

## AUDIOVISUAL & MEDIA

### *Applicable legislation in this field*

- Law of Audiovisual no. 504/2002, published in the Official Gazette no. 534/22<sup>nd</sup> of July 2002
- Decision of the president of the National Audiovisual Council no. 113/2002 on the procedure for the issuance, modification and withdrawal of the retransmission authorization, published in the Official Gazette no. 773/24<sup>th</sup> of October 2002
- Decision of the president of the National Audiovisual Council no. 146/2002 on the granting of the audiovisual license and the issuance of the decision of audiovisual authorization for the broadcasting on terrestrial radio-electric way of the services of programs, published in the Official Gazette no. 889/11<sup>th</sup> of December 2002
- Decision of the president of the National Audiovisual Council no. 123/2003 on advertising and teleshopping, published in the Official Gazette no. 479/4<sup>th</sup> of July 2003
- Decision of the president of the National Audiovisual Council no. 57/2003 on the minors' protection in the services of programs, published in the Official Gazette no. 199/27<sup>th</sup> of March 2003
- Decision of the president of the National Audiovisual Council no. 234/2003 on the obligations incumbent to radio-broadcasters at the registration of the radio and TV shows, published in the Official Gazette no. 517/17<sup>th</sup> of July 2003

### *I. Scope of legal provisions in the field of audiovisual*

Law recognizes the broadcasting and retransmission right only to the radiobroadcasters and to the distributors of services under the jurisdiction of Romania.

*Radiobroadcaster* is the natural or legal person, of public or private law, bearing the publishing responsibility for the creation of services of programs

destined to the reception by the public and that ensures their broadcasting directly through a third party.

The private law radio broadcasters, which are legal persons, are established and operate in the form of trade companies.

*Distributor of services* is any person that creates and places at public's disposal an offer for services of programs on terrestrial radio electric way or through satellite, by any means of electronic communication, including satellite, on the basis of contractual relations with radiobroadcasters or with other distributors.

## ***II. Public authorities having duties in the field of audiovisual***

The public authorities with duties in the field of audiovisual are: the Ministry of Communications and Information Technology and the National Audiovisual Council.

## ***III. Licenses and authorizations***

The broadcasting of a service of programs by a radiobroadcaster who is under Romanian jurisdiction may only be performed on the basis of the audiovisual license and, as the case may be, on the basis of the license granted to it by the Ministry of Communications and Information Technology.

### **1. Audiovisual license**

Audiovisual license is the juridical document through which the National Audiovisual Council grants to a radiobroadcaster who is under the jurisdiction of Romania the right of broadcast, in a definite area, a certain service of programs.

The audiovisual license is granted for a period of 9 years, both in the field of sonorous broadcasting station and in that of the television. The license may be prolonged for a period of another 9 years, subject to conditions established by National Audiovisual Council (Consiliul National al Audiovizualului – CNA).

The audiovisual license may be transferred to a third party only with the consent of CNA and with the assuming by the new holder of all the liabilities deriving from license.

CNA shall withdraw the audiovisual license subject to conditions of Art.57 from the Law no. 504/2002, as amended.

## **2. Decision of audiovisual authorization**

The CNA Decision no. 146/2002 stipulates the procedure for the obtaining of the decision for audiovisual authorization.

The decision for audiovisual authorization is requested from CNA, within ten days from the date of the obtaining of the technical operation authorization, granted by the Ministry of Communications and Information Technology, subject to conditions established by it. The obtaining of the decisions of audiovisual authorization grants the right to begin the broadcasting of the service of programs.

*The broadcasting of the service of programs should begin in maximum 30 days from the obtaining of the decision of audiovisual authorization.*

In the event that the broadcasting of a service of programs involves the use of a terrestrial radio-electric frequency, this is performed on the basis of the audiovisual license, as well as of the license of broadcast, compulsory granted by the Ministry of Communications and Information Technology to the holder of audiovisual license.

## **3. License of broadcast**

The Ministry of Communications and Information Technology issues license of broadcast to the holder of audiovisual license; the license of broadcast grants to the holder the right to use, for a definite period, one or more radio-electric frequencies, as the case may be.

The holder of the license of broadcast has the obligation to pay annually, in advance, a **tariff for the use of the spectrum**, established by the Ministry of Communications and Information Technology.

