



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2018

11th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

Published by Global Legal Group, with contributions from:

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Cairn Legal
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Published by

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London SE1 3PL, UK
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Stephens & George
Print Group
November 2017

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ISBN 978-1-911367-79-6

ISSN 2050-7607

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EDITORIAL

Welcome to the eleventh edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Three general chapters. These chapters provide readers with an overview of key issues affecting telecoms, media and internet laws and regulations, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 29 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Arnold & Porter Kaye Scholer LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Cuatrecasas

1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

- a) Regarding the telecoms sector, including internet:**
- i) Annual revenue: this figure is not available at this time.
 - ii) The most important companies in the telecoms industry are MEO – *Serviços de Comunicações e Multimédia*, S.A. (Group Altice); NOS Group and Vodafone Portugal – *Comunicações Pessoais*, S.A. (Group Vodafone).
- b) Regarding the audio-visual media distribution sectors:**
- i) Annual revenue: more than 1 billion EUR (according to data from the ERC 2016 Report).
 - ii) Most significant market participants: MEO – *Serviços de Comunicações e Multimédia*, S.A. (Altice Group); Grupo NOS and Vodafone Portugal – *Comunicações Pessoais*, S.A., Grupo Media Capital, Grupo Impresa.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

The most important legislation regarding the telecoms and audio-visual media distribution sectors are as follows:

- a) Telecoms, including internet:**
- Law n.º 5/2004 of 10 February;
 - Law n.º 91/97 of 1 August; and
 - Law Decree n.º 31/2003, 17 February.
- b) Audio-visual media distribution sectors:**
- Law n.º 55/2012 of 6 September; and
 - Law Decree n.º 124/2013 of 30 August.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

In relation to telecoms, including internet, the Portuguese Competition Authority and the Portuguese Communications Authority are the main regulators. In terms of the audio-visual

media distribution sectors, the Portuguese Competition Authority and the Regulatory Authority are the main regulatory bodies for the Media.

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

Both telecoms and audio-visual media sectors have been liberalised and open to foreign investment.

2 Telecoms

General

2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Portugal has been a member of the World Trade Organisation since 1 January 1995.

After the Uruguay Round, sectoral negotiations took place in the WTO: on the movement of natural persons (1995); on telecommunications (1997); and on financial services (1997). During the sectoral negotiations, participating countries took new commitments specifically in those sectors. These new schedules replaced the corresponding section in the original schedules.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

The provision of telecoms (or electronic communications) networks and services are regulated by two regulatory authorities: the Portuguese Competition Authority; and the Portuguese Communications Authority.

2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?

The Portuguese Competition Authority and the Portuguese Communications Authority are the main regulatory and competition

law authorities in the Portuguese jurisdiction. Concretely, ANACOM is responsible for the regulation of the communications sector, including electronic and postal communications, and has the power to sanction, regulate and supervise within this sector. The role of the Portuguese Competition Authority is to ensure compliance with the competition rules in Portugal, and cooperates with regulators such as ANACOM to do so.

Although ANACOM has as one of its multiple functions in the communications sector, the promotion of competition in the provision of networks and services in this duty is complemented with the fundamental role of the Competition Authority. In accordance with Article 11 of ANACOM statutes in matters related to the application of the legal organisation of competition in the communications sector, ANACOM and the Competition Authority should cooperate and collaborate with each other and respect their individual duties.

Both entities assist the government in their areas but they are, in their nature, an independent administrative body. They are organic, functional and technically independent from the government.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

ANACOM's decisions are subject to appeal at the Portuguese Competition, Regulation and Supervision Court in accordance with Article 51° of the ANACOM status.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in your jurisdiction?

The provision of electronic communications networks and services, whether publicly available or not, is only subject to a general authorisation. This regime determines that the execution of activities in the electronic communications sector does not depend on any prior decision or authorisation by ANACOM, but is subject to a mere declaration of commencement of activity signed by the provider.

2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

In order for an entity to provide electronic communication services in Portugal, it will need to have previously submitted a statement before ANACOM under the general authorisation regime. In accordance with this regime, the offering of services does not rely on a previous decision from ANACOM. Undertakings are, nonetheless, under an obligation to notify ANACOM of the network and services to be provided, including its identification elements. After this communication, the notifying entity may immediately initiate its activity without any further constraints.

