

NATIONAL AUDIOVISUAL COUNCIL

Decision no. 320/2012 concerning the provision of on demand audiovisual media services

Whereas the National Audiovisual Council (NAC) holds the role of warrantor of the public interest, as well as that of unique regulatory authority in the field of audiovisual media services,

Having regard to the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services,

Having in view the establishment of the procedure of notification of audiovisual media services on demand and of the conditions of broadcasting these services,

Taking into account the specific character of on demand audiovisual media services, which determines a *mutatis mutandis* application of the regulation established by NAC Decision no. 220/2011 on the Code of regulation for the audiovisual content, with its subsequent alterations regarding the audiovisual content,

Having regard to Art. 12 of the Directive 2010/13/EU according to which "*on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services*",

Having in view the fact that the right of reply cannot be exercised in an online environment, this one being adequate for television services,

In keeping with the provisions of art. 17, art. 74 par. (5) and art. 75¹ of the Audiovisual Law no.504/2002 as further modified and completed,
THE NATIONAL AUDIOVISUAL COUNCIL adopts the following:

DECISION CHAPTER I *General provisions*

Art. 1. – (1) Within the meaning of the present decision, the following terms and phrases hold the following significance:

a) *service "video on demand"* – type of audiovisual media service on request, non-linear, named also *video by request*, which offers access to the user at his individual request at the moment chosen by the latter for the viewing of feature films, videos, shows, live or recorded, as well as other video contents on the basis of a catalogue of programs, whatever the form of selection or organizing they have within the catalogue;

b) *"video replay" service* – type of non-linear audiovisual media service on request, named also *catch up TV*, which offers access to the user, for a limited period of time, at reviewing, at his individual request at the moment chosen by him, of programs previously broadcast within a television service;

c) *broadcasting* – setting at the disposal of the public of audiovisual programs within an on demand media service; broadcasting also includes the communication

within an on demand audiovisual media service of signs, signals, texts, sounds, data, messages of any nature, such as subtitling services and electronic program guides;

d) *user* – any natural person that uses or requests an audiovisual media service intended for public audience;

e) *provision note* – the administrative act issued by the National Audiovisual Council to a provider of on demand audiovisual media services, herein after called provider, which grants the holder to set at the disposal of the public on demand audiovisual media services;

f) *site web* – group of multimedia web pages, comprising texts, sounds, moving images, with or without sound, data or messages of any nature, accessible on the Internet, and which are connected by so-called *hyperlinks*;

g) *representative* – the legal representative or any other person commissioned by a special proxy to engage the provider of on demand audiovisual media services in his relation with the National Audiovisual Council;

h) *CNA* – National Audiovisual Council;

i) *ANCOM* – National Authority for Management and Regulation in Communications;

j) *Audiovisual Media Services Directive* – Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

(2) In the present decision the definitions provided by Art. 1 of the Audiovisual Law no. 504/2002 with as further modified and completed are applied, herein after called *The Audiovisual Law*, the definitions provided by art. 1 of CNA Decision no. 220/2011 on the Code of regulation for the audiovisual content, with its further completions, herein after called *The Audiovisual Code*, as well as the definition of the electronic communications network provided by Art. 4 par. (1) p. 6 of the Government Emergency Ordinance no. 111/2011 on electronic communications.

CHAPTER II

Notification requests of on demand audiovisual media service

Art. 2. – (1) The present decision establishes the conditions for providing on demand audiovisual media services through electronic communications networks and applies to providers under Romanian jurisdiction, as stipulated by the criteria defined in Art. 2 of the Audiovisual Law.

(2) The on demand audiovisual media services, as defined in Art. 1 par (1) p. 3 of the Audiovisual Law, may be composed of “*video on demand*” services and/or “*video reviewing*” services.

(3) The present decision does not apply to:

a) web services that do not compete with the on demand audiovisual media services, the audiovisual content on the site being only incidental and accessory for the service main object, as web sites that contain only auxiliary animated graphic elements, video clips, fragments of audiovisual programs, when these are present only incidental and exclusively for illustration, short advertising spots or information on a product or service that is not audiovisual;

b) web sites that provide audiovisual content generated by private users, with the aim to place content for common use and exchange within a community of interests, such as *You Tube, Google, Vimeo*;

c) any form of private correspondence;

d) gambling online, including lotteries, bets and other form of services in the field of gambling, excepting games and competitions broadcast, according to the law, within an audiovisual media service;

e) electronic versions of newspapers and magazines;

f) search engines on Internet.

