

Code of Conduct

On-Demand Audiovisual Media Services

1. Introduction

In furtherance of Section 13.(1) of the Statutory Instrument No 258 of June 2010 of the Minister of Communications, Energy and Natural Resources, the following Code for On-demand services has been developed. This Code covers all On-demand audiovisual services made available under the jurisdiction of the Republic of Ireland. The relevant body drawing up this Code is the On-Demand Audiovisual Services Group (ODAS). This grouping, under the auspices of the Irish Business and Employers Confederation (IBEC) comprises the Advertisers Association of Ireland, the Institute of Advertising Practitioners in Ireland, the Advertising Standards Authority for Ireland, and a representative group of Broadcasters, Telecommunication companies and other service providers.

2. Definitions

On-Demand Services

On-demand audiovisual media service (i.e. a nonlinear audiovisual media 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 and where the following characteristics are also present at the same time:-

- The service is under the editorial control/responsibility of a service provider;
- The service has as its principal purpose the provision of television like content to the general public in order to inform, entertain or educate;
- The service is intended for reception by and which could have a clear impact on a significant proportion of the general public, but excludes:
 - services which are primarily non-economic;
 - services which are not in competition with or akin to broadcasting services,
 - private websites or emails,
 - services consisting primarily of the hosting or distribution of content generated by third party users of the service for sharing

within communities of interest, where editorial control over that content remains with such users,

- electronic versions of newspapers and magazines,
- services where the audiovisual content is incidental to the main purpose of the service,
- gaming, gambling, online games, and search engines.

Advertising

Any form of announcement whether in return for payment or for similar consideration or 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 products or services, including immovable property, rights and obligations, in return for payment.

ASAI

The Advertising Standards Authority for Ireland (ASAI) is the independent self-regulatory body set up and financed by the advertising industry and committed to promoting and enforcing the highest standards of marketing communications, that is, advertising, promotional marketing and direct marketing, in the public interest.

Audiovisual Commercial Communication

Images with or without sound which are designed to promote, directly or indirectly, the products, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement but do not include public service announcements and charity appeals broadcast free of charge.

BAI

The Broadcasting Authority of Ireland, a body corporate established by the Broadcasting Act 2009, is The Statutory Regulator in relation to broadcast or linear services. The BAI implements codes in relation to both content and commercial communications for broadcast services.

Child/Children

For the purpose of this Code, the terms “Child” and “Children” refer to any person under 18 years of age.

Comparative Audiovisual Commercial Communications

Comparative audiovisual commercial communications are those that contain explicit or implicit identification of a competitor or products or services offered by a competitor.

Editorial Responsibility

Editorial responsibility” means the exercise of effective control both 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. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided.

European Works

- (i) European works” means the following:
- works originating in Member States,
 - works originating in European third States - party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of point (ii),
 - works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements,
 - application of the provisions of the second and third indents shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned
- (ii) The works referred to in the first and second indents of point (i) are works mainly made with authors and workers residing in one or more of the States referred to in the first and second indents of point (i) provided that they comply with one of the following three conditions:
- they are made by one or more producers established in one or more of those States, or
 - production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or
 - the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States;
- (ii) Works that are not European works within the meaning of point (i) but that are produced within the framework of bilateral co-

production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States

Inappropriate Commercial Communications

Inappropriate commercial communications refers to communications which may not be in breach of other provisions of the Code but when placed in or around programme material in an unsuitable manner, without due deference to that material, or the likely audience, are not appropriate.

Product Placement

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, in return for payment or for similar consideration.

Sponsorship

Any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

Subliminal Audiovisual Commercial Communications

Audiovisual commercial communications that include any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware or fully aware of what has been done.

Surreptitious Audiovisual Commercial Communications

The representation in words or pictures of products, services, the name, the trade mark or the activities of a producer of products 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. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

Teleshopping

A direct offer to the public with a view to the sale, purchase, rental or supply of products or the provision of services, including immovable property, rights and obligations, in return for payment.

3. Provisions of the Code

PART 1 (Audiovisual Commercial Communications)

General

1. Commercial Communications should be legal, decent, honest and truthful. They should not mislead and should be prepared with a sense of responsibility to consumers and society and should respect the principles of fair competition generally accepted in business. Specifically on-demand service providers should comply with the following:
 - (a) Audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
 - (b) Audiovisual commercial communications shall not use subliminal techniques;
 - (c) Audiovisual commercial communications shall not:
 - (i) prejudice respect for human dignity;
 - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation, family status, marital status or membership of the travelling community;
 - (iii) encourage behaviour prejudicial to health or safety;
 - (iv) encourage behaviour grossly prejudicial to the protection of the environment;
 - (d) All forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;
 - (e) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages. Commercial Communications should comply with the relevant provisions of the ASAI Code, and any provisions of the voluntary industry code in place in relation to alcoholic beverages.
 - (f) Audiovisual commercial communications for medicinal products and medical treatment available only on prescription shall be prohibited;

