

CLIENT ALERT

ISP-Liability & Media Law

November 4, 2008

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Notification of various e-gaming laws to the European Commission

The Hungarian, Belgian and British governments have each notified draft legislation to the European Commission on e-gaming, and the French government may follow soon. Upon notification, a stand-still period applies that stakeholders can use to express their views with the Commission or national government officials.

Introduction

Under Directive 98/34 (the "notification Directive"), Member States enacting legislation concerning technical norms and/or information society services must notify the European Commission of their draft legislation. Recent e-gaming legislation has been notified by Hungary, Belgium and the UK, and France may follow soon.

The Hungarian notification

Hungary has notified draft legislation pursuant to which a company registered and licensed in an EEA country other than the Republic of Hungary to organize online bookmaking on sports or horseracing may, in accordance with its license, publish betting announcements online that are also accessible to Hungarian players once it is registered by the Hungarian state tax authority. This notification in other words confirms the principle of mutual recognition whereby Hungary would recognize operators licensed by a foreign licensing authority.

The Belgian notification

Belgium has notified draft legislation aimed at regulating the sports betting market, which would be subject to a licensing obligation and would become subject to the control of the Gaming Commission. The draft legislation also provides in licensing obligations for online sports bookmakers and casinos.

The UK notification

The UK has notified draft legislation *inter alia* concerning binding technical standards in the following areas:

- the display of its licensed status by remote licensees, gaming machine technical and gambling software licensees;
- age verification procedures for remote licensees;
- identification of individual customers by remote licensees;
- incentive and reward schemes.

Upcoming French notification

Further to French Government announcements that the markets of online sports betting and online gaming would be opened for competition and that operators would be allowed on condition of having obtained a license, it is expected that the French Government will issue a draft bill and notify it at the latest in the beginning of 2009.

Advice to stakeholders

It should be noted that upon notification, a standstill period applies, during which the notifying Member State must wait to enact the notified legislation. During that period, the European Commission and other Member States can make observations or apply for a further standstill. Stakeholders are therefore recommended to review the drafts and to get in touch with their local government officials or with the European Commission so that their concerns or remarks can be heard.

For more information, contact: [Christoph De Preter](#) or [Thomas De Meese](#).

According to the Flemish media regulator, SMS games and services constitute "teleshopping"

In two decisions, the Flemish media regulator has confirmed its viewpoint that the broadcasting of banners that allow for personalized comments or contents to appear on screen upon sending SMS messages qualify as "teleshopping" (distance shopping) and not as a television program. The same goes for programs suggesting SMS codes for one-to-one chat or adult content.

Introduction

TV broadcasters and content and program producers are often confronted with the thin legal line between ordinary programs and teleshopping activities. The latter are subject to a large number of regulatory requirements, such as the fact that they cannot be integrated into ordinary programs and must be recognizable as such. The case law of the Flemish media regulator gives some guidance as to what is and what is not permitted.

The decisions

In a first decision, the program "SMS Games", which provides in the possibility to have personalized comments broadcast in a banner upon sending of an SMS message was considered teleshopping. In a second decision, the programs "Sex Pression", "one-to-one chat", "fortune telling with tarot cards" and "love-match" were also viewed as teleshopping.

Legal guidance

It is clear that the Flemish Media Regulator takes a hard stance towards viewer funded programs. However, audiovisual content inviting the viewer to react by an SMS that is then charged does not automatically qualify as "teleshopping". The Flemish media regulator seems to use as a threshold that the SMS traffic must bear some level of interaction with the content of the program

concerned. This may leave the door open to programs providing, for instance, adult content or fortune-telling, to invite viewers to participate in SMS traffic, as long there is some degree of interactivity with the content broadcasted.

Links:

- [Valaamse Regulator voor de Media \[PDF\]](#)

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