

# Media Act

2011 No 38 20 April

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**Entry into force 21 April 2011.** *EEA Agreement:* Annex X, Directive 89/552/EEC. *Amended by* Act No 126/2011 (entry into force 30 September 2011) and Act No 54/2013 (entry into force 12 April 2013; *EEA Agreement:* Annex XI, Directive 2010/13/EU).

Any reference in this Act to “the Minister” or “the Ministry” not accompanied by express mention of or reference to a specific field of responsibility shall be understood as being a reference to the **Minister of Education, Science and Culture** or to the **Ministry of Education, Science and Culture** as responsible for the implementation of this Act.

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## Section I. Objectives and definitions

### ■ Article 1 Objectives

The objective of this Act is to promote freedom of expression, freedom of information, media literacy, diversity and pluralism in media and to enhance consumer protection in this area. A further objective of the Act is to establish a coordinated regulatory framework for media services irrespective of the type of media employed.

### ■ Article 2 Definitions

For the purposes of this Act, the following definitions shall apply:

1. *Set-top box:* a device intended to receive and process all aspects of digital broadcasts and transmit them to television receivers, this including, where appropriate, providing access to audiovisual content that is only available in return for payment.
2. *Advertisement:* A commercial communication involving any type of announcement which is relayed in return for payment, or in the media service provider’s own interests, involving the promotion of an image, product or service.
3. [*Responsible editor:* a media employee who has editorial responsibility for content and the choice thereof and who decides on its organisation, such as an editor-in-chief, a programme director or a director of a radio or television station. If the media service provider is an individual, that person is automatically presumed to be the responsible editor.]<sup>1)</sup>
4. *Programme schedule:* the entire assemblage of programmes.
5. *Programme:* a set of sounds and/or moving images constituting an individual item within a programme schedule established by a media service provider and whose form and content is comparable to the form and content of a radio or television broadcast.
6. *Surreptitious commercial communication:* the representation in words or pictures of goods, services, the name, trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature.
7. ...<sup>1)</sup>
8. *Retransmission of foreign audiovisual broadcasts:* a radio or television broadcast from a foreign media service provider that is received by an Icelandic media service provider and re-transmitted by the latter to consumers in Iceland, by wire or by radio.

9. [*European works*: audiovisual content covered by point (n) of Article 1(1) and Article 1(2), (3) and (4) of 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.]<sup>1)</sup>

10. *Electronic communications undertaking*: a natural or legal person that has informed the Icelandic Post and Telecom Administration of the proposed operation of an electronic communications network.

11. *Electronic communications network*: transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical means, by electricity cable systems, high-voltage lines or by other electromagnetic means, including networks used for audio and audiovisual broadcasting.

12. *Teleshopping*: an audiovisual broadcast involving the direct offer or sale of products and services, including immovable property, rights and obligations, to the public in return for payment, in which one or more methods of telecommunication are employed in the presentation of the offer and the conclusion of the agreement without any meeting between consumer and seller taking place. ‘Teleshopping’ covers both teleshopping windows and teleshopping spots. Teleshopping windows constitute complete programmes, while teleshopping spots consist of content inserted between programmes and are subject to the same rules as commercial communications.

13. *Media outlet*: any media outlet which regularly provides the public with content which is subject to editorial control. Media outlets include, amongst other things, newspapers and periodicals, together with their supplements, internet media, audiovisual media and other comparable media.

14. *Media services*: the services provided by media outlets.

15. *Media service provider*: the natural or legal person operating a media outlet.

16. *Transmission*: in relation to the ‘must carry’ and ‘must offer’ rules, the transmission and distribution of audiovisual content from a television station’s connection point to the consumer’s set-top box.

17. *Transmission rules*: the ‘must carry’ and ‘must offer’ rules.

18. *Must-offer obligation*: the obligation of media service providers, subject to certain requirements, to comply with a request from an electronic communications undertaking to distribute content.

19. *Must-carry obligation*: the obligation of electronic communications undertakings, subject to certain requirements, to comply with a request from a media service provider to distribute content.

[20. *Representative*: a natural person who has overall responsibility for the operations of a media service provider.]<sup>1)</sup>

[21.]<sup>1)</sup> *Interactive advertising*: advertising which enables recipients of audiovisual content to access information at their own initiative using any type of receiver.

[22.]<sup>1)</sup> *Podcasting (podcasts)*: when programmes, in their entirety or in part, are offered for downloading by the public.

[23.]<sup>1)</sup> *Commercial audiovisual broadcasts*: covers commercial communications and teleshopping.

