



Dutch Media Authority Policy Rules of 25 June 2019 on administrative fines for violations of the 2008 Media Act (2019 Policy Rules on Administrative Fines)

The Dutch Media Authority,

Having regard to Articles 7.11 and 7.12 of the 2008 Media Act and Article 4:81 of the General Administrative Law Act (Awb);

Whereas:

- Article 7.11 of the 2008 Media Act provides that, barring certain specific provisions, the Dutch Media Authority is tasked with the administrative enforcement of compliance with the provisions of the 2008 Media Act, or of legislation based thereon;
- Article 7.11 of the 2008 Media Act provides that, barring certain specific provisions and Article 5:20 of the General Administrative Law Act (Awb), the Dutch Media Authority is authorised to issue any offender of the provisions of the 2008 Media Act, or of legislation based thereon, an administrative fine for such an offence of no more than €225,000 per violation;
- The Dutch Media Authority would like to offer insight into the manner in which it effectuates the powers vested in it to issue administrative fines.

Decrees:

Article 1. Definitions

The following terms employed in these Policy Rules shall have the following meaning:

- *ODMS*: On-Demand Media Service;
- *Awb*: The General Administrative Law Act;
- *Authority*: The Dutch Media Authority.

Article 2. Scope

These Policy Rules apply to all violations for which the Authority has been authorised to issue administrative fines pursuant to Article 7.12 of the 2008 Media Act.

Article 3. Fine Amount

1. The Authority shall determine the amount of the administrative fine in accordance with the provisions of Articles 4 *et seq.* of these Policy Rules, unless said fine is issued for a violation of Article 2.34(1) of the 2008 Media Act.
2. The Authority shall determine the amount of the administrative for a violation of Article 2.34(1) of the 2008 Media Act in accordance with the provisions of Article 7.12(2) of the 2008 Media Act.

Article 4. Violated Norm

Following a general assessment of their nature, the Authority has divided the norms it has been tasked to enforce into the following categories:

- a. Category A: Violation of the provisions of Articles 2.1, 2.34(2), 2.50, 2.52, 2.58, opening clause and (d), 2.88, 2.88a, 2.89, 2.90, 2.91, 2.94, 2.95, 2.96, 2.97, 2.106, 2.107, 2.108, 2.109, 2.110, 2.111, 2.112, 2.113, 2.114, 2.132, 2.133, 2.134, 2.135, 2.136, 2.137, 2.138, 2.138a, 2.139, 2.141, 2.142, 2.142a, 2.151(2), 2.170(7)¹, 3.1, 3.2, 3.5, 3.5a, 3.7, 3.8, 3.9, 3.10, 3.11, 3.13, 3.15, 3.16, 3.17, 3.18, 3.19, 3.19a, 3.19b, 4.1, 4.6, 5.1, 5.2, 5.3, 5.4, 6.13, 6.14, 6.15, and 7.18 of the 2008 Media Act, or of legislation based thereon and Article 5:20 of the Awb.

¹ The Policy Rules shall apply to this provision, i.e. Article 2.170(7) of the 2008 Media Act immediately upon the cessation of said provision's exclusion in Article 7.12(1) of the 2008 Media Act; see also: the Legislative Proposal: *"Wijziging van de Mediawet 2008 in verband met aanscherping van de nieuwediensprocedure, modernisering van procedures voor de benoeming van raden van toezicht en besturen, modernisering van het bestuur en verduidelijking van de positie van de Ster, alsmede technische verbeteringen onder meer in verband met taken van het Commissariaat voor de Media"* (Kamerstukken II 2018–2019, 35 042, no. 2).



- b. Category B: Violations of the provisions of Articles 2.35, 2.70, 2.71, 2.92, 2.93, 2.99, 2.115, 2.116, 2.117, 2.119, 2.124, 2.171, 2.172, 3.6, 3.20-26, 3.29, 3.29b, 3.29c, 3.29d, 6.4, 6.6, 6.9, 6.10, 6.23, 6.24 and 6.27 of the 2008 Media Act, or of legislation based thereon.
- c. Category C: Violations of any other mandatory requirement prescribed by the 2008 Media Act, or legislation based thereon, for which the Authority has been tasked with monitoring compliance and for which the Authority has been granted the power to issue administrative fines.

Article 5. Severity of the Violation

The Authority shall determine the severity of the Violence in question in accordance with the relevant circumstances of the case. The Authority shall determine whether the circumstances of the case in question give it cause to rate the violation as a minor (Severity I), or a very serious (Severity III) violation. If such circumstances are not present, the Authority will classify the violation in question as a Severity II violation.

