

[NL] Supervisory investigation of video-uploader compliance with AVMSD rules

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On 9 May 2023, the *Commissariaat voor de Media* (Dutch Media Authority) - CvdM) announced the results of a notable supervisory investigation into video-uploader compliance in the Netherlands, with rules under the *Mediawet* (Media Act) transposing the revised EU Audiovisual Media Services Directive (AVMSD) (see IRIS 2019-1/3 and IRIS 2021-1/24). This follows a high-profile announcement in May 2022 that the CvdM would be monitoring video-uploaders under its new Policy Rule for the qualification of commercial on-demand services in 2022, which clarified which video-uploaders must register with the Media Authority (see IRIS 2022-7/17).

Crucially, the Media Authority noted that video-uploaders “need to be more compliant”, after the investigation by the Authority of a sample of video-uploaders who are under active supervision. The Authority emphasised that certain rules under the Media Act have applied to these video uploaders “for some time now”, in particular, rules about registering accounts, clearly indicating advertising, and protecting minors. The Media Authority stated it would penalise video uploaders who do not comply with the rules; but in the first instance, the Authority would focus on “preventing or rectifying” violations; and if necessary, fines will be imposed. The CvdM noted that about 200 video uploaders have registered with the Authority, and several videos from 50 uploaders were analysed in a random sample. The random check is part of the Authority’s implementation of the supervision of video uploaders since 2022.

In terms of specific rules, the Authority noted that advertising, sponsorship and product placement should be easy for the viewer to recognise. This also applies if there is advertising for products or companies in which video-uploaders have a (large) share (self-promotion). The Media Authority concluded on the basis of the sample that “too often it is insufficiently made clear that a video is about commercial influence”, and a statement in the description of the video “is not sufficient”: it must also be “made clear in the video itself when commercial influence is involved”. Merely tagging the brand advertised by video uploaders is also “not enough for the recognisability of advertising”.

In addition, half of all video uploaders registered with the Media Authority did not report to the *Nederlands Instituut voor de Classificatie van Audiovisuele Media*

(Netherlands Institute for the Classification of Audiovisual Media) , and the *Stichting Reclame Code* (Dutch Advertising Code Foundation) - SRC). However, every video uploader registered with the Media Authority must report to NICAM, and must ensure that children and parents are informed about (possibly) harmful content for children. An advertising video uploader must also register with SRC. Video uploaders who do not comply with this legal obligation will soon receive a letter from the Media Authority.

Finally, the Media Authority noted that supervision and enforcement is not limited to compliance with the rules on commercial influence. Video uploaders also have some administrative obligations. One of them is the registration requirement. As with all other media institutions, it is the responsibility of the video uploaders themselves to notify the Media Authority if they need to register. Not every video uploader that needs to register has done so. As, the Media Authority recently wrote to a number of non-registered video uploaders to register or to demonstrate that they are not required to register. Failure to comply with this request in time will result in a fine.

Dutch Media Authority, Video uploaders need to get started with regulatory compliance, 9 May 2023

