

Administrative Notice BC03/15

Date 21/12/15

Administrative Notice with respect to On-Demand Media Service

This Notice is issued in accordance with s13 (1) of the Broadcasting Act 2012 and in light of the advancements in technology with regards to on-demand media services.

Providers of audiovisual media services may operate an on-demand service which will encompass a catalogue of programmes selected by the media service provider.

Having considered the requirements of the Broadcasting Act 2012 (the Act), and 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 (AVMS Directive), the Authority explains in this Notice how it interprets what an on-demand service is, and how it may be distinguished from other methods of making available audiovisual media services.

1. Whereas the Act provides the following definitions:
 - “on-demand media service” means a non-linear media service provided by a media service provider for the viewing or listening of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;
 - “media service provider” means the natural or legal person who has editorial responsibility for the choice of the audio content or audiovisual content, or both, of the audio or audiovisual media service (including but not limited to DTT service) and determines the manner in which it is organised;
 - “editorial responsibility” means the exercise of effective control over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services, and, for the avoidance of doubt, editorial responsibility does not necessarily imply any legal liability for the content or services provided;
 - “audiovisual media service” means a service which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks, and may be either a television broadcast or an on demand audiovisual media service, or audiovisual commercial communication;

2. Whereas, the Authority is conscious that in Gibraltar, media service providers of on-demand services are likely to be offering content for which they have acquired the rights to make available and so, will be exercising editorial responsibility with regards to the content being offered, the Authority does also distinguish between services for which editorial responsibility cannot be exercised, for example, the provision of linear television such as channel originating in other countries such as those produced by the BBC, ITV etc.;

The Authority has concluded that:

3. In light of the above, where a media service provider is relaying content in a linear format, either as a live stream, or by way of an on-demand catch-up service being offered to its customers, the media service provider cannot be deemed to be exercising editorial responsibility if it does not control the content or chronological order of the stream.
4. A media service provider will be deemed to be exercising editorial responsibility if the on-demand service is one where the media service provider has full editorial responsibility as the content on offer to its customers. In the case where a catalogue of programmes is made available to customers and such catalogue is subject to change in such manner as the media service provider deems necessary with respect to market forces, customer demands or any such factor which the media service provider finds appropriate, the Authority will deem such a service to be an on-demand service where editorial responsibility will have been, and will continue to be exercised, for such the period as the service remains on offer to customers.
5. Given the distinction made above, and in light of the amendments to the Broadcasting (Licensing) Regulations 2013 (the Regulations), media service providers offering an on-demand content over which editorial responsibility is exercised, must obtain a licence for making available such content, and the service not offered until such licence is granted by the Authority. In accordance with the Regulations, media service providers shall not make available as part of their on-demand services, any content which has not been agreed with the rights holders.
6. Furthermore, on-demand content which is subject to a licence in accordance with the Regulations, will be subject to regulatory controls with a view to ensuring that all licence conditions are adhered to. These controls will extend, but will not be limited to, ensuring that any content offered via a licensed on-demand service is done so only with the agreement of the rights holder, and that evidence of such agreement must be made available to the Authority on demand.

For further information please contact the Gibraltar Regulatory Authority on + (350) 20074636 or broadcasting@gra.gi.

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