This regime will not apply if the entity requires rights of usage over frequencies or numbers. In this case, a previous decision from ANACOM will be necessary so as to allow the interested operator to start activity. The time-frame for the attribution of rights of usage over numbers or frequencies depends on the type of resources, but it should take between 15 and 30 days.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

The use of spectrum frequencies and number allocation depends on the attribution of individual rights of use, which shall be conducted by ANACOM.

The attribution of spectrum frequencies depends on the type of frequency and can be performed through procedures of direct acquisition, public tender and auction. All frequencies and their respective types are listed in the National Frequency Allocation Board (QNAF).

The right to use the frequency is granted for a 15-year period, renewable for an equal period of time. The payable fees depend on the form of attribution.

Regarding mobile networks, 2G (GSM) and 3G (UMTS) were granted by means of tender offer, and 4G (LTE) was granted by auction.

In accordance with QNAF, public Wi-Fi services are exempt from licensing.

The individual right of use of numbers is granted on a direct basis and the payable fees are determined by ANACOM. The allocation to operators is executed upon request or public tender or auction (applicable only if the relevant number is of exceptional economic value).

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The applicable law is mainly the Portuguese Code of Expropriations, approved by Law n.º 168/99, of 18 September.

Whether the land at stake is public or privately-owned, pursuant to Article 1 of the abovementioned Law, the corresponding rights and assets may be expropriated in case of public utility, insofar as a fair compensation is awarded to the rightful owner for the loss of property/use of the land. Any act of expropriation (which is an administrative act), in addition to complying with the protected public interest, shall be in accordance with the constitutionally protected principles of proportionality, legality, justice, equality, impartiality and good faith – Article 2 of the Code of Expropriations. The decision to expropriate a publicly-owned land must follow the directives set in Article 6 of the Code of Expropriations. It is noteworthy that the right to a fair compensation is as enforceable when a public land is at stake as when a private one is in question. The decision to expropriate must be justified by a declaration of public utility, which must itself be published in the appropriate forum (according to Articles 10–17 of the Code of Expropriations).

The right to a fair compensation is key in this process and is set in Article 23 of the Code of Expropriations. The value of such a compensation is determined pursuant to Articles 25–31 of the abovementioned Code and takes into account, alongside other things, the type of soil of the land in question, and the use that have may have been made of it by the original owner – agriculture, farming, etc.

Pertaining, in particular, to the installation of Telecommunications infrastructure, Decree Law n.º 123/2009, of 21 May, which defines the legal standards for the construction, access to and the installment of electronic communications infrastructure, may also be applicable.

In addition, through subsidiarity, one may still take into account the relevant provisions relating to safety and protection of human life set forth in the Regulatory Decree (*Decreto Regulamentar*) n.º 1/92, of 18 February. This bill establishes the basic safety standards to be taken into account by interested parties in the installment and maintenance of High Tension Power Lines.

Access and Interconnection

2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

The Electronic Communications Law contains a general provision on interconnection and access. It states that operators may freely negotiate access and interconnection conditions and have the right to request interconnection from other operators.

ANACOM may impose specific obligations with regard to interconnection and access, particularly on dominant undertakings, and also require certain operators to publish standard interconnection conditions and regulate prices.

Interconnection or access disputes may be submitted before ANACOM for an administrative decision. In general, ANACOM's decision should be issued within the four months following the request and will be binding, although it may be challenged before a court of law.

2.10 Which operators are required to publish their standard interconnection contracts and/or prices?

As far as we are concerned, only MEO has to publish standard conditions and prices on interconnection.

2.11 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Please see question 2.9.

2.12 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

MEO is subject to accounting separation obligations in several markets where it has significant market power. This obligation was imposed by ANACOM according to *ex ante* regulation mechanisms.

The remedy of functional separation is included in the Electronic Communications Law, but it has never been applied. Moreover, the measure of legal separation is not provided for in the specific telecom legislation, although the ADC may apply this measure when analysing specific merger operations.

