

5. BROADCASTING LEGISLATION

5.1 - Amendment to the Broadcasting Act

By means of the Communication Laws (Amendment) Act, 2004 – Act No. VII of 2004 – the Broadcasting Act was amended in the sense that the duties hitherto carried out by the Department of Wireless Telegraphy were henceforth assumed by the Malta Communications Authority. This amendment to the Broadcasting Act was required due to the merger of the Department of Wireless Telegraphy with the Malta Communications Authority. Hence, the Broadcasting Authority's technical consultant is now the Malta Communications Authority.

5.2 - Transposition of the Injunctions Directive

The Prime Minister approved two subsidiary laws which are of relevance to broadcasting. These are:

- (a) Legal Notice 300 of 2005 entitled the Advertising, Sponsorship and Teleshopping (Protection of Consumers' Interest) (Television Broadcasting Injunction) Order, 2005; and
- (b) Legal Notice 302 of 2005 entitled the Administrative Penalty (Revision) Order, 2005.

The Prime Minister together with the Broadcasting Authority approved Legal Notice 301 of 2005 entitled the Broadcasting Act (Amendment of Fifth Schedule) Regulations, 2005.

All three legal notices came into force on 1st September 2005. In addition, Legal Notices 300 and 301 of 2005 apply only to television services and not to radio services whilst Legal Notice 302 of 2005 applies to both radio and television services.

Legal Notice 300 of 2005

This Legal Notice is intended to transpose into Maltese Law the provisions of European Union Directive 98/27/CE of the European Parliament and of the Council of 19th May 1998 on injunctions for the protection of consumers' interests in so far as this directive applies to those provisions on advertising, sponsorship and teleshopping contained in the Television Without Frontiers Directive.

In terms of this Legal Notice, the Broadcasting Authority has been empowered to issue a compliance order to ensure that no advert, sponsorship or teleshopping is broadcast which is in breach of the Television without Frontiers Directive. The text of this Legal Notice is found at Appendix I of this report.

Legal Notice 301 of 2005

This Legal Notice established the maximum penalty which the Broadcasting Authority may impose for an infringement of Legal Notice 300 of 2005. The maximum penalty has been established at



Lm15,000 and the minimum penalty at Lm10,000. The text of this Legal Notice is found at Appendix II of this report.

Legal Notice 302 of 2005

In terms of Legal Notice 302 of 2005 the Prime Minister has revised the administrative penalty which the Broadcasting Authority may impose from Lm5,000 to Lm15,000. This penalty applies to any violations of the Broadcasting Act which need not necessarily be related to advertising, sponsorship or teleshopping infringements. The text of this Legal Notice is found at Appendix III of this report.

5.3 - Amendment to the Code for the Investigation and Determination of Complaints, 2005

By means of Legal Notice 83 of 2005 published in the Government Gazette of 24th March 2005, the Code for the Investigation and Determination of Complaints was amended in order to establish a period of time within which a complainant has to request the Authority to appoint his/her complaint. Otherwise the Authority will declare the complaint abandoned and will not take further cognisance of such complaint. A copy of this Legal Notice is attached as Appendix IV to this Report.

5.4 - B.A. Directive on the Conduct of Competitions and the Award of Prizes on the Broadcasting Media

On 20th June 2000, the Broadcasting Authority had approved the Guidelines on the Conduct of Competitions and the Award of Prizes on the Broadcasting Media.

These guidelines were upgraded to a Directive of the Broadcasting Authority in terms of Article 15 of the Broadcasting Act in the sense that they are now legally enforceable. This Directive came into force on 1st February 2005. The text of this Directive is reproduced in Appendix V to this Report.

5.5 - Addition to the Guidelines on Alcoholic Drink Advertising, Sponsorship and Teleshopping

Following a request for clarification by a radio station concerning the above guidelines, the Broadcasting Authority revised its guidelines on Alcoholic Drink Advertising to extend the provisions of these guidelines to cases of teleshopping programmes of alcoholic drinks.

Moreover, the Authority decided to prohibit the use of the name of an alcoholic drink as the name of a sponsor before 9.00p.m. This brings these guidelines in line with the Authority's Family Viewing and Listening Policy.



These guidelines came into force with effect from 1st July 2005. A consolidated version of these guidelines is found in Appendix VI to this report.

5.6 - Guidelines regarding Participation of Vulnerable Persons in Media Programmes

The Broadcasting Authority had originally approved the above guidelines on 25th January 2005. Since then the Authority has felt the need to update them.

