

Broadcasting regulations

CATALONIA

Government Awards 48 Provincial and Supra-Provincial Digital Radio Licences

On 12 November 2003 the government of the Generalitat awarded terrestrial digital licences for public service broadcasting in the provincial and supra-provincial areas (DOGC No. 4018, of 26/11/03). The coverage areas in relation to the licences were the supra-provincial areas of the Provinces of Barcelona (made up of Barcelonès, Baix Llobregat, Maresme, Vallès Oriental, Vallès Occidental, Alt Penedès and Garraf); the Provinces of Tarragona (including Tarragonès, Baix Penedès, Alt Camp, la Conca de Barberà, Priorat and Baix Camp) and Montsià-Baix Ebre. Licences also went to the provinces of Gironès, Segrià, Bages and Osona.

The following companies were awarded the licences:

- Cadena Pirenanca de Ràdio i Televisió, SL (licence for the Provinces of Barcelona).
- Comit Audiovisual, SL (licences for the Provinces of Barcelona; the Provinces of Tarragona; Montsià-Baix Ebre; Gironès; Bages and Osona).
- Compañía de Emisiones de Publicidad, SA (CEPSA) (Osona).
- Comunicacions Pla, SA (Segrià).
- Diari Segre, SLU (Segrià).
- Enciclopèdia Catalana, SA (Provinces of Barcelona).
- Grupo Editorial 100 por 100, SL (Provinces of Barcelona; Provinces of Tarragona; Montsià-Baix Ebre; Gironès; Segrià; Bages and Osona).
- Mediaproducción SL (Provinces of Barcelona; Provinces of Tarragona; Montsià-Baix Ebre; Gironès; Segrià; Bages and Osona).
- Ona Catalana, SA (Provinces of Barcelona; Provinces of

Tarragona; Montsià-Baix Ebre; Gironès; Segrià; Bages and Osona).

- Onda Ramblas, SA (Provinces of Tarragona; Montsià-Baix Ebre; Bages and Osona).
- Productora d'Emissions de Ràdio, SL (Provinces of Barcelona)
- Ràdio Marina, SA (Gironès).
- Radiocat XXI, SL (Provinces of Barcelona).
- RM Ràdio, SA (Provinces of Barcelona and Montsià-Baix Ebre).
- Sociedad Española de Radiodifusión, SA (SER) (Provinces of Barcelona; Provinces of Tarragona; Gironès and Segrià).
- Taelus, SL (Bages).
- Uniprex, SA (Provinces of Barcelona).

Other News:

- The Catalonia Broadcasting Council published the first call for awarding aid to research projects in audiovisual communication (Agreement 165/2003 of 12 November, DOGC No. 4036 of 23/12/2003). In particular, the aim is to promote research in the following areas: a) protection policies for children and young people with regard to audiovisual material; b) cultural diversity in the audiovisual sphere; c) new forms of advertising, d) digitalisation - technical aspects, legal framework, market situation and business strategies; and e) deregulation of the telecommunications sector.

- The DOGC of 23 December 2003 published the edicts under which two projects of the General Directive of the Catalonia Broadcasting Council shall be submitted for public consultation. In particular, the spheres subject to regulation are the presence of the Catalan and Aranese languages and cultures in the broadcast media and the protection of children and adolescents, signalling guidance and the right to information of television-service users (DOGC No. 4036, page 25,526).

SPAIN

Act Accompanying the 2004 Budgets: Amendments to the Legal System Concerning Television

The Act accompanying the Budgets (Act 62/2003 of 30 December on fiscal, administrative and social organisation measures published in Official State Gazette No. 313 of 31/12/03) has again been used to modify the regulatory framework for television in Spain. The Act includes a number of modifications that arose from the amendments the Popular Party presented to the Senate during the procedural steps of the Act concerning local television (about the transition to digital TV and network transmissions) and shareholder incompatibility, in which current limits are relaxed. It is important to bear in mind that the current regulations in both cases refer to the modification introduced through the Act accompanying the 2003 Budgets.

In particular, the Act anticipates the following modification to the legal system concerning television:

- With regard to shareholder incompatibility, the Act bans a single shareholder from having "a significant level", i.e., 5% or more, of shares in a company with a public service television licence in any of the three spheres of TV coverage, i.e., State, regional or local, at the same time in a single geographical coverage demarcation or sphere. A private operator with more than 5% of shares in a state television company can hold shares in other regional or local operators so long as the coverage does not exceed 25% of the population. The same condition is established in the case of regional operators in relation to local operators. The act allows a single shareholder to have shares in different television operators of the same sphere of coverage so long as they do not exceed 5% of the capital.