(4) Providing of on demand audiovisual media services through electronic communications networks using digital terrestrial frequencies in television is possible only under a digital terrestrial broadcasting license, the CNA granted according to the law.

Art. 3. – (1) Any person intending to provide on demand audiovisual media services, hereinafter called applicant, is compelled to notify CNA this intention at least 7 days before the start.

(2) With the purpose of notification, the applicant will fill in and submit the request for notification at the CNA headquarters, the document provided by Appendix no. 1, which is part of this decision. The notification application can be downloaded from the website of CNA, at www.cna.ro.

(3) The Romanian individual applicant, who is a trader, will attach to the request for notification under par. (2) in addition the following documents:

a) the registration certificate with the Trade Register of the legal person or, where appropriate, of the authorized natural person, of the authorized family association, of the individual business enterprise or of the family business enterprise, in copy;

b) the constitutive act, with all subsequent amendments and completions, accompanied by mentions matriculation certificates, in copy, or an official certificated issued to that effect by the Trade Register no later than 15 days before submitting the notice;

c) the identity card of the solicitant authorized natural person, in copy.

(4) The applicants foreigners having headquarters in Member States of the European Union or European Economic Area will attach at the application file the following documents:

a) equivalent documents to those referred in par. (3) lett. a) and b);

b) contact address on Romania's territory of the person designated to represent the applicant.

(5) Copies of the documents referred to in par. (3) and (4) shall be certified by signature of the legal representative; documents transmitted to the CNA in a foreign language must be accompanied by an authorized translation into Romanian.

(6) The notification and the accompanying documents are submitted to the CNA in person or by a representative of the applicant, by getting signature at the headquarter or territorial offices of the CNA, or sent through a postal service or as document in electronic form, which has an extended electronic signature incorporated, attached or logically associated, based on a qualified certificate that is not suspended or revoked at the time and is generated by a secure device for electronic signature.

Art. 4 – To ensure compliance with the obligation of CNA, the cooperation between regulatory authorities in EU Member States, established by the Directive of

audiovisual media services, CNA may request information necessary to identify the provider, as follows:

- a) to the person providing the on demand audiovisual media service, where the information on the service web page does not specify the regulatory or supervisory authority under whose jurisdiction it is located;
- b) to the regulatory or supervisory authorities of EU Member States, in accordance with Art. 30 of the Audiovisual media services directive;
- c) to the Romanian authorities that can contribute to identify the provider.

Chapter III

Conditions for issuing, modification and withdrawal of on demand audiovisual service provision note

Art. 5. - (1) The notification shall be deemed legally performed only if all the requirements of the Chapter II are met, in which case the Licencing and Authorization Office issue to the applicant the on demand audiovisual media service provision note, hereinafter called the provision note, that confer to the applicant the status of on demand media service provider.

(2) The provision note may be forwarded to the applicant as document by electronic means, that was filledout , attached or logically associated with an electronic signature.

(3) The applicant may start the broadcasting of on demand audiovisual media service / services only after obtaining the provision note from the CNA.

(4) The provision note sent to the applicant certifies that this had made the notification provided by this Decision and have the right to provide on demand audiovisual media services specified in the provision note.

Art. 6. - The provision note comprises, as appropriate:

- a) the number and date of issue;
- b) identification data of the holder;
- c) the name and the type of the on demand audiovisual media service;
- d) identification data of the electronic communications networks and services used as well as the name of the provider / providers that ensure access to on demand audiovisual media service;
- e) website address and / or the Internet portal name belonging to the service;
- f) geographical area of the on demand audiovisual media service.

Art. 7. - (1) Providers hold the obligation to notify the CNA any modifications occurred in the documents and data mentioned in the Art. 3. par. (3) and (4), submitted during the notification, as well as in the data provided in the Art. 7. par. b) - f), stated in the notification form.

(2) Obligation to notify the CNA the modifications in documents and data specified in par. (1) must be made within 30 days after occurrence of the modification.

