



Coimisiún
na Meán

Draft Media Service Code and Media Service Rules

Advertising, Teleshopping, Signal Integrity & Information

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Contents

1. Introduction	3
2. Scope and Jurisdiction	3
3. Purpose and Preparation of the Code and Rules	4
4. Regulatory Principles Relevant to the Code and Rules	4
5. Severability	5
6. Waiver	6
7. Compliance and Enforcement	6
8. Complaints	6
9. Guidance	7
10. Definitions	7
Media Service Code Provisions	8
11. Advertising and Teleshopping – Television Broadcasters	8
12. Signal Integrity – Media Service Providers	10
13. Information – Media Service Providers	10
14. Rights to Cinematographic Works	10
Media Service Rules Provisions	11
15. Advertising and Teleshopping Limits – Television Broadcasters	11



1. Introduction

- 1.1 Pursuant to Section 46N(1) and Section 46O(1) of the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022, (the “**Act**”) Coimisiún na Meán (the “**Commission**”) may make codes and rules (“**media service codes**” and “**media service rules**”) governing the standards and practices of broadcasters and providers of audiovisual on-demand media services.
- 1.2 Pursuant to Section 46N(5) of the Act, the Commission shall make media service codes providing for the matters required to be provided for by Articles 5, 6(1), 6a(1) to (3), 7b, 8, 9, 10, 11, 15, Chapter VI, and Chapter VII (other than Article 26) of Directive (EU) 2010/13 (as amended by Directive (EU) 2018/1808) (the “**Audiovisual Media Services Directive**”) (except in so far as provision is made by media service rules).
- 1.3 Pursuant to section 46O(9) of the Act, media service rules shall provide for the matters required to be provided for by Articles 6(1), 6a(1), 7, 7b, 8, 9, 10, 11, Chapter VI and Articles 23(2), 24 and 25 of the Audiovisual Media Services Directive (except in so far as provision is made by media service codes).
- 1.4 Pursuant to Section 46O(13)(b) of the Act, the BAI Rules on Advertising and Teleshopping (Daily and Hourly Limits) dated 28 July 2010 were continued in force with the establishment of the Commission.
- 1.5 In accordance with its statutory duties and obligations set out above, the Commission has prepared this media service code (the “**Code**”) and these media service rules (the “**Rules**”). This Code and Rules replace the BAI Rules on Advertising and Teleshopping (Daily and Hourly Limits) which will be revoked as of the date this Code and Rules take effect.

2. Scope and Jurisdiction

- 2.1 The Code and Rules give effect to Articles 5(1), 7b, 19, 20, 21, 23, 24 and 25 of the Audiovisual Media Services Directive in Ireland, in so far as they relate to audiovisual media services, namely, television broadcasting services and audiovisual on-demand media services.
- 2.2 The Code and Rules apply only to media service providers that are under the jurisdiction of the State within the meaning of Section 2A of the Act.
- 2.3 The Code and Rules are made without prejudice to the powers granted to the Minister for Tourism, Arts, Culture, Gaeltacht, Sports and Media, pursuant to Section 106 of the Act, to approve certain time limits for advertisements in television broadcasting services provided by RTÉ or TG4, subject to the limits and conditions set out in section 15 of the Code and Rules.



3. Purpose and Preparation of the Code and Rules

Purpose

- 3.1 The purpose of the Code and Rules is to ensure that media service providers that are under the jurisdiction of the State comply with the requirements of Articles 5(1), 7b, 19, 20, 21, 23, 24 and 25 of the Directive.

Preparation of the Code and Rules

- 3.2 Pursuant to Section 46N(6) of the Act, the Commission has had regard to the following matters when preparing the Code: -

- the degree of harm or offence likely to be caused by the inclusion of a particular matter in programme material.
- the likely size and composition of the potential audience for programme material.
- the likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential members of the audience.
- the likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions.
- the desirability of securing that the provider of a broadcasting service or an audiovisual on-demand media service informs the Commission of any change affecting the nature of the service and, in particular, of any change relevant to the application of media service codes.
- the desirability of maintaining the independence of editorial control over programmes.

- 3.3 The Code and Rules have been prepared in accordance with the procedures provided for by Section 46Q of the Act.

4. Regulatory Principles Relevant to the Code and Rules

- 4.1 In its interpretation, application and enforcement of the Code and Rules, the Commission must, in accordance with its public law duties, act lawfully, rationally and fairly.

- 4.2 More particularly, the Commission must act in accordance with: -

- its general statutory objectives and functions under the Act.