- (g) Audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.
- (h) Commercial communications for gambling should comply with the provisions of all legislation in this area. On foot of a complaint The Advertising Standards Authority for Ireland may require the service provider to provide qualified legal opinion in regard to this provision.
- (i) Commercial communications for fortune tellers or psychic services must be designed to entertain and should not make assertions or claims which cannot be substantiated.
- (j) On demand audiovisual media service providers shall develop codes of conduct so that on-demand audiovisual media services do not contain inappropriate audiovisual commercial communications, accompanying or included in children's programmes. In this regard commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. Service providers are advised to take on board provisions of the BAI Code in regard to children's advertising for foods and beverages falling into the above categories.

Sponsorship

2. On-demand audiovisual media services or programmes that are sponsored shall meet the following requirements:
 - (a) Their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
 - (b) They shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
 - (c) Viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive

sign thereof in an appropriate way for programmes at the beginning, during and/or the end of the programmes.

3. On-demand audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.
4. The sponsorship of on-demand audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the State.
5. On-demand audiovisual media services of news and current affairs programmes shall not be sponsored and shall not show a sponsorship logo during children's programmes, documentaries and religious programmes.

Product Placement

6. Product Placement shall be admissible:-

- in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes but not in children's programmes; or
- where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

7. Programmes shown on an on-demand audiovisual media service that contain product placement shall meet at least all of the following requirements:

- (a) Their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider and any product placement shall be editorially justified.
- (b) They shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- (c) They shall not give undue prominence to the product in question;
- (d) Viewers shall be clearly informed of the existence of product placement.

8. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and where practicable, when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer. This provision only applies where the programme in question has either been produced or commissioned by the media service provider.
9. Programmes shown on an on-demand audiovisual media service shall not contain product placement of:
 - tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or,
 - specific medicinal products or medical treatments available only on prescription in the State.

PART 2 (Content)

Community Standards

1. On-demand audiovisual media services provided by media service providers shall not contain any incitement to hatred based on race, sex, religion, nationality, sexual orientation or being a member of the travelling community.

Protection of Minors

2. On-demand audiovisual media services provided by media service providers which might seriously impair the physical, mental or moral development of minors can only be made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.

On-demand audiovisual media service providers should be conscious of two different types of services they may provide.

- a. On-demand services which are free to view and are unrestricted. Such services should:
 - i. Ensure programme material complies with standards considered acceptable in contemporary Irish society.
 - ii. Ensure viewers are protected from undue offensive and harmful material.
 - iii. Ensure the privacy of any individual is not unreasonably infringed.
 - iv. Where content is purported to be news or current affairs the concepts of fair, objective and impartiality should apply.

- v. Provide viewers, in a clear manner, with advance notice of material which has a potential to offend by a clear labelling mechanism.
- b. On-demand services which are of a restricted, subscription, or of an encrypted nature should ensure:
 - i. Viewers are provided with a clear and full knowledge of the likely content of the service.
 - ii. Require the positive action of an adult before being made available, as appropriate.

Accessibility

- 3. Media service providers of *on-demand audiovisual media services* shall endeavour to ensure that their services are gradually made accessible to people with a visual or hearing disability.

Rights

- 4. Media service providers shall not transmit cinematographic works outside periods agreed with the rights holders.

European Works

- 4. On-demand audiovisual media services provided by media service providers shall promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service. To this end On-Demand services providers should ensure European works clearly stand out by visual means and/or are listed up front in the catalogue of programmes.

PART 3 (Compliance and Complaints)

Notification

- 1. Audiovisual Media Service providers of on-demand audiovisual media services shall notify the Minister/Regulatory authority of their intention to provide or continue to provide such services in the manner specified by the Minister/Regulatory authority.

2. Audiovisual media service providers shall make easily, directly and permanently accessible to the recipients of a service at least the following information:-
 - (a) The name of the media service provider;
 - (b) The geographical address at which the media service provider is established;
 - (c) The details of the media service provider, including the electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;
 - (d) Where applicable, the competent regulatory or supervisory bodies.

This information should be made available at the entry point to the service.

