



RADIO AND TELEVISION COMMISSION OF LITHUANIA

DECISION

**REGARDING THE APPROVAL OF GUIDLINES REGARDING QUALIFYING AND
REQUIREMENTS APPLICABLE TO AUDIOVISUAL MEDIA SERVICES PROVIDERS,
WHO PROVIDE THE SERVICES USING A VIDEO-SHARING PLATFORM**

30 March 2022 No. KS-42
Vilnius

Following Part 6 Article 40⁴ of the Law on the Provision of Information to the Public of the Republic of Lithuania, hereby the Radio and Television Commission of Lithuania decides:

to approve the Guidelines Regarding Qualifying and Requirements Applicable to Audiovisual Media Services Providers, Who Provide the Services Using a Video-Sharing Platform.

Chairman

Rimantas Bagdzevičius

APPROVED

By the 30 March 2022 Decision No. KS-42 of
the Radio and Television Commission of
Lithuania

**GUIDELINES REGARDING QUALIFYING AND REQUIREMENTS APPLICABLE TO
AUDIOVISUAL MEDIA SERVICES PROVIDERS, WHO PROVIDE THE SERVICES
USING A VIDEO-SHARING PLATFORM**

**SECTION I
GENERAL PROVISIONS**

1. On 1 February 2021 the Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities has been transposed to the national law.

2. Paragraph 1 of Preamble of the Audiovisual Media Services Directive provides that new types of content, such as video clips or user-generated content, have gained an increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established. This convergence of media requires an updated legal framework in order to reflect developments in the market and to achieve a balance between access to online content services, consumer protection and competitiveness. Paragraph 3 of Preamble provides that Directive 2010/13/EU should remain applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. <...> **Channels¹ or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a video-sharing platform which is characterised by the absence of editorial responsibility.** In such cases, it will fall to the providers with editorial responsibility to comply with Directive 2010/13/EU if they also match the other criteria applicable for audiovisual media services provider. Paragraph 4 of Preamble provides that video-sharing platform services provide audiovisual content which is increasingly accessed by the general public, in particular by young people. This is also true with regard to social media services, which have become an important medium to share information and to entertain and educate, including by providing access to programmes and user-generated videos. Those social media services need to be included in the scope of Directive 2010/13/EU because they compete for the same audiences and revenues as audiovisual media services. **Furthermore, they also have a considerable impact in that they facilitate the possibility for users to shape and influence the opinions of other users.**

3. Having transposed the Audiovisual Media Services Directive, the Lithuanian Law on the Provision of Information to the Public (hereinafter – the Law on PIP) has been amended accordingly, by which Part 6 Article 40⁴ provides that when an audiovisual media service provider provides its services through a video-sharing platform service, the measures implemented by the video-sharing platform provider shall not remove the requirements for the audiovisual media service provider laid down by this Law and the Law on the Protection of Minors against Detrimental Effect of Public Information. Requirements applicable for audiovisual media services provider, who provide their services using a video-sharing platform (YouTube, Facebook and etc.) shall be as similar to those,

¹ Youtube or other channels of video sharing platforms, which publish audiovisual content.

applicable to other audiovisual media services providers, as possible. Following this, it can be concluded that audiovisual media services providers, who provide their services using a video-sharing platform, shall notify the Radio and Television Commission of Lithuania (hereinafter – the Commission) about the provision of their services and they shall comply with the other provisions of the Law on PIP and the Law on the Protection of Minors against Detrimental Effect of Public Information. Provisions of the Law on PIP and the Law on the Protection of Minors against Detrimental Effect of Public Information shall be applicable for the audiovisual media services providers, who provide their services using a video-sharing platform only if it is established that they are audiovisual media services providers and they match the criteria applicable for such subjects, as provided by the Audiovisual Media Services Directive and the Law on PIP.

