

**G-Regs™**

## Spain – General Law on Audiovisual Communication



**Full title:** General Law on Audiovisual Communication 7/2010 of 31<sup>st</sup> March ("BOE" No. 79 of 01/04/2010). Entered into force: 01/05/2010.

This law implements Directive 2007/65/EC (AVMS Directive – codified by 2010/13/EC) of 11 December 2007 amending Council Directive 89/552/EEC (TWF Directive) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

**Relevant Amendments:**

- Organic Law 4/2011 of 11<sup>th</sup> March – Disposal 3 amends Art 18 para 6.  
[http://boe.es/diario\\_boe/txt.php?id=BOE-A-2011-4551](http://boe.es/diario_boe/txt.php?id=BOE-A-2011-4551)
- Law 6/2012 of 1 August 2012 amending General Law 7/2010 of 31 March 2010 on Audiovisual Communications concerning the flexible management of regional public service audiovisual communications. ("BOE" núm. 184, de 2 de agosto de 2012, páginas 55139 a 55143)

Art 1 amends Art 7 (paras 2 and 5) of Law 7/2010: Rights of the minor

[http://boe.es/diario\\_boe/txt.php?id=BOE-A-2012-10385](http://boe.es/diario_boe/txt.php?id=BOE-A-2012-10385)

- General Law 9/2014 of 9 May, on Telecommunications ("BOE" no 114, of 10/05/2014). Entry into force: 11/05/2014

Amended Art 17.1 (2<sup>nd</sup> para) – Product Placement

[http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-4950](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-4950)

**Title of relevant sections:****Title I: General Provisions**

Article 2: Definitions

**Title II – Basic Rules for Audiovisual Media**

Article 7: Rights of the minor

**Chapter II (Rights of the Audiovisual Media Services Provider); Section 2 (Right to produce commercial communications).**

**URL of source:**

Consolidated Legislation: <http://boe.es/buscar/act.php?id=BOE-A-2010-5292>

Unofficial English Translation: Gen Law on AV Communication 7/2010 and Amendment - Law 6/2012

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Article 13 - Right to create commercial communication and programmes channels or self-promotion announcements

Article 14 - Right to broadcast advertising messages.

Article 15 - Right to broadcast teleshopping.

Article 16 – Right to sponsorship

Article 17 – Right to product placement

Article 18 - Commercial communications prohibited in any form.

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## TITLE I – GENERAL PROVISIONS

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### Article 2

#### Definitions

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### Article 2.2

#### Audiovisual Media Services

Audiovisual media services are services under the editorial responsibility of a service provider, the principal purpose of which is to provide programmes and content through electronic networks and communications in order to inform, entertain, or educate the general public, as well as to broadcast commercial communication.

The following are categories of audiovisual media services:

- a) Television audiovisual media service, which allows the simultaneous viewing of programmes on the basis of a programme schedule.
  - b) On-demand television audiovisual media service, which allows the viewing of programmes and content at the moment chosen by the viewer and at his individual request on the basis of a catalogue of programmes selected by the media services provider.
  - c) Television audiovisual media service, or “mobile television”, which allows the viewing of programmes and content on a mobile device.
  - d) Radio audiovisual media service, which allows the simultaneous listening of programmes and content on the basis of a programme schedule.
  - e) On-demand radio audiovisual media services, which allows the listening of programmes and content at the moment chosen by the viewer, and at his individual request on the basis of a catalogue of programmes selected by the media service provider.
  - f) Radio audiovisual media service, or “mobile radio”, which allows the listening to of programmes and content on a mobile device.
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### Article 2.24

#### Audiovisual commercial communication

Sounds or images designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such sounds or images

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accompany a programme or are included in the programme in return for consideration paid to the service provider.

In any case, the following are forms of audiovisual commercial communication: television or radio advertising spots, sponsorship, teleshopping and product placements.

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**Article 2.25****Advertising spot**

Any form of announcement by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations.

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**Article 2.26****Teleshopping**

Direct offers to the public through television audiovisual media with a view to the supply of goods or services, including immovable property, rights and obligations

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**Article 2.29****Sponsorship**

Any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products.

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**Article 2.31****Product placement**

Any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme

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**TITLE II – BASIC RULES FOR AUDIOVISUAL MEDIA**

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**Article 7****Rights of the minor**

1. Minors have the right not to have their image or voice used in audiovisual media services without their consent or the consent of their legal representative, in accordance with current regulations.

It is prohibited under any circumstances to broadcast the name, image or other data identifying minors in a criminal context, or for broadcasts to dispute their custody or paternity.

2. The broadcast of audiovisual content that might seriously impair the physical, mental or moral development of minors and in particular of programmes that show scenes of pornography, maltreatment or general or gratuitous violence is prohibited.

