

# Frequently Asked Questions (FAQ) – Dutch Investment Obligation

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Version of 1 July 2025

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## 1. Dutch cultural audiovisual products

### 1.1. Question: How does the Media Act define an ‘original literary work’?

Article 3.29f(c) of the Dutch Media Act 2008 (*Mediawet 2008*; hereinafter the ‘Media Act’) provides that the scenario of a production must be based on an original literary work in Dutch or Frisian. The Explanatory Memorandum<sup>1</sup> states that a literary work could be a novel, a play or a poem, for example.

### 1.2. Question: Will any further information be provided about the four conditions mentioned in Article 3.29f of the Media Act or will these be explained in more detail?

These will not be explained in more detail, as the relevant article and the Explanatory Memorandum regarding this article provide the clarity needed. For the sake of completeness, the *Commissariaat voor de Media* (‘Dutch Media Authority’; hereinafter the ‘Authority’) notes the following about paragraphs b, c and d:

- The ‘main characters’ mentioned in paragraph b (the main characters speak Dutch or Frisian for at least 75% of the time) may also refer to people being portrayed.
- Paragraph c (the scenario is based on an original literary work in Dutch or Frisian) means that where an animated film is involved, the term ‘scenario’ also refers to the storyboard. For documentary films and documentary series, the scenario also includes the script for the documentary.
- Paragraph d (the central theme is related to Dutch culture, history, society or politics) means that the central theme of a production must be Dutch culture, history, society (in a broad sense) or politics. This is a broad category that may include both fiction and non-fiction productions.

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<sup>1</sup> *Parliamentary Documents I* 2021/22, 36176, no. 3 (Explanatory Memorandum).

## 2. Relevant revenue

- 2.1. Scenario: A media service provider provides two separate on demand audiovisual media services. The relevant revenue of both services is €7.5 million per service in any given financial year. This means that the relevant revenue in the relevant financial year totals €15 million for these two services. Article 3.29e(4) of the Media Act provides that the investment obligation does not apply if the relevant revenue for a financial year is less than €10 million. Does the investment obligation apply to this media service provider or does it not apply?**

The €10 million threshold referred to in the aforementioned article of the Media Act applies to every on demand audiovisual media service individually. In other words, despite the fact that the media service provider has generated relevant revenue of more than €10 million in total from its two on demand audiovisual media services, it has not reached the revenue threshold for every individual audiovisual media service. As a result, the investment obligation does not apply for this financial year.

- 2.2. Scenario: A media service provider provides two separate on demand audiovisual media services. In financial year X, the relevant revenue of on demand audiovisual media service “A” amounts to €5 million. The relevant revenue of on demand audiovisual media service “B” amounts to €15 million. The relevant revenue in the relevant financial year amounts to €20 million in total. What amount of revenue must be used to calculate the obligation to invest 5%, as referred to in Article 3.29e(2) of the Media Act? Only the relevant revenue of €15 million of service “B” or the total relevant revenue of €20 million?**

The obligation to invest 5%, as referred to in the aforementioned article of the Media Act, applies to individual on demand audiovisual media services. In the situation outlined above, this means that the investment obligation only applies to the relevant revenue generated from service “B” (5% of €15 million = €750,000).

The revenue of service “A” is disregarded, as it remains below the €10 million threshold. The relevant media service provider is free to invest the aforementioned amount of €750,000 in Dutch cultural audiovisual products intended for service A, service B or both services.

**2.3. Question: In addition to the on demand audiovisual media service, the media service provider's platform also provides linear media content. Does this affect the determination of the relevant revenue?**

The answer to this question depends on whether the linear media content consists of occasional live streams or that the linear content is qualified as a commercial 'broadcasting service' as defined in more detail in the Media Act.<sup>2</sup>

Broadcasting services of audiovisual media service providers are not subject to the Dutch investment obligation. This means that any revenue that is exclusively and demonstrably generated from the content of commercial broadcasting services is not part of the relevant revenue.

If, however, there is no commercial broadcasting service (as is often the case, for example, with occasional live streams), the revenue generated by making the live streams available is deemed to be "related to the provision of the relevant on demand audiovisual media service", as referred to in Article 3.29e(3) of the Media Act. The same goes for the revenue generated by making additional content available, such as online games that are provided on the same platform of the media service provider in addition to the on demand audiovisual media service.

