

## THE MEDIA DECREE

(Bulletin of Acts and Decrees of the Kingdom of the Netherlands (*Staatsblad van het Koninkrijk der Nederlanden*) 1987, 573)

as last published in the *Bulletin of Acts and Decrees* 1992, 617, and as subsequently amended by:

- the **Administrative Authorities (National Ombudsman Act and Government Information (Public Access) Act) Decree (Bulletin of Acts and Decrees 1993, 535)**;
- the **Decree of 23 October 1993 (Bulletin of Acts and Decrees 541)** harmonising a number of Orders in Council with the General Administrative Law Act (Ministry of Welfare, Health and Cultural Affairs);
- the **Decree of 19 December 1994 (Bulletin of Acts and Decrees 914)** amending the Media Decree and containing rules pertaining to the introduction of the Act of 28 April 1994 (Bulletin of Acts and Decrees 385);
- the **Decree of 14 November 1996 (Bulletin of Acts and Decrees 589)** harmonising the Media Decree with the Act of 18 May 1995 (Bulletin of Acts and Decrees 320) amending the Media Act with a view to the implementation of Council Directive 89/552/EEC of 3 October 1989, and with the Act of 4 April 1996 (Bulletin of Acts and Decrees 219) amending the provisions of the Media Act in relation to a revision of the advertising rules for local and regional public broadcasting, the promotion of collaboration between regional and national public broadcasters, and providing for other than national commercial broadcasting;
- the **Decree of 22 April 1997 (Bulletin of Acts and Decrees 195)** harmonising the Media Decree with the Act of 19 December 1996 amending the provisions of the Media Act in connection with the restructuring of the licence fee collection service of Koninklijke PTT Nederland N.V. into an autonomous administrative authority governed by public law;
- the **Decree of 29 April 1998 (Bulletin of Acts and Decrees 274)** harmonising the Media Decree with a number of Acts amending the Media Act;
- the **Decree of 18 May 1998 (Bulletin of Acts and Decrees 327)** amending the Media Decree (adjusting the principal sum of the licence fee in connection with the introduction of an annual surcharge on the fee for an A licence);
- the **Decree of 20 February 1999 (Bulletin of Acts and Decrees 104)** harmonising the Media Decree with the Telecommunications Act.

- the **Decree of 25 October 1999 (Bulletin of Acts and Decrees 456)** amending the Media Decree in connection with the deferral of the application procedure for the granting of national public broadcasting concessions;
- the **Decree of 7 December 1999 (Bulletin of Acts and Decrees 545)** amending the Media Decree (implementation of the amendment to the directive on television without frontiers);
- the **Decree of 21 May 2001 (Bulletin of Acts and Decrees 261)** amending the Media Decree in connection with the Act of 23 March 2000, Bulletin of Acts and Decrees 138 (introduction of a new concession system for national public broadcasting) and the Act of 22 December 1999, Bulletin of Acts and Decrees 573 (abolition of licence fees);

## **CHAPTER 1. PUBLIC BROADCASTING**

### **PART 1. NATIONAL BROADCASTING**

#### *§1. The granting of concessions and accreditations*

##### **Article 1**

1. The Foundation shall forward a concession policy plan as referred to in section 30b, subsection 1 of the Media Act to the Media Authority before 1 March of the year in which a current concession period ends.
2. The Foundation shall forward an interim concession policy plan as referred to in section 30b, subsection 3 of the Media Act to the Media Authority before 1 March of the year in which the fifth year of a current concession period ends.

##### **Article 2**

1. Applications for an accreditation or a provisional accreditation for programme service provision for national broadcasting as referred to in section 31 or section 37 of the Media Act shall be submitted in June of the year preceding the year in which a current accreditation period ends.

2. Applications for an accreditation or a provisional accreditation shall be accompanied by the applicant's constitution.
3. Our Minister shall decide on an application for an accreditation or a provisional accreditation before 1 January of the year following the year in which the application is submitted.

### **Article 3**

1. Applications for a national broadcasting accreditation or provisional accreditation shall be made available for public inspection at the library of the Ministry of Education, Culture and Science in Zoetermeer from the time of their submission for advice to the Council for Culture until the time when Our Minister decides on the applications.
2. The policy plan referred to in section 32, subsection 2 or section 37a, subsection 1 of the Media Act shall not be made available for public inspection in so far as:
  - (a) the policy plan contains commercial information disclosed to Our Minister on a confidential basis;
  - (b) depositing the policy plan for public inspection would disproportionately disadvantage the applicant or disproportionately benefit third parties.

### **Article 4 (Repealed)**

### **Article 5 (Repealed)**

### **Article 6 (Repealed)**

### *§2. Provision and allocation of broadcasting time*

### **Article 7**

Each year, the Radio and Television Advertising Foundation shall have at its disposal 6.5 per cent of the total time used for national television or radio broadcasting.

## **Article 8**

Subject to the cases referred to in section 39g of the Media Act, national broadcasting time shall be allocated only if a relevant application has been submitted to the Media Authority.

## **Article 9**

1. Applications for the allocation of broadcasting time under section 39h of the Media Act shall be submitted in September. Applications under section 39f of the Media Act shall be submitted in September of the year preceding the year in which the five-year period referred to in section 39f, subsection 1 of the Media Act, in which broadcasting time under that section may be allocated, ends.
2. The Media Authority shall decide on an application before 1 January of the year following the year in which the application is submitted.
3. If broadcasting time is allocated, it shall take effect on 1 September of the year following that in which the application is submitted.
4. In special cases, the Media Authority may decide to deviate from the effective date for the allocation of broadcasting time referred to in paragraph 3.

## **Article 10**

1. Applications for the allocation of broadcasting time as referred to in section 39h of the Media Act shall be submitted by Our Minister of General Affairs.
2. The Media Authority shall allocate the broadcasting time referred to in paragraph 1 to Our Minister of General Affairs for use by government organisations or persons designated by the said Minister.

