

REGULATORY ALERT**Breakthrough in Spanish Media Law: the Genesis of
a New Media Act for the XXI Century****1. Introduction. Current status of the legislative process.**

- 1.1 The Constitutional Commission of the Spanish House of Representatives, lower chamber of the Spanish Parliament, has approved the Media Bill (**Bill**) last January. The Bill has been referred to the Senate, the higher chamber of Parliament, for further debate.
- 1.2 The preamble to the Bill notices how the media sector has evolved, particularly due to the introduction of digital technology and the end of the limited spectrum paradigm. Spanish media law was hitherto contained in a disperse body of laws and regulations. The Bill purports to compile the existing law, introduce substantial reform and also implement into Spanish law EC Directive 2007/65, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 332/27, 18 December 2007).
- 1.3 Below, we provide a summary of the features of the Bill that may have an economic impact on media players. In particular, we refer to content related and licensing obligations, media production finance obligations, advertising and ownership restrictions of broadcasting companies.

2. Content related obligations and obligations regarding licensing of football rights.

- 2.1 Broadcasters should allocate a minimum percentage of their annual air time to given categories of content.
- 2.2 According to the provisions set out in the Bill, companies rendering media services at national or autonomous community (regional) level should devote 51% of their annual broadcasting time (excluding time devoted to news, sports, games, advertising, teletext and telesales), to the broadcast of European media productions. Half of the time allocated to European media productions (i.e., 50% of the previous 51%) must be devoted to productions in any of the Spanish languages.
- 2.3 On the other hand, 10% of the total broadcasting time must be devoted to works produced by producers that are independent from the broadcasting operator. In addition, half of that 10% should be reserved to works produced in the last five years.
- 2.4 Finally, 30% of the productions included in pay-per-view catalogues should be European works, 10% of which must be reserved to works in any of the Spanish official languages.
- 2.5 It should be highlighted that electronic communications operators providing TV and pay-per-view services are subject to the above obligations. On the contrary, local TV operators not forming part of a national network are excluded from the scope of the Bill.

- 2.6 The Bill establishes a maximum duration of four years for football rights licenses. According to the current wording of the Bill, any football licensing agreement in force at the time when the Media Act enters into force may not last beyond four years from the time the Media Act enters into force.
- 2.7 On April 2008, the Spanish Competition Authority (National Competition Commission, NCC) opened antitrust enforcement proceedings against several media operators and football clubs concerning the duration of football licensing contracts. A final decision on the matter is still pending, although it is likely that the NCC will limit the duration of existing licenses of football broadcasting rights.
3. *Financing of European productions.*
- 3.1 Broadcasters must earmark 5% of their turnover to the financing of European productions (films, TV series, documentaries and cartoons). The 5% will be calculated taking into account the revenues obtained by the particular broadcaster via any of its channels that broadcast media productions of such kind. Public broadcasters should devote 6% of their revenues to financing European films.
- 3.2 At least 60% of the funds should be devoted to movie financing. Half of that 60% must be assigned to independent producers.
- 3.3 Electronic communications operators providing TV and pay-per-view services are subject to the obligations described here. Local TV operators not forming part of a national network are not subject to the financing obligations.
4. *Restrictions on advertising.*
- 4.1 The Bill recognizes the right to create channels devoted to commercial communications and self-promotional programs. Operators are also entitled to broadcast advertising, teleshopping, TV promotion and programmes containing product placement and the right to sponsor programmes.
- 4.2 There are some limitations to the above: (i) news may not be sponsored; (ii) providers of TV audiovisual communication services are allowed to broadcast films, documentaries, series, sports and entertainment programmes containing product placement (product placement within children's programmes is banned); and (iii) neither sponsorship nor product placement can affect the programme content or its timing, or directly encourage the viewer to buy the products.
- 4.3 Regarding time limits, the Bill establishes that broadcasters can broadcast just twelve minutes of advertising per hour. There are, however, some exceptions: (i) time spent on sponsorship, product placement and TV promotion (with certain restrictions) does not count towards those twelve minutes, (ii) TV channels devoted exclusively to advertising are not subject to that time-limitation and (iii) broadcasters can broadcast five minutes per hour of advertising of own TV programs.
- 4.4 The Bill establishes rules concerning *when* advertising can be inserted. For instance (i) news and movies can be interrupted once every thirty minutes; (ii) sports events may only be interrupted when the particular event finishes or between independent sections of the same event; and, (iii) no advertisements can be inserted during broadcasts of religious services.
- 4.5 Finally, the Bill establishes the following advertising bans:
- Unlawful advertising under the Advertising Act and, generally, advertising disrespectful with human dignity.
 - Subliminal advertising.

