

LEGISLATIVE DECREE OF July 31, 2005, no. 177
((Consolidated Text on Audiovisual and Broadcasting Services)).

Enacts the following legislative decree:

Art. 1

Scope

1. The consolidated text on broadcasting, referred to as the “consolidated text” contains:

((a) the general principles for audiovisual and broadcasting services, considering the convergence between the various forms of communications, such as electronic communications, publishing, including electronically and online in all its applications;))

b) the current legislative provisions on the matter ((audiovisual and broadcasting services)) with the integrations, modifications and abrogation necessary for its coordination or to ensure its best implementation based on the Constitution of the international laws governing the internal laws and obligations from Italy’s membership in the European Union ((...)).

2. The provisions regarding ((audiovisual and broadcasting services, such as the transmission of television programs aired normally or upon request)) radio programs and data programs, including those with conditional access as well as the supply of associated interactive services and access services conditional on terrestrial frequencies by cable and satellite. ((7))

UPDATE (7)

Legislative Decree of March 15, 2010, no. 44 states (with Art. 1, section 4) that “the words: “television broadcasting” has been replaced with “audiovisual and radio broadcasting such as the transmission of television programs aired normally or upon request;”; the words: “on terrestrial frequencies by cable or satellite” are replaced by the following “on any distribution platform.”

Art. 1b

((Field of Application))

((1. Notwithstanding the provisions of Article 1-c, this consolidated text applies to all audiovisual and radio broadcasting service suppliers in accordance with the regulations set forth in sections 2 and the following.

2. Audiovisual and broadcasting service suppliers are subject to Italian law:

a) when located in Italy pursuant to section 3; or

b) those to which section 4 applies.

3. An audiovisual and broadcasting service supplier is considered to be located in Italy in the following cases

a) the supplier has its primary offices in Italy and the editorial decisions on the audiovisual media are made in Italy;

b) if a media service supplier has its primary offices in Italy but the editorial decisions on the audiovisual media service are made in another member state of the

European Union or vice versa, this supplier is considered as located in Italy in the case where a significant part of its employees perform their audiovisual media service work in Italy. If a significant part of employees perform their audiovisual media service work in Italy or in another member state of the European Union, the supplier is considered as located in Italy if its primary office is located in Italy. If a significant part of its employees performing media service work do not perform their work in Italy or another member state of the European Union, the supplier is considered to be located in Italy if this is the first member state in which it began its business based on the national legal system so long as it maintains a stable and effective bond with the Italian economy;

c) if an audiovisual media service and broadcasting supplier has its main offices in Italy but the audiovisual media service decisions are made in a third party country, or vice versa, it is considered located in Italy so long as a significant part of the employees that perform the audiovisual media services operates in Italy.

4. The media service suppliers to which the provisions set forth in section 3 do not apply are considered to be subject to Italian case law in the following cases:

a) if they use a terrestrial-satellite connection (up-link) in Italy;

b) even if they use a terrestrial-satellite connection (up-link) located in Italy, if they use a satellite under Italian jurisdiction.

5. If it is not possible to determine which member state of the European Union has jurisdiction pursuant to sections 3 and 4, the media service supplier located in the national territory pursuant to articles 49-54 of the Treaty on the European Union Operations is considered subject to Italian law.

6. The audiovisual media service suppliers in the member states of the European Union subject to Italian law pursuant to this article are required to respect the Italian law applicable to the audiovisual media service suppliers.))

Art. 2

((Definitions.))

((1. For the purpose of this consolidated text, the following means apply:

a) “audiovisual media service:”

1) a service as defined under Articles 56 and 57 of the Treaty on the Operation of the European Union, which is under the editorial responsibility of a media services supplier and the main goal of which is the supply of programs to inform, entertain or instruct the general public through electronic communication networks. This audiovisual media services means either the television broadcasting, as defined in letter i) of this article and, in particular, the analog or digital television, live streaming online, television streaming online like webcasting and on-demand video like near video on demand or an on demand audiovisual medial service, as defined in letter m) of this article.