### *§3. Scheduling of broadcasting time*

#### **Article 11**

1. Programmes of establishments which have been allocated national broadcasting time may not be interrupted by a programme of the Radio and Television Advertising Foundation more frequently than once every forty-five minutes in the case of television broadcasting or once every thirty minutes in the case of radio broadcasting.
2. A programme may only be interrupted by a programme of the Radio and Television Advertising Foundation if:
  - (a) the length of the programme to be interrupted is more than ninety minutes in the case of television broadcasting or more than forty-five minutes in the case of radio broadcasting;
  - (b) the interruption lasts at least two minutes in the case of television broadcasting or at least one minute in the case of radio broadcasting; and
  - (c) the interruption does not affect the rights of rights holders.
3. Programmes of a religious or spiritual nature and programmes mainly targeted at minors under the age of twelve shall not be interrupted by programmes of the Radio and Television Advertising Foundation.

#### **Article 12**

The television broadcasting time of the Radio and Television Advertising Foundation shall be scheduled with due observance of a minimum length of two minutes per block.

#### **Article 13**

National radio broadcasting time shall be scheduled in such a way that the programmes of broadcasting associations are transmitted on at least three radio programme service networks.

#### *§4. Obligations with regard to the programme services*

#### **Article 14 (Repealed)**

#### **Article 15**

1. The programme service of the Programme Service Foundation shall include the following programmes:
  - (a) background information and commentaries on political and social developments, including developments in the economic, scientific and technological fields;
  - (b) programmes for target groups within society which are not or not sufficiently served elsewhere;
  - (c) consumer information; and
  - (d) programmes other than those referred to at (a) to (c) and in section 51b, subsection 3 of the Media Act, which meet the social, cultural, religious or spiritual needs of the public in such a way that the programme service of the Programme Service Foundation, together with the programme services of the other establishments which have obtained national broadcasting time, provides a balanced reflection of the social, cultural, religious and spiritual diversity of the Netherlands.
  
2. In addition to the programmes referred to in paragraph 1, the television programme service of the Programme Service Foundation shall also include:
  - (a) for at least twenty per cent, programmes for or relating to ethnic and cultural minorities; and
  - (b) programmes of an educational nature aimed at young people.
  
3. In addition to the programmes referred to in paragraph 1, at least twenty-five per cent of the radio programme service of the Programme Service Foundation shall consist of programmes for or relating to ethnic and cultural minorities.

## **Article 16**

1. The programme service of the Foundation shall in any event include the following programmes:
  - (a) daily news coverage;
  - (b) coverage of the Dutch and European parliaments;
  - (c) coverage of national holidays and commemorations;
  - (d) current sports coverage, including in any case competition and cup matches, and international events;
  - (e) coverage of other national and international events of a special nature, including State visits.
2. In addition to the programmes referred to in paragraph 1, the television programme service of the Foundation shall also include news intended for young viewers and for the hard of hearing.
3. In addition to the programmes referred to in paragraph 1, the radio programme service of the Foundation shall also include programmes providing information for shipping, fisheries, agriculture, horticulture and traffic, along with morning exercises.

## **Article 16a**

At least a third of the programmes referred to in section 54, subsection 2, first sentence, of the Media Act shall be no more than five years old.

### *§5. Other obligations*

## **Article 17**

Revenues from programme guides published by the broadcasting associations may be spent each year on activities of the relevant association up to the amount necessary to cover any losses of that association. For the purpose of determining the profit and loss, changes in the value of the tangible fixed assets as a result of revaluation shall not be taken into account. The usual annual depreciation of tangible fixed assets shall not be treated as a revaluation.

## PART 2. REGIONAL AND LOCAL BROADCASTING

### *§1. Broadcasting time*

#### **Article 18**

1. Applications for the allocation of regional or local broadcasting time shall be submitted to the Media Authority.
2. Applications shall relate to a period of at least five years.
3. Applications shall be accompanied by:
  - (a) a copy of the notarial instrument containing the applicant's constitution;
  - (b) a specification of the major social, cultural, religious and spiritual movements in the municipality or province from which members are appointed to the regional or local broadcasting association's body referred to in section 30 (c) of the Media Act;
  - (c) a list of those who, as representatives of the movements referred to at (b), have been appointed to the said body;
  - (d) a statement as to whether the application relates to broadcasting time on radio, television or both;
  - (e) a specification of the area within which the programme service is to be broadcast; and
  - (f) a specification of the amount of broadcasting time desired and of the days and hours for which the broadcasting time is desired.
4. The provisions of paragraph 3 (f) shall not apply to a request for permission to provide a local programme service transmitted by means of a broadcasting network.

#### **Article 19**

1. The Media Authority shall submit the application for the allocation of regional broadcasting time to the provincial council within four weeks of receiving the application.



2. The provincial executive shall issue an advisory opinion to the Media Authority within eighteen weeks of receiving the application referred to in paragraph 1, stating whether the executive is prepared to finance the regional broadcaster.
3. The Media Authority shall decide on the application within four weeks of receiving the advisory opinion from the provincial executive.
4. When allocating broadcasting time, the Media Authority shall also determine the amount of broadcasting time for the first calendar year or the remaining part thereof and designate the days and hours and, where necessary, the broadcasting transmitter or transmitters on which the programme service is to be broadcast. The effective date of the allocation of broadcasting time shall be determined by the Media Authority after hearing the regional broadcasting establishment.

#### **Article 20**

1. The Media Authority shall submit the application for the allocation of local broadcasting time to the municipal executive within four weeks of receiving the application and shall send a copy of the application to the Minister of Transport, Public Works and Water Management.
2. The municipal executive shall issue an advisory opinion to the Media Authority within eighteen weeks of receiving the application referred to in paragraph 1.
3. The Media Authority shall decide on the application within four weeks of receiving the advisory opinion from the municipal executive.
4. When allocating broadcasting time, the Media Authority shall also determine the amount of broadcasting time for the first calendar year or the remaining part thereof and designate the days and hours and, where necessary, the broadcasting transmitter or transmitters on which the programme service is to be broadcast. The broadcasting time shall become effective at the earliest possible date. The first sentence shall not apply where broadcasting time is allocated for a local programme service to be transmitted by means of a broadcasting network.

