

BIRD & BIRD

THE EVOLUTION OF
NEW ADVERTISING TECHNIQUES

AUSTRIA

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- SUMMARY -

**This summary has been drafted by Bird & Bird Brussels
on the basis of the national report**

I. Television

The Austrian audiovisual legislation can be found in the Broadcasting Act and the Cable and Satellite Broadcasting Act.

We note that Austria makes a distinction between public (the ORF) and private broadcaster.

1. Definitions

- Advertising is defined exactly the same as in the Directive TVWF.
- Sponsorship is defined exactly the same as in the Directive TVWF.
- Teleshopping is defined exactly the same as in the Directive TVWF.
- Other relevant definitions, such as broadcaster: *“the person, that – except the ORF – creates and/or composes radio or television programmes (analogue or digital) for the transmission by cable or satellite or aerial transmission and that transmits them or has them transmitted unaltered by third parties. Persons solely retransmitting programmes only are not regarded as broadcasters”*.

2. Advertising

Advertising is allowed under the law both to the public and the private broadcasters.

a) **Rules on insertion in and between programmes**

➤ **Regarding the public broadcaster:**

Advertising can be inserted between the programmes. It is not permitted to insert advertising in the public programmes. Insertion of advertising in the programme is only allowed regarding the broadcasting of sport events and the transmission of similarly structured events and performances containing intervals.

Regarding the insertion of advertising on the ORF's thematic channels, which can be broadcasted by the ORF subsidiaries, the ORF Act contains specific provisions about it that are similar to the ones of the directive TVWF.

Furthermore as advertising-free days, the law specifies “good Friday”, the “1st of November” and the “24th of December”.

➤ **Regarding the private broadcasters**

The Broadcaster Act contains similar provisions as the one of the directive TVWF. Regarding the prohibition to insert advertising in certain programmes, the private broadcasting Act contains stricter rules than the Directive TVWF: *“Advertising and teleshopping shall not be inserted in any broadcast of a religious service, news, current affairs programmes and*

children's programmes. Only news and current affairs programmes and documentaries may be interrupted by advertising provided their duration is longer than 30 minutes".

b) Rules on the maximum amount of advertising

➤ Regarding the public broadcaster

The ORF is allowed to broadcast advertising programmes only "inside Austria". On the yearly average, advertising broadcasts must not exceed 5% of the daily length of programmes, deviations of not more than 20% per day is admissible.

The determination of the length of permissible television advertising is to be based on a daily transmission time of not more than 14 hours per day and per programme. This means that on the yearly average, the ORF may use a maximum of 2.92% of its transmission time for advertising on each of its two channels.

➤ Regarding private broadcaster

The Private TV Act contains the same provisions as the one in the Directive TVWF.

3. Tele-shopping

The public broadcaster (ORF) is not allowed to broadcast teleshopping in its programmes. Regarding the Austrian provisions on teleshopping, there is the same as the one mentioned in the Directive TVWF.

4. Sponsorship

The Austrian law allows sponsorship for both public and private broadcasters. There are no specific rules regarding the duration and the insertion in and between the programmes. Regarding the announcement, the general rules of the Directive TVWF have been taken over exactly. In addition, stricter provisions apply to the ORF, such as the reference to the sponsor of a specific programme during the programme is not allowed. Further more the ORF Act prohibits the so-called "theme sponsoring" which means that someone who pays for the programme must not set any requirements regarding the theme on which a broadcast is based. Regarding private broadcasters, the provisions of the Directive TVWF have been taken exactly in the Private Broadcasting Act.

5. Product Placement - Surreptitious advertising

The ORF Act contains a ban on product placement for the public broadcasting programmes (cinema, films, television films and television series being explicitly excluded). The ORF allows the showing of product only if it cannot be avoid during sports events and if the

advertising cannot be influenced by the broadcaster. Moreover, the product placement in children's programmes is prohibited.

6. New advertising techniques

a) split screen techniques :

At this stage, only the ORF uses the split screen technique for the simultaneous transmission of tv programmes and other information (e.g. stock market prices during news programmes). There are no specific regulations concerning this technique.

b) virtual advertising

The ORF is using virtual advertising only on its own productions. The ORF states that virtual advertising could endanger the journalistic quality of programme if the broadcaster has not the full responsibility concerning the insertion of virtual items. As mentioned above, advertising may be inserted during natural breaks in sports events. Analogous rules are applicable to private broadcasters.

c) interactive advertising (digital television)

There are no informations available.

II. Radio

Radio advertising is permitted on all radio broadcasters (public and private).

➤ **Regarding private radio broadcaster**

The Private Radio Act states that advertising programme must not exceed a daily maximum of 172 minutes on an annual average basis, with a maximum permissible deviation of 20%.

