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FSE DOCUMENTATION

FSE ACTION PLAN

on the

AUDIO-VISUAL MEDIA SERVICES DIRECTIVE

(2007/65/EC)

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Fédération des Scénaristes d'Europe // Federation of Scriptwriters in Europe

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Disclaimer

The information given in this booklet is only intended to advise and give general guidance. The information cannot be construed as specific advice and guidance and the authors of this booklet cannot accept any responsibility for any loss that may arise from reliance on information, advice and guidance made available in this booklet. No guarantee is given as to the accuracy and completeness of the information contained in these pages.

The FSE Board advises that member guilds should first examine the Audio-visual Media Service Directive and then consult your members to decide which topics to raise with your government before contacting your government representatives.

INTRODUCTION

The purpose of this booklet is to give guidance to member guilds on how to approach their governments regarding the implementation of the Audio-visual Media Services Directive for the maximum benefit to screenwriters and to the audio-visual sector in each country.

The Audio-visual Media Service Directive will become law by the end of the year. Each member state will have two years to transpose the law to its audio-visual and media service sector. Since the vote in the parliament on 13 December 2006, the law has been changed in some aspects for the better, in some aspects for the worse. It is vague and highly condensed, leaving out certain articles and definitions that existed in previous versions. It is now up to the member guilds to approach their own governments and to insist that the directive be enforced at the highest standard. Guilds should consider writing to government regulators and even to ministers and demand meetings with top officials to insist that the law be implemented at the highest level.

There is a list of contacts of the officials in each FSE member country to whom you can contact. The names given are officials who have been themselves consulted by the European Commission and have attended meetings in Brussels to discuss the Directive. The exceptions are the names from Portugal and Bulgaria.

Obviously each guild has its own specific priorities, for example not every guild has a position on product placement. However, it is advisable that every guild considers highlighting specific recitals and articles in the law which should be clearly interpreted and enforced at the highest standard. The more information is given out about the directive in advance and discussions take place, the more chances each country has of having the highest standards of European television – public and private – applied. Below is a list of suggestions and recommendations that you can use to enhance your arguments.

Recital and Articles of the Directive

The Directive is divided into “recitals” and “articles”. **Recitals** refer to the aims and objective of the law – for example the law aims to facilitate cultural creation and linguistic diversity. They refer to the sector to which the law is to apply. Recitals also refer to other laws, specifically articles in the Treaty on the European Union, to international treaties and to the UNESCO convention. They also refer to the limits of the law. **Articles** are the rules. They indicate definitions, what is to be enforced and how it should be enforced.

The Directive can be downloaded :
http://europa.eu/pol/av/index_en.htm
or http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

The next pages detail the recitals and articles that FSE members should consider their lobbying effort on.

The AMS Directive

Suggested
FSE/Guild Position

On the Recitals

Recital 9

The Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting [9] reaffirmed that the fulfilment of the mission of public service broadcasting requires that it continue to benefit from technological progress. The co-existence of private and public audiovisual media service providers is a feature which distinguishes the European audiovisual media market.

Remind your government for the need to continue meaningful funding of your public sector broadcaster and that public sector broadcasters should be permitted to develop online TV (i.e. non linear services).

Recital 20

“Television broadcasting services, i.e. linear services, currently include in particular analogue and digital television, live streaming, webcasting and near-video-on-demand, whereas video-on-demand, for example, is an on-demand, i.e. non-linear service. In general, for linear audio-visual media services or television programmes which are also offered as non-linear services by the same media service provider, the requirements of this Directive are deemed to be met by the fulfilment of the requirements applicable to the linear transmission. However, where different kinds of services are offered in parallel, but are clearly separate services, the Directive will apply to each of the services concerned.”

