

Code of Good Practice on the Protection of Minors in On- demand Audiovisual Media Services

of 26 June 2014



Preamble

- I. According to Article 47e paragraph 1 of the Broadcasting Act (unified text: Journal of Laws 2011, No. 43, item 226, as amended) making on-demand audiovisual media services which include broadcasts or other transmissions specified in Article 18 paragraph 4 of the aforementioned Act (i.e. broadcasts or other transmissions detrimental to the physical, mental, or moral development of minors, in particular content involving pornography or gratuitous violence) publically available is forbidden without taking technical protective measures or other appropriate measures to protect minors from viewing them.
- II. The aim of this Code is to define the specific conditions with which the above technical protective measures or other appropriate measures to protect minors from accessing the above broadcasts or other transmissions specified in Article 18 paragraph 4 of the Broadcasting Act are to correspond.
- III. The formulation of this Code was guided by the need to ensure effective protection of minors from detrimental content, taking into consideration technical capabilities, the level of harm in the broadcast or other transmissions to minors in specific age categories as well as the specific character of on-demand audiovisual media services.

1. Definitions

1.1. For the purposes of this Code, the following definitions have been assumed:

- 1.1.1. **On-demand audiovisual media service (AMS)** - a media service as defined by the Broadcasting Act provided within the framework of business activity conducted in this area, which involves making audiovisual broadcasts publically available on the basis of a programming catalogue compiled by the entity providing the service;
- 1.1.2. **IAB Polska** - Internet Employer Association *Interactive Advertising Bureau* Polska, with its registered office at Ul. Krucza 16/22, 00-526 Warsaw, entered into the National Court Register maintained by the District Court for the Capital City of Warsaw under KRS number 0000258896, NIP 521-34-18-62;
- 1.1.3. **The Code** - "Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services" adopted and applied by IAB Polska;
- 1.1.4. **Minors** - persons under 18 years of age;
- 1.1.5. **Entity providing on-demand audiovisual media services (AMS) (Provider)** - a physical person, legal person or personal trading company 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;
- 1.1.6. **Making on-demand AMS publically available** - provision of the aforementioned services in a way allowing general users to receive broadcasts chosen by them from the programming catalogue provided as part of such services at the time of their choosing and at their discretion;
- 1.1.7. **Party/Parties** - Entity providing on-demand AMS which is a signatory (through submission of a declaration of commitment) of this Code and which has its seat in the Republic of Poland;
- 1.1.8. **Inappropriate content** - broadcasts or other transmissions specified in Article 18 paragraph 4 of the Broadcasting Act (i.e. broadcasts or other transmissions detrimental to the physical, mental or moral development of minors, in particular content involving pornography or

- gratuitous violence).
- 1.1.9. **The Broadcasting Act** - the Broadcasting Act of 29 December 1992 (unified text, Journal of Laws 2011, No. 43, item 226, as amended);
- 1.1.10. **Service recipient** - each physical person who makes use of a given on-demand AMS.

2. General Provisions.

- 2.1. This Code:
- 2.1.1. is a code of good practice in accordance with Article 2 point 5 of the *Prevention of Unfair Commercial Practices Act*, that is a set of rules of procedure and, in particular, ethical and professional standards, applicable to Parties who undertake to be bound by them;
- 2.1.2. is complementary to currently-binding regulations in the Polish law;
- 2.1.3. applies to the Parties, without regard to the technology used to provide on-demand audiovisual media services.
- 2.2. A Party to the Code is any Entity providing on-demand audiovisual media services who submits to IAB Polska a written declaration to commit themselves to the Code (a specimen declaration comprises Appendix No. 1 to this Code).

3. Conditions under which technical protective measures or other appropriate means of protecting minors from inappropriate content are to be used.

