



Broadcasting Authority of Ireland

Report on the Effect of the BAI General Commercial Communications Code 2010

Introduction

The BAI General Commercial Communications Code ('the Code') was introduced in 2010 to regulate advertising, sponsorship, product placement and other forms of commercial communication on Irish broadcasting services. The Code applies to all broadcasters that fall under Irish jurisdiction¹ and replaced the BCI General Advertising Code. In 2011 the Code was updated to incorporate the BAI's decision to permit paid product placement following the introduction of the Audio Visual Media Services Directive, ("AVMSD")². In 2013 the Code was again updated to reflect new BAI rules on the promotion of HFFS³ food to children arising from the review of the BAI Children's Commercial Communications Code.

The requirement for the Code is set out in Section 42 of the Broadcasting Act 2009 ('the 2009 Act') and the Code is a key deliverable for the Authority under strategic goals 4 and 6 of the BAI Strategy Statement 2014-2016. Section 45(3) of the Broadcasting Act 2009 ('the 2009 Act') requires the Authority to review the effect of the Code every 4 years and to submit a report on that review to the Minister for Communications, Energy and Natural Resources ("the Minister"). Work on this review of the Code commenced in 2014 and was designed to incorporate the views of all stakeholders on the effectiveness of the Code, in particular audiences, advertisers and broadcasters. Ipsos MRBI was appointed to undertake this element of the review and their report is attached as Appendix One.

As many elements of the Code reflect provisions in the AVMSD, the review also looked at trends internationally to provide a broader context for the review and to identify areas for consideration in any subsequent revisions. This element was conducted by independent consultants, Miha Kriselj and Deirdre Kevin and their report is attached as Appendix Two.

¹ Services licensed by the BAI and services provided by public broadcasters as provided for in the 2009 Act. Non-linear/on demand services are governed by the ODAS Code. Advertising is also regulated by the ASAI code which is a self regulatory code.

² Under the previous European Directive, Television Without Frontiers, paid product placement was prohibited.

³ Food that is deemed to be high in fat, salt and sugar



This report is divided into three further sections and two appendices as follows:

Section 1	The Review Methodology
Section 2	The Review Outcomes
Section 3	Conclusion
Appendix One	Operational Review of the BAI General Commercial Communications Code 2014 - by IPSOS MRBI
Appendix Two	Jurisdictional and Legal Review of the BAI General Commercial Communications Code April 2014 – by Miha Kriselj and Deirdre Kevin



Section 1- The Review Methodology

The review methodology comprised four interconnected phases as outlined below.

1.1 Review of Existing BAI Data

To initiate the process the BAI reviewed existing internal data such as relevant complaints decisions, general broadcaster compliance reports and submissions from stakeholders on interpretational issues or concerns around the practical implementation of the Code.

In addition the BAI also had regard to information available from its general interaction with stakeholders and its participation in relevant international fora such as the European Platform for Regulatory Authorities ("EPRA") and the Contact Committee on the Audio Visual Media Services Directive ('AVMSD'). This information was used to develop the specification for the two pieces of commissioned research and to inform BAI participation in these projects.

1.2 An Operational Review of the Code

IPSOS MRBI was engaged to do an independent operational review of the effectiveness of the Code from a stakeholder perspective. Their approach involved three stages of data collection and analysis. Initial research consisted of a review of internal BAI data and a workshop with relevant BAI staff. Subsequently detailed in-person interviews with 21 sectoral stakeholders were conducted. Broadcasters, industry representative bodies, government/regulators were asked to assess the effectiveness of the Code and identify any required revisions.

Finally a mixed methodological approach was adopted to ascertain the public's view and knowledge of the Code. This included a general survey of a nationally representative sample of 1000 adults and two dedicated focus groups. All the data collected was analysed and the outcomes are presented in the report attached at Appendix One.

1.3 A Jurisdictional and Legal Review of the Code

The BAI also commissioned two international experts to review changes and developments in the regulation of commercial communications in other European countries. While the review covered all the 52 regulatory authorities that are members of the EPRA, there was an in-depth examination of the position in four selected countries, Austria, France Germany and the UK. This review had a particular focus on issues identified by the BAI in relation to the operation of the Code from phase one above.



1.4 Review of data collected through phases 1-3

All the data collected through phases 1-3 above was reviewed by the BAI to produce an overall report on the effectiveness of the Code which is set out in Section 2 below.



Section 2 - The Review Outcomes

The review indicates that the current Code is effective and achieving its objectives. It is meeting the requirements of national and international legislation and is generally supported by stakeholders. While a number of issues have emerged that require further consideration, modification rather than a major revision appears to be the appropriate response.

It is important to note that some of the issues raised by stakeholders do not fall within the BAI's remit and cannot be addressed without changes in legislation or regulations drawn up by other bodies. Examples here are the prohibition on the sponsorship of news and current affairs on TV, which is a requirement in the AVMSD, and the requirements in relation to advertisements for financial services which are governed by the Central Bank. While the BAI will continue to contribute to discussions on these matters through relevant fora, and will respond to any changes in this broader environment, these issues cannot be addressed by the BAI exclusively in a code review.

The following extract from the Ipsos MRBI Report provides a good summary of stakeholders views on the effectiveness of the current Code: -

"Objectives

- *Stakeholders were firmly of the view that the Code is meeting its objectives, although there were recommendations given for how the Code could be enhanced.*
- *The Code succeeds in ensuring commercial communications are legal, honest, truthful and decent and works effectively as part of a framework of industry and Government codes and regulations.*
- *The consensus was that the Code helps safeguard the editorial integrity of broadcasts. The requirement of the Code to provide clear guidance to broadcasters is being met, although a number of requests for clarification were noted, most notably regarding sponsorship rules and also the rules relating to betting services and smoking aids.*
- *The objective of the Code to not impact in an unwarranted manner the right of broadcasters to communicate commercial messages is being met at an overall level, although a number of areas of potential competitive disadvantage contained within the Code were identified, including:*
 - *Radio disadvantaged compared to TV in the area of sponsorship and product placement*
 - *Radio and TV broadcasters more tightly regulated than (opt-out) broadcasters not regulated by the BAI and other media, especially online. For TV broadcasters, the growth in opt-out channels was of significant concern."*

(Ipsos MRBI Report Page 3)



These outcomes reflect the BAI's own assessment of the effectiveness of the Code and are generally positive, in particular when one considers the challenges faced by the media sector since the Code was introduced in 2010. Television and radio have both seen a decline in advertising spend in recent years. Analysis of the Irish advertising market conducted by Indecon consultants for the DCENR found that the decline in broadcast advertising spend between 2007 and 2013 was over €160m.⁴ Ipsos MRBI's report states that over the same period, 2007-2013, internet advertising spend has grown by over €100m.⁵

While broadcasters are concerned about their ability to compete with the less regulated new media, the role the Code plays in protecting audiences and maintaining confidence in broadcast advertising is also acknowledged by stakeholders. In this context more flexibility in relation to some of the specific rules, rather than a dilution of the principles, emerges as a recurring theme in the review.

While the economic climate is beginning to improve, the impact of convergence on the traditional media sector will continue. This is a particular focus for attention in the jurisdictional review where the impact of these developments on regulatory policy and practice is examined. This report highlights the planned review of the AVMSD which has direct relevance for a number of rules in the Code. While there is still no clarity as to what changes may be introduced, such developments need to be monitored and considered in any proposed revisions to the Code.

Specific issues emerging from the review that fall within scope of a revision of the Code by the BAI are summarised under the three headings below.

2.1 Sponsorship rules, particularly as they apply to radio

The following extract from the Ipsos MRBI report captures the main issues raised regarding current sponsorship rules under the Code.

“Sponsorship also emerged as the principal non-compliance issue during BAI monitoring, suggesting broadcasters, in particular radio broadcasters, are struggling to meet the requirements of the Code, either due to pressure from advertisers or due to a different interpretation of the Code. While the need exists for sponsorship to be separate from advertising from a legislative perspective, for advertisers and broadcasters the line between sponsorship and advertising can blur. Ideally, any review would attempt to bring all stakeholders closer together on this issue,

⁴ Pages 9 & 10 - *Indecon Economic Analysis of the Advertising Market in Ireland* in 2013 by Indecon International Economic Consultants

⁵ Page 12 - Ipsos MRBI report



deliver a level playing field insofar as this can be achieved, while at the same time maintaining compliance with the AVMS Directive and protecting the integrity of broadcasts.”

(Ipsos MRBI Page 33)

Compliance with sponsorship regulations has been an ongoing issue since the first advertising and sponsorship code was introduced 20 years ago. In addition, the difficult economic climate of recent years has increased the pressure on broadcasters to develop more innovative and attractive solutions for advertisers. As noted above the radio sector in particular have pointed out their concerns with respect to some of the current sponsorship rules especially since the introduction of product placement in 2011 provided additional flexibility for television broadcasters.

The option of a radio specific code to address these issues was explored in the review process and the authors of the jurisdictional review conclude it may have some merits. However the BAI is not convinced that a separate radio code is necessary or in the best interest of audiences. The BAI notes that the current code structure allows for distinctions to be made between radio and television in relation to particular rules or sections e.g. the rules on sponsorship of current affairs and the section on product placement. This provides the flexibility to address the issues raised within a single code. Furthermore a separate radio code may not be in the best interests of audiences who are already dealing with two separate BAI advertising Codes; the General and Children's Commercial Communications Codes. As such and given the size of the market here, and the general satisfaction with the current Code already noted above, a single code, with separate sections for radio and television sponsorship rules, seems more appropriate.

Moving to the sponsorship rules themselves, as Ipsos MRBI note there is no time limit on sponsorship and this is one of the factors which means that differentiation between sponsorship and advertising is important to ensure that there are reasonable limits on commercial communications in the interest of audiences, and maintenance of a viable diverse broadcasting sector. While the principles of separation and transparency remains relevant it is interesting to note research indicates that 31% of the public are not aware of the difference, and a further 19% perceive there to be no difference between sponsorship and advertising⁶. One explanatory factor here could be the fact that no such differentiation exists outside the traditional linear broadcast media.

Stakeholders also cite interpretational issues as a concern, pointing to compliance issues that have arisen as a result of what they consider to be a restrictive interpretation of the Code by the BAI. In this regard they refer in particular to limitations surrounding 'calls to action', and the Code's requirement not to afford 'undue prominence to a product or service' being effectively translated to mean a 'one product

⁶ Ipsos MRBI report – page 36



reference only' rule. Proposed revisions to the Code will consider how these rules are applied and explore opportunities for flexibility as well as clarification.

2.2 Rules For Specific Products or Services

In general the rules and guidelines for specific products and services such as food, medicines and alcohol, were considered clear and effective. Stakeholders acknowledged the need of the Code to reflect rules set by other regulatory bodies, and the benefits of providing a consistent approach to these rules among regulators was also noted. Consultation therefore with relevant regulatory bodies and government departments will be maintained so that any potential changes to the regulation of a particular sector, for example alcohol advertising, can be addressed when considering revisions to the Code.

During the course of the review however broadcasters did indicate a desire for greater clarity or guidance on rules for certain products or services, which as currently written are considered to be somewhat ambiguous and open to interpretation. For example e-cigarettes were identified as an area needing clarification given their increasing popularity. While the current code has a rule for smoking aids, it does not specifically address e-cigarettes as a product and the absence of any guidance pertaining to them can be problematic given their emergence as a product / category and existing debates as to whether they can be classified as tobacco related products or not, or as a smoking aid. In this regard monitoring of relevant EU legislation and challenges to such will aid clarification in any future revision to the Code.

Likewise the rules in respect of advertising for betting services were noted as being somewhat ambiguous, especially in the context of the term 'encouragement to bet'. Given the increase in betting services, and how they can be advertised and accessed since the Code was first drafted in 2010, broadcasters called for greater clarity with respect to what is and is not permissible. Other examples were cited by stakeholders however the above two examples were perhaps most prominent.

Further consideration should be given to the language used to articulate rules for specific products or services within the proposed new draft Code together with continued monitoring and implementation of relevant changing legislation.

2.3 Awareness and Engagement with the Code by Audiences

The operational review conducted by Ipsos MRBI tends to indicate a lack of public engagement with the BAI in terms of the Code. When asked who is responsible for ensuring advertising is not offensive or misleading 49% of those surveyed placed the responsibility with the broadcaster.



While the authors conclude that this indicates a lack of engagement with the BAI it could equally be due to the fact that the public is asked in the first instance to contact a broadcaster when making a complaint. In addition the low level of complaints submitted under the Code to the BAI⁷ could reflect high levels of compliance by broadcasters which, with the exception of sponsorship, would reflect the BAI experience.

It should also be noted that a lack of engagement does not necessarily indicate an unawareness on the part of the public of the standards they should expect from commercial communications on broadcasting services; one of the stated objectives of the Code. The Ipsos MRBI survey notes the public recognises the role of commercial communications in the broadcasting mix with 85% perceiving these commercial communications to be useful to the audience,⁸ and as noted above 49% placed responsibility for guarding against offensive and misleading material with the broadcaster.

Furthermore, of those surveyed 31% of respondents spoke of the importance of advertising and sponsorship not to be misleading or deceptive.⁹ These responses point to the public's awareness of standards in advertising and sponsorship. Further exploration of the public's awareness of these issues will be facilitated during the course of a consultation process on a revised Code.

Section 3 Conclusion

Overall the current Code is considered to be broadly effective and its principles respected and understood. The outcomes of the review process however indicate certain areas worthy of further consideration in a planned revision of the Code. As noted above, in the main these relate to sponsorship rules and the rules for specific products and services, and how clarity and flexibility can be afforded to traditional media within the scope of the Code and the remit of the BAI.

In addition public perceptions of commercial communications and the standards to be expected emerged as an area for consideration. These will be addressed in the context of the development of a revised Code by the BAI which will be presented for review through a public consultation process later in 2015.

⁷ Between June 2010 and April 2014 there were 91 complaints received by the BAI and of these 24 were upheld in total or in part.

⁸ Ipsos MRBI Operational Review – page 34

⁹ Ipsos MRBI Operational Review – page 40.

Operational Review of BAI General Commercial Communications Code November 2014



Report

November 2014



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Report Details

1. Executive Summary

Background & Objectives

The current BAI General Commercial Communications Code (“Code”) became effective on June 10th 2010. After 4 years, the BAI is now required to review the effect of the Code, having regard to any compliance, interpretational and guidance issues on the part of the broadcaster who must adhere to the Code and audiences whose interests the Code aims to protect.

To inform this review, the BAI commissioned Ipsos MRBI to review relevant literature, statistics and publications, to seek the views of industry stakeholders and to canvass the opinions and experiences of the general public.

Data Collection Methodologies Employed

Three phases of data collection were conducted.

Firstly, a desk research phase was completed, involving the review of industry statistics, findings from monitoring by the BAI and the EU, submissions from broadcasters and complaints statistics provided by the BAI.

The core research phase involved in-depth, in-person interviews with 21 industry stakeholders representing broadcasters, advertisers and Government/Regulators. In addition to the in-depth stakeholder interviews, a round-table discussion with BAI staff was convened.

Finally, a general public survey of attitudes was conducted amongst a nationally representative sample of 1,000 Irish adults. Two focus groups were also conducted, comprised of members of the general public aged between 25 and 54 years.

Desk Research Findings

To fully evaluate and understand the effect of the Code, it is important to put the Code in context. Some of the key environmental factors to emerge from the desk research phase are summarised below:

- The communications industry in Ireland has had to endure a dramatic decline in revenues in recent years, with nominal advertising spend declining from €759m in 2010 to €685m in 2013 (Source: Zenith, Oliver & Ohlbaum). For broadcasters, there has been additional competitive pressure coming from internet advertising which continues to steal share from all media, including TV and radio;
- A review of monitoring conducted by the BAI and the EU under the AVMS Directive identified sponsorship as being the key area of non-compliance. Also raised were issues that arguably highlight a need for clearer differentiation between radio and television in some aspects of the Code, as they relate to informational announcements regarding upcoming programmes;
- A submission from IBI on behalf of the independent radio sector suggested a number of changes to the Code and the Guidelines in respect of sponsorship communications, in particular the one-product rules and rules relating to calls to action and outside broadcasts;
- The scale and nature of complaints logged with the BAI were also examined. At an overall level the number of complaints logged over a four year period was low, totalling just 91, with complaints relating to Psychic Readings accounting for 32 of these complaints.

The Stakeholder Perspective

The opinions of industry stakeholders were canvassed at a number of levels. Firstly we explored the degree to which stakeholders feel the Code is meeting its objectives. Secondly, the appropriateness of General Rules of the Code were discussed. And finally, the views of stakeholders were sought on the Rules as they apply to specific products and services.

The other key stakeholders in this review were members of the general public and their experiences were also explored for this review using survey and qualitative research.

Before the specifics of the Code were discussed, industry stakeholders were keen to set the context for the Code, which has changed in recent years and will certainly continue to evolve. They believe the Code must reflect, and be flexible enough to adapt to, the changing media landscape whereby the growth in internet use, the broadening pool of content providers and increased social media interaction has changed how audiences access and consume media. Within broadcasting and across other media, the competitive set is expanding to include this digital aspect and competition for media spend is growing.

It makes no sense, in the opinion of broadcasters, for media spend to be diverted towards unregulated (by the BAI) broadcasters or other media where audience protections are not as strong. To prevent this from happening, or continuing to happen, broadcasters would like to be allowed maximum flexibility to compete providing audience protections are not diluted.

Objectives

- Stakeholders were firmly of the view that the Code is meeting its objectives, although there were recommendations given for how the Code could be enhanced.
- The Code succeeds in ensuring commercial communications are legal, honest, truthful and decent and works effectively as part of a framework of industry and Government codes and regulations.
- The consensus was that the Code helps safeguard the editorial integrity of broadcasts. The requirement of the Code to provide clear guidance to broadcasters is being met, although a number of requests for clarification were noted, most notably regarding sponsorship rules and also the rules relating to betting services and smoking aids.
- The objective of the Code to not impact in an unwarranted manner the right of broadcasters to communicate commercial messages is being met at an overall level, although a number of areas of potential competitive disadvantage contained within the Code were identified, including:
 - Radio disadvantaged compared to TV in the area of sponsorship and product placement
 - Radio and TV broadcasters more tightly regulated than (opt-out) broadcasters not regulated by the BAI and other media, especially online. For TV broadcasters, the growth in opt-out channels was of significant concern.

General Rules

While the General Rules section of the Code covers a range of commercial communications including advertising, product placement, teleshopping, split-screen and interactive advertising, rules pertaining to sponsorship communications dominated the discussions.

For radio broadcasters, rules and guidance concerning the use of a call to action, one-product rules and rules on outside broadcasts were deemed to be overly restrictive.

Specific Rules

Stakeholders were invited to comment on the rules as they related to specific product and service categories.

Some categories, such as Alcohol, Food, Medicines, Financial Services and Premium Rate Telecoms Services are also regulated by other bodies, and the BAI Code works effectively with these organisations to provide a comprehensive and consistent set of communications rules.

On the other hand, Smoking Aids and Betting Services were regarded as highly dynamic or emerging categories on which stakeholders required further guidance from the BAI, above what was currently contained within the Code. Stakeholders recognised the unique challenges of each of these categories - the speed with which the Smoking Aids category has emerged and the fast-changing competitive and communications landscape of Betting Services - and would welcome further guidance from the BAI.

From a public perspective, cosmetic product advertising has a potential to mislead, although it did not attract notable mention from industry stakeholders.

During the review it was discussed how difficult it can be to differentiate between Food Supplements and Sliming Aids, or between Cosmetics Treatments and Cosmetic Surgery. Further clarity on these questions would be welcomed.

Overall, the rules were deemed appropriate and comprehensive. Suggestions for enhancement, inclusion or modification provided by stakeholders are detailed fully in the body of the report.

2. Background & Objectives

Established on 1st October 2009, the BAI is the statutory regulator for the Irish broadcasting sector. The BAI's functions incorporate work previously undertaken by the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission, in addition to a range of additional functions and responsibilities. The BAI comprises an Authority and two statutory committees, the Compliance Committee and the Contract Awards Committee, dealing with compliance and contract awards, respectively.

The objectives of the BAI, as set out in the 2009 Broadcasting Act, are to endeavour to ensure that:

- The number and categories of broadcasting services made available in the State best serve the needs of the people of the island of Ireland, bearing in mind their languages, traditions and their religious, ethical and cultural diversity;
- The democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld;
- The provision of open and pluralistic broadcasting services.

Section 45(3) of the broadcasting Act requires that the Authority shall, once in each period of 4 years, beginning with the period of 4 years commencing on the date of the preparation of the broadcasting code or rule, review the effect of a broadcasting code or rule and shall prepare a report in relation to that review and furnish the report to the Minister".

The current BAI General Commercial Communications Code ("Code") became effective on June 10th 2010. It was updated in 2011 in the context of the BAI's decision to permit Paid Product Placement and, again, in 2013 to reflect the Authority's decisions in relation to HFSS (high fat, sugar and salt content) foods.

The requirement to review the effect of the Code and submit a report to the Minister falls due in 2014.

2.1 Aims of the Operational Review

The aim of the review is to establish how effective, or otherwise, the Code has been operating in the context of its objectives, having regard to any compliance, interpretational and guidance issues on the part of broadcasters who must adhere to the Code and audiences whose interests the Code aims to protect.

The review also fulfils strategic objective 6.1 in the BAI's Strategy Statement 2014-2016 which requires the Authority to "review its development and implementation of broadcasting codes and rules, to ensure compliance with acceptable standards in Irish broadcasting and to anticipate and meet the evolving needs of audiences in a broadcasting environment".

The BAI is of the view that the review of the Code also presents an opportunity to identify recommendations for revisions to the Code. Any revised Code resulting from the statutory review will be the subject of public consultation in 2014 as provided for in Section 44 of the Act.

3. Data Collection Methodologies Employed

To satisfy the aims of the review, an initial desk research phase was completed, followed by two phases of primary research.

3.1 Desk Research

For the desk research phase, a cross-section of data sources were reviewed, including industry reports, internal BAI data and submissions to the BAI.

The following information sources and documents were reviewed:

- Monitoring conducted by both the BAI and the EU (under the AVMS Directive) on TV and radio commercial communications in Ireland;
- IBI Submission to the BAI -“The Broadcasting Authority’s Commercial Communications Code – Time for Review?”
- Summary of complaints logged under the General Commercial Communications Code;
- Complaints received by the BAI regarding Play TV & Psychic Readings Live;

The desk research also reviewed various communications between radio broadcasters and the BAI, outside of the formal submission by IBI.

3.2 Industry Stakeholder Discussions

The first phase of primary research involved in-depth personal interviews, lasting up to one hour, with 21 stakeholders representing the interests of broadcasters, advertisers, regulators and Government. Below is the list of stakeholders who participated in the review. Ipsos MRBI would like to acknowledge their participation and thank each stakeholder for taking the time to provide feedback.

Stakeholders	Representatives
<i>RTE</i>	Paul Mulligan
<i>TV3</i>	David McKenna
	David McRedmond
	Victoria O’Brien
	Deirdre Macklin
<i>TG4</i>	Pádraic Ó Ciardha
	Anna Millington
<i>UTV</i>	Brian McCarthy
	Scott Williams
<i>IRS</i>	Grainne Clarke
<i>IBI</i>	John Purcell
<i>Communicorp</i>	Peter McPartlin
<i>AAI</i>	Barry Dooley
<i>ASAI</i>	Frank Goodman
<i>FSAI</i>	Raymond Ellard
	Jane Ryder
<i>IMB</i>	Kevin O'Donnell
<i>Central Bank</i>	Toni McIntyre
<i>ComReg</i>	Tom Boyce
<i>DCENR</i>	Eanna O’Conghaile
	Maria Owens

In-depth interviews were held between 30th May and 8th July, 2014

In addition to the in-depth interviews, a round-table discussion with BAI staff was convened, to get the BAI perspective on the effect of the Code.

3.3 National Survey And Focus Groups Amongst The General Public

Public opinion was canvassed in the form of a national survey of public attitudes and by convening traditional focus groups amongst the general public. The national survey of public attitudes was conducted amongst a representative sample of the Irish population aged 15 years and upwards.

Universe:	All aged 15 years and upwards
Sampling:	Random Digit Dialling of landline and mobile phone numbers
Data Collection:	CATI (Computer Aided Telephone Interviewing)
Data Weighting:	Corrective weighting applied to align sample with known national population profile on age, gender, socio-economic status and region.
Fieldwork:	5 th to 20 th June, 2014.

To complement and inform the interpretation of the survey findings, two focus groups amongst the general public were convened, in Dublin, with each group comprising a mix of genders, ages (between 25 and 54 years) and socio-economic groupings.

4. Desk Research Findings

For the desk research phase, the following information sources and documents were reviewed:

- Monitoring conducted by both the BAI and the EU (under the AVMS Directive) on TV and radio commercial communications in Ireland;
- IBI Submission to the BAI -“The Broadcasting Authority’s Commercial Communications Code – Time for Review?”
- Summary of complaints logged under the General Commercial Communications Code;
- Complaints received by the BAI regarding Play TV & Psychics Reading Live;

4.1 Monitoring Conducted by the BAI & the EU (under the AVMS Directive)

During BAI monitoring over the past two years, sponsorship has emerged as the principle non-compliance issue. The majority of notifications of non-compliance to broadcasters have been as a result of sponsorship activity including more than one product used in a sponsorship sting, the use of ‘call to action’ language/terminology and the promotion of advertorial content during an outside broadcast.

Further EU monitoring under the AVMS Directive raised issues that arguably highlight a need for clearer differentiation between radio and television in some aspects of the Code. For example EU monitoring found the general provision for Exclusions in Section 2 of the Code not to be strictly reflective of the AVMS Directive. Exclusions in this context refer to informational announcements regarding upcoming programmes on broadcast services. Radio is not covered or bound by the AVMS Directive. As such consideration should be given to clarifying these general provisions in the Code, and the exclusions separately applicable to radio and television.

Other areas noted by EU monitoring related to fashion and competition programming on e.g. referring to price points within programming. The BAI has acknowledged this as an issue and raised this with relevant broadcasters. EU monitoring also questioned compliance in terms of alcohol advertising. However BAI monitoring in this regard did not raise any issues and found broadcasters to be compliant. These differing viewpoints suggest different interpretations being applied by the BAI and the EU.

4.2 IBI Submission To The BAI

The IBI submission focuses on the issue of sponsorship and particularly the lack of differentiation between TV and radio advertising within the Code and calls for a more equitable approach. It draws attention to the situation in the UK, whereby Ofcom has amended its Code to allow for more flexibility and distinguishes between the two broadcast media by, for example, establishing a limited use of call-to-action links or the ability to use a sponsors’ brand/product during an outside broadcast.

4.3.1 Call to Action

According to the IBI, clients are looking to ‘connect’ with their customers in a more meaningful and integrated way to develop a relationship using multiple touchpoints with the customer, integrating content across traditional media, digital, social media and product placement. Currently the radio industry does not feel that they can deliver an integrated solution within the Code. The IBI believe radio is perceived at times as an “outdated” form of advertising. Restrictions around the inclusion of any call to action in a sponsorship communication are noted as a key barrier to achieving integration, thus limiting radio’s ability to drive traffic to

non-purchasing social media outlets, such as Facebook or Twitter. The same restrictions do not apply to TV.

4.3.2 One-Product Rule

The IBI submission seeks clarity on and a greater flexibility around the number of products or services that can be included in a sponsorship sting.

“There seems to be regular issues of interpretation around the ‘one product reference’ rule. One of the biggest problem areas and the one that can cause the greatest commercial fall-out is the line ‘affording undue prominence to a product or service of the sponsor’. For example, telecom companies have many different service offerings, (broadband, mobile, pre-pay, bill pay etc.) and want to use their sponsorship to reinforce different areas of their business.”

IBI Submission

The IBI would like to see flexibility to allow complementary products or sub-brands to be advertised together, within reason. For example, reference to “Bulmers Berry, part of the Bulmer’s range” was deemed to be a breach, on the basis of the one product rule, while the IBI would contend that reference to the parent brand is a natural fit.

The Guidance Notes suggest only one product and service can be mentioned within a sponsorship sting, while the Code itself does not specify the number of products or services. The one-product rule, in the opinion of the IBI, is more restrictive for radio compared to TV and places their members at a commercial disadvantage.

4.3.3 Outside Broadcasts

The IBI submission requests a more flexible approach to outside broadcasts and promotional mentions at such events. Allowing mentions of the featured sponsor’s product or service, or some level of presenter engagement with the product/service is proposed:

“Clients become very frustrated when stations cannot talk about what they are being paid to promote, such as descriptions of products, encouragements to visit, etc.”

IBI Submission

4.3.4 Minutage

The IBI submission raises issues in relation to minutage. Radio currently has a limitation of 10 minutes of advertising time per hour, though no such restrictions apply to sponsorship for either TV or radio. The IBI submission contends that the use of visuals provides TV with the ability to make sponsorships look like ads and therefore provides TV with an advantage over radio.

However, minutage requirements are not set by the Code and therefore not within the scope of this review. The 10 minutes per hour requirement for radio is set by the Broadcasting Act 2009.

4.3.5 Financial Services Advertising

Within their submission, the IBI proposes further discussion between the BAI and IBI regarding the advertising of Financial Services. While this type of advertising is regulated by the Financial Regulator and therefore is outside of the Code’s remit, the IBI would nonetheless like an opportunity to explore options with the BAI.

4.3.6 Central Copy Clearance

The establishment of central copy clearance to provide outright confirmation that a commercial communication is in breach of the current Code prior to broadcast is proposed within the IBI submission.

4.3 Summary of Complaints Logged Under The GCCC

Below is a summary of the complaints logged by the BAI between June 2010 and April 2014 under the General Commercial Communications Code; categorised by product/programme/vehicle type:

	TV	Radio	Total
Advertising			
Alcohol	4	2	6
Food	2	-	2
Household	2	-	2
Cosmetic/Medical	-	1	1
Unsuitable/Graphic	14	3	17
Psychic	32	-	32
XFactor	4	-	4
Competition	-	3	3
Programme/Content	2	7	9
Other	8	7	15
Total	68	23	91

Over a four year period, the number of complaints to the BAI was 91, a relatively modest amount in view of the, literally, billions of individual communications broadcast during this period. This underscores the findings from the stakeholder in-depth interviews which indicated very high levels of compliance and co-operation within the industry.

These data are also consistent with the findings from the General Public survey which show a high level of inertia amongst audiences. In the event that a broadcast is found to be in some way offensive, viewers and listeners usually take no action at all, and complaints to a public body, broadcaster or the BAI are exceptional.

The number of complaints regarding graphic or unsuitable content is understandably higher for TV than radio. However, when the Psychic Readings Live complaints are excluded, the difference between the two media is less evident. Psychic Readings Live attracted a relatively high number of complaints (32), with other sectors such as alcohol, food, household products and cosmetic/medical advertising registering only a handful of complaints during this period.

In addition to the above, it is worth noting that 31 complaints were received against Play TV between January and March 2010, however, these were considered under the General Advertising Code and therefore processed prior to the implementation of the General Commercial Communications Code ("GCCC").

The table below breaks down the outcome of the complaints logged under the GCCC between June 2010 and April 2014. When reviewing this table it is important to note that BAI structures permit complaints to be considered by its Executive Complaints Forum (ECF)¹ and/or its Compliance Committee.

<i>Complaint Outcomes</i>	
Upheld (Total or in Part)	24
Rejected	31
Resolved (Without being considered by BAI)	31
Invalid	2
Withdrawn	1
Decision Pending	2
	91

Of the 91 complaints logged, 24 were upheld by the Compliance Committee. In total 31 complaints were rejected; 20 by the ECF and 11 by the Compliance Committee. A further 31 complaints, though logged, were resolved without being considered by the BAI. Resolved in this context refers to complaints whereby the broadcaster's response was considered satisfactory by the complainant and therefore the matter was not pursued, or the complainant failed to liaise with the BAI further.

4.4 Complaints Received By The BAI Regarding Play TV & Psychic Readings Live

Psychic Readings Live was the phone-in TV programme that invited viewers to dial a premium rate telephone line costing €2.44 per minute. This gave them a chance to communicate with a team of in-studio psychics who offered predictions of future events. Several of the complaints highlighted the fact that the show preyed on the vulnerable in society by telling them to call for answers on a premium rate number. Many complainants deemed the show to be unethical and immoral in the way it sought to encourage viewers to make contact by alleging to have answers to questions of a personal nature, of which the programme knew little or nothing about. The complaints also highlighted the fact that while the phone number was referred to on numerous occasions, at no point was the viewer verbally informed of how much per minute a call would cost. Although the number was displayed on screen, the writing was small, the quality of the picture was poor, and consequently some viewers may not have had the ability to see the text.

Play TV was a late night/early morning phone-in quiz show where viewers were encouraged to call a premium rate number in order to give solutions to puzzles being put to them by presenters. However, there was no guarantee that callers would get through to the studio, even though they were still charged the full cost of the call. An example of this was highlighted by one complainant who told of watching the show for 25 minutes before deciding to call in. As she watched the show the presenter seemed agitated that no one had the answer to the quiz. The presenter repeatedly stated that nobody was calling into the show. The complainant called the number on screen. Upon getting through to the show, the complainant was asked a qualifying question by choosing A or B but was told she was unsuccessful and to try again. The complainant continuously called in and failed to be put through to the studio, despite the presenter pleading with viewers to call in, stating that there were no calls to the studio. This particular complaint was upheld under the General Commercial Communications Code.

¹ The ECF may forward complaints to the Compliance Committee if deemed necessary.

5. Stakeholder Feedback

This chapter of the report looks in-depth at the opinions and experiences of industry stakeholders, as expressed during a series of in-person interviews. Furthermore, the general public was afforded the opportunity to review the Code through both qualitative and quantitative research techniques the findings of which are also discussed in this chapter.

The first section of this chapter explores the perspectives of industry stakeholders on the changing media landscape. Inevitably the conversations with stakeholders began with a **contextualisation** of the Code by discussing the needs of broadcasters and advertisers, the competitive situation and how the Code helps or hinders stakeholders from achieving their long-term goals of maintaining audience trust while ensuring the competitive viability of broadcasters.

After explaining the context for the Code, stakeholders gave their feedback on the **content** of the Code. Firstly, industry stakeholders were asked if they felt the Code was meeting its objectives, before being asked to evaluate the rules of the Code, both in general and as they relate to individual sectors. While stakeholders were given the opportunity to comment on any part of the Code, the discussion tended to gravitate towards a number of key issues.

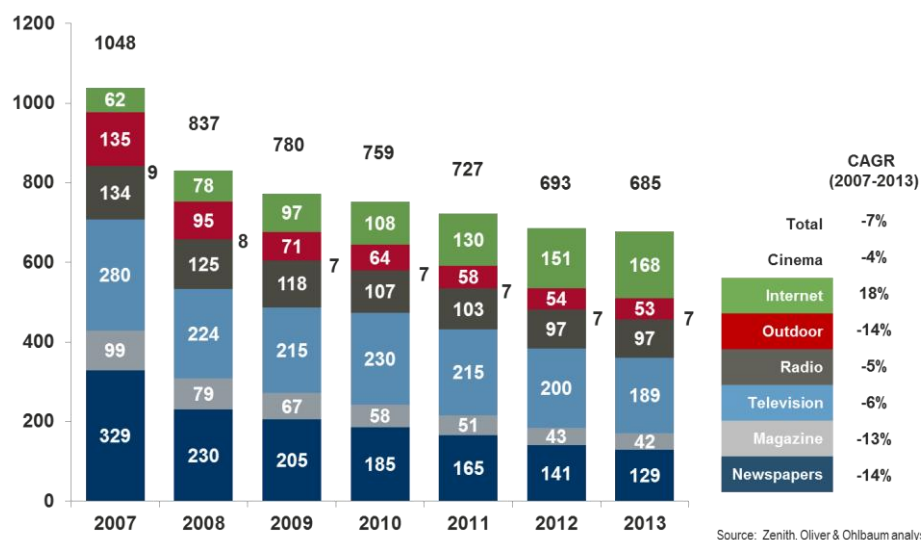
Throughout the general public research phase, respondents considered their experiences of commercial activity on Irish TV and radio and the role of the broadcasters and other bodies in relation to protecting the interests of the public. Specific reactions to the GCC Code in terms of this objective were then investigated.

Members of BAI staff were also invited to give their views during a round-table discussion held at the BAI office in Dublin.

5.1 Context - A Changing Media Landscape

A review of Public Funding from Public Service Broadcasters (2007-2013) was prepared by Oliver & Ohlbaum Ltd. Oliver & Ohlbaum's analysis of the advertising market in Ireland concluded: "the economic downturn hit the Irish advertising industry hard, and it has yet to begin a serious recovery; 2013 advertising expenditure stood at 65% of its 2007 level. Although not suffering as badly as print media advertising revenues – which fell by 60% over the period – the broadcast media sector has also seen a decline in advertising revenue, with a CAGR of -6% and -5% for television and radio respectively between 2007 and 2013".

Nominal Advertising Expenditure in Ireland (2007-2013)



The broadcast media sector has clearly been under commercial and competitive pressures, driven by the economic downturn and the growing popularity of online advertising. For broadcasters it is essential that they remain competitive and relevant and all have embraced this challenge by providing new digital platforms for audiences to engage with their content. However, this multi-platform environment presents particular challenges from an advertising perspective. It is essential, from the broadcasters' perspective that the Code also remains relevant in this new environment, enabling the delivery of appropriate communication strategies, and thus facilitating broadcasters to remain competitive. Arguably the greater the audience for TV and radio, the more protection Irish consumers will be afforded.

For broadcasters in particular, the suitability of the Code was evaluated in the context of the competitive environment. Invariably, discussions began with and comments were placed within the context of a highly dynamic and extremely challenging competitive media environment.

Despite the rise of digital media, TV and radio remain almost as important to Irish audiences today as they did a generation ago. TAM Ireland research (2014) shows that the average Irish adult watches 193 minutes of TV per day, while the JNLR (2014) estimates average radio consumption to be 253 minutes per day per Irish adult.

In recent years, however, the digital revolution has begun to commercially impact TV and radio, with more and more advertising spend being diverted online. Leading media agencies in Ireland forecast that digital will become the largest commercial communications channel for Irish advertisers within the next two years.

Compared to TV and radio, digital media is less strictly regulated, which has changed the context within which broadcasters evaluate the appropriateness and effectiveness of the BAI's General Commercial Communications Code. While broadcasters recognise that their competitive advantage is enhanced by a regulatory environment that promotes responsible broadcasting, and by extension, delivers a broadcast environment valued by advertisers, the competitive threat from online brings regulation and some restrictions into sharper focus.

During the discussion with BAI staff, the growth of non-linear/on-demand consumption of TV and radio was acknowledged, however the legislative underpinnings of the Code prevents addressing these platforms. Regulation of digital media in the wider sense is clearly not within the remit of the BAI. An acknowledgement of these restrictions by all stakeholders would be important when considering any future potential revisions of the Code.

Developments in technology have also facilitated an explosion in communications and content from outside Ireland, widening the competitive set for Irish broadcasters.

“

Carat Media is saying digital will be the biggest medium in Ireland this year whereas Core Media says it is going to be next year. But it is going to happen and it seems that digital is not regulated the way TV and radio might be.

Advertising Industry Representative

“

Digital is the fastest growing species on earth.

