

“VENEZUELAN CONGRESS HAS PASSED *THE RADIO AND TV SOCIAL LIABILITY ACT*, AFFECTING THE ADVERTISING SECTOR”

Last December 7th, 2004, the “Radio and TV Social Liability Act” was enacted.

This Legal Text has been quite controversial because of the matters it regulates. It includes regulation about the programming that can be broadcast thru radio and TV services, including subscription TV, as well as the schedules for the transmission of those programs

In this sense, the Act establishes a regulation that affects the advertising activity, determining a list of prohibitions and restrictions. Another important element is the “Sanctioning Administrative Procedure” by means of which the State would be able to impose considerable fines and even revoking the authorization for provision of the service, in case of breaching any of the obligations or prohibitions established in the Legal Text.

A. ABOUT THE OBJECT AND APPLICATION OF THE ACT. PUBLIC ORDER (articles 1 and 2)

OBJECT: To establish the social liability of all **those entities related to the service of transmission and reception of messages**, such as radio, TV, advertisers, independent producers and even users.

APPLICATION: Every image or sound which broadcasting or **reception** takes place in Venezuela, so it applies not only to the messages or programming transmitted from Venezuela, but to the ones received. The dispositions of the Act are applicable to all public and private TV and radio services, including subscription TV.

PUBLIC ORDER: The content of this Act has been stated as Public Order, so it is above any other individual right, when it is interpreted by the Justice Authorities. In case of doubt, the interest of the users will be privilege.

B. LANGUAGE. INTENSITY OF AUDIO (article 4)

The mandatory use of Spanish is established for the transmission of all messages, except for some cases, such as:

- Trademarks
- Terms of universal use, that cannot be translated because of their technical, scientific or artistic nature.

Also, is stipulated as an obligation that the programming must stay in the same intensity of audio, during the transmission. This disposition might be applicable to TV and radio commercials in the future.

C. PROGRAMMING. CLASIFIED ELEMENTS (articles 5 and 6)

The content of the programming is classified as:

- Cultural and educational programming
- Informative programming
- Opinion programming
- Sports or recreational programming
- Mixed programming

The article 6 defines the “classified elements”, a list of contents that will determine the kind of programs that can be transmitted in each hour. These elements are: **language, health, sex and violence** and they are group in different levels, according to the sensibility of the audience.

D. PROGRAMMING HOURS (article 7)

The Act establishes 3 schedule hours, which determines the kind of programming/ contents that can be broadcast by TV and Radio services. As a consequence the Advertisers will have to review their strategy of distribution of the “purchased” advertising hours to the media which they use for advertising. These schedules are:

ALL AUDIENCES: This schedule goes from 7 am to 7 pm. During these hours, only programming and advertising that can be attend by all kind of audiences, including minors, without the need of adult supervision, can be transmitted.

SUPERVISED HOURS: This schedule goes from 5 to 7 am and from 7 to 11 pm. During these hours, radio and TV channels will be able to transmit messages that, if they are attended by minors, they require adult supervision.

However during these hours, programming contenting nudity or obscene images or sounds, that refers in any way to the consumption of alcohol, tobacco, drugs, compulsive practice of games, or related to violence, either real or dramatized, cannot be transmitted.

ADULT HOURS: Goes from 11 pm to 5 am. During these hours, only programming directed exclusively to adults can be transmitted, basically any kind of messages. However, advertising of products restricted remain prohibited.

In addition, this Act establishes a number of general restrictions, such as the prohibition of transmitting messages that uses sound or audiovisual techniques that cannot be perceived conscientiously, or programming contenting explicit nudity.

E. RESTRICTIONS TO ADVERTISING, PROPAGANDA AND PROMOTIONS **(article 8 and 9)**

The total time for transmission of **advertising, propaganda and promotions**, including those presented in live shows, will be of 15 minutes for every 60 minutes period of transmission and it can be divided in a maximum of 5 fractions, except in the case of the live retransmission of:

- Sports events or shows
- Foreign programs

In both cases a different pattern for interruptions will be allowed, as long as the nature of the program really requires it, but in any case the total time of interruptions, including promotions, can exceed 17 minutes.