This is a new recital and could be absolutely vital in having the directive apply to non-linear services as well. Insist on the strongest definition possible. Insist that any broadcaster that has a linear service which it also offers in a non-linear service format, must have this service regulated as a linear service and apply the quotas. The recital is unclear. But it does seem to indicate that any traditional broadcasters which are regulated according to rules applying to linear services, should regardless of which technological platform they use to transmit their services, should be regulated according to the tougher rules, i.e. linear services. Argue that the recital should apply to all service providers, including new entrants like Telecommunications companies that create video-on-demand services. They should not have a competitive advantage over existing services providers like broadcasters.

Recital 48

“Non-linear audiovisual media services have the potential to partially replace linear services. Accordingly, they should where practicable promote the production and distribution of European works and thus actively contribute to the promotion of cultural diversity. Such support for European works might for example take the form of financial contributions by such services to the production and rights acquisition of European works, a minimum share of European works in video-on-demand catalogues, or the attractive presentation of European works in electronic programme guides. It will be important to regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services. Within the framework of the reports set out in Article 3f paragraph 3, Member States shall also take into account notably the financial contribution by such services to the production and rights acquisition of European works; the share of European works in the catalogue of audiovisual media services as well as in the effective users’ consumption of European works proposed by such services.”

Insist that regardless on how Recital 20 is interpreted, non-linear service providers show European works, especially quality programmes like dramas and documentaries. The more each guild is precise in the definition of what is a “minimum share” and pushes for the highest possible proportion, the more the officials have clear-cut objectives with this. Insist on a re-examination of the application of this provision and to be consulted throughout the examination process.

Recital 60

Surreptitious audiovisual commercial communication is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious advertising does not cover legitimate product placement within the framework of this Directive where the viewer is adequately informed of the existence of the product placement, this can be done by signalling the fact that product placement is taking place in a given programme, for example by means of a neutral logo.

This recital refers to product placement and to editorial independence of the media service provider. For those guilds that feel the rules on product placement should be tougher it is advisable to agree that member states should insist that **content creators** (like screenwriters and directors) should also have editorial responsibility for the content. Content creators is defined in the European Union Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights which states in Article 2

“Cinematographic or audio-visual works:1. The principal director of a cinematographic or audio-visual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.2. The term of protection of cinematographic or audio-visual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audio-visual work.”It is very important that the officials understand the difference between content creators (screenwriters) and content providers (broadcasters). In general the idea of content creator should be insisted on, brought into the mentalities so as to be taken into consideration at all times in the implementation of all laws that concern authors. They also need to give the officials a clear definition of product integration/ thematic placement and have them understand to what extent it constitutes a form of censorship.

Recital 62

“Product placement should, in principle, be prohibited. However, derogations are appropriate for some kinds of programme genres, on the basis of a positive list. Member States should be able to opt-out of these derogations, totally or partially, for example by permitting product placement only in programmes which have not been produced exclusively inside that Member State”.

Recital 62 states that product placement should “in principle” be prohibited. For those guilds opposed to product placement, insist that the product placement be prohibited. Argue that the words: “in principle” should be omitted as much as possible because they create ambiguity.

On the Articles

Article 1

DELETED: Amendment 137 of the European Parliament; Article 1 POINT 7, POINT (A A) (new); Article 6, paragraph 1 (Directive 89/552/EEC)

(aa) In paragraph 1, the following point (d) is added:

“(d) in defining the term ‘independent producer’, the Member States shall take appropriate account of the following three criteria : ownership and proprietary rights of the production firm; number of programmes provided to the same broadcaster, and ownership of secondary rights”

Unfortunately, the Council of the European Union decided to delete mention in the definition of what constitutes an independent producer by deleting the amendment which defined independent producers as organisations that retain the secondary rights from broadcasters. It is strongly advised to raise this issue with your government and explain that the broadcasters are insisting that independent producers agree to buy-outs of rights, who are then compelled to demand the true right holder – i.e., screenwriters, directors, composers; to sign up to buy-out of rights themselves. Given the situation with big media groups, this not only robs producers and screenwriters of their rights, but, in the long term, the member states of their own diversity.

