

**IMC- 2017/02**

Pursuant to the Article 3, paragraph 2, point 6 and 11 of Law No. 04/L-44 on the Independent Media Commission, IMC approves:

**REGULATION FOR AUDIO AND AUDIOVISUAL MEDIA**

 **SERVICE PROVIDERS**

**ARTICLE 1**

**PURPOSE**

This Regulation defines the criteria, rights and obligations for media services providers, regardless the manner of broadcasting in the Republic of Kosovo, in order to guarantee the protection of media pluralism and the public interest, as well as to make possible fair and equal competition on media market in the Republic of Kosovo.

**ARTICLE 2**

**SCOPE**

This Regulation will be applied to all audio and audiovisual media service providers that are legally established in the territory of the Republic of Kosovo, to provide audio and audiovisual media services in the band for terrestrial broadcasting as well as through other forms of electronic communications outside of radio-diffusive band.

**ARTICLE 3**

**DEFINITIONS**

1. **Audiovisual media service (AVMS)** - service which is under the editorial responsibility of program service provider and the main principle of which is the provision of programs in order to inform, entertain or educate the entire public through electronic communications networks.
2. **Audio media service (AMS)** - a service which is under the editorial responsibility of audio media service provider and the main principle of which is the provision of programs in order to inform, entertain or educate the entire public through electronic communications networks. Audio media service is a radio broadcast, an audio media service on demand or commercial communication on audio media services.
3. **Media service provider (MSP)** – a natural or legal person who has editorial responsibility for selection of the audiovisual content of the media service and who determines the manner in which it is organized.
4. **Distribution operator** – a legal person who distributes audiovisual media services to users through the cable network, IPTV and any other form of distribution outside the radio-diffusive frequency band.
5. **Multiplex operator** - a legal person who provides the technical infrastructure for terrestrial distribution of digital programs and supplementary services for digital transmission of data.
6. **Multiplex** - (hereinafter "MUX") a standardized set of digital signals, expressed in Mbit/s (Mega-bit-per-second), containing several television and/or radio and/or other data, which are transmitted and broadcasted at the same time and in interwoven way.
7. **Video on demand ("Video on demand")** - nonlinear audiovisual media services - audiovisual media service provided by media service provider for visual programs in the certain moment determined by users and the request of the individual based on the catalogues of programs selected by media service provider.
8. **Distribution** - provision of audiovisual media services through the operators who despite the used technology (with wire or wireless) distribute audiovisual content to the user.
9. **Program** - a package of motional pictures with sound or no sound that represents a separate unit within the schedule or catalogues of programs determined by media service provider, the form of which is comparable to the television broadcasting form and content. Examples of such programs include the feature-length movies, sports events, comedies, documentaries, children programs and original dramas.
10. **The Applicant** - any entity that submits request the IMC license or seeking approval for the transfer of an existing license or approval for obtaining an ownership share of an existing Licensee.
11. **Authorized person** - an individual representing and implementing the instructions of a third party, but not on behalf of a political organization or a religious community.
12. **License** - a license issued by the IMC for media service providers to exercise activity of providing audio and audiovisual media services.
13. **Licensee** - a legal person whom IMC has given license to provide audio and audiovisual media services.
14. **Editorial responsibility** – the exercise of an effective control over selection of programs and tools to implement effective control over their selection and organization in chronological order in the case of television broadcasting, or in the catalogue in the case of audiovisual media services on request.
15. **Broadcasting** – the original emission of programs with radio-diffusive waves through terrestrial transmitter, cable network, digital broadcasting, satellite or other electronic equipment, encrypted or unencrypted, designated for public use which are received by radio, television or other particular electronic equipments for transmitting, not including individual communications.
16. **Public Broadcaster** - Radio Television of Kosovo.
17. **Pay TV** - a transmission system through which television programs are broadcast in a closed form (encrypted) and is accessible only to users who pay subscription for access to content and decoding devices.
18. **Open TV broadcast** (Free-to-air) - a transmission system with open access, which does not require any subscription by users.
19. **Independent production** - Any registered business entity, which has the status of a legal entity and which in accordance with law implements projects and relevant audiovisual works in the public interest.
20. **Generalist channel** - media service provider that offers a wide range of programs and types of programs to different public.
21. **Thematic channel** - media service provider, the program of which contains 70% of a certain type of program such as: information, education, entertainment, for children, sports, science etc.
22. **Program segment** - the program in its entirety, clearly distinct from other segments with its beginning and end.
23. **Program structure** - all program segments offered by a particular audiovisual media service provider.
24. **Own program** – means a program segment consist of own productions of the audio-visual media service provider, coproduced and purchased programs.
25. **Own Production** - program segments produced entirely by audiovisual services themselves, using their own human and material resources or program segments produced by any other company for the purpose of audiovisual services, on request and with expenses of the audiovisual media service provider.
26. **Coproduction -** program segments on which production the audiovisual media service provider participated with its material means and/or human resources.
27. **Purchased program -** program segments for broadcasting of which audiovisual media service provider has obtained the rights.
28. **The rebroadcast program** - a broadcasted program by an audiovisual media service provider that deals entirely by another audiovisual media service provider with the aim of simultaneous broadcasting.
29. **Exchange program** - parts of the exchange program between two or more audiovisual media service providers.
30. **Program schedule** - a detailed scheme for each hour of broadcasted program of audiovisual media service provider.
31. **Validity of the license** - the duration of the license issued by the IMC from the date of the decision until the expiration date.