Broadcaster

“

Listeners are not stupid and we don't want to turn them off clearly but also to recognise that the game has changed from the advertiser expectation and also the agency view as well, and that every other medium - whether they like it or not - will have to keep pace with what is going on in the digital world where you know, you can effectively buy content whatever shape or shade you want.

Broadcaster

“

And other media that's coming from outside the geographical area of Ireland, I mean we're looking at a situation where it's as easy to pick up a radio station from New York or from London as it is from Dublin now online. So, to me that's an issue. It's probably even in some ways a bigger issue for TV.

Broadcaster

“

Other (European) broadcasters, all public service, most of them taking advertising, but we're almost the only ones who have a same language, big neighbour, beaming all the stuff into [Ireland].

Broadcaster

For TV in particular, the growth in the number of channels from outside Ireland and not regulated by the BAI attracts more comparisons to be made between the BAI Code and codes operated in other jurisdictions, most notably the equivalent Ofcom Code.

“

Viability is critical. We live in a multimedia environment. We compete against all media and the same rules should apply but currently we have opt out channels from the UK where the same rules do not apply. The code can seem out of date compared with the UK. Consider betting advertising, for example, Sky 3 or Euro Sports where you have on-screen betting. We have to compete with Sky for sports in Ireland whereas these channels can take additional revenue from betting and for this reason the code ends up being discriminatory even if it's not designed to be discriminatory.

Broadcaster

“

When this review last happened, I think there were two non-indigenously licensed stations selling advertising in the Irish market and the figure, I think, as of this morning is thirty six.

Broadcaster

For broadcasters, a level playing pitch for all media is the ideal, without of course diluting in any way consumer protections, and most of the changes suggested to the Code are informed by this ambition.

“

And all are unregulated - newspapers in terms of ownership yes - but in terms of content - you know a publication like Metro where you can wrap it in whatever shape or form or whatever colour you want. And that's - look from an audience point of view - is acceptable because it is free and Google likewise we talked about Adwords, Facebook like all of these sort of free media - radio is free in that respect but obviously we are beholden to the state because that is how we got our licences. So again it is not a case of we want to go and rampantly commercialise everything but it has to be realistic in the context of everything else that we are competing against.

Industry Representative

Arguably, it is also very much in the interest of the BAI to facilitate broadcasters in Ireland to compete as effectively as possible with emerging and foreign media. As one contributor noted, the unintended consequences of regulation can be that it encourages advertisers to divert spending away from Irish broadcasters to media where, possibly, audiences do not enjoy the same protection.

“

[Irish advertisers] want to keep as much advertising as they can in Ireland, and to do that, if they can't advertise the way they want, how they want in Ireland, they basically do it from outside with the opt-outs, which is affecting the income of Irish broadcasters. We don't want to be chasing advertising out of the country.

Department Official

The pace of change was not expected to decelerate and, it was observed, the Code should be more focussed on principles than rules in order to achieve the desired level of flexibility to deal with a faced-paced, dynamic media environment.



Technology and viewing habits are moving at a pace that regulation ... it's in constant need of review, just can't keep up. So all of these things reinforce the point that, our view would be that general principles with flexibility are much better for everybody than prescriptive, minutely calibrated things which will be inevitably overtaken by events.

Broadcaster

5.2 Working Together

Commercial communications are regulated at a number of levels by a matrix of codes, both statutory and voluntary. It was evident from the stakeholder interviews that there is a high level of co-operation between all organisations involved, ensuring the codes are consistent and enforcement is effective.



It would be absolutely bureaucratic to have a kind of double jeopardy where the BAI would take action and we would take action, or the NCA would take action and we also would take action, you know ... if a company is going to be prosecuted by one [organisation], that's sufficient.

Industry Sector Regulator

5.3 Achieving The Objectives Of The Code

This section of the report assesses the effect of the Code by examining how the Code is achieving its stated objectives.

The consensus amongst stakeholders is that the Code has been successful in meeting its objectives. In particular, overwhelmingly stakeholders believe the Code is effective at protecting the interests of the audience and the integrity of broadcasts. And the Code is clear and comprehensive. This is not to say that there are areas where further clarity is not needed or a greater appreciation of the competitive challenges is warranted, but these amendments do not suggest the Code is not achieving its objectives.

Objective: To ensure that the public can be confident that commercial communications are legal, honest, truthful and decent and protect the interests of the audience.

This objective is shared across the entire broadcast and advertising community. Broadcasters are acutely aware that advertising effectiveness is built on trust. For advertising agencies and advertisers, the brands they build and the industry they promote can be seriously damaged by untruthful advertising.



The code, the fundamental principle of the code, of that code and other codes, whether it be that code or the Advertising Standards Authority Code, is to protect the consumer, but it's to protect the consumer in the long-run interests of the broadcaster and the advertising industry too, because if you bring advertising into disrepute, then people don't listen to it, don't watch it, don't act upon it. Whereas if it's held up to scrutiny and it's legal, decent, honest and truthful, that's the other one, legal, decent, honest and truthful, if it stands up to those things then people have confidence in it, then advertisers advertise and the business works.

Broadcaster

Findings from the general public survey reinforce the importance of trust and maintaining the confidence of the general public: 85% of Irish adults find advertising and sponsorship always or sometimes useful.

All stakeholders struggled to bring to mind communications that were illegal, dishonest, untruthful or indecent. However, the potential for the boundaries to be pushed without regulation was also acknowledged, reinforcing the importance of this objective and remaining vigilant.

It was interesting to note that when stakeholders discussed the role of regulation in protecting the public, the term 'misleading' was used most often. This is also a term favoured by the public when discussing this aspect of commercial communications. Consideration should be given to whether this term should be mentioned explicitly in the Code as the standard that commercial communications must reach.

In order to not mislead, it was specifically requested that advertising of ticket prices (concerts, ferries, airlines etc.) should be required to deliver absolute clarity of pricing.



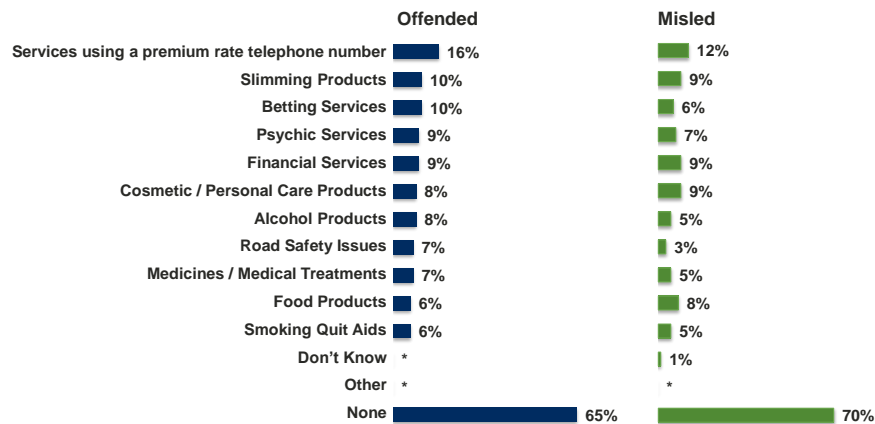
If you're advertising an airline price, it must be the price that they can buy the thing from, you cannot advertise the price and then tell me that there's a separate, that there are charges and fees on top of it. And a similar one is for cars which is a huge area of advertising, there must be on-the-road prices or they must tell you that it does or it doesn't include delivery and related charges so people don't go to garages and say, 'I saw the car advertised for 25 grand,' and they say, 'Yeah, but it's 27,500 with the new number plates and delivery.'

Broadcaster

According to the General Public survey, commercial communications are rarely offensive or misleading, with a minority of Irish adults recalling **ever** being misled (29%) or offended (19%) by advertising. Sponsorship and product placement are hardly ever misleading or offensive.

	Ever Misled	Ever Offended
Advertising	29%	19%
Sponsorship	6%	4%
Product Placement	3%	2%

To probe the issue further, the public were prompted during the survey with a list of communications categories and asked if they were ever misled or offended by these types of commercial communications. Services using Premium Rate Telephone Numbers topped the list of offenders, followed by slimming products, betting services, psychic services, financial services and cosmetic/personal care products.



It is interesting to note that even when prompted with a list of categories, the majority of the public could not recall any being misleading (70%) or offensive (65%)

Objective: To ensure that commercial communications do not impinge on the editorial integrity of broadcasts.

The issue of integrity is tied to the issue of trust, and therefore it is in everyone's best interests that the integrity of broadcasters and broadcasts is protected.

Once again, stakeholders could not readily recall situations where the editorial integrity of a broadcast was impinged.



A sponsor cannot and does not influence editorial content. We offer an environment that appeals to our sponsors and to their brands.

Broadcaster

When and how products are allowed to be mentioned during a broadcast attracted a degree of comment. Some contributors can mention their product (books, movies) but others, such as a wine merchant, must not be seen to promote their own product (or you can mention your own product if the show is devoted to that product category with other companies also participating in the show). During promotions, sponsors can be mentioned, but the mention cannot be gratuitous. When the editorial integrity risk is not obvious, fine lines become major roadblocks if commercial opportunities are foregone as a consequence.

One stakeholder suggested a less strict interpretation of the editorial integrity objective, with the safety net that in the event that editorial integrity was compromised, viewers and listeners could complain and this complaint could then be dealt with under normal complaints procedures. It was further proposed that viewers and listeners would, in any event, tune out, which was the ultimate sanction for any broadcaster.

“

There is an anomaly with the sponsorship of news and current affairs. Newspaper is news yet they can take advertising or sponsorship as part of their offer. Online is news. In radio the restriction is only for news. The thought that sponsorship would influence a show, for example Vincent Browne, is ridiculous. You want the quality of the show, not the other way around. If we are found to not be balanced then a fine can be issued or a breach. Let someone complain if they feel there has been an influence.

Broadcaster

Objective: To provide clear guidance to broadcasters as to the standards to which commercial communications should adhere.

The Code was generally regarded as clear although a need for greater clarity was noted under a number of headings. Issues that emerged regarding the lack of clarity in some areas are dealt with elsewhere in this report under the relevant heading.

The Guidance Notes were positively received.

“

Guidance notes are very good and clear. Guidance last year on opinion insertion was excellent.

Broadcaster

However Guidance Notes can only provide guidance to a point. It was noted that in situations where the Code was not clear and the Guidance Notes are not sufficiently informative, informal advice from the BAI on the suitability of copy before broadcast was not readily available, unlike the process operated by the ASAI where non-binding advice is provided.

“

Publish or be damned.

Broadcaster

I think it goes back to the lack of any guidance on the Code ... when we go to the BAI and I know it's not their role ... the response that was back is generally a copy and paste section of the Code.

Broadcaster

Non-binding advice, if possible within the resources available within the BAI, would be welcomed by broadcasters.

Objective: To provide guidance to the general public on the standards they can expect from commercial communications on broadcasting services.

If the intention of the Code, as contained within this objective, is to be a reference document or a document familiar to the general public, it is unlikely this objective has been achieved. We know from the survey conducted for this review that 32% of the public are unaware of the BAI. The BAI was also placed third (on 9%) on the list of likely contacts to complain about a commercial communication (behind the broadcaster and the ASAI). While we did not ask specifically about awareness of the Code, it would be reasonable to conclude that the public would be mostly unaware/unfamiliar with the Code.

Perhaps the question should, more correctly be, should we expect the public to be familiar with the Code and would the investment required to build this familiarity be justified?

Objective: To provide broadcasters with a simple, flexible and comprehensive Code that does not impede in an unwarranted manner their right to communicate commercial messages.

Contained within this objective are two sub-objectives. Firstly, the Code should be simple, flexible and comprehensive. And secondly, the Code should not impede in an unwarranted manner a broadcaster's right to communicate commercial messages.

On the objective of **simplicity, flexibility and comprehensiveness**, it was noted that the general construct is to include both specific BAI rules and more general references to other relevant regulations issued by the relevant competent authority and to Irish and European legislation.

The construct of referencing other sources of legislation was regarded as both comprehensive and clear. It was further suggested by the BAI staff that even more definition could be given to this structure.

It was noted, however, that the other rules, regulations, codes and legislation referred to in the BAI Code were not universally understood by broadcasters. The likelihood that a broadcaster with limited resources, such as a local radio station, would have someone on staff at all times who was familiar with all codes and legislation was questioned. And as legislation is unlikely to become less complicated or broadcaster resources more plentiful, the situation is not expected to improve. The current role of RTE as an unofficial clearing house for the industry was acknowledged.

“

RTE because of its dominant position over the years, and its public service remit, has functioned, by and large, as a sort of unpaid copy clearance agency.

Broadcaster

It was further acknowledged that even when the expertise exists within an organisation, the fact that different organisations are interpreting the various rules and regulations differently will lead to a lack of consistency in interpretation on occasion. Centralised copy clearance, as operates in the UK, was suggested for Ireland as a way to overcome this lack of familiarity and potential for differing interpretations.

“

We put a set of guidelines in place for members saying - look if you want your scripts pre-cleared, if you want your mechanics pre-cleared we will work with our members to try and design that type of system. They have it in the UK and it seems to me to eliminate a lot of unnecessary headaches after the event.

Industry Representative

“

I have on previous occasions suggested to the BAI that they should write that into the code, that Central Copy Clearance would be an ideal. You know, they can't really force people but they can certainly encourage people. So that you get consistent decisions in relation to the code that would apply to all Irish broadcasters, rather than have individual broadcasters interpret their stuff.

Broadcaster

Regarding the sub-objective of ***not impeding in an unwarranted manner a broadcaster's right to communicate commercial messages***, most of the comments from broadcasters related to the need for a level-playing pitch in order to protect the commercial interests of TV and radio broadcasters. Specifically:

- Radio broadcasters identified areas of the Code that disadvantaged radio compared to TV, including:
 - easier for TV to adhere to requirements to give consumer information that only has to be shown on TV, whereas on radio such information has to be read out (costs of calls, regulatory messages etc.)
 - sponsorship rules are more restrictive for radio because TV can use imagery to enhance the sponsorship message
 - product placement, which was regarded by one broadcaster as obviously surreptitious advertising, is available to TV
- TV can also appear to be disadvantaged compared to radio in terms of the restrictions that apply to commercial communications around current affairs programmes.
- Minutage for TV differs between channels and jurisdictions.
- However, for TV and radio broadcasters, their priority is to ensure the Code does not disadvantage their organisations commercially compared to other media, because:
 - online is less regulated or not regulated at all
 - opt-out channels are not regulated by the BAI and the Ofcom Code is seen to be less restrictive
 - press is free to carry advertising around news and current affairs
 - political advertising is not allowed at all on TV or radio

The competitive landscape is complex and the issues raised complicated. As a priority, all stakeholders support the removal of competitive disadvantage without diluting consumer protections.

“

That is what we are facing in every single brief these days, how can we engage [with consumers].

Broadcaster



The minutage issue completely denies us equal access to revenue.... people divvy out share of revenue according to commercial inputs. We are all at a complete disadvantage.

Broadcaster

5.4 General Rules Evaluated

This section provides stakeholder feedback on the rules as they relate to advertising, sponsorship, teleshopping and product placement.

During the industry stakeholder discussions, feedback was invited on all the general rules contained within the Code, as they relate to advertising, sponsorship, product placement, teleshopping, split-screen and interactive advertising. Inevitably, feedback concentrated around a few key rules. Sponsorship communication attracted the majority of comment and, consequently, this section of the report is weighted heavily towards the rules as they pertain to sponsorship.

Advertising or teleshopping segments shall not be inserted in any television broadcast of news and current affairs programmes, documentaries or religious programmes when their scheduled duration is less than 30 minutes.

News, current affairs, religious services and religious programmes shall not be sponsored on television.

If commercial communications are clearly seen to be separate from editorial, the audience protection benefit from not allowing advertising around or sponsorship of TV current affairs programming was questioned by one stakeholder. However the prohibition of sponsorship of news and current affairs programming is set out in the AVMS Directive and the Code must reflect this rule. While industry stakeholders may question the need for this rule, the BAI must ensure the Code is reflective of the AVMSD.



Sponsorship is not allowed for news and current affairs on TV but is only restricted to news on radio. It is difficult to argue that Matt Cooper and Drivetime are fundamentally different to for example the Vincent Browne show.

Broadcaster

Whether news should be sacrosanct was also questioned, especially when other media could combine advertising and news.

“

Newspaper is news, yet they can take advertising or sponsorship as part of their offer. Online is news.

Broadcaster

A sponsorship announcement or references shall not directly encourage the purchase or rental of a product or service, in particular by, inter alia, making special promotional references to a product or service, by the inclusion of advertising copy, prices, endorsements or calls to action, or by affording undue prominence to a product or service of the sponsor.

The exclusion of any calls to action was regarded by some stakeholders as overly harsh and featured prominently in a recent IBI submission to the BAI. For radio broadcasters, being allowed to read out a phone number or website address but not being allowed to add the words ‘call’ or ‘visit’ was regarded as highly restrictive, limiting the potential for radio to link in with, for example, social media as part of an integrated, multi-media campaign.

“

The example of a call to action. You use it across every other media, and you can't do it on radio. I find it very difficult to justify it [to a client].

Broadcaster

The requirement for a sponsorship to also not receive undue prominence was also deemed to place radio at a competitive disadvantage to TV, where a sponsorship logo can appear in sports interviews or a sponsorship sting can show a product being used. For radio, being part of the local community and being able to engage with local events and launches is essential, yet outside broadcasts for (local) radio must conform to a format that seems artificial for the setting and the content.

“

I think that's the future of local radio; I think they're very good at the engagement pieces; it's a platform that knows what their medium can deliver. So, I think, from that perspective, local radio stations are seen as a 'friend of the community' you know that way, and it's not going to be overtly commercial and they're not looking to, you know, push, like we're not selling health insurance or pensions, ... I think it's just ... with some promotions and stuff like that they have a little bit of leeway to work with advertisers, to work with retailers that gives them a little bit more of an edge over the others and even to be on the same page as the [other media].

Broadcaster

“

So, if I am Kellogg's and I want to put a five-second sting on, I have a note about this, excuse me, so I get this right. If I am Kellogg's and I have a five-second sting and I say in the sting, you can say Kellogg's 4978193 but you cannot say 'Call Kellogg's on 4978193' because that is a 'call to action'. So, you cannot, once you introduce words like, 'Go to', 'Click on', 'See', 'Call' you are making a call to action which is not allowed under the current broadcasting BAI regulations for sponsorship stings.

Advertising Industry Representative

An interpretation of the sponsorship rules which does not disadvantage radio would be welcomed by radio broadcasters

“

To support hurling in the community so they are going to have the whole gambit of hurling clubs from all over Kilkenny coming together. And we will be there and we will be talking to people and we will be airing our normal stuff and the guest of honour at the thing is Henry Shefflin, so Henry Shefflin is probably being paid a stack of money by Centra to come along. We will go along to Centra and say beforehand there can be no gratuitous, mentions, endorsements all of this sort of stuff, say it to Henry, try and keep it kind of general, Henry that was a great win over Wexford there last week, how are you doing, "Well I am delighted to be here by Centra and working along with Centra, they are great people ... Henry is going well I have got to get a plug in for [Centra].

Broadcaster

While the Code does not explicitly restrict the mention of more than one product or service in a sponsorship sting, the Guidance Notes include this restriction and radio stations have been found to be in breach if more than one product or service is mentioned. A change to the Guidance Notes was requested by stakeholders to allow mention of multiple products and services that are naturally bundled together.

“

VHI Swiftcare injuries and illnesses. So we were breached.

Broadcaster

In general, radio broadcasters feel, when it comes to sponsorship, radio is disadvantaged compared to TV. The ability for TV to use visuals means TV sponsorship can look more like advertising. As one stakeholder noted, the pouring of Avonmore cream over strawberries is an advertisement, even if it does not contain a call to action.

“

I think it is virtually all advertising to me and to the punter out there on the street I don't think they see a difference in it.

Advertising Industry Representative

“

Avonmore ... it's a sponsorship ... but (really) it's an ad for their product.

Broadcaster

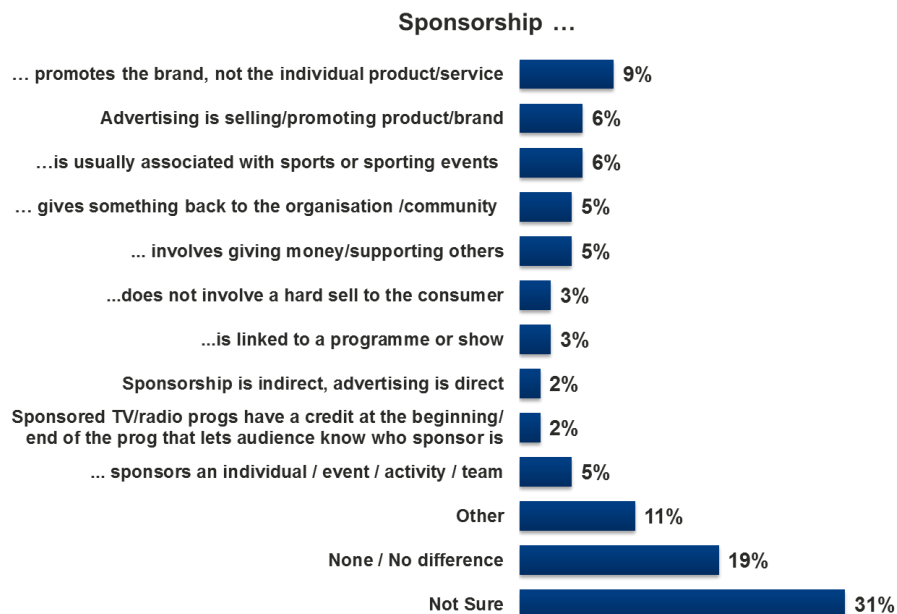
One solution offered by a stakeholder was to increase the minutage and make no distinction between advertising and sponsorship.

“

So maybe the sponsorship sting issue moved into advertising so that it would be adjudicated based on a normal ad as opposed to sponsorship stings.

Advertising Industry Representative

The general public survey asked respondents how sponsorship is different to advertising.



While the high levels of 'no difference' (19%) and 'not sure' (31%) responses prove how difficult it is for some to identify or articulate the difference, for others there is a distinction. Sponsorship, in their opinion, is more about brand association, less about hard sell, and often involves giving something back. And, has already been highlighted in this report, sponsorship is less likely than advertising to offend or mislead.

5.5 Rules Pertaining To Specific Products and Services

Stakeholders generally considered this section of the Code to be clear and comprehensive. A number of issues were raised in relation to alcohol, medicines, smoking aids and food, and these are noted under the relevant headings below.

However, during the stakeholder discussions it became clear that some sectors such as betting services and smoking aids are especially worthy of further attention as they attracted comment from a wide range of stakeholders.

5.5.1 Alcohol

Rules pertaining to alcohol communications were universally regarded as clear and comprehensive, supported by voluntary codes and copper-fastened by a central clearance process.

A specific request was made by one stakeholder to include pre-mixed spirit drinks alongside alcopops as a category of drinks that should not be allowed to be advertised, to give greater clarity to the rule as it relates to pre-mixed spirit drinks.

“

The original code included an exclusion on products, spirit-based products which were ready to drink, that has been deleted from the latest version of the code, but should be put back in because it helps the broadcaster explain to someone who wants to advertise Smirnoff Mule or whatever it is, that actually that product, whereas it may not be high in alcohol and therefore is allowed to advertise, it is not a good idea that we advertise it because it has a certain appeal to the young.

Broadcaster

Inclusion of the Code of a restriction on alcohol companies sponsoring sports programmes was proposed.

“

It's sort of a gentleman's agreement that alcohol won't sponsor sports programmes. It should be made a little bit more than just an agreement.

Broadcaster

5.5.2 Medicines, Medical Treatments, Products & Services, and Cosmetic Treatments & Services

The rules pertaining to medicines serve to reinforce and reflect the key requirements of relevant Irish and European legislation.

The relevant legislation as it relates to medicines focuses on efficacy and safety. However, claims of market leadership or other economic claims that are not referenced directly in the legislation could be included specifically in the BAI Code as an additional safeguard.

“

If a company is advertising how their medicine is a brand leader in Ireland, well, a claim like that wouldn't be a breach of the medicines advertising legislation although it might be untrue, and we couldn't easily act on it if it was untrue or not, and I think having the BAI legislation or code in place is very useful in looking at claims like that.

Industry Sector Regulator

The BAI Code directs that advertising for a cosmetic surgery service should not encourage use of the service. One stakeholder questioned how realistic such a direction can be, as mentioning a client name and list of services is essentially encouraging use of these services, even if the communication does not include a specific call to action.

“

I know that I've been hearing advertisements on the radio recently of clinics offering breast enhancements and reduction surgeries like that and like I would view that as an advertisement and an advertisement to encourage use of a service.

Industry Sector Regulator

It can also be difficult for the BAI and for broadcasters to draw a line between what is cosmetic and what is surgical.

“

Come to Joe's dentistry in Newry and get all your teeth seen to. It's an ad, a call to action. Maybe he is going to whiten your teeth, which is a cosmetic process. Maybe he is going to augment certain parts of your body which might be good for your health ... it is very difficult sometimes to make a hard and fast ruling.

Broadcaster

It was also proposed that the BAI Code could be enhanced by moving from a position where the irrational use of medicines is not encouraged to one where the rational use of medicines is encouraged.

Generally, this section of the Code can be confusing and one stakeholder hoped greater clarity could be achieved.

“

The most complicated, convoluted and difficult to apply version of the Code is in the area of medicines and medical treatments, and cosmetic medicines and cosmetic treatments....I don't have the answer but I know it can be done better.

Broadcaster

No comments were made in relation to the commercial communication of hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry.

5.5.3 Smoking Aids

It was noted that e-cigarettes have grown significantly in popularity in recent years. Both nationally and internationally, regulators are working to categorise e-cigarettes and to provide a consistent basis for regulating this new product category. In the absence of clear and specific rules and regulations, an inconsistent approach to how e-cigarette communications are treated by broadcasters is inevitable. It was requested that the BAI or another body provide clarity in order to achieve consistency on how, if at all, e-cigarettes should be advertised.

“

This whole vaping thing that is going on at the moment. That has got to come tumbling down around us all sooner rather than later and the whole issue of, is it smoking, is it not, is it good for you, is it not? But the more and more I look there are shops popping up everywhere and you see ads appearing in magazines just like the old days, the Carrolls days where you'd see the Major ads and all of those. That is an issue that I think needs to be addressed by somebody

Advertising Industry Representative

“

It's a tricky one. Some people are saying it's like nicotine replacement therapy, other people are saying there are a lot of people who are having e-cigarettes along with their cigarettes.

Broadcaster

“

We're in a bit of a legislative vacuum about it right now.

Industry Sector Regulator

Medicines legislation does not cover e-cigarettes once they are not advertised as cessation aids.

5.5.4 Food (Including HFSS Food)

The inclusion of Food rules in the Code is advantageous at a number of levels.

The legislation that exists in relation to food advertising is strengthened by the BAI Code, with one stakeholder noting the important role of the BAI in enforcing the rules and regulations that exist, facilitated by the close relationship the BAI have with broadcasters.

“

When it comes to TV and radio and BAI helps us a lot because what they set down in their code of practice means that the players in that area that we wouldn't come across - the TV people and the media people - would pay more attention to the BAI.

Industry Sector Regulator

However, it was also noted that broadcasters can rely on the BAI Code at the expense of building an understanding of other Food communication legislation. The possibility of including more specific provisions in the Code, taken from other legislation, could be explored.

It was specifically noted that, currently, EU legislation would appear to allow food advertising to make health claims that are in the process of being adjudicated upon by relevant EU authorities. The role of the BAI Code in protecting consumers from unsubstantiated health claims could also be explored with relevant stakeholders, if this apparent loophole is being exploited.

“

There is a slight grey area in that there are applications for health claims which have to go through the European Food Safety Authority which haven't been adjudicated upon.....they know full well that the claim they have made is not going to be substantiated.

Industry Sector Regulator

The regulations regarding the advertisement of infant and follow-on formulas was raised as an item of increasing sensitivity and where further clarification may be required.

“

Infant formula only applies up to the age of four months. They tell you that it does up to six months but legally it's only four months.

Industry Sector Regulator

“

It would appear to us that the companies that are advertising follow on formula are heavily promoting it on the basis, you know, to keep people who have bought their infant formula buying their product and the science has come on a bit more saying these things aren't necessarily any use to anyone.

Industry Sector Regulator

HFSS foods have been the subject of much discussion in recent years. On balance, the stakeholder view was that rules pertaining to HFSS food are appropriate, although concern was expressed that HFSS foods attract an unreasonable level of regulatory attention.

“

In the general code what is in here under HFSS is also very fair, it complements the Children's Code.

Advertising Industry Representative

“

HFSS is a vital part of our revenue. Why should broadcasters be restricted in this area when others are not. The State takes VAT on HFSS.

Broadcaster

“

There seems to be a view that TV advertising is wholly responsible and is capable of changing matters of public policy such as diet.

Broadcaster

Ideally, according to one stakeholder, public policy would take a more holistic view of how HFSS foods are communicated and policy recommendations consequently would include all media and all forms of communication, and regulations would reflect the known influence of advertising on negative health outcomes.

5.5.5 Cosmetic Products

Cosmetic products did not attract comment from industry stakeholders, although it is worth noting that cosmetics advertising was mentioned during the general public focus groups as a category of advertising with significant potential to be misleading.

5.5.6 Slimming Treatments, Products and Services

Slimming aids and supplements are potentially difficult categories to regulate because they fall somewhere between foods and medicines. Further clarification could be provided in the Code on what and when health claims can be made within these product categories.

“

There are particular rules in relation to health claims about [supplements and slimming aids].....the greatest hassle in the last while are products that are slimming aids and some supplements that bear health claims.

Industry Sector Regulator

5.5.7 Financial Services and Products

All stakeholders accept the requirement for financial services communications not to mislead in any way. The legislation which regulates financial services organisations operating in Ireland appears robust and comprehensive.

While appreciating that the BAI do not have responsibility for the legislation that requires broadcast advertising to provide regulatory information at the end of each advertisement, it is a source of commercial disadvantage to radio stations because the information needs to be read out whereas it can be shown on screen for TV without reducing advertising time which the advertiser has purchased.

“

We get complaints saying why does the KBC ad, why does the Bank of Ireland ad, why does Rabo really have one - why do they have all this rushed stuff at the end. We say look this is not a requirement of our code, it is a requirement of the Central Bank code. You should go to the Central Bank because we can do nothing about it, you know.

Advertising Industry Representative

It was suggested by one stakeholder that a better solution for radio broadcasters and consumers would be an advertising campaign, funded by broadcasters, that builds consumer awareness of financial regulations, which would then only need to be referenced at the end of a financial advertisement.

5.5.8 Betting Services

The commercial communication of betting services has seen huge growth since the Code was first drafted, the range of gambling services has expanded dramatically, as too has the number of channels through which betting services are available. Pressure is growing on broadcasters to offer attractive broadcast advertising opportunities, to compete with digital and other media. In this context, greater clarity and granularity was sought on the rules surrounding betting services.

“

The Code is possibly at its most ambiguous, I'm sure not intentionally so, but operationally when it comes to betting, I mean, one argument is for example that if you allow advertising of something, of anything it is an encouragement to use that, buy that product, or use that service and yet the code seems not to wish to encourage betting.

Broadcaster

There was a feeling, held by one stakeholder, that audiences are not being protected.

“

If anything probably restrictions on betting should be more, I would be personally arguing for that. There is a current TV campaign on for Ladbrokes, I don't know how it got through.

Advertising Industry Representative

One stakeholder proposed the adoption of a framework of rules, similar to that in place for alcohol advertising.

“

They devised a code which basically, fundamentally says you're allowed to advertise gambling provided it doesn't encourage people to bet. Now, that doesn't make any sense at all. We would propose to the BAI that they look at the alcohol provisions of the code and apply them similarly to betting. In other words, that it's not appropriate for young people.... all the rules are there in the alcohol section and they should be applied to betting because it's a growth area. It is an area that has the same, I mean it's a legitimate activity but it has an addictive possibility.

Broadcaster

Betting services attracted a good degree of comment, partly due to the lack of clarity and partly because betting services are a lightning rod for the competitive advantage that opt-out channels and other media can enjoy over broadcasters regulated by the BAI.

It is important to note that new legislation in this area is being drafted and is scheduled to be published in 2015 – see speech by Minister Fitzgerald dated may 29th 2014 <http://www.justice.ie/en/JELR/Pages/SP14000125>

5.5.9 Premium Rate Telecommunications Services, Fortune Tellers and Psychic Services

The Code, in conjunction with other rules and regulations, addresses what is a potentially complicated, and often controversial, type of programming. This area is primarily regulated by COMREG.

In the first instance, the cost of accessing premium rate services must be clear. And secondly, fortune tellers and psychic services must be advertised as being for entertainment purposes only. While the Code, together with other legislation and COMREG, delivers consumer protection under these two objectives, the communication of psychic services will likely continue to ask questions of the relevant codes and legislation.

6. Conclusions

- The Irish broadcast media is operating in an increasingly global and digital world, competing with an ever-widening set of broadcasters for valuable communications revenues. In reviewing the Code, there was a widespread belief among broadcasters that due consideration should be given to any aspect of the Code that may disadvantage regulated Irish broadcast media compared to other media, providing amendments do not dilute the ability of the Code to deliver on its objectives and protect the Irish viewing and listening public or contradict other legislation or codes applying to commercial communications.
- Stakeholders considered that any changes to Ofcom regulations should be monitored as differences between the Ofcom Code and the BAI Code may have commercial implications for Irish broadcasters.
- While recognising that TV and radio are different media, stakeholders were concerned that the Code would not disadvantage one media over the other, insofar as this can be achieved bearing in mind the unique characteristics of each media. In particular, as radio is not a visual medium the perception was that the Code should avoid regulations which are unduly onerous on radio when compared with TV.
- Co-operation with and references to other regulations and legislation helps deliver a high level of compliance through a sense of collective responsibility and stakeholders believed that maintaining these links should remain a priority for the BAI.
- The ambition to achieve full compliance may be challenged in future years as legislation and regulations become more comprehensive and media resources are further squeezed. Initiatives to provide broadcasters with more support and advice in understanding the rules and screening communications could be explored, to ensure consistency of interpretation is achieved and high levels of compliance are maintained. Initiatives, such as offering non-binding advice (as per the ASAI), central copy clearance (as operates in the UK) or similar initiatives emerged as potential considerations as a route to achieving greater consistency in the face of increasing complexity. However, the provision of a central copy clearance may not be feasible - the UK example references a situation where an independent body acts as the copy clearance for all commercial broadcasters, which may be an unlikely joint initiative given the limited resources within the industry in Ireland.
- There are currently no minute restrictions on sponsorship communications, which means the rules applying to this type of communication can appear unduly harsh, in order for sponsorship communications not to 'bleed' into advertising. Sponsorship also emerged as the principal non-compliance issue during BAI monitoring, suggesting broadcasters, in particular radio broadcasters, are struggling to meet the requirements of the Code, either due to pressure from advertisers or due to a different interpretation of the Code. While the need exists for sponsorship to be separate from advertising from a legislative perspective, for advertisers and broadcasters the line between sponsorship and advertising can blur. Ideally, any review would attempt to bring all stakeholders closer together on this issue, deliver a level playing field insofar as this can be achieved, while at the same time maintaining compliance with the AVMS Directive and protecting the integrity of broadcasts.
- The research highlights a number of issues requiring greater clarity, most of which received relatively isolated mentions, although this does not diminish the importance of addressing each issue. However, betting services and smoking aids in particular were mentioned by a number of stakeholders as requiring greater clarity within the Code.
- The Code is intended to provide guidance to the general public, yet the public have minimal interaction with the BAI. How realistic is it for the BAI to expect the public to be aware of the Code and could this objective be revisited or clarified?

Appendix 1: General Public Research Findings

As part of the review of the General Communications Code the general public was identified as an important source of feedback on the effect of the Code. To include the public perspective, a sample of the Irish public were asked to consider their experiences of commercial communication activity on Irish TV and radio and review the role of the broadcasters and other bodies in relation to protecting the interests of the public.

The public perspective was obtained by way of both a qualitative phase of research involving two focus group discussions and via a national survey among 1,000 respondents aged 15 years and upwards. This section of the review reports the survey findings, with observations and comments from the qualitative phase included where appropriate.

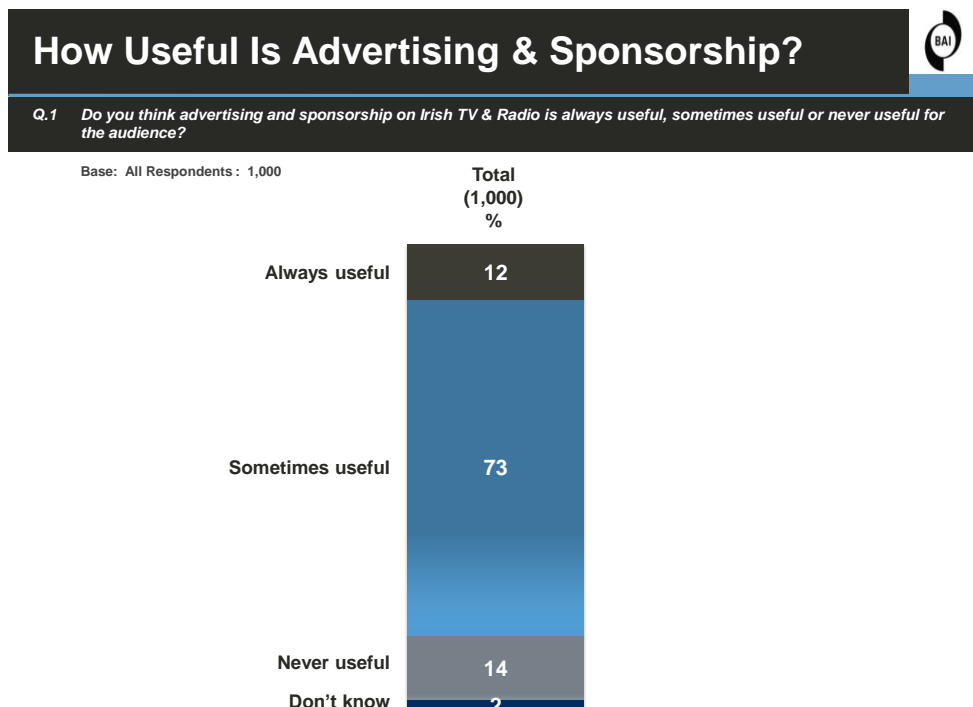
Awareness And Perceptions Of Advertising, Sponsorship And Product Placement In The Broadcast Mix

How Useful Is Advertising & Sponsorship

TV viewing and radio listening behaviour are changing. Developments in technology such as the hard disk recorder offered by Sky and UPC, and the introduction of services such as Netflix, means a TV audience can view their content – both programming and advertising - at the time of their choosing. Online and mobile have changed how and where we listen to radio, and the ready availability of new stations online may, in time, also impact what we listen to.

However despite this changing media landscape, TV and radio remain our traditional media pillars and advertising continues to be an integral part of the media mix.

The public recognises a role for advertising and sponsorship in the broadcasting mix with the vast majority (85%) perceiving these commercial communications to be useful to the audience. This echoes the views of broadcasters and other stakeholders who appreciate the need for commercial communications to continually engage with audiences.



Attitudes Towards Advertising & Sponsorship

The survey asked audiences about their attitudes towards the broad principles of the Code such as independence of content, transparency and protection from harm. All respondents reflected on a range of attitudinal statements and, using a scale of one to five, considered whether they agreed or disagreed with each.