➤ **Regarding public radio broadcaster**

The rules for the public radio broadcaster are stricter: one nationwide radio programme must be free from advertising while the length of advertising must not exceed a daily maximum of 172 minutes on an annual basis in the second nationwide radio programme, with a maximum permissible deviation of 20% per day. Regarding the third nationwide radio programme, the average annual duration of advertising must not exceed 8% of a daily broadcasting time.

III. Internet and Mobile Phone

The Media Act is applicable to Internet. According to this legislation, the term media comprises all means used to disseminate information and presentations with intellectual content by words, sounds or images to a large group of persons using methods of mass production or mass dissemination. Therefore, the Internet is included in this definition. Regarding the “unsolicited commercial e-mail”, Austria has an opt-in solution, which means that the user must agree from the outset that he or she consents to receive commercial e-mails. The e-mail advertising is generally prohibited in Austria is the first EU member state to issue an explicit statutory ban on unsolicited e-mail advertising.

Regarding the advertising by means of mobile telephony, the Telecommunication Act states that such advertising is considered as unfair practices if unsolicited. Unless there is a permanent business relationship between the parties or the subscriber has explicitly consented to it beforehand.

AUSTRIA

- REPORT -

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TELEVISION

- **General preliminary remarks**

Although in 2001 the Private Television Act (PrTV-G)¹ (replacing the Cable and Satellite Broadcasting Act) and the ORF Act (ORF-G)² (amending the Broadcasting Act) changed essential aspects of the basic conditions of the television sector (particularly by creating a legal basis for private terrestrial broadcasting), it may nevertheless be emphasized that the general rules of advertising contained in these laws had been in force already previously. For the TVWF Directive 97/36/EC was implemented already earlier by amending the former Broadcasting Act (with provisions on the Austrian Broadcasting Corporation ORF) and the former Cable and Satellite Broadcasting Act (with provisions on private cable and satellite broadcasters).

Generally speaking, the rules on television advertising explained below have thus been in force for quite some time. In the course of the necessary adjustment of existing legal regulations and the creation of a legal basis for private terrestrial television – since 1 August 2001, the Private Television Act has been in force –, however, more precise provisions were adopted for public broadcasting, leading to clearer regulations on advertising. The ORF Act, for instance, which fully entered into force on 1 January 2002, provides for a clear separation of the ORF's permissible from its non-permissible activities in connection with advertising and sponsoring. For one, clear legislative decisions have been taken with regard to practices which so far have been controversial because of different legal interpretations (e.g. inserted advertising) and, for another, a separation should also be made of the funding options through advertising and sponsoring of the ORF, on the one hand, and of the private broadcasting sector, on the other. This means that the advertising possibilities for the ORF have also been legally restricted to offer private television broadcasters sufficient funding opportunities and thus better starting conditions. Even though this is no guarantee for the actual profitability of private television, it was at least intended to create an economic environment for the establishment of private broadcasting and thus a balance between public and private broadcasting within Austria's dual broadcasting system.

¹ Federal Act issuing regulations on private television (Private Television Act - PrTV-G), Federal Law Gazette I No. 84/2001

I. Advertising

A. General regulation

1. General law on consumer protection containing rules on advertising applicable to all media

- Federal Act of 8 March 1979, providing regulations for the protection of consumers (Consumer Protection Act - KSchG) Federal Law Gazette No. 140/1979 as amended by Federal Law Gazette I No. 48/2001

Section 3 of the Consumer Protection Act provides that consumers may withdraw from a contract with entrepreneurs. Entrepreneurs are persons for whom a business room is part of the operation of an enterprise. Accordingly, a consumer may declare his withdrawal from a contract in writing if he concludes the contract in a business room which is not permanently used by the entrepreneur (a classic example is the conclusion of a contract in the consumer's apartment on the basis of a door-to-door sale) or within the framework of a trip or promotion tour or is brought into the business rooms used by the entrepreneur after being personally and individually approached in the street. The consumer may exercise his right to withdraw from the contract within one week from the conclusion of the contract without giving reasons. This period of time starts only after the entrepreneur hands over a document about the purchase. This document must contain the name and the address of the entrepreneur, the subject of the deal and a written notice about the consumer's right of withdrawal. If no appropriate document is handed over, the right of withdrawal expires as late as one month after the contract has fully been fulfilled by both parties (i.e. rendering of payment by the consumer and of service by the entrepreneur).

- Federal Act against Unfair Competition – UWG, Federal Law Gazette No. 448/1984 as amended by Federal Law Gazette I No. 111/1999

The Unfair Competition Act regulates the economic competition among independent activities, setting a framework, among others, for competition and drawing a line between unrestricted rivalry and fair and service-oriented competition. The general

² Federal Act on the Austrian Broadcasting Corporation (ORF-Act, ORF-G), Federal Law Gazette I No. 83/2001

clause of Section 1 of the Unfair Competition Act provides that an action for damages or an injunction may be brought against anyone who, in doing business, resorts to competitive practices that offend against accepted moral standards.