**CHAPTER I**

**LICENSING OF AUDIO MEDIA SERVICE PROVIDERS WITH**

**TERRESTRIAL BROADCASTING**

**ARTICLE 4**

**SUBMISSION OF THE APPLICATION FOR LICENCE**

Request for IMC license for Audio Media Service Providers with terrestrial broadcast (in radio-diffusive band) is made in accordance with Article 21, 22 and 23 of the Law on Independent Media Commission (Law No. 04/L-44). Requests for licensing to broadcast through terrestrial network will be accepted only on the basis of the public competition announced by the IMC.

**ARTICLE 5**

**QUALIFICATION AND PROFESSIONAL CRITERIA**

1. The applicant must provide evidence and guarantee in writing that adheres to the following conditions:

* 1. Legal presence in Kosovo: Private company or non-governmental organizations must be physically present in the Republic of Kosovo and should be registered in accordance with applicable laws in the Republic of Kosovo.
	2. Representative of the company or non-governmental organization, when applying for a license, should provide evidence that is a citizen of the Republic of Kosovo.

2. The Licensee may be:

2.1 Private company legally registered in the Republic of Kosovo, including but not limited to, private business enterprise, general partnership, limited partnership, stock enterprise or with limited liability company that has registered the exercise of the activity of broadcasting programs through audio services.

 2.2 Non-Governmental Organization (NGO) registered under the applicable law in the Republic of Kosovo, whose activities include the broadcasting of radio programs.

3. The Applicant for License must demonstrate a commitment and ability to operate an audio media service provider in accordance with the Law and bylaws of the IMC.

4. The Applicant must demonstrate a commitment and ability to provide commercial programs legally.

5. The Applicant must demonstrate that it has a staff with superior qualifications (university degree) for program and technical issues.

6. The Applicant must prove that it has fulfilled all obligations related to fees and taxes in accordance with the legislation of Kosovo Tax Administration.

7. The Applicant must provide evidence of the Commercial Court that doesn’t have court disputes.

**ARTICLE 6 PROGRAM CRITERIA**

1. Program criteria for audio media service provider include:

1.1 Compliance with weekly program schedule, including program segments and structure, in accordance with the bylaws of the IMC;

1.2 The general level of skills and experience of staff in charge for program issues, evaluated based on organizational structure, education and work experience; and

1.3 The specifics of the program content in a particular geographical area assessed with the degree to which the planned program schedule, together with program segments and structure, is presented in that certain geographical area.

**ARTICLE 7 ECONOMIC CRITERIA**

Economic criteria for audio media service provider include:

1. The economic sustainability of the applicant in terms of the amount of registered common capital.

2. The economic performance of the applicant in terms of financing structure and sources, including measures of liquidity, paying capacity and debt.

3. The business plan for the next three years, including the organizational structure and the total number of employees.

**ARTICLE 8 TECHNICAL REQUIREMENTS**

Technical criteria for providing audio media service with quality broadcasting include:

1. Broadcasting system in accordance with the technical project;
2. The quality of the proposed broadcasting technology;
3. The quality of technology and compliance with proposed working standards in the studio.

**ARTICLE 9 ISSUE OF THE LICENSE**

1. The license for audio media service provider with terrestrial broadcasting is exclusively issued only through public competition.
2. The license for audio media service provider through terrestrial broadcasting services will be issued after completion of the public tender procedure.
3. Program Structure and technical parameters will be integral part of the license for audio media service providers with terrestrial broadcasting as an annex of the license.