Firstly in regards to the concept of separation, the majority 65% agreed that *“it is always easy to tell when an ad or sponsorship ends and a programme begins”*. However, there is some sense that ad breaks are not always clearly signalled - 46% agreed, while 28% disagreed.

Considering the principle of undue influence, two-in-five (40%) respondents agree that sponsorship of TV and Radio programmes does not influence the content of the programme, but a sizeable minority (26%) disagreed with this statement suggesting there is some suspicion among the audience about the objectivity of the content, although during the focus groups no examples of undue influence were articulated.

There is mixed opinion about the balance between ads and programme content on TV and Radio – almost a third (30%) perceived there to be an appropriate balance while a similar proportion (32%) disagreed. Considering that audiences quite probably view advertising as a necessary evil, it may be be unreasonable to expect a majority to agree that the current balance is right.

On the question of offense, again a mixed opinion with over one-third (35%) agreeing that *“advertising is never offensive”* and a similar proportion (34%) disagreeing. However respondents are more definitive when considering advertising in the context of being misleading. Approaching two-thirds (63%) disagreed with the statement *“advertising is never misleading”*.

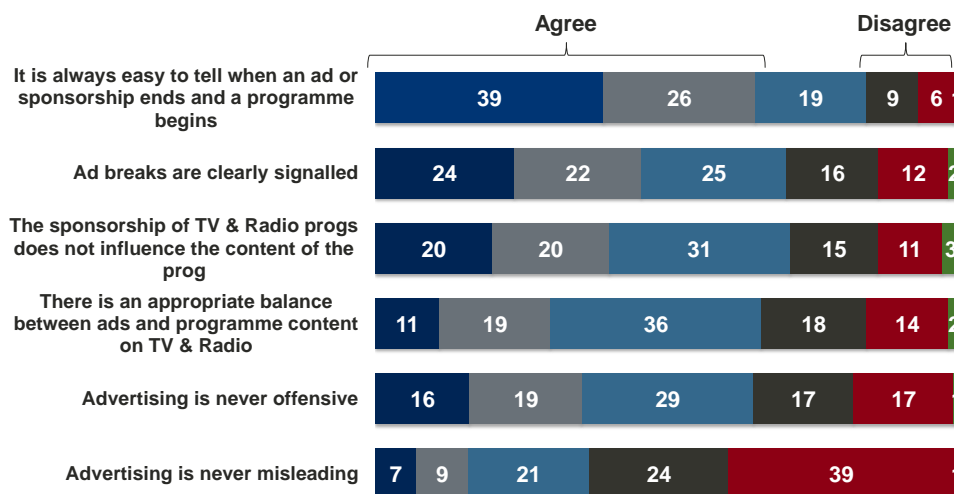
“The Specsavers ad, you are told on the ad how cheap it’s going to be, how much value it is and then you find yourself being hit for all these different kinds of costs and tests and glasses”.

Attitudes Towards Advertising & Sponsorship



Q.2 Considering the range of products and services that are advertised and sponsored on Irish TV & Radio, can you please tell me the extent to which you agree or disagree with each of the following statements. Please use a scale from 1-5 where 1 is disagree strongly and 5 is agree strongly.

Base: All Respondents: 1,000



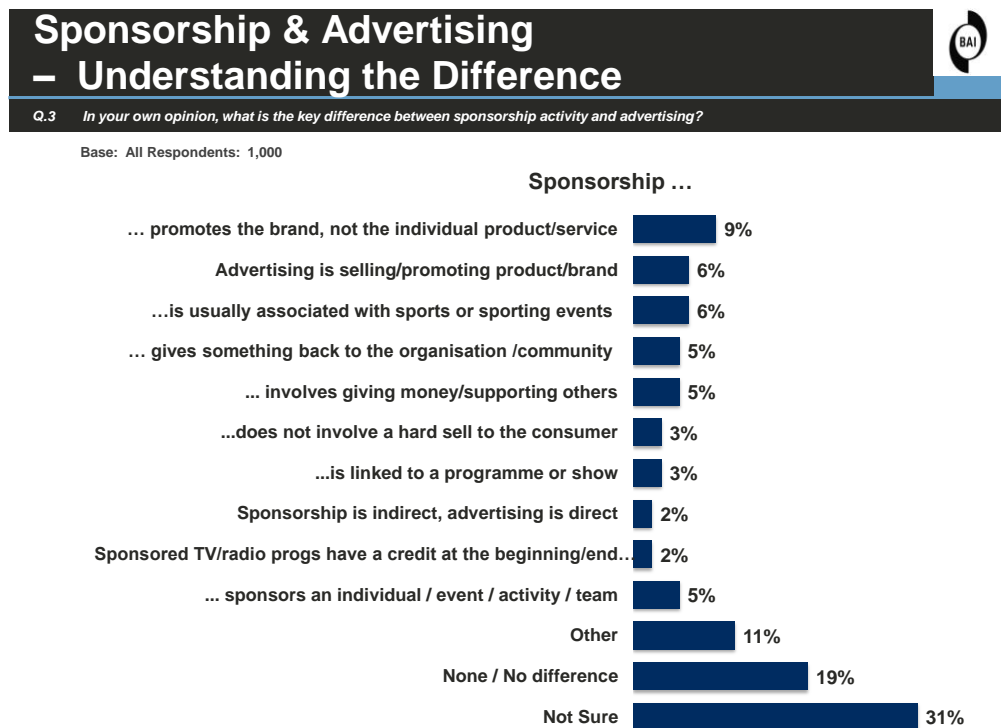
Sponsorship & Advertising – Understanding The Difference

When distinguishing between the different mechanics of advertising and sponsorship, the most significant finding relates to the extent to which the public either perceive there to be no difference or they do not know what the difference is.

"I think an ad is an ad full stop. I honestly can't differentiate between an ad and sponsorship. I think it's just all ads because they're trying to sell you something".

One-in-five (19%) of the population perceived there to be no difference at all and a further 31% do not know what the difference is.

Where the public were able to express a distinction between advertising and sponsorship, the difference is partly one of role, with sponsorship focused on building brand awareness and brand associations: a more subtle form of marketing than advertising.



There was also a tendency to associate sponsorship with giving something back to the community through sporting or charitable programmes.

"Sponsorship can actually, kind of contribute while advertising doesn't really. I think sponsorship is putting something back into something, so if you sponsor a match or you sponsor a football team, you're putting something back".

Recall Of Product Placement On Irish TV and Radio

While there was some recall of Product Placement on Irish TV and Radio - 44% claimed to recall having seen or heard an example of PP - specific PP activity recall was vague. When prompted to identify any specific examples, Fair City was the only Product Placement broadcast to cut through.

Coca Cola was the brand with the highest level of recall but this was at a relatively low level with just 5% of the public mentioning the brand. Mostly, respondents mentioned product categories such as food (5%) and tea/coffee (4%) and sports and sports drinks (3%).

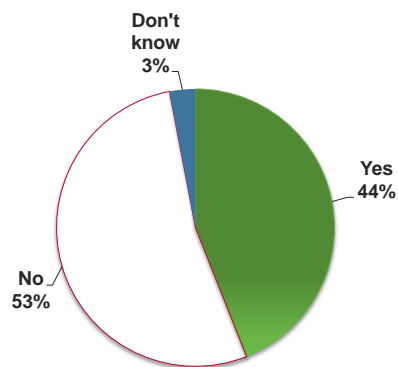
Recall Of Product Placement On Irish TV & Radio



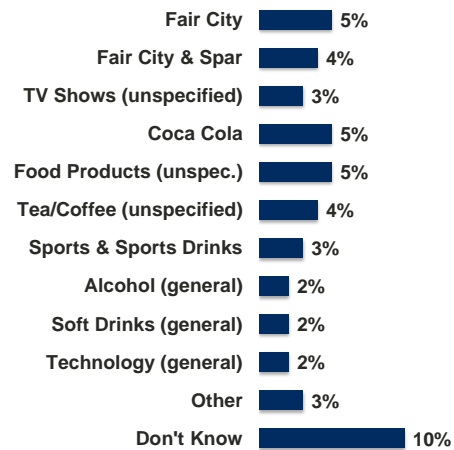
Q.16 Product Placement is a type of advertising or sponsorship. It is where a product is placed in a programme so it can be seen, for example a branded coffee cup placed on a table during an interview. The placement is paid for by the company who own the product. Thinking about Irish TV, have you come across any examples of Product Placement?
Q.16a Which ones?

Base: All Respondents: 1,000

Recall of Product Placement



Top 10 Examples of Product Placement



Commercial Communications – Experience Of Misleading Or Offensive Messages

Commercial Communication Devices – Are They Ever Offensive Or Misleading

When considering the various communication devices, it is clear that the less intrusive nature of Product Placement and Sponsorship activity is less likely to mislead or offend the audience. The audience appreciated that Product Placement and Sponsorship do not interfere with or interrupt their enjoyment of a programme. It is advertising where consumers are more likely to have had significant negative experiences, although the majority of the population claimed to never have been misled or offended by advertising.

"I don't really have a problem with product placement as long as it's realistic.

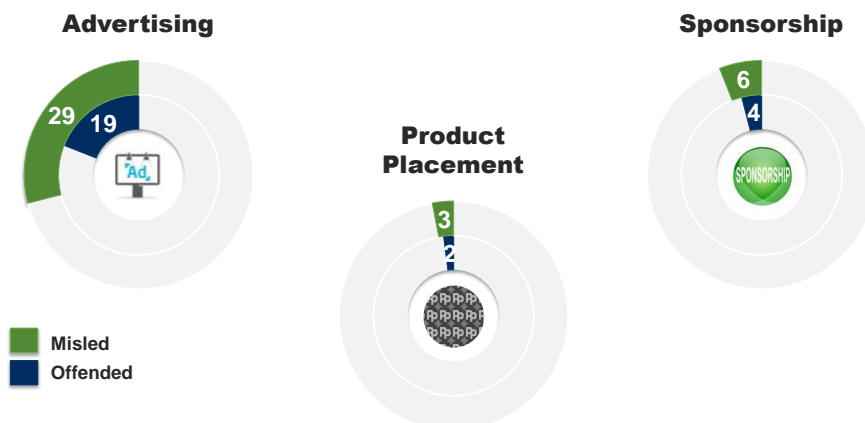
It is subtle though isn't it (PP)...there's nobody annoying you about it".

Commercial Communication Devices – Are They Ever Offensive or Misleading?



Q. Firstly thinking about ..., have you ever been offended by an advertisement on Irish TV or Radio?
Q. Have you ever been misled by an ... on Irish TV or Radio?

Base: All Respondents: 1,000



Just one-fifth of all respondents (19%) claimed to have ever been offended by advertising in the past, with the highest level of offense experienced by women (24%) and the older 45+ demographic (23%). However, when asked to give details, respondents struggled to be specific. A range of product categories were mentioned spontaneously, however they were mentioned by relatively small proportions of the population as the chart below illustrates.

"The ads with the cars (RSA), now I know they are effective and they are getting the shock factor in, but it is disturbing to watch".

Arguably, the concept of misleading messages is a more subjective one, and on this measure a higher proportion of the general public (29%) claimed to have ever experienced misleading advertising in the past. Interestingly, this experience is more balanced across men and women but increases marginally among the younger (15-34 years) demographic – among this segment (32%) claimed to have ever experienced misleading advertising.

Once again, almost half of those claiming to have been misled could not recall the product or service being advertised at the time. The categories most likely to be mentioned spontaneously were financial services and cosmetic/personal care products (3% mentions each).

"Say insurance and say like car insurance from €219, and then at the bottom it says this is based on so & so, living in such & such a place, driving such & such, that doesn't mean you are going to get it (at that price)...it's very specific

Which Advertising Has Ever Offended Or Misled – Recalled Spontaneously?



Q.4 Firstly thinking about advertising, have you ever been offended by an advertisement on Irish TV or Radio?
 Q.4a Can you recall, what type of product or service that was being advertised?
 Q.4b And what action if any did you take when you were offended by this advertising?

Base: All Respondents: 1,000

Ever Offended by ...

	%
Food products	2
Cosmetic/personal care products	1
Financial services	1
Alcohol products	1
Gender issues/biased	1
Other	3
Don't know	9
Never Offended	81

Ever Misled by...

	%
Financial services	3
Cosmetic/personal care products	3
Food products	2
Household/cleaning products	1
Mobile phones/ networks	1
Telecoms	1
Gender issues/ biased	1
Medicines/medical treatments	1
Other	4
Don't know	13
Never misled	71

*Mentions less than 1% not shown

Product Categories That Have Offended Or Misled

When prompted specifically to recall any offensive or misleading communications across a range of product categories and services, still the majority of the public claimed not to have had any negative experiences.

Communications around services using a premium rate telephone number emerged as the most likely to offend or mislead, although during the qualitative phase there appeared to be little clarity as to what was offensive – the cost of the call or the nature of the service on offer. Women and older people were more likely to be offended by this type of communication.

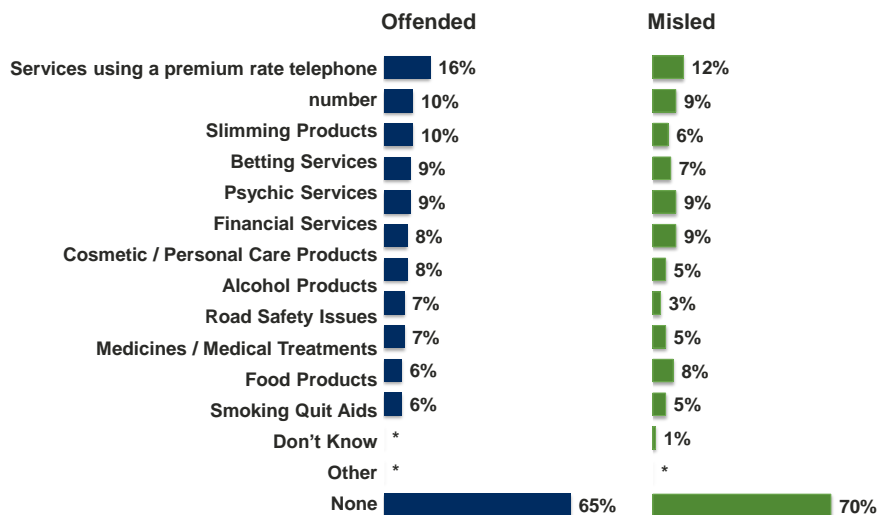
"They prey on really lonely people I think and they know the demographic they're shooting for with fortune tellers"

Product Categories That Have Offended or Misled



Q.8 Have you ever been offended by advertising or sponsorship on Irish TV or radio for any of the following types of products or services?
Q.9 And have you ever been misled by advertising or sponsorship on Irish TV or radio for any type of the following products or services?

Base: All Respondents: 1,000



Unsurprisingly, women were more likely than men to have experienced misleading messages in terms of cosmetic and slimming products. On the other hand more men than women recalled misleading messages for financial services and psychic services.

"I think a lot of beauty products stuff as well – they actually make up words like 'bio-genetic building!'"

Action Taken In Response To Offensive Communications

The incidence of making any type of formal complaint in relation to an offensive or misleading commercial communication was extremely low.

On seeing or hearing the offending material, the most common reaction was to do nothing at all. A small proportion of the population were somewhat more proactive - 3% switched channel and 2% switched off altogether. A few looked away. A tiny proportion made a complaint to another party, but only one person in the survey mentioned complaining to the BAI.

Action Taken In Response To Offensive Communications



Q.4b And what action if any did you take when you were offended by this advertising?
Q.6b And what action, if any did you take when you were offended by this sponsorship?

Base: All Respondents: 1,000

	Advertising	Sponsorship
	%	%
Continued watching/did nothing	11	3
Switched channel/station	3	*
Switched off	2	*
Kept TV/radio on but looked away	1	*
Complained to person known to me	1	*
Complained to the Broadcaster	*	*
Complained to BAI	*	*
Complained to public body	1	*
Other	1	1
Not sure	1	*
Not offended / No action taken	81	96

Spontaneous Awareness Of Where To Complain

One-quarter of all respondents did not know who to contact if they wished to make a complaint about an ad or sponsorship on Irish TV or radio. One-quarter (26%) would complain to the Broadcaster, who is most likely to receive a complaint. Organisations with a regulatory role in this regard – the Advertising Authority, the Broadcasting Authority – were each mentioned by nearly one in ten respondents.

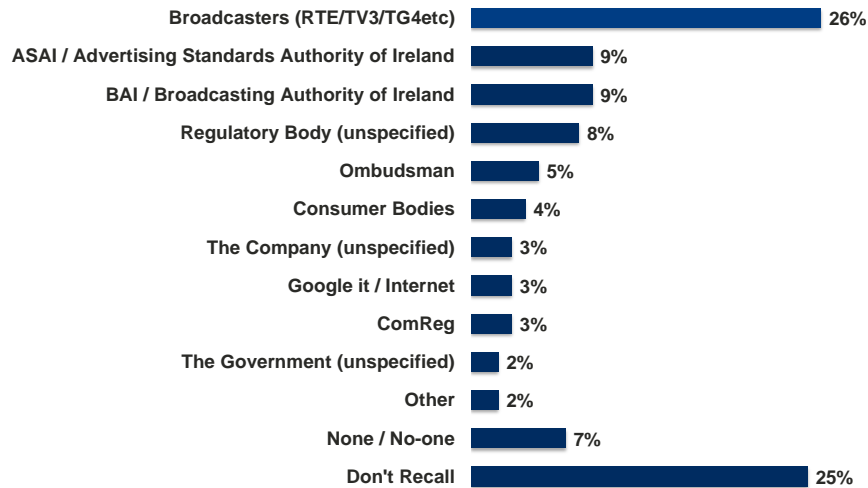
“Do you know, I’d probably ring the reception in RTE and find out”.

Spontaneous Awareness Of Where To Complain



Q.10 If you wanted to complain about an ad or sponsorship on Irish TV or radio, who would you contact?

Base: All Respondents: 1,000



*Mentions ≤1% not shown

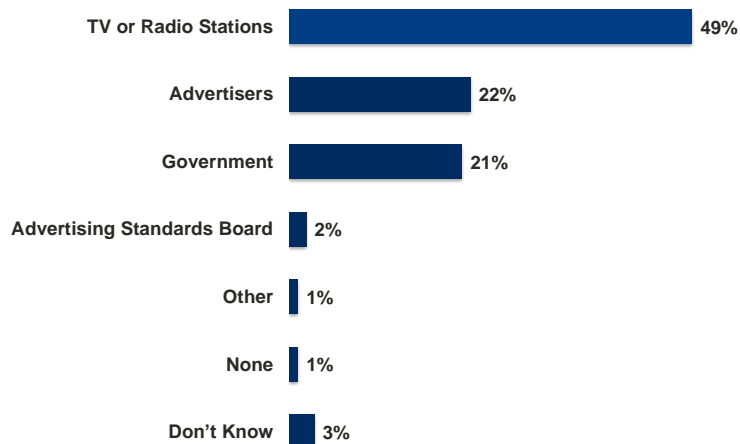
Organisation With Responsibility For Commercial Communications

At a prompted level, when asked who is responsible for ensuring advertising is not offensive or misleading, almost half (49%) of all respondents clearly placed that responsibility onto the broadcaster. One-fifth (22%) believed the Advertiser is responsible and another one-fifth (21%) nominated the Government.

Organisation with Responsibility for Commercial Communications

Q.11 Thinking of advertising and sponsorship on Irish TV or radio, who do you think is most responsible for ensuring advertising is not offensive or misleading? READ OUT. MULTI CODE ALLOWED.

Base: All Respondents: 1,000

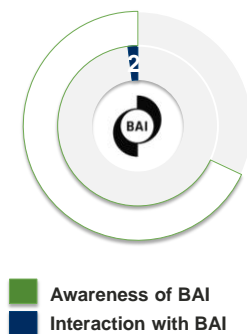


Two-thirds of respondents have specifically heard of the BAI, although a much lower level of awareness exists among younger audiences (15-34 year olds). Only 2% have ever made contact or complained to the BAI and when asked to rate their experience, 8 of the 22 people surveyed who had contacted the BAI were satisfied with the outcome, 2 were neither satisfied nor dissatisfied and 12 were dissatisfied.

Awareness of & Interaction with BAI

Q.12 Have you ever heard of the BAI – Broadcasting Authority of Ireland?
Q.13 Have you ever complained or contacted the BAI?
Q.14 When you contacted the BAI, how satisfied were you with the outcome? Were you...

Base: All Respondents: 1,000



Satisfaction With Outcome* (n = 22)

Very satisfied	4
Fairly satisfied	4
Neither	2
Fairly dissatisfied	5
Very dissatisfied	7
Mean Score	2.73

*Raw Numbers

Suggested Key Rule To Be Included In The Code

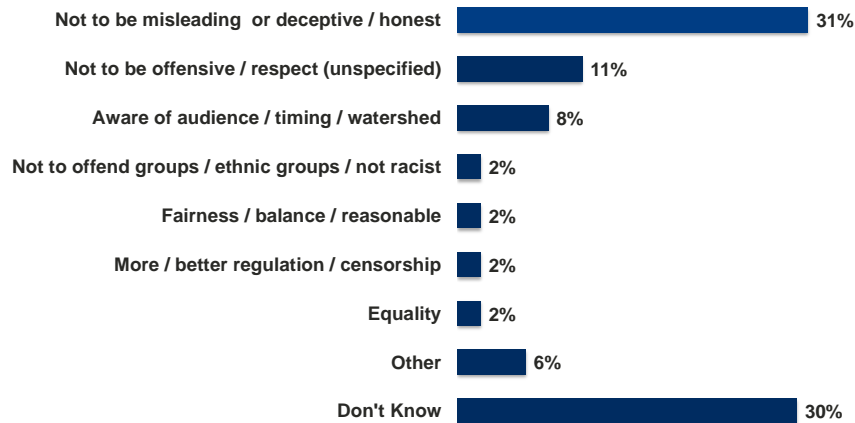
From the audience perspective, if one rule is to be included in the Code it is that advertising and sponsorship must not be misleading or deceptive. This was mentioned spontaneously by almost one-third (31%) of respondents and in terms of perceived importance is the clear leader in this regard. Calls for commercial messages not to be offensive and for messages to be sensitive to the time and age of the audience were also requested as important rules to be included.

Suggested Key Rule To Be Included In The Code



Q.15 The BAI is the Government body responsible for the regulation of different types of commercial messages. The BAI has rules for advertising and sponsorship in their advertising code. In your own words, what do you think is the one rule that needs to be in the Code?

Base: All Respondents: 1,000



*Mentions ≤1% not shown

Appendix 2: IBI Submission



The Broadcasting Authority of Ireland's
Commercial Communications Code
- Time For Review?

A paper by the Independent Broadcasters of Ireland

September 13th 2013

Executive Summary

The current General Communications Code from the Broadcasting Authority of Ireland (BAI) has been in place since May 2011. The Independent Broadcasters of Ireland (IBI) believe particular aspects of the code heavily restrict independent radio stations from competing effectively in the commercial sphere and are out of line with commercial practices elsewhere across the media landscape. Furthermore, these restrictions have major implications for all independent radio operators and their ability to sustain both levels of service to their listeners and future staffing levels for their employees.

It is the opinion of the IBI that the implementation of the codes is being done in a way that lacks subtlety and a common sense approach to interpretation.

This report outlines the wider commercial context in which independent Irish radio operators are now competing and endeavours to highlight why the current code makes it incredibly difficult to do so effectively against other media outlets, including TV broadcasters who fall under the BAI's aegis.

A survey of our member stations and their sales teams has highlighted a number of issues which generally create the greatest level of difficulty with advertisers and sponsors. These can broadly be broken down under the following headings:

- ☒ Call to Action' issues
- ☒ Interpretational issues
- ☒ Outside Broadcast Issues
- ☒ Minutage Issues
- ☒ Guidance issues
- ☒ Financial Services Terms & Conditions

We have suggested what the BAI could do to adopt a lighter touch under each of these headings without compromising the integrity of the broadcaster-audience relationship.

Our report also examines the more progressive approach taken by UK licensing authorities to commercial aspects of radio in that territory in the last two years and which might provide the BAI with some guidance for future approaches here.

Background

The current General Communications Code from the Broadcasting Authority of Ireland (BAI) has been in place since May 2011. Much has happened in those two years which make it timely for a review of the code to be considered. The Independent Broadcasters of Ireland (IBI) believe particular aspects of the code heavily restrict independent radio stations from competing effectively in the commercial sphere and are out of line with commercial practices elsewhere across the media landscape. Furthermore, these restrictions have major implications for all independent radio operators and their ability to sustain both levels of service to their listeners and future staffing levels for their employees.

Over the last two years since the end of 2010 when the code was being reviewed, total advertising revenue in Ireland has fallen by 10%, from €839.5m to €758.9m in 2012, according to agency estimates. Commercial radio revenue has fallen by 11% in that same period, from €145.6m to €129.4m in 2012. Depressed economic conditions have clearly been a major factor in this but the rise in commercial popularity of web, mobile and social media channels has accentuated the pressure on traditional media like radio. In the same two years digital media has been the only sector to show real growth, rising from an estimated €110m in 2010 to €158m in 2012.

Against this backdrop, the IBI believe that a review of the General Communications Code as it applies to radio operators is both timely and necessary.

Changing Commercial Demands

The other important development in recent times has been the change in expectations and demands from advertisers, sponsors and the large media buying groups. The new media planning model is very much centred on striking what are variously described as '360-degree', 'multi-platform agreements' or 'content integration' deals with media owners. This typically involves a commitment by an advertiser / sponsor to concentrate a substantial proportion of their spend with a single medium in return for a more holistic and integrated commercial solution.

There are a number of examples of this across different media:

- ☒ In 2011 Kellogg's agreed a cross-platform deal with RTE across TV, radio, web and print for their 'Field of Dreams' campaign. This involved RTE producing and running commercial content across all of their platforms to promote the campaign and get national audience involvement. It blurred the borders between programming and sponsorship through the creation of messages featuring RTE personalities and props along with placement in shows such as 'The Late Late Show', where the casual viewer may have seen little delineation with the show itself.
- ☒ This type of cross-platform deal has now been mirrored by broadcasters like TV3, where the added benefit of product placement revenue (most notably from brands such as Spar in 'Fair City' and Kenco in TV3's 'Ireland AM') have yielded a substantial revenue boost which radio operators can only dream of.

- ☒ In the case of TV, it is also evident that the commercial options which national broadcasters now routinely offer as 'sponsorship' and 'advertising', has become more open to looser interpretation. For example, Avonmore are a long-standing sponsor of the RTE daily weather forecasts but the commercial stings which are broadcast have become mini product commercials in their own right. Meanwhile TV3 also appear to have much greater latitude in their interpretation of 'advertising', 'promotions' and 'sponsorship'. For example, gift card provider, One4All, were promoting their annual retail week, where many of their retailers offer specific discounts to encourage people to spend their unused One4All cards. In 2012 they chose TV3 because they could offer 'gift idea segments' (essentially advertorials) that promoted what viewers could buy for Father's Day with the One4All cards. This type of option is not something that radio operators can provide under the current code.
- ☒ In newspapers, where there are clearly no commercial and editorial restrictions beyond those imposed by the publisher, there has been an almost complete breakdown in the lines between the two. Driven by free publications like Metro, where advertisers could wrap the whole front page for the right price, other publishers like the Irish Daily Mail and The Irish Star have now followed suit. There have been highly creative examples of advertiser and publisher working together to create commercial content for clients as diverse as cars and cosmetics, further eroding the lines between commercial and editorial. The days when the words 'advertising feature' appear at the top of such content seem to be well and truly numbered.
- ☒ Alongside these developments, 'sponsored Facebook stories' and 'sponsored tweets', woven into the personal Facebook posts and the individual Twitter feeds of thousands of Irish users, has become the norm and attracted substantial advertising revenue to social media channels. Their intrusiveness makes them highly popular with advertisers and there is also a passive acceptance by users of the services who almost certainly accept them as a necessary part of funding a free service.

So it is clear from these examples that the lines between editorial and commercial have become well and truly blurred across the broader commercial landscape. In contrast, Ireland's commercial radio operators, through their adherence to a strict legislative code that comes with penalties for non-compliance, look distinctly outmoded. In many instances, our member stations are seen as obstructive and un-cooperative in the eyes of advertisers, sponsors and their agencies because they cannot deliver the norms of commercial behaviour on other media. Advertisers and their agencies are pushing hard to get beyond our commercial breaks and into our shows. We need to make the breaks and commercial stings much more attractive to them in order to act as a bulwark against rampant commercialisation.

"There is a large shift happening in advertising as a much greater integration of advertising messages with editorial content is taking place than ever before. Those media that have embraced this shift have seen a growth in advertising revenue."

Michael Clancy, Deputy Managing Director – Mediavest Ireland

As an industry with a primary obligation to serve our audiences locally, regionally and nationally, it is certainly not our desire to create a free for all where advertisers dictate what they want us to broadcast. We do not want to undermine the trust and relationships that our individual stations have established with Irish people. But we do need the BAI to work with us, as a stakeholder in the success of independent radio.

The industry needs a commercial code which reflects the new reality, protects the integrity of our programming output and allows us to compete effectively with other media. A new commercial code that is fit for purpose, would help the stations to create a sustainable future, where IBI member stations continue to deliver services that listener's value and which advertisers want to invest in.

The BAI provided encouraging engagement and a willingness to listen to the views of the IBI at the organisation's AGM on October 23rd, 2012. We have now collected the experiences of our member stations around the existing commercial code and the views of decision-makers across the media and marketing community and summarised these in this submission.

Hotspots in the current code

A survey of our member stations and their sales teams has highlighted a number of issues which cause the most area of difficulty and that can broadly be broken down under the following headings:

- ☒ Call to Action' issues
- ☒ Interpretational issues
- ☒ Outside Broadcast Issues
- ☒ Minutage Issues
- ☒ Guidance issues
- ☒ Financial Services Terms & Conditions

Call to Action Issues

The industry needs to be able to offer more directness in stings to deliver value and effective communication for clients.

The code currently prohibits any encouragement in sponsorship stings to contact an advertiser / sponsor (e.g., "call us on...."; 'check out our website....'; 'visit our showrooms...' etc.,) The code pre-dates the advancement of digital media activity where more and more clients are looking for traffic to be driven towards their Facebook , websites, etc,. It could be argued that sending someone to a Facebook page is not an encouragement to purchase.

Given the predominance of brand websites, social platforms or mobile channels as a normal part of modern day business and commerce, it certainly appears archaic to restrict sponsors ability to directly encourage listeners towards these channels when people are doing so anyway and expect to have that interactive option as a natural part of the buying process.

"The current code governing radio is extremely out dated and out of step with other media in the Irish landscape. Other media offer advertisers much greater flexibility and much more impactful and effective advertising options. The code hampers radio's ability to compete causing it to miss out on revenue."

Michael Clancy | Deputy Managing Director – Mediavest Ireland

What we are asking the BAI to consider:

Greater scope for 'calls to action' in sponsorship stings especially around sponsor websites, digital platforms, phone -numbers, etc.

Interpretation issues

The code does not allow sponsorship announcements to contain advertising copy or any references intended to encourage purchase. While this is a noble aspiration to have and may have been more acceptable to benevolent sponsors when there was a lot more marketing money around, the fact is that companies and their brands use sponsorship as another means to sell or persuade audiences. (Avonmore's clever use of their TV sponsorship stings around the RTE weather to promote their various products, show that this is an advantage that visual broadcast media have over radio.)

There seems to be regular issues of interpretation around the 'one product reference' rule. One of the biggest problem areas and the one that can cause the greatest commercial fall-out is the line 'affording undue prominence to a product or service of the sponsor' For example, telecomm companies have many different service offerings, (broadband, mobile, pre-pay, bill pay, etc) and want to use their sponsorships to reinforce different areas of their business.

Here are some other examples:

- ☒ Today FM was cited breached for a sponsorship sting around one of its evening shows for Bulmer's because it mentioned "Bulmers Berry, part of the Bulmers range" – it said that two product mentions were unacceptable.
- ☒ Lifestyle Sports, the sports sponsor on Spin, are exclusive stockists of some fashion brands, but cannot use their sponsorship to highlight this. Client pushes back saying they can do with other media.
- ☒ Midlands 103 were breached for naming two products during a weeklong promotion for Standish Saw Mills. They stated that Standish Saw Mills were makers of "fences and gates" which was adjudged as two products.

- ☒ Other examples from across our members include: "THE ENTERTAINMENT GUIDE WITH JIMMY'S BAR AND RESTAURANT – HOME OF THE SATURDAY NIGHT TRAD SESSION FOR 26 Years WHERE ALL MUSICIANS ARE WELCOME – 094 900000".
In this case "Bar and Restaurant" are part of the name of the business and the trad session is the product – or are these deemed to be mentions of more than one product/service?
- ☒ "THE WEATHER FORECAST WITH JIMMY'S HOTEL, BRIDGE STREET, WESTPORT – PERFECT FOR WEDDINGS, BIRTHDAYS OR ANY OCCASSION – 094 900000 AND JIMMYSHOTELWESTPORT.IE "
In this case are we saying that a different reason to have a celebration means a different service for each celebration – how could anyone sell a sponsorship if this was to be the case?
- ☒ 'Citroen, home of the five year warranty and 2013 Citroen range' – this was said to be non-compliant with regard to 6.1 and 6.2 of the code. (i.e., Sponsorship shall not constitute advertising as defined by this Code. A sponsorship announcement or reference shall not directly encourage the purchase or rental of a product or service, in particular by, inter alia, making special promotional references to a product or service, by the inclusion of advertising copy, prices, endorsements or calls to action, or by affording undue prominence to a product or service of the sponsor) In this case, the sponsorship sting has no price points, no products and it could be argued, is a positioning statement for the sponsor.

What we are asking the BAI to consider:

Sub-brands or additional services should be seen as part of the whole sponsorship mechanic. One mention is far too restrictive and this should be expanded. Sponsors should be allowed champion the different products or services under the parent brand.

There are also interpretational issues around radio promotions:

- ☒ Retailers cannot promote their sales and discount weekends through promotions as they cannot promote actual reductions. (E.g., Oxendales wanted to offer C103 and Limerick Live listeners 25% off their products for the duration of the promotion. They could not do this but yet the client said TV3 had done this for them before.)
- ☒ Aer Lingus will not do any radio promotions around any of their seasonal sales as stations cannot mention the word 'SALE'.
- ☒ In Summer 2012, Lucozade had a multi-media campaign to support their on-pack promotion where they gave away €100 every 30 minutes. They wanted people to pick up a bottle in store for a chance to win. Radio stations could not say this on air, all that could be said was "to celebrate Lucozade on pack promotion". The promotion ran on radio but the messaging was not 100% in line with the outdoor and TV that was running at the same time and the advertiser was dissatisfied.

- ☒ Red FM ran a promotion for a local credit union which resulted in 19 instances of non-compliance – 16 for promos and 3 for presenter comments. ‘Pay your bills, with Bishopstown Credit Union’ was constituted as a call to action. The letter from the BAI stated, ‘a listener could reasonably interpret that that to enter the competition one should register to pay bills with the credit union.’ The mechanic was very clear from the station promos: listeners had to register their bill with Red FM, (i.e. ‘text in your bill type and amount to Red FM’, there was absolutely no requirement to go near the credit union)

What we are asking the BAI to consider:

Interpretation is clearly different between radio -based promotions and ones for the same campaign type when they are on TV stations . We are asking for similar latitude in

Outside Broadcast Issues

Member stations report that interviews and product/service descriptions are so limiting that it has become impossible to undertake any kind of sponsored interview on an outside broadcast. Their primary issues arise around live mentions by presenters. The code restricts any calls to action at all, but when client pays for a station to broadcast from a store, it is in effect a 3 hour advertorial. Clients become very frustrated when stations cannot talk about what they are being paid to promote, such as descriptions of products, encouragements to visit, etc.

Here are some examples:

- ☒ Boots wanted to do an OB to celebrate an in-store event. They want to communicate that ‘Boots will have a special 3 for 2 mix and match offer across Haircare, Skincare and Self Selection Cosmetics.’ But stations could not say this and as a result do very little business with radio in Ireland.
- ☒ Earlier this year Volvo ran a series of Outside Broadcasts with UTV stations. They wanted to celebrate the Irish launch of the new Volvo V40 Cross Country and V40 R Design. (‘Be the first to test drive the V40 Range at the Volvo Open Week 21st – 27th January! The Volvo V40 is designed around you.’)
As the Irish launch of the new Volvo V40 Cross Country and V40 R Design and the Volvo Open Week 21st – 27th January are two different products the stations could not mention both. Also, with a call to action in the tail, stations could not ask people to test drive the vehicle.
- ☒ In January UTV did an OB and promotion for Innocent. They wanted to encourage listeners to tweet/Facebook a ‘goodness’ message using the hashtag, #innocentgoodness and in return they received a smoothie at their pop up store. Stations could not say this.

What we are asking the BAI to consider:

We are asking for a more relaxed interpretation of the wording around promotional mentions.

Minutage Issues

Some members of the IBI have reported problems with commercial breaks having to be held over from one clock hour to the next because of editorial over-runs. For example if an interview with a Minister overruns at top of hour and results in an ad break not been taken but then included in next hour, the station risks being breached. Stations have also reported breaches for having interviews on talk shows which involved business guests with topics of interest to listeners, where prices were mentioned. These were then but classified as commercial and therefore part of the stations ad airtime.

We note the inclusion of proposed legislative change regarding advertising minutage for independent radio stations in the BAI's response to Crowe Horwath's Report on the Funding of RTÉ. Recognition of the commercial disadvantage independent radio stations deal with is welcomed as is the recommendation that legislation be amended to resolve the inequities in the system. The Authority highlights that its suggested change would be a very significant one in the broadcasting landscape but we would argue that a meaningful rather than a significant change should be the goal of the Authority and to this end the opinions and suggestions of the practitioners should be instrumental in any change.

What we are asking the BAI to consider:

Despite the Authority's recommendations we are not advocating an increase in overall ad minutes. Instead we are recommending a measure that we believe will strike the right balance between ensuring commercial viability, delivering quality broadcasts and maintaining audience. Radio operates in a live environment with breaking news and the flow of interviews and flexibility is vital to ensure that this is catered for. We suggest that 10 minutes per hour of advertising be maintained but that it is averaged over the daytime radio schedule (7am – 7pm). This would eliminate breaches and the administration requirements that accompany these breaches and also allow for a more free flowing radio service for the listening public.

Guidance Issues

This is a real area of frustration with all of our members. It is our members' experience that responses from the BAI tend to be just guidance. Stations would like a clear decision and a reason why. An often expressed view is that if the BAI cannot give clear direction, clearance or non-clearance on a query before the event, how can it subsequently adjudicate later whether it was in breach or not?

It seems that if stations seek an opinion or clearance on a commercial issue or even get an opinion which is generally not clear and unambiguous, it tends to be after the commercial, sponsorship or promotion in question has run or should run. On some occasions, these issues need immediate response but if none is forthcoming from the BAI then business is either lost by the station or it is found to be in breach having run the commercial message.

What we are asking the BAI to consider:

We understand the pressure on BAI resources but practical guidance and advice on potential breaches are required before they happen. The BAI often issue the breach report without consultation. Stations can lobby after the event but the breach letter will remain on file and be available under Freedom Of Information rules. We are asking that the BAI consider issuing a draft report for discussion and response before it becomes a formal breach.

