[NL] Media Act amended to incorporate the revised AVSM Directive 2018

IRIS 2021-1:1/24

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On 1 November 2020, new legislation amending the Media Act 2008 (*Mediawet 2008*) came into effect, transposing the European Union's revised Audiovisual Media Services Directive 2018 (AVMS Directive) (see IRIS 2019-1/3) into Dutch law. The revised AVMS Directive was enacted in November 2018, and under Article 2, EU member states were required to incorporate the Directive into national law by 21 September 2020. The revised AVMS Directive contained a range of new rules, including more flexibility in television advertising, increased obligations to promote European works for on-demand services (such as Netflix), and certain audiovisual rules being extended to what are termed video-sharing platforms (such as YouTube). As such, the Dutch amending legislation contains a number of notable provisions implementing the revised AVMS Directive.

First, in relation to the promotion of European works, under a new Article 3:29c of the Media Act, providers of on-demand audiovisual media services must now offer at least a 30% share of European works in their catalogues, and European works must be given prominence. However, this obligation does not apply if the media service has a low turnover or a small audience. The Dutch Media Authority (*Commissariaat voor de Media*) can also grant an exemption from this obligation if the obligation would be impracticable or unjustified in view of the nature or subject of the media service.

Secondly, in relation to television advertising, under an amendment to Article 2.95 of the Media Act, the maximum percentage of 20% advertising is no longer calculated per clock hour. Instead, a maximum of 20% of advertising may now be broadcast between 6 a.m. and 6 p.m., and a maximum of 20% between 6 p.m. and midnight, providing more flexibility to broadcasters.

Thirdly, under a new Article 3a of the Media Act, new rules are applicable to video-platform services (*videoplatformdienst*), which are defined as services (a) whose principal purpose or essential functionality is providing audiovisual programmes or user-generated videos, or both, to the general public for information, entertainment, or education; (b) for which the video-platform provider does not have editorial responsibility; (c) the organisation of which is determined by the video-platform provider by automatic means or algorithms, and (d) is offered by means of public electronic communications networks. The new rules include the requirement for video platforms to ensure that audiovisual

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commercial communication is recognisable as such, that no subliminal techniques are used in audiovisual commercial communication, that audiovisual commercial communication is not offered in the form of surreptitious advertising, and that if user-generated videos contain audiovisual commercial communication and the provider of a video platform is aware of this, the provider of a video platform must inform the user about this in a way that is clear to the user. Importantly, video-platform providers must also take appropriate measures to protect minors from content that could be harmful to them, and they are also required to take appropriate measures to protect viewers against content that incites violence or the distribution of which is a criminal offence. Finally, the new rules for video-platform serivces under the amended Media Act are only applicable to video-platform services established in the Netherlands.

Wet van 30 september 2020, houdende wijzing van de Mediawet 2008 in verband met de implementatie van Richtlijn 2018/1808 van het Europees Parlement en de Raad van 14 november 2018 tot wijziging van Richtlijn 2010/13/EU betreffende de coördinatie van bepaalde wettelijke en bestuursrechtelijke bepalingen in de lidstaten inzake het aanbieden van audiovisuele mediadiensten (richtlijn audiovisuele mediadiensten) in het licht van een veranderende marktsituatie, 30 September 2020

https://zoek.officielebekendmakingen.nl/stb-2020-391.html

Law of 30 September 2020 amending the Media Act 2008 in connection with the implementation of Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13 / EU on the coordination of certain legal and administrative provisions in the Member States on the provision of audiovisual media services (Audiovisual Media Services Directive) in the light of a changing market situation, 30 September 2020

Commissariaat voor de Media, Gewijzigde Mediawet van kracht, 2 november 2020

https://www.cvdm.nl/actueel/gewijzigde-mediawet-van-kracht

Dutch Media Authority, Amended Media Act comes into effect, 2 November 2020

https://www.cvdm.nl/actueel/gewijzigde-mediawet-van-kracht

Mediawet 2008

https://wetten.overheid.nl/BWBR0025028/2020-11-01

Media Act 2008

https://wetten.overheid.nl/BWBR0025028/2020-11-01

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