2. Specific audiovisual regulations

a) Definitions

The definition of “**broadcasting**” (including radio and television) in Article 1 paragraph 1 of the Constitutional Act for the Safeguard of the Independence of Broadcasting 10 July 1974, Federal Law Gazette No. 396/1974), reads as follows:

“Broadcasting is the transmission of all kinds of items in the form of words, sounds or images, intended for the general public and communicated by means of electrical oscillations without recourse to connecting circuits, or alternatively through or via a conductor, as also the operation of technical facilities serving this end.”

All definitions of Article 1 of the TVWF Directive are, as a rule, formulated in exactly the same way as in the pertinent laws. Nevertheless, the terms “**television broadcast**” and “**broadcaster**” have been defined by the legislator in accordance with the individually applicable requirements. In the PrTV Act, for instance, which is not applicable to the ORF, a “broadcaster” (Section 2(1) of the PrTV Act) is defined as follows:

“ ‘broadcaster’ means the person, that – except the ORF – creates and/or composes radio or television programmes (analogue or digital) for the transmission by cable or satellite or aerial transmission and that transmits them or has them transmitted unaltered by third parties. Persons solely retransmitting programmes only are not regarded as broadcasters.”

The term “broadcaster“ thus implies all private broadcasters of cable programmes, satellite programmes and terrestrial analogue or digital programmes. Persons who merely supply or make parts of programmes available to a broadcaster who transmits them under his responsibility are not regarded as broadcasters. In this context, the regulator in a way combined the provisions of Article 1 paragraphs a and b of the TVWF Directive, i.e. the definitions of “television broadcasting” and “broadcaster”.

In analogy to this, the Private Radio Act (PrR-G)³ relevant for private radio broadcasters defines the term “radio broadcaster” as follows:

Section 2(1) of the PrR-G

“Radio broadcaster: the person who, with the exception of the Austrian Broadcasting Corporation, creates and/or composes radio programmes under his editorial responsibility and transmits them or has them transmitted by third parties.”

The definition of the term „**television advertising**“ has been taken over exactly from Article 1 paragraph c of the TVWF Directive in Section 13 paragraph 1 of the ORF Act and in Section 34 paragraph 3 of the PrTV Act.

The definition of the term “**surreptitious advertising**“ has been taken over exactly from Article 1 paragraph d of the TVWF Directive in Section 14 paragraph 2 of the ORF Act and in Section 19 paragraph 4 subparagraph b of the PrR Act. Section 34 paragraph 2 of the PrTV Act ~~only~~ mentions that “surreptitious advertising“ is not permitted.

The definition of the term “**sponsorship**“ has been taken over exactly from Article 1 paragraph e of the TVWF Directive in Section 17 paragraph 1 of the ORF Act and in Section 46 paragraph 1 of the PrTV Act. The term “sponsorship“ can also be found in Section 19 paragraph 5 subparagraph a of the PrR Act, where the wording of the definition contained in the TVWF Directive, adapted to radio broadcasting (“...*in the production of radio programmes...*“), is used analogously.

The definition of the term „**teleshopping**“ has been taken over exactly from Article 1 paragraph f of the TVWF Directive in Section 2 (23) of the PrTV Act. In the ORF Act (Section 13 paragraph 2), too, the term “teleshopping“ is used and defined, although the provision states that the ORF is strictly prohibited from using this type of advertising.

b) Authorisation to distribute advertising

Basically, advertising is allowed under the law both to the public broadcaster ORF and private television broadcasters. As far as the concrete legal framework is concerned, however, there

are considerable differences. The new ORF Act, having entered into force on 1 January 2002, has the aim, among others, to make a clear and transparent separation of public core tasks from other commercial activities of the ORF in order to counter any concerns under Community law regarding the ORF's funding modalities.

c) General rules on the content of TV advertising

The general requirements for television advertising to be found in the ORF Act and the PrTV Act go in certain aspects beyond the principles set out in Articles 12 and 16 of the TVWF Directive.

