

**BIRD & BIRD**

**STUDY ON THE EVOLUTION OF NEW  
ADVERTISING TECHNIQUES**

**REPUBLIC OF IRELAND**

**REPUBLIC OF IRELAND**

**- SUMMARY -**

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

## Television

The Irish Codes of Standards based on the Broadcasting Act of 1990 implement the TVWF Directive and were modified in 1999. There is a new legislation that deals directly with broadcast advertising, the Broadcasting Act 2001.

### 1. Definitions

- **Advertising** is defined as “*any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotion purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment*”. The Codes then provides for certain exclusions from the definition of advertising.
- **Sponsorship.** There is several definition of the sponsorship. According to the BCI Codes, the sponsorship in broadcasting services shall be construed, for the time being, as any contribution made directly or indirectly by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audiovisual works, to the financing of television or radio programmes with a view to promoting its names, its trademark, its image, its activities or its product”. This definition is similar to the one of the Directive TVWF with the following difference: the BCI Codes refers to any contribution made directly or indirectly by an undertaking, whereas the directive simply refers to any contribution made.

On the other hand, the TRE Sponsorship Guidelines states that “Sponsorship is a relationship entered into with a broadcaster and any other organisation with the objective of promoting products, goods, interests or services for a consideration. Distinction is needed between what sponsorship is and what advertising is. Advertising is a message from a commercial or other body contained in a recognisable and separate entity, a commercial break. Sponsorship credits stand apart from commercial breaks and the minutage allowed for them”. This definition is not similar in wording to that in article 1(e) of the directive, although the substance of a relationship between broadcaster and another with a view to promoting property is similar.

- **Teleshopping** is defined similarly the same as in the Directive TVWF. The Irish definition refers to “other property”, whereas the directive is slightly more expansive in referring to “immovable property, rights and obligations”. Moreover, the directive refers to supply “in return for payment” whereas the Irish code is silent on that point.

- **Other relevant definition:**

- “**Cable system**” means a wired broadcast relay system;
- “**MMD system**” means a multipoint microwave distribution system used for the transmission of broadcasting services on a point to point basis;
- “**the Internet**” means a system commonly known by that name.

## 2. **Advertising**

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

Advertising and teleshopping material shall be inserted between the programmes. Advertising and teleshopping material may also be inserted during the programmes provided the respect of the same conditions as the ones mentioned in the Directive.

### b) **Rules on the maximum amount of advertising**

#### ➤ **Regarding public broadcasting**

According to the Broadcasting Authority Act, 1960 which applies to the public broadcasters, “the total daily time fixed by the Authority for broadcasting advertisements and the distribution, determined by the Authority, of that time throughout the programmes, shall be subject to the approval of the Minister”. Currently, RTE and TG4 can show 6 minutes of advertising or teleshopping material per hour. However they can broadcast up to 7.5 minutes of advertising or teleshopping material per hour in peak times, provided that the daily allocation of advertising time is not exceeded.

#### ➤ **Regarding independent broadcasting**

The Broadcasting Act, 2001 states that the Broadcasting Commission of Ireland shall make rules with respect to:

- The total daily time that shall be allowed for the transmission of advertising and teleshopping material on a broadcasting services, being a service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act or the Act of 1998, and
- The maximum period that shall be allowed in any given hour for the transmission of advertising and teleshopping material on such a broadcasting service or sound broadcasting services and the Commission may make different such rules with respect to different classes of broadcasting service or sound broadcasting service.

### 3. Teleshopping

The general rules on duration of advertising and insertion of adverts within and between broadcasts also apply to teleshopping. However, it is specified that “forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of service shall not exceed one hour per day on any broadcasting service”. To date, Irish television occasionally features teleshopping spots, but as yet there are no dedicated teleshopping programmes. There is no distinction drawn between teleshopping spots and teleshopping programmes in the applicable legislation or Codes.

### 4. Sponsorship

It is specified in the Broadcasting Act, 2001 that the Broadcasting Commission of Ireland shall prepare codes specifying standards to be complied with and rules and practices to be observed in respect of amongst other sponsorship. The Commission has as yet drawn up no such codes and rules. Thus, the current situation is that the sponsorship of broadcasting is still governed by BCI Codes made under section 4 of the 1990 Act.

The BCI provide further details on types of sponsorship. Accordingly, “sponsorship occurs where any or all of the following are present:

- Cash injection,
- Investment in kind and supply of goods, services or knowledge.

Cash injection is the provision of direct funding by a sponsor. Investment in kind is the acceptance of facilities or services from a sponsor”.

#### 1. RTE Sponsorship Guidelines

“Sponsored programmes (as opposed to coverage of sponsored events) cannot include the name of the sponsor in the title of the programme.

The nature of the sponsorship must be made clear in the credits, thus;

- a) A sponsor funding part of whole of a programme should say one of the following two lines, ‘Sponsored by.....’ or ‘ In association with.....’.
- b) If a sponsor provides / makes the programme this too must be made clear, e.g. ‘Produced by.....’
- c) No credit can in anyway allow the broadcaster to abdicate its full responsibilities, e.g. ‘Brought to you by .....’.