Article 1 (d)

“Media service provider’ means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;”

Advise that your government to include the definition of content creator as indicated in Directive 2006/116/EC.

Include also a definition of the product integration and thematic integration: «product integration» and «thematic placement» mean the intervention of any undertaking or body in the plot of a film or fictional programme seeking to promote in particular a product, service or brand.

Refer to the DVD produced by the WGAW and given to you at the General Assembly in November 2006 on product integration. FSE can also send to you the “white paper” of the WGAW which gives excellent reasons and arguments for the banning on product integration and thematic placements.

Article 3

Article 3 (1)

“Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive provided that such rules are in compliance with Community law.”

Remind your government that it is recommendable, for the interest of national culture, to apply stricter rules. This directive is to harmonise rules at a minimum standard. Each member state can take more appropriate measures to safeguard cultural diversity, have stronger rules on advertising and better respect to right holders. By taking a “partnership” approach with the ministers and the officials in charge of implementing the directive, everyone is an actor, will feel involved and will tend more to strive for the highest standards and work together to do it, each one according to his competence.

Article 3 (g)

1. Product placement shall be prohibited.

Insist that product placement is prohibited.

2. By way of derogation from paragraph 1, product placement shall be admissible, unless a Member State decides otherwise, in :

If there are any derogations, nonetheless insist on the deletion of the exception in Article 3(f)2(c), which permit programmes and films made outside the EU to be exempt on rules relating to product placement. Put plainly, this means that product placement for EU AND non-EU films is prohibited.

- Cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes; or

- Cases where there is no payment but only provision of certain goods or services for free, such as production props and prizes, with a view to their inclusion in a programme.

The derogation in the first indent shall not apply to programmes for children

The programmes that contain product placement shall meet at least all of the following requirements :

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

Specifically regarding, suggest: 3(g) 2. a. ... and independence of the media service provider AS WELL AS that of the content creator. Article 3 (g)

(b) they do not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) they shall not give undue prominence to the product in question;

(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

By way of exception, Member States may choose to waive the requirements set out in (d) above provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

3. In any case programmes shall not contain product placement of:

- tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or

- specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

4. The provisions of paragraphs 1, 2 and 3 apply only to programmes produced after 19 December 2009.»;

4. Demand the earliest possible.

Article 3 (i)

1. Member States shall ensure that on-demand services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial

Insist that non-linear service providers apply the quotas in articles 4 and 5.

contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes proposed by the service.

2. Member State shall report to the Commission, no later than and every four years thereafter on the implementation of the measure set out in paragraph 1.

3. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and the Council on the application of paragraph 1, taking into account the market and technological developments and the objective of cultural diversity.

3. The guilds of each member state should find out who will make up the "independent bodies" in charge of making sure that the directive is implied and are even encouraged to propose their members to be part of them.

Articles 4 and 5

Article 4

1. Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works [...] a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.

Article 4 and 5

Insist that these are enforced properly and that they are applied to all services Also remind that Recital 14(b) demands that existing broadcasters are to be regulated according to the tougher regulations, i.e. those that apply to linear services (regardless if they develop these same services into a non linear format). This means applying the quotas to new online services.

Insist that the words "where practicable and by appropriate means" no longer apply. Same with Article 4, 2. "Where...par. 1 cannot be applied..."The sector is no longer in state of development. It is mature now and there is no handicap to services providers to apply the quotas.

Argue the need to have a sub-quota on new drama. Remind governments that broadcasters circumvent by repeating old programmes. New drama is a sure sign of improving the quality

3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive. To that end, the Commission report shall, on the basis of the information provided by Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.

Article 5

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 %

of content projected on linear and non linear services.

of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

Article 11

1. "Member States shall ensure, where advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme, and the rights of the right holders are not prejudiced."

Advise the reinstatement of the old article 11 which limits the interruption of films to 45 minute breaks. The new directive wants to reduce this to 30 minutes only. The guilds could even insist that programmes exceeding 45 minutes (52 is the standard, but there could also be 90 minute programmes or films) not be interrupted.