The following is not included in the definition of “audiovisual media service:” the services provided to perform non-economic activities and that do not compete with television broadcasting, such as private websites and services consisting in the supply or distribution of audiovisual contents generated by private users in order to share or exchange common interests;

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any form of private correspondence, including email;
services for which the main goal is not the supply of programs;
services for which the audiovisual content is merely incidental and does not constitute the primary goals, such as, by way of example:

- a) websites that contain purely auxiliary audiovisual elements, like animated graphic elements, short advertising spots or information on a non-audiovisual product or service;
- b) online games;
- c) search engines;
- d) electronic versions of newspapers and magazines;
- e) independent publishing services;
- f) cash gambling excluding transmissions for gambling and games of chance; or

2) an audiovisual commercial communication;

b) "media service supplier," the individual or company that has the editorial responsibility for the audiovisual content of the audiovisual media service and determines its organization methods; individuals or corporations that only handles the transmission of programs for which third parties have editorial responsibility are excluded from the definition of "media services supplier;"

c) "electronic communications network," transmission systems and, if necessary, the commutation or routing equipment and other resources that allow for signals to be transmitted by cable, radio, fiber optics or other electromagnetic means, including satellite networks, mobile and fixed terrestrial networks, circuit commutation and package commutation, including the internet, the networks used for the circular distribution of audio and television programs and the systems to convey electricity so long as they are used to send signals and television networks via cable regardless of the type of information conveyed;

d) "network operation" is the owner of the right to install, operation and supply an electronic communication network on digital terrestrial frequencies via cable or satellite and broadcasting, multiplexing, distribution and disclosure systems for frequency resources that allow for the transmission of programs to users;

...

dd) "audiovisual commercial communication," images, whether they include sound, that are intended to promote, directly or indirectly, the merchandise, services or images of an individual or corporation that exercises an economic activity and including television advertisements, sponsorships, infomercials and product placement. These images accompany or are included in a program for payment or other compensation for promotional purposes.

ee) "televised advertisement," any form for televised message transmitted for payment or other compensation or for the promotion of a public or private company or by a company within a commercial, industrial, artisan or freelance activity in order to promote the supply of goods and services, including real estate, securities and bonds, upon payment;

...

gg) “hidden audiovisual commercial communication,” the oral or visual presentation of goods, services, the name, brand or business of a manufacturer of goods or the supply of services during a program if this presentation is done by the media services supplier to pursue advertising goals and may mislead the public about its nature. This presentation is intentional, in particular, when it is done for payment or other compensation;

hh) “sponsorships,” any contribution by a public or private company or a corporation that is not involved in the supply of audiovisual media services or in the production of audiovisual works to finance audiovisual media services or programs in order to promote its name, brand, image, activity or products;

...

ll) “product placement,” any form of commercial audiovisual communication that includes placing or referring to a product, service or brand that appears in a program for payment or other compensation;

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2. The definitions set forth in section 1 applies to radio broadcasting services as well. Unless otherwise specified, sponsorships and infomercials includes the activities performed by audio radio broadcasting.))

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Art. 9

((Ministry of Economic Development))

1. The Ministry has the duties set forth in this consolidated text as well as those falling under the state functions and duties indicated by Article 32-c of Legislative Decree no. 300 of July 30, 1999, as recently replaced by Article 2 of Legislative Decree no. 366 of December 30, 2003.

2. The consulting bodies of the (Ministry of Economic Development for audiovisual and radio broadcasting services sectors)):

a) the Higher Council of Communication;

b) LETTER ABROGATED BY PRESIDENTIAL DECREE No. 72 OF MAY 14, 2007.

c) The Control Committee for Infomercials and Televised Spots for Astrology, Tarot and Similar

Goods and Services, Lottery, Power Ball, Soccer Bets, Sports Betting and Similar Gaming Predictions as well as the Committee to Apply the Code for Self-Regulation for TV and Minors. (2)

UPDATE (2)

The Presidential Decree no. 72 of May 14, 2007 states that (with Art. 6, section 1) “the Committee to Apply the Code for Self-Regulation for TV and Minors as per

Articles 9 and 35 of the consolidated radiobroadcasting text as per Legislative Decree no. 177 of July 31, 2005 is renamed: "Committee to Apply the Code for Media Self-Regulation and Minors."