**2.4. Question: May the part of the revenue generated from the reporting or presentation of sporting events and/or sporting competitions be deducted from the relevant revenue?**

The part of the revenue generated from the reporting or presentation of sporting events and/or sporting competitions may not be deducted from the relevant revenue. Article 3.29e(3) of the Media Act provides that the relevant revenue "consists of all revenue generated in the Netherlands that is related to the provision of the relevant on demand audiovisual media service."

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<sup>2</sup> Article 1.1(1) of the Media Act: "broadcasting service: a media service that relates to the provision of media content distributed **on the basis of a chronological schedule** established by the institution responsible for the media content, whether or not coded by means of a broadcasting transmitter or a broadcasting network **for simultaneous reception by the general public or part thereof**", and Article 3.1(1) of the Media Act: "Without prejudice to the provisions of or pursuant to the [Telecommunications Act](#), providing a commercial broadcasting service is only permitted with the **permission of the Authority**."

**2.5. Question: Is revenue generated when subscription fees are collected by or through third parties?**

Article 3.29e(3) of the Media Act provides a definition of ‘revenue’:

*“The relevant revenue for a financial year consists of all revenue generated in the Netherlands that is related to the provision of the relevant on demand audiovisual media service. This includes revenue from:*

- a. advertising messages;*
- b. subscriptions;*
- c. user transactions;*
- d. sponsorship; and*
- e. product placement.”*

This means that all revenue that is related to the provision of the on demand audiovisual media service must be regarded as revenue. It is irrelevant whether this revenue is collected from consumers through third parties.

### 3. Investments

- 3.1. Question: In any given financial year, a media service provider has invested more than the required 5% of its relevant revenue in Dutch cultural audiovisual products. May the part exceeding 5% be set off in other financial years?**

It follows from Article 3.29g(2) of the Media Act that the excess amount invested is taken into account in the next financial year. In other words, the surplus is automatically carried over to the next financial year. In order to avoid any misunderstanding, this only applies to the next financial year and not to later financial years. If, for example, 25% of the relevant revenue was invested in Dutch cultural audiovisual products in financial year 2024, this means that the obligation to invest 5% in financial year 2024 *and* – automatically – the obligation to invest 5% in financial year 2025 are complied with.<sup>3</sup> The other 15% invested is not taken into account for financial year 2026 and beyond.

- 3.2. Question: A media service provider has concluded an agreement under which a Dutch cultural audiovisual product is licensed for five years on payment of a fixed annual licence fee. How can this annual licence fee be reported as an investment?**

Article 3.29g(6) of the Media Act provides that an investment has been made if one or more agreements have been concluded. This means that the licence fees can only be reported for the financial year in which the licence agreement was concluded. As the amount of the annual licence fee payable is known and is fixed, the media service provider will choose to add up all annual licence fees and report them together for the financial year in which the relevant agreement was concluded.

- 3.3. Question: The media service provider has concluded an agreement for its transactional video on demand (TVOD) under which a Dutch cultural audiovisual product is licensed for five years on payment of a variable annual royalty rate. The fee is determined by the number of streams in that year. Contrary to the fixed licence fee referred to in question 3.2 above, the total**

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<sup>3</sup> In this example, the relevant revenue for financial year 2025 is equal to the relevant revenue for financial year 2024.

**fee for the full licence period of five years cannot be determined. How can this licence fee, which varies every year, be reported as an investment?**

Article 3.29g(6) of the Media Act provides that an investment has been made if one or more agreements have been concluded. This means that the licence fees can only be reported for the financial year in which the licence agreement was concluded. Article 3.29g(1) of the Media Act provides that the investment must be made within two financial years from the end of the financial year in which the relevant revenue was generated. In this case, the media service provider will choose to report, for every financial year within this period, the licence fee paid for that financial year, with reference to the financial year in which the agreement was concluded. This means that the royalty payments due after the expiry of the aforementioned period cannot be reported as an investment.

**3.4. Question: In the event that Dutch cultural audiovisual content is obtained by way of an exploitation licence, the production may not be older than four years at the time the licence is obtained. What point in time is to be used as the start date of the four-year period?**

The official first release date is decisive. This date is clear and can easily be verified.