#### **Article 21**

1. If a regional or local broadcasting establishment which has been allocated broadcasting time for a certain period of time wishes to qualify for the allocation of broadcasting time in a consecutive period, the establishment shall be required to submit the application referred to in article 18 to the Media Authority no later than six months before the end of the period for which broadcasting time has been allocated.
2. In special cases, derogation from the provisions of articles 19 and 20 shall be permitted.

## **Article 22**

1. Before 1 November of each year, the regional broadcasting establishment which has been allocated broadcasting time shall submit a proposal to the Media Authority regarding the amount of broadcasting time and the days and hours for the next year.
2. Before 30 November of each year, the Media Authority shall determine the amount of broadcasting time for the next year and designate the days and hours and, where necessary, the broadcasting transmitter or transmitters on which the programme service is to be broadcast. The broadcasting time shall become effective on 1 January of the next year.
3. If the Media Authority exercises its power as laid down in article 20, paragraph 4, paragraphs 1 and 2 of this article shall apply *mutatis mutandis* to local broadcasting.

## **Article 23**

1. If the Media Authority establishes that the regional or local broadcasting establishment no longer satisfies the requirements laid down in section 30 (b and c) of the Media Act, the Media Authority, having heard the provincial or municipal council, shall notify the broadcasting establishment accordingly with reference to the provisions laid down in section 45, subsections 1 and 3 of the Media Act.
2. Within four weeks of the end of the year following the notification referred to in paragraph 1, the Media Authority shall inform the regional or local broadcasting establishment of its decision on the broadcasting time for that establishment.

## **Article 24**

1. A decision pursuant to section 45 of the Media Act to withdraw broadcasting time allocated to a regional or local broadcasting establishment shall take effect immediately.
2. If the withdrawal of broadcasting time as referred to in paragraph 1 is based on section 46a of the Media Act, the relevant decision shall take effect two weeks after the date of the decision.

### *§2. The programmes*

## **Article 24a**

At least a third of the programmes referred to in section 54, subsection 6, second sentence, of the Media Act shall be no more than five years old.

## **Article 25**

1. No less than fifty per cent of the programme service of a regional or local broadcasting establishment shall consist of programmes produced by or exclusively for that establishment.
2. If section 51f, subsection 4 of the Media Act applies to a local broadcasting establishment, at least one half of the broadcasting time used for programmes as referred to in section 51f, subsection 4 (a) of the Media Act shall relate in particular to the municipality for which the programme service is intended, and at least half of the broadcasting time used for programmes as referred to in section 51f, subsection 4 (b) of the Media Act shall be produced by or exclusively for that establishment.

### §3. *Bookkeeping and annual accounts*

#### **Article 25a**

1. Local and regional broadcasting establishments which provide programmes as referred to in section 43a of the Media Act shall be under an obligation to keep proper books and records and to have their annual accounts accompanied by an auditor's report from an accounting consultant or a registered accountant.
2. The books shall in any event contain information on income and expenditure, broken down into income and expenditure relating to the exploitation of advertising messages, income and expenditure relating to other programmes and income and expenditure relating to all other activities.
3. Local and regional broadcasting establishments which provide programmes as referred to in section 43a of the Media Act shall send their annual accounts to the Media Authority before 1 June of each year.

#### PART 2a. TRANSMISSION BY MEANS OF BROADCASTING NETWORKS

#### **Article 25b**

Applications for permission to provide a programme service as referred to in section 67 of the Media Act shall be submitted to the Media Authority by the relevant regional broadcasting establishment which has been allocated broadcasting time.

#### **Article 25c**

A regional programme service as referred to in section 67 of the Media Act, in so far as it is a television programme service, shall not be broadcast between 19.00 and 23.00 unless the Foundation and the relevant regional broadcasting establishment have agreed otherwise.

## **Article 25d**

1. Applications for permission to provide a programme service as referred to in section 68 of the Media Act shall be submitted to the Media Authority by the relevant local broadcasting establishment which has been allocated broadcasting time.
2. Applications shall be accompanied by:
  - a. a statement as to whether the application refers to a radio or television programme service or both;
  - b. a copy of the notarial instrument containing the constitution of the establishment producing the programme service or, if it is not a legal person, a description of the establishment producing the programme service; and
  - c. the advisory opinion of the Council for Culture referred to in section 68, subsection 2 (d) of the Media Act.
3. If a local broadcasting establishment which has obtained the permission referred to in paragraph 1 wishes to qualify for permission in a consecutive period, it shall be required to submit an application no later than five months prior to the end of the period for which permission has been granted to it. Paragraphs 1 and 2 shall apply *mutatis mutandis*.

## **PART 3. ADVERTISING**

### *§1. General*

## **Article 26**

In this Part:

- (a) “event” shall mean any cultural event, musical performance, stage performance, sports contest, sports event or other similar event attended by the public;
- (b) “sports contest” shall mean any (preparation for a) contest organised either by or under the auspices of any of the national sports organisations, or their branches, which are recognised by the Sports Federation of the Netherlands (*Nederlandse Sportfederatie* - NSF) or by a similar international (umbrella) organisation, and any other (preparation for a) contest in a field of sport regarded as a sport by the NSF.

## **section 26a**

This Part shall not apply to advertising messages.

### §2. Unavoidable advertising

#### **Article 27**

Advertising expressions which form part of the normal street scene and which appear for several seconds in an individual programme without premeditation and without emphasis being placed on them shall be regarded as unavoidable.

### §3. Avoidable advertising

#### **Article 28**

1. Programmes of an informative and educational nature may contain avoidable advertising expressions that involve displaying or referring to a product or service, provided that:
  - (a) such a display or reference is in keeping with the context of the programme service;
  - (b) such a display or reference does not affect the formula or integrity of the programme service;
  - (c) such a display or reference does not take place in an exaggerated or excessive way;
  - (d) the product or service is not specifically recommended.
2. Paragraph 1 shall apply *mutatis mutandis* to other programmes, except for programmes which are predominantly targeted at minors under the age of twelve.