Art. 8. – (1) The provision note is withdrawn by the CNA under the following circumstances:

- a) as a result of enforcing the provisions of the Audiovisual Law, Art. 95¹ ;
- b) following the ceasing of the right of the holder who provides electronic communication networks or services through which on demand audiovisual

- media service is provided, ceasing set by decision of the National Authority for Management and Regulation in Communication president, under the law;
- c) upon the holder's request; the waiver of the right to provide on demand audiovisual media service, right provided by the issued provision note, is made by lodging with the CNA a waiver application.

(2) The request specified by para. (1). lett. c) takes effect from the date of transmission to the CNA or at a later date provided therein, and the CNA will confirm in writing to the provider the cease of the right to provide on demand audiovisual media services.

(3) Withdrawal of the provision note is established by CNA's decision, which sets the date of ceasing of the right to provide on demand audiovisual media services stipulated in the provision note. The decision shall be published on the website of CNA.

Art. 9. - The rights stipulated in the provision note shall not be transmitted to third parties.

Art. 10. - In order to accomplish an official inventory of the providers, CNA establishes and maintains the Public Register of on demand audiovisual services providers, available on CNA's website.

CHAPTER IV

Rules for Audiovisual Programs Broadcast by Video on Demand Audiovisual Media Services

Section 1

General provisions

Art. 11. – Law provisions and Audiovisual Code provisions shall apply also to video on demand audiovisual media services, having in view their specific nature of being available for viewing at the moment chosen by the user and at his individual request.

Section 2

The Protection of Minors

Art. 12 – The rules regarding the protection of minors' rights in audiovisual programs that apply for video-on-demand audiovisual media services are those stipulated in art. 2-8, art. 9 para (1), art. 10 and art. 11 in the Audiovisual Code.

Art. 13. – (1) The rules regarding the audiovisual programs classification made with a view to protecting the minors, that apply for video-on-demand audiovisual media services are those stipulated in art. 13, art. 14 par. (3), art. 15 par. (2), art. 16 par. (1) and par. (2), art. 19 – 21 and art. 27 par. (1) in the Audiovisual Code.

(2) In keeping with the classification of the audiovisual programs stipulated in art. 21 in the Audiovisual Code, these programs shall be broadcast, accompanied by one of the following warning signs:

- a) "PA" programmes, classified as such in keeping with the provisions of art. 21, let. b) in the Audiovisual Code shall be broadcast accompanied by a warning sign consisting of a white circle inside which capital letters "PA" (Parental agreement) stand

written in white letters on a transparent background;

b) Programmes “12” classified as such in keeping with the provisions of art. 21, let. c) in the Audiovisual Code shall be broadcast accompanied by a warning sign consisting of a white circle within which stands the digit 12 written in white letters on a transparent background.

c) Programmes “15” classified as such in keeping with the provisions of art. 21, let. d) in the Audiovisual Code shall be broadcast accompanied by a warning sign representing a white circle with a white number 15 inside on a transparent background;

d) Programmes “18”: classified as such in keeping with the provisions of art. 21, let. e) in the Audiovisual Code shall be broadcast accompanied by a warning sign representing a white circle having inside a white number “18” on a transparent background.

Art. 14. - Programmes classified “18” shall be broadcast only on condition that access restriction measures stipulated by art. 13 in the Audiovisual Code are provided.

Art. 15. - Programmes classified “18+”, classified as such in keeping with the provisions of art. 21, let. f) in the Audiovisual Code, as well as the audiovisual content which is illegal according to law provisions, such as pornographic materials with minors, are forbidden for broadcasting to audiovisual media services providers under Romania’s jurisdiction.

Art. 16. – The warning sign suitable for the audiovisual content according to the classification in art. 12 shall be visible during the entire time the program is broadcast as well as during the time promos for these programs are broadcast.

Art. 17. - (1) The audiovisual media services providers are allowed to include thematic video on demand services that contains 18 +, edited by providers under the jurisdiction of another Member States of the EU, only on condition that access restriction measures stipulated by art. 13 in the Audiovisual Code are provided, adapted to the used technical platform.

(2) The audiovisual media services providers can trade the services provided in para (1) only for a charge, by subscription or any other form of prior individual authorization.

(3) The packages that include 18+ programs cannot be trade on terms more favorable than those packages that do not contain such programs.

Section 3

Respect of Human Dignity and the Right to One’s Own Image

Art. 18. Audiovisual media service providers are compelled to respect the fundamental human rights and freedoms, the private life, to honor and reputation, and the right to a person’s own image.