Following submissions received from the Commissioner for Children, *Agenzija Appogg*, the Maltese Psychological Association and the Maltese Association of Social Workers, the Broadcasting Authority revised its Guidelines on the Portrayal of Vulnerable Persons in the Broadcasting Media. In doing so, the Authority has also taken note of PBS Ltd.'s Editorial Board Directive of 11th May 2005 on the same subject as well as the 15th June 2005 addendum of PBS Ltd.'s Editorial Board to the said Guidelines in so far as they apply to that station.

The final version of these guidelines is found in Appendix VII to this report.

5.7 - Guidelines on the Reporting of News and the Production of Programmes on the Commission of Offences, their Investigation and Court Proceedings

The Broadcasting Authority approved a set of Guidelines on the Reporting of News and the Production of Programmes on the Commission of Offences, their Investigation and Court Proceedings. Essentially, they outline the general principles which should inspire broadcast journalists when reporting crime and how court proceedings should be covered by the broadcasting media throughout the whole criminal process, that is, prior to the actual institution of court proceedings when the case is still being investigated by the Police, when an alleged perpetrator of a crime has been identified by the Police but not yet arraigned in court, when the suspected person is arraigned before the competent criminal court, when the trial proper is conducted and sentence delivered, including any appellate proceedings which might ensue. The Guidelines also focus on the journalist's behaviour when dealing with vulnerable persons during the criminal process such as the portrayal by the broadcasting media of victims of crime, the next of kin to the victim of the offence or to the suspected or accused person, witnesses, and the parties to the criminal proceedings including their respective attorneys and the judiciary, in particular jurors.

Naturally, these guidelines are not of a binding nature. Nor are they cast in stone, as one would always have to consider the circumstances of each case. But at least they contribute to assist the journalist/broadcaster in arriving at a more informed decision when reporting crime. In appropriate



cases, the journalist/broadcaster would still need to seek legal advice and/or direction from his/her immediate supervisors or Editorial Board.

The text of these guidelines is found at Appendix VIII.

5.8 - Participation of Health Care Professionals in the Broadcasting Media

On 10th May 2005 the Broadcasting Authority received a letter circular from the Council for Professionals Complementary to Medicine concerning the issue of participation of health care professionals on the broadcasting media. This letter was circulated to all broadcasting stations and a copy of this letter is contained in Appendix IX to this Report.

5.9 - Draft Guidelines on Gender Equality and Gender Portrayal in the Media

The Broadcasting Authority approved a draft version of the Guidelines on Gender Equality and Gender Portrayal in the Media. These guidelines were the subject of a consultation process, and following feedback, the Authority redrafted these guidelines. At a later stage, it is envisaged that a seminar is held in order to discuss further the text of these guidelines so that eventually they can be approved by the Broadcasting Authority.

5.10 - Sponsorship

Following feedback from stations, the Authority adopted a guidance note on the interpretation of sponsored programmes as follows:

- (1) It is allowed to identify a sponsor both at the beginning and at the end of the programme.
- (2) It is allowed to identify a sponsor not only at the beginning and at the end of the programme but also when the programme is interrupted by advertising breaks. In terms of paragraph 13 of the Third Schedule, a period of at least 20 minutes must elapse between each successive advertising break within a programme. During such interruption of a programme it is allowed to identify a sponsor of a programme.
- (3) A segment (*rokna*) of a programme can be sponsored but mention of the segment's sponsor can take place only as stated in paragraph 2 above, that is, during one advertising break per segment.
- (4) It is allowed to sponsor the weather forecast and the financial news.
- (5) It is allowed to sponsor the reading of the time (*dan il-ħin ġie miġjub lilkom minn...*).
- (6) No programme promotion can be sponsored.
- (7) "Current affairs" for the purpose of paragraph 23 of the Third Schedule to the Broadcasting Act means a programme dealing with political or industrial controversy



or with current public policy. Sports discussion programmes are not considered as “current affairs”.

- (8) The sponsor of a programme may advertise within the same programme.
- (9) The producer of a programme may advertise within the same programme.
- (10) The sponsor of a one-minute information/educational slot may be identified only at the end of that slot.
- (11) Sports news (which follows the main news bulletin) can be sponsored.
- (12) The credits given in the news bulletin to those companies/persons who provide the newscasters’ clothes plus make-up do not constitute sponsorship and hence are allowed.
- (13) Cross-media sponsorship is permissible (that is, a radio station or an independent production house can sponsor a television programme or a television station can sponsor a radio programme).