#### **Article 29**

1. Without prejudice to article 28, programmes of an informative or educational nature may contain avoidable advertising expressions that involve displaying or referring to names, trademarks, logos or brand images of certain products or services or to names of companies or establishments. Article 28, paragraph 1 (a to d) shall apply *mutatis mutandis* to these types of advertising expressions.

2. Notwithstanding article 28, paragraph 1 (d), programmes of an informative or educational nature may contain avoidable advertising expressions consisting of announcements and reviews of books, video tapes, compact discs and similar cultural products, as well as of plays, musical performances and films, shows and similar events of an artistic nature.

### **Article 30**

Radio and television programmes may contain avoidable advertising expressions that involve displaying or referring to the name of a company or establishment, provided that:

- (a) the name is used exclusively in relation to a sports association or sports contest;
- (b) the name is not displayed or referred to in an emphatic way; and
- (c) the name, in so far as it relates to a Dutch sports association, has been recognised by the relevant sports organisation associated with the NSF.

### **Article 30a**

1. A television programme covering or showing an event which is organised in the Netherlands or is produced by or for an establishment which has obtained broadcasting time may contain avoidable advertising expressions if the event is not primarily designed to be broadcast as a programme service and the presence of the advertising expressions are not dominating.
2. A television programme covering or showing an event which takes place abroad and is not produced by or for an establishment which has been allocated broadcasting time may contain avoidable advertising expressions if the event is not primarily designed to be broadcast as a programme service and the advertising expressions are not displayed in the programme any longer or emphasised any more than is necessary in the context of balanced coverage and presentation.

## **Article 31**

1. A television programme covering or showing an event which is not primarily designed to be broadcast as a programme service may contain a maximum of five seconds of avoidable advertising expressions at the beginning or end of the programme, consisting of the names, trademarks, logos or brand images of persons, companies or establishments which have made a significant contribution to the realisation of the event, stipulated by written agreement. The reference or display shall be such that it is not an advertising message as defined in section 1 (kk) of the Media Act. If the programme is intended for television broadcasting and consists of a report on or coverage of an event that is produced by or for an establishment which has been allocated broadcasting time and that is not primarily designed to be broadcast as a programme service, the reference or display shall consist of static images only.
2. Paragraph 1 shall not apply to persons, companies or establishments:
  - (a) whose main activities involve the manufacture or sale of cigarettes or other tobacco products; or
  - (b) that use names, trademarks, logos or brand images which are also used by persons, companies or establishments as referred to at (a), or which bear such a strong resemblance to any of these items as to make it reasonable to expect that the public will gain the impression that the name, trademark, logo or brand image involved is also that of a person, company or establishment as referred to at (a).

## **Article 32**

1. A television programme consisting of a film which has been or is to be shown in a public theatre, or a television adaptation thereof, may contain avoidable advertising expressions that involve displaying or referring to the names, trademarks, logos, brand images, products or services of persons, companies or establishments, if the advertising expressions in the programme appear in the same form and to the same degree as was the case in the version of the film intended for the public theatre.
2. A programme which has been purchased abroad and which has been broadcast as a programme service to a foreign audience may contain avoidable advertising expressions that involve displaying or referring to the names, trademarks, logos, brand images, products or services of persons, companies or establishments, if the



advertising expressions in the programme appear in the same form and to the same degree as was the case in the version broadcast to the foreign audience.

## **CHAPTER 2. FINANCING**

### **Article 32a**

1. Further rules and models may be laid down by ministerial order concerning the content and structure of:
  - (a) the budget for the establishments which have obtained national broadcasting time, as referred to in section 99 of the Media Act;
  - (b) the budget of Radio Netherlands, as referred to in section 108 of the Media Act.
2. Further rules and models may be laid down by ministerial order for the structure of the annual accounts, referred to in section 109 of the Media Act, of the broadcasting associations, the Programme Service Foundation, the Foundation, the educational broadcasting establishment, the Radio and Television Advertising Foundation, the religious and other spiritual organisations that have obtained broadcasting time, or Radio Netherlands.

### **Article 32b**

1. Advances to establishments which have obtained national broadcasting time and to Radio Netherlands shall be paid in the form of twelve monthly instalments. The board of directors or the Media Authority may deviate from this rule in special circumstances.
2. The amount of the advances shall be determined by the board of directors or the Media Authority on the basis of the budget referred to in section 99 or 108 of the Media Act and the cash-flow forecasts of the relevant establishment, which is to be sent to the board of directors or the Media Authority before 1 November of the year preceding the budget year.

3. Until the board of directors or the Media Authority has received the cash-flow forecast for the relevant year, advances shall be made on the basis of the last forecast to be sent.
4. The total amount of the advances in any year may not exceed the total amount of compensation established for that year.

**Article 33** (Repealed)

**Article 34** (Repealed)

**Article 35** (Repealed)

**Article 36** (Repealed)

**Article 37** (Repealed)

**Article 38** (Repealed)

**Article 39** (Repealed)

**Article 40** (Repealed)

**Article 41** (Repealed)

**Article 42** (Repealed)

**Article 43** (Repealed)

**Article 44** (Repealed)

**Article 45** (Repealed)

**Article 46** (Repealed)

**Article 47** (Repealed)

**Article 48** (Repealed)

**Article 49** (Repealed)

**Article 50** (Repealed)

**Article 51** (Repealed)

## **CHAPTER 3. COMMERCIAL BROADCASTING**

### *§3.1 Applications*

#### **Article 52**

1. Applications for permission to provide a programme service as referred to in section 71a, subsection 1 of the Media Act shall be submitted to the Media Authority.
2. Applications shall be accompanied by:
  - (a) a copy of the applicant's constitution;
  - (b) particulars of the actual place of establishment, if it differs from the place specified in the constitution;
  - (c) a statement as to whether the application is made for permission to provide a radio programme service, a television programme service or both;
  - (d) a description of the applicant's organisational and legal structure, and a list of its directors and shareholders.

