[RO] Decision on the Provision of On-demand Audiovisual Media Services

IRIS 2012-8:1/34

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On 29 May 2012, the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council - CNA) adopted Decision no. 320 on the provision of on-demand audiovisual media services. The Decision, adopted in order to further the transposition of the Directive 2010/13/EU (Audiovisual Media Services Directive), was published in the Official Journal of Romania no. 434 of 30 June 2012 (see IRIS 2009-3/30).

The provisions of the Audiovisual Law no. 504/2002, as amended, and the Audiovisual Code (Decision no. 220/2011 regarding the Regulatory Code of the Audiovisual Content) apply to on-demand services, bearing in mind their intrinsic availability for viewing at the moment chosen by the user and at its individual request. The Decision covers the activity of all providers under Romanian jurisdiction and contains provisions for on-demand audiovisual services through electronic communications networks (“video-on-demand” and “video replay”).

The companies and persons who intend to launch on-demand video services, irrespective of the technical way of provision or transmission (TV, internet or other electronic communications networks) must reserve in their catalogue of programmes at least 20% for European audiovisual works, not including the news, sports events, games, advertising or teletext and teleshopping services. They are required to promote on their websites the European audiovisual works of fiction available in the catalogue and to specify the country of origin of each audiovisual programme available. The video-on-demand service providers report annually to the CNA.

Within one year of the publication of the Decision in the Official Journal, the CNA will analyse developments in the market for on-demand audiovisual media services and will review those provisions applicable to the cultural responsibilities of the providers. At the same time, the CNA has established the deadline of 3 September 2012 for all providers to notify the CNA of any intention to offer on-demand audiovisual services. Such a notification must be made at least 7 days prior to the launch of such a service.

The Decision does not apply to web services which do not compete with the on-demand audiovisual media services or websites that provide audiovisual content

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generated by private users, such as sharing platforms, private correspondence, online gambling, electronic versions of newspapers/magazines or internet search engines.

The provision of on-demand audiovisual media services through digital terrestrial television frequencies is possible only under a digital terrestrial broadcasting licence, issued by the CNA. Applicants may begin transmitting on-demand audiovisual media services only after having obtained a provision note from the CNA. The rights stipulated in the provision note may not be transmitted to third parties. The provision note may be withdrawn by the CNA for any breach of the Audiovisual Act, following termination of the holder's right to provide such services or at the holder's request. The Public Register of on-demand audiovisual services providers will be available on CNA's website.

The Audiovisual Code sets out the applicable rules on:

- the protection of minors;

- the protection of human dignity and the right to a person's own image;

- the provision of accurate information and pluralism

- interactive shows, games and contests

- advertising, teleshopping, sponsorship and product placement; and

- on political advertising applicable to on-demand audiovisual media services.

Providers must improve access to audiovisual content for people with vision or hearing disabilities.

Programmes classified "18" may be transmitted only if the access restriction measures of the Audiovisual Code are implemented (see IRIS 2011-5/38). Programmes classified "18+", as well as the audiovisual content which is illegal under Romanian law, such as pornographic materials involving minors, are forbidden from being transmitted by audiovisual media service providers within Romania's jurisdiction. Persons whose rights or interests are harmed or compromised under these provisions may exercise a right to restitution up to 15 days from the date of viewing or accessing the offending material.

A failure to comply with the Decision is subject to penalties under the provisions of the Broadcasting Act.

Decizie nr. 320 din 29 mai 2012 privind furnizarea serviciilor media audiovizuale la cerere

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http://www.cna.ro/Decizie-nr-320-din-29-mai-2012,5314.html

Decision no. 320 with regard to the provision of on demand audiovisual services

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