**CHAPTER II**

**LICENSING OF AUDIOVISUAL MEDIA SERVICE PROVIDER**

**WITH TERRESTRIAL BROADCASTING THROUGH MULTIPLEX OPERATOR**

**ARTICLE 10**

**SUBMISSION OF THE APPLICATION**

Request for the IMC license for Audiovisual Media Service Provider with terrestrial broadcast, open broadcast (free-to-air) and pay broadcast, through multiplex operator will be accepted only on the basis of the public competition announced by the IMC.

**ARTICLE 11 QUALIFICATION AND PROFESSIONAL CRITERIA**

1. The applicant must provide evidence and guarantee in writing that adheres to the following conditions:

* 1. Legal presence in Kosovo: Private company or non-governmental organizations must be physically present in the Republic of Kosovo and should be registered in accordance with applicable laws in the Republic of Kosovo.
	2. Representative of the company or non-governmental organization, when applying for a license, should provide evidence that is a citizen of the Republic of Kosovo.

2. The Licensee may be:

2.1 Private companies legally registered in Kosovo, including, but not limited to, private business enterprise, general partnership, limited partnership, stock enterprise or limited liability company that has registered the exercise of the activity of broadcasting programs through audiovisual services;

2.2 Non-Governmental Organization (NGO) registered under the applicable law in Kosovo, whose activities include also the broadcasting of TV programs.

3. Applicant for License must demonstrate a commitment and ability to operate an audio-visual media service provider in accordance with the Law and bylaws of the IMC.

4. Applicant must demonstrate a commitment and ability to provide commercial programs legally.

5. Applicant must demonstrate that it has a staff with superior qualifications (university degree) for program and technical issues.

6. The applicant must prove that it has fulfilled all obligations related to fees and taxes in accordance with the legislation of Kosovo Tax Administration.

7. The applicant must provide evidence of the Commercial Court that doesn’t have court disputes.

**ARTICLE 12 PROGRAM CRITERIA**

1. **General program criteria for audiovisual media service provider with terrestrial broadcast through multiplex operator include:**

1.1 Compliance with weekly program schedule, including program segments and structure, in accordance with the bylaws of the IMC;

1.2 The general level of skills and experience of staff in charge for the program issue, evaluated based on organizational structure, education and work experience; and

1.3 The specifics of the program content in a particular geographical area assessed with the degree to which the planned program schedule, together with the program segments and structure, is presented in that certain geographical area.

**2. Specific program criteria for audiovisual media service provider with terrestrial broadcast through multiplex operator:**

 2.1. Program with generalist character that offers program segments and structure as follows:

2.1.1. Informative programs through which the citizen of the Republic of Kosovo exercises the right for information, regardless of ethnicity, gender, religion or political opinion;

2.1.2. Programs that promote human rights, with the aim of developing a free and democratic society;

2.1.3. Educational, cultural and entertainment programs, dedicated for children and adults;

2.1.4. Programs for people with special needs;

2.1.5. Programs that promote cultural identity and cultural heritage of the Republic of Kosovo;

2.1.6. Programs that affirm and support cultural and artistic developments in the Republic of Kosovo;

2.1.7. Programs that promote the culture of public dialogue;

2.1.8. Programs dedicated for environmental protection; and

2.1.9. Programs that promote academic education, academic promotion of the written word, language culture and fluent discourse.

2.1.10 The technical options to provide access to their programs for persons with disabilities (synchronization and subtitling and sign language).

2.1.11 The technical possibilities to provide segments of their programs in official languages of Kosovo (documentary, scientific and educational programs, informative programs, movies).

**ARTICLE 13 ECONOMIC CRITERIA**

Economic criteria for audiovisual media service provider include:

1. The economic sustainability of the applicant in terms of the amount of registered common capital.

2. The economic performance of the applicant in terms of financing structure and sources, including measures of liquidity, paying capacity and debt.

3. The business plan for the next three years, including the organizational structure and the total number of employees.

**ARTICLE 14 ISSUE OF THE LICENSE**

1. License for audiovisual media service provider with terrestrial broadcast is exclusively issued only through public competition.
2. License for audiovisual media service provider through terrestrial transmission services will be issued after completion of the public tender procedure.
3. Program structure and technical parameters will be integral part of the License for terrestrial broadcasting as an annex of the license.