Guilds can consider going even further by saying that this allows for us to preserve the specificity of European television and the quality of dramas whose writers don't have to bend over backwards to take commercial breaks into their narrations.

Article 23 (b)

"Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 thereof, notably through their competent independent regulatory bodies."

Insist that regulatory bodies are independent, meaning independent from industry (i.e., audio-visual media service providers) and enforce the provisions of the directive.

SUGGESTIONS AND RECOMMENDATIONS

Below are arguments that guilds can use and develop when discussing with government representatives.

Promote cultural creation

Try to avoid words like 'protecting' or 'safeguarding' culture. You should only use these words for the film heritage. Anything that sounds like protection will not be supported. When guilds argue for the best possible application of the quotas in Articles 4 and 5 and the best possible interpretation of Recitals 20 and 48 talk about the need to 'promote' cultural diversity and expression so that the audio-visual sector is dynamic and creative and produces quality programmes for viewers.

Quality TV

For those guilds that are opposed to the weakening of the rules on advertising (Article 11) and want stronger controls on product placement (Recitals 45, 46a and Article 3f) remind that quality of programmes will be harmed by the weakening of the rules. Viewer confidence in the integrity of programmes will be undermined if product placement is not banned or at least strongly regulated.

One of the unique features of European television is its strong regulation of advertising. In most cases television outside Europe has few advertising controls meaning that programmes can be interrupted at any time and at any place with little regard for the interests of the viewer and the rights holder. These safeguards on advertising are now part of European TV viewing culture and this should be recognised.

For excellent reasons on why product placements should be strongly regulated if not banned refer to the FSE speech presented by Christina Kallas, FSE President, at the European Parliament on June 1, 2006. The speech can be downloaded from the FSE website.

Needs of viewers

Viewers want access to the highest quality audio-visual programmes and films. It is in the interest of viewers that linear and non-linear audio-visual and media service providers ensure that topical programmes of local, regional and national interest (and therefore European interest) are available regularly. Broadcasters and new entrants like the huge Telecom companies must not simply be allowed to flood the airwaves with cheap imports with little if any cultural content, but with content that is meaningful and pertinent to viewer demands. Indeed content that is harmful to children, or encourages xenophobia and religious hatred should not be permitted.

Lisbon strategy

In 2000 the Member states of the European Union embarked on an ambitious policy to make Europe the world leader in the knowledge based economy. This policy goal can only be achieved through innovative creation – and that means good content which viewers want to see and are willing to pay for. Good new content means good scripts. Good television, film and radio programmes start from a good script.

UNESCO, WTO and fair competition

Screenwriters want to 'promote' culture. Screenwriters are not interested in 'protection' or against imports. We do not wish to stop people from viewing Hollywood films or watching Japanese cartoons on television. Indeed we would like to see as much variety as possible. The higher the quality of programmes and films the more viewers become aware of this art form and watch more of it. However, countries have the right as indicated in the UNESCO Convention and in WTO to patronise and promote the arts and their culture within their own borders to and to ensure that their culture maximises the opportunities provided by new information technologies.

LIST OF REGULATORS

EPRA - European platform of regulatory authorities

contact: Emmanuelle Machet
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F-67000 Strasbourg / France
tel. +33 (0)3 88 41 39 63
fax : +33 (0)3 88 14 44 19
@ : info@epra.org
www.epra.org

Austria

Rundfunk und Telekom Regulierungs-GmbH

contact: Michael Ogris
A-1060 Wien,
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Belgium

Vlaamse Regulator voor de Media

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@ : vrm@vlaanderen.be
www.vlaamseregulatormedia.be/
berichten/20051026.html

Belgium

Conseil Supérieur de l'Audiovisuel de la Communauté française de Belgique

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Bulgaria

Council for Electronic Media (CEM) - СЪВЕТ ЗА ЕЛЕКТРОННИ МЕДИИ

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www.cem.bg
www.cem.bg/r.php?sitemap_id=111

