme channel (broadcaster name).

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

- a recent certificate of registration in the register of companies of the Chamber of Commerce;
- a description of the organizational and legal structure of the applicant, and an overview of its directors and shareholders (if present);
- a copy of the statutes of establishment (if present);
- the indication of the type of programming offered: radio or television;
- the name of the programme channel (broadcaster name).

## 1.3 Evaluation

Once the Media Authority has received all the necessary information, it will assess whether one of the following **grounds for rejection** is applicable:

- a. the information provided is incorrect or incomplete;
- b. the applicant may be expected to breach the regulations stipulated in the Media Act.

If the Media Authority does not find grounds for rejection, it will grant the applicant a license for commercial broadcast for a period of five years.

The **term** within which the Media Authority must process the application may not exceed eight weeks. If the Media Authority requires more information in order to reach a decision, the applicant will receive a request to supplement the application. The eight week term is suspended until such time that the Media Authority has received the requested information.

## 1.4 Actual Distribution of a Broadcast Service

A license to provide a commercial broadcast service does not automatically mean that the programme may be distributed via cable or a broadcaster (including satellite). In order to distribute the programming via cable, the media service provider must enter into an agreement with the cable provider. For radio broadcasting via a radio frequency, the media service provider must obtain a license under the Telecommunications Act. For further information and for the application for such permits, please consult the Radiocommunications Agency Netherlands.

## 2. Demands on Provided Programming

The requirements set by the Media Act 2007 includes those for<sup>2</sup> programming provided by commercial media service providers:

### Advertising

- Advertising announcements are clearly distinguished from other programme broadcast content by acoustic, visual or spatial means.
- In principle, advertising is broadcast in blocks. Therefore, individual advertising or teleshopping messages must remain an exception. This exception does not apply to broadcasts of sports events.
- The broadcast of advertising announcements may not exceed twelve minutes per clock hour.
- Advertising for medical treatments is prohibited.
- Advertising announcements for alcoholic beverages are prohibited between the hours of 06:00 AM and 9:00 PM.
- Advertising announcements will be inserted only where these are not detrimental to the integrity, the character or the consistency of the programme concerned, and the rights of right holders are not prejudiced.
- Programs that consist of films, news or commentary on the news, and programmes that are intended for children under the age of 12 will contain a maximum of one block of advertising per thirty minute programme period.
- Advertising announcements will not be inserted in programmes that consist of the transmission of church services or religious gatherings.
- Uninterrupted teleshopping blocks shall last at least fifteen minutes. Teleshopping blocks are clearly recognisable for their entire durations by visual and audio means.

### Sponsoring and Product Placement

- For sponsored programming content, all sponsors must always 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 during the interruptions, provided that these sponsors are also mentioned at the beginning or at the end of the program.
- The editorial statute protects the editorial independence of the employees who are involved in the delivery and composition of the programming offered.
- Programming content that consists of news, current events or political information may not be sponsored.
- Product placement (the inclusion of a product in a programme for payment) is permitted for films, series, sports programmes and light entertainment programmes, unless these programmes are exclusively 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 programme, but also at the beginning or end of the advertising announcements that interrupt the programme.

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<sup>2</sup> 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).

- Product placement for alcohol is prohibited in programmes that are broadcast between the hours of 06:00 AM and 9:00 PM.
- Surreptitious advertising is prohibited in all cases, including in case of sponsorship or product placement.

### Programming Quota

- The television programming offered must consist of at least 40% original Dutch or Frisian language programmes. In special cases the Media Authority can grant conditional exemptions from this obligation and set a lower percentage.
- A commercial media service provider that reaches at least 75% of all households in the Netherlands must provide at least 50% of the original Dutch language productions with subtitling for people with a hearing impairment as of 2011. For the year 2010, this percentage is 35% and for 2009 it was 25%.
- On a television programme channel, at least 50% of the offered programming consists of European productions and at least 10% of productions can be considered independent productions. At least one third of these productions is not older than five years. In determining the percentages, programming that consists of news, sports and game shows, advertising and teleshopping announcements, still images and teletext are excluded. This obligation does not apply to commercial media providers that offer programming that is exclusively broadcast in a single municipality or in a limited number of adjoining municipalities.

In exceptional cases, the Media Authority can offer temporary partial exemptions with regard to the percentage of European productions, with the understanding that the percentage may not be lower than 10%.