**3.5. Question: Can development costs (also known as 'R&D costs') be counted as an investment?**

Development costs may be regarded as an investment if it can be demonstrated that certain development costs have been incurred for a specific Dutch cultural audiovisual product. However, the following should be borne in mind in this regard: if the development costs were initially incurred for a documentary film, documentary series, drama series or motion picture (as referred to in Article 3.29g(4) of the Media Act) but it turns out after completion that the minimum requirements for the minimum screening time and/or multiple episodes set in Article 3.29a of the Media Act are not met, these costs cannot be regarded as an investment as referred to in Article 3.29g(4) of the Media Act.

**3.6. Question: Can investments in talent development be counted as an investment?**

Such investments are not covered by the term 'investment'. As is evident from the Explanatory Memorandum, marketing and talent development are broad terms that can hardly be assessed objectively.



**3.7. Question: Can a production in the reality genre be regarded as a documentary film or documentary series, so that it counts towards the requirement that at least half of the amount to be invested must be used for a Dutch cultural audiovisual product that qualifies as a documentary film or documentary series (or a drama series or motion picture)?**

Yes, in principle, this is possible, provided that the requirements applicable to a documentary series or a documentary film are met. According to Article 3.29a of the Media Act, these are the following:

*“documentary film: an audiovisual production in the non-fiction genre in which the director’s own vision is realised while making creative use of cinematic elements in a personal style, with a screening time of at least 50 minutes;*

*documentary series: an audiovisual production in the non-fiction genre in which the director’s own vision is realised while making creative use of cinematic elements in a personal style, with a continuous storyline and in a limited series, with a total screening time of at least 120 minutes, divided among multiple episodes of at least twenty minutes each.”*

**3.8. Question: Does an investment made in a pilot or series that is not provided or that is provided only partially on the platform of the on demand audiovisual media service still count as an investment under the statutory investment obligation?**

It follows from Article 3.29g(6) of the Media Act that *“the investment has been made when one or more agreements have been concluded (...) or (...) the amount to be invested has demonstrably been used for this purpose in another way.”* This means that there is no formal requirement for the production to be or remain effectively provided on the platform of the on demand audiovisual media service in full or in part.

**3.9. Question: What is the reference date on which an investment has been made? Is it the date of the investment agreement or the date of actual payment, or is it the launch date of the production that was created as a result of the relevant investment?**

Article 3.29g(6) of the Media Act provides that *“the investment has been made when one or more agreements have been concluded for an investment or the*

*acquisition of an exploitation licence or, to the extent that it is an investment in a production or co-production, the amount to be invested has demonstrably been used for this purpose in another way.”*

In principle, this means that the date on which the relevant agreement is signed is the time of investment. Where an investment in a production or co-production is involved, the date of investment is the date(s) on which the associated production costs are incurred or the date of signing the agreement. The launch date is irrelevant when determining the time of investment.

### **3.10. Question: What options do media service providers have to invest through a fund in order to comply with the obligation?**

The Explanatory Memorandum states in 2.4 that providers may choose to invest in Dutch cultural audiovisual products either directly or through a private fund. Providers would need to manage such a fund themselves, which would allow them to make joint efforts to strengthen Dutch cultural audiovisual products. The legislature has stated that, given the nature of the investment obligation, it is up to market participants themselves to set up such a private fund or to join an existing fund.

Currently, there is one private fund that market participants could join, which is the private Abraham Tuschinski Fund ([www.abrahamtuschinskifonds.nl](http://www.abrahamtuschinskifonds.nl)).

The Authority stresses that the media service provider is the party that is responsible for complying with the investment obligation. This means that if the media service provider chooses to invest through a fund, the media service provider will ensure that the investment meets the conditions associated with the investment obligation.

## 4. Reporting obligations

- 4.1. Scenario: A media service provider provides an on demand audiovisual media service. The relevant revenue generated from this service in the Netherlands amounted to €1 million in any given financial year. Since the €10 million revenue threshold was not reached, the investment obligation for the relevant financial year does not apply to this media service provider. Does this automatically mean that the media service provider does not have to inform the Authority of the composition and amount of the relevant revenue as referred to in Article 3.29h of the Media Act?**

Whether the Authority is to be informed of the composition and amount of the relevant revenue related to the provision of the on demand audiovisual media service depends on the amount of total revenue the media service provider generated in the Netherlands in the relevant financial year. If the total revenue the media service provider has generated in the Netherlands is less than €10 million, the media service provider is exempt from the obligation to report to the Authority. If, by contrast, the total revenue the media service provider has generated in the Netherlands is €10 million or more, the Authority is to be informed of the composition and amount of the relevant revenue related to the provision of the relevant on demand audiovisual media service (but, in this scenario, the media service provider is exempt from the investment obligation).

