[SK] tvsme Considered On-demand Audiovisual Media Service

IRIS 2012-9:1/38

Juraj Polak
Radio and Television of Slovakia (PSB)

On 10 July 2012 the Council for Broadcasting and Retransmission of the Slovak Republic (the Council) decided that the service tvsme, provided by the publisher of sme - one of two major Slovak mainstream broadsheet newspapers - constitutes an on-demand audiovisual media service (AVMS) and thus falls under the regulatory scope of the Council. This is the first case in the Slovak Republic in which the provision of an electronic version of a newspaper is deemed to fall within the remit of the Council.

Interestingly, the Council had assessed the service in April 2010 and had concluded that it was not an AVMS, despite the existence of many common features between tvsme in 2010 and tvsme now. The service constitutes a separate section of the home page of the electronic version of sme. This section had then and continues to have its own IP address for direct access, although when entering the service (through the sme homepage or directly via the section's own IP address) there was never any doubt that the user had entered the sme environment (same page layout is used). The content of the service, however, changed substantially over the years. The service in 2010 comprised all audiovisual content located on the sme.sk home page. This means that the section included (written) journalistic articles accompanied by related audio-visual (AV) elements such as interviews and short video clips. Yet it also contained journalistic TV-like videos (short news / current affairs programmes created by sme journalists) and even some acquired BBC programmes. The ambiguous character of the content was the main reason for the Council's refusal to classify this service as an AVMS in 2010. The Council declared that due to the mixed nature of this service it was not possible to clearly determine whether it formed an integral part of the electronic version of sme or whether it constituted a separate service the principal purpose of which differed from the objectives of sme.sk (provision of TV-like AV content). The Council took into account the fact that assessing this kind of internet-based service was quite a new phenomenon and there was no common approach in this matter among other EU countries or in the practice of the European Court of Justice. Even so, the Council decided to act in line with the principle of *in dubio pro mitius* ("where there is doubt, to decide in favour of the defendant") and declared that the service does not fall within the remit of the Council.

© European Audiovisual Observatory (Council of Europe) 2026

In May 2012 the provider of tvsme announced that the service was available also on Samsung smart televisions. This led to a re-assessment of the service, which showed that its content had changed. The content of tvsme now consists solely of "stand-alone" videos that do not accompany any written text. These videos indicate absolute editorial control of the service provider along with a relatively high overall professional appearance (e.g. different camera angles, own logo, own microphones, light entertainment shows/news/current affairs/documentary programmes with their own hosts, etc.). All these modifications had changed the character of the service, which now appears clearly as a separate service with the principal purpose of providing television-like AV content. This conclusion is supported by the capacity to receive the service via a connected television set.

There is now no doubt that the tvsme service provided via the internet meets the criteria of the definition of an on-demand AVMS. There is, however, one remaining uncertainty that involves the tvsme app. (i.e. specialised smartphone application) for connected TV.

Using this app. to access the AV content of tvsme in "classic" on-demand mode, provides an "intro", in which the 7 newest videos are played in automatic flow. However, users do have some control over the content since they can forward or rewind within a video and even skip to the next video (but next video only). Therefore, the question was raised whether it is a linear or a non-linear (i.e. on-demand) service. After some consideration the Council decided that the "intro" in the smart TV app. does not constitute a linear service. On the one hand this is because of the level of control the user has over the content as opposed to the complete lack of control on the part of the provider over the scheduling of the content (the "position" of videos is generated randomly). On the other hand, the provider has editorial control over the available selection (the provider's own content from the internet) and to some extent over the arrangement and layout of the content. The Council decided that on balance even the "intro" forms part of the on-demand AVMS.

Rada pre vysielanie a retransmisiu, Uznesenie č. 12-14/43.680, 10.07.2012

Decision of the Council for Broadcasting and Retransmission of the Slovak Republic, No. 12-14/43.680, 10 July 2012

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026