2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

There is a government policy to promote internet and broadband penetration. Government Resolution No 112/2012 of 31 December (amended in 2015) approved the Digital Agenda. One of the key action areas is promoting fixed and mobile broadband penetration. Until 2020 the Government objective is, amongst other things, to: (i) improve access conditions for the general population to broadband Internet above 30 Mbps; and (ii) improve mobile broadband coverage in 480 parishes.

Before the approval of the Digital Agenda, the Portuguese Government launched in 2009 five public procedures for the deployment of optical fibre NGN (Next Generation Networks) in remote or rural areas of the country, as previously mentioned.

Price and Consumer Regulation

2.14 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Currently, and in general, retail prices are not regulated. However, the provision of services under the universal service legal framework, namely fixed voice telephone services, are subject to a price control mechanism, under which a variation of prices above CPI (Consumer Price Index) of -2.75% is not allowed.

As for mobile services the same principle applies.

2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

The Electronic Communications Law establishes a number of mandatory rules applicable to the contracts concluded with consumers and end users. The contract must specify, among other conditions, the following:

- (a) the services provided;
- (b) the minimum service quality levels offered;
- (c) information as to whether or not access to emergency services is provided;
- (d) details of prices;
- (e) the payment methods offered and the charges or penalties potentially incurred from said method;
- (f) the duration of the contract and the conditions whereby the contract or services may be renewed, suspended or terminated;
- (g) explicit indication of the subscriber's willingness in respect of the inclusion or not of their respective personal information in a public directory; and
- (h) the type of action that might be taken by the provider in reaction to network security or integrity incidents.

Regarding the duration of the contract, the Electronic Communications Law (as amended by the Law No. 15/2016, of 17 June) determines that companies that provide electronic communication services must offer contracts without a binding period, as well as contracts with six- and 12-month binding periods. The binding period in contracts for the provision of electronic communications services concludes that consumers may not exceed 24 months, unless in specific cases, such as customer consent and equipment actualisation.

In parallel with the telecoms regulation, customer terms and conditions are also subject to the boilerplate agreement regime, approved by Decree-Law No. 446/85, of 25 October, and general consumer protection regulations.

The providers are obliged to communicate the standard contracts to ANACOM, which is entitled to determine that operators cease or adapt immediately the use of standard contracts where it verifies the failure to comply with legal rules.

Numbering

2.16 How are telephone numbers and network identifying codes allocated and by whom?

The provision of electronic communications networks and services is subject to a general authorisation regime, without the need for any prior decision or act of ANACOM. According to this procedure, any entity intending to provide electronic communications or network services is required to submit to ANACOM a short description of the services it wishes to provide, together with the details required, and give notice of the estimated date of the activity entering into operation. In certain cases, a separate request for usage rights for frequencies and numbers must be submitted to ANACOM, which will then grant those rights in accordance with the National Numbering Plan. The decision on the allocation of usage rights will be adopted, notified and made public within a specified period of time.

2.17 Are there any special rules which govern the use of telephone numbers?

The Electronic Communications Law states that the right to use numbers are attributed to companies that offer or use electronic telecommunication networks or services. Those rights are allocated by open, objective, transparent, non-discriminatory and proportionate procedures.

As a general rule, the rights to use numbers are awarded by ANACOM within 15 days after the submission of the request by the operators. In the case of rights of use for numbers of exceptional economic value, ANACOM can grant them through competitive or comparative selection procedures, including by tender or auction.

All providers of publicly available telephony services (i.e., both fixed and mobile) must offer number portability and are obliged to cooperate in order to enable such portability and ensure minimum quality standards. With the new rules implemented by the revised 2009 EU Regulatory Framework, the right to portability was reinforced by reducing the porting deadline to one working day.

2.18 Are there any obligations requiring number portability?

The Electronic Communications Law determines that number portability must be required by the subscriber of the new service

provider, accompanied by the note of termination of the former subscription agreement. The new service provider engages the former provider by electronic request, indicating three portability windows in which the portability can be executed. Most requests are accepted, as the former provider can deny portability only in very restricted cases.