Art. 19. Rules regarding the protection of human dignity and the right to a person’s own image that apply to audiovisual media services on demand are those stipulated by art. 31-48 in the Audiovisual Code.

Section 4

The Right of Rectification

Art. 20. - 1. Any natural or legal person regardless of nationality whose legitimate rights or interests, in particular reputation and good name were damaged by an

assertion of incorrect facts made during an audiovisual media service on demand must have a right to reply.

(2) The rectification cannot be required in case the inaccuracy of the information is not obvious and significant.

(3) Within maximum 15 days since the date the respective programme was accessed/viewed during which the damage was made, the applicant for a right of rectification shall forward a written request to the head office of the audiovisual media service provider that transmitted the incriminated programme, containing, as the case may be, the following:

a) his or her name and address, telephone number or any other means by which they can be rapidly and effectively contacted;

b) the programme title and the date the respective programme was accessed/viewed;

c) the incorrect facts for which the rectification is requested;

d) the motivation of the request;

(4) In case of a minor under 14 years, the request mentioned in par. 3, shall be signed by his/her parents or by the legal representative, while for the minor aged between 14 and 18 years, the request shall be signed by the minor and by his/her the parents or legal representative.

(5) The request of the right for rectification shall be registered by the audiovisual media services provider mentioning the date and time it was received. The applicant shall be provided a written proof of the receipt.

(6) In the case the audiovisual media services provider refuses to register the request stipulated in par.(3), the applicant can address directly the National Audiovisual Council, further named the Council, within maximum 30 days since the date the respective programme, during which the damaging was made, was accessed/viewed.

(7) The audiovisual media services provider may deny the right to rectification under the following situations:

a) the request was not transmitted within the term and conditions stipulated in art. 3) and 4);

b) the provider is in possession of evidence proving the truth of the presented facts, or, as the case may be, the conditions stipulated in par. 2) is complied with.

(8) Within two day's time since the receipt of the request, the provider shall inform in written the applicant regarding the approval/rejection of the request. The motivated refusal shall bindingly specify the applicant's possibility to address the Council within maximum 30 days since the date the respective programme, during which the damaging was made, was accessed/viewed.

(9) The right to rectification shall be exercised by posting the text of the rectification on the respective service website starting page in a visible place, within maximum 3 days since the request for rectification was approved.

(10) The National Audiovisual Council may be addressed in keeping with par. 6 and par. 8 under the terms and the conditions stipulated by art. 59-62 in the Audiovisual Code.

Art. 21.- (1) The audiovisual media services providers shall publish on the web page of the service in a visible place the following:

a) detailed, clear and updated information stipulated by art.48 in the Audiovisual Law;

b) the website and the e-mail of the National Audiovisual Council

(2) The providers shall have to comply with providing the link to the complaints form on the NAC web page.

Section 5

Ensuring the correct information and pluralism

Art. 22. – Providers are compelled to ensure objective information to the public through fair presentation of facts and events and encourage the free formation of opinions.

Art. 23. - Rules on providing accurate information and pluralism, applicable to on demand audiovisual media services are provided in Art. 64 to 75, art. 77 para. (1) and Art. 80 of the Broadcasting Code.

Art. 24. Providers will ensure their own web pages accessibility, in order to improve access to audiovisual content by people with vision or hearing disabilities, according to international standards for web accessibility.

Section 6

Cultural responsibilities

Art. 25. - Rules on cultural responsibilities of suppliers, applicable to on demand audiovisual media services are provided in Art. 83 and Art. 84 of the Broadcasting Code.

Art. 26. (1) Video on demand service providers will ensure within the catalogue of programs a percentage of minimum 20% reserved for European audiovisual works, excepting the time dedicated to the news, sports events, games, advertising, as well as teletext and teleshopping services.

(2) Providers are required to promote the home page of the web site, equally, and European audiovisual works of fiction available in the catalog.

(3) For the purposes of par. (1) and (2), providers are required to specify the country of origin of each audiovisual program available in the catalog.

(4) video on demand service providers report yearly to the Council, according to the model presented in Appendix no. 2, which is integral part of the present decision.

Section 7

Interactive programs, games and contests

Art. 27. Rules on interactive shows, games and contests, applicable to on demand audiovisual media services are provided in Art. 89-91 and art. 92 para. (1) of the Broadcasting Code.