In the UK, the Ofcom Broadcasting Code requires that commercial references that "require confirmation or substantiation prior to broadcast" are cleared in the same way as advertisements for 'special category' commercial references. RACC, commercial radio's advertising clearance body, assesses potentially problematic claims for non-special category advertisers that appear nationally, for consistency.

The RACC translates the rules of the BCAP UK Code of Broadcast Advertising and the Ofcom Broadcast Code consistently and fairly for stations, listeners and advertisers alike. The RACC works on the basis that measured opinions, consistent views and useful suggestions for copy changes help to ensure that radio advertisements and commercial communications make it to air whilst complying with the requirements of the Code.

Stations, advertising agencies, production houses, etc. can upload their draft script/s to the RACC's online database if they are a registered user or they can register to be a user via this website or via sub.racc.co.uk. After scrutiny of the content, style and tone, the script can either be cleared as it stands or changes can be negotiated. The script is then sent back electronically with a clearance number (e.g. 12345/1).

The RACC operates swiftly online. It aims to get back to script submitters, either with cleared scripts or with further advice and suggestions for copy changes, within 24 hours. It usually gets back to customers within 8 hours.

We would be happy to discuss with the BAI how this type of pre-vetting service could be established for Irish radio broadcasters and advertisers, if only for contentious cases which arise.

Financial Services Terms & Conditions

We understand that the Financial Regulator imposes the requirement for terms and conditions around all financial services advertising and the BAI have had to incorporate this into the current code. However, with financial client budget restrictions affecting their ability to extend commercial lengths to comply with terms and conditions on radio, alternative media is becoming a more realistic. The following is a fairly common view from one of the large media buying groups in relation to the requirement for regulatory information on radio commercials:

"T+C's on radio ads are a big concern for financial advertisers but now they also have the potential to seriously affect other clients such as the motor industry (when they offer finance deals). The reality is that a number of large financial clients will move spend away from radio in the very near future if we don't find a more creative solution. I am looking at a potential shift in spend and as far as I can see, a 35% -40% of spend reduction is the best case scenario, with complete loss of spend a very real possibility."

Conor White, Head of Radio, GroupM

Regulator information on stings for financial services also causes minutage issues for sponsorship by these brands. On Spin 1038 for example, Chill sponsored their '5 Word Weather' but the tag ended up being three times as long as the actual editorial.

What we are asking the BAI to consider:

In the short term, IBI members have had to offer financial advertisers a reduced cost for every 30" ad with 10" of free airtime to accommodate the regulatory information. This is not sustainable and also could create a precedent for other categories in future where regulatory terms may have to be included (e.g., environmental messages, etc.) We would like to explore with the BAI whether the financial regulator would be willing to accept stations running separate commercials which highlight the promote the fact that financial services advertising approved to run on each station carry an approval rating from the regulator.

What changes has the UK broadcasting regulator implemented in this area?

At the end of 2010 Ofcom announced it was revising its Broadcasting Code "to ensure that it remains fit for purpose and provides consistency with wider public policy concerning product placement on television". The new rules permit the integration of commercial communications in programming, with the exception of spot advertisements which must be separated. The revisions still include prohibitions on commercial arrangements in relation to key areas of programming: news broadcasts, children's programming and the selection and rotation of music for broadcast.

In 2010 Ofcom reviewed its 2009 Commercial Broadcasting Code elements applying to sponsorship arrangements and other commercial references on radio, following the UK government's decision to permit product placement on television.

Ofcom took into account the wider regulatory and broadcast policy landscape in relation to product placement and commercial references on television.

The review and consultation sought to ensure that the Code remained fit for purpose, by continuing to take appropriate account of the interests of listeners, the interests of the radio industry, and developments in the wider regulatory and public policy environment.

As part of the 2009 Code Review, research was commissioned by Ofcom to assess the degree to which radio listeners are prepared to accept references that are subject to commercial arrangements being included within programming. It indicated that consumers would be receptive to liberalisation. This was based on an expectation that "commercial radio" is, by nature, commercial.

The Ofcom research showed that there were benefits in a revised code for both listeners and advertisers.

Listener benefits

A reinvigorated radio advertising revenue model would have the potential to increase substantially commercial radio's content budgets, thereby contributing to better choice and quality for listeners.

In addition, an important additional benefit for listeners of permitting commercial references within programming is the potential for the advertisers' involvement to enhance that particular element of the output.

The Ofcom-commissioned consumer research revealed a 'clear appetite for some relaxation of Ofcom's rules' surrounding commercial references in radio programming. This appetite is not limited to a preference for S&P over traditional spot advertising; amongst the research participants, there was also clear recognition that creative S&P activity could enhance the listening experience (for example, through the use of outside broadcasts and public information programming).

The consumer research also established that commercial radio is a medium through which most listeners expect to be 'sold to', or receive commercial messages, whether by spot ads or within programming. The research found that most participants "felt that their own common sense was sufficient to protect them from commercial deception or misinformation" and "on the whole, respondents were confident in their own ability to detect and – if desired – deflect advertising messages".

Advertiser benefits

There was clear demand amongst advertisers (and their agencies) to expand communication with listeners beyond traditional display advertising. Ofcom- commissioned commercial research, found that radio advertisers are increasingly favouring S&P activity, for the following reasons:

- ☒ Its greater scope for creative content;
- ☒ The ability for advertisers/agencies to have greater creative input;
- ☒ Its greater proximity to the station's brand;
- ☒ Its (potential) greater effectiveness and return on investment.

The research indicated that greater relaxation of regulation around commercial references in radio programming would provide advertisers with a real opportunity to creatively engage with their target audiences, and reinvigorate advertiser confidence in commercial radio.

The 2010 review represented a significant shift in Ofcom's attitude towards the regulation of commercial communications in radio programming. Whereas the 2009 consultation proposed to continue to prohibit commercial communications in radio programming, the 2010 consultation raised the possibility that commercial communications and programming could be integrated, subject to the principle of transparency. This places the creativity (and responsibility) around such references in the hands of the broadcaster.

Main changes as a result of the review

- ☒ Live links: Stations could broadcast 30' phone links that contain commercial messages (e.g., "it's the 'buy one/get one free day here at Boots"). But it must be transparent that this is a paid-for message: (e.g., "thanks to...")
- ☒ Live reads: These could now include endorsements (e.g., "Listen all this week to win tickets to Hollywood Cinema. I was there last night in one of their super comfy seats and watched Spider Man 3.")
- ☒ Outside broadcasts: they had to be clearly labelled every twenty minutes (e.g., "we're out and about today thanks to...") but they could also include an interview with the sponsor. These interviews should be more general and informational for the listener rather than blatant commercial plugs.
- ☒ Sponsored features: Sponsors can have editorial input but to keep editorial control, stations have to ensure that a third of the content must be independent. (e.g., a What's On guide.)
- ☒ Stations are also allowed to provide added value for show sponsors through presenter endorsement. (e.g., "I've just finished my lovely Glenilen yogurt and it's time to say happy birthday to...")

- ☒ Stations could also tie in client's products into on-air contest questions. (e.g., "It's your chance to win with Argos...just call me up and shout me out anything between 95 and 100 in the Argos catalogue or on argos.com")
- ☒ Restrictions still remained on commercial activity around children's shows while news bulletins can never include product placement or be sponsored.

<http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/summary>

Conclusion

The implementation of revised Commercial Communications Code could potentially transform independent radio's creative and commercial offering and, in turn, provide the industry with a much needed economic boost. It is therefore widely anticipated within the industry.

If a review is undertaken and necessary revisions are made, we recognise that the radio industry must adopt a highly responsible attitude to the use of commercial references in radio programming, to accompany any proposed liberalised regulatory framework. The Independent Broadcasters of Ireland are ready to play a key role in this. IBI members will accept their duty to inform and educate advertisers and agencies as to any revised rules.

We believe strongly that a revised Commercial Communications Code for Radio is timely and will lead to an enhancement of independent commercial radio's output, to the benefit of the industry, advertisers and, most importantly, listeners.

What are agencies saying?

"In today's Irish advertising landscape the number of media, stations, titles and websites definitely outweighs the demand for advertising space. Accordingly all of the media are incentivising clients to spend their limited budgets with them. There is a large shift happening in advertising as a much greater integration of advertising messages with editorial content is taking place than ever before. Those media that have embraced this shift have seen a growth in advertising revenue.

By reducing the potency of the message by the inability to deliver a clear call to action and the narrow interpretation of sponsorship the current radio code acts as a barrier to those clients who would wish to choose radio. The current code governing radio is extremely out dated and out of step with other media in the Irish landscape. Other media offer advertisers much greater flexibility and much more impactful and effective advertising options. The code hampers radio's ability to compete causing it to miss out on revenue. Simply put in a time of limited budgets where every euro has to work as hard as possible the code unwittingly ensures that money that would be spent on radio is spent elsewhere."

Michael Clancy – Deputy Managing Director, Mediavest Ireland.

"With a challenging economic environment media agencies are under increasing pressure from clients to deliver a return on investment. We are increasingly seeing briefs from clients that benchmark the number of acquisitions to their Facebook page or an X% drive in footfall. A greater slice of the media budget will be given to media owners who can deliver the media brief, i.e. without a multitude of restrictions. Radio in some scenarios can be viewed as a very limited media offering due to the current restrictions."

Danielle Donnelly – Media Director, Magna Global Ireland

"Radio in Ireland had long enjoyed a prominent position within the media mix versus where it stood in other European markets. However its slowness to adapt to the changes brought forward by the increasing convergence of media across its many channels has impacted negatively Radio's role and relevance within current best-practice media planning.

Radio was very much the original social medium. However we've seen social explode in the digital environment over the last decade, creating new channels with growing audiences and increasing revenue support from advertisers, while Radio commercial revenue has fallen into decline.

Greater return on investment to advertisers is, and will continue to be, driven through the optimisation of convergent media, meaning traditional approaches are simply no longer the norm. Without a broader commercial offering, Radio stations run the risk of only being able to increase value to the market place by reducing their prices, while still losing relevance within the marketing plan."

Ian McGrath, Group Business Director – Carat Ireland

"The very strength of radio, its heritage and the role it plays in our daily consciousness should offer an unrivalled platform for advertisers to engage with and develop meaningful communication strategies. However, what's clear is that the archaic rules currently governing commercial radio have ultimately impacted on the overall market share which the medium takes. These stringent guidelines are not evident in other media channels and we would welcome a review process to modernise the regulations in light of the current market conditions."

Andrew Sinclair, Deputy Managing Director, OMD Ireland

**Jurisdictional and Legal Review of the BAI
General Commercial Communications Code**

Final Report

Prepared for the Broadcasting Authority of Ireland

By Miha Krišelj and Deirdre Kevin

April 2014

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1. Note on methodology

With regard to changes and developments in the regulation of commercial communications the following elements of research were completed:

- A review of the information exchanged between the members of the European platform of Regulatory Authorities (EPRA) and specifically the country reports provided in the context of their bi-annual meetings were examined. These were reviewed from 2009 to 2014 with regard to new laws and codes, and significant cases. The compiled reports cover the 52 regulatory authorities that are members of the EPRA.
- A review and search of the legislation and codes on the Internet websites of regulatory authorities and governments was carried out in: Austria, France, Germany and the UK.

The rationale for focusing on these countries included the following:

- Austria has a media landscape somewhat comparable to Ireland for several reasons. Both countries were very late in establishing private broadcasting, and both have strong public service broadcasters.
- Satellite television plays an important role in both countries, and foreign content and operators play a significant role in the market with both having large same language neighbouring markets. Hence, given their similarities in size and media landscape it is useful to check developments in Austria when reviewing Irish codes.
- The legal developments in the three largest countries, and in particular in the UK and France have a strong influence on the development in many other countries. With regard to the AVMS Directive, many countries have been late in fully implementing the Directive, while many others simply “copy and paste” the articles into national law.
- For most, the codes and decrees of the French and British system provide a useful guidance in developing national codes for similar problems. Hence, it does not always make sense to review a wide range of countries that will in the end all have a legislative structure, in particular for commercial communications that replicates the Directive or follows the lead of the larger countries.
- Some differences can be noted in Spain and Italy, and these have both been addressed with regard to recent jurisprudence of the European Court of Justice.
- Searches of case law relevant to the issues were carried out using the IRIS MERLIN database.

2. Executive summary and main findings

- This judicial review of the regulation of commercial communications in Europe takes place during a particularly interesting time period with regard to audiovisual media services regulation. Technological developments and changing consumer habits are having an impact on the structure of the industry, funding models, the number and types of important players, and the cross border provision of services.
- While the review focused on changes to the regulation of commercial communications in four major European Union member states – Austria, France, Germany and the United Kingdom, it also provides an overview of the on-going debates at the European level with regard to future developments in the regulation of audiovisual media services and a future review of the AVMS Directive.
- The development of the provision of audiovisual media services (whether catch-up television, video-on-demand) via the Internet, mobile, tablet and via connected television has given rise to several significant developments in the market.
- Consumer habits are changing with an increasing amount of content being viewed outside the schedules of linear television programming. The BBC IPlayer catch-up services recorded 3 billion requests in the year 2013, an increase of 33% on 2012¹. Data for RTE shows that RTÉ Player had 45.9 million streams requested in 2012, 43% more than in 2011².
- Advertising revenue is now being shared between the traditional media outlets and the Internet. It should be noted however, that the data available not distinguish the share that traditional **media outlets have of online advertising**. In 2012, the share of adspend in Ireland that went to the Internet was 16.2%, while television had 28.4%. In the UK, by 2011 the Internet had already taken over television in terms of share of adspend. In 2012, the figures were 36.1% for the Internet and 28.9% for television³. Again it should be borne in mind that the BBC does not carry advertising, so the share of television was perhaps always at a lower level than in other countries.
- The media outlets suffering most from the loss of advertising are the printed press, although as noted above the measure of the Internet share of advertising does not provide a breakdown of the share held by press and TV outlets online. In France and Germany the shares for TV have also not adjusted much since 2012. Radio has remained steady in Austria, France, Germany and the UK, but not in Ireland where between 2008 and 2012, the share of adspend that went to radio decreased from 12.1% to 8.5%⁴.
- New advertising techniques have emerged, specifically those online that include behavioural analysis. These new types of advertising also lead to concerns regarding data protection and privacy where the behaviour of viewers and consumers online is being tracked. In addition, they raise questions regarding media literacy and the need for better understanding and awareness with regard to these methods of advertising, and the gathering and use of data.

¹ BBC Annual Report 2013: <http://www.bbc.co.uk/annualreport/2013/home/>

² RTE Annual Report 2012: <http://static.rasset.ie/documents/about/2012-english-annual-report-for-the-web.pdf>

³ The Yearbook of the European Audiovisual Observatory 2013, with data from WARC.

⁴ Ibid

- New players have emerged in the audiovisual media sector. This includes new types of distributors such as telecommunications operators who are now also becoming owners of sports rights (BT) and major shareholders of cable companies (Vodafone).
- Other new players include new content producers and distributors: Google, Yahoo, Apple/iTunes; and even more recently new types of content aggregators such as television manufacturers Samsung, Phillips, Panasonic etc.
- Concerns exist regarding competition from non-EU operators over the new distribution platforms. In its first review of the implementation of the AVMS directive (completed in 2012), the European Commission noted the emergence of several major US operators. The Commission expressed concern that the launching of their services in the EU would undoubtedly increase competitive pressure on the creation, financing and retail of EU works.
- These US players include Lovefilm, Netflix etc. In fact, in France the concern regarding the launch of Netflix in Luxembourg targeting France – yet without the contribution to French production, or being under the French regulation of promotion of European works – has led to calls in France for a reversal of the principle of “country of origin” to “country of reception”.
- The developments in new technology and in particular that of hybrid TV, connected TV and smart TV are at the centre of the recent debates at the EU level, including in the *Green Paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values*, and the *European Parliament Resolution of 4 July 2013 on connected TV*, and the *European Parliament Resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World* all of which are discussed in this review.
- These discuss the process of convergence at the level of reception devices, which blurs the difference between linear and non-linear services, which is of particular concern. For example, the browsing of TV channels appears to be replaced with the browsing of home pages controlled by the platform operators, portal operator or device manufactures. The main concern lies in the fact that those new gatekeepers are not regulated by any European legislation.
- Another concern is the different treatment of the content, particularly advertising which may both appear on the television screens, via the distribution platforms: of DTT, cable, IPTV, satellite etc.; and the content that may appear via a built in app over the Internet. Hence the European Parliament resolution proposed the removal of quantitative advertising provisions for linear audiovisual content replacing it by increasing flexibility and strengthening co- and self-regulation.
- In fact, the exercise of this review suggests that there may as many issues emanating from developments at the EU level which may need to be considered, as there are issues emerging from the comparison of the codes of the major member states in the context of this review.
- Regarding the regulation of commercial communications in the UK, France, Germany and Austria in comparison with Ireland, several issues arose.
- In the UK from 2010 a separate code was developed for commercial communications in radio to bring the regulations into a consistent status with those of product placement for television and permit additional contractual arrangements for the references to services or products would be transparent, regulated and yet prohibited in certain types of programming.

- To date the UK has not carried out any review of the impact of these changes on the radio market. The Ofcom Communications Market Reports indicate that advertising revenue has increased for radio, and also for local radio since 2010 but these reports do not draw any conclusions regarding the role played in this development by the changes in regulation of commercial communications.
- In France, less restrictive quantitative rules on advertising were introduced for television channels on the DTT platform (as compared to the other distribution platforms) for new DTT channels during the first 7 years of their existence.
- Although there are not many significant cases at the European level, one case noted in this review concerns Italian legislation which allows less strict advertising rules (in terms of quantity) for free-to-air broadcasters in comparison to pay-TV broadcasters. The main difference between the two approaches is that the French law concerns the promotion of new channels, while the Italian laws are based on the fact that pay-TV channels also have subscription revenue.
- Particular types of advertising such as virtual advertising (allowed in certain circumstances in Germany), surreptitious advertising (allowed in certain circumstances in France), comparative commercial communications (allowed in Ireland in certain circumstances) and product placement (the provision of specific logos to identify this in the UK and France) are regulated in different ways in each country.
- In UK and France a system of co-regulation has been established whereas in Ireland and Germany the control over commercial communications is provided by regulatory authorities. The issue of co-regulation has, as noted above arisen in the most recent debates at EU level regarding the future regulation in a fully converged digital world. The regulation of advertising for specific products such as alcohol also highlight some significant differences, particularly regarding the levels that can be advertised – while this limit goes to 25% in Ireland, it is less than 1,2% in the UK and France. In Austria no levels of alcohol are mentioned in the rules and the rules focus on the context in which alcohol is represented, and the fact that it should not be glamorised in certain ways. The 2001 law prohibited the advertising of spirits but this sentence was removed.
- The UK regulator, the Ofcom, has decided to treat gambling as teleshopping and regulate it accordingly in order to ensure that gambling advertisements are socially responsible. In France the commercial communications promoting gambling and betting are allowed under certain conditions and limitations. Gambling is not referred to in the context of the media laws in the other states.
- It is likely that the AVMS directive will be changed in the near future to follow the fast development in the field of hybrid TV receivers. It is expected that connectable TVs will move from 40.4 million devices end of 2012 to a presence in a majority of EU TV households by 2016⁵. In this perspective it is to be expected that major changes of the commercial communication codes is yet to come.
- Considering the differences between Austria, Ireland, Germany, France and UK it appears that co and self-regulation is an efficient tool to provide protection to the audience and fair playing level field for audiovisual providers. Although co-regulation is more developed in big media markets, considering future development of media in a converged world such ways of regulating media will be beneficial also for smaller markets.

⁵ Source: IHS Screen Digest

- In the time of convergence and hybrid devices it would be important not to forget radio, which has an important and stable position with audiences. Although the new radio technology is not bringing so many changes in the mode of radio listening, radio may need to develop further and benefit from funding based on advanced commercial communications.

3. European context

3.1. Introduction

After the coming into force of the original *Television without Frontiers Directive* in 1989, the European Commission issued in 2004 an interpretive communication on commercial communications⁶. This was necessary due to technological developments and the new forms of advertising that emerged.

The communication concluded that: “new forms and techniques in advertising are not per se incompatible with the Directive, provided their use does not undermine the objectives of general interest pursued by the Directive”, including separation of advertising from editorial content; protection against excessive advertising; the right of rights holders to have the integrity of their audiovisual works respected.

On more specific issues such as mini-spots, the communication again stressed the principles of separation and identification; for tele-promotions separation and also the daily limits were the basis of regulation; split screen advertising needed only to comply with insertion and limitation rules; interactive advertising is governed under directive rules up until the point that the viewer enters the interactive environment voluntarily when the e-commerce directive would apply. On this point it was stressed that in the latter case the principles of the protection of minors and human dignity still apply.

Finally, virtual advertising could be considered as a replacement to the usual messages on billboards in sports arenas and stadiums but must not be more visible or conspicuous than those that normally appear on the billboards.⁷

3.2. The review of the Directive

The review of the Directive led to the establishment of the Audiovisual Media Services Directive in 2010. This more directly addressed these new forms of advertising incorporating the interpretative communication, and in particular regulating such issues as product placement. More generally, the directive changes from the concept of television to that of audiovisual media services in order to recognise the existence of both linear and non-linear services, and to incorporate services distributed via new platforms such as the Internet.

The first report on the application of the Directive was published in 2012⁸

⁶ Commission interpretative communication of 23 April 2004 on certain aspects of the provisions on televised advertising in the "Television without frontiers" Directive [C (2004) 1450 - Official Journal C 102 of 28.04.2004].

⁷ WG I: Audiovisual Media Services Draft Directive- Focus on Advertising Rules – Information paper by Deirdre Kevin for the EPRA Secretariat. 23rd EPRA meeting, Elsinore May 17-18 2006: <http://www.epra.org/attachments/elsinore-wg1-advertising-background-paper>

⁸ First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2010/13/EU "Audiovisual Media Service Directive" Audiovisual Media Services and Connected Devices: Past and Future Perspectives /* COM/2012/0203 final */<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0203:FIN:EN:HTML>

The report covered a range of relevant issues from the implementation and monitoring activities that had taken place. Following the monitoring of advertising practices, it was also revealed that a number of issues arose in the area of commercial communications concerning sponsorship, self-promotion and product placement. The report concluded that this highlighted a need to clarify the rules governing the various forms of commercial communications.

This report was noted that it seemed appropriate to update in 2013 the Commission's interpretative communication on certain aspects of the provisions on televised advertising in the 'Television without Frontiers' Directive. Such an update would have included the issue of behavioural advertising; the impact of commercial communications, especially for alcoholic beverages, on minors;

Since advertising practices were considered to be key issues, the European Commission had planned to update its interpretative communication on televised advertising in 2013. This did not happen however, but perhaps due to the development of a broader consultation on the "fully converged digital world" as outlined in the next section.

3.3. Recent developments

Regarding developments at the European level two important documents emerged in 2013; the *Green paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values* published on 24.4.2013 and the *European Parliament Resolution of 4 July 2013 on connected TV*⁹. In addition a further important resolution was passed in March 2014 by the EP: *the European Parliament Resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World*¹⁰.

The Green Paper addresses the European internal audiovisual market and, among others, notes two major problems. This includes the issue of satellite and Internet delivery of audiovisual services originating outside the EU but targeting EU Member States. It also includes the process of convergence at the level of reception devices, which blurs the difference between linear and non-linear services.

This leads to an unequal position of EU audiovisual providers in relation to the providers whose origin is outside the EU.

Regarding the situation in the internal EU market the paper stresses the problems of local barriers, which are a consequence of geographical boundaries as well as the copyright issues. The other considerations are related to the financing models, interoperability of connected TV, infrastructure and spectrum, values, regulatory framework, media freedom and pluralism, commercial communications, protection of minors and accessibility for persons with disabilities.

The European Parliament Resolution (2013) is oriented towards the emerging convergence on the level of the hybrid television reception equipment. The browsing of TV channels appears to be replaced with the browsing of home pages controlled by the platform operators, portal operator or device manufactures. The main concern lies in the fact that those new gatekeepers are not

⁹ European Parliament resolution of 4 July 2013 on connected TV (2012/2300(INI)): <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-329>

¹⁰ European Parliament resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World (2013/2180(INI)): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0232+0+DOC+XML+V0//EN>

regulated by any European legislation. The European Parliament Resolution therefore calls for urgent amendments to the Audiovisual Media Services Directive, in particular, to take this new situation into account, because otherwise the diversity of opinion and of the services on offer may be jeopardised, as may the freedom of information.

The second European Parliament Resolution on Preparing for a Fully Converged Audiovisual World is based on the Green paper published by the European Commission. The aim of the Resolution is to safeguard user choice in the environment where there are now gatekeepers such as device manufacturers or platform operators. The European Parliament also expressed the concern as to whether the AVMS directive is still relevant in the light of developments in all audiovisual media services accessible to European citizens. It also proposed the removal of quantitative advertising provisions for linear audiovisual content replacing it by increasing flexibility and strengthening co- and self-regulation.

3.4. Green paper on preparing for a fully converged audiovisual world

The EC published the *Green Paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values* on 24.4.2013. The purpose of the Green paper was to open a broad public discussion on the implications of the convergence of media services and the way in which these services are consumed and delivered. The convergence may have an impact on a number of legal instruments including the Audiovisual Media Services Directive, the E-Commerce directive and the electronic communications framework (e.g. Article 31 of the Universal Services Directive, spectrum policy and Article 6 of the Access Directive).

The Green Paper addresses questions related to growth and innovation, market considerations, financing models, interoperability of connected TV, infrastructure and spectrum, values, regulatory framework, media freedom and pluralism, commercial communications, protection of minors and accessibility for persons with disabilities.

The focus of the green paper is based around two main questions:

- How to transform the process of convergence in a larger European market into economic growth and business innovation in Europe?
- What are the implications of convergence for values such as media pluralism, cultural diversity, and the protection of consumers, including specific groups such as minors?

Convergence might have an impact in the future on a number of legal instruments including the Audiovisual Media Services Directive (AVMSD), the E-Commerce Directive and the electronic communications framework.

Regarding market considerations the problem lies in the limited choice based on geographical delimitations, which on the one hand is the consequence of copyright rules, and on the other hand limited by the applications in smart TV sets. Access to content from other EU countries is often blocked or restricted by the manufacturers' national pre-selected choices/ settings.

Apropos the regulatory framework the Green paper stresses that the AVMS is based on the technology neutral approach where the type of the audiovisual service is important and not the delivery platform. Convergence had an impact not only on the delivery networks but also on the reception equipment thus the hybrid TV set is able to deliver linear and non-linear audiovisual services in a way where the difference between the two seems to be blurred. This will have an inevitable impact on the regulatory framework.

The AVMS makes distinction between linear and non-linear services based on the much higher consumer control in on-demand services, justifying less stringent regulation in certain areas. Linear and non-linear services will increasingly compete on the same screen, sometimes even offering over two delivery channels the same content for the attention of the same audience. With new forms of on-demand content that seem more like 'lean-back' linear content, the difference between linear and non-linear services from the consumer's point of view might blur. If, in a converging world, linear and non-linear provision of similar content were to be treated as being in competition, then the current differences in regimes could clearly distort that relationship. On the other hand, if the degree of customer control remains a significant feature for users, then differentiated regulation would retain a certain logic. This requires policy makers to reflect on the ways in which these changes will affect both, consumers' perceptions of the received service and the effectiveness of current tools.

Regarding the regulatory framework it seems that self-regulation in the case of Internet content is a proper complement to the regulatory approach. The European Commission launched in 2012 the process to develop a code of good practice for self and co-regulation (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681 final) which results in drafting principles for better self- and co-regulation aiming at ensuring a greater effectiveness.

QUESTIONS FOR PUBLIC CONSULTATION:

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

(11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

(12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

In the field of commercial communications, the Green paper again stresses the problem of the differences in regulating linear and non-linear services. The current provisions of the AVMS set the limits for broadcast advertising at 12 minutes per hour. Furthermore, the Directive lays down criteria relating to the advertising of certain products as well as advertising in relation to minors. The problem is that those rules are in use for both linear and non-linear audiovisual services but the time limits apply only to linear services. Given the blurred difference between linear and non-linear services and considering the fact that non-linear service providers could originate from countries outside the EU, the European broadcasters seems to be in a position of disadvantage (see text below).

GREEN PAPER - COM(2013) 231 final

Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

Excerpts regarding the commercial communications:

3.3. Commercial communications

The AVMSD sets limits in transmission time for broadcast advertising, such as 12 minutes per hour, and lays down criteria relating to the advertising of certain products as well as advertising in relation to minors. Qualitative

rules apply similarly to both linear and non-linear services, while quantitative rules apply only to linear services. In view of the increasing competition between linear and non-linear services and the fact that non-linear services might be provided by providers not subject to EU jurisdiction, European broadcasters fear that such an asymmetry puts them at a disadvantage.

In the context of convergence, some innovative advertising techniques put existing rules to the test. The Commission was informed about concerns regarding commercial overlays over broadcasters' linear services and the question whether this could challenge the essential purpose of advertising regulation, in particular whether such overlays could be shown with or without the consent of users and broadcasters. Disguised commercial communications in the online environment could also present challenges.

Personalisation of content offers can benefit consumers and advertisers, but may depend on tools posing challenges for personal data protection. European data protection rules can increase consumer trust in innovative business models which is the stated objective of the Commission proposals for a reform of the EU regulatory framework submitted in January 2012. The advertising industry has introduced a self-regulatory system for online behavioural advertising, which in the future might be extended to cover video adverts in addition to display adverts. Industry standardisation initiatives such as Do Not Track (DNT) should also be taken into account.

QUESTIONS FOR PUBLIC CONSULTATION:

- (17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?
- (18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?
- (19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Public consultation responses were provided by the ASA (Advertising Standards Authority) and the EASA (European Advertising Standards Alliance). Both supported the self and co-regulatory instruments of regulation.

The ASA took over the regulation of broadcast advertising from OFCOM in 2004 under a co-regulatory partnership. The success of self and co-regulation was also mentioned in the report of the UK Department for Culture Media & Sport, July 2013: *Connectivity, Content and Consumers. Britain's digital platform for growth* (see text below).

Extract from the: Connectivity, Content and Consumers. Britain's digital platform for growth (Department for Culture Media & Sport, July 2013)

Advertising

It is important that advertising and other marketing methods in the digital world are appropriate, in terms of who they target, where they are shown, and in the methods they use.

The UK benefits from a healthy and successful advertising sector, underpinned by an exemplar of successful self-regulation, the Advertising Standards Authority (ASA). The ASA administers a system which is flexible and responsive, and is industry funded, through a 0.1% levy on non-broadcast advertising spend levied by the Advertising Standards Board of Finance (ASBOF). This levy is voluntary, but is well supported by industry; however, it will be important to ensure that this continues to be sustainable in the future. The relatively recent extension of the ASA's online remit to cover marketing on companies' own websites and on social media demonstrates the increasing importance of online advertising, and advertising spend in the future is likely to increase its focus on these online markets. Therefore, it will be important to ensure that this self-regulatory, industry-funded model remains sustainable for the future, and that the regulation of online and offline advertising alike can continue to be supported by the industry levy.

Some concerns have been raised over the degree to which collection of the levy in the digital world has kept pace with the rate at which advertisers are now operating there. We think it is incumbent upon all parts of the industry, including the digital media, to safeguard this continued funding by playing their part in the collection of the levy.

3.5. European Parliament resolution of July 4 2013 on connected TV

3.5.1. Introduction

In the resolution of 4 July 2013 the European Parliament stressed the concern that the AVMS directive does not properly address the situation in the connected TV environment. Namely the current provisions of the AVMS directive are based on technological neutrality, yet separately considered as linear and non-linear audiovisual services. Hence there is a finely meshed regulatory system on linear services, but non-linear services are treated less restrictively. Given the recent development of hybrid reception devices, users can access both traditional TV programmes and the Internet. Regardless of the technical mode of distribution almost total convergence of the media may occur. However, according to the provisions of the AVMS directive those services are subject to different rules which is in conflict with the technological neutrality principle of the directive. The technological neutrality principle of the directive is based on the presumption that the technology is not relevant as long as the same type of the service is concerned (linear or non-linear) but the fact that non-linear services could be perceived as linear on hybrid receiving devices was not taken into the consideration in the provision of the AVMS directive. Therefore the European Parliament shared the opinion that this situation raises a series of questions and problems, which need to be resolved in the regulation of the media. Thus the Audiovisual Media Services Directive seems to require urgent necessary amendments.

3.5.2. European Parliament resolution of 4 July 2013, Explanatory note

The European Parliament adopted resolution of 4 July 2013 on connected TV, led by rapporteur Petra Kammerevert MEP, which calls on "the Commission to have an eye to the future challenges of Connected TV, in terms of competitiveness in the industry, by allowing greater flexibility for quantitative rules on advertising".

The statement stresses that connected TV is an important technological step towards media convergence, a step which by its nature calls into question vital decisions concerning regulation of the media. In the Audiovisual Media Services Directive it was decided to impose a finely meshed regulatory system on linear services, but to treat non-linear services less restrictively.

The differentiation between linear and non-linear media, which is reflected in the graduated regulatory approach found in the Audiovisual Media Services Directive, is becoming increasingly inadequate due in particular to the development of connected TV, or at least is giving rise to a series of questions and problems which need to be resolved in the regulation of the media.

A hybrid reception device affords users access both to traditional TV programmes and to the Internet. Irrespective of their mode of technical distribution, in the long term almost total convergence of the media is likely to occur. Services are used on one and the same screen, which are subject to different rules, with widely differing degrees of regulation, namely:

- linear audiovisual media services;
- non-linear audiovisual media services;
- audiovisual services which do not fall within the scope of the Audiovisual Media Services Directive but are subject to other European legislation;

- media services which are not subject to any European legislation;
- services whose classification remains controversial.

To be able to display Internet content on a TV screen a special processing is required. Some hybrid reception devices have an option to access universal Internet content but the majority of these offers access to audiovisual Internet content through applications developed specially for those devices, similar to apps, which are developed for Smartphones. In most cases those apps are limited to specific brands of TV set and controlled by the manufacturers. The reason for this is the compatibility with the middleware of particular hybrid receivers. For example, installing a non-authorised application could cause the malfunction of the TV set. Navigation through the content is enabled via remote control unit but it could also be performed using a Smartphone or Tablet. The result of such development is that the content is not available to users via assigned channels but accessed in a way more similar to the browsing of a home page. Therefore the access to content is becoming more complex and depends entirely on the options of the platform and the portals controlled by the platform operators, portal operator or device manufactures who controls the access to content. This development of hybrid devices leads to the situation where platform operators and device manufacturers become gatekeepers, although they are not yet covered by any media regulation. The European Parliament Resolution therefore calls for urgent amendments of the Audiovisual Media Services Directive, in particular, to take this new situation into account, because otherwise diversity of opinion and of the services on offer may be jeopardised, as may freedom of information.

The Audiovisual Media Services Directive needs to be further developed in such a way that it also comprehensively regulates operators of hybrid portals and platforms. Anyone who has significant control over the diversity of content and opinions reaching an end-user should also be subject to regulation to safeguard that diversity of content and opinions.

Moreover, the new technical capacities of connected TV make it necessary to protect the integrity of content. The overlaying of content with third-party content should be prohibited except where the content provider authorises it and the user expressly initiates it.

European Parliament resolution of 4 July 2013 on connected TV (2012/2300(INI))

The extracts concerning advertising:

The European Parliament

having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce),

- H. whereas the advent of connected TV has shaken up the traditional value chain and makes it necessary to draw up a new strategy;
- K. whereas in the light of growing media convergence, the concept of 'connected TV' is being interpreted in a dynamic, technologically neutral and broad way to cover all devices, including mobile devices, which enable access to linear and non-linear media content, over-the-top services and other applications on one and the same device or screen, thereby bringing together the world of broadcasting and the world of the Internet;
- M. whereas the current provisions of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) are based on the principle of technological neutrality; **whereas those provisions do not yet reflect on-going technological convergence; and whereas in particular graduated regulation, which differentiates between**

television programmes (including webcasting and live streaming) and audiovisual media services on demand, will become less important in its existing form, although differently regulated information and communications services are available on one and the same device, including services which do not fall within the scope of the Audiovisual Media Services Directive but of the e-Commerce Directive or, in the case of non-European services, are not covered by any EU media regulations, **which both may result in unequal competitive conditions and unacceptable discrepancies in the protection of users** and raises fresh questions - regardless of media type - of content access, dissemination method and findability;

- Q. whereas the range of possible uses offered by hybrid devices **calls into question core principles of the Audiovisual Media Services Directive**, such as the mandatory separation of advertising and programmes, and rules on the insertion of advertising;
- V. whereas net neutrality is proven to be insufficiently safeguarded by transparency and competition;
1. Calls on the Commission to evaluate the extent to which it is necessary to revise the Audiovisual Media Services Directive and other current requirements laid down in network and media regulations (e.g. the telecommunications package) with respect to the rules on findability and non-discriminatory access to platforms, for content providers and content developers as well as for users, expanding the concept of platforms, and to adapt the existing instruments to new constellations; whereas it should be ensured in so doing that consumers can benefit from increased choice and access to audiovisual media services and that content providers can benefit from more choices in how to distribute their content while maintaining contact with their audience;
 7. Calls on the Commission, in the event of a review of the Audiovisual Media Services Directive, to ensure fair competition among all content providers;
 12. Calls on the Commission to have an eye to the future challenges of Connected TV, in terms of competitiveness in the industry, by allowing greater flexibility for quantitative rules on advertising, and to outline the relevant advantages and drawbacks;
 15. Wonders, in that connection, whether the principle of the division between advertising and programme content can be maintained across all types of media or whether the aim of providing protection could be better achieved by making advertising and programme content clearly recognisable and clearly distinguishable across all types of media;
 16. Takes the view that the introduction of new, or the extension of existing, advertising bans or other measures which have an impact on advertising as a source of funding should be prevented so that new business models can also be employed in the digital TV sector;
 18. Emphasises that new advertising strategies that use new technologies to increase their effectiveness (screenshots, consumer profiling, multi-screen strategies) raise the issue of protecting consumers, their private lives and their personal data; with this in mind, emphasises that there is a need to come up with a set of consistent rules to apply to these strategies;
 22. Recommends, therefore, in order to avoid any distortion of competition, that the same rules should apply to the same services, irrespective of the medium of transmission;
 34. Calls on the Commission to safeguard by law the integrity of linear and non-linear services on hybrid platforms and, in particular, to prohibit the overlay or scaling of these services by platform providers or third parties with content or other services, unless the latter have been explicitly initiated by the user and, in the case of content which is not covered by the definition of individual communication, have been authorised by the content provider; points out that unauthorised interference by third parties with the content or broadcast signals of a provider and their unauthorised decryption, use or dissemination must likewise be prevented;

3.6. European Parliament resolution of March 12 2014 on Preparing for a fully converged Audiovisual World

On 12 March 2014 the European Parliament adopted a *Resolution on Preparing for a fully Converged Audiovisual World (2013/2180(INI))*, based on a committee report drafted by Sabine

Verheyen MEP. This complements the earlier report by Petra Kammerevert MEP on *Connected Television*. The resolution is a response to the Commission's *Green paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value* published in April 2013. The Green paper contained considerations regarding infrastructure, frequencies and funding models of audiovisual content as well as market considerations on the vertical and horizontal integration of the media and ICT industry. However, the European Parliament expressed the opinion that the Commission's paper is heavily based on market considerations and, in particular, on targets related to economic growth and technical aspects, yet neglects the significance of the media for cultural diversity and identity in Europe. The Resolution is divided into following chapters:

- Convergent markets
- Access and findability
- Safeguarding diversity and funding models
- Infrastructure and frequencies
- Values
- Regulatory framework

Regarding the convergent markets the European Parliament shares an opinion that regulation is required where content gateways control access to media and impact directly or indirectly on the shaping of opinion. In the case of such developments a regulatory framework is required.