**CHAPTER III**

**LICENSING OF AUDIO AND AUDIOVISUAL MEDIA SERVICE PROVIDER THROUGH DISTRIBUTION OPERATORS**

**ARTICLE 15 SUBMISSION OF THE APPLICATION FOR LICENSE**

1. Request for IMC license for audio and audiovisual media service provider through distribution operators, outside radio-diffusive band, may be submitted at any time and without competition, under the procedures established by the IMC.
2. The applicant must show that through which electronic communication network plans to distribute audio and audiovisual media services.

**ARTICLE 16 QUALIFICATION AND PROFESSIONAL CRITERIA**

1. The applicant must provide evidence and guarantee in writing that adheres the following conditions:
	1. Legal presence in Kosovo: Private company or non-governmental organizations must be physically present in the Republic of Kosovo and should be registered in accordance with applicable laws in the Republic of Kosovo.
	2. Representative of the company or non-governmental organization should, when applying for a license, provide evidence that is a citizen of the Republic of Kosovo.
2. The Licensee may be:
	1. Private companies legally registered in the Republic of Kosovo, including but not limited to, private business enterprise, general partnership, limited partnership, stock enterprise or limited liability company that has registered the exercise of the activity of broadcasting programs through audio or audiovisual services;
	2. Non-Governmental Organization (NGO) registered under the applicable law in Kosovo, whose activities include also broadcasting of radio or TV programs.
3. The Applicant for the License must demonstrate a commitment and ability to operate an audio and audio-visual media service provider in accordance with the Law and bylaws of the IMC.
4. The Applicant must demonstrate a commitment and ability to provide commercial programs legally.
5. The Applicant must demonstrate that it has a staff with superior qualifications (university degree) for programs and technical issues.
6. The applicant must prove that it has fulfilled all obligations related to fees and taxes in accordance with the legislation of Kosovo Tax Administration.
7. The applicant must provide evidence of the Commercial Court that doesn’t have court disputes.

**ARTICLE 17 PROGRAM CRITERIA**

The general program criteria for audio and audiovisual media service provider through distribution operators is compliance with the weekly program schedule, including program segments and structure, in accordance with the bylaws of the IMC.

**ARTICLE 18 ECONOMIC CRITERIA**

Economic criteria for audio and audiovisual media service providers include:

1. The economic sustainability of the applicant in terms of the amount of registered common capital.

2. The economic performance of the applicant in terms of financing structure and sources, including measures of liquidity, paying capacity and debt.

3. The business plan for the next three years, including the organizational structure and the total number of employees.

**ARTICLE 19 ISSUE OF THE LICENSE**

License for MSP through distribution operators is issued without public competition under the procedures established by the IMC.

**CHAPTER IV**

**LICENSING OF MEDIA SERVICE PROVIDER ON-DEMAND**

**ARTICLE 20 SUBMISSION OF THE APPLICATION FOR LICENSE**

1. The application for IMC license for media service provider on-demand may be submitted at any time and without competition, under the procedures established by the IMC.
2. License for MSP on-demand is given in the non-exclusive basis.
3. The application for a license for MSP on-demand can be made by any natural or legal person registered in the Republic of Kosovo under the applicable legislation.
4. The application for a license must be submitted in the determined Form by the IMC according to the guidelines established in the Form.
5. MSP on-demand must inform the IMC regarding the program orientation, and available catalogue of program content.
6. The application for a license will be considered as completed only if the Form is filled out properly and entirely, together with accompanying documentation determined according the Form. The request for a license may be refused only if the applicant has provided false information.
7. MSP on-demand will be responsible for its program content, regardless of their origin, in accordance with the Law and bylaws of the IMC.
8. MSP on-demand should promote products of Kosovo and European works depending on financial opportunities.
9. MSP on-demand should try that their services are accessible to persons with impaired vision and hearing.
10. MSP on-demand should be identified in its program catalogue.