Article 6. Basic Fine

1. The Authority shall take the appropriate basic fine listed in the table below as its starting point in its determination of the amount of the fine it intends to issue in the case in question.
2. The basic fine is determined by the amount of people reached by the violator, the violated norm and the severity of the violation in question.
3. The Authority shall determine the basic fine in accordance with the provisions of Articles 4 (Violated Norm) and 5 (Severity of the Violation) of these Policy Rules.
4. The following basic fines apply to cases where the violator is either a national public media institution, or a commercial media institution or an ODMS with a coverage of more than 500,000 households:

	Category A	Category B	Category C
Severity III	€180,000	€107,500	€27,500
Severity II	€85,000	€50,000	€13,000
Severity I	€17,500	€10,000	€3,000

Table 1

5. The following basic fines apply to cases where the violator is either a regional public media institution, or a commercial media institution or an ODMS with a coverage of at least 25,000 households, but no more than 500,000 households:

	Category A	Category B	Category C
Severity III	€36,000	€21,500	€5,500
Severity II	€17,000	€10,000	€2,600
Severity I	€3,500	€2,000	€600

Table 2

6. The following basic fines apply to cases where the offender is either a local public media institution, or a commercial media institution or an ODMS with a coverage of no more of 25,000 households:

	Category A	Category B	Category C
Severity III	€9,000	€5,400	€1,400
Severity II	€4,300	€2,500	€650
Severity I	€900	€500	€150

Table 3

7. In the event the circumstances referred to in paragraphs 4–6 of this Article do not apply to the violator, the amounts listed in the table included in paragraph 4 of this Article will apply.

Article 7. Mitigating and Exacerbating Circumstances for Fines

1. The Authority shall in its determination of the amount of the administrative fine it intends to issue take into account any mitigating or exacerbating circumstances. This may give rise to either an increase, or a reduction of the basic fine.

2. Exacerbating circumstances giving rise to an increase of the basic fine include:
 - the circumstance that the Authority has on previous occasion found the violator to have committed a similar, or comparable, violation;
 - the circumstance that the violator has previously satisfactorily been made aware of the application of the legislation;
 - the circumstance that gross negligence, or (conditional) intent, was found;
 - the circumstance that the violation caused an unlawful financial gain, or any other gain that may be expressed in terms of money, to have been obtained.
3. Mitigating circumstances giving rise to a reduction of the basic fine amount include:
 - the circumstance that the violation occurred in spite of the offender having taking precautionary measures;
 - the circumstance that the violator has since taken adequate measures to prevent recurrence of the violation;
4. In addition to the above mitigating and exacerbating circumstances, the Authority can also take other circumstances into account as either mitigating or exacerbating circumstances with regard to the amount of the fine.

Article 8. Deviation

In the event that the extraordinary circumstances of the case were to give rise to it considering such, the Authority can deviate from the administrative fine calculation method provided in Articles 4–7.

Article 9. Repeal of *Beleidslijn Sanctiemaatregelen 2011*

The *Beleidslijn Sanctiemaatregelen 2011* [2011 Policy Directive on Sanctions] is herewith repealed.

Article 10. Entry into Force

1. These Policy Rules shall be made public by their publication both in the Government Gazette and on the Authority's website (www.cvdm.nl).
2. These Policy Rules shall enter into force on the day following the date of publication of the Government Gazette in which this Decision is published.

Article 11. Official Title

These Policy Rules are referred to as: The 2019 Policy Rules on Administrative Fines.

Hilversum, 25 June, 2019

*DUTCH MEDIA AUTHORITY,
M. de Cock Buning,
President*

*J. Buné,
Commissioner*

EXPLANATORY NOTES

I. General

These policy rules replace the *Beleidslijn Sanctiemaatregelen 2011* [2011 Policy Directive on Sanctions]. These policy rules are founded in the principle derived from the principles of equality and legal certainty, that insight be provided into the criteria applied in the issuing of administrative fines for violations of requirements contained either in the 2008 Media Act, or legislation based thereon, or Article 5:20 of the *Algemene wet bestuursrecht* [*General Administrative Law Act*] (hereinafter: the Awb).

Power to Issue Administrative Fines

Article 7.12 of the 2008 Media Act authorises the Dutch Media Authority (hereinafter: the Authority) to issue administrative fines. This enables the Authority to, while weighing the interests involved, respond to any violation of any requirements contained in the 2008 Media Act, or legislation based thereon, by issuing a punitive sanction.

Terminology

Unless expressly provided to the contrary, the terms employed in these policy rules shall have the same meaning as those vested in them in the provisions of the 2008 Media Act and the Awb, or legislation based thereon.

