

Government Affairs Update, Oct 2010

By Marcel Avargues, Executive Director ERA Europe

Audiovisual Media Services directive implementation

Media access and the protection of our industry from unfair consideration has now moved from the good principles we were able to include in the Directive in 2005, to national implementation level, and this is still mostly in progress with the exception of major markets.

The Government Affairs Committee, Chaired by **Julian Oberndoerfer** (HSE, Germany) and **Mike Wells** (Dolphin Television Ltd, UK) has fostered an implementation monitoring process, which you have been informed about and is being nurtured by members.

I can only reiterate my call to all of you, to involve your legal and institutional relations executives, and alert us if you see a situation which will negatively impact your access to audiovisual media or unfairly restrict it.

As part of this national monitoring, it is essential for us to keep an eye on what type of activities are labelled Teleshopping.

Some national initiatives could lead to an unwanted regrouping or re-classification of our industry, leading to a negative regulatory evolution in your market... This is why your input here is absolutely essential.

As a collateral association mission, initiatives are underway in the UK and Germany to make sure that members of ERA EUROPE, who have made Self Regulation a key part of their business model, are recognized by all national stakeholders as being different from companies which exclude themselves from this industry positioning.

You will easily understand that the two efforts are linked. We have made considerable progress in the protection of the DRTV and Television Shopping Industry by demonstrating when appropriate, that you, the ERA EUROPE Constituency members are actively cooperating in making this industry more "consumer sensitive".

Consumer Protection Issues

The ERA EUROPE leadership has to take into consideration that Electronic Retailers are now, in a growing majority, Multichannel retailers, albeit with a specific profile: the usage of audiovisual content - originally exclusively on TV - to sell products direct-to-consumer. Some of the key issues and their related legislative projects could create heavy and costly demands on you as multichannel direct marketers.

All the work carried out, month after month in Brussels, is with the aim of ensuring our industry-specific profile is recognized as such, forming a strong voice in the cooperative efforts conducted by groups or consortiums of associations; representing industries impacted by the same Consumer Protection legislative projects and, albeit in different contexts.

The three current areas of concern

1) Distance Selling Directive

This piece of legislation was moving slowly until Mrs Viviane Reding, the Justice Commissioner, now in charge, got her staff and team organized earlier this year. Her first action was to revise, rather drastically for the harmonization objectives, the legacy draft left by Mrs Kuneva, before passing it to the Parliament.

The IMCO (Internal Market & Consumer protection) Committee is finalizing a sequence of hearings and consultations. ERA EUROPE has participated in most of these, in coordination with EMOTA, FEDMA and the Distance Selling Federation.

A final reading by retailers on the Board and ERA EUROPE members directly impacted has been launched and ERA EUROPE will produce a short list of comments and recommendations, specifically on those points and issues relevant to our industry.

The high level issue of maximum harmonization of Consumer Protection provisions in the directive, can positively impact those of you operating in different markets. It should have a minimal impact on the industry at large.

We need, however, to closely monitor the details of the articles, in order to detect potentially unclear definitions or provisions, nests of potential troubles, when the revised directive will be implemented by member states.

2) Data Protection

Commissioner Reding's office has already drafted a preliminary version of the Commission Communication on the review of the Data Protection directive, which they intend to publish at the end of October.

Mrs Reding shows a visible "intensity" on this matter, having pin-pointed it as one of the key banners for her mission as Commissioner. ERA EUROPE belongs to the group, led by FEDMA, that is currently dialoguing to ensure the constraints and unique elements of Direct-to-Consumer / Direct Marketing operators are fully understood by this new team.

We have received this week the confidential preliminary versions of these documents and are now cooperating with FEDMA in the gathering of case studies to demonstrate the impact that some of the more questionable principles and proposals may have; and so that we can react accordingly, through our good relationships with members of Mrs Reding's directorates such as Giuseppe Abbamonte, who will contribute to the success of these collective efforts.

This will be an on-going process over the forthcoming months. ERA EUROPE is also seeking additional help (in cooperation with the Government Affairs group within ERA USA) in Brussels, in order to build, nurture and promote our appropriate positions when required.

3) On-Line-Behavioural Marketing / Advertising

Under this description (most probably created by "consumer advocacy" leaders in the US and adopted by the European institutions), all "Consumer Interest based" marketing strategies and models are regrouped, and subject to a flurry of initiatives and discussions in Brussels, at the Commission, in the European Council and in the Parliament, but also by representative organizations.

If you sell through the Internet - whether marginally or as a core part of your business model - you are exposed to the possible legislative consequences of these debates, because you use, now routinely, as the simplest example, such elements as

cookies, to track and communicate with customers and prospects online.

At this stage, **Mrs Kroels (DG information Society)** and **Mrs Reding (DG Justice)** are both closely involved, though Mrs Kroels appears to covet the final leadership. A cross-industry grouping has been discussing a broad initiative to cover all forms of interest-based-advertising, and not only online behavioural advertising carried out by third-party ad networks.

Accelerated efforts are in progress to gain political support for a self-regulatory approach, and to influence the upcoming "guidance document" part of the Telecoms Package to be issued, on these matters, by the Commission to the national Governments.

ERA EUROPE is now joining this industry-wide representative organisations group, in coordination with FEDMA and EASA, with specific collaboration between the US and ERA, since these issues are clearly "Cross Atlantic" ones.

Conclusion

I would like to conclude this update on a light note, since many of you are back from an intensive D2C Convention in Las Vegas; a very successful and "upbeat" meeting in Vegas.

Government Affairs, especially European ones, are not as fun and sexy as "Business Networking" facilitation, but the ERA EUROPE leadership and myself are striving to ensure that the long-term context in which you will operate with your Star Products and Offers in the future, will continue to be protected from inadequate, inappropriate or unnecessary legislations.

We will continue to do this through constructive relations with our industry stakeholders, in Brussels and when appropriate, in your respective markets.