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**Portugal \***

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\*SOUSA, H. (1999) "Portugal" in Legal Guide to Audiovisual Media in Europe, Recent Developments in Broadcasting, Film, Telecommunications and the Global Information Society in Europe and Neighbouring States, Estrasburgo, Observatório Europeu do Audiovisual

## Resumo

Este capítulo apresenta as principais transformações legais e reguladoras que ocorreram em Portugal durante o ano de 1988 na área da televisão, cinema, telecomunicações e Sociedade da Informação.

## Palavras-chave

Portugal, Legislação, Regulação, Televisão, Cinema, Telecomunicações, Sociedade da Informação

## Portugal

Member of the European Union

10 million inhabitants

## Broadcasting

It might be considered that 1998 was the most important year in the Portuguese broadcasting arena since the Public Service Television Broadcasting monopoly was broken up in 1992. A new television Act was passed (Law 31-A/98 of 14th of July), revoking Law 60/79 of 18th of September and Law 58/90 of 7th of September. The new television introduced changes in both the access to and exercise of the television activity. For the first time, the possibility of creating local, regional and thematic channels was consecrated by law 31-A/98.

Up until Law 31-A/98 was approved, the Portuguese television broadcasting system included two public national channels (RTP1 and RTP2)<sup>i</sup>, two private national channels (*Sociedade Independente de Comunicação*, SIC, and *Televisão Independente*, TVI), two public regional channels (RTP-Açores and RTP-Madeira), and two public international channels (RTP África and RTP Internacional). Cable television and satellite television reception were well established realities but companies were not allowed to produce their own programmes. Only third party transmissions were legally possible.

Though the new television law demands for detailed regulation in areas such as regional television, it has already opened up the thematic channels' flood gate. Terrestrial television companies are associating themselves with cable operators and international content producers in order to guarantee their places in the new broadcasting scenario. SIC, for example, has associated itself with the Brazilian network *TV Globo* and the biggest national cable operator, *TV Cabo*, in order to develop the *Premium TV* project. *Premium TV* is offering two codified movie channels (Telecine1 and Telecine2) since June 1998. RTP has, in February 1998, signed a contract with *TV Cabo*, and with a company with multiple interests in sports, *Olivedesportos*. This consortium is operating, since September 1998, a codified Sports channel, *Sport TV*. Other thematic and local/regional channels opportunities are being studied to start broadcasting in 1999.

The proliferation of television channels does not necessarily mean that Portugal has a booming television advertising market. Indeed, since the opening up of television to private initiative, broadcasting companies have had important financial losses, and -

although annual financial reports have not yet been published - it is widely believed that 1998 was not substantially different from previous years. Indeed, apart from SIC which has had a solid leadership since its early days, terrestrial broadcasting companies have had highly unstable management throughout 1998 mainly due to the lack of advertising revenues and debt accumulation.

Besides transforming the market structure, the new television law also introduced changes in terms of television content regulation, in order to implement the modified EU 'Television without Frontiers' Directive (Directive 97/36/EC amending Directive 89/552/EEC). Regarding programming and information, and despite general assumptions about freedom of expression and freedom of thought, article 21 of Law 31-A/98 states that:

1. No transmission which violates rights, liberties and fundamental guarantees, which constitutes a threat to human dignity or might incite crime is allowed.
2. Programmes that might have a negative impact in the development of children and young people's personality or in vulnerable elements of the public, namely through the exhibition of violent or shocking images, should be preceded by warnings and should be transmitted with an adequate symbol after 10pm.
3. Violent images might, however, be broadcast in news programmes if considered relevant in journalistic terms. Still, they have to abide by journalistic ethical norms, and viewers should be warned of its particular nature.
4. The broadcasting of films which have been previously classified for cinema or video distribution should be preceded by a reference to the classification that it has been attributed by the official classification commission. Furthermore, when a film is classified for 16-year-olds or more, it should be preceded by oral warnings, and should be transmitted with an adequate symbol, only after 10pm.
5. For the present diploma, the concept of transmission includes all aspects of programming, namely advertising and promotional spots.

Apart from the new television law, in 1998, the government has also been with concerned digital television. Although terrestrial digital television is not expected to be introduced before 2001, the prime minister has announced, on August 1998, that it would be introduced 'as soon as possible' (press release, [www.secs.pt](http://www.secs.pt)). As a result, the *Instituto da Comunicação Social* (Media Institute, known as ICP) and the *Instituto das Comunicações Portugal* (Portuguese Communications Institute) co-ordinated a public consultation process on Digital Video Broadcasting - Terrestrial (DVB-T) from August up until October 1998.

## Film

On October 1998, the Council of Ministers has approved the 'Cinema, Audiovisual and Multimedia' law. The law-decree 15/99(A) regulates the state's support to cinema production and intends to stimulate the development of a national content industry.