- 4.2. Question: The investment obligation has been in force since 1 January 2024. What information needs to be reported for the first financial year?**

Every year before 1 July, media service providers must inform the Authority of the composition and amount of the relevant revenue and the investment made with regard to the previous financial year.

The information to be reported before the first reporting date of 1 October 2025<sup>4</sup> is listed below (based on a financial year that coincides with a calendar year):

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<sup>4</sup> As stated in section 1.6 of the 'Manual for the Financial Reporting of Relevant Revenue within the Framework of the Dutch Investment Obligation', the first report must be submitted before 1 October 2025 rather than 1 July 2025.

### **Reporting Form – Investment Obligation for financial year 2024:**

- The effective date of the investment obligation has been set at 1 January 2024. Before 1 October 2025,<sup>4</sup> media service providers must report on the amount and composition of the relevant revenue generated between 1 January 2024 and 31 December 2024 and the investment made between 1 January 2024 and 31 December 2024.
- *Concluding statement:* on the Reporting Form – Investment Obligation for a specific financial year, an authorised director under the Articles of Association of the media service provider makes a statement to confirm full compliance with the investment obligation for the relevant financial year (in this case financial year 2024).
- *Random checks:* the Authority may carry out random checks and, for this purpose, may request documents/additional information regarding investments reported on the Reporting Form – Investment Obligation. These documents may include, for example, production and licence agreements, scripts and the like.

#### **4.3. Scenario: The investment obligation has been in force since 1 January 2024. The relevant media service provider applies a ‘split financial year’. What information needs to be reported for the first financial year?**

In the event that a media service provider applies a split financial year, the provision of Article 9.14g of the Media Act becomes relevant. This article states that the relevant revenue is determined for the first time for the remaining months of the financial year in progress on the effective date of this article (...).

This may be illustrated as follows for a financial year that runs from 1 October to 30 September:

### **Reporting Form – Investment Obligation for financial year 2024**

- The effective date of the investment obligation has been set at 1 January 2024. Media service providers must report the relevant revenue for the remaining months of the financial year in progress on the effective date (1 January 2024) before 1 October 2025.<sup>4</sup> This means that the relevant revenue for 1 January 2024 up to and including 30 September 2024 must be reported, as well as the investment made between 1 January 2024 and 30 September 2024.



- The amount of the obligation is determined as follows for the first financial year (2024). The revenue threshold of at least €10 million for a full financial year is at least €7.5 million for the period of 9 months (1 January 2024 up to and including 30 September 2024). If, for example, the service provider has generated relevant revenue totalling €8 million in this period, the service provider is subject to an obligation to invest 5% of its revenue of €8 million (= €400,000) for the first financial year 2024.
- *Concluding statement:* on the Reporting Form – Investment Obligation for a specific financial year, an authorised director under the Articles of Association of the media service provider makes a statement to confirm full compliance with the investment obligation for the relevant financial year (in this case financial year 2024).
- *Random checks:* the Authority may carry out random checks and, for this purpose, may request documents/additional information regarding investments reported on the Reporting Form – Investment Obligation. These documents may include, for example, production and licence agreements, scripts and the like.

**4.4. Question: The Authority will annually receive information from the media service providers about the relevant revenue and compliance with the investment obligation (Article 3.29h(1) of the Media Act). Of all this information, what information will the Authority use in its reports to the Minister of Education, Culture and Science?**

According to Article 9.14h of the Media Act, the Minister will annually report to the Houses of the States General on the investments the media service providers made in Dutch cultural audiovisual products in the previous financial year. These reports will contain data and figures based on information from the Authority (see the [Kamerbrief d.d. 7 november 2024](#)).

These are aggregated figures regarding the investments made in Dutch cultural audiovisual productions, including in the separate categories of films, series and documentaries and in independent productions. In light of commercial confidentiality, the information cannot be traced back directly to individual media service providers.