- the rights conferred by the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights insofar as applicable under the European Convention on Human Rights Act 2003 and the EU Treaties.
- 4.3 Section 7(2) of the Act provides that, in performing its functions, the Commission shall endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children. The Commission shall also endeavour to ensure the Commission's policies in relation to broadcasting services and audiovisual on-demand media services best serve the needs of the people of the island of Ireland.
- 4.4 In addition, the Commission must endeavour to ensure that its regulatory arrangements (i) address programme material and other content which are harmful or illegal; (ii) take account of technological and societal change; and (iii) operate proportionately, consistently and fairly.
- 4.5 Section 7(3) of the Act provides that, in addition, the Commission shall, inter alia:
 - stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services.
 - engage in evidence-based decision-making in the exercise of its functions, and promote evidence-based decision-making by those with which it consults.
 - encourage compliance with the provisions of the Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.
- 4.6 Pursuant to Section 7(4) of the Act, in performing its functions, the Commission shall have regard to: the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth in respect of that matter; the regulation of gambling, and published policies of the Minister for Justice in respect of that matter; climate change and environmental sustainability, and published policies of the Minister for the Environment, Climate and Communications in respect of that matter; and published policies of the Government in respect of any of those matters.

5. Severability

- 5.1 If any provision of the Code or the Rules is found to be unlawful, invalid, prohibited, unenforceable or inapplicable (either generally or with respect to a particular media service provider(s)) in any respect, on the basis of any law (including the Constitution and European law), such finding shall not affect the lawfulness, validity, enforceability or applicability of any other provision of the Code and Rules or part thereof, unless the finding is declared to be applicable to such other provision or part thereof, or the same is the subject of the relief granted by a court.

- 5.2 Without prejudice to the foregoing, all of the other provisions and/or parts of the Code and Rules shall remain fully effective, applicable and enforceable. To the extent necessary any provision or part of the Code and Rules found to be unlawful, invalid, prohibited, unenforceable or inapplicable, shall be severed from the Code and Rules.

6. Waiver

- 6.1 The fact that the Commission does not respond to or comment upon any submission, assessment, proposal, report, compatibility statement or any analogous document submitted to it by a media service provider shall not be deemed to be an acceptance or approval of the contents of any part of the same and shall not imply that the provider has complied with its obligations under the Act and/or the Code and Rules.
- 6.2 Without prejudice to the foregoing, the fact that the Commission does not respond or comment on any such document shall not create an estoppel against, or constitute a waiver by, the Commission of any of its powers or rights pursuant to the Act and/or the Code and Rules.

7. Compliance and Enforcement

- 7.1 Pursuant to Sections 46N(10) and 46O(11) of the Act, a failure to comply with the Code and Rules shall be a contravention for the purposes of Part 8B of the Act.
- 7.2 A media service provider shall ensure that it has systems and controls in place to demonstrate compliance with the obligations contained in this Code and Rules.
- 7.3 Pursuant to Section 47(3) of the Act, a media service provider is required to prepare and implement a code of practice for the handling of complaints relating to the failure of the media service provider to comply with a media service code or media service rule.

8. Complaints

- 8.1 A person may make a complaint if they believe that a media service provider has not complied with the Code and Rules. Coimisiún na Meán advises complainants to make their complaint to the media service provider in the first instance as this is the quickest way to have a complaint considered and responded to.

Information on the complaints handling process, including Coimisiún na Meán's process, is available on our website (www.cnam.ie) or you can contact Coimisiún na Meán on + 353 1 963 7755 or at usersupport@cnam.ie.

- 8.2 Complaints in relation to signal integrity (at section 12) should be made directly to Coimisiún na Meán.



9. Guidance

- 9.1 The Commission may provide general non-binding guidance regarding the provisions of the Code and Rules on request or as and when it is deemed necessary. The Commission reserves the right to publish and amend guidance from time to time as it sees fit.
- 9.2 Requests for guidance must include the relevant material linked to the request for guidance. The request should clearly state the section(s) of the Code and Rules, which the requestor believes are relevant, and set out the specific question about which the requestor would like a view. The Commission accepts no liability for any decision (or consequences arising therefrom) made following receipt of non-binding general guidance from the Commission.

10. Definitions

Terms not defined below have the meanings given by the Act. Key definitions are:

“audiovisual media service” means

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service.

(ii) audiovisual commercial communication.

“audiovisual on-demand media service (on-demand service)” means an audiovisual media service provided by a media service provider for the viewing 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.

“broadcaster” means a media service provider of television broadcasts.

“media service provider” means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised.

“product placement” means any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.

“programme” means a set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama.

“sponsorship” means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products.

“teleshopping” means a direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

“television advertising” means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

“television broadcasting” or “television broadcast” (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

Media Service Code Provisions

The following provisions are made pursuant to Section 46N(1) and (5) of the Act.