## **Article 52a**

If a commercial broadcasting establishment wishes to obtain permission for a consecutive period, it must submit the relevant application to the Media Authority at least five months prior to the end of the period for which permission has already been granted. Article 52 shall apply *mutatis mutandis*.

### *§3.2 Obligations with regard to the programme services*

## **Article 52b**

A commercial broadcasting establishment which provides programmes consisting of advertising messages shall ensure that it is covered by the Advertising Code (*Nederlandse Reclame Code*) or some other comparable scheme established by the Advertising Code Foundation (*Stichting Reclame Code*) and, in that context, that it is subject to the supervision of the Advertising Code Foundation. The commercial broadcasting establishment shall be required to prove that this is the case by submitting a written statement from the Advertising Code Foundation to the Media Authority.

## **Article 52c**

1. Advertising messages or teleshop messages included in the programme service provided by a commercial broadcasting establishment shall be recognisable as such and shall be clearly distinguishable from the other programmes by optical or acoustic means. Subliminal techniques shall not be used.
2. The blocks of teleshop messages referred to in article 52d, paragraph 6 shall, throughout the transmission, be recognisable as such by optical means and be clearly distinguishable from the other programmes by optical or acoustic means.

## **Article 52d**

1. No more than fifteen per cent of the total length of the entire programme service provided by a commercial broadcasting establishment on a given day shall consist of advertising messages.

2. No more than twenty per cent of the total length of entire programme service provided by a commercial broadcasting establishment on a given day shall consist of teleshop messages.
3. No more than twenty per cent of the total length of the programme service provided by a commercial broadcasting establishment on a given day shall consist of a combination of advertising messages and teleshop messages.
4. No more than twelve minutes per hour of the programme service provided by a commercial broadcasting establishment shall consist of advertising messages or teleshop messages.
5. Advertising messages in television programme services, or teleshop messages shall be broadcast exclusively in blocks which, including the filler items before, after and between the advertising messages, shall be at least two minutes in length.
6. The programme service of a commercial broadcasting establishment shall consist of no more than eight blocks of teleshop messages per day; each block, without interruptions, shall last at least fifteen minutes and the total length shall be no more than three hours per day. Paragraphs 2 to 5 shall not apply to these blocks of teleshop messages.

#### **Article 52e**

1. Programmes of commercial broadcasting establishments shall only be interrupted by advertising messages or teleshop messages if the interruption does not affect the integrity, nature or coherence of the relevant programme or infringe the rights of rights holders.
2. Programmes covering gatherings relating to religious or other beliefs shall not be interrupted by advertising messages or teleshop messages.
3. The following programmes shall be interrupted by advertising messages or teleshop messages only if they last more than thirty minutes:
  - (a) programmes consisting of news or news commentaries;
  - (b) programmes of a religious or spiritual nature other than those referred to in paragraph 2;

- (c) programmes aimed at minors under the age of twelve.
  - (d) nondramatised documentaries.
4. Films shall be interrupted by advertising messages or teleshop messages only if they last at least forty-five minutes.
  5. Without prejudice to paragraph 4, films shall not be interrupted by advertising messages or teleshop messages more frequently than once every forty-five minutes. If a film has a remaining length of more than twenty minutes after two or more full segments of forty-five minutes, the film may be interrupted once more.

#### **Article 52f**

1. Where one television programme is interrupted by more than one advertising or teleshop break, the intervals between them shall be at least twenty minutes.
2. Notwithstanding paragraph 1, television programmes consisting of a report on a sporting event, a stage performance or some other similarly structured performance or event shall only be interrupted by advertising messages or teleshop messages during natural breaks occurring in the performance or event or between separate parts of the performance or event.

#### **Article 52g**

1. Notwithstanding article 52d, paragraphs 1, 4 and 5, a commercial broadcasting establishment shall be permitted to provide a television programme service consisting exclusively of advertising messages transmitted for self-promotion purposes.
2. A programme service as referred to in paragraph 1 may include other advertising messages, having regard to the provisions applicable to the broadcasting thereof.
3. Notwithstanding article 52d, paragraphs 2 to 6, a commercial broadcasting establishment shall be permitted to provide a programme service consisting exclusively of teleshop messages.

4. A programme service as referred to in paragraph 3 may include advertising messages, having regard to the provisions applicable to the broadcasting thereof.

#### **Article 52h**

1. Programmes of a commercial broadcasting establishment shall be sponsored only if that establishment has drawn up a programme statute which in any event protects the editorial independence of those of their employees charged with the editorial aspects of the programme services against interference by sponsors.
2. The names of all the sponsors shall be mentioned by means of a name, trademark, logo or brand image either at the beginning or end of the sponsored programme for the information of the public. The names of sponsors may not be presented in such a way as to meet the definition of an advertising message laid down in section 1 (kk) of the Media Act.
3. A sponsored programme may refer to or display products or services of persons, companies or establishments, provided that the public is not, by way of specific recommendations or otherwise, encouraged to purchase or hire such products or to purchase such services.
4. Commercial broadcasting establishments shall not stipulate or accept any sponsorship contributions from persons, companies or establishments:
  - (a) whose main activities involve the manufacture or sale of cigarettes or other tobacco products; or
  - (b) that use names, trademarks, logos or brand images which are also used by persons, companies or establishments as referred to at (a), or which bear such a strong resemblance to any of these items as to make it reasonable to expect that the public will gain the impression that the name, trademark, logo or brand image involved is also that of a person, company or establishment as referred to at (a).
5. Programmes of commercial broadcasting establishments which have obtained permission shall not be sponsored if they consist of news, current affairs or political information.