In addition to the requirements specified in Article 12 of the TVWF Directive, Section 14 paragraph 1 of the ORF Act provides that "television advertising" (in principle, the ORF is forbidden to broadcast teleshopping) on the public broadcasting programmes must not contain any discrimination on grounds of "*age, disability and religion*". Moreover, television advertising must not "*encourage illegal practices, be misleading and harmful to the interests of the consumers.*"

As regards private broadcasters, the general principles set forth in Article 12 regarding "television advertising and teleshopping" can be found in Section 37 of the PrTV Act. Section 37 also states that television advertising and teleshopping must not contain any discrimination on grounds of "*disability*" nor "*encourage illegal practices*". Analogously to the ORF Act, Section 34 paragraph 1 of the PrTV Act states, that television advertising and teleshopping must not "*be misleading and harmful to the interests of the consumers.*"

The principles regarding minors defined in Article 16 of the TVWF Directive can be found in Section 16 paragraph 5 of the ORF Act and Section 43 of the PrTV Act. In this respect, legislation has turned the requirements listed as "shall not" provisions in the TVWF Directive into stricter "*must not*" provisions for the ORF and also for private broadcasters.

d) Rules on duration of advertising and insertion in or between programmes

³ Federal Act issuing regulations on Private Radio Broadcasting (Private Radio Act – PrR-G), Federal Law Gazette I No. 20/2001

➤ Identification of advertising

The provisions of Article 10 paragraph 1 of the TVWF Directive have been taken over exactly in Section 38 of the PrTV Act and Section 13 paragraph 3 of the ORF Act. Similarly, the exact wording of Article 10 paragraph 2 of the TVWF Directive can be found in Section 36 paragraph 1 of the PrTV Act and Section 14 paragraph 7 of the ORF Act.

➤ Insertion between programmes

The provisions of Article 11 paragraph 1 of the TVWF Directive have been taken over exactly in Section 36 paragraph 1 of the PrTV Act and Section 14 paragraph 7 of the ORF Act.

➤ Insertion during programmes

The provisions of Article 11 paragraphs 1 to 4 of the TVWF Directive can be found, for one, in Section 14 paragraph 8 of the ORF Act, making it clear for the public broadcaster that, as a rule, the insertion of advertising during all public programmes is basically not permissible. It is only allowed during the broadcast of sports events and the transmission of similarly structured events and performances containing intervals (*f.i.* transmissions of theatre or concert performances). In the explanatory remarks on the ORF Act, it is pointed out that as regards the interpretation of “*similarly structured events and performances containing intervals*”, it will be of importance to what extent the ORF can exert an influence on the course and the structure of the event or performance, above all, whether it may influence the timing of intervals. If there is such a possibility, this will be no “similarly structured event”, such as the transmission of a soccer game where intervals take place without the ORF being able to influence the timing.

Section 15 of the ORF Act contains specific provisions regarding the insertion of advertising during the ORF’s thematic channels which can be broadcast by ORF subsidiaries. These regulations correspond, word-for-word, to the provisions of Article 11 paragraphs 1 to 5 of the TVWF Directive.

For private broadcasters, the exact wording of the provisions of Article 11 paragraphs 1 to 4 of the TVWF Directive has been taken over in Section 36 paragraphs 1 to 3.

➤ Prohibition to insert advertising

In principle, the ORF is forbidden (for exceptions see above) to insert advertising during its public programmes; it may only insert them during the thematic channels broadcast by its subsidiaries. These thematic channels are subject to the provisions of Article 11 paragraph 5 (have been taken over exactly in Section 15 paragraph 6 of the ORF Act).

Furthermore as advertising-free days, the law – only for the ORF and not for private broadcasters – specifies “*Good Friday*”, the “*1st of November*” and the “*24th of December*” (cf. Section 13 paragraph 5 of the ORF Act).

For private broadcasters, Section 36 paragraph 4 of the PrTV Act regulates that *in principle*, private broadcasters are required that “*the broadcast of religious services, programmes with a religious content, children’s programmes, news programmes, current affairs programmes and documentaries must not be interrupted by advertising or teleshopping.*” “News programmes, current affairs programmes and documentaries” may be interrupted by advertising provided their scheduled duration is at least 30 minutes.

➤ Duration

The duration of television advertising in public broadcasting programmes is governed by Section 13 paragraph 7 of the ORF Act. On the yearly average, advertising broadcasts must not exceed 5% of the daily length of programmes, deviations of not more than 20 per cent per day being admissible. In calculating the longest permissible advertising time, all announcements and closing announcements of sponsored programmes must be taken into account because of their commercial character (cf. Section 17 paragraph 5 of the ORF Act).

The determination of the length of permissible television advertising is to be based on a daily transmission time – independent of its actual length – of not more than 14 hours per day and programme. This means that on the yearly average, the ORF may use a maximum of 2.92% of its transmission time for advertising on each of its two channels.

For ORF subsidiaries broadcasting thematic channels the duration is fixed with 10 % of the daily transmission time (see section 9 para 5 ORF-Act).

Moreover, it needs to be noted that in principle the “Foundation Council” (“Stiftungsrat”) determines the extent of advertising on the ORF channels upon the proposal of the Director

General. Furthermore, the ORF is also subject to the provision of Article 18 paragraph 3 of the TVWF Directive (have been taken over exactly in Section 13 paragraph 5 of the ORF Act).