CHAPTER V
**Rules on commercial communications
broadcast on-demand audiovisual media services**

Section 1
General provisions

Art. 28. - The provisions of the Broadcasting Code on commercial communications shall apply accordingly to on demand audiovisual media services, taking into account their specificity, while viewing time is selected by the user.

Art. 29. - For the purposes of correct information, any information or warning contained in an audiovisual commercial communication is broadcast in such a manner that it can be clearly perceived by the public, in particular by ensuring the following measures:

- a) to be made static, readable and have sufficient length, if running as videotext information;
- b) to be played at normal speed reading.

Section 2
Sponsorship

Art. 30. - Rules on sponsorship, applicable to on demand audiovisual media services are provided in Art. 97 para. (1) and (2), Art. Article 98. (1), (2) and (4) and Art. 99 of the Broadcasting Code.

Section 3
Product placement

Art. 31. - Rules on product placement, applicable to on demand audiovisual media services are provided in Art. 100 of the Broadcasting Code.

Section 4
Advertising and teleshopping

Art. 32. - Rules on advertising applicable to on demand audiovisual media services are provided in Art. 101-105, art. 108, art. 109, art. 114, art. 115, art. 117-119, art. 120 par. (1) - (3), Art. 121-124 para. (1) - (3), Art. 125, art. 126, art. 127 par. (1) and (2), Art. 128 to 134 of the Broadcasting Code.

Art. 33. - Rules on teleshopping applicable to on demand audiovisual media services are provided in Art. 135 to 137 of the Broadcasting Code.

Art. 34- The rules on political advertising, applicable to on demand audiovisual media services are provided in Art. 139 and Article 140. (2) of the Broadcasting Code.

Art. 35. - (1) telethon programs must specify at the beginning and end of the programs the person / people holding the responsibility / for collecting and using goods and donated monetary funds and contact details of the latter.

(2) For campaigns that involve the collection of funds from the public for a specific objective, suppliers are obliged to inform the public about the concrete results of these campaigns.

Art. 36. - Advertising and teleshopping for products and treatments for sexual problems can be broadcast only *18 programs*, so classified in accordance with Art. 21 points. e) of the Broadcasting Code.

CHAPTER VI

Recording of broadcasts within on demand audiovisual media services

Art. 37. - (1) The provider must keep a copy of each program included in the audiovisual media service request at least 30 days after the program ceases to be available for viewing.

(2) The exception from the provisions of par. (2) program that is subject to a request for granting the right to rectification, in which case a copy will be kept for 45 days after the date the program ceases to be available for viewing.

Art. 38. - (1) Suppliers are required to provide CNA, upon request, within three days following the request, a copy of the program in a standard format to enable viewing of the program as it was made available for public viewing.

(2) A copy of the program, according to the provisions of para. (1), shall be submitted to the NAC, in person or by a representative of the applicant, under signature, or document transmitted by e-mail in an electronic form, which was incorporated and attached or logically associated with an extended electronic signature, based on a qualified certificate suspended or not revoked at the time and generated by a secure electronic signature creation device.

CHAPTER VII

Obligation to inform the public

Art. 39. - (1) The provider is required to provide the public with detailed, clear and updated information on applicable prices and tariffs, and technical and commercial conditions of use on demand audiovisual media services, in order to ensure knowledgeable users to choose the question, in accordance with consumer protection legislation.

(2) The provider is required to prepare and present the information referred to in para. (1) in a manner which allows users to easily browse them. Conditions or terms that affect some offers will be presented in the same format and with the same font used for drawing graphics offerings.

CHAPTER VIII

Penalties, transitional and final provisions

Art. 40. - Failure to comply with this Decision is liable to penalties in accordance with the Broadcasting Law.

Art. 41. - (1) Not later than 3rd September 2012, all service providers of on demand audiovisual media are required to complete and submit the request for notification procedure as laid down in Chapter II.

2) Failure of notification under the terms and conditions of par. (1) puts an end to the right to provide upon request audiovisual media services.

Art. 42. - Within one year after the date of publication of this Decision in the Official Gazette, Part I, CNA will analyze the on demand audiovisual media services market developments and will review the provisions listed in Section VI "*Cultural responsibilities*" of Chapter IV "*Rules for Audiovisual Programs Broadcast by Video on Demand Audiovisual Media Services*".

Art. 43. – The present Decision shall be published in the Official Gazette, Part I.

President

National Broadcasting Council,

Rasvan Popescu