Other content that might impair the physical, mental or moral development of minors may be broadcast free to air only between the hours of 22:00 and 06:00 and shall in all

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cases be preceded by an acoustic and optical warning in accordance with the criteria set by the relevant audiovisual authority. Optical indicators shall remain visible throughout all programmes containing such content. Where such content is broadcast using a filtering system, audiovisual communications providers shall include parental controls.

Three periods requiring extra protection shall be introduced, applying Spanish peninsular time:

08:00 to 09:00 and 17:00 to 20:00 on working days and 09:00 to 12:00 on Saturdays, Sundays and public holidays. Content recommended for a public that is over 13 years of age must be broadcast outside these periods and programmes that include such content must at all times display an optical symbol indicating the age restriction.

Saturday and Sunday protected viewing periods shall also apply on the following days: 1 and 6 January, Good Friday, 1 May, 12 October, 1 November and 6, 8 and 25 December.

All providers of television audiovisual communication services, including on-demand services, shall classify content by viewing age and use a digital code to enable exercise of parental controls. The coding system used must be approved by the audiovisual authority.

Programmes dedicated to games of chance and betting may be broadcast only between the hours of 01:00 and 05:00. Programmes with esoteric and/or alternative science content may be broadcast only between the hours of 22:00 and 07:00. In all cases, audiovisual communications providers shall have vicarious liability for any fraud committed through such programmes.

The above viewing restriction shall not apply to the results or draws of lotteries organised for public causes.

During time slots in which minors are protected, audiovisual communications providers may not show commercial communications that promote/ encourage the cult of the body (physical appearance/ body worship) and have a negative impact on self-image (such as slimming products, plastic surgery or beauty treatments) which are based on ideas of social rejection as a result of one's physical image/ condition or suggest that success is based on weight or attractiveness (looks/aesthetics).

3. Commercial communications should not cause physical or moral detriment to minors. They are therefore subject to the following limitations:

- a) They shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity.
  - b) They shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised.
  - c) They shall not exploit the special trust minors place in parents, teachers or other persons.
  - d) They shall not unreasonably show minors in dangerous situations.
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e) They shall not encourage behaviour that promotes inequality between men and women.

f) Commercial communications for products specifically aimed at minors, such as toys, shall not mislead the viewer with regards to the product's characteristics, safety, or the ability and skills needed for the minor to use the product without harming themselves or others.

4. The competent audiovisual authority shall encourage codes of conduct between television audiovisual media service providers regarding inappropriate audiovisual commercial communications accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

5. Where audiovisual communications are provided under a programme schedule, providers shall produce separate schedules for programmes whose content might seriously impair the physical, mental or moral development of minors. For this purpose, providers shall produce effective, updatable and easy-to-use systems, programmes or methods that allow the use of parental controls to block content that is harmful to minors and to prevent minors accessing content not intended for them.

6. All audiovisual products distributed through television audiovisual media services must have an age rating, in accordance with the rating guidelines issued by the State Council of Audiovisual Media. The rating must be approved by the Self-Regulation Code for Television Content and Children.

The monitoring, control and sanction of the proper classification of programmes by the television audiovisual media service providers corresponds to the competent audiovisual authority.

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## Chapter II

### CHAPTER II (RIGHTS OF THE AUDIOVISUAL MEDIA SERVICES PROVIDER); SECTION 2 (RIGHT TO PRODUCE COMMERCIAL COMMUNICATIONS)

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#### Article 13

#### **Right to create commercial communication and programmes channels or self-promotion announcements.**

1. Private audiovisual media service providers are entitled to create channels exclusively dedicated to the broadcast of advertising and teleshopping spots. These spots are subject to the general provisions of this section, except with regards to the time limitations for advertising spots referred to in Article 14, and to the specific regulations on advertising.

Television advertising and teleshopping must be easily identifiable as such and distinct from editorial content.

2. Audiovisual media service providers are entitled to broadcast programmes which provide information on their programming or announcements of their own programmes and the ancillary products directly derived from those programmes.

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These programmes and announcements shall not be deemed commercial communication for the purposes of this Act. For television audiovisual media, however, the time dedicated to advertising spots on their own programmes and products shall not exceed 5 minutes per clock hour, and its content shall be subject to the general obligations and prohibitions set forth for commercial advertising.

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#### Article 14

##### **Right to broadcast advertising messages.**

1. Audiovisual media service providers, whether television, radio, or interactive, are entitled to broadcast advertising spots.

Television audiovisual media service providers may exercise this right by broadcasting 12 minutes of advertising spots every clock hour. Radio, related and interactive services are entitled to broadcast advertising spots freely.

Only advertising and teleshopping spots shall be taken to account for the calculation of those 12 minutes, with the exclusion of sponsorship and product placement. Telepromotion shall also be excluded where the individual telepromotion spot has a duration clearly greater than that of an advertising spot and the telepromotions do not exceed 36 minutes per day in total, nor do they exceed 3 minutes per clock hour.