There is a special concern in the regime in preventing any unwanted portability, which is why both service providers involved have a particular responsibility to ensure that the person requesting portability is the legal subscriber of the contract associated with the relevant number.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

ANACOM is responsible for the regulation of the radio-electric spectrum, as established in Article 15 of the Electronic Communications Law (Law n.º 5/2004 of 10 February).

3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative ‘beauty parades’, etc.?

ANACOM plans frequencies and assigns them, according to transparency, non-discriminatory and proportionality criteria.

In this context, ANACOM is responsible for publicising and updating the National Frequency Allocation Plan (QNAF – *Quadro Nacional de Atribuição de Frequências*), with the purpose of disseminating the use of spectrum and the application in Portugal of international agreements in this area. This publication, which is based on agreements at a national and international level, contains the spectrum allocations for the various radio services applicable in Portugal, as well as the detail of used and planned services and systems, without the prejudice of further decisions from ANACOM. The QNAF also contains information regarding the use of frequencies accessible or not to the public, as well as the indication of reserved frequency bands and their terms of allocation.

The use of spectrum is subject to radio-electric licensing, in accordance with Decree-Law no. 151-A / 2000, of 20 July, as amended by Decree-Law no. 264/2009, of 28 September, which presupposes the settlement of fees, and the respective amounts are set forth in the Administrative Rule (Decree no. 296-A / 2013, of October 2).

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The Portuguese Communications Institute may decide on the exemptions of licences, according to Article 9.º of the said Decree-Law.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Pursuant to Article 19º of the said Decree-Law, the use of the radio spectrum is indeed subject to the payment of fees. For the determination of the amounts, spectral, coverage and usage parameters shall be taken into account, namely:

- a) the number of stations used;
- b) the frequencies or channels consigned;
- c) the frequency band;
- d) the bandwidth;
- e) the degree of congestion in the region of implementation;
- f) the economic and social development of the region of implementation;
- g) the area of coverage;
- h) the type of use and user; and
- i) the exclusivity or the sharing of frequencies or channels consigned.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

Pursuant to Article 14 the network or station licences are transferable with the prior authorisation of the ICP. The entity to which the licence is transmitted must, under penalty of nullity of the transmission, be legally entitled, in the same terms as the transferor, to exercise the public or private telecommunications activity to which they are subject, assuming all rights and obligations are inherent in the licence.

The transmission of a network licence implies the transmission of the licences of the stations that integrate it, if they exist.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

The licensed spectrum is both tradable and assignable. It is, therefore, possible to trade or assign licensed spectrum between companies, according to the rights granted in the licence, as long as ANACOM has not prohibited such transfer.

In case of transfer, the holders of rights of use shall give ANACOM prior notification of their intention to transfer such rights, as well as the conditions under which they intend to conduct the relevant transfer. ANACOM is, within 45 working days, entitled to prohibit the transfer or assignment if the following conditions are not met:

- a) the transfer or lease does not distort competition, namely owing to the accumulation of rights of use;
- b) frequencies are efficiently and effectively used;
- c) the frequency use complies with what has been harmonised through the application of Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March (the Radio Spectrum Decision) or other EU measures; or
- d) the restrictions set forth in the law in respect of radio and television broadcasting are safeguarded.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

Article 54-A to 54-G of the Electronic Communications Law (as amended) enshrines obligations applicable to operators providing public communications networks or publicly available electronic communications services, including to take appropriate technical and organisational measures to appropriately prevent, manage and reduce the risks posed to security of networks and services, aiming in particular to prevent or minimise the impact of security incidents on

users and interconnected networks, at a national and international level, and to notify ANACOM of a breach of security or loss of integrity with a significant impact on the operation of networks or services. ANACOM is entitled to approve and impose technical implementing measures on operators that provide public communications networks or publicly available electronic communications services.

It is incumbent on ANACOM to:

- (i) inform the national regulatory authorities of other member states and the European Network and Information Security Agency (ENISA) where this is deemed to be justified on account of the scale or seriousness of the breach of security or loss of integrity notified by the operators;
- (ii) inform the public, by the most appropriate means, of any breach of security or loss of integrity or to require operators to do so, where it determines that disclosure of the breach is in the public interest; and
- (iii) once a year, submit a summary report to the European Commission and ENISA on the notifications received on breach of security or loss of integrity, by the operators, and the action taken thereon.