To private broadcasters, the provisions of Section 44 of the PrTV Act apply, which have been taken over exactly the provisions of Article 18 of the TVWF Directive regarding the duration of advertising and teleshopping.

For all broadcasters Art 18 para 2 of the TVWF Directive has been taken over (see section 44 para 2 of the PrTV-Act and section 13 para 7 last sentence of the ORF Act)

e) Surreptitious advertising

The provisions of Article 10 paragraph 4 of the TVWF Directive can be found in a stricter form in Section 34 paragraph 2 of the PrTV Act, and in Section 19 paragraph 4(b) of the PrR Act where it is said, that “*surreptitious advertising and similar practices in teleshopping as well as the use of subliminal techniques are prohibited.*” See also Section 14 para 2 (prohibition of surreptitious advertising) and Section 13 para 4 of the ORF Act (prohibition of subliminal advertising).

B. Regulations for specific products

1. Alcohol

The provisions on television advertising of alcoholic beverages can be found in Section 13 paragraph 4 and Section 16 paragraph 4 of the ORF Act as well as in Section 42 of the PrTV Act, the formulation of Article 15 of the TVWF Directive having been adopted word-for-word.

2. Tobacco

The ban on tobacco advertising is contained in Section 13 paragraph 4 of the ORF Act, in Section 39 of the PrTV Act, and in Section 19 paragraph 2 of the PrR Act.

3. Medicines

The provisions regarding medicines and medicinal products can be found in Section 16 paragraphs 1 to 3 and in Section 40 paragraphs 1 to 3 of the PrTV Act with the further stipulation – in addition to the provisions of Article 14 of the TVWF Directive – that the advertising provisions of the Medicines Act, Federal Law Gazette I No. 185/1983, of the Medicinal Products Act, Federal Law Gazette No. 657/1996, and of the advertising restrictions contained in the provisions for the exercise of health-related professions remain unaffected.

4. Cars

No specific regulations

5. Media

Section 13 paragraph 8 of the ORF Act contains a rule relating to the advertising of periodic printed works (such as daily and weekly newspapers, monthly journals) in ORF programmes. According to this rule, such advertising may only *“refer to the title (name of the printed work) and the reporting policy but not to their content”*. Moreover, the transmission time allocated for this purpose must not exceed two minutes of overall weekly advertising time. Furthermore, it is noted that *“transmission times and the fees shall be allocated to all media owners of such printed works on equal and non-discriminatory conditions”*.

The background of this rule is that advertising in the television programmes of the ORF can, as a rule, be afforded only by financially strong, powerful print media while the financially weaker competitors cannot make use of this effective means of advertising. In order to prevent market distortions and to promote pluralism in the media sector and, of course, to strengthen the independence of the ORF from the print media sector, the extent of advertising time was therefore restricted.

6. Religions, politics and parties, social issues and groups

No specific regulations

C. Self-regulation

„Österreichischer Werberat“ (<http://www.werberat.or.at/index.html>)

The system of self-regulation in the field of advertising has been created voluntarily by the advertising industry. The task of the “Österreichischer Werberat” (ÖWR) is to counteract any undesirable developments or abuses in advertising. The ÖWR has drawn up guidelines on self-regulation which are intended to prevent advertisements that are discriminatory, that undermine human dignity or that are misleading. These guidelines do not affect the freedom to advertise, which is entrenched in the Austrian Constitution in the form of the fundamental right to freedom of expression.

In general there is a degree on consumer complaints concerning advertising in Austria. In 2001 the ÖWR has already over 140 different cases, mostly regarding women discrimination, sexism and violence.

II. Teleshopping

A. General regulations

1. General law on consumer protection containing rules on distance selling, applicable to all media

- Federal Act of 8 March 1979 providing regulations for the protection of consumers (Consumer Protection Act - KSchG) Federal Law Gazette No 140/1979 as amended by Federal Law Gazette I No 48/2001
- Federal Act against Unfair Competition – UWG, Federal Law Gazette No 448/1984 as amended by Federal Law Gazette I No. 111/1999
- Federal Act inserting provisions on distance contracts into the Consumer Protection Act and the Federal Act against Unfair Competition of 1984 and amending the Product Liability Act (Distance Selling Act), Federal Law Gazette I No 185/1999

The Distance Selling Act implemented the requirements of the Directive on Distance Selling, the rules on distance selling being integrated into the Consumer Protection Act. This type of implementation was chosen because the Consumer Protection Act is the central instrument of Austria's consumer protection law and because it also helps apply the experience gained with it so far as well as the pertinent case law without much effort to distance contracts.