It also states (with Art. 6, section 3) that "Until the Committee is incorporated as per section 1, the Committee to apply the Code on TV Self-Regulation and Minors" remains in effect pursuant to the current law.

Section II Functions of the Authorities

Art. 10

((Jurisdiction regarding Audiovisual Media and Radio broadcasting Services for the Authorities for Communication Guarantees))

1. The Authority that performs the tasks assigned to it by law, ensures respect for the fundamental rights of people in the communications sector ((even through audiovisual or radio broadcasting media services)).
2. The Authority ((regarding audiovisual and radio broadcasting services)) performs the tasks set forth in the regulations of this consolidated text as well as those falling under the tasks and duties assigned by the current laws, even if not transposed in the consolidated text and, in particular, the jurisdiction set forth by Laws no. 223 of August 6, 1990, no. 481, November 14, 1995 and no. 249 of July 31, 1997.

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Section III Other jurisdictions.

Art. 36-b

((General Principles on Audiovisual and Radio broadcasting Commercial Communications.))

- ((1. The commercial audiovisual communications provided by the media services suppliers subject to Italian law respect on the following provisions:
- a) the audiovisual commercial communications are easily recognizable as such; hidden audiovisual commercial communications are prohibited;
 - b) the audiovisual commercial communications do not use subliminal techniques;
 - c) the audiovisual commercial communications:
 - 1) do not prejudice respect for human dignity;
 - 2) do not involve or promote discrimination based on sex, race or ethnic origin, nationality, religion or personal convictions, disability, age or sexual orientation;
 - 3) do not encourage prejudicial conduct for health and safety;
 - 4) do not encourage serious prejudicial conduct to protect the environment;
 - d) any form of audiovisual commercial communication is prohibited for cigarettes and other tobacco-based products; the audiovisual commercial communications are prohibited even if done indirectly through the use of names, brands, symbols or

other tobacco product features or companies whose primary activity consists in the production or sale of these products, when the forms, methods and means used or based on any other similar element this use is suitable to pursue an advertising goal for the products. In order to determine the primary activity of the company, reference must be made to the sales revenue for the individual activities so the principal activity has precedence over other business activities within Italy;

e) audiovisual commercial communications for alcoholic drinks must not be specifically intended for minors or encourage the reckless consumption of these drinks;

f) audiovisual commercial communications for drugs and medical treatments are prohibited that are prescription only;

g) the audiovisual commercial communications do not cause physical or moral harm to minors. They cannot encourage minors to purchase or lease a product or service by taking advantage of their inexperience or naiveté nor encourage them to persuade their parents or others to purchase the advertised goods or services not to take advantage of the special faith that minors place in their parents, teachers or other persons nor to show, without just cause, minors in a dangerous situation.

2. The Ministry, with the cooperation of the Authority and having heard the Department of Health, encourages media service suppliers to prepare codes of conduct concerning inappropriate commercial audiovisual communications that accompany programs for children or that include, for food or drinks that contain nutritional substances or substances with a nutritional or physiological effect, in particularly those like fats, trans fatty acids, sugars, sodium or salt, the excessive consumption of which is not recommended in the general diet.

3. The provisions of this article also apply to the radiobroadcasters and the services they provide)).

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Section IV

((Advertising, sponsorship and product placement provisions))

Art. 39

(Provisions on Audiovisual and Radiobroadcasting Services and Sponsorships).))