6. If a sponsored programme has been purchased outside the Netherlands and has already been broadcast as a programme service to a foreign audience, this article shall apply only in so far as the sponsorship money has been furnished to facilitate the purchase of that programme by the commercial broadcasting establishment.
7. Paragraph 2 shall apply *mutatis mutandis* to a programme for which a government organisation or an organisation other than as referred to in section 1 (II) of the Media Act has provided a financial or other contribution for the making or purchase of that programme, in order to promote or make possible its transmission as a programme.

#### **Article 52i**

1. A programme of a commercial broadcasting establishment covering or showing an event as referred to in article 26 (a) and not primarily intended to be broadcast as a programme service may refer to or display the names, trademarks, logos or brand images of persons, companies or establishments which have made a significant financial or other contribution to the realisation of the event, either at the beginning or the end of the programme. The reference or display shall be such that it does not meet the definition of an advertising message laid down in section 1 (kk) of the Media Act.
2. Paragraph 1 shall not apply to persons, companies or establishments:
  - (a) whose main activities involve the manufacture or sale of cigarettes or other tobacco products; or
  - (b) that use names, trademarks, logos or brand images which are also used by persons, companies or establishments as referred to at (a), or which bear such a strong resemblance to any of these items as to make it reasonable to expect that the public will gain the impression that the name, trademark, logo or brand image involved is also that of a person, company or establishment as referred to at (a).

#### **Article 52j**

1. Without prejudice to the provisions of article 52g, article 52h, paragraphs 2 and 3, and article 52i, paragraph 1, the programme services of commercial broadcasting establishments may not refer to or display any names, trademarks, logos, brand images, products, services or activities of persons, companies or establishments if it



can be reasonably assumed that the commercial broadcasting establishment has included such a reference or display either to encourage the public to purchase a certain product or service or to influence public opinion in a positive manner as regards a specific business, branch of industry or establishment in order to promote the sale of products or the use of services.

2. A reference to or display of the name, trademark, logo, brand image, product, service or activity of a person, company or establishment in a programme service shall be deemed to have been made with the intention described in paragraph 1, if the commercial broadcasting establishment is paid for the inclusion of such a reference or display.

#### **Article 52k**

1. Commercial broadcasting establishments shall devote at least fifty per cent of their television programme service to programmes which may be considered as European works within the meaning of article 6 of the European Directive.
2. Commercial broadcasting establishments shall devote at least ten per cent of their television programme service to programmes as referred to in paragraph 1 which have not been produced by:
  - (a) the commercial broadcasting establishment concerned or another establishment which provides a programme service;
  - (b) a legal person in which an establishment which provides a programme service holds directly or through one or more subsidiaries an interest of at least twenty-five per cent;
  - (c) a legal person in which two or more establishments which provide a programme service hold directly or through their respective subsidiaries a joint interest of more than fifty per cent; or
  - (d) a company in which an establishment which provides a programme service, or one or more of its subsidiaries, is as a partner fully liable towards the company's creditors for its debts.
3. At least a third of the programmes referred to in paragraph 2 shall be no more than five years old.

4. For the purposes of this article, the following television programmes shall be disregarded:
  - (a) programmes consisting of news;
  - (b) programmes relating to sport;
  - (c) programmes which have the character of a game, with the exception of programmes of a cultural or educational nature which also have the character of a game;
  - (d) programmes consisting of advertising messages or teleshop messages;
  - (e) programmes consisting of static images.
  
5. This article shall not apply to:
  - (a) a television programme service that can be received in one municipality only or in a limited number of adjacent municipalities;
  - (b) television programme services as referred to in article 52g;
  - (c) television programme services that are intended exclusively for reception in countries other than the member states of the European Union and that cannot be received directly or indirectly by the public in one or more member states of the European Union.
  
6. The Media Authority may in exceptional circumstances, with respect to a particular commercial broadcasting establishment, grant a temporary, partial exemption from paragraph 1, on the understanding that the percentage may never be less than ten per cent.

### **Article 52l**

1. Commercial broadcasting establishments shall devote at least forty per cent of their television programme service to programmes originally produced in the Dutch or Frisian language.
2. Paragraph 1 shall not apply to programme services for special broadcasting purposes.

### **Article 52m**

A commercial broadcasting establishment shall not include any films in its programme service outside the periods agreed with those holding rights to the film.

### **Article 52n**

Article 52d, article 52e, paragraphs 2 to 5, and articles 52f, 52g, 52i and 52k to 52m shall not apply to a television programme service which cannot be received directly or indirectly outside the Netherlands and that:

- (a) in terms of visual content, is composed exclusively or almost exclusively of static images; or
- (b) mainly consists of information relating to the programme services and other services provided by a broadcasting transmitter or a broadcasting network.

### **Article 53 (Repealed)**

### **Article 53a (Repealed)**

### **Article 53b (Repealed)**

## **CHAPTER 4. TRANSMISSION OF PROGRAMME SERVICES**

### **Article 53c**

1. For the purposes of section 82f of the Media Act, two or more establishments shall be regarded as one establishment if:
  - (a) an establishment has such direct or indirect control or influence over one or more other establishments that it can largely determine their policies, or has considerable influence on policy content; or
  - (b) a natural person or group of natural persons has such direct or indirect control or influence over two or more other establishments that the said person or group of persons can largely determine their policies, or have considerable influence on policy content.
  
2. Our Minister may, having consulted the Minister of Transport, Public Works and Water Management, determine that, notwithstanding section 82f, subsection 1 of the Media Act, more frequency space than one FM frequency or combination of FM frequencies may be used to transmit radio programme services of one and the same establishment.

### **Article 53d (Repealed)**

### **Article 53e (Repealed)**

### **Article 53f (Repealed)**

## **CHAPTER 5. PRESS PRODUCTS**

### **Article 54**

Apart from the case referred to in section 130, subsection 4 of the Media Act, financial support in the form of a grant may also be provided by the Press Fund:

- (a) as compensation for daily newspapers on the grounds of unequal conditions on the daily newspaper advertising market;
- (b) for joint projects of press products;

- (c) for a management study aimed at a structural improvement in the exploitation of a press product;
- (d) for research benefiting the industry as a whole, in so far as such research fits in with the Press Fund's objectives.