2. Specific audiovisual regulations

a) Definition

The definition of the term “teleshopping” has been taken over exactly from Article 1 paragraph f of the TVWF Directive in Section 2(23) of the PrTV Act.

b) Authorisation

Under Section 13 paragraph 2 of the ORF Act, the ORF is not allowed to broadcast teleshopping in its programmes. Private broadcaster, however, are allowed to do so.

c) General rules on content

The provisions regarding the content of teleshopping are the same as those applying to advertising programmes.

d) Rules on duration and insertion in and between programmes

As regards the duration of teleshopping, the provisions of Article 18, 18a, 19 and 19a of the TVWF Directive have been taken over exactly in Section 44 and section 45 of the PrTV Act (Article 18 paragraph 1 in section 44 paragraph 1, Article 18 paragraph 2 in section 44 paragraph 2, Article 18 paragraph 3 in section 44 paragraph 3, Article 18a in section 44 paragraph 4, Article 19 in section 45 paragraph 1 and Article 19a in section 45 paragraph 2).

B. Regulations for specific products

To alcoholic beverages and tobacco, the same provisions apply as are applicable to traditional advertising. As regards medicines, Section 41 of the PrTV Act contains a general ban on teleshopping for “*medicines and therapeutic treatments*”.

C. Self-regulation

As for advertising: Österreichischer Werberat (<http://www.werberat.or.at/index.html>)

III. Sponsorship

A. General regulations

2. General law on consumer protection applicable to all media

- Federal Act of 8 March 1979 providing regulations on the protection of consumers (Consumer Protection Act - KSchG) Federal Law Gazette No 140/1979 as amended by Federal Law Gazette I No 48/2001

3. Specific audiovisual regulations

a) Definition

The definition of the term “sponsorship“ (“Patronanzsendung”) has been taken over exactly from Article 1 paragraph e of the TVWF Directive in Section 17 paragraph 1 of the ORF Act and in Section 46 paragraph 1 of the PrTV Act. The term “sponsorship” can also be found in Section 19 paragraph 5a of the PrR Act where the wording of the definition of the TVWF Directive, adapted to radio broadcasting (“ ... *in the production of radio programmes* ... “), is used analogously.

b) Authorisation

Basically, sponsorship is allowed under the law both to the public broadcaster ORF and private television broadcasters.

c) General rules on content

Sponsoring in the ORF is governed by the requirements of Section 17 paragraph 2 of the ORF Act, which has been taken over exactly the rules of Article 17 of the TVWF Directive. In addition, stricter provisions apply to the ORF:

In Section 17 paragraph 2 subparagraph 2 (last sentence) it is stated that “*Reference to the sponsor of a specific broadcast during the broadcast is not allowed.*” Section 17 paragraph 7

prohibits the so-called “theme sponsoring” which means that someone who pays for the broadcast must not set any requirements regarding the theme on which a broadcast is based (“*The programming of programmes or parts of programmes based on thematic requirements of third persons who pays for the broadcast is prohibited.*”) Moreover, the general advertising restrictions for print media also apply (cf. Section 13 paragraph 8 of the ORF Act) to the announcement and the closing announcement of sponsored broadcasts (cf. Section 17 paragraph 6 of the ORF Act).

To private broadcasters, the provisions of Article 17 of the TVWF Directive have been taken over exactly in Section 46 of the PrTV Act and in Section 19 paragraph 5 of the PrR Act.

d) Rules on duration and insertion in and between programmes

no specific regulation

B. Regulations for specific products

In this respect, sponsoring is subject to the same regulations that apply to advertising and teleshopping.

C. Self-regulation

As for advertising: “Österreichischer Werberat” (<http://www.werberat.or.at/index.html>)

IV. Self-promotion

Section 13 paragraph 9 of the ORF Act provides a ban for the public broadcaster on so-called “cross promotion”. Consequently, the ORF is prohibited to advertise its radio programmes in its television programmes (and vice versa). This regulation does not cover neutral information about the content of specific programme elements. The background of this provision is that the legislator wanted to restrict the incomparably higher competitive advantage of the ORF over private broadcasters – due to its capacity to broadcast several television and radio

programmes and to advertise them mutually. The regulation is thus to prevent unilateral distortions of competition.

V. Other promotion techniques

1. Inevitable advertising

Section 14 paragraph 5 of the ORF Act contains a ban on product placement for the public broadcasting programmes - cinema films, television films and television series being explicitly excluded. Section 14 paragraph 6 of the ORF Act allows product placement only in so far as it cannot be avoided at sports events with sports field advertising or cannot be influenced by the broadcaster. The explanatory remarks on the ORF Act specify the term “product placement” to mean “*the effective placement, in terms of advertising, of proprietary products in a broadcast*”. Thus, this does not include the location of a programme or event in a specific place or a specific region (“location placement”).

What is generally prohibited, however, is product placement in children’s programmes (cf. Section 14 paragraph 6 of the ORF Act).

It has to be stressed that it can only be qualified as product-placement if the ORF receives payment or other return favours for “placing” the product.

