

[IT] AGCOM Adopts a New Regulation on the Promotion of European Works by On-Demand Audiovisual Media Services

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On 6 April 2011, the Italian Communications Authority (Autorità per le garanzie nelle comunicazioni - AGCOM) adopted Regulation no. 188/11/CONS on the promotion of European works by on-demand audiovisual media services (hereinafter “the Regulation”). The Regulation establishes the duties of video on-demand services related to the promotion of European audiovisual works, according to Article 44, paragraph 7 of the Audiovisual Media Services and Radio Code, adopted by Legislative Decree no. 44/2010. The Regulation has been adopted through co-regulatory procedures.

For the development of the new rules, AGCOM has established a technical committee, with the participation on a voluntary base of all the stakeholders involved. The committee was established on 9 October 2010 by Deliberation no. 476/10/CONS. After almost 6 months of long discussions, the new Regulation introduced the rules relating to promotion of European works by non-linear audiovisual media services, as defined by Directive 2007/65/EC. The regulation consists of one article that amends the main AGCOM framework on the general promotion of European and independent audiovisual works adopted by Regulation no. 66/09/CONS.

The first paragraph introduces the definition of “catalogue”, that is the list provided by non-linear audiovisual media services of programmes that can be immediately viewed by the user. The second paragraph introduces the definition of a thematic catalogue consisting in an offer with more than 70% of programmes dedicated to a unique theme.

The third paragraph introduces Article 4-bis to the main framework, which sets the obligation for video on-demand media services to promote European works, gradually and taking into account the development of the market by the adoption of either of these measures:

- a) a minimum 20% share of European works in video on-demand catalogues, calculated on the total number of hours provided on an yearly basis;
- b) a financial contribution to the production of and acquisition of rights in European works that must not be less than 5% of the revenues recognised for the

provision of video on-demand services.

Article 4-bis, paragraph 2 concerns the gradual introduction of the duties within the fourth year from the coming into force of the regulation. According to Article 4-bis, paragraph 3, during this transitional period the share of works in the catalogue must not be less than the 5% and the financial contribution must not be not less than 2%.

Paragraph 4 of Article 4-bis establishes that AVMS on-demand providers who opt for the financial contribution obligation are permitted to have an incidental 1% decrease of the quota during one year that has to be recovered during the next year.

According to Article 4-bis, paragraph 5, all providers must provide an explanatory memorandum when they are not able to reach the minimum quota.

According to Article 4-bis, paragraph 6, the providers owned or controlled by one company shall reach the minimum quota calculating the operas in all the catalogues provided by the company.

Article 4-bis, paragraph 7, concerns the exclusion from the obligations related to the promotion of European works for the subjects that do not fall within the scope of the general AVMS on-demand regulation adopted by Decision no. 607/10/CONS.

The final provisions of Decision 188/11/CONS are related to the possibility of derogation from the obligations for on-demand AVMS providers that provide a thematic catalogue or that suffer financial losses in the last two years, in accordance with the same possibility granted to linear AVMS.

Approvazione del regolamento riguardante la promozione della produzione e della distribuzione di opere europee da parte dei servizi di media audiovisivi a richiesta ai sensi dell'articolo 44, comma 7, del testo unico dei servizi di media audiovisivi e radiofonici, 06/04/2011

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