II. Explanatory Notes by Article

Article 2. (Scope)

A violation, as used in these policy rules, will, in accordance with the provisions of Article 5:1 of the Awb, be understood as any conduct in contravention of the provisions of the 2008 Media Act, or legislation based thereon, or of Article 5:20 of the Awb.

Articles 3-8. (Calculation of Fine Amount)

The Authority shall determine the amount of the administrative fine it intends to issue for any violation of Article 2.34(1) of the 2008 Media Act, in accordance with the provisions of Article 7.12(2) of the 2008 Media Act, and Article 5:46(3) of the Awb.

In all other events, the Authority shall determine the amount of the administrative fine it intends to issue in accordance with the calculation tables included in Articles 4–7 of these policy rules. The Authority will do so, mindful of Chapter 5 of the Awb (Enforcement). The Authority will, having regard to Article 5:46(2) of the Awb, adapt the amount of the fine it intends to issue, to the severity of the violation and the extent to which said violation can be attributed to the violator.

In doing so, and where needed, the Authority will take into account the circumstances under which the violation occurred.

As the norms the Authority has been tasked with enforcing do not require any culpability to be found, for any liability to be invoked, the Authority is consequently not required to show the existence of any such culpability. Once it has determined beyond doubt who committed the violation in question, the Authority may, in principle, presume the existence of culpability. Should the violator wish to rely on a defence claiming the absence of all culpability on his part, it will be up to him to sufficiently substantiate the suggestion that such culpability is indeed absent (*Kamerstukken II 2003-2004, 29 702, no. 3, p. 134*). No administrative fine will be issued if it becomes clear that the offence cannot be attributed to the violator (Article 5:41 of the Awb). Furthermore, the proportionality principle may in certain circumstances when there is a reduced culpability lead to the issuing of a reduced fine.

Violated Norm

The Authority has divided the norms it has been tasked with enforcing into three categories, i.e. Category A, Category B and Category C. Norms are placed into any one of these categories according to the general appreciation of their nature and the interests they aim to protect.

Severity of the Violation

The Authority will determine the severity of the violation in question in accordance with the relevant circumstances of the case.

Breach of Core Values

For this determination the Authority shall take into account the extent to which the violation has harmed the core values the Authority aims to protect, i.e. the independence, diversity, and accessibility, of media content. All media content should remain independent of political or commercial influence, as well as remain accessible and diverse.

Independence means that viewers and listeners should be able to rely on independent reporting by public and commercial media institutions and on information not coloured by political or commercial interests. Editors must be clearly separated from any commercial and political interests. If indeed any media content were to contain either (permitted) sponsoring or product placement, viewers or listeners must be able to recognise them as such. Independence also requires public media institutions to enjoy full editorial freedom in respect to the content of their programmes. They are prohibited from making themselves subservient to third parties. Accessibility requires that all inhabitants of the Netherlands be able to access the information at a reasonable cost and with as few limitations as possible. Accessibility also means that providers of media content should enjoy access to the platforms that allow such to be disseminated. However, this does not apply to all types of information. Some harmful information may become too accessible and consequently be unsafe. The law aims to prevent minors from being exposed to seriously harmful images. Media content diversity requires a great diversity of topics to be featured in various manners. All sorts of (target) groups, opinions and stories are to be given room to feature. Media content diversity supports freedom of expression and freedom of opinion.

Violation of Supporting Basic Principles

These three core values are supported by the basic principles of lawfulness, transparency and integrity. In its determination of the severity of the violation in the case before it, the Authority will also take into account the extent to which the violation has harmed these principles. The principle of lawfulness pertains to the lawfulness of the expenditure of public media institutions. The legitimacy of the public broadcasting system is strongly dependent on the trust the public and lawmakers have in the manner in which public funds are spent. A transparent justification is an essential condition to the monitoring of media content independence and the lawful expenditure of media funds by public media institutions. This not only applies to the justification of expenditure, it also applies to the origins of income, e.g. funds accrued through sponsoring. Furthermore, members of the executive and supervisory boards of public media institutions are expected to conduct themselves with integrity. This means they should not only focus on a media institution's corporate interests, but should also take into account the public interests that form the foundations of the 2008 Media Act.

Other

The Authority may take other circumstances into account in its assessment of the severity of the violation before it. All cases brought before it, will require the Authority to determine whether the circumstances of those cases give it cause to rate the conduct observed in them as a minor (Severity I), or a major (Severity III) violation. If such circumstances are not present, the Authority will classify the violation in question as a Severity II violation.