The above clarifies the interpretation of the provisions of paragraph 20 to 23 of the Third Schedule to the Broadcasting Act which read as follows:

“Sponsorship

20. Sponsored programmes shall meet the following requirements:

- a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;
- b) they shall be clearly identified as such by the name or logo of the sponsor at the beginning or the end of the programmes;
- c) they shall not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

Prohibited Sponsorship

21. Programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

22. Sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicinal products and medicinal treatment may promote the name or the image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription.

23. News and current affairs programmes may not be sponsored.”

The provisions of this guidance note came into force on 1st July 2005.

Moreover, the Monitoring Department drew the attention of all broadcasters that it was becoming increasingly common for radio stations to use the brand names of products or trade names of sponsors to identify programmes and/or games within such programmes. This goes against sponsorship regulations in that it defeats completely the underlying principle of separation and distinction between programme content and sponsorship as clearly spelt out in such regulations.



A proper interpretation and application of sponsorship rules implies that sponsored programmes have to be clearly identified as such by the name of the sponsor at the beginning and/or end of the programme and where the programme is interrupted by advertising breaks, within such breaks, in this case respecting other prevailing regulations. In this respect the brand or trade name cannot form an intrinsic part of the name of the programme or game.

In view of this, station managers were requested to refrain from applying such practices and conform accordingly.

5.11 - Crawls & Captions in Television Programmes

The Authority noted that certain crawls and captions in television programmes were unreadable by the viewer. To ensure that this does not happen, the Authority issued a directive in terms of Article 15 of the Broadcasting Act to all television stations to the effect that they should ensure that crawls and captions used in all television programmes are to be at least 3.3% of the television screen.

The television screen is divided in the first column into 24 lines whilst the percentage of the screen in relation to each line is found in the third column. Hence television stations should ensure that the wording of crawls and captions used (e.g. to announce product prices, cooling off period, cost of telephone call, etc.) should be at least 3.3% of the television screen.

It was subsequently noted by the Authority that crawls and captions in television programmes were not always easily readable not because of the font size used. as happened in the past. but because of the speed at which such crawls and captions travelled across the television screen.

Apart from being of the size indicated in the 19th January 2005 Directive on Crawls and Captions in Television Programmes, the Authority emphasised that the speed used for such crawls and captions must be such as to make them clearly legible. In fact, paragraph 1.2.5 of that Directive makes it quite clear that it is crucial that crawls are displayed for a sufficient length of time for viewers to read them. Where a voice-over is used, the person reading out a text should do so in such a way that the viewer can comprehend the exact meaning of such text and the voice-over is not read at such speed as to make it unintelligible to the viewer.

5.12 - National Commission for the Promotion of Equality for Men and Women

The Authority has received a letter from the National Commission for the Promotion of Equality for Men and Women in terms of which the said Commission has concluded that according to article 10(2) of the Equality for Men and Women Act, Chapter 456 of the Laws of Malta, a particular advert produced for a local bank contravened the provisions of that article.



The attention of all broadcasters was drawn to the fact that in terms of article 10(3) of the said enactment, persons who act in breach of article 10(2) are guilty of an offence and on conviction are liable to the penalties established for contravention.

5.13 - Revision of the Broadcasting Code for the Protection of Minors

The Broadcasting Authority had approved the Broadcasting Code for the Protection of Minors in 2000. It had transmitted the Code to the Minister responsible for culture – who is the Minister responsible for broadcasting – who also approved it. The Code was published as a Legal Notice in 2000.

Since then the Authority has felt the need to revise this Code in order to provide further extensive protection to children. Following a paper drawn up by the Chief Executive on the subject, the Authority decided to get in touch with the newly appointed Commissioner for Children so that the Commissioner would assist in this matter. As a result of the ensuing fruitful discussion which took place, a sub-committee was set up between the Broadcasting Authority and the Commission for Children which during 2004 began discussing a strategy aimed at updating the said Code by focussing primarily on providing guidelines for good quality programmes for children.

For this purpose, a Round Table Conference was organised by the Broadcasting Authority and the Commissioner for Children on 24th October 2005 to discuss research carried out on local and foreign children's programmes and what focus groups participants thought how this sector would be developing. The Round Table Conference also discussed draft guidelines for Programme Content created for Children and a Strategy to be proposed for adoption by Government. It is envisaged to convene a conference in 2006 to further discuss both the said guidelines and strategy.



5.14 - Cooking Programmes

On 4th August 2005 the Authority decided to draw the attention of all broadcasters who produced cooking programmes to ensure that the basic hygiene standards were being met in such programmes. The Authority also emphasised the need to ensure that proper protective clothing was used by the chef and his or her assistants and that the basic sanitary implements were used.