[24.]<sup>1)</sup> *Audio media service*: a service provided by a media service provider consisting on the one hand of radio broadcasts and on the other of podcasts or any other type of on-demand audio media service.

[25.]<sup>1)</sup> *On-demand audio media service (non-linear audio media service)*: a service provided by a media service provider, irrespective of the device used to receive the transmissions and

of whether payment is required for the content, and enabling users to listen to programmes in their entirety or in part at the time they choose and on their specific request on the basis of the media service provider's catalogue.

[26.]<sup>1)</sup> *Radio broadcasting* (linear audio media service): any form of broadcasting of audio content, irrespective of the receiver used to receive the transmission, in which the media service provider offers programmes for simultaneous listening on the basis of a programme schedule.

[27.]<sup>1)</sup> *Sponsorship*: any contribution made by public or private undertakings or natural persons not engaged in audio or audiovisual media services or in the production of audio or audiovisual works to the financing of individual programmes with a view to promoting their name, its trade mark, its image, its activities or its products.

[28.]<sup>1)</sup> *Paid-access transmission*: a radio or television broadcast in which the audio or audiovisual signal is altered in order to restrict access to the transmission to paying users.

[29.]<sup>1)</sup> *Audiovisual media service*: a service offered by a media service provider consisting on the one hand of television broadcasts and on the other of on-demand audiovisual services.

[30.]<sup>1)</sup> *On-demand audiovisual media service* (non-linear audiovisual media service): a service provided by a media service provider, irrespective of the device used to receive the content and of whether payment is required for the content, and enabling users to watch programmes in their entirety or in part at the time they choose and on their specific request on the basis of the media service provider's catalogue.

[31.]<sup>1)</sup> *Print medium*: a media outlet which makes text content available in printed or other comparable form, e.g. a newspaper or periodical.

[32.]<sup>1)</sup> *Electronic text medium*: a media outlet which makes text content available electronically, e.g. an internet edition of a newspaper or periodical, a newspaper or periodical which is transmitted by email and other internet media.

[33.]<sup>1)</sup> *Text content*: text which is made available independently. 'Text content' also includes maps, drawings, pictures, written music, etc.

[34.]<sup>1)</sup> *Text-based service*: a service offered by a media service provider consisting, on the one hand, in the provision of text content in printed or other comparable form and, on the other, in the provision of text content by electronic means.

[35.]<sup>1)</sup> *Editorial control*: control over the selection and organisation of the content made available.

[36.]<sup>1)</sup> *Independent producer of audio or audiovisual content*: an undertaking which is also a separate legal person, independent of the media service provider concerned in the sense that it is not under its direct or indirect control, either individually or in partnership with others, and free to define its own commercial policy.

[37.]<sup>1)</sup> *Television broadcasting* (linear audiovisual media service): any type of transmission of audiovisual media content, irrespective of the receiver used to receive it, in which a media service provider offers content for simultaneous viewing on the basis of a programme schedule.

[38.]<sup>1)</sup> *Split-screen advertisement*: an advertisement which appears in part of the screen simultaneously with the transmission of any other type of audiovisual content.

[39.]<sup>1)</sup> *Virtual advertising*: advertising which is not present at the venue where a televised event takes place, but is added so that it appears in the broadcast or other transmission of the content.

[40.]<sup>1)</sup> *Commercial communication*: a text, image and/or audio content which is designed to direct attention, directly or indirectly, towards the products, service or image of a natural or legal entity pursuing an economic activity and is presented in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication include, *inter alia*, advertisements, sponsorship and product placement.

[41.]<sup>1)</sup> *Receiver*: any device that receives and relays media content, e.g. a television, radio, computer, palm-top computer or mobile telephone.

[42.]<sup>1)</sup> *Product placement*: commercial communications including all types of audiovisual transmission for commercial purposes including or referring to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration.

[43.]<sup>1)</sup> *Broadcast signal*: a transmission wave, carried over a wire or by radio, which conveys audiovisual content to receivers or set-top boxes, either in digital or analogue form.

<sup>1)</sup>Act No 54/2013, Article 1.

## **Section II. Scope and jurisdiction**

### **■ Article 3 Scope**

This Act applies to all [media outlets and media service providers]<sup>1)</sup> established in Iceland which make content available to the Icelandic public, subject to the provisions of Article 4. Thus, it applies to all audio and audiovisual content, whether in paid access or open access, linear or on demand, and to all text content, whether presented in printed or other comparable form, or electronically.

<sup>1)</sup> Act No 54/2013, Article 2.