In the field of access and findability, net neutrality is a key element for ensuring the non-discriminatory access to, and transmission of, all audiovisual content. It is also in line with the principle of the "Must Carry" rule in the converged media landscape. The content should be accessible and findable also where the offer to users is prescribed by device manufacturers, network operators, content providers or other aggregators. On the other hand the EP believes that the creation of apps should be encouraged but should not lead to market access problems for producers of audiovisual content.

In the chapter on safeguarding diversity and funding models, **the EP proposes to remove regulations regarding quantitative advertising provisions for linear audiovisual content**, to ensure that the aims of Directive 2010/13/EU are accomplished more successfully by increasing flexibility and strengthening co- and self-regulation.

Regarding the regulatory framework, similar content on the same device requires a uniform, flexible, user-friendly and accessible legal framework, which is technology-neutral, transparent and enforceable. The Commission should conduct an impact assessment as to whether the AVMS Directive is still relevant in the light of developments in all audiovisual media services.

More details on the EP resolution can be found in the Annex.

4. United Kingdom

4.1. Introduction

Regarding several areas of regulation, Ofcom has designated self-regulatory organisations to act on its behalf.

ATVOD has been designated in respect of content of on-demand programme services while ASA is formally designated in respect of advertising for both broadcasting and on-demand services. A wide range of enforcement mechanisms are exercised by Ofcom, from directing a broadcast licensee to take remedial action, imposing financial penalties and revocation of the broadcasting license. For on-demand services Ofcom may impose financial penalty or suspend or restrict on-demand service.

The following is a text describing the recent developments of the Advertising Standards Authority taken from the document *Connectivity, Content and Consumers: Britain's digital platform for growth*, Dep. for Media, Culture and Sport:

The UK benefits from a healthy and successful advertising sector, underpinned by an exemplar of successful self-regulation, the Advertising Standards Authority (ASA). The ASA administers a system, which is flexible and responsive, and is industry funded, through a 0.1% levy on non-broadcast advertising spend levied by the Advertising Standards Board of Finance (ASBOF). This levy is voluntary, but is well supported by industry; however, it will be important to ensure that this continues to be sustainable in the future. The relatively recent extension of the ASA's online remit to cover marketing on companies' own websites and on social media demonstrates the increasing importance of online advertising, and advertising spend in the future is likely to increase its focus on these online markets. Therefore, it will be important to ensure that this self-regulatory, industry-funded model remains sustainable for the future, and that the regulation of online and offline advertising alike can continue to be supported by the industry levy.

Some concerns have been raised over the degree to which collection of the levy in the digital world has kept pace with the rate at which advertisers are now operating there. We think it is incumbent upon all parts of the industry, including the digital media, to safeguard this continued funding by playing their part in the collection of the levy.

4.2. Evolution of the codes

The table below outlines recent changes to the broadcasting code in relation to advertising.

OFCOM Broadcasting code	Section 9	Section 10	
Sept. 2010	Sponsorship (TV&RA)	Commercial References and Other Matters (TV&RA)	
Dec. 2010	Sponsorship (TV)	Commercial References and Other Matters (TV)	Commercial Communications in Radio programming (RA)
2011	Commercial References in	Commercial Communications in	

	Television Programming*	Radio Programming
2013	Commercial References in Television Programming	Commercial Communications in Radio Programming

* Sponsorship included in this Sector

4.2.1. Broadcasting code (Sept. 2010)

In the OFCOM Broadcasting Code of sept.2010 sections 9 and 10 on sponsorship and commercial communications had not explicitly distinguished between radio and television commercial communications. Section Nine of the Code (sponsorship) has applied both to radio and television broadcast sponsorship arrangements. It was underpinned by three key principles:

- it sought to ensure that sponsorship arrangements were transparent,
- to separate from programming and distinct from advertising,
- that the broadcaster maintained editorial control over sponsored content, so that programming was not distorted for commercial purposes.

Section Ten of the Code (commercial communications) applied to other instances where references to a product or service may appear in the course of television or radio programming, whether as a result of a commercial arrangement or not. It was underpinned by two key principles: it sought to ensure that advertising was separate from programming and that the broadcaster maintained editorial control over programme content, so that programming was not distorted for commercial purposes.

When considering commercial communications on radio as a whole, the overriding principles, have been summarised as:

- transparency,
- separation,
- editorial independence.

Ofcom's 2009 Code Review set out the intention to revise Sections Nine and Ten of the Code, replacing these with a revised Section Nine concerning television and a revised Section Ten concerning radio. The review of Sections Nine and Ten of the Code was subsequently extended to 2010. This was in order for Ofcom to take account of the Government's decision to permit (subject to limitations) product placement on television i.e. to permit non-promotional broadcast references to products or services within television programming, in return for payment. Such references were not previously permitted.

Evolution of the Section 10 of the Broadcasting code

The new Code published in December 2010 provided two parts of section 10 (commercial communications). One related to the TV and the other related to Radio services. In the new code of December 2010 the TV part was practically the same as in the version from September 2010 removing some wording previously related to radio. The radio part of the new Section 10 was drafted based on the results of a consultation done by OFCOM. According to OFCOM, the new Section Ten (Radio) ensures appropriate consumer protection, through transparency of all

broadcast commercial arrangements, and offers opportunities for the radio industry to generate new revenue.

OFCOM Broadcasting code	Section 10
Sept. 2010 - Dec. 2010	<p>Section 10 was split into two subsections:</p> <ul style="list-style-type: none"> Section Ten (Radio): Commercial Communications in Radio programming (new text based on OFCOM consultation) Section Ten (Television): Commercial References and Other Matters (the same text as in version Sept.2010 except "radio" was removed from the text)
Dec. 2010 - 2011	The part of the text referring to the television was moved to section 9
2011 - 2013	No change

The new rules permit the integration of commercial communications into programming on radio, with the exception of spot advertisements, which must be separated. The rules include prohibitions on commercial arrangements in relation to key areas of programming: news broadcasts, children's programming and the selection and rotation of music for broadcast.

The radio code 2013

<p>General Rules</p> <p>10.1 Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.</p> <p>10.2 Spot advertisements must be clearly separated from programming.</p> <p>10.3 No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.</p> <p>This rule does not apply to:</p> <ul style="list-style-type: none"> reference to a news supplier for the purpose of identifying that supplier as a news source; specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming; the use of premium rate services (e.g. for station/broadcaster surveys); and references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event). <p>10.4 No commercial reference, or material that implies a commercial arrangement, is permitted on radio services primarily aimed at children or in children's programming included in any service.</p> <p>This rule does not apply to:</p> <ul style="list-style-type: none"> credits for third party association with either programming or broadcast competition prize donation; the use of premium rate services (e.g. for broadcast competition entry); and references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event). <p>10.5 No commercial arrangement that involves payment, or the provision of some other valuable consideration, to</p>

the broadcaster may influence the selection or rotation of music for broadcast.

10.6 No programming may be subject to a commercial arrangement with a third party that is prohibited from advertising on radio.

10.7 Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.

10.8 Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements.

Programming

Programming comprises all broadcast material other than spot advertisements.

Spot advertisements

Spot advertisements comprise advertising broadcast in commercial breaks.

Commercial arrangement

A commercial arrangement is a contract, or any other formal understanding, between a broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties).

Examples of a commercial arrangement include programming sponsorship, competition prize donation and premium rate service provision. Programming that is subject to a commercial arrangement will therefore generally include payment and/or the provision of some other valuable consideration in return for a commercial reference (whether promotional or not).

Commercial reference

For the purposes of this section of the Code, a commercial reference is a reference in programming to a brand, trademark, product and/or service that:

- is subject to a commercial arrangement; or
- promotes the station/broadcaster's own products or services.

Transparency

Listeners should know when material is broadcast in return for payment or other valuable consideration. Signalling is the means by which transparency is achieved.

Transparency of a commercial arrangement should be achieved through the appropriate signalling of a brand, trademark, product and/or service of a third party (or third parties) that has paid for broadcast exposure by, for example: including a sponsorship credit; reference to the donor of a prize; the promotion of a premium rate number for listener interaction in programming.

Signalling

Broadcasters are required to give, at appropriate times, clear information within programming, to inform listeners of any commercial arrangement affecting that programming.

Appropriate signalling is therefore essential in complying with Rule 10.1. There are four aspects to consider when assessing what signalling is appropriate, to ensure compliance:

- Wording this must be clear, to ensure immediate transparency of the commercial arrangement;
- Positioning transparency of the commercial arrangement generally requires signalling at the outset of each instance of broadcast material subject to it;
- Frequency longer output that is subject to a commercial arrangement may require signalling at appropriate intervals;
- Identity (of the third party) transparency of the commercial arrangement requires the third party's relevant title to be stated on air.

Broadcasters should ensure that broadcast material appearing either to be a station campaign or to provide any independent assessment of products/services is genuinely independent and not subject to a commercial arrangement. Signalling commercial references in, for example, consumer advice/affairs programming therefore requires particular care, as it is essential that the broadcast of paid-for promotions of goods and services is not presumed to be independent observation/comment.

Specialist factual strands

Specialist factual strands in or around news bulletins or news desk presentations might include, for example, travel,

sport, finance and weather.

Factual programming, including matters of political or industrial controversy and matters relating to current public policy

Broadcasters should note that all programming must comply with Section Five of the Code. Commercial references broadcast under such an arrangement are also subject to Section 7 of The Broadcasting Committee of Advertising Practice UK Code of Broadcast Advertising. In addition, broadcasters are reminded that Rule 2.2 applies to all factual programming (i.e. factual items must not materially mislead the audience).

Commercial references that require confirmation or substantiation

Examples include, but are not limited to: complex factual claims (including those that are capable of objective substantiation); market leadership claims; special offer prices; comparisons with competitors; superlative claims; claims and offers involving significant limitations and exclusions; "free" claims; testimonials; endorsements; and claims that may be of particular interest to children.

Premium rate and similar services

10.9 Any use of premium rate telephony services in programming must comply with the Code of Practice and any additional broadcast-related requirements issued by PhonepayPlus.

10.10 The cost to listeners for using premium rate telephony services, or other services based on similar revenue-sharing arrangements, must be made clear to them and broadcast as appropriate.

Charity appeals

10.11 Fund-raising activity broadcast on behalf of a charity (or emergency appeal) is only permitted if:

- it is broadcast free of charge;
- it does not contain any commercial reference that is subject to a commercial arrangement with the relevant charity (or emergency appeal); and
- the broadcaster has taken reasonable steps to satisfy itself that:
 - the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
 - the organisation concerned is not prohibited from advertising on radio.

Appeals for funds for programming or services

10.12 Broadcasters may broadcast appeals for donations to make programming or fund their service. Listeners must be told the purpose of the appeal and how much it raises. All donations must be separately accounted for and used for the purpose for which they were donated.

Financial promotions and investment recommendations

10.13 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

Financial promotion

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

Investment recommendation

An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.

Television

The major change in the OFCOM broadcasting code which related to commercial communications took place in 2011 when the old content from the TV part of section 10 was moved and upgraded with the provisions of product placement into section 9 and merged with the provision for

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sponsorship in the original section 9. This became "Commercial References in Television Programming". Section 10 changed from Sponsorship to Commercial Communications in Radio Programming.

OFCOM Broadcasting code	Section 9
Sept. 2010 - Dec. 2010	No changes except the issues related to radio are removed
Dec. 2010 - 2011	Product placement rules have been added to the existing text on sponsorship
2011 - 2013	No change

The purpose of the new section nine

The rules in section nine have been drafted to ensure that editorial content remains distinct from advertising. They require broadcasters to retain editorial control over the programmes they transmit. The rules serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming,
- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

The main principles underpinning Section Nine are:

- To ensure that broadcasters maintain editorial independence and control over programming (editorial independence),
- To ensure that there is distinction between editorial content and advertising (distinction),
- To protect audiences from surreptitious advertising (transparency),
- To ensure that audiences are protected from the risk of financial harm (consumer protection),
- To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).

Furthermore the rules in Section nine are largely based on (and in some cases directly derived from) the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive, which are implemented into UK law through the Communications Act.

What is new in Section 9 of the code 2011 (compared to code of Dec. 2010)?

A definition of advertising is added – by reference in the OFCOM Code on the scheduling of television advertising ("COSTA"). The *code on the scheduling of television advertising* sets out the rules with which television broadcasters licensed by OFCOM must comply when carrying advertising. These rules give effect to relevant provisions of the Audio Visual Media Services (AVMS) Directive and those policies determined by OFCOM following consultation. In accordance with Article 20 of the Directive, OFCOM may disapply some or all of the relevant rules to channels

that are not receivable outside the United Kingdom. Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee on Advertising Practice.

In the code the following terms are defined (television advertising, the broadcasting day, Parliamentary proceedings, public service channels, a formal Royal ceremony, films, self-promotion and teleshopping). The code sets the Allowances for advertising and teleshopping, Transfer of minutage, Identification of advertising and teleshopping breaks, Advertising and teleshopping breaks during programmes, and Scheduling restrictions.

Excerpts from COSTA (updated 20 December 2010)

Allowances for advertising and teleshopping:

Subject to paragraphs below, time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes. In addition:

- a) on public service channels time devoted to television advertising and teleshopping spots must not exceed:
 - i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
 - ii) subject to (a) above, an average of 8 minutes an hour between 6pm and 11pm;
- b) on other channels time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.

During programmes broadcast by the national Channel 3 licensee, the amount of time permitted for television advertising and teleshopping spots between 6am to 9.25am may be averaged across the week.

Channels exclusively comprised of teleshopping and advertising are not subject to the limits on advertising and teleshopping spots set out in second bullet of the first paragraph above.

Channels exclusively comprised of self-promotional content are not subject to the limits on advertising set out in second bullet of the first paragraph, notwithstanding that self-promotional content is defined as a form of announcement broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment. On those channels comprising both self-promotional and other content, the self-promotional content will be treated as advertising, and will be subject to the limits on advertising set out in the first paragraph.

Teleshopping windows must be at least 15 minutes long:

- a) on public service channels, teleshopping windows may be scheduled only between midnight and 6am; and
- b) on other channels, there are no limits on the number or scheduling of teleshopping windows.

Channels licensed by OFCOM which are available only in a locality within the United Kingdom and which are not receivable outside the United Kingdom may use all or part of their teleshopping windows for local advertising features that do not include direct offers for sale, provided that a significant proportion of each feature refers specifically to the locality in which it appears.

Scheduling restrictions

Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception. Restrictions apply when inserting advertising breaks during the following programmes:

- a) films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;
- b) children's programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes;
- c) programmes including a religious service may not include advertising or teleshopping breaks during the service;

- d) broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;
- e) broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
- f) in programmes of live events, more breaks may be taken than are indicated in Tables 1 and 2 below, provided that:
 - i) the timing of the event and its constituent parts are outside the control of the programme provider; and
 - ii) there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.
- g) live programme feeds from an overseas broadcaster may take the break pattern of the originating broadcaster. The broadcaster retransmitting the feed from the UK remains responsible for ensuring compliance with other relevant parts of this Code and the Television Advertising Standards Code.

Scheduled duration of programme	Number of breaks
21 – 44 minutes	One
45 – 54 minutes	Two
55 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

Table 1: Number of internal breaks permitted
in programmes on public service channels

Scheduled duration of programme	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

Table 2: Number of internal breaks permitted
in programmes on other channels

The term and definition of surreptitious advertising is added (not present in the code of Dec. 2010 - old code).

Rule: "**Products, services must not be promoted in programming**", was upgraded to "Products, services **and trade marks** must not be promoted in programming". More exemptions were added. In the old code this rule was not applicable to programme related material where it could be editorially justified. The new code states that programme-related material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified. And that the broadcaster must retain responsibility for ensuring the appropriateness of promoting programme-related material. Another extension of this rule is related to premium rate telephony service (PRS):

- Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements,

- Premium rate telephony services will normally be regarded as products or services, and must therefore not appear in programmes, except where:
 - a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or
 - b) they fall within the meaning of programme-related material.

Note:

Each of the above exceptions is subject to the undue prominence rule.

- Where a premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate service must be clearly subsidiary to that primary purpose,
- Any use of premium rate telephone numbers must comply with the Code of Practice issued by PhonepayPlus,
- The cost to viewers for using premium rate telephony services must be made clear to them and broadcast as appropriate.

Note:

Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16 - Broadcast competitions and voting).

Company names, brand names, logos are replaced with "trade mark".

Product placement was prohibited in the old code. In the new code product placement is also prohibited with some exceptions.

The meaning of "Product placement" and Prop Placement" is better defined in the new code and some new terms were added as:

- Meaning of "significant value",
- Meaning of "residual value",
- Meaning of "relevant provider",
- Meaning of "connected person".

The following Notes were added:

- The BBC is prohibited from accepting most types of commercial revenue in relation to services funded by the licence fee. However, the Act's product placement requirements apply to programmes the BBC acquires or those produced/commissioned by its commercial services or any connected entities. The Code rules required by the Act apply to the BBC in those respects,
- The "Product placement" rules also apply to paid-for references to products, services or trade marks that are included in a programme for a non-commercial purpose,
- The rules do not permit the inclusion in programmes of paid-for references to other interests of third party funders (e.g. their aims, objectives or beliefs).

The following provision in the old code is omitted in the new code:

- Acquired programmes: With the exception of children programmes produced after 19 December 2009, product placement prohibition does not apply to arrangements covering the inclusion of products or services in a programme acquired from outside the UK and films made for cinema provided that no broadcaster regulated by Ofcom and involved in the broadcast of that programme or film directly benefits from the arrangement.

New rules for product placement were added:

Product placement is prohibited except in the following programme genres:

- films,
- series made for television (or other audiovisual media services),
- sports programmes; and
- light entertainment programmes.

Programmes that fall within the permitted genres must not contain product placement if they are:

- news programmes; or
- children's programmes.

Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster. There must always be sufficient editorial justification for the inclusion of product placement in programmes. In particular, editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products, services or trade marks.

References to placed products, services and trade marks must not be promotional.

References to placed products, services and trade marks must not be unduly prominent.

The product placement of the following products, services or trade marks is prohibited:

- cigarettes or other tobacco products,
- placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
- prescription-only medicines.

Additional rules for all programmes produced under UK jurisdiction:

Product placement is not permitted in the following:

- religious programmes,
- consumer advice programmes; or
- current affairs programmes.

The product placement of the following is prohibited:

- alcoholic drinks,
- foods or drinks high in fat, salt or sugar ("HFSS"),
- gambling,
- infant formula (baby milk), including follow-on formula,
- all medicinal products,

- f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or
- g) any product, service or trade mark that is not allowed to be advertised on television.

In addition to the rules above the following rule related to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider:

Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

- a) at the beginning of the programme in which the placement appears,
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme.

The universal neutral logo is defined:



Acquired programmes and signalling:

When a broadcaster acquires a programme containing product placement (i.e. the broadcaster has not produced or commissioned the programme, and it has not been produced or commissioned by a connected person or company), there is no signalling requirement. However, such programmes must comply with any other relevant Code rules.

If a broadcaster acquires a programme from a third party on the condition that product placement within the programme will be broadcast (subject to compliance with relevant rules), the requirements of rule on surreptitious advertising should be noted. In such circumstances, Ofcom expects broadcasters to ensure that audiences are made aware that the programme includes product placement.

The content of Section 9 from the Code dec.2010 on Sponsorship was included in the new Section 10 of the Code 2011 with minor changes.

Virtual advertising is no longer in the new code. In the Statement on the Ofcom Broadcasting Code on 20th of December 2010, the rule on virtual advertising has been rendered obsolete. Virtual advertising normally (but not exclusively) takes place at events, for example, sporting events, and involves altering the broadcast signal to replace existing venue advertising with other advertising in the television picture (potentially targeted at a particular geographical audience).

Appeals for funds for programming or services

In the new code two additional rules were added to the old ones (The audience must be told of the purpose of the donation and how much has been raised as a result of the appeal. All donations must be separately accounted for and used for the purpose for which they were donated).

Additional:

- Broadcasters must not offer any additional benefits or other incentives to donors.
- Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service.

Development of section 9 and section 10 in OFCOM code:

OFCOM Broadcasting code	Section 9	Section 10	
Sept. 2010	Sponsorship (TV&RA)	Commercial References and Other Matters (TV&RA)	
Dec. 2010	Sponsorship (TV)	Commercial References and Other Matters (TV)	Commercial Communications in Radio programming (RA)
2011	Commercial References in Television Programming*	Commercial Communications in Radio Programming	
2013	Commercial References in Television Programming	Commercial Communications in Radio Programming	

5. France

5.1. ARPP (professional Regulatory authority of publicity)

Since the Law 86-1067 of 30 September 1986 on freedom of communication (known as the L  otard Law), the entire television and radio sector has been under the authority of a regulatory body, the Higher Council for Radio and Television (CSA). It issues broadcasting permits to private operators, checks whether requirements in the technical specifications are being respected, especially public and ensures that laws and regulations are respected in such areas as pluralism of information and protection of children. It also appoints heads of public radio and television companies. The CSA also controls the content and the methods of programming of commercial communications broadcast by the audiovisual media services. This control is applied at the time of the broadcasting whereas the ARPP carries out a control before diffusion. The ARPP, formerly known as the "Office for checking advertising" (BVP), is an association governed by the law of July 1st, 1901, whose mission is "to conduct an action in favour of an honest, ethical and healthy advertising in the interest of consumers, the public and the professional standards of advertising". It was created by the advertising companies as a self-regulation framework. ARPP safeguards the potential disputes in the advertising business. This inter-professional organisation has four categories of members: advertisers, communication agencies, distribution platforms (press, radio, television, posting, cinema) and "associated members" (trade unions, law firms, associations, etc.).

The ARPP sets the ethical rules ("recommendations"), which apply, to its members who, voluntarily, commit themselves to comply with them. It provides the guidelines for professionals on the creation of advertisements and provides opinions on conformity with the professional rules and the existing regulation before actual transmission.

As regards television commercial communications, they are examined before they are broadcast by the ARPP while the CSA intervenes at the time of their broadcast or after if they prove not to be in line with the laws and respective bylaws.

Sponsorship in television programmes and also radio advertising and sponsorship are not the subject of systematic prior examination by the ARPP.

5.2. The code (Commercial Communications)

5.2.1. *Ethical definition and rules*

The decree of March 27th, 1992 (D  cret n  92-280) defines commercial communications as "any form of audiovisual communication which is subject to remuneration promoting the supply of goods or services, including those which are presented under their generic name, within the framework of a marketing activity, industrial, artisanal or of liberal profession, that is to say to ensure the sales promotion of a public enterprise or private".

The messages of general interest originating from the public administration, and those that are charitable or humane by nature are not considered as advertising. They can however be a part of advertising breaks.

The CSA takes care of the respect for ethical rules and can in particular sanction the broadcast of misleading advertising, or that does not respect human dignity or the public order, or causes

damage to the minors, or is likely to interfere with the religious, philosophical or political views of the audience.

5.2.2. *Rules for broadcasting advertisements*

Insertion of the advertising in audiovisual programmes

The Council is particularly focused on the methods of identification and insertion of advertising in programmes. This ensures that content providers comply with the rules relating to the interruption of cinematographic and audio-visual content.

- One period of at least twenty minutes must be passed between two successive interruptions inside the same programme, a cinematographic work, an audio-visual work (consisted, or not, of a series, a serial or documentary) or a programme targeting minors.
- Cinematographic and audio-visual content cannot be interrupted by more than two advertising breaks. Regarding cinematographic works, the advertising breaks must be limited to a six minutes break.
- However, audiovisual or cinematographic content broadcasted by France Televisions, and the cinematographic content of the movie channels are not allowed to be interrupted by commercial breaks.
- These provisions guarantee that advertising insertion takes place in harmony with the contents of the programme, and in particular coincides with the natural interruptions, in order to avoid the unplanned and premature interruption of a short speech, an interview or a musical programme.
- Exceptions are programmes composed of various autonomous parts, and in the case of sport programme or re-broadcasting of an event or a show already containing intervals. In these cases, the advertisements can be inserted between these autonomous parts or during these intervals without limitation of the number of the interruptions.

The air-time devoted to advertising

The CSA controls the time of air-time devoted to advertisements and intervenes where networks which go beyond the maximum duration of advertising as set up by the conventions and the specifications adopted by the decree of March 27th, 1992.

On the private channels, the air-time devoted to advertising depends on the type of the broadcasting platform:

- on the terrestrial broadcasting platform (i.e. the DVB-T/ DTT), advertising time is limited to 9 (nine) minutes per hour on average over a day taking into account the authorised air-time of the television channel, and to 12 (twelve) minutes limitation per clock hour. In order to support the development of DVB-T platforms, new channels do not have to respect the limitations of 9 minutes per hour on average for the first 7 years of operation. In this period the advertising time is limited only to 12 minutes per clock hour. After 7 years they have to respect the nine minutes limitation per hour.

- Television channels distributed by cable, XDSL or satellite, the duration devoted to advertising is fixed by the CSA rules. The air-time cannot exceed twelve minutes for one clock hour.

The rules limiting the duration of advertising are more strict on the public channels. The air-time of advertising cannot exceed 6 (six) minutes per hour on average daily, nor 8 (eight) minutes per clock hour.

Moreover, since January 5th, 2009, the channels of France Televisions (France 3 regional channels excluded) should not include advertising from 8 p.m. until 6 o'clock in the morning. This limitation applies only to advertising and does not relate to messages of general interest, generic advertisements (promoting healthy food e.g. fruits or milk products, etc.) or sponsorship.

Prohibited advertisement

Certain types of advertising are prohibited for ethical, public health or economic reasons.

Alcoholic beverages

Advertising of drinks including more than 1,2 degrees of alcohol is prohibited on television channels.

Concerning the possible presence of alcoholic beverages in television programmes, the CSA published the decision on June 17th, 2008, advising the television channels to point out the dangers to health caused by alcohol abuse and to advise moderate consummation of alcohol.

Tobacco and products of the tobacco

The law of January 10th, 1991, known as law Évin, added the provisions, which are now integrated into the Public health code. The law introduced a total prohibition of the advertising and promotion of the tobacco products.

However, this prohibition may be breached in the case of re-broadcasting motor sports events taking place abroad which includes advertising panels on site promoting tobacco products.

Surreptitious advertising

Article 9 of the modified decree of March 27th, 1992 qualifies surreptitious advertising as “the verbal or visual presentation of goods, services, name, brand or activities of a manufacturer of goods or a service provider in programmes, when this presentation is made with an advertising aim”.

Surreptitious advertising is widespread and regularly sanctioned by the CSA. In the case when a broadcaster does not respect the existing regulation, the Council has the possibility of initiating a sanction procedure, which can in particular lead to a financial sanction.

However, when some references to the goods and services in the television programmes cannot be avoided, as they are an essential part of the content of the programme e.g. having the nature of information, they are not considered as surreptitious advertising.

An advertisement is described as surreptitious when goods, services or other brands are presented, outside of advertising breaks, and with an “advertising aim”, i.e. not with an aim to inform, but to promote.

The Council does not have to prove that the promotion was subject to remuneration nor to prove that it has been done intentionally. The Council operates on a case-by-case basis taking into account the various practices detected on the air. When a particular case appears to be litigious the Council decides to intervene.

To detect surreptitious advertising the CSA uses the following indicators:

- the absence of plurality in the presentation of the goods, services or brands,
- the positive representation such or such product,
- the frequency of the quotation and/or the visualisation of the product or the brand,
- the indication of the address or the telephone contact or Internet site of an advertiser,
- the absence of any critical approach.

Other criteria can be added.

5.2.3. *Radio*

Ethical definition and rules

Radio advertising is regulated in the Charters on Radio France and Radio France International (RFI) and by the decision n°87-239 of April 6th, 1987 which deals with advertising on the private French radio stations.

The Council thus takes care that radio operators do not broadcast advertisements, which could harm decency and the human dignity. The radio stations must ensure that advertisements do not contain any element which would be likely to disturb the religious beliefs, philosophical or political views of the listeners and do not exploit the inexperience or the innocence of children and teenagers.

Rules on radio advertising

Methods of insertion of advertisements in programmes

Advertisements must be clearly announced and identified on public and private radio networks.

Rules applicable to the private radio stations specify that the whole advertising sequence must begin and end with easily identifiable sound jingles.

The French language is the imposed advertising language.

When listeners are invited to react by SMS or telephone, the operator has the obligation to inform the public on the prices of the premium telephone numbers. This obligation results from Article 4 of directive 97/7/CE of May 20th, 1997 which is integrated into Article 14 of the decree of December 3rd, 1987 relating to information on the prices laying down that “the price of all products or any performance of service suggested to the consumer depending on a type of the

telecommunication must be indicated in a precise way to the consumer, before the signature of the contract”.

After consultation with radio operators, the Council decided on July 3rd, 2012 to adopt a new Article on premium numbers costs and the costs of short messages (SMS). The aim of this Article was to provide a balance between the specifics of the radio medium and consumer protection. In accordance with this new Article, the references about the premium rate telephone numbers must be announced live or pre-recorded before the first incentive to call a premium rate number and at regular intervals during the radio broadcast.

The air-time devoted to advertising

The Charters on Radio France and Radio France International (RFI) regulate a maximum time devoted to advertising. On the national radio networks the air-time for commercial communications is limited to 30 minutes per day on average over the period of one year. Maximum air-time for commercial communication on private local radio networks is limited to 25% of the duration of the local programme (not including national commercial communications) related to a 24-hour period.

Regulated and prohibited sectors of radio advertising

Prohibited sectors of advertising: tobacco and products of the tobacco

The law of January 10th, 1991, known as law Évin, of which the provisions are integrated today into the Public health code, introduced a total prohibition of tobacco advertising.

The Council decision of June 17th, 2008 relating to the on-air promotion of the products of the tobacco, alcoholic beverages and prohibited drugs supports the general prohibition defined in the Evin law.

The specific scheme of the radio stations of the public service broadcaster

Prohibition of brand advertising

Radio France and RFI are allowed to advertise only topics related to public values and of general interest (Law on May 24th, 1951) such as products or services presented under their generic name, advertising of matters of general interest, for example discouraging use of tobacco, or health campaigns.

Any advertising, which could be understood as a surreptitious promotion of brands, is prohibited on public radio channels (Article 34 of the Charter of radio France).

Prohibited sectors

The Charter of Radio France prohibits any advertising relating to products, which are legally prohibited as well as alcoholic beverages including more than one degree of alcohol.

RFI is not allowed to advertise, on the one hand, the products being the object of a legislative prohibition, and on the other hand, the drinks including more than 1,2 degree of alcohol.

Derogation of advertising for alcoholic beverages for private radio stations

The Article L. 3323-2 of the public health code lays down that "promotion and advertising, direct or indirect, in favour of alcoholic beverages whose manufacturing and sale are not prohibited are allowed to be advertised on private radio programmes in certain time slots defined by the Council of the State".

According to Article R. 3323-1 of the Public health code integrating the provisions of the decision n°92-1047 of September 23rd, 1992, private radio channels are allowed to advertise alcoholic beverages which contains more the 1,2% of alcohol only in the following time slots:

Wednesday, between 0:00 and 07:00;

Other days, between 0:00 and 17:00.

These commercial communications should not approve or encourage the consumption of alcohol and must be accompanied with a message regarding medical matters specifying that alcohol is dangerous to health (Article L. 3323-4 of the public health code).

Messages outside the advertising slots

The Council ensures that public and private radio stations properly announce and identify the advertising slots (Article 8 of the decree n°87-239 of April 6th, 1987 for the private radios, Article 42 of the Charter of Radio France and Article 35 of the Charter of RFI). The advertising slots must begin and end with identification jingles.

The presenters in the radio shows should not encourage listeners to purchase or lease products or services, nor promote specific products or services on the air. Such practices will be considered as surreptitious advertising.

The Council does not have to prove that this kind of promotion was subject to remuneration. The CSA is particularly focused on the following aspects:

- the absence of plurality in the presentation of the goods, services or brands,
- the positive representation of such and such product,
- the frequency of the quotation of the product or the brand,
- the indication of the address or the telephone contact or Internet site of an advertiser,
- the absence of any critical view.

5.2.4. Sponsorship

The object of sponsorship

Article 17 of the decree of March 27th, 1992 qualifies sponsorship as "any contribution of a legal or private person, not involved in the audiovisual production, financially supporting the audiovisual production for the purpose of promoting its brands or activities".

Television news and news on political issues cannot be sponsored.

The current regulatory provision allows only one programme to be sponsored. Furthermore, the topics of a programme cannot be sponsored, as well as the part of the network programmes.

The sponsorship of the weather news programme is allowed when the weather report is not a part of the TV news or a political programme.

Television programmes cannot be sponsored by companies whose main production is oriented to the manufacturing or selling of alcohol beverages or tobacco products.

Conditions of sponsorship

Identification of the sponsor

The Council intervenes regularly in the cases of where there is an absence of clear identification of the sponsor. This identification must take place at the beginning or at the end of the programme and can be done only as defined in Article 18-III of the decision of March 27th, 1992. Otherwise, the products of the sponsor cannot be presented during a sponsorship.

Apart from its presence in the credits at the beginning or at the end of the programme, the mention of the sponsor during the sponsored programme and in the trailers is not allowed.

During sport programmes, the display of the sponsor's name cannot exceed five seconds and the time between two consequent appearances should be not less than 10 minutes.

The Council regards as specific an appearance of which the duration does not exceed five seconds and separate of another appearance of the sponsor by an interval of at least ten minutes. The CSA allows the logo or the name of the sponsor to be in a corner or at edge of screen.

Non-advertising character of sponsorship

The aim of sponsorship is to promote the name and the image of the company, therefore cannot include any elements of commercial communications.

The Council intervenes when sponsorship comprises advertising slogans or encourages the purchase of the products or the services of the sponsor.

Sponsorship of games and competition programmes

The sponsorship of games and competition programmes can include the provision of the products or services of the sponsor to the participants, under the condition that those products or services are not additionally promoted in the programme by means of sales leaflets.

The CSA specified that in these programmes, the products and services provided for the show should be provided only by the sponsors. In the case where other products and services are used in the show no brands should be quoted nor visualised as and no additional promotion or sales leaflets are permitted.

In addition, all games and competition programmes, or the parts of the competition programme must be identifiable per se, in particular through the credits at the beginning and at the end.

Sponsorship on the public radio stations

The Charter of Radio France allows sponsorship for programmes of an educational, cultural and social nature as a part of the obligations of Radio France that respect the conditions determined by the regulatory authority (Article 46).

The sponsorship of programmes is allowed also for RFI, under the condition that the sponsorship has no influence on the editorial responsibilities of RFI (Article 39 of the RFI Charter).

Sponsorship on the private radio stations

Definition of sponsorship

The decree n° 87-239 of April 6th, 1987 defines the rules of sponsorship on private radio stations. The sponsorship of radio broadcasts is allowed for the public or private enterprises that finance radio programmes with the aim of promoting their image, their activities or their achievements. Nevertheless the radio station should keep the whole control and editorial responsibility of the radio programme (Article 9).

Conditions of sponsorship

The mention of the name, the denomination or the corporate name of the company and the characteristics of the sponsor can take place during the sponsored programme (Article 9). Conventions of the private radio stations specify in Article 3-3 that when they are sponsored by a third party, the programme should not encourage the purchase or the lease of the products or services coming from the third party.

Restrictions on sponsorship

Under the terms of Article L. 3511-3 of the public health code, the sponsorship of any programme by a company producing tobacco or tobacco products is prohibited;

In the same way, in accordance with the Article L. 3323-2 of the public health code, any kind of sponsorship where alcohol beverages are promoted, directly or in-indirectly is prohibited.

Home Shopping (TV only)

Home shopping is regulated by the decree n° 92-280 of March 27th, 1992.

Article 21 of this decree defines home shopping as “the programmes directly addressing the audience offering goods and real estate and services with the aim of selling”.

The decree defines three categories of services to be offered in the Home shopping programmes:

- services which are additionally available in Home Shopping,
- the services which are mainly available for Home Shopping (service occupying at least 50% of the air time of Home Shopping programme),
- the services, which are exclusively available in Home Shopping.

However, according to Article 34 of the Charter of France Televisions, Home Shopping is not allowed on the channels of the public television in France.

The TV networks offering Home Shopping programmes must respect the following conditions:

- In order to prevent an excessive number and duration of Home Shopping programmes, the duration of each programme cannot last more than fifteen minutes while the total duration must not exceed three hours per day. Moreover, the television stations cannot schedule more than eight daily Home Shopping programmes.

- In the case of broadcasting Home Shopping on the terrestrial broadcasting platform such programmes can be scheduled only between midnight and 11 a.m. and between 2 p.m. and 4 p.m.
- Home Shopping programmes are not allowed to be scheduled on Wednesday afternoon because French children and teenagers do not have school on Wednesdays.
- The Home Shopping should be clearly announced and clearly indicated as such.
- The Home Shopping programmes can not be interrupted by advertising slots

In the case of a television channel exclusively or mainly dedicated to Home Shopping, the following more flexible conditions are to be respected:

- Home Shopping programmes can be broadcast for more than 3 hours per day,
- There are no limitations concerning programming time slots or their duration,
- The programme can be interrupted by advertising slots.

Whatever the category of the television network, the origin of the products can be freely quoted during Home Shopping programmes (brand, manufacturer, distributor...).

5.2.5. Product placement

Product placement is defined as any form of audio-visual commercial communication wherein a product, a service or a brand or reference is included in a programme in return for payment.

In theory, the Directive 2010/13/UE of the European Parliament and the Council of March 10th, 2010 does not allow product placement in any audiovisual media. However, the Directive allows Member States to permit product placement under a certain regulatory framework.

Thus the law n°2009-258 of March 5th, 2009, Article 14-1 relating to the freedom of communication, gave the CSA the power to set the conditions under which product placement is allowed in the French audiovisual services.

The Council set the conditions of product placement in the decision n°2010-4 of February 16th, 2010, published in the Official journal on March 5th, 2010. Two years after the decision was accepted, the Council made an assessment of its application. According to the results of the assessment, the CSA decided to modify the product placement decision regarding certain points (see the modifying decision of July 24th, 2012, published in the Official journal on August 7th, 2012).

Scope of the decision n° 2010-4

In the scope of the decision of February 16th, 2010, product placement is considered as an investment made for a fee, that is to say, the provision formalised by a contract for goods or services, which are identifiable in the audiovisual service.

Product placement is allowed only in audio-visual cinematographic works, fiction and music videos, except when they are targeting children. Product placement in other audiovisual services is not allowed.

The following products cannot be the object of a product placement: alcoholic beverages, tobacco and tobacco products, drugs, which are or are not subject to medical regulation, firearms and children's food.

Programmes containing product placement must meet the following requirements:

- The content and the programming should not be influenced by the product placement in order to ensure the independence of editorial responsibility,
- The product placement should not encourage the purchase of the products and services of third parties and should not include promotional references specific to the third party product or services or brands,
- The product placement should not use unfair methods of promoting products, services or brands.