**CHAPTER V**

**OBLIGATIONS OF MEDIA SERVICE PROVIDERS**

**ARTICLE 21 RESPONSIBILITIES**

1. MSP is responsible for the nature and content of broadcast programs and is responsible for any damage that may cause to the third party in accordance with applicable laws.
2. MSP is obliged to comply with standards relating to broadcasting and program production quotas determined by the IMC.
3. MSP is obliged to provide a description related to technical measures envisaged for the protection of children and minors.
4. MSP will provide technical and content measures favorable for people with hearing and visual difficulties regarding information, cultural and entertaining programs. At the same time MSP should provide a description of such envisaged measures.
5. MSP is obliged to comply with the IMC Law, IMC bylaws and other relevant legislation in the Republic of Kosovo.
6. MSP is obliged to keep and maintain broadcasted programs archive for a period of 21 days, and when it is necessary to provide it to IMC for monitoring activities.
7. The Licensee should identify its content through logo, which can be amended only with the prior approval of the IMC.
8. The Licensee should be responsible for all program content regardless of origin, and should ensure that programs contents are in compliance with the Law and bylaws of the IMC.
9. At least 20% of the weekly program of the Licensee should be own program, and at least 75 minutes of that program should be broadcasted between 17:00 and 24:00.
10. Paragraph 8 should not be applied for thematic channels, including channels dedicated exclusively to teleshopping or self-promotion.
11. The Licensee may rebroadcast programs that do not exceed 20% of the total daily program. The source of the rebroadcast program should be clearly identified and consistently. Each retransmission should be based on a written contract between the Licensee and media service provider, whose program is rebroadcasted.
12. Two or more Licensees can exchange their program segments of their own production on the basis of written agreements.
13. The Licensee should attempt to provide access to its services for people with disabilities (impaired vision/hearing).

**CHAPTER VI**

**AUDIVISUAL WORKS OF MEDIA SERVICE PROVIDER**

**Article 22 KOSOVO WORKS**

1. For the purposes of this Regulation, Kosovo works imply:
	1. Works with origin from the Republic of Kosovo; and
	2. Works that are produced in the languages of communities in the Republic of Kosovo, as well as works dealing with cultural heritage.
2. Works referred in paragraph 1 of this Article are works which are mainly created by resident authors in the Republic of Kosovo, and which meet the following criteria:
	1. are created by one or more producers registered in the Republic of Kosovo; and
	2. production of an individually work is supervised or controlled by one or more producers registered in the Republic of Kosovo, or the contribution of co-producers from the Republic of Kosovo in general cost of coproduction is dominant and coproduction is not controlled by one or more producers established abroad.
3. The Licensee should reserve at least 20% of the program content for Kosovo works on a weekly basis, excluding appointed time for news, sports events, games, and advertising, teletext and teleshopping services. This percentage should be reached progressively within five (5) years after the entry into force of this Regulation.
4. The provisions of paragraph 3 should not apply to Licensees with local/regional coverage and thematic channels, including those intended for teleshopping and self-promotion.

**ARTICLE 23 EUROPEAN WORKS**

1. For the purposes of this Regulation, European works include:
	1. Works with origin from Member States of the European Union;
	2. Works with origin from other European countries, members of the European Convention on Television without Frontiers of the Europe Council;
	3. Co-produced works within the framework of agreements dealing with audio-visual sector reached between EU Member States and other European countries and which fulfill the conditions defined in each of these agreements.
	4. European works include also works produced in the Republic of Kosovo as well as the Licensee's own productions, excluding news, sports events, games, advertising, teletext and teleshopping services.
2. The Licensee should, in appropriate way, to reserve at least 10% of the program content for European works created by independent producers, excluding news, sports events, games, advertising, teletext and teleshopping services. This percentage should be reached progressively within five (5) years after the entry into force of this Regulation.
3. The provisions of paragraph 2 should not apply to Licensees with local/regional coverage and thematic channels, including those intended for teleshopping and self-promotion.

**CHAPTER VII**

**FINAL PROVISIONS**

**ARTICLE 24 TRANSFER OF LICENSE**

 The licenses cannot be utilized and transferred without the prior written approval of the IMC.

**Article 25 FEES FOR LICENSE**

The Licensee is obligated to make annual payment of the license fee in accordance with the IMC Law.

**ARTICLE 26 CONCENTRATION OF MEDIA OWNERSHIP**

Concentration of media ownership in the Republic of Kosovo will be regulated by the IMC with a special bylaw.

**ARTICLE 27 SANCTIONS**

Failure to act in accordance with the provisions of this Regulation will result in sanctions measures by the IMC according to IMC Law.

**ARTICLE 28 ENTRY INTO FORCE**

This Regulation will enter into force on the signing day.

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 **Adnan MEROVCI Date**

**Chairman of IMC**

 **The Independent Media Commission**