Complaints

3. The Advertising Standards Authority for Ireland (ASAI) shall accept complaints with regard to breaches of PART 1 of this Code and make determinations on complaints. All complaints regarding commercial communications should, where necessary, be initially forwarded by the ASAI to the service provider and where appropriate the relevant advertiser or agency for a response. In all other respects the ASAI will operate their normal procedures for examination of complaints from consumers. In addition, the existing rules of examination of intra industry complaints will apply.
4. On-demand audiovisual media service providers shall give due and adequate consideration to a complaint in relation to programme content on one or more of the grounds of this Code of Conduct made in writing by a person in respect of the content of the on-demand service which, in the opinion of the provider, has been made in good faith and is not of a frivolous or vexatious nature.
5. To deal with complaints under PART 2 of this Code on-demand audiovisual media service providers shall prepare and implement procedures for the handling of complaints. The procedures shall make provision for the following matters:
 - (a) An initial point of contact for complainants, including an electronic-mail address.
 - (b) A time period within which the provider shall respond to complaints. A provider must respond to a complaint within a period of fifteen working days from receipt of the complaint.

- (c) The procedures to be followed by the provider in the resolution of complaints.
 - (d) Provide for an appeals mechanism within the provider's organisation at a senior level which will respond to appeals within ten working days of receipt.
6. An on-demand provider shall publish on a website maintained by the provider and generally make available, a copy of the complaints procedures. All material and correspondence relating to a complaint will be held by the provider for six weeks from receipt of the complaint, or from response to an appeal.
7. The Compliance Committee of the BAI shall accept appeals against the resolution offered by the service provider with regard to breaches of sub-sections 1 & 2 of PART 2 of this Code and make determinations on complaints provided a complaint is received within ten working days from the decision of the appeal being notified to the complainant.
8. Audiovisual media service providers are required to abide by decisions and recommendations of the ASAI and the BAI and to take appropriate action if required. ODAS will put in place a range of sanctions beyond the publicity associated with a ruling by the ASAI or BAI against the provider including:
- a. Requiring the provider to remedy the cause of the complaint; and/or,
 - b. Require an assurance from the service provider regarding future behaviour; and/or,
 - c. Require the service provider to reimburse service charges paid in connection with the matter giving rise to the complaint; and/or,
 - d. Publicise the decision and identify the provider concerned; and/or,
 - e. Suspend the service provider from the regulatory system.

Reporting

- 1 **European Works**
Where a request is made by the Minister to an audiovisual media service provider or relevant regulatory body for information necessary to enable the Minister to make a report on the provision by on-demand audiovisual media services of European works, it shall be complied with by the audiovisual media service provider or relevant regulatory body as the case may be.

- 2 The relevant body shall report to the Minister on the operation of Codes prepared under the Statutory Instrument on an annual basis, or at times, as the Minister may otherwise direct and in such a manner as the Minister may direct.
- 3 The Codes prepared under the Statutory Instrument No 258 shall be reviewed at the end of one year of operation and amended by the relevant body.

APPENDIX

The following is a non-exhaustive list of the principal legislation which may restrict, control or otherwise affect commercial communications in Ireland. This list is for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case.

Adoption Act 1952

Animal Remedies Act 1993

Animal Remedies (Control of Sale) Regulations 1985-1991
(S.I.258/1958; S.I.244/1991)

Betting Act 1931

Building Societies Act 1989 as amended by 2006 Act

Central Bank and Financial Services Authority of Ireland Act, 2003.

Central Bank Acts 1942-1998

Censorship of Films Acts, 1923-1992

Censorship of Publications Acts, 1929-1965

Censorship of Publications Regulations, 1980 (S.I. 292/1980)

Child Trafficking and Pornography Act, 1998

Child Trafficking and Pornography (Amendment) Act, 2004

Companies Acts 1963-2004

Consumer Credit Act 1995

Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996)

Consumer Information Act 1978

Consumer Information (Advertisement for Concert or Theatre Performances) Order, 1997 (S.I. 103/1997)

Consumer Information (Advertisements) (Disclosure of Business Interest) Order, 1984 (S.I. 168/1984)

Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000)

Consumer Information (Miscellaneous Goods) (Marking) Order, 1984 (S.I. 178/1984)

Copyright Act 1963

Copyright and Related Rights Act 2000 as amended

Credit Union Act 1997

Criminal Justice (Theft and Fraud Offences) Act 2001

Data Protection Act 1988

Dairy Produce Act, 1924

Defamation Act 1961

Defence Act 1954

Employment Agency Act, 1971

Employment Agency Regulations, 1972-1993 (S.I. 27/1971, S.I. .255/1972, S.I 49/1993)

Employment Equality Acts 1998 and 2004

Gaming and Lotteries Acts 1956 – 1979

Hallmarking Act 1981

Health (Foods for Particular Nutritional Uses) Regulations, 1991 (S.I. 331/1991)

Hire Purchase Acts 1946 and 1960

Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961)

