

# **Commercial Media Services On Demand**

# Introduction

This brochure provides information about the registration of a commercial on-demand media service with the Commissariaat voor de Media (Dutch Media Authority) and the requirements that must be met by the individual media service and the corresponding 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 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 media broadcast 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 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.

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<sup>1</sup> 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.

Registrations 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), and submit all information requested therein.

## 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 pursuant to 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 based on a catalogue<sup>2</sup>;
- 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 considered an economic service.

A more elaborate description of the above criteria is provided in the 'Policy regulations classification commercial media services', which is available at <http://www.cvdm.nl/wp-content/uploads/2013/08/Beleidsregels>.

## 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.

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<sup>2</sup> 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.

## 2. Demands on the Provided Video Offer

The Authority's supervision of commercial media services on demand is restricted to videos and their corresponding subtitling, pre-rolls or overlays as based on a catalogue and the programme details specified in the catalogue. In terms of determining what is and what is not considered a component of the video, this may be based in part on what the viewer sees when he watches the video on a full screen (by selecting the 'full screen' mode in the player). These are the images that the viewer cannot bypass when he chooses to view the video. The demands of the Media Act 2008 on a media service on demand are less strict than those on a linear media service. Contents of the media broadcasts of commercial media services on demand must comply with demands in terms of advertising, sponsoring and product placement and European quota.

### Advertising

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

- Advertising messages must be recognizable as such by their form and content.
- Surreptitious advertising is prohibited in all cases.
- Advertising for medical treatments is not permitted.

### Sponsoring and Product Placement

- For sponsored media content, all sponsors must always be listed at the beginning or at the end, in order to inform the audience. The sponsor reference (credit) is not solicitous.
- Sponsoring credits are also permitted in the interruptions, provided that the 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 manner as in the event of sponsoring. 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 European Commission has determined that media organizations that provide the commercial programmes on demand, the so-called cmoas, stimulate the production and consumption of European programmes. Subsequently affiliated organizations include European programme broadcasts in their catalogue, properly manage their public findability and clearly communicate this to consumers. The reason for this European directive is twofold, based on both the promotion of the European cultural interests and the strengthening of the internal European market. This concerns productions from the European member states, which also includes the Netherlands of course. Programmes in the own language will be dominant in these media broadcasts. In order to achieve this objective the media organisation that provides media services on demand is obligated to provide a statement concerning the share of European programmes in its overall broadcasts and present this statement to the Dutch Media Authority. This will be done by answering a series of easy questions. Another requirement is the provision of a calculation of the share of European productions in the

overall broadcast offering. In order to ensure a punctual calculation, a detailed explanation is included with the report form.

This mandatory report does not apply to video footage that contains news, sports, games, advertising or teleshopping messages or so-called 'user generated content'. In that case, the report may be limited to providing a description of the type of video material. For the programme broadcasts that fall outside of the scope of the given categories, the share of European productions must be calculated.

For more detailed information on the corresponding registration and the methodology of the percentage calculations, please see the digital version of the report form with the detailed explanation. This form is available on our website at <http://www.cvdm.nl/praktisch/commerciele-mediadienst-op-aanvraag-aanmelden/>.

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<sup>3</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).

### 3. Demands on the Media Service Provider

- 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 with the Dutch Advertising Code
- On-demand media services do not contain images that are seriously harmful to persons under the age of sixteen. These images may only be offered if they are not accessible to young viewers. This can be done using access checks or coded subscription services.
- Commercial providers of media services on demand may consult the NICAM, the organisation responsible for the development of the Kijkwijzer. Kijkwijzer uses pictograms to inform parents and educators about the potential hazard of a television programme or film for specific age groups. By using Kijkwijzer to classify its video broadcasts on demand, the provider helps parents and educators and demonstrates its social responsibility in this regard.
- 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 organisation that provides the media service on demand will permanently provide its name, location, contact details in the media broadcast, in addition to the name of the Media Authority as the regulatory body. For the latter, the Authority has made a logo available (choice of three sizes). The media organisation will receive the logo after it has been determined whether the media service is truly a media service on demand pursuant to the Media Act 2008. The logo must be placed in the immediate vicinity of the media service on demand, for example on the homepage with the contact details or at the bottom of the screen with the video catalogue. The logo must also be linked through to a page on the Authority's website that provides an explanation of the logo.

### 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 determined by the Minister of Education, Culture and Science. Media service providers that have registered will receive an invoice 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 must comply only with 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 Institute for the Classification  
of Audiovisual Media (NICAM)  
PO Box 322  
1200 AH Hilversum  
The Netherlands  
tel. +31 (0)900 161 2600 (15 ct p/m)  
[info@nicam.cc](mailto:info@nicam.cc)

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  
fax +31 (0)35 7737799  
[info@cvdn.nl](mailto:info@cvdn.nl)

## Disclaimer

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