11. Advertising and Teleshopping – Television Broadcasters

11.1. Transparency and Separation

11.1.1 A television broadcaster shall ensure that television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques,¹ television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means. Such means shall not contain any audiovisual commercial communications, such as a sponsorship announcement.

11.1.2 A television broadcaster shall ensure that the insertion of television advertising and teleshopping shall not affect the integrity (including editorial integrity) of a programme. Advertising and teleshopping segments shall be inserted into programmes in such a way that takes into account the natural breaks and the duration and nature of the programme concerned and shall not prejudice the rights of the rights holders.

¹ For example, split-screen, virtual or interactive advertising techniques. Except where otherwise indicated, the provisions set out in the Code and Rules that apply to advertising will apply also to the use of new advertising techniques, including with respect to the calculation of advertising and teleshopping limits. There are additional rules on new advertising techniques in Coimisiún na Meán’s General Commercial Communications Code available at <https://cnam.ie>

11.2 Advertising Break Patterns

11.2.1 The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising, teleshopping, or both, once for each scheduled period of at least 30 minutes.

11.2.2 The transmission of children's programmes may be interrupted by television advertising once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.

11.3 Teleshopping

11.3.1 A television broadcaster shall ensure that teleshopping windows are clearly identified as such by optical and acoustic means and shall ensure that teleshopping windows are of minimum uninterrupted duration of 15 minutes.

11.3.2 A television broadcaster shall ensure that teleshopping does not feature medicinal products which are subject to market authorisation within the meaning of Directive 2001/83/EC (including prescription medicines), or teleshopping for medical treatments.

11.3.3 A television broadcaster shall ensure that teleshopping is not included during children's programmes.

11.4 Isolated advertising and teleshopping spots

11.4.1 Isolated advertising and teleshopping spots shall be admissible in sports events. Isolated advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception. An isolated spot is generally understood as a single advertisement.

11.5 Religious Services

11.5.1 A television broadcaster shall ensure that advertising or teleshopping is not inserted in any broadcast of a religious service.

11.6 Television Channels Devoted to Advertising, Teleshopping, Self-Promotion

11.6.1 Sections 11.1.2, 11.2.1, 11.2.2, 11.3.3, and 11.5.1, shall not apply to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.



12. Signal Integrity – Media Service Providers

- 12.1 Audiovisual media services as defined in this Code and Rules shall not be overlaid for commercial purposes or modified (including by transmission in a shortened form or by interruption) without the explicit consent of the media service provider.
- 12.2 The prohibitions in Section 12.1 will not apply in relation to: -
- i. control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels.
 - ii. legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider.
 - iii. without prejudice to Article 3(3) of Regulation (EU) 2015/2120, data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content.
 - iv. overlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications.

13. Information – Media Service Providers

- 13.1 A media service provider shall make easily, directly and permanently accessible to the recipients of its services information about the provider of the service.
- 13.2 Further to 13.1, information provided by a media service provider shall include, at least, the following information:
- i. its name.
 - ii. the geographical address at which it is established.
 - iii. the details, including its email address or website, which allow it to be contacted rapidly in a direct and effective manner.
 - iv. that it is a media service provider under the jurisdiction of the State within the meaning of Section 2A of the Act, and, accordingly, its competent authority is Coimisiún na Meán, 1 Shelbourne Buildings, Shelbourne Road, Dublin 4, D04 NP20, Ireland.

14. Rights to Cinematographic Works

- 14.1 A television broadcaster shall not transmit cinematographic works outside periods agreed with the rights holders.

Media Service Rules Provisions

The following provisions are made pursuant to Sections 46O(1), (2), (3) and (9) of the Act.

15. Daily Advertising and Teleshopping Limits – Television Broadcasters

- 15.1 A television broadcaster shall ensure that the proportion of television advertising spots and teleshopping spots within the period between 06.00 and 18.00 hours does not exceed 20% of that period. The proportion of television advertising spots and teleshopping spots within the period between 18.00 and 24.00 hours shall not exceed 20% of that period.
- 15.2 With the exception of community television broadcasters, the maximum time permitted for television advertising spots in any one clock hour shall be 12 minutes. In the case of community television broadcasters, the maximum time permitted for advertising spots in any one clock hour shall be 6 minutes.
- 15.3 Rules 15.1 and 15.2 shall not apply to: -
- i. announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and audiovisual media services from other entities belonging to the same broadcasting group.
 - ii. sponsorship announcements.
 - iii. product placements.
 - iv. neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.
- broadcast by a television broadcaster.
- 15.4 This section shall not apply to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.