VI. New advertising techniques

1. Split screen techniques

For the time being, only the ORF is using split screen techniques for the simultaneous transmission of TV programmes and other information (e.g. stock market prices during news programs- so far not for advertising) . Bearing in mind that no explicit regulations are yet existing regarding the use of split screens, broadcasters have to respect the general principles regarding TV advertising (e.g. separation of programmes and advertising).

2. Interactive advertising

There are no specific regulations on interactive advertising.

3. Virtual advertising

There are no specific regulations on virtual advertising.

The ORF stated that he will be using virtual advertising only in its own productions. The ORF points out that virtual advertising could endanger the journalistic quality of a programme if the broadcaster has not the full responsibility concerning the insertion of virtual items. Under Article 14 paragraph 8 of the ORF Act, advertising may be inserted in sports programmes or similarly structured programmes only during "*natural breaks*". The financing of sports programmes by way of product placement is under certain conditions (see section 14 para 6) permitted.

RADIO

I. Advertising

A. General regulations

1. General law on consumer protection containing rules on advertising, applicable to all media

- Federal Act of 8 March 1979, providing regulations on consumer protection (KSchG) Federal Law Gazette No. 140/1979 as amended by Federal Law Gazette I No. 48/2001
- Federal Act against Unfair Competition (*UWG*), Federal Law Gazette No. 448/1984 as amended by Federal Law Gazette I No. 111/1999

2. Specific audiovisual regulations

a) Definition

The definition of advertising is laid down in Section 19 paragraph 1 of the PrR Act. Under this provision, advertising comprises “*spots, short programmes and edited commercials including announcements and closing announcements of sponsored programmes*”.

b) Authorisation

Generally, radio advertising is permitted to all radio broadcasters, i.e. both the public broadcaster ORF under the ORF Act and private broadcasters under the PrR Act, for analogue terrestrial radio broadcasting and under the PrTV Act for radio broadcasting via satellite or cable.

As regards the ORF, however, legislation has imposed certain restrictions on advertising. The ORF is generally required to provide three nationwide and nine regionwide terrestrial radio programmes (cf. Section 3 paragraph 1 of the ORF Act). Section 13 paragraph 6 stipulates that one of the nationwide radio programmes must be free from advertising (*see below*).

c) General rules on content

As regards the radio programmes of the public broadcaster ORF, the same general requirements concerning advertising apply as in regard to television (cf. Section 14 paragraph 1 of the ORF Act).

The programming principles laid down for all private radio programmes in Section 16 paragraph 4 of the PrR Act stipulate that all programmes must “*respect the human dignity and fundamental rights of others*“ and must not “*incite hatred on the grounds of race, sex, religion or nationality*“. In addition, Section 19 paragraph 4 of the PrR Act provides that “*advertising must not be misleading or harmful to the interests of the consumers*”.

d) Rules on duration and insertion in and between programmes

The duration of radio advertising granted to private radio broadcasters under the PrR Act is laid down in Section 19 paragraph 1 of the PrR Act. This law provides that advertising programmes must not exceed a daily maximum of 172 minutes on an annual average basis, with a maximum permissible deviation of 20% per day.

Stricter and highly complex rules apply to the ORF: One of the nationwide radio programmes must be free from advertising, while for the other ORF radio-programmes the length of advertising (in all these programmes together!) must not exceed a daily maximum of 172 minutes on an annual average basis, with a maximum permissible deviation of 20% per day. In each of these other radio programmes the average annual duration of advertising must not exceed 8% of daily broadcasting time.

B. Regulations on specific products

As regards the radio programmes of the public broadcaster ORF, the same general requirements concerning advertising apply as in regard to television advertising (see above).

As regards private radio broadcasters under the PrR Act, there is a ban on tobacco and liquor in Section 19 paragraph 2 and a ban on advertising for medicines and therapeutic treatments in Section 20.

C. Self-Regulation

As for all advertising: “Österreichischer Werberat” <http://www.werberat.or.at/index.html>

II. Shopping

There exists no specific technique similar to teleshopping on radio in Austria.

III. Sponsorship

As regards sponsorship, the same rules apply to private radio and private television broadcasters which means that the definitions of Article 17 of the TVWF Directive is used analogously in Section 19 paragraph 5 of the PrR Act.

As regards the radio programmes of the public broadcaster ORF, analogous rules concerning sponsorship for television programmes apply (see above).

IV. Self-Promotion

As outlined above (with regard to television advertising), Section 13 paragraph 9 of the ORF Act provides a ban on cross promotion for the public ORF.

CINEMA

There exists no specific regulation or self-regulation for advertising in cinemas in Austria. As for agreements between producers, distributors and cinemas on advertising during and around movies, it was not possible to get any information about these issues.

