

SPAIN'S AUDIOVISUAL LAW FAILS TO DELIVER - FOX INTERNATIONAL CHANNELS

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Patricia Luquero is lobbying to change a law that was drafted without considering how it would apply to pay-TV channels

For Patricia Luquero, Legal and Business Affairs Director of Fox International Channels (FIC), Spain & Portugal, the economic crisis is the least of her worries. Two years on from the implementation of Spain's Law for Audiovisual Communications, she is still lobbying for change to what she describes as a rather unfortunate law.

Luquero began her career at Freshfields in their dispute resolution department, in charge of the major tobacco company accounts, followed by a short move in-house to Philip Morris, the leading cigarette manufacturer.

From there she was invited to manage the International Department at law firm Ecija, before moving in-house again at Antena 3.

With FIC now for seven years, Luquero handles all their legal affairs in Spain and Portugal. A subsidiary of the Fox Entertainment Group, part of News Corporation, FIC develops, produces and distributes over 183 pay-TV (PTV) channels across Latin America, Europe, Asia, the Middle East and Africa. And it has been weathering the economic storm relatively well, says Luquero.

"We are having to develop further into new media and other areas of business to try and increase the scope of the company in view of the crisis," she says, "but aside from having to deal with certain clients that have found themselves unable to pay what they owe, we haven't been that affected".

Luquero's department is made up of three lawyers, two based in Madrid with her, and one in Portugal to help coordinate matters there.

As for external law firms, Luquero only uses them in "exceptional" circumstances requiring highly specialised expertise, and in Spain she always uses Baker & McKenzie, usually in Madrid.

While she originally used Uría Menéndez-Proença de Carvalho in Portugal, her relationship with lawyer, Ines Arudda, was so strong that when Arudda recently left to start her own firm, now Vasconcelos Arruda & Associados, Luquero's business went with her.

An incomplete Law

FIC's legal department supervises all the business activities of the company including contracts, new channel launches, agreements with distributors or advertising sales and acquisition of rights, while also overseeing marketing, On Air pieces and external communications, to be sure all activities are in line with the audiovisual law in each jurisdiction.

In Portugal, this is very effective as the law is exactly like the EU directive, says Luquero. However, as FIC's channels are under Spanish jurisdiction, the same cannot be said for Spain's Law.

"The Law has terrible implications," she says, "because the definitions are incorrect, there is a lack of clarity throughout, and, most importantly, for PTV channels, there is no security from a legal point of view".

The reason for this, she explains, is that when they drafted the Law, they did not take into account the PTV channels, but based the entire Law around free TV channels.

They are therefore subject to a Law designed for free TV channels such as Antena 3 and Telecinco, she says, the consequence of which is that there are obligations that they cannot possibly fulfil because they should not apply to PTV channels that are merely content providers, giving as an example the need to invest at least five percent in cinema.

Lobbying for change

Luquero has, therefore, taken a very proactive approach to these problems and belongs to a lobbying group, CONNECT, which includes other companies such as Disney and Multicanal, that has been in talks with some key local Authorities of different levels, to introduce changes to the Law. “We have had many conversations around the problems we have been facing,” she says, “and we are lobbying to have clauses added to the current Law to relieve us of obligations we cannot fulfil and ensure the Law applies equally to PTV channels”.

As to when these changes might happen, it's anyone's guess, she says. But in the meantime, legal departments at PTV providers in Spain are fighting a losing battle to try to comply with some of their legal obligations.

Patricia Luquero is the Legal and Business Affairs Director of Fox International Channels, Spain & Portugal.

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