OTHER INTERESTING ISSUES FOR THE ADVERTISERS:

- Advertising about tobacco, alcohol, drugs, and professional services offered by unqualified persons, lottery games that denigrate work as a social need, goods or services directed to children showing or using violence, guns and explosives devices are strictly prohibited.
- The intrigue campaigns are subject to the fulfilling of certain technical rules, with the purpose of informing opportunely to the consumer about the good or service being advertised.
- The advertising of overcharged phone numbers must have a clear reference about such overcharge, and the cost of the call will have to be in non smaller visual proportion of the 50% of the size that occupies the number in screen and at the same level of audio, in case of being announced during the commercial.
- The advertising or promotion of any product that is similar (trademarks, slogans, tunes, among others) to advertising of goods and services restricted is also prohibited.
- The product placement is prohibited (not defined in the Act, but understood as when the publicity of the product is previously contracted by a third party to the person responsible of the transmission or the media - typical case of sponsorship of sport teams), but in the case of sports events, unless the sponsorship is related to any of the products which advertising is prohibited.
- In case of subscription TV, is also prohibited the advertising of tobacco, alcohol, drugs and guns.

- At least, an **eighty five percent** of the broadcasted advertising thru TV and radio services must be national productions and made by qualified professionals.
- “Live” advertising, using the same environment of the TV or radio program, must show the word ADVERTISING on the screen in case of TV, and must be intelligible in case of radio shows.
- In any case, must be taken in account that other ways of advertising COULD also be prohibited / allowed by the competent authority, so there is no unique case of prohibition.

F. ABOUT THE NATIONAL PRODUCERS AND THE INDEPENDENT PRODUCERS.

As already said, radio and TV services are forced to broadcast at least an 85% of NATIONAL PRODUCTION.

However, the Act gives a vague definition of what the National Production is, when it precise it as “every program, ADVERTISING and propaganda, in which creation, production and postproduction, can be seen:

- Venezuelan capital
- Venezuelan places
- Venezuelan scripts
- Venezuelan authors
- Venezuelan artists
- Venezuelan technical personnel
- Venezuelan cultural values

Also, there is the figure of the NATIONAL INDEPENDENT PRODUCER, defined as the producers that have no relationship with the TV and radio stations or the State Entities.

Consequently, it is important for the advertisers to verify how much of their publicity is foreign, given the preeminence of the national production, and the complications that it can bring to multinational companies, whom usually hires regional or worldwide advertising campaigns. However, the figure of the independent producer DOES NOT apply to the advertising activities.

G. LIABILITY OF THE ADVERTISERS. SANCTIONS (article 28)

The Act establishes a large list of sanctions for the service providers, which vary from imposition of fines to revoking, temporary or permanently, the authorization for the service provision. Each restriction or prohibition is followed by a sanction, depending on the gravity of the infraction.

However, the solidarity liability of the advertisers it is NOT established for the infractions made by the radio or TV station, although it is not the same on the contrary.

Advertisers will be liable for those advertising and propaganda that, when transmitted by radio and TV services, infringes any of the obligations established in the Act.

SANCTION: In case of infringement, the advertisers will be sanctioned with a fine that will vary between a 20% and a 200% of the price of purchase of the total spots in which the advertising object of the sanction was transmitted.

G. VALIDITY OF THE ACT

This Act came into force last December 7, 2004, when it was published in the Official Bulletin. However, mostly of the obligations will take effect gradually, in three, six and twelve months periods. In this sense, the agreements made between the service providers and the advertisers will have to be adapted to the regime established in the Act, within the following three months.

CONCLUSION

Putting aside subjective considerations about the pertinence of the Act, it is clear that it will suppose a new way to make radio and TV, with a direct impact to the advertising activity, because of the new distribution of the programming segments, the new restrictions and prohibitions and all the sanctions, affecting directly the “advertisers - advertising agency - media” relationship