[LV] Media regulator takes active enforcement measures against providers of on-demand audiovisual media services

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Recently the Latvian media regulator, the National Electronic Mass Media Council (NEPLP) has taken a more active enforcement stance against unregistered on-demand audiovisual media services, as well as promoting compliance with the relevant rules, by issuing guidelines.

On 2 December 2021, the NEPLP announced that it has decided to penalise natural persons involved in the unlawful provision of an on-demand audiovisual media service – Brīvvalsts TV. According to the announcement, the NEPLP carried out a thorough examination of their website to assess its conformity with the features of an audiovisual on-demand service and discovered that the service corresponded to all essential features. The providers of Brīvvalsts TV had not applied to the Council for registration as a service provider before commencing, thus violating the legal requirements. As the service was not registered in accordance with Section 22 of the Electronic Mass Media Law, the NEPLP decided to apply two EUR 700 fines and a EUR 500 fine on individuals for violating the Electronic Mass Media Law.

According to the NEPLP, the violation should be considered as significant as the on-demand service has been provided illegally for a long time, misleading the public and creating an unequal situation in the sector, where other on-demand service providers offer the service complying with industry regulations and obligations specified in regulatory enactments.

The applied penalty reflects the increasing activity of the NEPLP to promote the compliance of the on-demand audiovisual media service providers. After identifying more potential on-demand audiovisual service providers, who should register with the NEPLP and become electronic mass mediums, the NEPLP announced on 15 December 2021 that it has prepared new guidelines on identifying on-demand audiovisual electronic media services. The new guidelines were developed based on the Audiovisual Media Services Directive and its amendments, the Electronic Mass Media Law, and international practice.

The guidelines are designed for the NEPLP employees to carry out inspections of audiovisual media service providers. However, the guidelines are also intended to

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be used by audiovisual media service providers in determining whether their service meets the characteristics of an on-demand audiovisual media service, and thus whether the provider is obliged to submit a notification to the NEPLP.

The first part of the guidelines explains the terms used. The second section of the guidelines identifies seven characteristics that must be cumulative for a service to be considered as an on-demand audiovisual media service.

Firstly, the provider must offer an audiovisual media service with the aim to provide such a service for remuneration. The guidelines however indicate an exception where the requirements for an on-demand audiovisual media service do not apply – for instance, in the case of services whose operation is not mainly related to economic activity in the broadest sense.

Secondly, the primary purpose of the service provider is to offer (produce or distribute) television-like audiovisual programs via public electronic communication networks, including websites.

Thirdly, audiovisual media services are available to the public via public electronic communication networks, whether for a fee or free of charge, with or without registration, including Internet websites.

Furthermore, the service provider organises a catalogue within the service in which the audiovisual programs are placed. The catalogue is a systematic and organised list (for example, programs, films, etc.) according to a particular principle (for example, by theme, genre, country of origin).

An on-demand audiovisual media service is designed and made available to the broadest possible audience, and as a result, may have a significant impact on it. The guidelines define the term “intended for the general public” as a service that is meant for a large part of the public rather than for individual users or groups of like-minded people.

The purpose of the on-demand audiovisual media service is to “inform, educate or entertain” the general public. Services whose primary objective instead is to offer a variety of goods, and the audiovisual content merely visualises the offer, are not considered on-demand services.

Finally, the audiovisual media service provider has editorial responsibility (“effective control”), or the right and ability to decide, which programs will be broadcast on the audiovisual service in question.

Overall, given the rapid development of on-demand electronic media audiovisual services in recent years and the expected growth and use of these services, the guidelines developed by the NEPLP will promote a common understanding of the

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characteristics of on-demand services and their content, facilitating easier identification of such services.

NEPLP soda tīmekļa vietnes Brīvvalsts TV raidījumu nodrošinātājus par pretlikumīgu audiovizuāla pakalpojuma pēc pieprasījuma sniegšanu.

https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/ar-pretlikumigu-audiovizuala-pakalpojuma-pec-pieprasijuma-sniegsanu.html

NEPLP penalises Brīvvalsts TV broadcasters for providing illegal on-demand audiovisual services

NEPLP izstrādātā instrukcija palīdzēs identificēt audiovizuālus pakalpojumus pēc pieprasījuma

https://www.neplpadome.lv/lv/sakums/padome/padomes-sedes/sedes-sadalas/neplp-izstradata-instrukcija-palidzes-identificet-audiovizualus-pakalpojumus-pec-pieprasijuma.html

The guidelines developed by NEPLP will help identify on-demand audiovisual services

Instrukcija audiovizuālo elektronisko plašsaziņas līdzekļu pakalpojumu pēc pieprasījuma identificēšana

https://www.neplpadome.lv/lv/assets/documents/PPT/PPP_Instrukcija_25.11.2021..pdf

Guidelines to identify on-demand audiovisal electronic media services

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