- 3.1. Making on-demand audiovisual media services which include inappropriate Content publically available in the programming catalogue may take place only and exclusively alongside the use of the following technical protective measures or other equivalent measures to protect Minors from the aforementioned Content:
- a) a system in which inappropriate Content will be made accessible to the Service recipient only after verifying that they are of appropriate age via:
- i. submission of credit card data by the Service recipient in order to, for example, check its validity, apply pre-authorisation or a temporary nominal blocked charge (e.g. a one-time charge upon registration of the Service Recipient or each time upon login or browsing by the Service Recipient of given Inappropriate Content) and/or
- ii. payment (e.g. one-time, subscription, upon first attempt by a given Service recipient to access inappropriate Content) for access to inappropriate Content (via credit card, electronic bank transfer or other equivalent solution, such as PayPal).
- or
- b) another system which makes the Service recipient's access to inappropriate Content conditional upon verification that the Service recipient is of age. Should a Provider use a system other than specified in point a) above, the Provider shall inform IAB Polska of this intent/fact.

- 3.2. Should one of the aforementioned models be used, insofar as is technically possible the Party to the Code may also freely establish a so-called safe mode as part of its service offering on-demand AMS, in which only those broadcasts and transmissions which do not comprise inappropriate Content are shown in the programming catalogue (as a result of prior filtering). Deactivation of the safe mode should be done by entering, for example, an alphanumeric PIN code or other equivalent solution.
- 3.3. A Service recipient whose age has been verified in one of the aforementioned ways (points 3.1.a or b) may have access to inappropriate Content in whichever payment model is offered as part of the on-demand AMS.

4. Violation of the Code.

- 4.1. Each Party to the Code is obliged to abide by the Code's resolutions insofar as they are directed at the Party.
- 4.2. Each Party is obliged to conduct an assessment of the efficacy of the security measures used by it at least once every two (2) years.
- 4.3. Should IAB Polska find a serious violation of the Code by a Party, the appropriate organ / body of IAB Polska or person / persons designated by it shall notify the Party of the violation found, at the same time setting a suitable deadline to formulate a position on the charges and/or to remove the violation. Notification may be made by email or sent to the address indicated by the Party.

5. Final provisions.

- 5.1. Information on entities who are Parties to the Code will be published by IAB Polska via a generally-accessible website.
- 5.2. Continual supervision over observance of the Code and adjudication of violation claims fall within the exclusive competence of the IAB Polska Arbitration Committee. **The IAB Polska Arbitration Committee shall be convened by IAB Polska within two (2) calendar months of the Code coming into force.** The IAB Polska Arbitration Committee shall be an independent body, and its composition shall be chosen from among experts in fields related to the subject of the Code.
- 5.3. The Code takes into account in particular the provisions of the Broadcasting Act, the Audiovisual Media Services Directive (Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 - OJ L 95/1), as well as the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 13 September 2011 on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry – Protecting children in the digital world /* COM/2011/0556 final */.
- 5.4. In the case of changes to the Code, each Party shall be informed at least 30 days in advance. Should a Party fail to withdraw from the Code within the aforementioned period, the Party thereby admits its acceptance of the new

- resolutions.
- 5.5. Each Party is entitled to withdraw from the Code at any moment. Any withdrawal should be done in written form.
 - 5.6. The appendices hereto form an integral part of this Code.
 - 5.7. The Code shall come into force within 30 days of being enacted.

Information for entities who are not Parties to the Code:

Please note that - in accordance with Article 7 point 1) of the Unfair Commercial Practices Act - provision of information by a business entity that it commits itself to this Code, **if it is not true**, is an unfair commercial practice according to the aforementioned Act and may form the basis for initiation of proceedings by the President of the Office of Competition and Consumer Protection (UOKiK) for practices violating collective consumer interests.

Appendices:

1. Declaration of Commitment to the Code.

Appendix No. 1

.....(place),(date)

DECLARATION OF COMMITMENT

to the "Code of Good Practice on the Protection of Minors in VOD services".

On behalf of....., with its registered office in.....,
KRS/NIP number.....(hereafter referred to as "the Party"), I hereby
declare the commitment of the Party to *The Code of Good Practice on the Protection of Minors
in VOD services* as set out in the document comprising an appendix to this statement.

On behalf of the Party:

.....

(enter name and surname of signatory above)

.....

(enter name and surname of signatory above)

Appendices:

1. Copy of KRS certificate (or another appropriate register) of the Party and power of attorney (if applicable);
2. *Code of Good Practice on the Protection of Minors in VOD services.*