SECTION II

CRITERIA, BASED ON WHICH PERSONS, WHO PUBLISH CONTENT ON A VIDEO-SHARING PLATFORM, SHALL BE CONSIDERED AS AUDIOVISUAL MEDIA SERVICES PROVIDERS

4. Part 10 Article 2 of the Law on PIP provides that 'Audiovisual media service' means the broadcasting of television programmes, an on-demand audiovisual media service, an audiovisual commercial communication service where the principal purpose of such services or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a provider of these services, pursuing economic and commercial activities, to the general public, in order to inform, entertain or educate, by means of electronic communications networks. Part 11 of the same Article provides that 'Audiovisual media service provider' means a person who provides an audiovisual media service, who decides on the order in which its content is presented and who has editorial responsibility for the choice of the content of this service. **Thus, an audiovisual media services provider can be an on-demand audiovisual media services provider and (or) broadcaster of television programmes.** In terms of provision of audiovisual media services using a video-sharing platform, there can be situations, when a live broadcast of programmes is offered through YouTube or other similar platform, but the most frequent situation is when the programmes are viewed at the user's request, at the moment chosen by the user and on the basis of the offered catalogue. Moreover, after the live broadcast of the programmes, very often the same programmes are offered to watch at the request of the user and on the basis of the offered catalogue. Only broadcasting of live programmes using a video-sharing platform, without the possibility to watch the programmes from the offered catalogue, happens very rarely in practise, therefore **most often, those audiovisual media services providers, who provide their services using a video-sharing platform, shall be considered as on-demand audiovisual media services providers.**

5. According to Part 73 Article 2 of the Law on PIP an 'On-demand audiovisual media service' means a non-linear audiovisual media service provided by a media service provider for the viewing of programmes at his individual request and at the moment chosen by the user and on the basis of a catalogue selected by the audiovisual media service provider. As it was mentioned, description of the audiovisual media service's notion is provided by Part 10 Article 2 of the Law on PIP. **The main features of such service are as follow:** a) the programmes are provided for information, entertainment, or educational purposes; b) editorial responsibility is applicable for the provider of this service; c) provider of this service is pursuing economic and commercial activities.

6. According to Part 40 Article 2 of the Law on PIP a 'Programme" means a set of sounds or moving images independent in terms of content and structure usually constituting an individual item,

irrespective of its length, within a programme schedule or catalogue established by a service provider (feature-length films, video-clips, sports or other events, situation comedies, documentaries, children's programmes, original drama, announcements, talk shows, news programmes, etc.). **It is important to assess if the videos, which are submitted to a video-sharing platform can be considered as programmes, meaning that the videos shall be essentially similar to the programmes, which are broadcasted on TV, so that it would be considered as audiovisual media services.**

It is noted that the feature *the programmes are provided for information, entertainment or educational purposes* should be evaluated in a narrow sense. In the opposite case, any audiovisual content could be attributed to this definition and this would raise more obscurity when seeking to properly qualify the providers of on-demand audiovisual media services. This means, that it can be decided not to include certain programmes, which are intended for a very narrow/specialised audience, for example, hotel chefs, high level IT experts or illusionists. Obviously, it is not an absolute rule and it should not be applicable to the channels of special hobbies, that reach a significant proportion of the general public. Another proof that the programmes are intended for a significant proportion of the general public could be the required number of financial investments for the offered content, although, sometimes there are channels, which reach exceptionally significant proportion of the general public without a large or any investments. Additional indicator in qualifying the on-demand audiovisual media services can also be product placement, advertisement of gambling activities and (or) sponsorship on the channels.

7. Editorial responsibility is named as one of the features and it means the responsibility falling on a producer and/or disseminator of public information, except for a re-broadcaster and video-sharing platform provider, for the exercise of control over the production of public information for the public, preparing it for dissemination and dissemination of such information as well as over the selection of programmes and over their organisation in a chronological order in a programme schedule and/or catalogue (Part 49 Article 2 of the Law on PIP).

8. As it was mentioned, an audiovisual media service's provider means a person, who provides an audiovisual media service, who decides on the order in which its content is presented and who has editorial responsibility for the choice of the content of this service. Item d Part 1 of Audiovisual Media Services Directive provides that a 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. **Therefore, following the provisions of Audiovisual Media Services Directive and the Law on PIP, an on-demand audiovisual media service's provider can be a natural, as well as legal person.**

9. An important feature, when assessing if the content submitted to a video-sharing platform should be considered as on-demand audiovisual media service, is a pursue of economic and commercial activity, which, according to law doctrine is permanent and self-sufficient, meaning that it is an activity, which is performed at own risk and it seeks for profit, related to purchase and sale of goods or provision of services to other persons for a reward (*see Valentinus Mikelenas and others, Lietuvos Respublikos civilinio kodekso komentaras. Antroji knyga. Asmenys. Vilnius: Justitia, 2002. P. 23*). In a linguistic sense, the following signs are attributed to a notion of *economic and commercial activity*: firstly, it is a continuity and permanent nature; secondly, it is self-sufficiency, meaning that it is an act of own risk and own name; thirdly, it is a remuneration, meaning that by performing such activity a profit and economical benefit is sought (*see for example the decision of the Supreme Administrative Court of Lithuania, dated 14 November 2011, No. A62-3506/2011*). **In the current situation, when deciding if an on-demand audiovisual media services provider pursues economic and commercial activities, it is important to evaluate if the activity of a services**

provider is registered at the respective register of the tax administrator (State Tax Inspectorate (*Valstybinė mokesčių inspekcija*)).