Additionally, Law No. 109/2009, of 15 September (which transposes into national legislation the Framework Decision 2005/222/JHA of the Council of the European Union, of 24 February 2005), establishes substantive and procedural criminal provisions, as well as provisions on international cooperation in criminal matters related to the field of cybercrime.

4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

The legal framework applicable in Portugal does not allow the government to obtain access to or intercept private communications. Only specific criminal and legal judicial authorities may carry out this process, under very precise circumstances.

The Constitution of the Portuguese Republic, in Article 34, N0. 4 sets forth the standard rules on access to private communications. The Constitution expressly refers that interception of telephone communications can only be allowed in case of criminal investigations. Such investigations are under the responsibility of the Public Prosecutor, jointly with a criminal judge.

There are specific rules and provisions, as those set out in Law No. 9/2007 of 19 February (amended in 2014), providing the legal framework for the Portuguese Information Security Intelligence (SIS) and for the Portuguese Intelligence Services for Strategic Defense (SIED). This act does not grant powers of interception, encryption/decryption, direct access to communications or the possibility of requesting that telecom providers provide access to these communications, other than as set out in Articles 187 to 190 of the Portuguese Criminal Procedure Code; interception can only be authorised in the event of suspicion of the practice of a specific type of crime (depending on the nature of the offence and the duration of the criminal sentence).

Other than this, the interception of communications may only be performed during a state of siege or emergency (in this case, the decision to intercept communications is to be taken by the Parliament).

Should interception of communications be carried out in any other context, this would be considered illegal, a breach of the Constitution of the Portuguese Republic and would be punishable as a crime.

Finally, please note that from a regulatory perspective there are no substantial differences between VoIP and the traditional voice over the PSTN (Public Switched Telephone Network) and, thus, VoIP operators and PSTN operators should be treated equally.

4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Please see question 4.2 above.

4.4 How does the state intercept communications for a particular individual?

Please see question 4.2 above.

4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

In accordance with the Privacy in Communication Law, providers of publicly available electronic communications services are under an obligation to protect personal data transmitted, stored or otherwise processed, against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access. Furthermore, such providers may avoid having to notify service subscribers in case of a data breach (which can adversely affect the subscriber or user data) if they are able to demonstrate to the relevant authorities that they have implemented measures to render the data unintelligible to any person who is not authorised to access it.

Electronic communications service providers providing encryption features must ensure, at their expense, that they also have decryption or decoding means (Article 27, No. 17, of the Electronic Communications Law), in order to ensure that access to information in the context of a criminal procedure, whenever applicable, is possible and may be carried out as ordered by the relevant authorities.

4.6 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

The Law No. 32/2008, of 17 July (Data Retention Law), which transposed the Directive 2006/24/EC of the European Parliament and of the Council, sets forth that electronic communications services providers are obliged to retain customer and traffic data for a one-year period from the time of completion of the communication.

However, please note that the EU Court of Justice declared the invalidity of Directive No. 2006/24/EC of the European Parliament and of the Council (the Data Retention Directive), as it was considered to entail “a wide-ranging and particularly serious interference with the fundamental rights to respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary”. This being said, as this Law was set up as a consequence and for the transposition of a Directive which has now been declared invalid, whilst the Law is currently formally valid, the reasoning behind the law is now inexistent. This issue has already been addressed in other Member States, where operators have expressly stated that they would cease to retain data, considering that this obligation had been deemed too intrusive on an EU level. Whereas in Portugal, a formal decision to repeal the Law has not yet been made, the duty to retain the data

has now been questioned and operators may choose to take a stance in this respect.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

The distribution of audio-visual media is regulated by the Portuguese Media Regulation Authority (*Entidade Reguladora para a Comunicação Social* – “ERC”). ERC is a legal body governed by public law, as an independent administrative entity. All the entities which, under the jurisdiction of the Portuguese State, continue to be considered activities of media, are subject to the supervision of the ERC.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Advertising on the internet is mainly governed by general rules inserted into the Portuguese Advertising Code (Decree-Law No. 330/90, 23 October 1990, last amended by Decree-Law No. 66/2015, 29 April 2015); Law No. 7/2004, 7 January 2004; the Civil Institute for Self-Regulation of Commercial Communication (ICAP) Code of Conduct on advertising and other forms of commercial communication; and the Digital Marketing and Online Behavioural Advertising Good Practices Guide of ICAP.