The Act then goes on to establish the guarantee mechanism for operators who breach the established share limits: communication to the relevant authorities accompanied by an action plan to modify the breach (additional provision 30.12 amending Act 10/1988 of 3 May on Private Television, amending article 19 and transitory provision 3 and adding article 21b).

- With regard to local television, the 'analogical blackout' is delayed, with which for two years beginning 1 January 2004 broadcasters are allowed to transmit on analogical technology "so long as the availability and planning of the spectrum as established under the National Television Plans so allow" (additional provision 30.11 amending Act 41/1995 of 22 December on Local Television by Terrestrial Waves, amending transitory provision 2).

- With regard to inhouse programming transmission, the Act establishes the obligation of television stations in all spheres of territorial coverage, i.e., State, regional or local, to broadcast television programmes of their own production for a minimum of 4 hours per day and 32 hours per week. These transmissions should take place between 1 p.m. and 4 p.m. and 8 p.m. and 11 p.m. and content should relate to the sphere of transmission "subject to other content which could be authorised by the regulatory procedure to transmit during the above-mentioned times" (additional provision 30, section 1).

- With regard to station broadcast limits, the act forecasts a maximum of 5 hours per day and 25 hours per week (additional provision 30, section 2).

New General Telecommunications Act

On 5 November, the new GTA entered into force (Act 32/2003 of 3 November, General Telecommunications Act published in Official State Gazette No. 264 of 4/1/03), replacing Act 11/1998 of 24 April. The principle purpose of the new Act is to incorporate into the Spanish legal system the provisions of the new regulatory framework on electronic communications adopted by the European Community in March 2002 with the objective of consolidating a telecommunications market of open competition (see the commentary on the GTA project in *Quaderns del CAC* 15).

In accordance with article 1 of the Act, the objects of the regulation are telecommunications that include the use of the Internet and the provision of e-communication services and associated resources. In other words, the new Act establishes the legal system for signal carriers rather than the content that is broadcast. The new provisions change the audiovisual landscape despite excluding "audiovisual programming content" from the application sphere. Although the provisions do not affect content or content marketing they do regulate transmission (i.e., infrastructure conditions) and reception (i.e., conditional access), interactive television services, electronic programming guides (EPGs), application programme interfaces (APIs) that allow interactivity and must-carry regulations.

In this framework, an important feature with regard to the sphere of broadcast communication services is, amongst other things, the fact that it involves an additional 7th provision on "obligations with regard to access conditions, access to particular broadcasting services and television, wide-format television and transmission obligations" as well as additional provision no. 10 on "cable services". In the former case, the object of the regulation conditions the determination of the audiovisual sector in that in the new digital environment the matters subject to regulatory development on the part of the State government refer to aspects directly related to viewers' access to content and thus to the pluralism of the media. In the second case (with the additional provision being introduced through an amendment by the Popular Party in the Senate) it establishes the deregulation of the provision of cable radio and television services, specifying that, "they are provided under a system of free competition, in the conditions

established by the government through regulation". This regulation will determine "the relative obligations on the distribution of programmes belonging to independent programmers and compliance with the applicable legislation on issues of radio and television service content".

Other News:

- Act 59/2003 of 19 December, on electronic signatures (Official State Gazette No. 304 of 20/12/03, page 45329).

- On 17 December 2003 the Ministry of Science and Technology authorised Telefónica to market its ADSL television services (the Imagenio Project).

- The Supreme Court of Justice in La Rioja rejected an appeal from Localia against the decision to award DTT licences to Popular TV and the former Correo Group, now called Vocento. (26/11/03).

- Agreement of 14 November 2003 from the Council of Ministers on the purchase of Retevisión Audiovisual by Abertis, in which it authorised the purchase subject to particular conditions. The authorisation was agreed upon according to the matters established in a report from the Restrictive Practices Court (www.tdcompetencia.org/frames.asp?menu=5) and the Telecommunications Market Commission recommending the operation be subject to the condition that Abertis renounced accumulating rights to Retevisión and Tradia infrastructure within the area of Catalonia. Among the conditions for the authorisation of the purchase, Abertis Telecom will have to give up the right to rent the infrastructures that belong to the Generalitat of Catalonia and the ability to determine who shall access use of the two television networks that currently exist, the ownership or right to rent of which were retained by Retevisión and Tradia. Secondly, Abertis Telecom will have to maintain the legal and operative separation of the companies relative to their respective networks. Moreover, behaviour conditions were imposed with the purpose of providing access or use to third parties that operate on the two networks.