10. Paragraph 21 of Directive 2010/13/EU provides that the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, **that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public.** Its scope should be limited to services as defined by the Treaty on the Functioning of the European Union and therefore should cover any form of economic activity, including that of public service enterprises, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest. Considering the mentioned feature (audiovisual media services, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public) it is the most difficult to assess, what is a significant proportion of the general public, as no explanation is provided by the Audiovisual Media Services Directive. For example, a number of views of a particular video, uploaded on a YouTube channel can be very unstable as the time passes – from million views of a particular video record to several thousand views of another video record. In practise, a number of followers and subscribers of a channel is a more objective criteria, rather than a number of views. A number of followers and subscribers is usually provided by the platform itself, therefore a number of followers on a video-sharing platform can be an important criteria, in order to assess if the service is intended for a significant proportion of the general public. **Services providers (channels), who have a significant number of followers and views of the programmes, within the period not shorter than 12 months, shall be considered as on-demand audiovisual media services providers, who reach a significant proportion of the general public.**

11. To summarise, there are certain features, which can be distinguished, in the existence of which a person (vlogger, a channel), who uploads content on a video-sharing platform (YouTube, Facebook, TikTok and other), can be considered as on-demand audiovisual media services provider:

- **Services provider pursues economic and commercial activities, meaning that this activity should be registered at the respective register of the tax administrator (State Tax Inspectorate (*Valstybinė mokesčių inspekcija*));**
- **Services provider provides programmes, as it is established by Part 40 Article 2 of the Law on PIP;**
- **The main aim of the services provider is to provide programmes for information, entertainment or educational purposes;**
- **Services provider has an editorial responsibility in respect of the provided programmes;**
- **Services provider proposes to watch the programmes at the user's request and at the moment chosen by the user, as it is established by Part 73 Article 2 of the Law on PIP;**
- **The target audience of the services provider is a significant proportion of the general public and a clear impact is made on it. An on-demand audiovisual media services providers, who reach a significant proportion of the general public, shall be considered those services providers (channels), who have a significant number of followers (subscribers) and views of the programmes, within the period, not shorter than 12 months.**

It is important to note that only after the assessment of all the features a conclusion, if a particular person, who publishes content on a video-sharing platform is considered as an on-demand audiovisual media services provider, who provides the services using a video-sharing platform, can be made.

12. It should be noted, that the provisions of the Law on PIP and the Law on the Protection of Minors against Detrimental Effect of Public Information are applicable for the services provider (vlogger, YouTube channel), only if the on-demand audiovisual media services provider belongs to the jurisdiction of the Republic of Lithuania, as it is provided by Article 25 of the Law on PIP.

13. The following services shall not be considered as on-demand audiovisual media services, provided using a video-sharing platform:

- Audiovisual content published by educational institutions for learning, preparation of academic papers or continuous learning purposes, including content from the archive;
- Audiovisual content published by museums, theatres and other art or culture institutions or persons, who have the status of art creator, for the purpose of introduction of own activity, art, including audiovisual art, which is registered as provided by the laws of the Republic of Lithuania;
- Audiovisual content published in order to introduce own activity, including the content from archive;
- Audiovisual content, published by public administrative subjects, in order to introduce own activity and tasks, performed according to its field of competences;
- Audiovisual content published by political parties, in order to describe own activity;
- Audiovisual content published by companies, whose goal is to introduce the made or distributed goods, offered services;
- Audiovisual content published for the self-promotion of associations and presentation of one-self as an item that matches the activities of associations;
- Audiovisual content published by natural persons, in order to present own private life, related to, for example, free-time activity or hobbies, with no intention to provide information that may have an impact on the opinion of general public and without receiving commercial benefit from it.

