

Electronic Media and the New NMC Licensing Regime for the UAE

The National Media Council added a new resolution to their library this month, the Electronic Media Activity Regulation Resolution 2018 ('Resolution'). Many expected the move, as the Council had been discussing this addition to its suite of regulations for some time.

The Resolution features a licensing system for any entity that is involved in 'E-Media'. The definition is clear and broad in scope: Electronic Media is a 'media activity that is practiced through the tools and means of electronic publication.'

For even greater clarity, the resolution sets out its intended scope at the beginning:

'This Resolution applies to all Electronic Media activities carried out within the State, including those in free zones. It is prohibited to conduct any of the Electronic Media activities determined by the National Media Council unless a decision has been issued to grant of the media license.' (emphasis added)

Two key things are of importance to highlight.

Firstly, there is a clear extension of the trade licence activities that now require a licence from the Council. Under the previous system, trade licences in the category of broadcasting and publishing (in the traditional sense) had to be approved by the Council. However, operators of websites that created and published such content, despite being publishers in the broadest definition of the term, were not covered under those regulations.

This now differs, with specific reference to the following business operations:

1. Websites of trading, offering and selling of audiovisual and print material;
2. On-demand electronic publishing and printing;
3. Specialized Websites (e-ads, news sites, ... etc.); and
4. Any electronic activity that the Council may determine to add.'

Note that this is a direct quote from the Resolution.

Section 1 and 2 above are clear in scope – they relate to entities that sell or create items such as books, newspapers, or magazines. Section 3, however, potentially extends the scope for licensing to any site that is involved in Electronic Advertising, as the term is defined in the Resolution ('[a]ny paid or unpaid form of presentation or promotion of ideas, goods or services by electronic means or network applications'). The scope of this section is potentially quite broad, certainly covering entities that advertise third party goods for sale, aggregate content for sale, and provide news sites of all persuasions. We understand from the Council (and this seems clear from the drafting), that they do not intend to cover entities that facilitate publication by third parties (such as Facebook or Instagram). However, any entity that uses those platforms to sell such goods or otherwise engage in this type of commercial activity must have a licence.

The process for obtaining a licence is reasonably transparent; we will address this and other issues relating to the licence itself (including whether or not a trade licence is required in order to obtain a media licence under this Resolution) in a separate alert in the near future.

Exempt from the requirement to obtain a licence are government education providers and the government itself. We see this as being applicable more particularly in relation to the provision of (for example) academic papers, laws, and advisory notes to the public.

The second matter, and the one that appears to have captured the imagination of news outlets, is that 'influencers' and indeed anyone that undertakes any media activities on a commercial basis by way of social media will now have to secure a licence in order to operate. We have long held the view that any person that obtains cash or benefits in exchange for promoting a product is operating a business and so should have a trade licence. The Resolution requires them to now have a media licence.

We envisage that this Resolution will have a major effect on the industry that has grown up around this developing commercial practice. One particular point of note is that Electronic Advertising is defined as being 'paid or unpaid'; as long as it is intended to promote then it is captured by the Resolution. This certainly clarifies the question as to whether the provision of goods or services instead of cash means that a post is no longer an advertisement. Under this definition, it captures both with little ambiguity.

Regarding influencers generally, it has been asked if this Resolution requires influencers to declare their content as advertising so that consumers are aware of that. It does not. That is covered in the National Media Council Resolution No 35 of 2012 on Advertising ("The advertising identity shall be clearly determined, and it shall appear as unique and separate from other editorial or media material, and there shall be limits separating the advertisement from any other material in addition to time lapses in case of radio or television broadcasting'), and also in the recent Cabinet Decision 23 of 2017 ('All paid advertising material must be explicitly and clearly stated as paid advertising material'). Both of these are clear, in our opinion, although we have not yet encountered any prosecutions on the matter. The Resolution does state the following: 'Ads that are presented on Social Media shall be subject to the advertising standards that are applicable at the Council'. This is a clear and unambiguous direction.

In addition, the new Resolution states that websites of traditional media, being television, radio, newspapers, and magazines, are deemed to be licensed already. These companies are already licensed for media activities, so the exemption is logical. Free zone companies are specifically noted as being subject to compliance as well.

The Council has allowed three months for all entities to become compliant. Therefore, we advise all entities to be fully compliant by the first week of June 2018.

(The following is a news alert that was sent to Al Tamimi client base in April.)