### **■ Article 4 Jurisdiction over audiovisual media service providers**

Iceland shall have jurisdiction over audiovisual media service providers established in Iceland. Such entities shall be regarded as being established in Iceland:

a. when they have their head office in Iceland and decisions on programming and other matters covered by editorial responsibility are made in Iceland;

b. when they have their head office in Iceland and decisions on programming and other matters covered by editorial responsibility are made in another country, or vice versa, provided that a substantial part of the workforce involved in the pursuit of the audiovisual media service activity is employed in Iceland;

c. when they have their head office in Iceland, decisions on programming and other matters covered by editorial responsibility are made in another country, and a substantial part of the workforce involved in the pursuit of the audiovisual media service activity is employed in each of the two countries; and

d. when they have their head office in Iceland and decisions on programming and other matters covered by editorial responsibility being made in another country, or vice versa, and a substantial part of the workforce involved in the pursuit of the audiovisual media service activity is employed in neither of these countries, and the entity concerned has begun broadcasting under a broadcasting licence granted on the basis of Icelandic law and has maintained a stable and effective link with the Icelandic economy.

Iceland shall also have jurisdiction over audiovisual media service providers established neither in Iceland, as provided for under the first paragraph, nor in another EEA Member State, if they meet one of the following conditions:

a. They use a ground station located in Iceland for transmitting a signal via satellite; or

b. They use the transmitting capacity of a satellite associated with Iceland, provided that a ground station of another EEA Member State is not employed for sending the signal to the satellite.

In the event of doubt regarding whether or not an audiovisual media service provider falls under Icelandic jurisdiction or that of another EEA Member State, and if the question cannot be resolved on the basis of the first or second paragraph, it shall be resolved on the basis of the provisions of the Agreement on the European Economic Area, in particular those of Part III, Chapter 2, on the right of establishment.

■ **Article 5** *Temporary blocking of the reception of audiovisual media content from other EEA Member States*

□ Notwithstanding Iceland's obligation to ensure freedom to receive television broadcasts from other EEA Member States, the Media Commission may block such reception temporarily if the following conditions are met:

a. [The broadcast constitutes a clear, significant and serious violation of the ban on incitement to hatred on grounds of race, sex, religion or nationality or of the provisions of Article 28;]<sup>1)</sup>

b. The media service provider concerned has violated point a on at least two occasions during the previous 12 months;

c. The Media Commission has notified the media service provider concerned, and the EFTA Surveillance Authority or the European Commission, as appropriate, in writing, of the alleged violation and of the measures that it intends to take if the violation is repeated; or

d. Consultation with the competent authority in the Member State exercising jurisdiction of the media service provider concerned and the EFTA Surveillance Authority or the European Commission, as appropriate, has not led to a solution within 15 days of the notification mentioned in point c and the alleged violation continues.

□ In the case of on-demand audiovisual media services the reception of audiovisual content from another EEA state may be blocked temporarily on the basis of the same considerations as are listed in point a of the first paragraph, and the same applies if the audiovisual content in question is considered as being, for other reasons, in violation of public order, the protection of public health, public security or the protection of consumers.

□ However, the Media Commission shall only block the reception of audiovisual content such as that referred to in the second paragraph if the competent authority in the Member State exercising jurisdiction over the media service provider in question has not complied with the authority's request to take measures against the media service provider concerned, or the measures which it has taken are insufficient. In such a case, the Media Commission shall inform the EFTA Surveillance Authority or the European Commission, as appropriate, of the proposed blocking of reception of the content before it is implemented.

□ The provisions of the third paragraph may be waived in emergency situations. However, such instances shall be reported without delay to the EFTA Surveillance Authority or the European Commission, as appropriate, and to the competent authority in the Member State concerned, accompanied by a justification for classifying the situation as an emergency.

<sup>1)</sup> Act No 54/2013, Article 3.

■ **Article 6** *Measures against audiovisual media service providers which fall under the jurisdiction of other EEA Member States*

□ If the Media Commission considers that a media service provider which comes under the jurisdiction of another EEA Member State while distributing audiovisual content that is mainly, or entirely, intended for reception in Iceland has violated provisions of this Act, the Commission may request the competent authority in the EEA Member State concerned to instruct the media service provider to comply with the relevant provisions.

□ If the Media Commission considers that the outcome obtained by the application of the first paragraph is unsatisfactory, and that the media service provider in question has acquired establishment in the EEA Member State concerned solely for the purpose of circumventing Icelandic law, it may take appropriate measures against the media service provider under this Act if the following conditions are met:

a. It has notified the EFTA Surveillance Authority, or the European Commission, as appropriate, and the competent authority in the relevant EEA Member State, of the measures it intends to take and provided appropriate reasoning for them; and