The Violator

The policy rules make a distinction between public and commercial media institutions operating at local, regional, and national level. Such a distinction is to be expected in light of the differences in their effective (geographical) coverage or scale of distribution and the commensurate impact, or seriousness of the violation, accompanying this. The boundaries between the various levels in respect of commercial broadcasters are determined by the number of households they reach. The Authority will, in principle, base its determination of a commercial media institution's coverage (reach) on the number of households it used in the monitoring cost assessment for that commercial media institution it calculated, pursuant to Article 3.30 of the 2008 Media Act, in the calendar year prior to the year in which the violation occurred.

If Article 6(5) and (6) of these policy rules do not apply to the violator, the amounts listed in the table in paragraph 4 of this provision shall apply as the basic fine (table 1).



From this follows that those basic fines, for example, apply to national public media institutions, providers of broadcast networks and (commercial) media institutions with a coverage of more than 500,000 households.

Similar to the calculation method that applies to linear commercial media services, for which administrative fines are issued based on the media service's technical coverage, fines issued to on-demand commercial media services are also based on their technical coverage. The lion's share of these services can be used, on-demand, via the publicly available internet. Therefore, these services potentially enjoy national coverage. This means that the table with the highest basic fine amounts (table 1) will, in principle, apply to such on-line on-demand commercial media services. However, the Authority does appreciate that certain circumstances may not render it equitable that the category with the highest fine amounts be applied to media services exclusively offering their content via the internet. The Authority may take the media service's size and annual turnover into account in its determination of the amount of the fine it intends to issue. Depending on the scope of their technical coverage, a lower category will apply to on-demand commercial media services with a more limited technical coverage, such as services with only a limited number of subscriptions.

Basic Fine

The Authority will determine the so-called 'basic fine' according to the coverage enjoyed by the violator in question, the category that applies to the norm that was violated, and the severity of the violation in the case in question. The Authority shall take the amount listed for the appropriate basic fine as its starting point in its determination of the amount of the fine it intends to issue in the case before it.

Mitigating and Exacerbating Circumstances for Fines

The Authority shall take into account any mitigating and exacerbating circumstances in its determination of the amount of the administrative fine it intends to issue. This may give rise to either an increase, or a reduction, of the basic fine used as a starting point. Whether, or not, and the extent to which circumstances may lead to a fine being either increased, or reduced, depends on the circumstances of the case.

The circumstance that the Authority has on previous occasion found the violator to have committed a similar, or comparable, violation, does not require any previous (suspended) sanction to have been issued in respect of the violation in question, nor does it exclude that possibility. It should be noted that the Authority will not move to impose a separate sanction for any violation which it has already deemed an exacerbating circumstance in relation to a violation for which it has already issued an administrative fine.

The Authority may, in the event that the violation caused an unlawful financial gain, or any other gain that may be expressed in terms of money, to have been obtained, deem such to constitute an exacerbating circumstance giving rise to an increase of the fine issued. Such an eventuality could see the fine increased up to the maximum amount stipulated in Article 7.12 of the 2008 Media Act, for reasons of negating the unlawful gains made.

The violator will have to show the existence of any mitigating circumstance(s) and that the violation occurred in spite of the violator having taken precautionary measures. This will require him to sufficiently substantiate the suggestion that the precautionary measures he took should be reasonably considered as sufficient. This also applies to a situation where, following the violation, the violator has since taken such measures that will in all likelihood prevent the violation in question from being repeated. The violator merely committing to taking such measures, will in this respect not suffice to allow him to successfully rely on the existence of such a mitigating circumstance.

Deviation

In the event that the exceptional circumstances of the case were to give rise to such, the Authority shall reserve the right to deviate from the application of the aforementioned calculation method. It could, for example, elect to do so if it were to feel that application of the regular calculation method would not constitute an adequate response in terms of its punitive character, or of its particular, or general, deterring nature. Any violator wishing to successfully rely on such circumstances will have to sufficiently substantiate the suggestion that circumstances existed which would justify the Authority from deviating from the application of its regular calculation method.

Article 10. (Entry into Force)

No transitional provisions have been deemed necessary to apply upon the entry into force of these policy rules. These policy rules apply to all matters in existence at the time of their entry into force, e.g.



any current entitlements and existing contracts (direct effect). Such is without prejudice to the provisions of Article 5:46(4) of the Awb. Said article provides that, where such application would prove more favourable to the offender, the *Beleidslijn Sanctiemaatregelen 2011* [2011 Policy Directive on Sanctions] shall apply to any violations occurred prior to the entry into force of these policy rules.