Framework for contractual relations

The decision of February 16th, 2010, modified by decision of July 24th, 2012, envisages the contract agreed between the producer and the advertiser including the information as to whether the product placement was done during the production of the audiovisual work, co-production or the audiovisual work was pre-purchased by the advertiser.

Information for the viewers

The viewers should be informed about the presence of product placement by the appropriate symbol, which should appear in the first minute at the beginning of the programme, after each advertising break as well as being a part of the closing credits. In the case of a music video spot programme, the symbol must be present during the whole duration of the video spot. The symbol was defined by the CSA and is available to be used for all television networks.

The Symbol and the explanatory banner

In order to familiarise the viewers with the symbol, TV networks must provide an additional message describing the significance of this symbol, which should be broadcast for the first two months after its initial use on the TV channel. Apart from this the TV stations should inform the viewers regularly about the significance of the symbol. After the assessment of the results of the decision from February 16th, 2010, two years after it coming into effect, the CSA reminded the television channels that they are obliged to keep informing the audience regarding the meaning of the symbol describing the product placement programme.



CE PROGRAMME COMPORTE DU PLACEMENT DE PRODUIT 

The arrangements for informing viewers of the existence of product placement

	Cinematographic works Audiovisual fiction content	Music video	
		Programmes devoted to the dissemination of music video spot	Other modalities of music video spot (Examples:

			- Dissemination of music video spots between two programmes - Dissemination of one or more music video spots in a programme non-dedicated exclusively to music videos)
Information phase (2 months)	<u>Beginning of the programme:</u> <ul style="list-style-type: none"> Pictogram for five seconds in a banner Clearly displaying the notification that the following programme include product placement <u>Then:</u> <ul style="list-style-type: none"> Symbol on air for 1 minute <u>After each commercial break:</u> <ul style="list-style-type: none"> Symbol on air for 1 minute <u>End of programme:</u> <ul style="list-style-type: none"> Symbol on air throughout the credits 	<u>Beginning of the programme:</u> <ul style="list-style-type: none"> Pictogram for five seconds in a banner Clearly displaying the notification that the following programme include product placement <u>During the music video programme with product placement:</u> <ul style="list-style-type: none"> Symbol on the air throughout the duration of the music video spot programme <u>End of programme:</u> <ul style="list-style-type: none"> Symbol on air throughout the credits 	<u>Beginning of video spot:</u> <ul style="list-style-type: none"> Pictogram for five seconds in a banner Clearly displaying the notification that the following programme include product placement <u>During the music video:</u> <ul style="list-style-type: none"> Symbol on the air throughout the duration of the music video spot.
Regular use	<u>Beginning of the programme:</u> <ul style="list-style-type: none"> Symbol on air for 1 minute <u>After each commercial break:</u> <ul style="list-style-type: none"> Symbol on air for 1 minute <u>End of programme:</u> <ul style="list-style-type: none"> Symbol on air throughout the credits 	<u>During the music video programme with product placement:</u> <ul style="list-style-type: none"> Symbol on the air throughout the duration of the music video spot programme 	<ul style="list-style-type: none"> Symbol on the air throughout the duration of the music video spot

5.2.6. Games

Since the proclamation of the law n°2010-476 of May 12th, 2010, which enabled the opening to competition and the regulation of certain sectors of the market such as gambling and betting, the commercial communications promoting gambling and betting are allowed under certain conditions and limitations.

The law regulates all commercial communications related to providers of the gambling legally authorised by the public authorities that are under exclusive rights terms (Francaise des jeux, Paris mutuel urbain), under authorisation (casinos) or approved by the ARJEL (Regulatory authority of the online games), for the activities on the land-line network and online.

These activities are regulated under the framework set by the legislator and the CSA.

The law lays out that commercial communications promoting gambling and betting are prohibited on the audio-visual communication networks and in the programmes likely to be viewed by minors. The law assigns to powers to the CSA to specify the conditions of dissemination of such commercial communications.

Thus the Council adopted the decision n°2010-23 of May 18th, 2010, followed by the decision of April 27th, followed by the decision of January 22nd, 2013. The Council detailed the criteria for definition of the services and programmes when addressing the minors, and extended the prohibition of commercial communications promoting gaming and betting to thirty minutes before and after such programmes are broadcast.

Commercial communications must clearly indicate that they promote legally authorised gaming and betting. The origin of the advertiser of the commercial communication must be clearly identified. The commercial communications should not be presented to minors nor to encourage them to play.

The decision also recalls that any commercial communication must be “accompanied with a message of warning statement against excessive or pathological gaming, as well as the message referring to the assistance and information system” (this is imposed by the decree n°2010-624 of June 8th, 2010 related to the regulation of commercial communications promoting gaming and betting e.g. the information about the risks related to gaming practices).

At the request of the Council, television advertising agencies, on the one hand, and the radio programme editors and radio advertising agencies, on the other hand, had signed on January 7th and 31st, 2011, the charter of good behaviour with the aim of limiting the volume and the concentration of commercial communications promoting legal providers of gaming and betting. The Council is vigilant regarding the practical application of these charters.

The Council moreover asked various partners (programme editors, professional organisations of sports journalists, providers of gaming and betting services, federations of sports event organisers) to commit to avoid any changes to the normal structure of the programmes, in particular sports programmes, from the excessive reference to gaming and betting.

6. Germany

The broadcasting legal framework in Germany is based on the *Interstate Treaty on Broadcasting and Telemedia (Rundfunkstaatsvertrag, RStV)*. The Treaty represents the harmonised framework although the German broadcasters are regulated by the independent federal state laws. The first draft version was enacted on 1st of December 1987 and the fifteenth version came into force on 1st of January 2013. For the purpose of the judicial and legal review of the regulation of commercial communications in Germany, the development of the RStV will be analysed from the first to the last version of the treaty. The analysis focuses on the following parts:

General provisions:

- Advertising principles, obligatory identification
- Insertion of advertising and teleshopping
- Sponsorship
- Prize games

Provision for public broadcasting sector:

- Insertion of advertising
- Duration of advertising, sponsorship
- Directives
- Changes to advertising
- Exclusion of teleshopping

Provision for Commercial Broadcasting:

- Admissible product placement
- Duration of television advertising
- Teleshopping windows and self- promotion channels
- Directives

Amended Treaties are compared to the corresponding previous versions.

6.1. 1st amendment to the Treaty as from February 2/1 March 1994

The Article on Sponsoring in the fourth paragraph was changed. Namely the original version of the Article did not allow the interruption of the sponsored programme with advertising for products or services promoted by the sponsor. In the amended Treaty only the provision of non-encouragement to buy or lease the product or services of the sponsor remained in place.

6.2. 3rd amendment to the Treaty of 26 August/11. September 1996

The Article on commercial guidelines was amended with the option on exchange of practices related to the use of the provisions of the articles regulating the commercial communications, between public broadcaster ARD and ZDF and the federal state regulatory authorities.

6.3.4th amendment to the Treaty of 16. July/31. August 1999

In the 4th amended Treaty of August 1999 the main changes are related to the introduction of the term Teleshopping which was added in the articles on "Content of advertising and teleshopping, identification", "Insertion of advertising - Public/Commercial Broadcasting", "Exclusion from TV advertising" and the "Duration of Advertising" where in the latter also new definitions on self-promotion and new rules for the duration of Teleshopping were established. Additionally three new articles were added; an Article defining the Teleshopping windows, an Article on dedicated advertising channels and provisions to change the advertising rules for the local and regional broadcasters on the level of federal states authorities.

4th amendment to the Treaty compared to 3rd	Title of Article	Change
§ 7	Content of advertising and teleshopping, identification	<ul style="list-style-type: none"> Teleshopping
§ 8	Sponsoring	Two paragraphs added: <ul style="list-style-type: none"> Tobacco/medical ban
§ 14	Insertion of advertising - Public Broadcasting	<ul style="list-style-type: none"> Teleshopping added
§ 18	Exclusion from TV shopping	<ul style="list-style-type: none"> TV shopping replaced with Teleshopping
§ 44	Insertion of advertising and Teleshopping - Commercial Broadcasting	<ul style="list-style-type: none"> Teleshopping added
§ 45	Duration of Advertising	<ul style="list-style-type: none"> Teleshopping/windows added Self-promotion & public good advertising not considered as advertising Old definition of direct offers once limited to 1 hour per day replaced with Teleshopping with the time limit of 20% of daily transmission time
§ 45a	Teleshopping-Window	New Article <ul style="list-style-type: none"> Definition on duration of the Teleshopping windows
45b	Dedicated Advertising Channels	New Article <ul style="list-style-type: none"> Dedicated advertising channels allowed for other forms of advertising
46a	Exceptions for regional und local TV broadcasters	New Article <ul style="list-style-type: none"> Option to change advertising rules for local and regional broadcasters on the federal state level

6.3.1. § 7 Content of advertising and teleshopping, identification

- (1) The advertising and Teleshopping should not mislead the viewers nor endanger the health, security and also should not cause damage to the environment. Advertising and Teleshopping, which could be seen by the minors, should not harm their welfare nor take advantage of their inexperience. Teleshopping should not encourage minors to buy products or services promoted on the television.
- (2) Advertising or advertisers should not have an influence on the programme content and editorial responsibilities. This shall apply *mutatis mutandis* to teleshopping spots, teleshopping windows and their suppliers.
- (3) Advertising and teleshopping shall be readily recognisable as such. It must be clearly separated from other parts of the programme by visual means and by acoustic means on the radio. In the advertising and teleshopping no subliminal techniques may be used.
- (4) A part of the television screen may contain the advertising under the condition that this advertising is clearly optically isolated and identified as such. Such advertising will be deducted from the amount of time for spot advertising.
- (5) Infomercials (*Dauerwerbesendungen*) are permitted if the promotional nature is visible in the foreground and the advertising is an essential component of the programme. The viewers must be informed about such advertising at the beginning and during such advertising.
- (6) Surreptitious advertising and practices are prohibited. The insertion of virtual advertising in broadcasts is permitted when the viewers are informed at the beginning and at the end of the programme and when the virtual advertising is replacing the existing on site advertising (outside broadcasting).
- (7) People who appear regularly on the TV news or political magazines cannot be involved in television advertising.
- (8) To advertise political, ideological or religious topics is not permitted. This should also apply *mutatis mutandis* to teleshopping. Unpaid contributions in the public service affairs, including fundraising for social welfare shall not be considered as advertising.

The Article 8 on **Sponsoring** was amended with two paragraphs related to tobacco and medical products available only on prescription:

- Programmes may not be sponsored by undertakings whose principal activity is the manufacture of cigarettes and other tobacco products.
- The sponsorship of programmes by sponsors whose activities include the manufacture or sale of medicinal products and medical treatment is allowed, but not for specific medicinal products or medical treatments available only on prescription.

6.3.2. § 14 Insertion of advertising - Public Broadcasting

In the Article “Insertion of advertising” Teleshopping was added:

- (1) Religious and children’s programmes must not be interrupted by advertising or **teleshopping spots**.

(2) Television advertising **and teleshopping spots** shall be inserted between programmes. **Individual advertising and teleshopping spots shall remain as an exception.** Advertising and **teleshopping spots** can also be inserted during programmes under the conditions referred to in paragraphs 3 and 4, unless the context and the character of the programme is not compromised **nor prejudiced the rights of copyright holders.**

(3) Television programmes of more than 45 minutes duration may contain one block of advertisements **and teleshopping spots**; this also applies to subdivisions of the programme. In the case of transmission of events and performances containing intervals, advertising **and teleshopping spots** shall only be inserted between the subdivisions or in the intervals. **The calculation of the duration of a programme is based on its scheduled airtime.**

(4) The provision of the first sentence of the 3rd paragraph should not be used in the case when the sports events programme contains breaks, therefore advertising **and teleshopping spots** may be inserted only during the breaks.

(5) Insertion of advertising **or teleshopping spots** in a television programme specifically and frequently broadcast to viewers of another state that has ratified the European Convention on Transfrontier Television, and which is not a member of the European Union, must not breach the advertising **or teleshopping** regulations of the target country. Previous sentence shall not apply if the provisions of this treaty on advertising **or teleshopping** are stricter than those regulations that apply in the country concerned.

6.3.3. § 18 *Exclusion from Teleshopping*

In Article 18 on Exclusion from TV shopping, TV shopping was replaced with Teleshopping.

Old text:

Commercials in the form of direct offers to the public for the sale purchase or lease or rental of products or services (TV Shopping) does not take place in public broadcasting.

New text:

Teleshopping with the exception of Teleshopping spots is not allowed in public broadcasting.

6.3.4. § 44 *Insertion of advertising and Teleshopping - Commercial Broadcasting*

(New text in bold)

(1) Religious and children programmes must not be interrupted by advertising **or teleshopping spots.**

(2) Television advertising **and teleshopping spots** shall be inserted between programmes. **Individual advertising and teleshopping spots shall remain as an exception.** Advertising and **teleshopping spots** can also be inserted during programmes under the conditions referred to in paragraphs 3 and 4, unless the context and the character of the programme is not compromised **nor prejudiced the rights of copyright holders.**

(3) In respect of television programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising **and teleshopping spots** shall only be inserted between the parts or in the intervals. For other

programmes, the interval between two successive interruptions should be at least within 20 minutes of the programme. Paragraphs 4 and 5 remain unaffected.

(4) Notwithstanding paragraph 3, sentence 2, the transmission **of audiovisual works** such as feature films and films made for television excluding series, serials, light entertainment programmes and documentaries for each complete period of 45 minutes may be interrupted once, provided their scheduled duration is more than 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

(5) Television newscasts, current affairs programmes, documentaries and religious programmes that have a scheduled duration of less than 30 minutes, should not be interrupted by advertising **or teleshopping**. If their scheduled duration is at least 30 minutes, then the provisions of the previous paragraphs shall apply.

(5) Insertion of advertising **or teleshopping spots** in a television programme specifically and frequently broadcasted to viewers of another state that has ratified the European Convention on Transfrontier Television, and which is not a member of the European Union, must not breach the advertising **or teleshopping** regulations of the target country. Previous sentence shall not apply if the provisions of this treaty on advertising **or teleshopping** are stricter than those regulations that apply in the country concerned.

6.3.5. § 45 Duration of Advertising

The definition of Teleshopping and Teleshopping windows was added as well as more liberal regulation of the duration of the Teleshopping windows. Self-promotion and non-paid or promotion in the interest of the public is from now on considered not to be advertising.

The old definition of direct offers once limited to 1 hour per day was replaced with Teleshopping with the time limit of 20% of daily transmission time.

Old text:

(1) The duration of advertising should not exceed 20 per cent of the daily transmission time. The duration of advertising spots should not exceed 15 per cent of the daily transmission time.

(2) Within any one hour period the advertising spots must not exceed 20 per cent of the time.

(3) Forms of advertising, such as direct offers to the public are allowed for the sale, purchase or hire or rental of goods or services should not exceed one hour per day. Broadcasters may not act as contractors or agents for ordering of goods and services.

New text:

(1) The proportion of total time devoted to teleshopping spots, advertising spots and other forms of advertising may not exceed 20 per cent of the daily transmission time. This is not applicable for the teleshopping windows defined in the Article § 45a. The total time for advertising spots shall not exceed 15 per cent of the daily transmission time.

(2) The proportion of transmission time for advertising spots and teleshopping spots within an hour, calculated from the clock hour, shall not exceed 20 per cent.

(3) Promotion of the broadcaster on its own programmes and ancillary products directly derived from those programmes, and unpaid contributions in the service of the public, including fundraising for social use shall not be considered as advertising as defined in paragraphs 1 and 2.

6.3.6. § 45 a Teleshopping-Window (New Article)

(1) Teleshopping windows on TV channels not exclusively devoted to teleshopping shall have a minimum duration of 15 minutes without interruption.

(2) A maximum of eight windows per day are allowed. Their overall duration shall not exceed three hours per day. The windows must be optically and acoustically clearly identified as teleshopping windows.

6.3.7. § 45 b Dedicated Advertising Channels (New Article)

For dedicated advertising channels, § 7, 8, 44, 45 and 45a, shall apply. For these channels, other forms of advertising within the limits according to § 45 paragraphs 1 and 2 are allowed.

6.3.8. § 46a Exceptions for regional und local TV broadcasters (New Article)

Federal states can modify articles § 7 paragraph 4, sentence 2, § 44 § 3-5 and § 45, 45a for the purpose of regional and local television programmes.

6.4. 7th amendment to the Treaty of 26./27. September 2003

The only change related to the commercial communications:

6.4.1. § 7 Content of advertising and teleshopping, identification

(1) Advertising and teleshopping shall not mislead, nor harm the interests of consumers. Furthermore it should not encourage behaviour, which could damage the health or safety of consumers nor harm the environment.

6.5. 10th amendment to the Treaty of 19.12.2007

In the 10th amended Treaty the rules on Prize games are defined in the new Article 8a with the reference to Article 13 on the financing of public broadcasting, which prohibits the generation of revenue based on value-added telephone services (premium numbers).

10th amendment to the Treaty compared to previous	Title of Article	Change
§ 8a	Prize games	New Article <ul style="list-style-type: none">Prize games programmes and games are permitted.

		<ul style="list-style-type: none"> New rules for Prize games (costs of participation, protection of participants...)
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6.5.1. § 8a Prize games (New Article)

(1) Prize games programmes and games are permitted. They are subject to the principle of transparency and the protection of participants. Prize games must not mislead nor harm the interests of the participants. The cost of participation, eligibility, the game design as well as the instructions of the task should be known in advance. The concerns regarding the protection of the minors should be respected. The participation fee should not exceed 0,50 euros; § 13 section, 1 sentence 3 shall remain unaffected (see Article 13 below)

(2) When required, the organiser has to submit to the competent supervisory authority all documents, and all information necessary to verify the correct implementation of the prize games programme.

6.5.2. § 13 Financing (Public service)

(1) The public service broadcasting is financed through license fees, revenues from radio advertising and other revenue; the primary funding source is the license fee. Programmes and services within the public service broadcasting are not the subject of special payment; except accompanying materials. **Revenues cannot be earned from value-added telephone services.**

6.6. 12th amendment to the Treaty of 18.12.2008

In the 12th amendment to the Treaty of 18.12.2008 the provisions in Articles 7 and 8a (Infomercials, Prize games) are extended to the Teleshopping channels. Five new articles were added allowing ARD, ZDF and Deutschlandradio to be involved in commercial activities. Conditions of such involvement were set up, as well as the administrative provisions including rules on shareholdings in third companies involved in commercial communications, control systems, auditing and liability of public broadcasters in such undertakings.

12th amendment of the Treaty compared to previous	Title of Article	Change
§ 7	Content of advertising and teleshopping, identification	<ul style="list-style-type: none"> Provisions in paragraph 5 (Infomercials) shall also apply to teleshopping Provisions in paragraph 6 (Surreptitious advertising) shall also apply to teleshopping
§ 8a	Prize games	<ul style="list-style-type: none"> Provisions for Prize games are now extended also for Teleshopping TV channels (new paragraph added)
§ 16a	Commercial Activities	New Article: <ul style="list-style-type: none"> Commercial activities allowed

		for ARD and ZDF <ul style="list-style-type: none"> • Conditions for such activities in the public broadcasting sector
§ 16b	Shareholdings in Companies	New Article: <ul style="list-style-type: none"> • Article 16a sets the rule that commercial activities must be effected by legally independent subsidiaries • Article 16b defines the involvement of the public broadcasters in the third companies pursuing a commercial communications
§ 16c	Control of Shareholdings in Companies	New Article: <ul style="list-style-type: none"> • The provisions on effective control system regarding the shareholdings of ARD and ZDF
§16d	Control of Commercial Activities	New Article: <ul style="list-style-type: none"> • Sets up the provisions for auditing the commercial activities of ARD, ZDF and Deutschlandradio
§ 16e	Liability for Associated Companies Pursuing Commercial Activities	New Article: <ul style="list-style-type: none"> • ARD, ZDF and Deutschlandradio are not liable for the associated companies pursuing commercial activities

6.6.1. § 7 Content of advertising and teleshopping, identification

(Added text in bold)

1) Advertising and Teleshopping should not mislead the viewers nor endanger their health or security, and also should not cause damage to the environment.

(2) Advertising or advertisers are not allowed to influence the programme content nor editing. Previous sentence shall apply *mutatis mutandis* to teleshopping spots, teleshopping windows and their suppliers.

(3) Advertising and teleshopping shall be readily recognisable as such. Advertising must be clearly separated from other parts of the programme by optical means on television and by acoustic means on the radio. In advertising and teleshopping subliminal techniques may not be used.

(4) A partial display of advertising on the television screen is permissible, if the advertising is clearly optically isolated from the rest of the programme and identified as such. Such advertising will be deducted from the amount of spot advertising according to § 16 and §45. § 15 section 1 and § 44 paragraph 1 shall apply *mutatis mutandis*.

(5) Infomercials are permitted if their promotional nature is visible in the foreground and the advertising is an essential component of the programme. Infomercials must be announced at the beginning and during their presence. **These sentences 1 and 2 shall also apply to teleshopping.**

(6) Surreptitious advertising and practices are prohibited. The insertion of virtual advertising in broadcasts is permitted if: it is signalled at the beginning and at the end of the presence of such advertising, and when they are replacing the existing advertising on site in the case of outside broadcasting. Other rights are not affected. **Sentences 1 and 2 shall also apply to teleshopping.**

(7) Any persons that regularly present news or current affairs programmes on the television cannot take part in advertising and teleshopping.

(8) Advertising of political, ideological or religious themes is not permitted. Sentence 1 shall apply *mutatis mutandis* to teleshopping. Unpaid contributions in the service of the public, including fundraising for social use shall not be considered as advertising.

6.6.2. § 8a Prize games

(Added text in bold)

(1) Prize games programmes and games are permitted. They are subject to the principle of transparency and the protection of participants. Prize games must not mislead nor harm the interests of the participants. The cost of participation, eligibility, the game design as well as the instructions of the task should be known in advance. The concerns regarding the protection of the minors should be respected. The participation fee should not exceed 0,50 euros; § 13 section 1, sentence 3 shall remain unaffected.

(2) On requirement, the organiser has to submit to the competent supervisory authority all documents, and all information necessary to verify the correct implementation of the prize games programme.

(3) Paragraphs (1) and (2) are applicable also to Teleshopping TV channels.

6.6.3. Articles 16a to 16e

The amendment also included provisions (articles 16a to 16e) regarding the commercial activities of the public broadcasters, their auditing and relation with the public service remit which is not relevant to the scope of this document.

6.7. 13th amendment to the Treaty of 10.3.2010

In the new amended version of the Interstate Treaty, Article 7 was changed now allowing product placement in certain cases as defined in articles 14 and 44. A new Article 7a was added combining some provision from the old Article 15 adding two paragraphs on isolated advertising and teleshopping spots and the interruptions of films (with the exception of series, serials and documentaries) and cinematographic works and news programmes by television advertising or teleshopping once for each scheduled period of at least thirty minutes. Article 8 on Sponsorship was amended with the prohibition of showing sponsorship logos in children's programmes and religious broadcasts. A new Article 15 was added allowing product placement in derogation from Article 7 paragraph 7. In the amended Article 16f (Directives) ARD, ZDF and Deutschlandradio are now allowed to consult media authorities on which formats and to which extent free product placement may take place (Article 7(7) and Article 15). Product placement provisions were added in the new Article 44 (Admissible Product Placement). Article 45 (Duration of Television

Advertising) provides for the exclusion of product placement from the time limits of the duration of television advertising and the amended Article 45a now excludes self-promotion channels from the limitations on duration of advertising (Articles 7a and 45).

13th amendment to the Treaty compared to previous	Title of Article	Change
§ 7	Advertising Principles, Obligatory Identification	<ul style="list-style-type: none"> • New paragraph 1 on principles of advertising • Changed paragraph 7 adding Surreptitious advertising, product placement and thematic placement rules • Surreptitious advertising, product placement and thematic placement rules are prohibited except in exceptions defined in Articles 15 and 44
§ 7a	Insertion of Advertising and Teleshopping	<p>New Article:</p> <ul style="list-style-type: none"> • The first and the fourth paragraph are taken from the Article 15 of the 12th amended Treaty • Paragraphs two and three are new
§ 8	Sponsorship	<ul style="list-style-type: none"> • Paragraph 1 extended with the additional means of labelling the sponsored programmes • Paragraph 6 extended with the prohibition of showing sponsorship logos in children's programmes and religious broadcasts.
§ 15	Admissible Product Placement	<p>New Article:</p> <ul style="list-style-type: none"> • Allowed product placement in derogation from Article 7 paragraph 7.
§ 16f	Directives	<ul style="list-style-type: none"> • Added provision for ARD, ZDF and Deutschlandradio on how to consult media authorities on which formats and to which extent free product placement may take place (Article 7(7) and Article 15)
§ 44	Admissible Product Placement	<p>New Article:</p> <ul style="list-style-type: none"> • The old Article 44 (Insertion of advertising and Teleshopping - Commercial Broadcasting) was replaced with the new Article on Admissible Product Placement
§ 45	Duration of Television Advertising	<p>New Article:</p> <ul style="list-style-type: none"> • The old Article 45 (12th amended Treaty) was replaced

		with the new text where product placement is excluded from the time limits of the duration of television advertising
§ 45a	Teleshopping Windows and Self-Promotion Channels	<ul style="list-style-type: none"> • Article amended with the provisions from the old Article 45b • Self promotion channels now excluded from the limitations on duration of advertising (Articles 7a and 45)

6.7.1. § 7 Advertising Principles, Obligatory Identification (New)

(1) Advertising and teleshopping shall not

- **prejudice respect for human dignity,**
- **include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation,**
- **be misleading or prejudice the interests of consumers, or**
- **encourage behaviour prejudicial to health or safety as well as grossly prejudicial to the protection of the environment.**

(2) Advertising or advertisers shall not influence the editorial content or other parts of a programme. Sentence 1 applies accordingly to teleshopping spots, teleshopping windows and providers thereof.

(3) Advertising and teleshopping shall be readily recognisable as such and shall be clearly distinguishable from editorial content. Advertising and teleshopping shall not use subliminal techniques. New advertising techniques used shall also keep advertising and teleshopping quite distinct from other parts of the programme by optical means, on radio by acoustic means in a manner that is adequate to the media.

(4) Advertising may occupy part of the broadcast picture provided that the advertising is kept optically separate from the other parts of the programme and is clearly identified as such. Such advertising will be included in the calculated duration of spot advertising pursuant to Articles 16 and 45. Article 7a (1) applies accordingly.

(5) Infomercials shall be permitted provided that the advertising character can be clearly recognised and that the advertising constitutes a substantial component of the programme. They must be announced as infomercials at the beginning of the programme and identified as such for the entire duration of the programme. Sentences 1 and 2 shall also apply to teleshopping.

(6) Virtual advertising may be inserted in programmes provided that:

- the insertion is pointed out at the beginning and at the end of the programme in question, and
- it replaces advertising already existing at the site of transmission.

Other rights remain unaffected. Sentences 1 and 2 shall also apply to teleshopping.

(7) Surreptitious advertising, product placement and thematic placement as well as similar practices shall be prohibited. As far as exceptions are admissible pursuant to articles 15 and 44, product placement must meet the following requirements:

- editorial responsibility and independence concerning content and scheduling must not be prejudiced,
- the product placement shall not directly encourage the purchase, rental or lease of goods or services, in particular not by making special promotional references to such goods or services, and
- the product shall not be unduly prominently placed; this shall also apply to goods of minor value provided free of charge.

There shall be clear information concerning product placement. Product placement shall be identified at the beginning and at the end of a programme as well as at its continuation following an advertising break, or on radio by a similar adequate identification. Obligatory identification shall not apply for programmes not produced by the broadcaster itself or produced or commissioned by a company affiliated to the broadcaster, if it is not possible to establish at reasonable expense whether they contain product placement; information to this effect shall be given. The broadcasting corporations forming the ARD association, the ZDF and the state media authorities shall stipulate a uniform system of identification.

(8) Television advertisements and teleshopping may not feature individuals who regularly present news or current affairs programmes.

(9) Advertising of a political, ideological or religious nature shall be prohibited. Sentence 1 applies to teleshopping accordingly. Public service announcements transmitted free of charge, including charitable appeals, shall not be considered as advertising within the meaning of sentence 1. Article 42 remains unaffected.

(10) Advertising and teleshopping for alcoholic beverages shall not promote excessive consumption of such beverages.

(11) Paragraphs 1 to 10 shall also apply to teleshopping channels.

6.7.2. § 7a Insertion of Advertising and Teleshopping (New)

First and fourth paragraphs from Article 15 (12th amended Treaty) paragraphs 2 and 3 are new.

(1) Broadcasts of religious services and children's programmes must not be interrupted by advertising or teleshopping spots.

(2) Isolated advertising and teleshopping spots shall remain the exception on television; this shall not apply to the transmission of sports events. The insertion of advertising or teleshopping spots on television shall not prejudice the integrity of programmes, taking into account natural breaks in transmission and the duration and the nature of the programme, and the rights of the right holders.

(3) The transmission of films (with the exception of series, serials and documentaries) as well as cinematographic works and news programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes.

(4) If advertising or teleshopping spots in a television service are specifically and frequently directed at viewers in another state that has ratified the European Convention on Transfrontier Television but is not a Member of the European Union, the television advertising and teleshopping rules, which apply in the respective state, must not be circumvented. Sentence 1 shall not apply if

the provisions of this Interstate Treaty are stricter than the provisions of said state, nor if agreements have been taken out in this respect with the respective state.

6.7.3. § 8 Sponsorship

(Changes in bold)

(1) In programmes which are partially or wholly sponsored, the financing by the sponsor shall be indicated in justifiable brevity and in an appropriate manner at the beginning or at the end of the programme; the reference may also be made by means of a moving image. Alongside or in place of the name of the sponsor the company logo or a trade mark, **another symbol of the sponsor, a reference to his products or services or a similar distinctive sign** may be shown.

(2) The content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a manner that the editorial responsibility and independence of the broadcaster are prejudiced.

(3) Sponsored programmes must not encourage the sale, purchase, rental or lease of products or services of the sponsor or a third party, in particular by making special references.

(4) Programmes may not be sponsored by undertakings whose principal activity is the manufacture or the sale of cigarettes and other tobacco products.

(5) Sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but may not promote particular medicinal products or medical treatment available only on prescription.

(6) News and political information programmes may not be sponsored. **The transmission of sponsorship logos shall be prohibited in children's programmes and religious broadcasts.**

(7) Paragraphs (1) to (6) shall also apply to teleshopping channels.

(8) Paragraph 7 (1), (3) and (8) to (10) shall apply accordingly.

6.7.4. § 15 Admissible Product Placement (New)

In derogation from Article 7 (7), sentence 1, product placement shall be admissible in broadcasting:

- in cinematographic works, films and series, sports programmes and light entertainment programmes which are not produced by the broadcaster itself or produced or commissioned by an company affiliated to the broadcaster, unless they are children's programmes, or
- where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.

Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment.

6.7.5. Article 16f Directives

(Amendments in bold)

The state broadcasting corporations forming the ARD association and the ZDF shall enact directives for the implementation of Articles 7, 7a, 8a, 15 and 16. The directive relating to Article 8a shall in particular specify in greater detail the conditions for the participation of minors. **For enacting said directives, the state broadcasting corporations forming the ARD association and the ZDF shall consult with the state media authorities and shall conduct a joint exchange of experiences with regard to the implementation of these directives. The directive relating to Article 7 (7) and Article 15 shall specify in detail under which conditions, in which formats and to which extent free product placement may take place, by which means the independence of producers and editorial staff will be safeguarded and by which means undue prominence of the product will be avoided. Sentences 1 to 4 shall apply accordingly for the directives enacted by Deutschlandradio for the implementation of Articles 7, 8a and 15.**

6.7.6. Article 44

New Article 44 for commercial broadcasters - the old Article 44 from the 12th amended Treaty is no longer valid.

The old Article 44 Insertion of advertising and Teleshopping - Commercial Broadcasting

(1) Religious and children programmes must not be interrupted by advertising or teleshopping spots.

(2) Television advertising and teleshopping spots shall be inserted between programmes. Individual advertising and teleshopping spots shall remain as an exception. Advertising and teleshopping spots can also be inserted during programmes under the conditions referred to in paragraphs 3 and 4, unless the context and the character of the programme is not compromised nor prejudiced the rights of copyright holders.

(3) In respect of television programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals. For other programmes, the interval between two successive interruptions should be at least within 20 minutes of the programme. Paragraphs 4 and 5 remain unaffected.

(4) Notwithstanding paragraph 3, sentence 2, the transmission of audiovisual works such as feature films and films made for television excluding series, serials, light entertainment programmes and documentaries for each complete period of 45 minutes may be interrupted once, provided their scheduled duration is more than 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

(5) Television newscasts, current affairs programmes, documentaries and religious programmes that have a scheduled duration of less than 30 minutes, should not be interrupted by advertising or teleshopping. If their scheduled duration is at least 30 minutes, then the provisions of the previous paragraphs shall apply.

(5) Insertion of advertising or teleshopping spots in a television programme specifically and frequently broadcasted to viewers of another state that has ratified the European Convention on

Transfrontier Television which is not a member of the European Union, must not breach the advertising or teleshopping regulations of the target country. Sentence 1 shall not apply if the provisions of this treaty on advertising or teleshopping are stricter than those regulations that apply in the country concerned.

Was replaced with the following new Article 44:

§ 44 Admissible Product Placement

In derogation from Article 7 (7), sentence 1, product placement shall be admissible in broadcasting:

- in cinematographic works, films and series, sports programmes and light entertainment programmes unless they are children's programmes, or
- where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices, with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.

Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment as well as programmes in regional window services and window services pursuant to Article 31.

§ 45 Duration of Television Advertising (New)

Old Article 45 (Duration of Television Advertising):

(1) The proportion of total time devoted to teleshopping spots, advertising spots and other forms of advertising may not exceed 20 per cent of the daily transmission time. This is not applicable for the teleshopping windows defined in the Article § 45a. The total time for advertising spots shall not exceed 15 per cent of the daily transmission time.

(2) The proportion of transmission time for advertising spots and teleshopping spots within an hour, calculated from the clock hour, shall not exceed 20 per cent.

(3) Promotion of the broadcaster on its own programmes and ancillary products directly derived from those programmes, and unpaid contributions in the service of the public, including fundraising for social use shall not be considered as advertising as defined in paragraphs 1 and 2.

Was replaced with the new text:

(1) The proportion of television advertising spots and teleshopping spots within one hour shall not exceed 20 per cent. Sentence 1 shall not apply to product placements and sponsorship announcements.

(2) Announcements made by the broadcaster in connection with its own services and programmes and ancillary products directly derived from said services and programmes, public service announcements and charity appeals broadcast free of charge as well statutory references are not considered to be advertising.

(3) Paragraphs (1) and (2) as well as Article 7a shall not apply to channels exclusively devoted to advertising.

Article 45a Teleshopping Windows and Self-Promotion Channels (New, combined with the old 45b)

(1) Windows devoted to teleshopping that are transmitted in a service not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. They shall be clearly identified as teleshopping windows by optical and acoustic means.

(2) Articles 7 and 8 shall apply accordingly to self-promotion channels. Articles 7a and 45 shall not apply to self-promotion channels.

Old Article 45b:

For dedicated advertising channels, § 7, 8, 44, 45 and 45a, shall apply. For these channels, other forms of advertising within the limits according to § 45 paragraph 1 and 2 are allowed.

6.8. 15th amendment to the Treaty of December 2010

New paragraph 6 in of Article 16 (Duration of Advertising, Sponsorship)

(6) There shall be no sponsorship after 8.00 p.m., or on Sundays or on national public holidays; this shall not apply to sponsorship of major events broadcast pursuant to Article 4 (2).

No other changes.

7. Austria

7.1. Introduction

The pages in this section present the current legal framework applicable to the Austrian media industry. The legal framework underwent substantial changes in the year 2001, when private terrestrial radio was provided with a new legal basis in the Private Radio Act (PrR-G), and private terrestrial television was made possible by the Private Television Act (PrTV-G), which also included the provisions of the Cable and Satellite Broadcasting Act. The Austrian Communications Authority (KommAustria) was also created at that time. Moreover, the Austrian Broadcasting Corporation (ORF) was also subjected to new legal provisions under the ORF Act (ORF-G).

In addition to a large number of laws and ordinances that define the legal and technical framework for KommAustria's activities, international treaties as well as legal acts of the EU also have an influence on broadcasting regulation in Austria.

The most recent substantial changes in the media field took place in October 2010, when KommAustria was provided with a new basis in constitutional law, transforming it from a monocratic, subordinate authority into an independent panel authority, which is not subject to instructions from any other authority. At the same time, all of Austria's broadcasting laws were amended: In particular, the ORF Act has equipped the regulatory authority with far-reaching supervisory powers over ORF and its subsidiaries, while the Audiovisual Media Services Act (formerly the Private Television Act) implements the EU's Audiovisual Media Services Directive (AVMSD) and expands the authority's substantive control over broadcasting to include audiovisual media services on the Internet. Finally, additional considerations regarding the digitisation of television and radio broadcasting were also taken into account in the Austrian Audiovisual Media Services Act and Private Radio Act.

Austria was the last European country where broadcasting was a state monopoly until 1998, when private radio stations were officially allowed.

7.2. Development of the private TV law (considering commercial communications)

Amendments/Laws	Notes/Changes
PrTV-G - 2001	Private TV law
BGBL.97/2004	Art. 34 - Additional definition of surreptitious advertising Art. 42, 43 - Television advertising replaced with Advertising Art.44 - "Television advertising" replaced with "Advertising spots" and "Teleshopping" replaced with "Teleshopping spots"
BGBL.169/2004	Art.46 - minor change in wording
BGBL.7/2009	Modified Articles (36, 44 and 45)
BGBL.50/2010	New Articles on commercial communications, Private TV became Audiovisual media service Law
BGBL.16/2012	Art.34 - Minor changes

Note: BGBL. stands for Bundesgesetzblatt (Official Gazette)

Advertising and teleshopping

§ 34. (1) Advertising (Spots, short programmes, announcements and final announcements of sponsored programmes) and teleshopping shall not be misleading and shall not prejudice the interests of consumers.

(2) Surreptitious advertising and comparative advertising in Teleshopping and subliminal advertising and teleshopping are prohibited.

(3) Commercial advertising is any form in the exercise of a trade, business, craft or profession that is broadcast for payment or for similar consideration or for self-promotional immovable with the aim of the sale of goods or the provision of services, including property, rights and obligations, in return for payment.

Presentation and influence

§ 35. (1) Advertising and teleshopping shall not include the image or voice of persons who present regularly News and current affairs.

(2) An advertiser or client of sponsored programmes shall not exercise any editorial influence over the content of programmes.

Interruption of television programmes

§ 36. (1) Television advertising and teleshopping are generally broadcasted in blocks between individual television programmes. Single advertising and teleshopping spots shall remain the exception. Under the conditions referred in paragraphs 2 and 3, television advertising and teleshopping programme can be inserted also in the on-air programme in such a way that the integrity and value of the program, taking into account natural breaks and the length and nature of the program, is respected. The rights of the rights holders should not be violated.

(2) In programmes consisting of autonomous parts, or in sports programmes and also other similarly structured events and performances containing intervals, television advertising and teleshopping can be inserted only between the sections or during in the intervals.

(3) The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

(4) Regarding programmes other than those items covered by paragraph 2, when they are interrupted by television advertising or teleshopping, there must be a space of at least 20 minutes between each successive advertising break within the programme.