- Bill creating the Andalusia Broadcasting Council (17 December 2003).

- ECD Order/224/2003 of 22 July setting out the application standards of Royal Decree 526/2002 of 14 June regulating the measures to foster and promote films and the realisation of film co-productions (Official State Gazette No. 188 of 7/8/03, page 30,472).

The Future of the Audiovisual Regulatory Policy

European Commission Communication of 15 December 2003 on "the future of the European regulatory audiovisual policy" [Document COM (2003) 784 final].

europa.eu.int/eur-lex/es/com/cnc/2003/com2003_0784es01.pdf

With the adoption of this document, the European Commission approved the new programme to update the European Union audiovisual policy in the short and long terms. The document was the result of a public consultation on the revision of the Television Without Frontiers Directive and followed an intense discussion by Member states that identified the spheres considered necessary for adopting new regulatory measures at the European level. In particular, the Communication proposes a two-phase update: i.e., adopting initiatives on TV advertising and the protection of minors during the first quarter of 2004 and continuing to reflect on other aspects covered by the Directive, in relation to which a study in collaboration with experts will be proposed to see if the Directive can be updated in 2005.

The timetable for the actions established by the European Commission is as follows:

- Interpretive communication on advertising (first quarter of 2004)
- Proposal for an update of the Council Recommendation on the protection of minors and human dignity (first quarter of 2004)
- Proposal for a Council Recommendation on cinematographic heritage (first quarter of 2004)
- Proposal for an update of the Commission's Cinema Communication (first quarter of 2004)
- Report on the application of articles 4 and 5 of the Television Without Frontiers Directive (first quarter of 2004)
- Meeting of focus groups on the regulation of audiovisual content, level of detail in the regulation of advertising and the right to information (2004)
- Possible Commission decision on AV regulators group (second half of 2004)
- Presentation of the study on the impact of measures concerning the promotion of the distribution and production

of TV programmes (Community and national), provided for under article 25 a) of the Television Without Frontiers Directive (late 2004)

- Presentation of the comparative study on the impact of control measures on the television advertising markets of the Member States of the European Union and other countries (late 2004)
- Fifth Commission report on the application of the Television Without Frontiers Directive (2005)
- Third European audiovisual conference (2005)
- Presentation of the study on co-regulatory measures in the media sector (2005)

Other News

- The European Commission's second assessment report on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity.

europa.eu.int/eur-lex/es/com/rpt/2003/com2003_0776es01.pdf

- Sentence from the Court of Justice of 23 October 2003 in prejudicial matter C-245/01, *RTL Television GmbH Versus Niedersächsische Landesmedienanstalt für privaten Rundfunk*, in which the European court interpreted the regulations of the Television Without Frontiers Directive (in particular section 3, article 11) with regard to ad breaks during series.

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- Council Decision (2003/840/EC) of 17 November 2003 concerning the celebration, in the name of the European Community, of the Council of Europe's Agreement No. 180 on information and legal cooperation in the area of information society services (DO No. L-321, 6/12/2003, page 41).
- The European Commission reached a provisional agreement with the FA Premier League and BskyB on the rights to broadcast football matches (IP/03/1748 of 16/12/03).
- The European Commission considered the public funding of France 2 and France 3 in proportion to their assigned public service missions (IP (03/1686 of 10/12/03).

[europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/03/1686|0|RAPID&lg=FR&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action=getfile&doc=IP/03/1686|0|RAPID&lg=FR&type=PDF)

- Council Resolution of 24 November 2003 on registering films in the European Union (DO No. C-295 of 5/12/03, page 5).

- European Commission Report on the application of Community law in the area of electronic communications (Document COM (2003) 715 final, of 19/11/2003).

- Sentence from the Court of Justice in prejudicial matter C101/01, Bodil Lindqvist, in which for the first time the sphere of application of the Directive concerning the protection of personal data and their free circulation on the Internet was defined.

