[PL] New VOD-related fees in Poland

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Aleksandra Suwala
Atorney at Law/Radca Prawny

As of 1 July 2020, on-demand audiovisual media service providers in Poland are subject to a new fee: the so-called “Netflix tax”. The fee is to be paid by on-demand audiovisual media service providers to the Polish Film Institute (PISF) and amounts to 1.5% of the revenue received from fees for access to audiovisual media services made available to the public on demand or from commercial communications, whichever is higher.

The new VOD-related fee has been introduced by the Polish Government as a response to the COVID-19 pandemic. The fees collected by the PISF will be allocated to cinematographic projects, that is, film production, the organisation of festivals and other film events, and are aimed at helping the Polish film industry recover from the crisis. The justification for the project lies in the estimation that the tax will bring the institution revenue of approximately PLN 15 million by the end of 2020 and at least PLN 20 million per year in subsequent years.

An on-demand audiovisual media service provider established in another member state of the European Union shall make the payment of 1.5% of the revenue received from fees for access to audiovisual media services made available to the public on demand, determined on the basis of the revenue received on the territory of the Republic of Poland. However, the amended law provides for exceptions to the payment obligations: micro-enterprises and on-demand audiovisual media service providers that did not have more than 1% of subscribers of data transmission services providing broadband Internet access during the previous year. The payment is to be made on a quarterly basis, within 30 days after each quarter.

The right to impose obligations on on-demand audiovisual media service providers for the development of national cinematography is not fully harmonised at EU level, and member states have a degree of freedom in this respect. Directive 2018/1808 on audiovisual media services indicates that member states have the right to impose such obligations on service providers under their jurisdiction. In addition, it indicates that if member states decide to impose such obligations on national providers, they may also impose it on providers from other member states who provide services on their territory. The provisions of Directive 2018/1808 are being implemented in all member states. The deadline for its implementation is 20 September 2020. Prior to 1 July 2020, a similar fee to the newly introduced one was paid only by broadcasters, cinema theatres and

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distributors, that is, entities which derive income from the exploitation of the legacy of Polish cinematography. However, as the Polish law on cinematography was first introduced in 2005 when on-demand audiovisual media services did not exist, the lack of provisions imposing fees on on-demand audiovisual service providers led to a degree of inequality - for example, television broadcasters who provide on-demand audiovisual services used to pay a fee on part of their television advertising revenue, yet did not have to pay anything on the advertising revenue generated from on-demand audiovisual services.

Platformy VoD zapłacą na polskie kino. Jest decyzja Sejmu, Business Insider.

https://businessinsider.com.pl/media/internet/skladka-na-polskie-kino-od-platform-vod/qk51h8b?utm_source=businessinsider.com.pl_viasg_businessinsider&utm_medium=referal&utm_campaign=leo_automatic&srcc=ucs&utm_v=2

VOD platforms will pay for Polish cinema. There is a decision of the Sejm [Lower house of Parliament], Business Insider.

Ustawa z dnia 30 czerwca 2005r. o kinematografii.

http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20051321111/U/D20051111Lj.pdf

Polish Cinematography Act of 30 June 2005.

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