2. Both television advertising spots and teleshopping must be kept quite distinct from programmes by visual and acoustic means and according to the general criteria established by the competent audiovisual authority. The sound level of these advertising spots must not be above the average sound level of the preceding programme.

3. The broadcast of infomercials, telepromotions and, in general, forms of advertising other than television spots which by virtue of their broadcasting characteristics might mislead the viewer about their nature as advertisements, must contain throughout and in a clearly legible form a transparency marked "advertisement" (Publicidad).

4. Television advertising spots must respect the integrity of the programme into which they are inserted and of the units that comprise them.

The transmission of films for television (with the exclusion of series, serials and documentaries), feature-length films and television news programmes may be interrupted once for each scheduled period of thirty minutes. Children's programmes may be interrupted once for each uninterrupted scheduled period of thirty minutes, if the programme is longer than thirty minutes.

The transmission of television sports events may only be interrupted by isolated advertising spots during a pause in the event. Advertising spots may be inserted into these transmissions, whether or not they are made up of autonomous parts<sup>1</sup>, provided the

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<sup>1</sup> G-Regs note: meaning irrespective of whether the sporting event itself is made up of separate parts – such as football games which have two halves – thus providing a natural break for an advert.

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course of the event may still be followed. No television advertising or teleshopping shall be inserted during religious services.

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**Article 15****Right to broadcast teleshopping.**

1. Audiovisual media service providers are entitled to broadcast teleshopping spots. The television broadcast of these spots should follow the terms provided in the previous article and in the specific regulations on advertising.
  2. Audiovisual media service providers are entitled to broadcast teleshopping programmes, provided they have a minimum uninterrupted duration of 15 minutes.
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**Article 16****Right to sponsorship**

1. Audiovisual media service providers are entitled to have their programmes sponsored, with the exception of current events programmes.
  2. The public shall be clearly informed of sponsorship at the beginning or at the end of a programme, or when the programme resumes after a break, by the name, logo or any other symbol, product or service of the sponsor.
  3. Sponsorship shall not condition editorial independence. Nor shall it directly exhort the purchase or rental of goods or services, particularly through the use of special promotional references to the above. In addition, the content of the sponsored programme or audiovisual media and their broadcasting schedule shall not be influenced by sponsorship in such a way as to affect the responsibility of the audiovisual media service provider.
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**Article 17****Right to Product Placement**

1. Audiovisual media service providers are entitled to include product placement in the broadcast of feature-length films, short films, documentaries, films and series for television, sports programmes and light entertainment programmes. In cases where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme, it will only constitute product placement and therefore be permitted, as long as those goods and services have significant value.
  2. When the programme has been produced or commissioned by the service provider or one of their subsidiaries, the public must be clearly informed of the product placement at the beginning and end of the programme, and when the programme resumes after an advertising break.
  3. The placement shall not condition editorial independence. Nor shall it directly encourage the purchase or rental of goods or services, make special promotions of the above, or give undue prominence to the product.
  4. Product placement in children's programmes is prohibited.
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**Article 18****Commercial communications prohibited in any form**

1. In addition to the provisions of the General Advertising Act 34/1988 of 11 November, regarding illegal advertising, any commercial communication that violates human dignity or fosters discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation is prohibited. Any advertising that uses a degrading or discriminatory image of women is also prohibited.

2. Surreptitious commercial communication and commercial communication using subliminal techniques are prohibited.

3. Commercial communication that encourages behaviour prejudicial to health is prohibited.

The following are prohibited under any circumstances:

a) The commercial communication of cigarettes and other tobacco products, as well as the undertakings that produce them.

b) The commercial communication of medicinal products and healthcare products which contravenes the provisions of Article 78(1) and (5), Act 29/2006 of 26 July, on Guarantees and Rational Use of Medicines and Healthcare Products.

c) Television commercial communication of alcoholic beverages with an alcohol content above 20% ABV.

d) Television commercial communication of alcoholic beverages with an alcohol content below 20% ABV broadcast outside the time frame of 20:30 to 6:00 the following day, unless the advertisement is inseparable from the acquisition of rights and the production of the signal to be broadcast.

e) Commercial communication of alcoholic beverages with an alcohol content below 20% ABV which is aimed at minors, or encourages excessive (immoderate) consumption, or associates consumption with improved physical performance, health, or social success.

4. Commercial communication that encourages behaviour prejudicial to the environment is prohibited.

5. Commercial communication that encourages behaviour prejudicial to people's safety is prohibited.

6. Televised commercial communication of a political nature is prohibited, except in the circumstances envisaged by the Organic Law 5/1985 of 19 June on the General Electoral System.

7. Audiovisual commercial communication is subject to the prohibitions set forth in the remainder of the regulations on advertising.

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