(5) The broadcasting of religious services, religious programmes, children's programmes, news programmes, current affair magazines (News Magazine) and documentaries may not be interrupted by advertising or teleshopping. For news broadcasts, news magazines and documentaries on television that have a scheduled duration of at least 30 minutes, the previous paragraphs shall apply.

General requirements for advertising and teleshopping

§ 37. Television advertising and teleshopping shall not:

1. harm respect for human dignity,
2. include discrimination by race, gender, disability or nationality,
3. harm religious or political beliefs,
4. encourage behaviour prejudicial to health or safety,
5. promote behaviour prejudicial to the protection of the environment,
6. promote illegal practices.

Labelling

§ 38. Advertising and teleshopping must be clearly identifiable. It should be separated optically or acoustically from other programme parts.

Ban on tobacco advertising

§ 39. Every form of advertising or teleshopping for cigarettes and other tobacco products is forbidden.

Advertising of medicinal products and medical devices

§ 40. (1) Advertising of medicinal products that are available only on prescription, and advertising for medical devices that are subject to prescription in accordance with a regulation pursuant to § 100 of the Medical Devices Act is prohibited.

(2) Advertising for all other drugs, medical products and therapeutic treatments must be clearly identifiable as such, and be honest, truthful and verifiable. One must not harm people.

(3) The advertising provisions of the Medicines Act, Federal Law Gazette No. 185/1983, and the Medical Devices Act, Federal Law Gazette No. 657/1996, as well as the advertising restrictions contained in the regulations governing health professionals remain unaffected.

Teleshopping for medicinal products

§ 41. Teleshopping for medicinal and therapeutic treatments is prohibited.

Advertising and teleshopping for alcoholic beverages

§ 42. Advertising and teleshopping of spirits is not permitted. In addition, television advertising must comply with following criteria for advertising and teleshopping of alcoholic beverages:

1. They may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
2. They shall not link enhanced physical performance with alcohol consumption, and the driving of automobiles should not be linked with alcohol consumption.

3. It must not give the impression that alcohol contributes towards social or sexual success.
4. It must not suggest a therapeutic, stimulating, soothing or conflict-resolving effect of alcohol.
5. Immoderate consumption of alcoholic beverages shall not encourage or present abstinence or moderation in a negative light.
6. The level of the alcohol content of beverages must not be given as a positive feature.

Protection of Minors

§ 43. (1) Advertising and teleshopping shall not cause moral or physical damage to minors, and should be subject to the following criteria:

1. Do not take advantage of the inexperience or credulity of minors to create direct exhortation to buy goods.
2. It must not directly encourage minors to persuade their parents or others to purchase the goods or service.
3. It shall not exploit the special trust of minors in parents, teachers or other persons.
4. It must not show minors in dangerous situations, without justification.

(2) teleshopping in addition, shall not exhort minors to complete purchase, rental or lease agreements for goods or services.

Advertising and teleshopping duration

§ 44. (1) The transmission time for television advertising may not exceed 15 per cent of the daily transmission time. The percentage may be increased to 20 per cent if it includes teleshopping with the exception of teleshopping windows within the meaning of paragraph 4 or other forms of advertising and if the transmission time for advertising spots does not exceed 15 per cent. Advertising on the radio may not exceed the average daily duration in the year of 172 minutes, wherein deviations not exceeding 20 per cent per day are allowed.

(2) Within a one-hour period, calculated from the last full hour, the duration of television advertising and teleshopping spots shall not exceed 20 per cent.

(3) References of the broadcaster to its own programmes (self promotion) and ancillary products directly derived from those programmes, as well as public service contributions and free donations for charitable purposes shall not be considered advertising for the purposes of the preceding paragraphs.

(4) Teleshopping windows that are broadcast in a channel that is not exclusively devoted to teleshopping shall have a duration of at least 15 minutes without interruption. There are a maximum of eight windows per day. Their overall duration shall not exceed three hours per day. The windows must be optically and acoustically clearly marked as teleshopping windows.

Teleshopping and self-promotion programmes

§ 45 (1) In programmes which broadcast exclusively teleshopping, advertising within the daily limits in accordance with § 44 Section 1 is allowed.

(2) In self-promotion programmes that exclusively broadcast self advertising, other forms of advertising within the limits according to § 44 paragraph 1 and 2 are allowed.

Sponsored programmes

§ 46. (1) A sponsored programme exists when a company not in the field of active production of audiovisual works or radio programmes public or private enterprise contributes to the financing of such works or programmes with the aim of the having the name, the brand, or product appear, to promote the activities or services of the company.

(2) Sponsored programmes must meet the following requirements:

1. Content and scheduling of Sponsored programmes may not be influenced in any way by the client in the manner that the responsibility and editorial independence of the broadcaster in respect of the programmes is affected.
2. Must be clearly marked as Sponsored programmes by the name or logo of the client at the beginning and or end of the programme (opening credits and closing credits).
3. One must not encourage the purchase or rental of the products or services of the client or a third party, in particular, stimulated by specific Sale promotional references to those products or services.

(3) Programmes must not be sponsored by individuals or legal entities, whose principal activity is the manufacture or sale of products or the provision of services, the advertising of which according to § 39 or pursuant to other statutory provisions is prohibited.

(4) Programmes sponsored by undertakings whose activities include the manufacture or sale of medicinal products and therapeutic treatments may be made only with regard to the name or image of the company, and not for drugs or therapeutic treatments that are available only on prescription.

(5) News programmes and programmes with political information may not be financially supported in the sense of paragraph 1.

7.2.2. BGBl.97/2004

The law published in Official Gazette 97/2004 brought only minor changes were related to the commercial communications. In Article **34** the meaning of surreptitious advertising is additionally defined (text in bold - see bellow). In articles **42** (Advertising and teleshopping for alcoholic beverages) and **43** (Protection of minors), The word "television advertising" was replaced by "advertising". In Article **44** (Advertising and teleshopping duration) the word "Television advertising" was replaced with "advertising spots" and "teleshopping" with "teleshopping spots".

Advertising and teleshopping

§ 34.

(2) Surreptitious advertising and comparative advertising in Teleshopping and subliminal advertising and teleshopping are prohibited.

Surreptitious advertising is the mention or display of goods, services, names, brands or activities of a producer of goods or a provider of services in programmes when this is intended for promotional purposes by the broadcaster and might mislead the public as to the actual purpose of that reference or presentation. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.

7.2.3. BGBl.169/2004

Minor change in wording of Article 46. Labelling of sponsored programmes reduced either to announcement or closing announcement (credits).

§ 46. Sponsored programmes (change and/or)

Old version:

(2) Sponsored programmes must meet the following requirements:

2. must be clearly marked as Sponsored programmes by the name or logo of the client at the beginning **and** at end of the programme (announcement **and** closing announcement).

New version:

2. must be clearly marked as Sponsored programmes by the name or logo of the client at the beginning **or** at end of the programme (announcement **or** closing announcement).

7.2.4. BGBl.7/2009

New rules on interruption of the programme

In Article 36 more liberal rules on interruption of television programmes were introduced. Instead of 45 minutes the period between the commercial communications is reduced to 30 minutes. The new law also allows commercial communication in the Children's programmes. See text of the new Article 36 (3) and the comparative table between the law in 2001 and the amendments in 2009.

§ 36. (3) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programs may be interrupted once for television advertising and teleshopping for each scheduled period of at least 30 minutes. The transmission of children's programs may be interrupted at most once for each scheduled period of at least 30 minutes, but only if the duration of the programme is more than 30 minutes according to the broadcast schedule.

Art.36	PrTV-G 2001	BGBl.7/2009
News	Not interrupted except if duration more than 30' than may be interrupted once for each complete period of 45'. Further interruptions if duration at least 20' longer than 2 or more complete periods of 45'	Yes, once in each 30' of the programme
Current Affairs		n.a.
Documentaries		No interruption
Children prog.	No interruption	Yes, once in 30' only if programme duration >30'

Feature films	Yes, once for each 45' . Further interruption if duration 20' longer than 2 or more complete period of 45'	Yes, once in each 30' of the programme
Films for TV		
Series	No interruption	No interruption
Serials	No interruption	No interruption
Light prog.	No interruption	n.a.
Religious services	No interruption	No interruption
Religious prog.	No interruption	n.a.
Other	Yes, if 20' between commercial breaks.	n.a.

Changes in Art.44(4) - Advertising and teleshopping duration

In the Law of 2001 the teleshopping windows were limited to maximum eight windows per day and the overall duration should not exceed three hours per day. The amended law does not define the number of windows not the daily overall duration:

§ 44(4). A teleshopping window must last at least 15 minutes without interruption. It must be visually and acoustically clearly marked as such.

Changes in Art.45 - Teleshopping, advertising and self-promotion programmes

In 2001 the advertising on the programmes broadcasting exclusively teleshopping, was limited with the daily limits in accordance with § 44(1) which sets the limit of 20% of air time. The amended Law withdraw this limitation thus programmes that broadcast exclusively teleshopping and advertising are not limited from 2009 on.

§ 45. The provisions for interruption of programmes and those relevant to advertising and teleshopping duration shall not apply to programmes that broadcast exclusively teleshopping and advertising, and for self-promotion programmes that only transmit self-promotion.

7.2.5. BGBl.50/2010

Amended Law on Private Television BGBl.50/2010 modified the Law on Private Television (PrTV-G 2001) into the new to Federal law on Audiovisual Media Services (Bundesgesetz über audiovisuelle Mediendienste - Audiovisuelle Mediendienste-Gesetz – AMD-G).

7.2.6. The final version AMD-G (Parts related to commercial communications)

General requirements for audiovisual commercial communication

§ 31. (1) audiovisual commercial communications shall be readily recognizable as such.

(2) Surreptitious, subliminal audiovisual commercial communication and similar practices are prohibited.

(3) audiovisual commercial communications shall not:

1. harm respect for human dignity,
2. contain or promote discrimination by gender, race or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
3. promote behaviour that endangers the health or safety;
4. encourage behaviour prejudicial to the protection of the environment to a great extent;

5. promote illegal practices.

Presentation and influence

§ 32. (1) the image or voice of people that regularly present News and current affairs may not appear in the audiovisual commercial communications.

(2) audiovisual commercial communications shall not affect the editorial independence of the media service provider.

Audiovisual commercial communications for tobacco products

§ 33. Any form of audiovisual commercial communications for cigarettes and other tobacco products is prohibited.

Audiovisual commercial communication for medicinal products, medical and therapeutic treatments

§ 34. (1) all forms of audiovisual commercial communication for medicinal products or therapeutic treatments that are available only on prescription, as well as for medical devices that are subject to prescription in accordance with a regulation pursuant to § 100 of the Medical Devices Act, Federal Law Gazette No. 657/1996, is prohibited.

(2) audiovisual commercial communications for all other drugs, medical products and therapeutic treatments must be easily recognizable as such, and honest, truthful and verifiable. You must not harm people.

(3) Teleshopping for medicinal and therapeutic treatments is prohibited.

(4) shall not affect the advertising provisions of the Medicines Act, Federal Law Gazette No. 185/1983, and the Medical Devices Act, Federal Law Gazette No. 657/1996, as well as the advertising restrictions contained in the legislation for the exercise of health professions.

Audiovisual commercial communications for alcoholic beverages

§ 35. audiovisual commercial communications for alcoholic beverages shall comply with the following criteria:

1. It may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
2. It shall not link to enhanced physical performance with alcohol or the driving of motor vehicles and alcohol are produced.
3. It must not be given the impression of alcohol contributes towards social or sexual success.
4. it shall not claim therapeutic, stimulating, soothing or conflict-resolving effects of alcohol.
5. immoderate consumption of alcoholic beverages shall not encourage or present abstinence or moderation in a negative light.
6. The amount of the alcohol content of beverages must not be given as a positive feature.

Audiovisual commercial communication and the protection of minors

§ 36. (1) audiovisual commercial communications shall not cause moral or physical detriment.

Therefore (2) audiovisual commercial communications are subject to the following criteria for the protection of minors:

1. You must not create direct requests for purchase or rental of goods or services to minors by exploiting their inexperience or credulity.
2. You must not directly encourage minors to persuade their parents or others to purchase the goods or service.
3. You shall not exploit the special trust minors place in parents, teachers or other persons.
4. It may not show without in dangerous situations minors.

(3) For audiovisual commercial communication with and in children's programmes for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans- fatty acids, salt / sodium and sugars, that excessive intake is not recommended as part of the overall diet, each media service provider is to adopt guidelines that are easily, directly and permanently accessible to make them public.

Sponsoring

§ 37 (1) Sponsored audiovisual media services or programmes must meet the following requirements:

1. Content of television broadcasts and their scheduling shall be influenced in a way by no means that the responsibility and editorial independence of the media service provider is impaired.
2. They must be labelled with the name, logo, or other symbol of the sponsor such as a reference to its products or services, or another distinctive sign, clearly identified as sponsored in programs especially at its

beginning or at its end by an on - or for cancellation.

3. You must not directly encourage the purchase or rental of goods or services of the Client or a third party, in particular, encourage by making special promotional references to those goods or services.

(2) audiovisual media services and programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products or the provision of services is prohibited for audiovisual commercial communications in accordance with § 33 or pursuant to other statutory provisions.

(3) The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of pharmaceuticals and therapeutic treatments that may be made only to the name or image of the company, and not for drugs or therapeutic treatments that only available on prescription are.

(4) News and current affairs programmes may not be sponsored.

Product placement

§ 38 (1) Product placement is prohibited, subject to the provisions of paragraphs 2 and 3.

(2) Not under the prohibition in paragraph 1 falls the free provision of goods or services, such as production props or prizes, with a view to their inclusion in a programme.

(3) Excluded from the prohibition in paragraph 1 are feature films, TV movies and television series as well as sports programmes and light entertainment. This exception does not apply to children's programmes.

(4) programmes that contain product placement shall meet the following requirements:

1. Content of television programs and their scheduling shall in no way be influenced so that the responsibility and editorial independence of the media service provider is impaired.
2. You must not directly encourage the purchase or rental of goods or services, in particular. By making special promotional references to those goods or services.
3. You must not give undue prominence to the product in question.
4. are to show the beginning and end, and when a programme resumes after an advertising break clearly marked by an indication to avoid any confusion on the viewer.

(5) Without prejudice to the provisions of § 33, broadcasts in any case contain no product placement in favour of companies whose main activity is the manufacture or sale of cigarettes and other tobacco products.

(6) Section 4 No 4 shall not apply, provided that the programme in question was not produced by the media service provider itself or by an affiliate of the media service provider company or commissioned and the media service provider had no knowledge of the existence of product placement.

7.3. Development of the private Radio law (considering commercial communications)

Amendments/Laws	Notes/Changes
BGBI.20/2001	Private Radio law
BGBI.97/2004	No changes except the new title of the Article 20 (Advertising for medicinal products)
BGBI.169/2004	Small change in Article 19(5)b2 – marking of the sponsored broadcast
BGBI.7/2009	Extended Article 19(1), New text in Article 19(5)b2 (Sponsored broadcast) and 19(6) (Broadcast of religious service)
BGBI.50/2010	Minor changes in Article 19
BGBI.16/2012	No changes.

Advertising

§ 19. (1) Commercials (spots, short programmes and designed advertising including announcements and closing announcements of sponsored programmes) may not exceed a total of 172 minutes on an annual average daily duration. Deviations not exceeding 20 per cent per day are allowed.

(2) Commercials for tobacco products and alcoholic beverages, as well as surreptitious advertising are not permitted.

(3) Advertising must be clearly (easily) recognizable as such and kept unambiguously separated from the other programme parts by acoustic means.

(4)

- a) Advertising must not be misleading and shall not prejudice the interests of consumers.
- b) Surreptitious advertising is prohibited. Surreptitious advertising is the mention or display of goods, services, names, brands or activities of a producer of goods or a provider of services in programmes when this is intended for promotional purposes by the radio broadcaster and might mislead the public as to the actual purpose of that reference or presentation. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.
- c) Advertising shall not include the persons who regularly present News and current affairs.
- d) An advertiser shall not exercise any editorial influence over the content of programmes.

(5)

- a) Sponsored programme is when a company which does not take part in the production of radio programmes, being public or private enterprise contributing to the financing of such works or programmes with the aim of promoting the activities or services of the company by appearance of the name, the brand, or product.
- b) Sponsored programmes must meet the following requirements:
 - 1. Content and scheduling of sponsored programmes may not be influenced by any means by the client. The responsibility and editorial independence of the radio broadcaster should be preserved.
 - 2. Sponsored broadcast must be clearly marked by the client's name at the beginning and at the end of the programme (announcements and closing announcements).
 - 3. Encouraging to purchase or rental of the products or services of the client or, in particular by making special promotional references to those products or services by a third party is not allowed.
- c) Natural persons or legal entities, whose principal activity is the manufacturing or selling of products or the provision of services, of which advertising is prohibited pursuant to paragraph 2 or other statutory provisions, are not allowed to sponsor radio programmes.
- d) In sponsored programmes by companies whose activities include the manufacturing or selling the medicinal products and medical services, may appear only by the name or image of the company. References to therapeutic treatments or medicines available only on prescription are not allowed.
- e) News and current affairs programs may not be financially supported within the meaning of Section 1, paragraph 5 lit.a.

(6) The broadcast of religious services, religious, children, news and current affairs programmes must not be interrupted by advertising.

(7) The radio broadcaster has to set a price list for radio advertising.

§ 20. (1) Advertising of medicinal products and therapeutic treatments that are available only on prescription, is prohibited.

7.3.2. BGBl.169/2004

Small change in Article 19(5)b2 - marking of the sponsored broadcast.

Old text:

Sponsored broadcast must be clearly marked by the client's name at the beginning **and** at the end of the programme (announcements and closing announcements).

New text:

The sponsored broadcast must be clearly marked by the client's name at the beginning **or** at the end of the programme (announcements and closing announcements).

7.3.3. BGBl.7/2009

Text added in Article 19(1):

Old version:

Commercials (spots, short programmes and designed advertising including announcements and closing announcements of sponsored programmes) may not exceed a total of 172 minutes on an annual average daily duration. Deviations not exceeding 20 per cent per day are allowed.

New version (new text in bold):

Commercials (spots, short programmes and designed advertising including announcements and closing announcements of sponsored programmes) may not exceed a total of 172 minutes on an annual average daily duration. Deviations not exceeding 20 per cent per day are allowed.

Broadcasters references of its own programmes and products directly related to those programmes, as well as public announcements, free announcements for donations for charitable purposes and closing announcements of sponsored programmes are not included in the maximum permissible period.

Additional text in Article 19(5)b2

Old text:

The sponsored broadcast must be clearly marked by the client's name at the beginning or at the end of the programme (announcements and closing announcements).

New text (in bold):

The sponsored broadcast must be clearly marked by the client's name **or an indication of its products or services, or another distinctive sign**, at the beginning or at the end of the programme (announcements and closing announcements).

Added text in Article 19(6)

Old text:

The broadcast of religious services, religious, children, news and current affairs programmes must not be interrupted by advertising.

New text:

The broadcast of religious services, religious programmes must not be interrupted by advertising.

During news programmes, when their scheduled duration at least 30 minutes they could be interrupted once. During children's programmes, when their scheduled duration at least 30 minutes they could be interrupted once but only in case when the duration of such programme is more than 30 minutes.

7.3.4. BGBl.50/2010

Minor change in Article 19(3) (text in bold)

Old text:

Advertising must be **clearly** recognizable as such and kept unambiguously separated from the other programme parts by acoustic means.

New text:

Advertising must be **easily** recognizable as such and kept unambiguously separated from the other programme parts by acoustic means.

8. Comparison of Austrian, British, French, German and Irish commercial communication codes

When comparing the BAI code with the codes of Austria, Germany, France and UK, we find that they are largely similar with the following exceptions:

8.1. Surreptitious advertising

Surreptitious advertising is prohibited by the AVMS but the French regulatory authority specified some cases where such advertising is allowed:

- When some references to the goods and services in the television programmes cannot be avoided, as they are an essential part of the content of the programme e.g. having the nature of information, they are not considered as surreptitious advertising.
- An advertisement is described as surreptitious when goods, services or other brands are presented, outside of advertising breaks, and with an “advertising aim”, i.e. not with an aim to inform, but to promote.

The Council does not have to prove that the promotion was subject to remuneration nor to prove that it has been done intentionally. The Council operates on a case-by-case basis taking into account the various practices detected on the air. When a particular case appears to be litigious the Council decides to intervene.

To detect surreptitious advertising the CSA uses the following indicators:

- the absence of plurality in the presentation of the goods, services or brands,
- the positive representation such or such product,
- the frequency of the quotation and/or the visualisation of the product or the brand,
- the indication of the address or the telephone contact or Internet site of an advertiser,
- the absence of any critical approach.

8.2. Comparative commercial communications

Comparative commercial communications are not defined in the German, British nor French legal framework. In Austria comparative commercial communications are prohibited whereas in the Irish code such advertising is allowed under certain conditions.

8.3. Alcohol

Advertising of alcoholic drinks is allowed under certain specific conditions, which are similar in all respective countries. But there is a difference in the level of alcohol that can be advertised. In Ireland advertising is forbidden for alcoholic drinks containing more than 25% whereas in the UK and France this threshold is set at 1,2%. German law provides general prohibition on alcoholic drinks advertising. In Austria no levels of alcohol are mentioned in the rules and the rules focus on the context in which alcohol is represented, and the fact that it should not be glamorised in certain ways. The 2001 law prohibited the advertising of spirits but this sentence was removed.

8.4. Insertion of advertising

In France there exist specific rules regarding advertising for the Digital Terrestrial Platform.

On the terrestrial broadcasting platform (i.e. the DVB-T/ DTT), advertising time is limited to 9 (nine) minutes per hour on average over a day taking into account the authorised air-time of the television channel, and to 12 (twelve) minutes limitation per clock hour. To support the development of DTT this limitation is not in force for the first 7 years (for new channels). For other platforms the limitation is 12 minutes for one clock hour.

Different rules exist for public channels where the air-time of advertising cannot exceed 6 (six) minutes per hour on average daily, nor 8 (eight) minutes per clock hour. Additionally, since January 5th, 2009, the channels of France Televisions (France 3 regional channels excluded) should not include advertising from 8 p.m. until 6 o'clock in the morning.

The reference to the "clock hour" exists in France but not in the UK, Austria, or in Germany where this was abandoned in 13th amendment.

In UK insertion of advertising is regulated by the COSTA (Code on the scheduling of television advertising). Public channels are allowed an average of 7 minutes per hour for every hour of transmission time across the broadcasting day and an average of 8 minutes an hour between 6pm and 11pm. On commercial channels the time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.

In Germany they no longer use the clock hour. It was replaced with the 13th amended Treaty where the proportion of television advertising spots and teleshopping spots within one hour shall not exceed 20 per cent. This shall not apply to product placements and sponsorship announcements.

For public channels: The total amount of advertising in the ARD channel "Das Erste" and in the channel "Zweites Deutsches Fernsehen" shall not exceed 20 minutes per working day on an annual average. Broadcasting times including product placement shall not be included in the permitted advertising minutage. The subsequent use of advertising minutage not fully exploited must not exceed 5 minutes per working day. Advertising shall not be broadcast after 8.00 p.m., nor on Sundays or on national public holidays.

8.5. Radio

Radio advertising rules are specified in Austrian, British and French regulatory framework but not in the German law and Irish codes. OFCOM believes that the section on radio commercial communications guarantees appropriate consumer protection, through transparency of all broadcast commercial arrangements, and offers opportunities for the radio industry to generate new revenue. Ofcom has not yet carried out any analysis of the impact of changes to the commercial communications regulation with regard to radio.

The Ofcom Communications Market Reports¹¹ of 2010, 2011, 2012 and 2013 indicate that commercial revenues of radio increased (by 2.8% between 2009 and 2010, the first increase for three years). Similar increases occurred between 2011 and 2012 with 3.5% and from 2012 to 2013

¹¹ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/>

with almost 4%. The growth in local radio advertising income grew 7.2% between 2012 and 2013. However, none of the reports make any correlation between the increases and the changes to the rules regarding commercial communications and radio.

8.6. Product placement

Product placement provisions in Austria, Germany, France, the UK and Ireland are following the provisions of the AVMS. The difference between particular arrangements in those countries is that France does not allow product placement in sports programmes. Also the category of light entertainment programmes used in Austria, Germany, the UK and Ireland is replaced with music video programmes in France.

Regarding the signalling of the presence of product placement, the provisions in all codes are similar except the French system, which is more detailed in providing detailed rules in case of the information phase and regular use. The French also have different rules for signalling the presence of product placement in categories such as Cinematographic works/Audiovisual fiction content and Music Videos.

	Cinematographic works Audiovisual fiction content	Music video	
		Programmes devoted to the dissemination of music video spot	Other modalities of music video spot (Examples: - Dissemination of music video spots between two programmes - Dissemination of one or more music video spots in a programme non-dedicated exclusively to music videos)
Information phase (2 months)	<p><u>Beginning of the programme:</u></p> <ul style="list-style-type: none"> • Pictogram for five seconds in a banner <p>Clearly displaying the notification that the following programme include product placement</p> <p><u>Then:</u></p> <ul style="list-style-type: none"> • Symbol on air for 1 minute <p><u>After each commercial break:</u></p> <ul style="list-style-type: none"> • Symbol on air for 1 minute <p><u>End of programme:</u></p> <ul style="list-style-type: none"> • Symbol on air throughout the credits 	<p><u>Beginning of the programme:</u></p> <ul style="list-style-type: none"> • Pictogram for five seconds in a banner <p>Clearly displaying the notification that the following programme include product placement</p> <p><u>During the music video programme with product placement:</u></p> <ul style="list-style-type: none"> • Symbol on the air throughout the duration of the music video spot programme <p><u>End of programme:</u></p> <ul style="list-style-type: none"> • Symbol on air throughout the credits 	<p><u>Beginning of video spot:</u></p> <ul style="list-style-type: none"> • Pictogram for five seconds in a banner <p>Clearly displaying the notification that the following programme include product placement</p> <p><u>During the music video:</u></p> <ul style="list-style-type: none"> • Symbol on the air throughout the duration of the music video spot.

Regular use	<u>Beginning of the programme:</u> <ul style="list-style-type: none"> • Symbol on air for 1 minute <u>After each commercial break:</u> <ul style="list-style-type: none"> • Symbol on air for 1 minute <u>End of programme:</u> <ul style="list-style-type: none"> • Symbol on air throughout the credits 	<u>During the music video programme with product placement:</u> <ul style="list-style-type: none"> • Symbol on the air throughout the duration of the music video spot programme 	<ul style="list-style-type: none"> • Symbol on the air throughout the duration of the music video spot
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Product placement logos are defined in the UK and France but not in the Irish code, the Austrian laws or the German Interstate Treaty.

8.7. Virtual advertising

Virtual advertising is replacing the existing physical advertising on site during sport events with the advertising provided by the television channel. Such practices are allowed only in German law;

The insertion of virtual advertising in broadcasts is permitted if: it is signalled at the beginning and at the end of the presence of such advertising, and when they are replacing the existing advertising on site in the case of outside broadcasting.

8.8. Gambling and betting

OFCOM have decided to treat gambling as teleshopping and regulate it accordingly (OFCOM Statement: The regulation of transactional TV gambling channels, 26.5.2009) The rules on gambling are set up in the BCAP code Section 17 and they are designed to ensure that gambling advertisements are socially responsible, with particular regard to the need to protect under-18s and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.

In France gambling is allowed under certain conditions in commercial communications since the proclamation of the law n° 2010-476 of May 12th, 2010. The law regulates all commercial communications related to providers of gaming legally authorised by the public authorities that are under exclusive rights terms (Francaise des jeux, Paris mutuel urbain), under authorisation (casinos) or approved by the ARJEL (Regulatory authority of the online games), for the activities on the land-line network and online. These activities are regulated under the framework set by the legislator and the CSA.

In Germany no special rules in the Interstate Treaty regarding gambling are defined. The same is the case for the Austrian law.

8.9. Co-regulation

In UK and France a system of co-regulation is established whereas in Ireland and Germany the control over commercial communications is provided by regulatory authorities. Of course industry codes are developed by the industry associations such as those of the Advertising Standards Authority of Ireland ASAI.

In the UK, OFCOM entered into co-regulatory arrangements with the Broadcast Committee of Advertising Practice (BCAP) in 2005, which has lead responsibility for keeping advertising rules under review, and the Advertising Standards Authority (ASA), which is responsible for securing compliance with those rules. As the backstop regulator, OFCOM retains responsibility for approving changes to the advertising rules. Regarding several areas of regulation, Ofcom has designated self-regulatory organisations to act on its behalf.

ATVOD has been designated in respect of content of on-demand programme services while the ASA is formally designated in respect of advertising for both broadcasting and on-demand services. A wide range of enforcement mechanisms are exercised by Ofcom, from directing a broadcast licensee to take remedial action, imposing financial penalties and revocation of the broadcasting license. For on-demand services Ofcom may impose a financial penalty or suspend or restrict an on-demand service.

In France the control of the content and the methods of programming of commercial communications is organised on two levels. The CSA controls the content and the methods of programming of commercial communications at the time of broadcasting, whereas the ARPP carries out a control before diffusion. The ARPP, formerly known as the "Office for checking advertising" (BVP), is an association governed by the law of July 1st, 1901, whose mission is "to conduct an action in favour of an honest, ethical and healthy advertising in the interest of consumers, the public and the professional standards of advertising". It was created by the advertising companies as a self-regulation framework. ARPP safeguards the potential disputes in the advertising business. This inter-professional organisation has four categories of members: advertisers, communication agencies, distribution platforms (press, radio, television, posters, cinema) and "associated members" (trade unions, law firms, associations, etc.). As regards television commercial communications, they are examined before they are broadcast by the ARPP while the CSA intervenes at the time of their broadcast or after if they prove not to be in line with the laws and respective bylaws.

9. Recent Jurisprudence of the European Court of Justice in relation to commercial communications

There have not been many recent issues arising at the European level with regard to commercial communications. The EU has had several years of more generally pushing for the full and proper implementation of the AVMS Directive.

There are just two cases of interest. In July 2013, the European Court of Justice made a preliminary ruling on changes to the Italian law that place stricter hourly advertising limits on pay-TV (14%) than on free-to-air TV (18%). This law was challenged by Sky Italia in the Italian courts, who then referred several questions to the ECJ.

The rationale accepted by the court was a balancing of the protection of consumers from excessive advertising, and the financial interests of television broadcasters. Free-to-air broadcasters' reliance on advertising placed them in a different position to Pay-TV who can also rely on subscription fees. In addition Pay-TV customers had already paid to watch the channels and it was reasonable that they should not have to pay again by being subjected to too much advertising. Hence, the Italian legislature could set different rules. Any questions regarding media

pluralism and the impact of changing the rules on the already dominant position of RTI in the advertising market would be left to the referring national court¹².

Another significant case concerned the ongoing issue with Spain regarding non-compliance with TV advertising rules¹³. The Spanish rules have defined the concept of advertising narrowly allowing various forms of advertising to fall outside the 12 minute per hour limit. In 2011, the Advocate General of the European Court of Justice stated that the interpretation of terms adopted by Spain in practice negate the efficiency of the time limits. Advertisers can easily bypass the hourly limit by slightly adjusting the form of advertising they use.

The Commission referred in particular to the incorrect and overly narrow interpretation by the Spanish authorities of the concept of 'advertising spots'. As a result of the Spanish approach to the concept, certain types of television advertising broadcast in Spain, namely advertorials, telepromotions, sponsorship credits and micro-ads are excluded from the advertising hourly restrictions. The main question in these proceedings was to determine whether the four aforementioned types of advertisement can be classified as 'advertising spots', as claimed by the Commission or rather constitute 'other forms of advertising', as claimed by Spain.

The European Court of Justice found a violation of the TWF Directive by Spain. According to the Court, Spain exceeds the advertising maximum limit of 20% broadcasting time per hour. As the Court reasoned, "It follows that any type of television advertising broadcast between programmes or during breaks constitutes, as a general rule, an 'advertising spot' within the meaning of the TWF Directive, unless the type of advertising concerned were to be covered by another form of advertising expressly governed by that directive [...]"

The Court concluded that "by tolerating a situation in which the broadcasting of certain types of advertising, such as advertorials, telepromotion spots, sponsorship credits and micro-ads, on Spanish television channels has a duration which exceeds the maximum limit of 20% of the transmission time within a clock hour, as laid down in Article 18(2) of Directive 89/552, the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) of that directive".

10. Conclusion

It is likely that the AVMS directive will be changed in the near future to follow the fast development in the field of hybrid TV receivers. It is expected that connectable TVs will move from 40.4 million devices end of 2012 to a presence in a majority of EU TV households by 2016¹⁴. The converged experience is progressively becoming a reality and market players are developing and adapting their business models. Many of new entrants to the market are not regulated and the technology neutral principle of the AVMS directive causes market distortion while imposing different rules on linear and non-linear services, which are now merged into a service where the difference between the two is disappearing. In this perspective it is to be expected that major changes of the commercial communication codes is yet to come.

¹² <http://merlin.obs.coe.int/iris/2013/8/article7.en.html>

¹³ <http://merlin.obs.coe.int/iris/2011/5/article4.en.html>

¹⁴ Source: IHS Screen Digest

Considering the differences between Ireland, Austria, Germany, France and UK it appears that co and self-regulation is an efficient tool to provide protection to the audience and fair playing level field for audiovisual providers. Although co-regulation is more developed in big media markets, considering future development of media in a converged world such ways of regulating media will be beneficial also for smaller markets.

In the time of convergence and hybrid devices it would not be fair to forget radio, which has an important and stable position with audiences. Although the new radio technology is not bringing so many changes in the mode of radio listening, radio will survive and it needs to develop further and benefit from funding based on advanced commercial communications. Therefore we would propose drafting a radio commercial communication code; to protect the audience and to give radio a chance to develop also in the digital era.

11. Appendices

11.1. European Parliament resolution of 4 July 2013 on Connected TV (2012/2300(INI))

P7_TA-PROV(2013)0329

Connected TV

European Parliament resolution of 4 July 2013 on connected TV (2012/2300(INI))

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to Article 10(1) of the European Convention on Human Rights,
- having regard to Articles 11 and 8 of the Charter of Fundamental Rights of the European Union,
- having regard to the Protocol on the system of public broadcasting in the Member States annexed to the Amsterdam Treaty amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts,
- having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)¹⁵,
- having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)¹⁶ amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009¹⁷,
- having regard to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications

¹⁵ OJ L 95, 15.4.2010, p. 1.

¹⁶ OJ L 108, 24.4.2002, p. 33.

¹⁷ OJ L 337, 18.12.2009, p. 37.

networks and services (Universal Service Directive)¹⁸ amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009¹⁹,

- having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)²⁰ amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009,
- having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)²¹ amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009,
- having regard to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce)²²,
- having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector²³, as last amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009²⁴,
- having regard to the Communication from the Commission on the application of State aid rules to public service broadcasting²⁵,
- having regard to Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity²⁶,
- having regard to its resolution of 15 June 2010 on the Internet of Things²⁷,

¹⁸ OJ L 108, 24.4.2002, p. 51.

¹⁹ OJ L 337, 18.12.2009, p. 11.

²⁰ OJ L 108, 24.4.2002, p. 7.

²¹ OJ L 108, 24.4.2002, p. 21.

²² OJ L 178, 17.7.2000, p. 1.

²³ OJ L 201, 31.7.2002, p. 37.

²⁴ OJ L 337, 18.12.2009, p. 11.

²⁵ OJ C 257, 27.10.2009, p. 1.

²⁶ OJ L 270, 7.10.1998, p. 48.

²⁷ OJ C 236 E, 12.8.2011, p. 24.