The general prohibition on misleading advertising (Portuguese Advertising Code and Decree-Law No. 57/2008, 26 March 2008, on unfair practices in the relation with the consumer) is also applicable to online advertising.

Any person, including competing traders with a legitimate interest in opposing the misleading advertising may bring the matter to the attention of the competent authority.

For investigation within the administrative offence procedure, the competent authority may request the advertisers to present evidence of the factual accuracy of the data inserted into the advertising. Such data are presumed inaccurate if such evidence is not presented or is insufficient.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

For the telecommunications of Television and Radio, the authorisations may only be given to companies that pursue such activities as their main corporate object.

The right to broadcast television and radio is subject to the attribution of a licence by the ERC by means of a public tender launched by a decision of the government. It is incumbent upon the ERC to grant, renew, alter or repeal licences or authorisations to pursue media broadcasting activity. The fees and timescale associated with such activity depend on the terms provided in the public tender.

The spectrum allocation for the performance of television and radio broadcasting is one of ANACOM’s attributions, which ANACOM must execute having considered the ERC’s opinion. The conditioned access to television programme services that require a subscription (pay-TV) do not use the spectrum and, therefore, such broadcasting is only subject to obtaining a licence granted by the ERC.

Concessions for public media broadcasting services, both radio and television, shall be granted for a 15-year period, subsequently renewable for equal periods of time, under the terms of the concession contract to be executed between the state and the concessionaire.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

The Portuguese Law (namely, Law n.º 55/2012, of 6 September) does not mention the possibility of the assignment of licences.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

We are not aware of any specific court decisions on this matter. However, please note that depending on their degree of intervention in the creation and transmission of the contents, telecommunications operators and/or internet service providers, acting as providers of information society service, may be held accountable for that content, according to the Electronic Commerce Law. As a general rule, the Electronic Commerce Law sets forth, under Articles 11 to 19 of this Law, that intermediary providers (i.e. the telecommunications operators and/or internet service provider companies which allow the content to be carried out over their network) are not required to monitor and oversee the information spread or stored over their network, or to investigate possible illicit acts practised in this scope.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

As a general rule, all telecommunications operators and/or internet service providers are required, in particular, to inform authorities immediately when they become aware of illicit activities being carried out through their services and to carry out all decisions aimed at preventing or terminating an infraction, namely by removing or making it impossible to access certain information.

6.3 Are there any 'net neutrality' requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?

Portuguese law does not set forth any specific net neutrality requirements.

The principle arising from Directive 2002/22/EC (Article 1, No. 3) on net neutrality is very broad and does not require or prohibit an internet service provider from managing traffic on their networks. In any case, ANACOM has the power to impose minimum quality requirements in order to prevent the blocking or the slowdown of traffic.

The Regulation (EU) 2015/2120 of the European Parliament and of the Council, of 25 November 2015, establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end users' rights. This regulation imposes an obligation to internet services providers (ISPs) to treat all traffic equally, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used. More recently, the Body of European Regulators for Electronic Communications (BEREC) sought to clarify the rules of Regulation (EU) 2015/2120, by publishing in August 2016 some guidelines on the implementation by National Regulators, including ANACOM, of European Net Neutrality Rules.

In accordance with this regulation and guidelines, zero-rating is not prohibited. However, a zero-rating offer where all applications are blocked once the data cap is reached out except for zero-rated applications would infringe the regulation. In addition, bandwidth 'throttling' is permitted only as an extraordinary measure imposed by law, by a court decision or by a public authority. It is also permitted in other cases, such as, to preserve the integrity and security of the network and to prevent any impending network congestion.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

Telecommunications operators and/or internet service providers must block access to sites/content whenever: (i) they are aware of a clearly illicit activity or information associated thereto; or (ii) the illicit nature is clear and manifest, taking into account the nature of the information provided through the network and the associated circumstances.



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