[RO] Clarification regarding the video section of an online publication

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On 8 September 2021, the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council — CNA) issued a press release offering a clarification regarding video sections of online publications.

The press release, written for online publications that have separate video sections and for those that intend to provide audiovisual media services on demand, set out the information that the CNA had made known in its public meeting of 31 August 2021. Following the analysis of a petition regarding the video section of an online publication, it had identified two possible scenarios in relation to the provisions of Article 1 paragraph (1)(g) of Directive 2010/13/EU and of Article 2 paragraphs (1) and (2) of the CNA Decision no. 320/2012 on the provision of on-demand audiovisual media services.

First, the situation in question could be found in the editorial area of an online magazine. According to the definition given by Directive 2010/13/EU at Article 1 paragraph (1)(a), and taking into account Recital three of Directive (EU) 2018/1808, as well as the provisions of Article 2 paragraph (3) of the CNA Decision no. 320/2012, the editorial area of the online magazine did not represent an audiovisual media service. Not every webpage that contained short video sequences, as auxiliary elements, meant to be examples only, automatically fell within the notion of audiovisual media service and therefore, that aspect did not fall within the competence of CNA;

Second, there could be an autonomous section that met all the criteria established in the definition of on-demand audiovisual media services in accordance with the provisions of Article 1 paragraph (1) lit. g) of Directive 2010/13/EU and of Article 2 paragraph (1) and (2) of the CNA Decision no. 320/2012. In that case, the video section of a site *did* fall within the competence of the CNA, as that section represented an audiovisual media service and had to comply with the regulations in force.

In other words, not every online publication fell within the scope of the CNA's activity. Audiovisual materials inserted into articles published on a website only to illustrate news or information did not constitute on-demand audiovisual media services. However, if the publication had a separate section comprising strictly of

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audiovisual material, it was to be considered a video-on-demand service.

According to Article (1) paragraph (1)(a) of CNA Decision no. 320/2012, a video-on-demand service is a type of non-linear on-demand audiovisual media service, which offers the user access, at his or her request and at the time chosen by him or her, to watch films, videos, shows, (live or recorded), as well as other types of video content which was brought together in a programme catalogue, regardless of the form in which they were selected and organised within that catalogue.

In this context, the CNA quoted the Court of Justice of the European Union (CJEU) in the case of *New Media Online*, resolved by Case C-347/14, "the offer of short videos may be subject to regulation on audiovisual media services. This is the situation when the respective offer has an autonomous content and function in relation to those of the journalistic activity of the online newspaper. (...) The Court emphasizes in this regard that, despite the audiovisual elements it contains, an electronic version of a newspaper should not be considered an audiovisual service if these audiovisual elements are secondary and serve only to supplement the supply of press articles written."

The CNA drew attention to the fact that that the provision of audiovisual media services — within the scope of the definitions provided in Article 1 paragraphs 1-3 of the Audiovisual Law no. 504/2002 — through any type of electronic communication network, including the Internet, was subject to the following legal obligations:

- a request for an audiovisual license, in the case of television services, pursuant to Articles 50-55 of the Audiovisual Law;

- notification of the audiovisual media service upon request, in accordance with the provisions of Article 74 paragraph (5) of the Audiovisual Law, as well as with the provisions of Article 3 paragraph (1) of the CNA Decision no. 320/2012, which stipulates the obligation to notify the Council at least 7 days before the beginning of the activity.

Non-compliance with those obligations entailed the sanctioning of audiovisual media service providers, in accordance with the Audiovisual Law and the CNA Decision no. 320/2012. The CNA warned that it would start a process of identifying the providers of audiovisual media services on request that were not complying with the legislation in force.

Comunicat de presă 08.09.2021. În atenția publicațiilor online care au secțiuni video distincte și a celor care intenționează să furnizeze servicii media audiovizuale la cerere.

https://cna.ro/Comunicat-de-pres,11344.html

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Press release 08.09.2021. For the attention of online publications that have separate video sections and those that intend to provide audiovisual media services on request.

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