## **Article 55**

1. The compensation for daily newspapers as referred to in article 54 (a) shall relate exclusively to the 1986 and 1989 financial years and may be granted if:
  - (a) the daily newspaper realised negative operating results in the year for which support is to be granted, as calculated in accordance with the Press Fund's guidelines;
  - (b) in the year for which support is to be granted, the number of copies sold by the daily newspaper was no more than 232,000 and the distribution density was no more than 0.48, whilst the average number of sold copies ( $O_i$ ) and the average distribution density ( $D_i$ ) were such that the result of the formula  $1 - O_i/232,000 - D_i/0.48$  is greater than 0;
  - (c) the staff costs of the daily newspaper's own editorial staff in the year for which support is to be granted accounted for at least thirty per cent of the total editorial staff costs of the newspaper in question;
  - (d) a project has been submitted which is aimed at a structural improvement in the exploitation of the newspaper within a reasonable period;
  - (e) the Press Fund has given its consent to the project; and
  - (f) the project is executed within a reasonable period.
  
2. For the purposes of paragraph 1 (b):
  - (a) "distribution density" shall mean the percentage of the total number of copies sold by a daily newspaper on its home market, multiplied by the coverage percentage on the home market;
  - (b) "home market" shall mean the nodal area in which the daily newspaper sells most of its copies plus the adjacent nodal areas in which the coverage percentage is at least eighty-five per cent of that in the nodal area in which the newspaper sells most of its copies, plus the nodal areas adjacent to the aforesaid nodal areas, in which the coverage percentage is at least eighty-five per cent of that in the nodal area in which the newspaper sells most of its copies;

- (c) "nodal areas" shall mean the areas marked on the map of the Netherlands attached to this Decree;
  - (d) "coverage percentage on the home market" shall mean the number of copies sold on the home market divided by the number of private addresses served by the PTT in the relevant area.
3. For the purposes of paragraph 1 (c), the daily newspaper's own editorial staff shall mean the permanent editorial staff of the relevant newspaper and freelance editorial staff in so far as they supply the newspaper with periodic editorial contributions. The central editorial staff of a newspaper, which also supplies other newspapers with editorial contributions, shall also be regarded as the daily newspaper's own editorial staff.
4. The financial support referred to in paragraph 1 shall not exceed seventy-five per cent of the losses incurred in the year for which the support is to be granted, as calculated in accordance with the Press Fund's guidelines.

#### **Article 56**

Support as referred to in article 54 (b) may be granted if:

- (a) the press products have submitted a joint project which is aimed at a structural improvement in the exploitation of those press products within a reasonable period;
- (b) the project fits in with the Press Fund's objectives;
- (c) the Press Fund has given its consent to the project;
- (d) the project is executed within a reasonable period.

#### **Article 57**

1. Support as referred to in article 54 (c) may be granted if:

- (a) the exploitation of the press product resulted in losses or threatened to result in losses in the financial year preceding the application;
- (b) the application contains a proposal for the structure and execution of the intended study;
- (c) the application for this type of financial support is aimed exclusively at obtaining support up to a maximum of two thirds of the costs of the intended management study.

2. The provisions of article 56 (b to d) shall apply *mutatis mutandis*.

#### **Article 58**

1. Support as referred to in article 54 (d) may be granted if the application for the financial support relates to:
  - (a) the press industry as a whole;
  - (b) an issue related to the Press Fund's objectives.
2. The provisions of article 56 (c and d) shall apply *mutatis mutandis*.

#### **Article 59**

1. Applications for the financial support referred to in sections 130 and 131 of the Media Act shall be submitted to the Press Fund by the legal person which owns the publication rights in the press product for which the application is submitted, or by the relevant group or branch of the press products.
2. If the application is made for the financial support referred to in article 54 (a), it shall be submitted during a period determined by the Press Fund.

#### **Article 60**

1. Applications for the financial support referred to in article 54 (a) shall contain at least the following information:
  - (a) the name and address of the legal person which submits the application and which owns the publication rights in the relevant daily newspaper;
  - (b) a description of the legal structure of the undertaking(s) involved;
  - (c) if the press product forms part of a group, a description of the group's structure and the legal and economic relationships between the applicant and the other group companies;
  - (d) recent information on the financial position of the press product, together with the annual reports, annual accounts and auditors' reports for the past three years;
  - (e) information on the sales figure developments, the income from subscriptions and the advertising revenue of the press product to which the application relates;

- (f) if the press product forms part of a group, information on the income and expenditure of the group, divided into the income and expenditure of the separate publications and of other group activities;
  - (g) the editorial statute of the press product;
  - (h) information on the project referred to in article 55, paragraph 1 (d);
  - (i) a statement concerning the possible effects of the project on the staff;
  - (j) the views, expressed in writing, of the editorial team(s) and works council(s) concerned on the project referred to in article 55, paragraph 1 (d);
  - (k) information on the average number of copies sold and the distribution density as referred to in article 55, paragraph 1 (b); and
  - (l) information showing the staff costs referred to in article 55, paragraph 1 (c).
2. Applications for the financial support referred to in article 54 (b) shall contain at least the following information:
- (a) the names and addresses of the legal persons which submit the application and which own the publication rights in the relevant press products;
  - (b) a description of the legal structure of the press products involved; if the publisher of a press product forms part of a group, a description of the group's structure and the legal and economic relationships between the applicant and the other group companies;
  - (c) information on the joint project: a description of the project and the anticipated effects in terms of cost development, income and cash-flow; and
  - (d) a specification of the financial support requested to execute the relevant project.
3. Applications for the financial support referred to in article 54 (c) shall contain at least the following information:
- (a) the name and address of the legal person which submits the application and which owns the publication rights in the relevant press product;
  - (b) information on the financial position of the press product;
  - (c) information on sales figures and distribution; and
  - (d) information about the structure and execution of the intended study.
4. Applications for the financial support referred to in article 54 (d) shall contain at least the following information:
- (a) the name(s) and address(es) of the applicant(s);



- (b) a description of the legal structure of the press products involved in the application, together with a description of the legal and economic relationships; and
- (c) a description of the intended research for which support is requested.