- Advertising of products potentially harmful to health (tobacco, alcohol and pharmaceuticals) which is targeted to minors, which is placed outside the 8:30pm to 6:00am time span, which encourages excessive consumption, or which associates their consumption with physical, social or health improvement.
- Advertising of products which are harmful to the environment.
- Advertising of products which are harmful to personal safety.
- Political advertising outside electoral campaign periods.
- Advertising which directly encourages minors to buy or to persuade someone to do it, taking advantage of their inexperience. This includes advertising that exploits the special trust placed by minors in their parents and teachers, display minors in dangerous situations or encourage conducts which favours inequality between the genders.

5. *Ownership and cross-ownership restrictions.*

- 5.1 The Bill contains a series of provisions devised to preserve media plurality in the TV and radio markets.
- 5.2 Regarding radio, no individual shareholder may control more than 50% of the television broadcasting authorisations (and in no event more than five authorisations) covering a given territory. No single shareholder may control more than 30% of the licenses nationwide.
- 5.3 Regarding television, a company or individual cannot have simultaneous significant shareholdings (see below for the legal definition of 'significant') in more than one television operator where the combined average audience share of the participated operators exceeds 27%. In addition to the above, there are three further situations where a shareholder is not allowed to acquire significant participations or voting rights in more than one operator:
- Where the nation-wide operators jointly acquire use rights for the radio electric public domain which technical capacity is equivalent to two multiplex channels.
 - Where the regional operators jointly acquire use rights for the radio electric public domain which technical capacity is equivalent to one multiplex channel.
 - At any moment, there should at least be three active independent open TV operators with nationwide coverage.
- 5.4 Acquisitions of stakes in Spanish open TV operators by companies or individuals from outside the European Economic Area will be subject to the principle of reciprocity, although the law adds that acquisitions by non-European operators may not amount to stakeholdings above 50% of the share capital.
- 5.5 For the purposes of the provisions set out in the Bill, the following will be considered a significant participation: (i) 5% of the total share capital; or (ii) 30% of the voting rights, or a lower percentage where such percentage confers the right to appoint more than half of the members of the board within twenty-four months from acquisition of the shareholding.

6. *Powers of the media watchdog under the Bill.*

- 6.1 The Media State Council (**Media Council**) (and relevant authorities which may be created regionally) is the body in charge of enforcing compliance with the provisions set out in the Bill.
- 6.2 For instance, amongst other powers, the Media Council is entitled to:
- Enact the necessary measures to safeguard the effectiveness of the rights and obligations of media operators.

- Approve the catalogue of general interest events (events that should be broadcast via open TV, mainly sports events).
- Enforce media ownership restrictions and take care of the relevant registrations.
- Elaborate reports addressed to the NCC in the context of merger control proceedings involving media mergers.
- Enforce compliance with the public service obligations of media operators.
- Act as arbitration court in disputes concerning media players (producers, content providers, and operators).
- Impose fines.
- Advice the Parliament, Government, regulatory bodies and regional media authorities on media matters, where necessary.

6.3 The Media Council is entitled to impose fines of up to Euro one million on TV operators and up to Euro half million on radio operators for very serious breaches of the Bill. The Media Council may also withdraw broadcasting authorisations in those cases. Examples of such serious breaches are: advertising infringements, failure to comply with the financing obligations or failure to comply with the minimum broadcasting time allocated to European media productions.

This newsletter does not contain definitive advice. If you have queries on any particular point, do not hesitate to contact Partner Pedro Callol (P.Callol@rocajunyent.com), at +34 649 421 304 or Associate Jorge Manzarbeitia (J.Manzarbeitia@rocajunyent.com).

ROCA JUNYENT
C/ José Abascal, 56 - 7^a
28003 Madrid
Spain
Switchboard: +34 91 781 97 60
www.rocajunyent.com