Denmark

Mediesekretariatets medarbejdere

contact: Erik Nordahl Svendsen
Vognmagergade 10, 1
1120 København K
tel. 3318 6868
fax : 3318 6869
@ : radrad@mediesekretariatet.dk
www.mediesekretariatet.dk

Finland

Viestintävirasto, Kommunikationsverket Finish Communications Regulatory Authority (FICORA)

contact: Jorma Koivunmaa
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FI-00181 Helsinki
fax : 358 9 6966 410
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France

Conseil supérieur de l'audiovisuel (CSA)

contact: Elisabeth Flury-Herard
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75739 Paris cedex 15
tel. +33 1 40 58 38 00
fax : +33 1 45 79 00 06
www.csa.fr/index.php

Germany

Bundesnetzagentur

Berlin office:
contact: Reinhold Albert, Direktorenkonferenz
der Landesmedienanstalten
contact: Gernot Schumann, Direktor der
Unabhängigen Landesanstalt für
Rundfunk und neue Medien (ULR)
Fehrbelliner Platz 3,
10707 Berlin
tel. +49 30 22480-0
fax : +49 30 22480-180
www.bundesnetzagentur.de
www.bundesnetzagentur.de/enid/2.html

Great-Britain

Ofcom - Office of Communications

contact: Tim Suter
Riverside House, 2a Southwark Bridge Road
London SE1 9HA
Switchboard: 020 7981 3000
fax : 020 7981 3333
Textphone: 020 7981 3043
www.ofcom.org.uk

Audio-visual Media Services Directive

Hungary

Országos Rádió és Televízió Testület National Radio and TV Commission – ORTT

contact: György Kovacs & György Ocsko
ORTT Irodája
1088 Budapest
Reviczky u. 5.
tel. 429-8600, 267-2590
tel. 411-5081, 411-5082, 411-5083
fax : 267-2612, 411-5080
www.ortt.hu

Greece

National Council for Radio and TV (Εθνικό Συμβούλιο Ραδιοτηλεόρασης - ESR)

contact: Evaggelia Demiri
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@ : ncrtv@otenet.gr
www.esr.gr
www.esr.gr/english.php

National Council for Radio and Television
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Iceland

Ministry of Culture and Education

<http://brunnur.stjr.is>
[http://brunnur.stjr.is/interpro/mrn/mrn.nsf/
pages/forsida](http://brunnur.stjr.is/interpro/mrn/mrn.nsf/pages/forsida)

Ireland

Broadcasting Commission of Ireland Colmisiún Craolacháin na hÉireann

Chief Executive: Michael O'Keeffe
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tel. + 353 1 644 1200
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Italy

Autorità per le garanzie nelle comunicazioni (AGCOM)

contact: Corrado Calabro (Chairman of
AGCOM)
Via delle Muratte, 25 - 00187 Roma
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www.agcom.it/intro.htm

Netherlands

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Poland

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Portugal

ICP-ANACOM - Entidade Reguladora para a Comunicação Social

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Spain

Comisión del Mercado de las Telecomunicaciones (CMT)

contact: José Bartolomé Pina; Ministry of
Industry, Tourism and Trade
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www.cmt.es/cmt_ptl_ext/SelectOption.do

Sweden

Granskningsnämnden för radio och TV

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Turkey

Radio and TV Supreme Council - RTUK

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www.rtuk.gov.tr

REGULATORS OF NON FSE MEMBER COUNTRIES

Cyprus

Cyprus Radio TV Authority

contact: Nicos Papaioannou,
President of Cyprus Radio TV Authority
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Czech Republic

Council for Radio and TV Broadcasting Prague

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Ministry of Culture

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Liechtenstein

Amt für Kommunikation

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Lithuania

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Slovenia

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Council for Electronic Media

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