If the holder of the license of broadcast uses rented broadcasting networks, the payment of the tariff of use borne by the owner of the network. The stipulated tariff is paid to the General Inspectorate for Communication and Information Technology.

Law no. 504/2002 distinguishes between license of national broadcasting, license of regional broadcasting and license of local broadcasting.

License for broadcasting is granted for a period of 9 years, both in the field of sonorous broadcasting station and in that of the television. The term begins from the date of the issuance of the technical authorization of operation. The license may be extended for another period of 9 years, subject to conditions established by the Ministry of Communications and Information Technology.

License for broadcasting may be transferred to a third party only together with the audiovisual license, with the prior consent of CAN and the Ministry of Communications and Information Technology and with the assuming by the new holder of all the obligations deriving from licenses.

#### **4. Technical authorization for operation**

The use of the broadcasting stations or of the telecommunication networks under the Romanian jurisdiction, for the purpose of the broadcasting or retransmission of any service of programs on, respectively from the Romanian territory, can only be made after **the obtaining of the technical authorization of operation** of it, from the Ministry of Communications and Information Technology, on the basis of the procedure established by it.

#### **5. Retransmission of services of programs**

Retransmission of services of programs by the distributors of services shall only be made on the basis of the permit issued by CNA.

Any distributor of services, without any prior authorization, can make retransmission of any service of programs that has obtained an authorization for retransmission freely.

Any distributor that retransmits services of programs through telecommunication networks has the obligation to include in his offer the services of programs of the Romanian Television Company destined for the Romanian public, as well as other services of programs, free for retransmission and without technical or financial conditionings of private radiobroadcasters, under the Romanian jurisdiction, in a limit of 25% from the total number of services of programs distributed through the respective network.

The council withdraws the permit in the event in which a distributor of services retransmits a service of programs without having the retransmission rights, as a result of the withdrawal by the Ministry of Communications and Information Technology of the technical authorization for operation or at holder's request.

#### ***IV. Audiovisual communication***

Audiovisual communication consists of placing at the public's disposal, in general, or of certain categories of public, by any means of electronic communication, signs, signals, texts, sounds, information or messages of any kind that do not have the feature of a private correspondence. Law prohibits broadcasting of programs containing any form of inciting to hate on racial, religious, nationality, sex or sexual orientation grounds.

### **1. Broadcasting of the events of major importance**

**An event of major importance** is any event, organized or non-organized, that may present an interest for an important part of the public and which is comprised in the list approved by the National Audiovisual Council. The events of major importance are stipulated in the annex to the Government Decision no. 47/2003.

### **2. Romanian audiovisual works and European audiovisual works**

*Until the date of the accession to the European Union*, any radiobroadcaster from the Romanian jurisdiction shall reserve a significant part of its broadcasting time, except for the time destined for the information, sport manifestations, games, advertising, as well as teletext and teleshopping services, for the **Romanian audiovisual works**, as defined by the Decision of CNA 130/2002.

*From the date of the accession*, a majority part shall be reserved to **European works**, as defined by the Art.23 of the Law 504/2002.

### **3. Broadcasting of a cinematographic work**

The broadcasting of a cinematographic work can only be made in the periods especially established in the contracts concluded with the copyright holders.

### **4. Advertising and teleshopping**

*Advertising* means any form of message, broadcast on the basis of a contract with a natural or legal person, public or private, in the exchange of a tariff or other benefits, regarding the exercising of a commercial, professional, domestic activity with a view to promote the supplying goods, including real estates and incorporeal, or performing of services for a price or broadcast for auto promotional purposes.

*Teleshopping* is broadcasting for the public of certain commercial direct offers regarding the supplying for a price of certain goods, including real estates and incorporeal or, as the case may be, performing of services.

Advertising and teleshopping are broadcast with the compliance with the following conditions:

- are broadcast grouped; isolated broadcasting of advertisements and teleshopping can only be made in exceptional situations; these situations are to be established by the CNA;
- to be easily identified through accordingly marks;
- to be separated by other parts of the service of programs through optical and acoustical signals.

Subliminal techniques are prohibited in advertising and teleshopping. Law prohibits masked advertising and masked teleshopping.

**Time of broadcasting destined for advertising** cannot exceed 15% from the broadcasting time and together with teleshopping cannot exceed 20% from the daily broadcasting time.