#### **Article 61**

1. The Press Fund shall confirm receipt of the application.
2. If any of the information referred to in article 60 is not included in the application, the application shall be required to show why this is the case.

#### **Article 62**

The Press Fund may submit the application to an external consultancy if it considers this to be desirable. The Press Fund shall ensure that confidential business information is treated as confidential.

#### **Article 63**

1. The Press Fund shall decide on the application within thirteen weeks of having accepted the application for consideration.
2. Applications for the financial support referred to in article 54 (a) shall be considered and decided on at the same time.
3. Applications for the financial support referred to in article 54 (b, c and d) shall be considered and decided on in order of receipt. If the amount available for financial support in a given year has been exhausted, any subsequent applications shall be rejected.

#### **Article 64**

The Press Fund may attach conditions to its decision to grant financial support. These conditions may concern:

- (a) the way in which the financial support is to be spent, in accordance with the underlying objectives;

- (b) the way and the period of time in which the project or the study must be executed;
- (c) the reporting requirements and the method of financial accounting;
- (d) any changes in the applicant's legal structure.

#### **Article 65**

Decisions in which applications are granted or refused, and those concerning the level of the financial support to be granted, shall be published in the Government Gazette (*Staatscourant*) within one week of the decision having been taken.

#### **Article 66**

1. If the Press Fund has decided to grant financial support, but has not yet reached a final decision on the level of the support, it may pay an advance to the applicant. The advance payment shall not exceed fifty per cent of the financial support as calculated on a provisional basis.
2. If an advance is paid and the definitive level of support is calculated at an amount lower than the advance payment, the difference between the advance and the definitive level of support shall be repaid to the Press Fund at the latter's first request.

#### **Article 67**

1. The Press Fund may terminate the financial support and reclaim the amounts already paid if:
  - (a) the applicant fails to comply with any of the conditions attached to the granting of support;
  - (b) the information submitted with the application proves to be incorrect;
  - (c) within one year of the date of the decision to grant financial support, an order for a suspension of payments or a bankruptcy order is issued by a court against the applicant.
2. The Press Fund may refuse an application for support under article 54 (a) or decide not to pay the promised financial support if a daily newspaper goes into liquidation in the period between the year to which the requested support relates and the moment when the relevant support was to have been paid.

## CHAPTER 6. PROGRAMME SERVICES FOR FOREIGN MILITARY PERSONNEL

### Article 68

1. The Media Authority shall permit the provision of a programme service which is intended exclusively for foreign armed service personnel and their families who are stationed in the Netherlands and which is to be broadcast within a limited area by means of a broadcasting transmitter.
2. The Media Authority shall grant such permission to the competent military authorities of a country which is a member of the North Atlantic Treaty Organisation (NATO) and which has armed forces stationed in the Netherlands. Permission shall be granted for use by those establishments or persons of the foreign armed forces which have been authorised for that purpose by said armed forces.
3. As regards the use of said permission, sections 52 to 53a, section 55, section 56, section 56a, subsections 5 and 6, section 134, section 138b and section 138d of the Media Act shall apply *mutatis mutandis*.

## **Article 69**

The Media Authority may, where necessary, designate the broadcasting transmitter or transmitters on which the programme services referred to in article 68 are to be broadcast.

## **Article 70**

1. Applications for permission as referred to in article 68 shall be submitted to the Minister of Defence, who shall forward them, accompanied by his comments, to the Media Authority within four weeks. The Media Authority shall send a copy of the application to the Minister of Transport, Public Works and Water Management.
2. Applications shall be accompanied by:
  - (a) a description of the purpose of the application;
  - (b) a specification of the area in which the programme service is to be broadcast;
  - (c) a statement by the copyright holders to the authorities of the relevant NATO member state, showing that no rights will be granted for distribution of the programme service outside the target group and the area referred to in article 68;
  - (d) a description of the broadcasting transmitter by means of which the programme service is to be broadcast.

## **Article 71**

1. The Media Authority shall withdraw its permission:
  - (a) if the requirements set in article 68, paragraphs 1 and 2 to qualify for permission are no longer satisfied;
  - (b) for reasons of State security.
2. The Media Authority may withdraw its permission if the provisions of article 68, paragraph 3 are not met.
3. The Media Authority shall notify Our Minister of Defence and Our Minister of Transport, Public Works and Water Management of its intention to withdraw permission.

## **Article 72**

1. A decision to withdraw permission on the grounds of article 71, paragraph 1 shall have immediate effect.
2. A decision to withdraw permission on the grounds of article 71, paragraph 2 shall not take effect until the competent military authority has been duly informed of the Media Authority's intention and of the grounds on which the decision is based and has been afforded the opportunity to give a written and, if so desired, a verbal reaction within a reasonable period.

## **Article 73**

1. The competent military authority shall use the permission granted exclusively for the programme service referred to in article 68.
2. An announcement to the effect that the programme service is intended exclusively for foreign armed service personnel of the relevant NATO member state who are stationed in the Netherlands and for their families shall be made each day at the beginning and end of each programme service.

## **CHAPTER 7. FINAL PROVISIONS**

### **Article 74**

For the purposes of article 52k, amendments to the European Directive shall take effect as from the final day set for implementation of the relevant amendment.

### **Article 75**

This Decree shall be cited as the Media Decree.

### **Article 76 (Repealed)**

### **Article 77 (Repealed)**

**Article 77a** (Repealed)

**Article 77b** (Repealed)

**Article 77c** (Repealed)

**Article 78** (Repealed)

**Article 79** (Repealed)

**Article 80** (Repealed)

**Article 81** (Repealed)

**Article 82** (Repealed)

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