((1. The audiovisual media services or sponsored programs must meet the following criteria:

a) the contents and, in case of radiobroadcast transmissions, the programming for a sponsored transmission, cannot in any case be influenced by the sponsor so has the impact the responsibility and editorial autonomy of the audiovisual media service suppliers or public agents for the transmissions;

b) must be clearly recognized as sponsored programs and indicate the name or logo of the sponsor at the start or end of the program;

c) must not encourage the purchase or rental of sponsor or third party products or services, particularly with specific promotional references to these products or services.

2. Audiovisual media services or program cannot be sponsored by individuals or corporations whose main activity is the production or sale of cigarettes or other tobacco products or the product or sale of liquors.
3. The sponsorship of audiovisual media services or programs by the companies whose activity includes the production or sale of drugs or medical products can involve the promotion of the company's name or image but cannot promote specific drugs or medical treatments that can be obtained by prescription only.
4. The sponsorship of similar local broadcasters can be done through acoustic and visual signals transmitted during program breaks including the name and brand of the sponsor in all forms allowed by Directive 89/552/EEC, as amended.
5. The sponsorship of televised news programs, radio news programs and political news is not allowed.
6. It is prohibited to show the logo of a sponsor during programs for children, documentaries and religious programs.
7. The provisions of this article also apply to radiobroadcasters and their services)).

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Art. 40b

((Product Placement.))

((1. Product placement is allowed in movies, films, and series produced for the audiovisual media

services, sports programs and light entertainment programs, excluding programs from children. The placement may occur for a monetary payment or free of charge for specific goods and services, such as those that aid in production and awards, given their inclusion within a program.

2. The programs for which the products are placed must meet the following requirements:

a) their content and, in the case of televised transmission, their programming must not in any case be influenced so as to compromise the editorial responsibility and autonomy of the media services supplier;

b) they may not directly encourage the purchase or lease of goods or services, making specific promotional references to these goods or services in particular;

c) they may not give undue importance to the products in question.

3. If the program where the products are included is produced or commissioned by the audiovisual media services supplier or a company that it controls, the views must be clearly informed about the product placement through notices at the beginning and end of the transmission as well as when it resumes after a commercial break.

4. Product placements for tobacco and cigarettes are prohibited as well as products from companies whose main activity is the production or sale of tobacco-based products. It is also prohibited to place drugs or medical treatments that are prescription only.

5. The manufacturers, broadcasters, including analog broadcasters, advertising agents and other interested parties adopt, with self-regulation procedures, the

provision to apply the principles listed in the sections above. The self-regulation procedures are reported to the Authority, which verifies their implementation)).

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Art. 51

Fines Imposed by the Authorities

1. The Authority applies fines for the violation of the programming, advertising and radio broadcasting contents based on the procedures set forth with its regulation and, in particular, those set forth by:

- a) the provisions on issuing permits for private televised broadcasting on terrestrial frequencies adopted by the Authority with its regulation, including commitments on programming made at the request of the agent;
 - b) the regulation on terrestrial broadcasting using digital technology, approved with the resolution of the Authority no. 435.1.CONS regarding the content suppliers;
 - c) the provisions on audiovisual commercial communications, televised and radio broadcasting advertisements, sponsorships, infomercials and product placement as per Articles 36b, 37, 38, 39, 40 and 40b, the decree of the Ministry of the Post Office and Telecommunications no. 581 of December 9, 1993 and the regulations of the Authority;
 - d) Article 20, sections 4 and 5 of Law no. 223 of August 6, 1990 as well as the regulations of the Authority on recording programs;
 - e) the provision on the breach of the obligation to send public communication messages as per Article 33;
 - f) interactive audiotext and videotext broadcasting services as per Article 1, section 26 of Law no. 650 of December 23, 1996;
 - g) on the production of European and independent audiovisual production, Article 44 and the Authority's regulations;
 - h) on the right to make corrections in case of missing, incomplete or late observance of this obligation as per Article 32b;
 - i) on the bans as per Article 32, section 2;
 - j) on the obligation to transmit the same program throughout Italy for which the permit was issued, notwithstanding the derogation as per Article 5, section 1, letter i);
 - k) the provisions as per Article 29;
 - l) the Authority's information obligation for, among other things, accounting and non-accounting data, as per Article 1, section 28 of Law no. 650 of December 23, 1996 and the Authority's regulations;
 - m) the provisions on advertising for the administrations and public agencies as per Article 41.
2. The Authority, by applying the regulations contained in section I, parts I and II of Law no. 689 of November 24, 1981, as amended, deliberates on the application of administrative fines for the payment of:
- a) between €10,329-€258,228 in case of the breach of the provisions of section 1, letters a), b) and c);