The duration of the advertisements and of the teleshopping cannot exceed 12 minutes from the time of every given hour; in the case of the public television their duration cannot exceed 8 minutes from the time of each given hour. The same provisions apply accordingly to the services of programs destined exclusively for auto promotion.

## **5. Right of retort and right of rectification**

Any natural or legal person whose rights and legitimate interests have been harmed by presenting in an audiovisual program certain untrue facts, has the **right of retort**, regardless the nationality.

If the **radiobroadcaster decides to grant the right of retort**, he shall communicate to the injured person, within two days from the date of the receiving of the application, the day and the hour of broadcasting the right of retort.

Any natural or legal person has the **right of rectification**, regardless the nationality, whose rights and legitimate interests have been harmed by presenting in an audiovisual program certain inexact information. The rectification cannot be requested if the inexactitude of the information is not significant and clear and neither in the case of a written agreement concluded by the radiobroadcaster with the injured person.

If the **radiobroadcaster decides the rectification**, he shall communicate to the injured person within maximum two days from the receiving of the application, the day and the hour of broadcasting of the rectification.

The right of rectification is exercised through the broadcasting on station, free of charge, within three days from the date of the approval of the application, between the same hours, of a material made by a broadcaster, through which he rectifies, in the spirit of truth, the inexact information that have produced the injury.

## **6. Radiobroadcaster's obligations regarding the election campaign**

Radiobroadcasters have the obligation to reflect the election campaigns equitably, balanced and impartially.

## **7. Protection of human dignity and of right to one's own image**

Any person has the right to freedom of expression. This right comprises the freedom of opinion and the freedom of receiving or communicating information or ideas, without the interference of public authorities and without considering the borders.

The exercising of these freedoms that imply duties and responsibilities may be subject to formalities, conditions, restrictions or sanctions stipulated by law, which constitutes measures necessary in a democratic society for the national security, territorial integrity or public safety, protection or order and prevention of offences, protection of health or morals; protection of the reputation or of somebody else's rights, in order to prevent the divulgation of confidential information or to guarantee the authority and the impartiality of judicial power.

## ***V. Sanctioning regime***

Supervision of the enforcement, control of the fulfilment of obligations and the sanctioning of the violation of provisions of law of audiovisual are incumbent on CNA, except the provisions of the law referring to the license to broadcast whose compliance with, supervision, control and respectively sanctioning of the violation are in the burden of the Ministry of Communications and Information Technology.

The violation by broadcasters and distributors of services of the incumbent obligations are sanctioned according to Law no. 504/2002, as amended.

The following are **contraventions**, sanctioned with a fine between lei 50 million to lei 500 million;

- a) broadcasting of a cinematographic work outside the periods stipulated in the contracts concluded with the copyright holder;
- b) use of subliminal techniques in advertising or teleshopping;

- c) use of masked advertising or of masked teleshopping;
- d) retransmission by the distributors of services of programs, without the approval of CNA and without including in their offer the services of programs of Romanian Television Company;
- e) broadcasting on another frequency or the non-compliance with the technical data, of the area or of the technical parameters stipulated in the license of broadcast;
- f) the broadcast of a service of programs outside the area specified in the audiovisual license, etc.

The CNA shall address publicly **summons** for becoming legal if it decides that the effects of an action provided for are minor.

If the radiobroadcaster or the distributor of services does not become legal within the term and the conditions established by the summons or violates these provisions again, a contravention fine shall be applied, from lei 25 million to lei 250 million.

The following actions are **offences**, punishable by a criminal fine of lei 1 million to lei 30 million.

- a) broadcasting or retransmitting programs without audiovisual license, license of broadcast or authorization for retransmission;
- b) broadcasting on another frequency or with a larger radiant power, from another location than those stipulated in the license to broadcast, if the author of the action does not comply immediately with the summons issued by the Ministry of Communications and Information Technology;
- c) producing, importing, distributing, selling, renting, holding, installing, maintaining and replacing, for commercial purposes, of licit devices for decoding, used for the audiovisual services with conditioned access.

The **summoning** can be made by any means of communication and through broadcasting, by those exploiting public broadcasting station and television networks.

The broadcast shall be made free of charge, in maximum 30 minutes from the request.