- having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education (A7-0212/2013),
- A. whereas TV sets were originally developed to receive linear broadcast signals; whereas in the digital environment, too, audiovisual content still meets with very great interest on the part of the public, owing to its suggestive power, by comparison with other electronic media services; and whereas consequently its outstanding importance for individual and public opinion-forming persists;
 - B. whereas audiovisual media services, which are as much cultural services as they are economic services, are of outstanding importance for society and democracy as vectors of identities, values and opinions, and therefore still require specific regulation in an increasingly convergent world;
 - C. whereas the long-awaited technical media convergence has now become a reality, particularly for broadcasting and the internet, and European media, culture and network policy must adapt the regulatory framework to the new conditions and ensure that a uniform level of regulation can be established and enforced, also with a view to new entrants to the market from the European Union and third countries;
 - D. whereas the internet has developed rapidly over the past 25 years, and whereas the smart devices which have emerged are changing habits and the way of watching television;
 - E. whereas, while the take-up of internet-connected devices is increasing, traditional services nevertheless remain mainstream-popular;
 - F. whereas linear and non-linear audiovisual services and numerous other communications services can already be used on one and the same screen, combined seamlessly and consumed simultaneously;
 - G. whereas the particular social significance of linear television and media services means that an independent regulatory framework for the media will still be necessary in the future, since this is the only way of taking proper account of this important role and of ensuring diversity of opinion and the media in the Member States;
 - H. whereas the advent of connected TV has shaken up the traditional value chain and makes it necessary to draw up a new strategy;
 - I. whereas the advancement of technological developments leads inevitably to what is to some extent only an apparent increase in user autonomy, and there is therefore a growing need to ensure protection of exclusive rights and integrity of content;
 - J. whereas opportunities are increasing for dissemination of (interactive) on-line services benefiting from the range of television offerings, and 100% broadband coverage is crucial for increasing consumer interest in hybrid receiving systems;
 - K. whereas in the light of growing media convergence, the concept of 'connected TV' is being interpreted in a dynamic, technologically neutral and broad way to cover all devices, including mobile devices, which enable access to linear and non-linear media content, over-the-

top services and other applications on one and the same device or screen, thereby bringing together the world of broadcasting and the world of the internet;

- L. whereas competition in the convergent media world is increasingly centring less on transmission capacities and more on the attention of users; whereas, as the number of services on offer rises, it becomes more and more difficult to reach users; and whereas access to and the rapid findability, listing and recommendation of services will most likely determine their success;
- M. whereas the current provisions of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) are based on the principle of technological neutrality; whereas those provisions do not yet reflect ongoing technological convergence; and whereas in particular graduated regulation, which differentiates between television programmes (including webcasting and live streaming) and audiovisual media services on demand, will become less important in its existing form, although differently regulated information and communications services are available on one and the same device, including services which do not fall within the scope of the Audiovisual Media Services Directive but of the e-Commerce Directive or, in the case of non-European services, are not covered by any EU media regulations, which both may result in unequal competitive conditions and unacceptable discrepancies in the protection of users and raises fresh questions - regardless of media type - of content access, dissemination method and findability;
- N. whereas these new service providers will compete head-on with the traditional players in the sector, both by acquiring exclusive content, including on the European market, and by offering new services;
- O. whereas the regulatory objectives of the Audiovisual Media Services Directive – particularly those of ensuring and promoting diversity of opinion and of the media, protecting human dignity and protecting children, encouraging media service providers to guarantee accessibility to the visually and hearing impaired, and safeguarding fair competition, as well as quality-and content-based regulation of advertising – retain their importance to society and their regulatory justification as a matter of principle, but whereas at the same time the limits of the effectiveness and enforceability of these protective provisions are becoming increasingly apparent because of the methods of use made possible by hybrid receiving systems;
- P. whereas high-quality connected TV services can only be provided if telecommunications operators offer sufficiently high-speed links between the broadcasting servers and subscribers;
- Q. whereas the range of possible uses offered by hybrid devices calls into question core principles of the Audiovisual Media Services Directive, such as the mandatory separation of advertising and programmes, and rules on the insertion of advertising;
- R. whereas the mere chance fact of the existence of numerous services does not automatically result in the aforementioned regulatory objectives being attained, and it is therefore appropriate to evaluate whether there will remain a need for a specific regulatory framework in order to realise the objectives and whether that framework could preclude possible adverse developments from the outset;

- S. whereas as connected TV becomes gradually more established, conventional TV and the internet may come to coalesce, just as mobile telephony and the internet melded together a few years ago;
 - T. whereas any means of adapting the market to favour creation and innovation in Europe should be encouraged;
 - U. whereas the development of hybrid systems combining TV and the internet will allow users to browse indiscriminately between TV channels and the internet, including websites illegally offering audiovisual content;
 - V. whereas net neutrality is proven to be insufficiently safeguarded by transparency and competition;
 - W. whereas the country-of-broadcast principle in the original Television Without Frontiers Directive represents a milestone for freedom of information and the development of a common market in services, since the Member States committed themselves to quality-based minimum standards and, in return, introduced the country-of-origin principle in the form of the country-of-broadcast principle;
1. Calls on the Commission to evaluate the extent to which it is necessary to revise the Audiovisual Media Services Directive and other current requirements laid down in network and media regulations (e.g. the telecommunications package) with respect to the rules on findability and non-discriminatory access to platforms, for content providers and content developers as well as for users, expanding the concept of platforms, and to adapt the existing instruments to new constellations; whereas it should be ensured in so doing that consumers can benefit from increased choice and access to audiovisual media services and that content providers can benefit from more choices in how to distribute their content while maintaining contact with their audience;
 2. Takes the view that, in the case of regulatory measures for platform operators, care must be taken to ensure non-discriminatory access to platforms so that broadcasters and other providers, including small-scale providers in many cases, can participate in the market on an equal basis;
 3. Calls on the Commission and Member States to apply the concept of media services defined in Article 1 of the Audiovisual Media Services Directive in such a way that the need for regulation by the Member States is determined more on the basis of the potential socio-political impact of services and specific features of that impact, particularly their relevance to opinion-forming and to diversity of opinion, as well as on the basis of editorial responsibility;
 4. Calls on the Commission to consider, bearing in mind the difference in remit between media services for which editorial responsibility is taken and other content, whether stricter regulation of TV platforms is still appropriate and necessary, or whether a general ban on discrimination is sufficient;
 5. Calls on the Commission, in the context of a possible revision of Directive 2010/13/EU, or in any future legislation, to continue its efforts to safeguard press freedom;

6. Calls on the Commission to provide a breakdown, on the basis of its consultation process entitled 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values', of which regulatory mechanisms are still necessary and useful against the background of convergence and which should perhaps be established in order to create a level playing field for all content and service providers, taking account of the following minimum requirements and maintaining the existing overarching regulatory objectives, so as to ensure fair competition among content providers and guarantee users the chance to choose, in a fully transparent manner, from among a wide range of high-quality services on a footing of equal opportunity and without discrimination, with a focus on maintaining free and public services;
7. Calls on the Commission, in the event of a review of the Audiovisual Media Services Directive, to ensure fair competition among all content providers;
8. Stresses that the development strategy of these new market players will lead to an increased range of content by combining long-established TV channels with the content offering available on the internet;
9. Emphasises in this connection the risk that the economic power and the international presence of these new market players may distort this new competitive environment to the detriment of long-established European players;
10. Emphasises that consideration should be given to retaining a graduated regulatory framework for media services, in which connection the graduation should be based not on a distinction between non-linear and linear services, but rather, primarily, on the potential impact of a given media service and the editorial responsibility for the service in question, and that, at the same time, the Member States should be granted appropriate leeway to take such decisions themselves;
11. Wonders whether, against the background of increasing technological convergence, the provisions laid down by the Commission in its communication on the application of State aid rules to public service broadcasting, setting out complex procedures for assessing and analysing audiovisual services offered by public providers, which go beyond the scope of normal broadcasting activities and are made available on new platforms, are still appropriate, in particular given that it is increasingly difficult for users to tell whether the service concerned is a conventional linear broadcasting service, an on-demand service or another type of audiovisual service;
12. Calls on the Commission to have an eye to the future challenges of Connected TV, in terms of competitiveness in the industry, by allowing greater flexibility for quantitative rules on advertising, and to outline the relevant advantages and drawbacks;
13. Emphasises that, in the interests of the uniform, Europe-wide protection of consumers, children and young people and minorities, qualitative restrictions on audiovisual media services should be reviewed and tailored at a high level to all modes of dissemination;
14. Calls, in that connection, for the ban on the violation of human dignity, the ban on incitement to hatred, protection against discrimination and the principle of barrier-free access to apply in the same way to all forms of media content;

15. Wonders, in that connection, whether the principle of the division between advertising and programme content can be maintained across all types of media or whether the aim of providing protection could be better achieved by making advertising and programme content clearly recognisable and clearly distinguishable across all types of media;
16. Takes the view that the introduction of new, or the extension of existing, advertising bans or other measures which have an impact on advertising as a source of funding should be prevented so that new business models can also be employed in the digital TV sector;
17. Emphasises that it is vital for the public sector not to be dependent solely on advertising funding in order for it to retain its independence, and calls on the Member States to support efforts to provide funding for that sector;
18. Emphasises that new advertising strategies that use new technologies to increase their effectiveness (screenshots, consumer profiling, multi-screen strategies) raise the issue of protecting consumers, their private lives and their personal data; with this in mind, emphasises that there is a need to come up with a set of consistent rules to apply to these strategies;
19. Encourages Europe's audiovisual industry to continue to develop consistent, attractive services, especially on line, so as to enrich the range of European audiovisual content on offer;
20. Calls on the Commission to examine whether and how those content providers can be granted an appropriately privileged status with regard to findability on first-screen devices, such as TV sets with a connection to the internet, to which the Member States assign a public broadcasting remit or which help to promote objectives in the public interest, such as ensuring media pluralism and cultural diversity, or which undertake to carry out duties which maintain the quality and independence of reporting and promote diversity of opinion;
21. Calls on the Commission and Member States, in addition to such 'must be found' rules, to consider to what extent a reform of media regulation so as to move towards incentive and certification schemes and strengthen co- and self-regulatory approaches can enable the aforesaid regulatory objectives of the Audiovisual Media Services Directive, in particular as regards the protection of young people and human dignity, to be attained in a lasting fashion, while at the same time maintaining the necessary flexibility for fair competition among media service providers; emphasises that any co- and self-regulation measures can supplement legal provisions and that compliance with them must be monitored and the assessment of their effectiveness must be carried out by an independent regulator;
22. Recommends, therefore, in order to avoid any distortion of competition, that the same rules should apply to the same services, irrespective of the medium of transmission;
23. Is furthermore concerned, in this context, by the increased level of competition resulting from the presence of international players that are not subject to European rules and obligations;
24. Calls on the Commission to ensure that these platforms are operated on the basis of open interoperable standards in a way which accords with market conditions and the general interest, entailing fair competition, accords with consumer demand and prevents the abuse by one or more providers of their prime position;

25. In this context, emphasises the need for consideration to be given to the development of the regulatory framework, to the ways of regulating connected TV and to the content-referencing systems;
26. Calls for connected TV platform regulation which guarantees access to, and integrity of, broadcasters' content, transparency for consumers and the application of a basic code of ethics (e.g. protection of minors and of private life);
27. Calls on the Commission and the Member States to advance the media literacy of all EU citizens, in particular, through initiatives and coordinated actions aimed at increasing understanding of linear and non-linear media services;
28. Calls on the Commission and the Member States to ensure that measures are taken, in particular, by device manufacturers and service providers to improve accessibility to linear and non-linear media services for elderly people and people with a disability such as the hard of hearing and the visually impaired;
29. Takes the view that platform services and portal services should be interoperable, in order to give third parties the opportunity, without discrimination, to produce and market their own applications, irrespective of the medium of transmission;
30. Calls on the Commission to ensure in a legally binding manner that all content is as a matter of principle made available to the same quality standard on networks and platforms;
31. Calls on the Commission to take legally binding measures to ensure that network operators systematically treat all data packets in the same way when forwarding them from dispatchers to receivers, i.e. that they do not give certain packets priority on the basis, for example, of origin, content, use or the fee charged to users, as this would run counter to the aim of guaranteeing fair universal access to services, data protection rules, the ban on data manipulation, the principle of the integrity of content and the aim of establishing fair conditions of competition;
32. Draws attention to the effects of the disparities between VAT systems at European level, which will be further accentuated with the arrival of connected TV;
33. Calls on the Commission to propose Union legislation guaranteeing net neutrality;
34. Calls on the Commission to safeguard by law the integrity of linear and non-linear services on hybrid platforms and, in particular, to prohibit the overlay or scaling of these services by platform providers or third parties with content or other services, unless the latter have been explicitly initiated by the user and, in the case of content which is not covered by the definition of individual communication, have been authorised by the content provider; points out that unauthorised interference by third parties with the content or broadcast signals of a provider and their unauthorised decryption, use or dissemination must likewise be prevented;
35. Calls on the Commission to consider measures to take account of the risk of unauthorised sites being referenced on portals and search engines;

36. Calls on the Commission to ensure that the level of protection in respect of audiovisual media services established by means of the special regulatory requirements of the Audiovisual Media Services Directive is not undermined by unauthorised provision of access on other platforms;
37. Calls on the Commission to ensure that applications never start up automatically merely because a portal has been accessed, but that start-up must always be initiated by the user, that the return to the previously used service must always be straightforward and entail only the pressing of a button (e.g. red button function), which must be made clear to users, and that when an application is shut down the previously used service must reappear in full audiovisual quality;
38. Calls on the Commission to ensure that a content provider can take legal action against such applications on hybrid platforms which make possible or encourage the unauthorised dissemination of content made available by the content provider;
39. Calls on the Commission, where appropriate on copyright grounds, to work towards the establishment of straightforward rights clearance systems which make it possible for non-linear services made available by media service providers to be mirrored unchanged and in full on third platforms;
40. Calls on the Commission to ensure that the anonymous use of TV and on-line services by means of hybrid receiving devices that are sold in or imported into the EU is guaranteed in principle and that it is in full compliance with EU rules on privacy and data protection;
41. Calls on the Commission to exclude audiovisual media services from liberalisation measures negotiated as part of international trade agreements, in view of their dual nature and their significance for society, and, at the same time, to ensure that the concept of 'audiovisual media service' is developed to reflect the ongoing process of digitalisation and media convergence;
42. Calls on the Commission to ensure that future hybrid TV services also comply with existing legislation on child protection, on the ban on certain kinds of advertising for health reasons, on the ban on incitement to racial hatred, on the separation between news and advertising messages, on ownership transparency, privacy, etc., since these are rules which have become part of the *acquis communautaire* and which cannot be circumvented on the pretext of technological developments; in particular, calls for service providers and providers of hybrid TV equipment from outside the EU to be informed that the applicable law is that of the country where the service is provided and not the one where the providers have their registered office;
43. Calls on the Member States, in the negotiations on the multiannual financial framework, to reconsider the cut in funding, from the figure of EUR 9,2 billion originally proposed to EUR 1 billion, for the Directorate-General for Communications Networks, Content and Technology (DG Connect, CNECT), in order to cover the further development of telecommunications infrastructure;

44. Calls on the Commission to pay due attention to important audience protection issues such as the protection of minors, and believes that Electronic Programme Guides may be a possible platform on which to address these issues;
45. Regrets the fact that there are still vast areas of Europe with limited Internet infrastructure, and reminds the Commission that in order to unlock the potential of Connected TV it is vital for consumers to have access to high-speed Internet;
46. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the

11.2. Explanatory statement EP declaration

At first sight, it seems as if connected television raises only technical issues. What are basically at issue, however, are the availability, accessibility and findability of media content and whether, and if so by what regulatory means, media services can be treated differently in a convergent world. The media are of a dual character: they are goods, but they are also, and above all, cultural assets, and as such they are of particular social importance. The diversity of the media and freedom of opinion, the press and information contribute substantially to the functioning of our democratic societies. The media have educational, informative, entertainment and watchdog functions. This is the basic reason why in the EU and the Member States media policy is governed not only by competition law and/or commercial law but by separate regulations which take into account their special character as outlined here and their particular importance to society. The convergence of technologies, which has reached a new peak with connected TV, will not change this in any way.

Connected TV is an important technological step towards media convergence, a step which by its nature calls into question vital decisions concerning regulation of the media. In the Audiovisual Media Services Directive it was decided to impose a finely meshed regulatory system on linear services, but to treat non-linear services less restrictively. This was justified inter alia by reference to differences in the impact of the services on society. In all Member States, linear services provided by public and private TV broadcasters are seen – apart from their mass-media impact – as possessing very substantial social-policy implications, which in many places are governed by statutory provisions. Despite the technological convergence, neither the mass attractiveness of TV nor its significance for social policy has changed at all so far. Because a wider radius of action continues to be imputed to the linear media, they must be subject to strict regulation. This differentiation, which has made sense hitherto and which is reflected in the graduated regulatory approach found in the Audiovisual Media Services Directive, is becoming increasingly inadequate due in particular to the development of connected TV, or at least is giving rise to a series of questions and problems which need to be resolved in the regulation of the media.

A hybrid receiving device affords users access both to traditional TV programmes and to the internet. Irrespective of their mode of technical distribution, in the long term almost total convergence of the media is likely to occur. Services are used on one and the same screen which are subject to different rules, with widely differing degrees of regulation, namely:

- linear audiovisual media services;
- non-linear audiovisual media services;
- audiovisual services which do not fall within the scope of the Audiovisual Media Services Directive but are subject to other European legislation;
- media services which are not subject to any European legislation;
- services whose classification remains controversial.

The term ‘connected TV’ is regularly used to refer to a television set which can itself receive and display on screen both traditional linear programmes and internet content. In addition, it is still a hybrid receiving device if, although the TV itself is not capable of connecting to the internet, it is connected to another device which does have an internet connection (e.g. a Blu-Ray player, games console, digital receiver / set-top box).

As internet content often requires special processing for display on a TV screen, such hybrid devices have so far offered universal internet access only in a few cases. Switching from a conventional TV programme to internet content on the screen is performed by means of a portal or using widgets, whose appearance and functionality are comparable to Smartphone apps, which can be accessed on a platform and which overlay the TV picture or are displayed in split-screen mode alongside a TV picture which is reduced in size. Navigation is by means of a remote control unit, but may also be performed using a Smartphone or Tablet. Increasingly, therefore, material supplied by traditional broadcasters – both linear and non-linear –, on-demand services, WebTV and internet content processed for connected TV are no longer findable to users via assigned channels, which users could hitherto change relatively easily but via a kind of home page. The wealth of content on offer makes findability and non-discriminatory access to content one of the central issues of connected TV. Creators of platforms and/or portal operators make a preselection of the content which will be available and above all determine whether and how it is prioritised, and they alone decide on the technology to be used in providing it. As a result, the platform operator, portal operator or device manufacturer (all three functions may be combined by one and the same business) controls access to content which has an impact on opinions. To an unprecedented extent, this gives platform operators and device manufacturers a gatekeeper position which is not currently covered by any media regulation. It therefore seems urgently necessary to amend the Audiovisual Media Services Directive, in particular, to take this new situation into account, because otherwise diversity of opinion and of the services on offer may be jeopardised, as may freedom of information. The strong position of device manufacturers and platform operators may also hamper further rapid market development of hybrid services, as device manufacturers determine the market conditions and technological conditions under which content appears on platforms which they operate. However, free and fair competition among services and content is possible only on the basis of uniform competitive conditions, i.e. in this case an interoperable system which uses uniform technology and is open and responsive to market needs, in relation both to the provider market (cable networks, Pay TV, IPTV) and to the market for receiving devices.

Ensuring the findability and accessibility of content will become the main issue in maintaining diversity. Accordingly, the system on which the Audiovisual Media Services Directive has been based hitherto should be developed further, as it is still assumed here that only a few parties possess the requisite resources to make an impact in the mass media. These scarce resources have – at least in the case of traditional broadcasting – been regulated by means of a licensing system. However, digitisation of content has put an end to this scarcity, as data of excellent quality are now available over the internet at any time, irrespective of their nature as text, moving pictures or sound (or a combination thereof). To users it is increasingly a matter of indifference by what technical means content reaches them. They can use content at any place and time, even if they may (to some extent without being aware of the fact) have different expectations of the quality of content and of presentation, depending on the provider.

Modern media regulation must in future recognise that scarcity is a feature no longer of the modes of transmission but of the places where content can be found.

Existing ‘Must-carry’ rules need to be supplemented with ‘Must-be-found’ rules. Those content providers should be given an appropriately privileged status with regard to findability on hybrid platforms (including portals, home pages and EPGs) to which the Member States assign a public broadcasting remit or which help to promote objectives in the public interest, such as ensuring

media pluralism and cultural diversity, or which undertake to carry out duties which maintain the quality and independence of reporting and promote diversity of opinion. Those who are subject to the stricter rules for linear and non-linear media services laid down in the Audiovisual Media Services Directive or who voluntarily agree to comply with those rules should therefore have the opportunity to acquire a more prominent position on platforms. Consideration should also be given to new forms of incentive schemes.

It is important to try to establish an appropriate balance of power between market parties, especially device manufacturers and content providers, and particularly in the case of integrated services. Individual content providers must also be prevented from gaining an unfair advantage in relation to the dissemination of their content.

The Audiovisual Media Services Directive needs to be further developed in such a way that it also comprehensively regulates operators of hybrid portals and platforms. Anyone who has significant control over the diversity of content and opinions reaching an end-user should also be subject to regulation to safeguard that diversity of content and opinions.

It should be ensured that devices, platforms and portals are designed on the basis of an open, non-proprietary and interoperable standard. Only in this way can non-discriminatory and technologically neutral access to all content be guaranteed.

Moreover, the new technical capacities of connected TV make it necessary to protect the integrity of content. The overlaying of content with third-party content should be prohibited except where the content provider authorises it and the user expressly initiates it.

Connected TV also has implications for data protection. This must be taken into account both in the development of hybrid devices ('privacy by design') and in the standard settings in a device ('privacy by default'), and particularly concerns the principle of data minimisation, proportionality and purpose limitation. Complete data transparency with reference to gathering, processing, use and transfer of data must be ensured. Without the express consent of the user, personal data may be gathered and used only to the extent necessary in order to facilitate the use of services and to charge the user.

Anonymous use of media must remain possible in future without causing any problems, and should be regarded as *the rule*. Analyses of user behaviour and the establishment of user profiles using complete IP addresses (including geo-location) should be allowed only with the witting and unambiguous consent (opt-in) of the user. This must be ensured by legislation.

11.3. European Parliament Resolution on Preparing for a Fully Converged Audiovisual World (2013/2180(INI))



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Preparing for a Fully Converged Audiovisual World (2013/2180(INI))

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)²⁸,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)²⁹,
- having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)³⁰ as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009³¹,
- having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and

²⁸ OJ L 95, 15.4.2010, p. 1.

²⁹ OJ L 178, 17.7.2000, p. 1.

³⁰ OJ L 108, 24.4.2002, p. 33.

³¹ OJ L 337, 18.12.2009, p. 37.

associated facilities (Access Directive)³²,

- having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)³³, as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009³⁴,
 - having regard to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications devices and the mutual recognition of their conformity³⁵,
 - having regard to the proposal from the Commission of 11 July 2012 for a directive on collective rights management and multi-territorial licensing of rights in musical works for online uses,
 - having regard to Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Copyright Directive)³⁶,
 - having regard to its resolution of 4 July 2013 on ‘Connected TV’³⁷,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Legal Affairs (A7-0057/2014),
- A. whereas audiovisual convergence means the merging of audiovisual media services previously delivered largely separately, and interlocking along the value chain or the grouping of various audiovisual services;
- B. whereas convergence means innovation, and whereas this requires new types of cooperation between companies and sectors so that users can access audiovisual content and electronic services everywhere, at all times, and with any device;
- C. whereas horizontal (sector convergence), vertical (value chain convergence) and functional convergence (convergence of applications/services) all impact on the audiovisual industry;
- D. whereas technical convergence means that media law and network policy issues are increasingly overlapping;
- E. whereas access to and findability of audiovisual content are becoming key factors in a converging world; whereas policy should not stand in the way of a self-regulating content

³² OJ L 108, 24.4.2002, p. 7.

³³ OJ L 108, 24.4.2002, p. 21.

³⁴ OJ L 337, 18.12.2009, p. 37.

³⁵ OJ L 91, 7.4.1999, p. 10.

³⁶ OJ L 167, 22.6.2001, p. 10.

³⁷ Texts adopted, P7_TA(2013)0329.

labelling system that meets minimum quality standards, and whereas net neutrality is becoming more and more urgent as regards cable and mobile connections;

- F. whereas technical media convergence has now become a reality – particularly for broadcasting, the press and the internet – and whereas European policies concerning media, culture and networks need to adapt the regulatory framework to the new conditions and ensure that a uniform level of regulation can be established and enforced, including as regards new entrants to the market from the EU and third countries;
- G. whereas, despite growing technical convergence, experience in relation to the use of linked devices and the expectations and profile of users is still limited;
- H. whereas digitisation and technical convergence alone are of limited value to citizens, and whereas support for high levels of sustained investment in original European content remains a key priority in a converging media environment;
- I. whereas growing convergence makes it necessary to develop a new understanding of the way in which audiovisual media, electronic services and applications interact;
- J. whereas the term ‘content gateway’ describes any entity which acts as an intermediary between audiovisual content providers and end-users and which typically brings together, selects and organises a range of content providers and provides an interface through which users can discover and access that content; whereas such gateways can include TV platforms (like satellite, cable and IPTV), devices (like connected TVs and games consoles) or over-the-top services;

Convergent markets

- 1. Notes that the increasing trend towards horizontal concentration in the industry and vertical integration along the value chain can provide new business opportunities but may also create dominant market positions;
- 2. Stresses that regulation is required where content gateways control access to media and impact directly or indirectly on the shaping of opinion; calls on the Commission and the Member States, therefore, to monitor developments in this regard and to make full use of the possibilities offered by European competition and anti-trust law and, if necessary, introduce measures to safeguard diversity, and also to draw up a regulatory framework for convergence that is adapted to these developments;
- 3. Notes that market developments indicate that in the future companies will increasingly link network services to the provision of audiovisual content, and that the internet in its current form based on optimum access might as a result increasingly give way to a range of content geared to unilateral company interests;
- 4. Takes the view that all data packages in the field of electronic communication must as a matter of principle be treated equally, regardless of content, application, origin and destination (the best effort principle), and therefore calls for a free and open internet to be preserved and safeguarded, particularly as regards the development of special services;
- 5. Stresses the need to align the rights and obligations of broadcasters with those of other

market players by means of a horizontal, cross-media legal framework;

Access and findability

6. Stresses that net neutrality, in line with a best-effort Internet and the non-discriminatory access to and transmission of all audiovisual content, guarantees a pluralist supply of information and a diversity of opinion and culture, and therefore represents a key element analogous to the 'must-carry' principle of the converged media landscape; calls on the Commission, therefore, to ensure, in a legally binding manner, compliance with the principles of internet neutrality, since this is vital where media convergence is concerned;
7. Calls for non-discriminatory, transparent and open access to the internet for all users and providers of audiovisual services, and opposes any restriction on the best effort principle through provider-specific platforms or services;
8. Reiterates that net neutrality rules do not remove the need to apply 'must-carry' rules for managed networks or specialised services such as cable TV and IPTV;
9. Calls for uniform standards for ensuring the interoperability of connected TVs to be developed by the industry in order not to stifle innovation;
10. Calls for the diversity of cultural and audiovisual work in a converged world to be accessible to and findable by all Europeans, in particular where the content on offer to users is prescribed by device manufacturers, network operators, content providers or other aggregators;
11. Believes that, in order to safeguard the diversity of products and opinions, searching for and finding audiovisual content should not be determined by economic interests, and that regulatory measures should only be taken if a platform provider exploits a dominant position in the market or gatekeeper function in order to favour or discriminate against particular content;
12. Calls on the Commission to check the extent to which operators of content gateways tend to abuse their position in order to prioritise their own content, and to develop measures to rule out any future abuse;
13. Calls on the Commission to define what a platform is and to establish, if necessary, regulation that also covers technical networks' transfer of audiovisual content;
14. Considers that open network platforms which do not occupy a dominant market position and do not hamper competition should be excluded from the regulation of platforms;
15. Believes that the creation of applications ('apps') should be encouraged given that it is a growing market; stresses, however, that 'appisation' can lead to market access problems for producers of audiovisual content; calls on the Commission to investigate where measures to secure the accessibility and findability of audiovisual media are needed and how they can be enforced, while recalling that regulatory measures should only be taken if a platform provider, by means of apps, exploits a dominant market position or gatekeeper function in order to favour or discriminate against particular content;

16. Believes that Member States should be able to take specific measures to provide a reasonable level of findability and visibility for audiovisual content of general interest, in order to guarantee diversity of opinion, while users should be able to sort the offers themselves in an uncomplicated manner;

Safeguarding diversity and funding models

17. Calls on the Commission, against the backdrop of media convergence, to determine how the refinancing, funding and production of quality European audiovisual content can be secured in a future-proof and balanced manner;
18. Calls on the Commission to examine the extent to which market distortions as regards quantitative and qualitative bans on advertising have arisen as a result of the unequal treatment of linear and non-linear services under Directive 2010/13/EU;
19. Emphasises that new advertising strategies that use new technologies to increase their effectiveness (screenshots, consumer profiling, multi-screen strategies) raise the issue of protecting consumers, their private lives and their personal data; with this in mind, emphasises that there is a need to come up with a set of consistent rules to apply to these strategies;
20. Calls on the Commission, by removing regulation in quantitative advertising provisions for linear audiovisual content, to ensure that the aims of Directive 2010/13/EU are accomplished more successfully by increasing flexibility and strengthening co- and self-regulation;
21. Considers that new business models under which unauthorised audiovisual content is marketed represent a threat to high-quality journalism, public service media and broadcasting funded by means of advertising;
22. Takes the view that linear and non-linear offers from broadcasters or other content providers must not be altered in terms of their content or technology, and that individual content or parts thereof must not be included in programme packages or otherwise used for payment or free of charge without the consent of the broadcaster or provider;
23. Considers that, in view of convergence, the accreditation procedure for electronic information and communication services funded by means of a licence fee – insofar as these are public service audiovisual offers – must be adapted to the digital reality of media competition;
24. Emphasises that, in order to retain its independence, the public sector must continue to be shielded from the constraints of advertising-based financing, and calls on Member States to support the sector's efforts in relation to financing;

Infrastructure and frequencies

25. Notes that widespread coverage of the most powerful broadband internet connections is a basic requirement for convergence and innovation in the media industry; stresses that such broadband networks need to be developed still further, particularly in rural areas, and calls on the Member States to rectify this problem by means of short-term investment campaigns;

26. Regrets there are still vast areas across Europe with limited internet infrastructure, and reminds the Commission that in order to unlock the potential of a converged audiovisual world, it is vital for consumers to have access to high-speed internet;
27. Urges industry actors, in anticipation of a more converged future, to work together on a voluntary basis in order to ensure that there is a common framework for media standards, so that a more consistent approach applies across different media, and also to ensure that consumers continue to understand what content has been regulated and to what extent;
28. Stresses that open and interoperable standards offer the guarantee of free and unimpeded access to audiovisual content;
29. Notes that emerging self-regulation initiatives have a crucial role to play in establishing uniform standards for user technologies and for developers and producers;
30. Stresses that DVB-T/T2 offers excellent long-term opportunities for the joint use of the 700 MHz frequency band by broadcasting and mobile communications, in particular when using promising hybrid mobile devices and by integrating TV receiver chips in mobile devices;
31. Advocates the development of a technology mix that makes efficient use of both broadcast and broadband technologies and intelligently combines broadcasting and mobile communications ('smart broadcasting');
32. Considers it important to have a roadmap for digital terrestrial radio in order to provide investors from both the broadcasting and mobile telephony sectors with the certainty needed for long-term planning;

Values

33. Regrets the Green Paper's lack of a specific reference to the dual nature of audiovisual media as cultural and economic assets;
34. Reminds the Commission that the EU is committed to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
35. Stresses that protecting media freedom, promoting media pluralism and cultural diversity and the protection of minors remain relevant values in an era of convergence;
36. Calls on the Commission, in the context of a possible revision of Directive 2010/13/EU, to continue its efforts to safeguard press freedom;
37. Calls on the Commission and the Member States to step up application of Article 13 of the AVMS Directive on promoting production of European works and access to those works through on-demand audiovisual media services;
38. Draws the Commission's attention to the fact that including audiovisual culture and media in international free trade agreements represents a contradiction of the EU's commitment to promote cultural diversity and identity and to respect Member States' sovereignty over their own cultural heritage;

39. Encourages Europe's audiovisual industry to continue to develop consistent, attractive services, especially on-line, so as to enrich the range of European audiovisual content on offer; stresses that content must remain the prime consideration; emphasises that the greatest threat comes from new platforms which recycle huge volumes of content, and that new thinking is therefore required about what is on offer, because having a large number of platforms is no guarantee of diversity of content;
40. Highlights that youth protection, consumer protection and data protection are absolute objectives of regulation and must apply uniformly to media and communications providers throughout the EU;
41. Calls on the Commission to step up its efforts to enforce youth and consumer protection provisions; calls for the same data protection requirements to apply to all media and communications service providers in the territory of the EU; stresses that consumers must be able to alter their privacy settings easily and at any time;
42. Stresses that global competition in converged markets makes it essential to draw up appropriate co- and self-regulation standards for youth and consumer protection at international level;
43. Calls on the Commission and the Member States to enhance and expand the existing range of activities aimed at imparting digital media skills, and to develop a methodology for the evaluation of media skills teaching;

Regulatory framework

44. Considers that European media and internet policy should aim to remove barriers to media innovation and, at the same time, not lose sight of the normative aspects of a democratic and culturally diverse media policy;
45. Stresses that similar content on the same device requires a uniform, flexible, user-friendly and accessible legal framework which is technology-neutral, transparent and enforceable;
46. Calls on the Commission to ensure that platforms are operated in a way which accords with market conditions, entailing fair competition;
47. Calls on the Commission to conduct an impact assessment so as to look into whether, in the light of developments in all audiovisual media services accessible to European citizens, the scope of the AVMS Directive is still relevant;
48. Calls on the Commission to examine to what extent the linearity criterion is preventing the regulatory objectives of Directive 2010/13/EU from being attained in many areas of the converged world;
49. Recommends deregulation for the areas of Directive 2010/13/EU in which the aims of the legislation are not being achieved; believes that, instead, European-level minimum requirements for all audiovisual media services should be put in place;
50. Stresses the importance of technology-neutral rights clearance systems in order to facilitate services of media service providers being made available on third-party platforms;

51. Stresses that the country of origin (or country of broadcasting) principle enshrined in the Audiovisual Media Services Directive is still a significant prerequisite for the provision of audiovisual content across borders and a milestone on the way to a common market in services; emphasises, however, the need to adapt EU law to the realities of the internet and the digital environment, and to pay special attention to companies offering audiovisual content on-line which try to evade taxation in certain Member States by basing themselves in countries with a very low tax rate;
52. Calls on the Commission to examine whether copyright law needs to be adapted to enable linear and non-linear content on the various platforms and their cross-border accessibility to be appropriately evaluated;
53. Calls on the Commission to enforce the principle of technology neutrality consistently and, where appropriate, to review European copyright law accordingly;
54. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

On 24 April 2013, the Commission presented a consultation paper which aimed at triggering broad public debate on the impact of the current transformation of the audiovisual media landscape. The green paper on 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value' focused on how future-proof the Audiovisual Media Services Directive (AVMSD) was, but also contained considerations regarding infrastructure, frequencies and funding models of audiovisual content as well as market considerations on the vertical and horizontal integration of the media and ICT industry.

At the moment, media policy in Europe is largely a matter for Member States. However, not all areas of media policy can be dealt with at national or federal level. Aspects related to the ongoing merging of conventional broadcasting services with the internet, in particular, need to be dealt with more than hitherto at European level as a result of changing market structures.

The problems

Convergence means the merging of linear and non-linear audiovisual media services which have in the past largely been considered separately from one another. New providers from the telecommunications industry and over-the-top (OTT) service providers are joining the market alongside traditional media institutions. The graduated regulatory system provided for under the AVMSD Directive has until now laid down a certain minimum standard for classical (linear) television content and for non-linear information and communication services and online content. With the digitalisation of broadcasting and media technologies, the convergence of technical transmission paths and the ongoing development of mobile and hybrid devices, classically regulated broadcasting and on-demand services suddenly find themselves competing on the same screen with previously unregulated content from the open internet.

This raises questions about consumer, youth and data protection, but also about safeguarding diversity and the dual nature of the media as a cultural and economic asset.

The rapporteur therefore focuses on market considerations on the one hand and models of funding and access in converged markets on the other. The rapporteur welcomes the main thrust of the Commission's green paper, since it moves away from a one-dimensional discussion of connected television and towards a broader consideration of all industries and interlinked sectors along the value chains of converged audiovisual markets. It is exactly these market changes which are providing not only new challenges but also opportunities for media industry stakeholders.

Even if the majority of European users continue to receive most of their audiovisual content through conventional televisions, there is a strong trend towards the use of mobile devices in addition to conventional televisions. Many younger users in particular would like access to audiovisual content and electronic services everywhere, at all times, and with any device.

Converged markets

Convergence therefore also means innovation and this requires new types of cooperation between companies and sectors. Similar content on the same device will in future therefore need a modern, accessible, user-friendly and horizontal regulatory framework. The existing legal framework for audiovisual media and its regulatory objective must be examined and, if necessary, adapted to the current reality of converged markets. The rapporteur believes that it will be necessary to conduct this examination in conjunction with existing legislation in the areas of electronic communication, electronic commerce, the licensing of rights to audiovisual and musical works for online use, copyright, the provisions related to broadcasting and telecommunications devices and competition and anti-trust law. Should a revision of European media law be required, the important social and cultural roles of the media in a converged environment will have to be protected by means of appropriate legal framework conditions.

The Commission's green paper is heavily based on market considerations and, in particular, on targets related to economic growth and technical aspects; it neglects the significance of the media for cultural diversity and identity in Europe. This own-initiative report on the green paper therefore reacts explicitly to the dual nature of audiovisual media as cultural and economic assets as well as the role of dual broadcasting for a culturally diverse range of content and services in the converged media world.

Access and findability

Findability and access to audiovisual goods and services aimed at the general public are becoming key factors in a converged world. Net neutrality guarantees the non-discriminatory transmission of all content and is therefore the 'must-carry' principle of the converged media world in the 21st century. End users should be able to access any content or services they wish, and providers of access should not be allowed to restrict users' freedom to choose. That said, discrimination-free transmission is not enough. For the future of broadcasting in particular, it is essential to ensure that programmes on individual transmission paths are not only given access, but that they can also be found on the content gateways.

The Commission, but also Member States, ought to focus on guaranteeing access to and findability of services and content when drawing up new legislation for the media industry. This means that the diversity of cultural and audiovisual work should be accessible and findable for all Europeans in a converged world. This is particularly relevant when user content is presorted or privileged in any way by device manufacturers, network operators, content providers or other aggregators. Searching for and finding audiovisual content on the various content gateways must not be exclusively determined by economic interests. It is for this reason that this rapporteur believes that the future inclusion of the principle of net neutrality is absolutely essential.

The 'must-be-found' principle, however, is somewhat more difficult to assess. In view of the fact that, in the converged world, we are witnessing a movement away from the principle of open internet content access (via portals and search engines) and towards the 'appization' of content and software on mobile devices, PCs and smart TVs, the rapporteur believes that the problem is not the content gateways that are reached via open access to the internet, but rather the app services which offer a very non-transparent selection of content.

The rapporteur believes that, in principle, it is correct that Member States be given the opportunity to adopt specific rules to guarantee an appropriate level of visibility for audiovisual content of general interest. The rapporteur is yet to be convinced of the effectiveness and/or

enforceability of a 'must-be-found' principle by means of EU legislation providing for a privileged or presorted offer of all (broadcasting) content on all platforms and content gateways. In addition, it is unclear what form such a priority would take in practice and the regulatory objective of the current Audiovisual Media Services Directive could not simply be applied as is to the internet and converged markets. First and foremost, it is important that all content and programmes can be found. The extent to which a statutory privilege in terms of the order could be useful is questionable, in particular when looking at commercial and not state-owned media content.

Safeguarding diversity and funding models

The rapporteur believes that regulation may be required if new platforms control access to media and impact directly or indirectly on the shaping of opinion. A comprehensive concept for content gateways and platforms is thus now required and must cover not only technical networks for the transmission of audiovisual content but also content portals, hardware and navigation systems such as EPG. Member States should therefore work together with the Commission to examine developments in converged markets and, if necessary, introduce legal restrictions on media concentration in order to safeguard diversity. The objective must be to balance the interests of all stakeholders throughout the media and the industry and to provide for more flexibility. It is primarily about the development of sustainable funding models which will endure integration in a horizontally (industry convergence) and vertically (value chain convergence) converged world.

In this context a level playing field must also be created. This could be accompanied by deregulation and more flexibility in the area of advertising provisions for broadcasting. At the same time, however, appropriate youth and data protection standards must be drawn up for converged devices and content gateways. The rapporteur therefore refers to instruments of co- and self-regulation.

With these considerations, however, one should not neglect the fact that digitalisation and the internet have changed the framework conditions for media-specific rules. In view of increasing convergence, it is essential to develop a new understanding of the way in which audiovisual media, electronic services and applications interact. This understanding should reflect the connections between the generation, processing, distribution and presentation of content and should take the form of a horizontal legal framework at European level. Convergence should also be viewed as an opportunity to develop new business models. European media players that have long complied with the typical behavioural patterns of traditional industry structures should not be at risk of having to limit their options in their own markets in order to defend their classical market structures.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Culture and Education on preparing for a fully converged audiovisual world

(2013/2180(INI))

Rapporteur for the opinion: Françoise Castex

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Calls on the Commission to conduct an impact assessment so as to look into whether, in the light of developments in all audiovisual media services accessible to European citizens, the scope of the AMS Directive is still relevant;
2. Calls on the Commission to assess whether the lighter-touch regulation applicable to non-linear services in the AMS Directive is still necessary and relevant in the light of the directive's objectives; wonders, in particular, why regulation of commercial communications relating to non-linear services should be weak when those services now have a major impact on European citizens;
3. Calls on the Commission and Member States to step up application of Article 13 of the AMS Directive on promoting production of European works and access to those works through on-demand audiovisual media services;
4. Points out in this context that all linear and non-linear media benefiting from the broadcasting of audiovisual works should contribute towards the financing of European production;
5. Calls on the Commission and Member States to give thought to extending 'must carry' obligations beyond network operators, i.e. to manufacturers of connected devices;
6. Calls on the Commission to harmonise the VAT rates applicable to all cultural products, however they are accessed, in order to prevent market distortions from holding back the expansion of new European on-line services.
7. Calls on the Commission to step up its efforts to enforce youth and consumer protection provisions; calls for the same data protection requirements to apply to all media and communication service providers on the territory of the European Union;
8. Takes the view that any exchange of data taking place in the background must be visible to consumers; urges that consumers must be able to alter their privacy settings easily and at any time.