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- MEDIA Plus. Development, Distribution and Promotion (2001-2005). Execution of a programme to stimulate the development, distribution and promotion of European audiovisual works. Call for proposals 75/2003. Support for the promotion and access to the market in the sphere of audiovisual festivals. (DO No. C-266 of 5/11/2003, page 18.)

- Committee of the Regions Sentence on the Fourth European Commission Report to the Council, the European Parliament, the Economic and Social Committee and the Regions Committee concerning the application of the "Television Without Frontiers" Directive 89/552/EEC.

(DO No. C-256, of 24/10/2003, page 79.)

- The Court of First Instance upheld the European Commission's decision to open a file against the Spanish authorities on the merger between Canal Satélite Digital and Vía Digital. The Court thus ruled against the appeal lodged by the Spanish cable operators (sentence of 30 September 2003 in accumulated matters T-346/02 and T-347/02).

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- European Commission Communication on the role of the e-Government in the future of Europe, of 23/9/03.

europa.eu.int/information_society/eeurope/2005/doc/all_about/egov_communication_fr.pdf

- European Commission Communication on an international instrument for cultural diversity (Document COM (2003) 520, 27/8/2003).

France

- On 21 October 2003, the Conseil Supérieur de l'Audiovisuel (CSA) awarded licences to DTT multiplex operators. The new licence holders are: Nouvelles télévisions numériques which manages the multiplex R2, iMCM, Canal J, Match TV, Direct 8, TMC and Cuisine.TV/Comédie; Compagnie du numérique hertzien with regard to the multiplex R3, Canal+, I-Télé, Sport+, CinéCinéma Premier and Planète

Société opératrice du multiplex R4 (Multi 4) for the multiplex R4, M6, M6 Music, TF6, Paris Première, NT1 and AB1; and SMR6 for the multiplex R6, TF1, LCI, Eurosport France, TPS Star and NRJ TV.

- Decree No. 2003-960 of 7 October 2003 amending Decree No. 92-280 of 27 March 1992 adopted in application of articles 27 and 33 of Act 86-1067 of 30 September 1986 concerning the freedom of communication and establishing the general principles and obligations of television operators with regard to advertising, sponsorship and telesales. (JO No. 233 of 8 October 2003). The modification opens the way to the press and distribution sectors being able to advertise on television; it limits the possibility of advertising related to the publishing world to cable and satellite and continues to completely exclude this type of advertising in the film sector. The exclusion approved in 1992 is justified on the grounds of cultural diversity and pluralism in the media. However, the regulation led the European Commission to open a procedure for breach of Community Law in France. It also remains to be seen whether this modification closes the procedure still open.

United Kingdom

- OFCOM (the Office of Communications), the new authority for the communications sector in the UK which assumed full powers on 29 December 2003 and which takes over the jurisdiction of the former sector authorities, has

opened the following public consultations:

Consultation on Ofcom guidance for the public interest test for media mergers

www.ofcom.org.uk/consultations/current/pi_test/?a=87101

The Ofcom Review of Public Service Broadcasting (PSB) Television

www.ofcom.org.uk/consultations/current/psb_review/index.htm

The Ofcom Strategic Review of Telecommunications

www.ofcom.org.uk/codes_guidelines/ofcom_codes_guidance/strategic_review_telecoms/

Consultation on the draft code on providing television access services

www.ofcom.org.uk/consultations/current/prov_tv_access/?a=87101

Outline procedure for statutory sanctions in content cases

www.ofcom.org.uk/consultations/current/sanctions_content/?a=87101

Ofcom's proposed guidance on regional production and regional programming

www.ofcom.org.uk/consultations/current/regional_production/?a=87101

Criteria for transferring functions to co-regulatory bodies

www.ofcom.org.uk/consultations/current/co-reg/?a=87101

The Future Regulation of Broadcast Advertising

www.ofcom.org.uk/consultations/current/broadcast_advertising/?a=87101

- The British Government gave the go-ahead to the merger of the Granada and Carlton television stations and authorised the creation of the new ITV PLC, worth some four billion pounds (six billion euros). In practice, this involves the creation of the third British TV group able to compete with the BBC and BskyB. In this framework, the Department of Trade and Industry, in its decision of 7 October 2003, considered the suggestions from anti-trust organisations acceptable and only found it necessary to require behavioural rather than structural changes. The only significant conditions are those imposed in the area of the advertising market, with the obligation to make "contracts with renewable rights".