- b) between €5,165-€51,646 in case of the breach of the provisions of section 1, letters d) and e);
 - c) between €25,823-€258,228 in case of the breach of the provisions of section 1, letter f);
 - d) between €10,329-€258,228 in case of the breach of the provisions of section 1, letter g);
 - e) between €5,165-€51,646 in case of the breach of the provisions of section 1, letters h), i), l), m) and n);
 - f) between €5,165-€51,646 in case of the breach of the provisions of section 1, letter o), including in the case where the advertising of the administrations and public agencies is managed by advertising agencies or media centers.
- 2b. For the administrative finds set forth in section 2, the reduction of the payment benefit is excluded as per Art. 16 of Law no. 689 of November 24, 1981, as amended.
3. SECTION ABROGATED BY LEGISLATIVE DECREE No. 59 OF APRIL 8, 2008, AMENDED BY LAW No. 101 of JUNE 6, 2008.
4. In case of the most serious violations of letters h), i) and l) of section 1, the Authority also provides, for the analog broadcaster or radiobroadcaster, for the suspension of the activity for 1-10 days.
5. While awaiting the Government to enact one or more regulations against the audio or televised broadcasters locally, the fines set forth in sections 1 and 2 are decreased by a tenth and those set forth in Article 35, section 2 are reduced by a fifth.
- ((5b) The reduction by a tenth as set forth in section 5 of this article also applies to the sanctions imposed on the local broadcaster pursuant to Article 1, section 31 of Law no. 249 of July 31, 1997, Article 97 and 98 of Legislative Decree no. 259 of August 1, 2003, as amended, Article 5, section 8 of Legislative Decree no. 9 of January 9, 2008 as well as pursuant to Article 1, sections 10, 11 and 12 of Law no. 220 of December 13, 2010, as amended.))
6. The Authority applies sanctions for the violations of the regulations set forth in this consolidated text on minors pursuant to Art. 35.
7. The Authority also has jurisdiction to apply sanctions to the dominant positions set forth in article 43 as well as Article 1, sections 29, 30 and 31 of Law no. 249 of July 31, 1997.
8. The Authority verifies the completion of the tasks assigned by the general broadcasting public service agent and, in case of violations, applies sanctions based on that set forth in Article 48.
9. If the violation is particularly serious or recurring, the Authority may suspend the business of the broadcaster, including analog broadcasters or radiobroadcasters, for a period of no more than six months or, in case of serious breaches of the orders and notices from the Authority, the revocation of the permits or authorizations.
10. The sums paid as administrative finds for the violations set forth in this article are paid as part of the revenue of the State.

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Art. 56

Entry into Effect

1. This consolidated text goes into effect the day after its publication of the Official Gazette of the Italian Republic.

Part of the provision is in graphic format.

This decree, bearing the seal of the State, will be included in the Official Registry of regulatory acts of the Italian Republic. Everyone is required to observe it and ensure its observance.

Done in Rome on July 31, 2005

CIAMPI

Berlusconi, Prime Minister

Landolfi, Secretary of Communications

La Malfa, Ministry of EU Policies

Castelli, Attorney General

Siniscalco, Secretary of the Economy and Finance

La Loggio, Secretary for Regional Affairs

Approval, the Attorney General: Castelli