SECTION III

REQUIREMENTS FOR AUDIOVISUAL MEDIA SERVICES PROVIDERS, WHO PROVIDE SERVICES USING A VIDEO-SHARING PLATFORM

14. Requirements for labelling and spreading of publicly disseminated information in the Republic of Lithuania, which have a negative effect on the development of minors are provided by the Description of Requirements for Labelling and Dissemination of Public Information, Which Have a Detrimental Effect on the Development of Minors, approved by the Decision of the Government of the Republic of Lithuania No. 1121, dated 21 July 2010 (hereinafter – the Description). Paragraph 25¹ of the Description provides that producers and disseminators of public information, who spread information, which have a negative effect on minors on video-sharing platforms, shall limit such information by using technical measures provided by the platform. Paragraph 25² provides that audiovisual media services providers not only implement measures provided by Paragraph 25¹ of this

Description, but additionally label the information with indexes N-7, N-14, S, provided by Part 2 Article 7 of the Law on the Protection of Minors against Detrimental Effect of Public Information. Paragraph 11 of the Description is not applicable for audiovisual media services providers, who provide services using a video-sharing platform. **Thus, in principle, on-demand audiovisual media services providers, as well as broadcasters, who provide the services using a video-sharing platform, shall comply with the requirements to label their content with indexes N-7, N-14, S, with no time restrictions for provision of such services.**

15. Article 39 of the Law on PIP provides requirements for advertising and audiovisual commercial communications. Compliance with the requirements laid down in this Law and other laws applicable to advertising and audiovisual commercial communications shall be monitored by the State Consumer Rights Protection Authority, other institutions supervising advertising as referred to in the Law on Advertising and other laws and by the Commission (Part 7 Article 39 of the Law on PIP). Item 14 Part 1 Article 48 of the Law on PIP provides that it is the Commission, that exercise control over compliance by broadcasters of television programmes and providers of on-demand audiovisual media services with the provisions of this Law concerning the requirements for television advertising and audiovisual commercial communications, sponsorship of audiovisual media services, radio programmes and parts of programmes and the product placement in programmes. So, it is the Commission, that supervises the spread of commercial audiovisual communications in the programmes of audiovisual media services provider.

16. The advertisement on the programmes of on-demand audiovisual media services provider shall be clearly recognisable. Disclosing of advertising only in the description of the programme (video recording) is considered to be not sufficient, as frequent user can take no notice of such information. When advertisement is inserted to a programme, the most appropriate reveal of advertising is considered to be when users are informed orally, as well as in writing, about the programme (or a part of it) being of advertising nature, during the programme and it is suggested that it is reminded more than one time. For example, during the programme, on screen there would be clearly visible word *Advertisement*, and the advertiser would state that, for example: *this programme/ recording/ film/ vlog (or a part of it) is supported by and the goods were provided for me to try free of charge by the brand x*. A mark Advertisement should be also provided below the programme (video recording), however providing only of this mark among all the other advertising brands would also be considered as unclear information of users. Information about the programme (video recording) being an advertisement only at the end of the programme would be considered as inappropriate labelling.

17. Users shall be clearly informed about the existing agreement of sponsorship. At the beginning of the programme, during it and (or) at the end of it the name, logo and (or) other mark, for example link to a product (products) or service (services) or their significant mark shall be clearly shown in the appropriate manner, when the programme is sponsored.

18. Requirements provided by Article 40¹ of the Law on PIP shall be applicable for product placement during on-demand audiovisual media services programmes. When informing the users about product placement, a letter *P* shall be shown at the bottom left corner, for a period not shorter than 5 seconds, at the beginning, at the end and after the resume of the programme, also after each intervening insertion. The letter *P* shall be clearly visible.

SECTION IV FINAL PROVISIONS

19. The Guidelines regarding Qualifying and Requirement Applicable to Audiovisual Media Services Providers, who Provide the Services Using a Video-Sharing Platform shall be applicable to the audiovisual content, which have been published after these Guidelines came into force.

20. The Guidelines regarding Qualifying and Requirement Applicable to Audiovisual Media Services Providers, who Provide the Services Using a Video-Sharing Platform are of a recommendatory nature, however, the Commission follows the provisions of these guidelines to assess if persons, who upload content to a video-sharing platform, can be considered as audiovisual media services providers and if they are in compliance with the provisions of the Law on PIP and the Law on the Protection of Minors against Detrimental Effect of Public Information.