Industrial and Commercial Property (Protection) Acts 1927-1958

Industrial Research and Standard Acts 1961 and 1979

Investment Intermediaries Act 1995

Licensing Acts 1833 – 2004 – 1988 Act

Investor Compensation Act 1998

Medical Preparations (Advertising) Regulations, 1993 and 1996 (S.I. 76/1993)- (S.I. 308/1996)

Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993, S.I. 440/1994, S.I. 187/1999)

Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984, S.I. 347/1989; S.I. 70/1993, S.I. 439/1994)

Medical Preparations (Advertising and Sale) Regulations 1958 (S.I. 135/1958)

Medicinal Products (Prescription and Control of Supply) Regulations 2003 (S.I. 540/2003)

Medicinal Products (Licensing and Sale) Regulations, 1998 (S.I. 142/1998)

Merchandise Marks Acts, 1887 - 1970

Metrology Act 1996

Moneylenders Act 1933

Milk and Dairies Acts 1935 and 1956

Occasional Trading Act 1979 as amended by the Casual Trading Act 1995

Official Languages Act 2003

Opticians Act 1956 and 2003

Package Holidays and Travel Trade Act 1995

Patents Act 1992

Prices Acts 1958 to 1972

Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973)

Public Health (Tobacco) Acts 2002 **and** 2004

Pyramid Selling Act 1980

Red Cross Acts 1938 to 1954

Sale of Goods and Supply of Services Act 1980

Solicitors (Advertising) Regulations 2002 (S.I. 518/2002)

Solicitors Acts 1954 – 2002

Stock Exchange Act 1995

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991-2000 (S.I. 326/1991) (S.I. 215/2000)

Tourist Traffic Acts 1939 as amended by 1957, 1966 and 1970 Acts

Trade Marks Acts 1996

Trustee Savings Banks Acts 1989 and 2001
Unit Trusts Act, 1990

Waste (Electrical and Electronic Equipment) Regulations 2005 (S.I. 340/2005)

Rights:

Defamation Act, 1961
Equal Status Act 2000 to 2004 – 2000 Act
Equality Act 2004
European Convention on Human Rights Act 2003
Prohibition of Incitement to Hatred Act 1989

European – based legislation:

Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European Communities (Fruit and Vegetables) Regulations, 1997 (S.I. 122/1997)

European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 as amended (S.I. 83/2003)

Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003)

European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations, 1995 (S.I. 300/1995)

European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998),

European Communities (Classification, Packaging and Labelling of Pesticides) Regulations, 1994 (S.I. 138/1994)

European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001)

European Communities (Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. 290/2006)

European Communities (Cosmetic Products) Regulations, 1997-2006 (S.I. 87/1997, S.I. 213/1998, S.I. 150/2000, S.I. 203/2000, S.I. 373/2006)

European Communities (Distance Marketing) of Consumer Financial Services Regulations 2004 (S.I. 853/2004)

European Communities (Distance Marketing) of Consumer Financial Services (Amendment) Regulations 2005 (S.I. 63/2005)

European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003)

European Communities (Infant Formulae and Follow-on Formulae) Regulations, 1998 to 2000 (S.I. 243/1998) (S.I.446/2000)

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 2000 and 2002 (S.I. 92/2000) (S.I. 483/2002)

European Communities (Life Assurance) Framework Regulations, 1994 (S.I. 360/1994)

European Communities (Misleading Advertising) Regulations, 1988 (S.I.134/1988)-

Directives on Misleading and Comparative Advertising - 84/450/EEC, 97/55/EC, 05/29/EC

European Communities (Names and Labelling of Textile Products) Regulations, 1998 (S.I. 245/1998)

European Communities (Non-Life Insurance) Framework Regulations, 1994 (S.I. 359/1994-

European Communities (Requirements to Indicate Product Prices) Regulations, 2002 (S.I. 639/2002)

European Communities (Pesticides Residues) (Feeding Stuffs) Regulations, 1992 (S.I. 40/1992)

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations, 2001 (S.I. 207/2001)

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) (Amendment) Regulations 2005 (S.I. 71/2005)

European Communities (Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs) Regulations 1995 and 1999 (S.I. 148/1995) (S.I. 275/1999)

European Communities (Supply of Information on the Origin Identification and Destination of Bovine Animals) Regulation, 1999 (S.I. 258/1999)

European Communities (Television Broadcasting) Regulations, 1999 (S.I. 313/1999)

EU Directives 89/552/EEC (SI 251/1991) and 97/36/EC (SI 313/1999)

European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 (S.I. 211/2003)

Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005)

Poisons (Control of Residues in Foods of Animal Origin) Regulations, 1985 and 1986 (S.I. 257/85) (S.I. 236/86)

Prospectus (Directive 2003/71/EC) Regulations, 2005 (S.I. 324/2005)

European Communities (Directive 1924/2006) on Nutrition and Health Claims Made on Foods