Though Portugal has a very limited audio-visual production, there is a long tradition of a highly conflictual relationship between producers/directors and the state due to lack of transparency in the attribution of subsidies. Apart from films, the new cinema law is also concerned with growth and quality of audio-visual products such as series and documentaries.

In terms of content regulation in protecting young viewers from violence and pornography, no relevant changes were introduced in 1998. The *Comissão de Classificação de Espectáculos*, a Culture Ministry agency, is the official entity that proceeds to the analysis and rating of films. The *Comissão de Classificação de Espectáculos* is regulated by the Law-decree 106-B/92 of the 1st of June. This piece of legislation attributes to the Commission deliberative power in terms of age and quality rating of films. The *Comissão de Classificação de Espectáculos* is organised in sections: i) age rating; ii) quality rating; iii) pornographic and non-pornographic rating. There is also an appeals sub-commission that analysis and enacts over the submitted appeals and may alter or maintain the previously attributed rating. In addition to the classification of films, it is also the Commission's function to produce recommendations on proposed legislation in this field.

## Telecommunications

The Law-decree 381-A/97 of the 30th of December 1997<sup>ii</sup> came into effect in January 1998. This law-decree established the new telecommunications access regime for the activity of a public telecommunications networks operator and provider of public telecommunications services, and aimed at simplifying the access to the telecommunications market. From then on, a number of telecommunications services no longer require authorization from the telecommunications regulator (*Instituto de Comunicações de Portugal*). Apart from fixed telephony, public networks and services implying the attribution of frequencies, all other telecommunications services have to be registered at ICP, but not authorized by the regulator. The 'freedom of establishment' principle aims at reducing bureaucracy and allow for an easier entrance of new actors into the market.

The Law-decree 381-A/97 is in itself a transposition of EU regulation to the national legislative body, namely directives 96/2/EC (mobile and personal communications), 96/19/EC (introduction of full competition in the telecommunications market), and 97/13/EC (common framework for authorizations and licenses in terms of access to the telecommunications market).

In September 1998, the third mobile phone operator entered the market. *Optimus*, a *Sonae* group<sup>iii</sup> project, shook the market and forced the other two operators (*Telecomunicações Móveis*, TMN and *Telecel*) to reduce tariffs. Due to an aggressive pricing policy, right before starting operating, *Optimus* already had half a million so-called 'pre-adherents', i.e., people who have put in writing their intention to become an *Optimus* client. Despite substantial investments (expected to be between 350 million Euros and 500 million Euros in the first three years), the *Sonae* holding is predicting *Optimus* to break-even by 2001.

Just like in most countries, telecommunications in Portugal is a highly profitable business in Portugal. Both *Telecel* and TMN had a good financial year. *Telecel's* stocks

were particularly highly rated during 1998, and TMN's provisional results are around 100 million Euros net profit, an increase of 80,3% when comparing with 1997. *Portugal Telecom*, the Portuguese main telecoms operator, revealed in March 1998 that its net profit for the previous year had reached 350 million Euros. That means that profits have increased 27,6% comparing with 1996.

## Information Society

In 1997, the Portuguese government published the Information Society Green Paper, an attempt to develop and implement policies within the 'Information Society' framework. In the aftermath of this green paper, a number of political measures were introduced and implemented in 1998. The National Science, Technology and Society Network, is being set up. This scientific network plans to bring together national researchers and to stimulate and consolidate R&D. The *Ministério da Ciência e da Tecnologia* (Science Ministry) is also making an effort to introduce the Internet in every school of the country (from the 5th to the 12th grade), universities, libraries, and research centres. 'Computers for all' is another project being developed. The 'Computer for all' project has the objective of increasing the number and usage of Internet connected computers at home. In addition, a considerable number of small-scale initiatives, such as the creation of telework centres, are under way.

Around 20% of the population has access to the Internet, though only 10,6% use the Internet regularly ([www.mediaplanning.pt/sabia/estudoint6](http://www.mediaplanning.pt/sabia/estudoint6)),. The Internet is mostly used at school, then at work and thirdly at home. Internet is most relevant in the education sector (amongst academics and students) and in the service sector (eg., banking, insurance, advertising and travel agencies).

As on-line services are a relatively recent reality, no specific content legislation has yet been developed. However, this does not mean that no legal means exist to punish crimes committed on electronic services. Indeed the Constitution, the Penal Law and the Civil Law contemplate a great number of issues which are relevant to on-line material and this legislation might be used to prosecute 'on-line' crimes. If crimes are directly linked with individuals (such as injury, defamation, etc.), the individuals themselves have to press charges. If crimes are committed against humanity (e.g. incitement to commit crime, racist behaviour, pornography, pedophilic content), the State prosecutor might take the case to court. However, the existing legal potential has never been used to press charges against 'on-line' crimes.

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<sup>i</sup> RTP stands for *Rádiodifusão Portuguesa*

<sup>ii</sup> This law-decree is known as the 'licencing law'.

<sup>iii</sup> Sonae is one of the biggest Portuguese economic groups.