INTERNET

The Austrian **Media Act** (Federal law of 12 June 1981 concerning the press and other media – MedienG, Federal Law Gazette No. 314/1981 as amended by Federal Law Gazette I No. 75/2000) dates back to a time when the Internet was not yet an issue. That is why the latter is not mentioned in the law. This does not mean, however, that the law is not applicable to the Internet since Section 1 of the Media Act gives a rather wide definition of the concept of "media":

“The term “media” comprises all means used to disseminate information and presentations with intellectual content by words, sounds or images to a large group of persons using methods of mass production or mass dissemination.”

This means that the type of transmission – paper or electronic – is not relevant, thus making at least any website and, possibly, even an e-mail message if it is directed to a large audience a medium, but of course not the Internet as such.

As regards provisions relating to advertising and consumer protection in this context, the following references to legal provisions may be made:

With the implementation of the E-Commerce Directive in the **E-Commerce Law**, which enters into force on 1 January 2002, certain legal aspects of the information society services, especially of electronic commerce, have been transposed into domestic law. The E-Commerce Law transposes the Directive into Austrian law, but goes even beyond it as regards the issue of **link liability** (Section 18) or the provisions governing **unsolicited commercial e-mail**.

As far as the question of link liability is concerned, regard should be had to a civil-law decision issued by the Austrian Supreme Court "austropersonal.com/jobmonitor.com" of 19/12/2000, 4 Ob 274/00y and 4 Ob 225/00t). In its decision, the Court notes that anyone providing a link from their website to another website, intends and positively ensures that an Internet user may obtain access to the content of that other website which is accessible from their website. The link provider thus facilitates access to a third website and – acting as a sort of assistant to the person holding power of disposition over that website – thereby contributes to its visualisation. In the event of an offence under the competition law being committed on the foreign website, the link provider is also partially responsible.

It is a known fact that there is an opt-out solution for "unsolicited commercial e-mail" under European law (Article 7 of the E-Commerce Directive). In Austria, we have an "opt-in solution", which means that the user must agree from the outset that he or she consents to receiving commercial e-mails. Such declarations of consent are frequently made in connection with product registrations or completion of customer survey forms during online shopping. E-mail advertising is generally prohibited in Austria. This solution is also considered to be compatible with the EU Directive. The issue is regulated in the Telecommunications Act (Federal Law Gazette I No. 100/1997 as amended by Federal Law Gazette I No. 32/2001), which also provides for offences to be punishable by a maximum fine of ATS 500,000 (cf. section 104 paragraph 3 subparagraph 24 Telecommunications Act).

The relevant provisions are as follows:

“Section 101. Calling up a subscriber– or sending them a telecopy – for advertising purposes without the subscriber’s prior consent is inadmissible. The consent of the subscriber is equivalent to the consent of a person authorised by the subscriber to use their line. A declaration of consent may be revoked at any time. Such revocation of consent does not affect the existence of a contractual relationship with the addressee of the declaration of consent. The delivery of electronic bulk mail or advertising material (spamming) is subject to the prior – freely revocable – consent of the recipient.”

Thereby making Austria the first EU member country to issue an explicit statutory ban on unsolicited e-mail advertising.

The Distance Selling Act (Federal Law Gazette I No. 185/1999), which implements the EU Distance Selling Directive and which entered into force on 1 June 2001, imposes certain information duties on entrepreneurs and grants consumers a right to cancel the order within seven working days applies to all contracts entered into by exclusively using one or more telecommunication media (including all public Internet services, telephone, teleshopping and all sorts of printed material). It follows that a personal face-to-face contact prior to the conclusion of a contract precludes the applicability of the Distance Selling Act. Contracts on financial services or the construction or sale of real estate, entered into through the use of vending machines or automated office rooms, or auctions, are also excluded from the scope of the law.

I. Self-regulation on the Internet

The Internet-Ombudsman ([Http://www.ombudsmann.at](http://www.ombudsmann.at)) provides information about all aspects of shopping on the Internet for consumers. This self-regulation institution was established by the “Austrian Institute for advanced telecommunication” in common with the “Association for consumer information”. The Internet-Ombudsman tries to help in giving increased security for e-commerce by means of extensive information and the development of quality standards. In case of problems arise in e-commerce people can inform the Ombudsman who seek to achieve out-of-court arbitration and offer for members legal protection whenever out-of-court settlement proves impossible.

MOBILE PHONE

Unfair, in terms of competition law, is also unsolicited telephone advertising or “cold calling”. Undesired telephone calls for advertising purposes are prohibited under Section 101 of the Telecommunications Act unless there is a permanent business relationship between the advertiser and the addressee or the subscriber has explicitly consented to it beforehand. This consent can be withdrawn any time. If this regulation is violated, a fine of up to ATS 500,000 may be imposed under Section 104 paragraph 3 subparagraph 24 of the Telecommunications Act.