## 3. Demands on the Media Service Provider

- The media service provider shall make it possible for the Media Authority to view and/or listen to the programming channel without encoding. For instance, a smart card or access code may be provided to the Authority. Prior to the first distribution of the programming, the media service provider shall inform the Media Authority of the platform upon which they will distribute the media service and provide additional information such as frequency or subscription information. In case of changes, the media service provider shall inform the Media Authority immediately.
- 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 programming content in which the journalistic rights and obligations of these employees are established.
- A media service provider that incorporates advertising announcements in its programme broadcasts, must be affiliated with the Dutch Advertising Code and is subject to monitoring by the Dutch Advertising Code Foundation.
- Television programming shall not contain content that may cause **serious damage** to the physical, mental or moral development of individuals under the age of sixteen.
- Television programming shall only contain content that may be **detrimental** to the physical, mental or moral development of persons under the age of sixteen if the media service provider is a member of the [NICAM](#) (Dutch website).
- The media service provider shall store recordings of the broadcast programmes for two weeks after the broadcast. The media service provider shall make these recordings available to the Dutch Media Service provider upon request in a manner that the Media Service provider finds necessary for the fulfilment of its task.

## 4. Other Stipulations

The granted license is valid for five years and expires at the end of this period. An application for prolongation of the license must be submitted to the Media Authority at least five months prior to expiration of the license.

If a media service provider wishes to broadcast a programming channel under another name in addition to the programming channel for which a license has been granted, the Media Authority must grant separate permission. Similarly, if the media service provider wishes to broadcast under the name for which a permit has been granted, but with (partially) different content (for example a local or provincial edition), it must file a written request with the Media Authority.

If the media service provider wishes to change the name of the programming channel for which a license has been granted, it must submit a written request to the Media Authority. If the media service provider no longer wishes to use the license, it must file a request for revocation of the license with the Media Authority.

The license is not transferable. There is no transfer if only the control relationships change because shares are held by different shareholders; the legal person in whose name the license has been granted remains the same.

## 5. Regulatory Fees

Commercial media service providers must pay annual fees to the Dutch Media Authority for each individual permit obtained.

The Minister of Education, Culture and Science has determined the amounts in an annex to the 2008 Media Regulations. The full text of these regulations can be found on the [website](#) of the Media Authority (in Dutch).

The payable amount depends on the average duration of the programming per day and the number of households that can receive the programming.

For the provision of a radio channel, the media service provider must pay half the amount applicable for a television channel. For a channel that consists of a cable TV information services, the media service provider must pay a quarter of that amount.

Commercial media service providers must provide information in order to determine the pricing level of the contribution for the Media Authority. The Media Authority shall send an annual information request over the previous year. After receipt of this information, the Media Authority may issue an invoice.

If the media service provider has not broadcast any programming in a given year, the Media Authority will charge the minimum amount.

## 6. European Directive

The basic premise of the European harmonisation of rules by the [European Audiovisual Media Services Directive](#) is that a media service provider must obey only 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 programming may in principle not be hindered in the other member states.

Which country is authorized to set rules and to exercise regulatory rights is primarily determined by the seat of the provider. The country in which the provider's headquarters is based determines the official seat of establishment. Headquarters are defined as the place where the programming decisions are made and where a significant percentage 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

Radiocommunications Agency  
PO Box 450  
NL-9700 AL Groningen  
tel. +31 (0)50 587 74 44  
[www.agentschap-telecom.nl](http://www.agentschap-telecom.nl)

NICAM (Rating system)  
PO Box 322  
1200 AH Hilversum  
The Netherlands  
tel. +31 (0)35 646 08 60  
[info@nicam.cc](mailto:info@nicam.cc)  
[www.kijkwijzer.nl](http://www.kijkwijzer.nl)

Dutch Advertising Code Authority  
PO Box 12352  
1100 AJ Amsterdam  
The Netherlands  
tel. +31 (0)20 696 00 19  
[www.reclamecode.nl](http://www.reclamecode.nl)

Dutch Media Authority  
PO Box 1426  
NL-1200 BK Hilversum  
Hoge Naarderweg 78  
1217 AH Hilversum  
The Netherlands  
telephone +31 (0)35 7737700  
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[cvdm@cvdn.nl](mailto:cvdn@cvdn.nl)  
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## Disclaimer

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