Current advertising straplines or those used in the past three years may not be used in sponsorship credits. Nor can **credits** be subsequently used for advertising material while the sponsorship relationship is still in place. Credits may however be programme related and may also include product use.

While credits and advertising messages must be different, credits must still comply with all relevant Advertising Codes of Practice in force at the time.

Credits must not be confused with station announcements or news items thus the use of Continuity Presenters or Newsreaders is not acceptable either for visual purposes or as voiceovers.

In all cases RTÉ remains the final arbitrator on the suitability of credits”.

In comparison with the Directive, the RTÉ Sponsorship Guidelines are not based on the directive, in the same way that the BCI Codes are. Thus certain principles from the directive are echoed in the RTÉ Guidelines, but not directly referenced.

### BCI Codes

Section 19 of the BCI Codes on sponsorship provides an introduction to sponsorship, which is aspirational in tone. That section states that “editorial integrity is an essential basis for a broadcaster's output. Equally, the sponsorship of certain programmes is an attractive commercial proposition for many organisations, particularly corporate advertisers. It should be seen as a legitimate part of a broadcaster's revenue and a means of enhancing existing programmes or of making programmes which otherwise could not be included in the schedules”.

“Broadcasters should ensure that the programming responsibilities imposed by sections 18(1), 18(2), 18(1B), and Section 17 of the Broadcasting Authority Act, 1960 (inserted by Section 13 of the Broadcasting Authority (Amendment) Act, 1976) in the case of R.T.É., and Sections 9 and 18 of the Radio and Television Act, 1988, in the case of the Independent Broadcasting Contractors operating under the auspices of the Independent Radio and Television Commission<sup>1</sup>, must not be prejudiced by sponsorship”.

Section 20.1 of the BCI codes deals with the responsibilities of broadcasters. Section 20.1 states that “it is the responsibility of broadcasters to ensure that editorial integrity is not influenced by the presence of sponsorship. A sponsor:-

(i) must not be involved in the manufacture, supply or provision of a product or service which is listed as unacceptable in the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial promotion in Broadcasting Services (Part I of the code),

(ii) must not be associated with a programme which addresses an audience to which its commercials are not permitted to appeal (e.g. alcoholic drink sponsorship of youth programmes is not permitted) or during which it would not be permitted to advertise,

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<sup>1</sup> Now known as the Broadcasting Commission of Ireland, since the Broadcasting Act, 2001.

(iii) should not have an involvement in the editorial content of the programme or appear to do so (// article 17, a of the directive).

Note: This is not intended to inhibit normal communication between a sponsor and a broadcaster”.

Section 21 of the BCI Codes deals with the general standards required of sponsored programmes. According to s21 “sponsored programmes shall meet the following requirements in addition to the more specific requirements for each programme category:

(i) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes (// article 17, a of the directive);

(ii) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of the programmes; (In view of this identification requirement, logos would be acceptable as ‘bumper’ credits around advertising breaks during the programme) (// article 17, b of the directive + additional explanatory information).

(iii) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services other than in advertisements in commercial breaks (// article 17, c of the directive, the only difference being the insertion of the clarifying explanation “other than in advertisements in commercial breaks” in the Irish codes)”.

Section 21.2 of the BCI Codes states “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, the advertising of which is prohibited by the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial Promotion in Broadcasting.

The subsidiary of a manufacturer or brand-seller of products, the advertising of which is prohibited, who uses a name or a trademark that differs completely from the manufacturers and whose activity is different from the production, distribution or provision of services in relation to such products may sponsor programmes”. These information are not included in the Directive.

Section 21.3 of the BCI Codes states “sponsorship involvement in any programme must not constitute advertising as defined in the Codes of Standards, Practice and Prohibition in Advertising and other forms of Commercial Promotions in Broadcasting Services”.

Section 23.3 of the BCI Codes states that “ special events coverage may involve the broadcaster in agreeing logistical and facilities support from commercial or Public

Service bodies. In such circumstances credits and on-air acknowledgements of contributors may be permitted provided:-

- (i) acknowledgements take the form of a statement of information and are not based on copy supplied to the programme makers.
- (ii) credits are consistent with the programme style”.

In relation to sports programmes, section 23.4 of the BCI Codes states that “sponsors must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of programmes. Product placement by the sponsor is forbidden as is the display of advertising material “in studio” ”.

Section 23.5 of the BCI Codes states that “broadcasters must ensure that coverage of sporting events, in terms of the actual decision to cover and method of coverage is not in any way influenced by the presence of a sponsor or sponsorship.

Section 25.1 of the BCI Codes states that “presenters and other ‘on-air’ personnel must not make gratuitous reference to commercial products or services”.

Section 25.2 of the BCI Codes states that “under no circumstances shall presenters and other ‘on-air’ personnel advertise or promote during the course of a programme any products or events with which they are associated”.

Section 25.3 of the BCI Codes states that “product endorsement by programme presenters during the course of a programme is prohibited irrespective of source or purchase arrangement”.

Section 26 of the BCI Codes states that “it is not always possible in the interests of authenticity to avoid references to the names of commercial products or services or their incidental portrayal in radio and television programmes, but the practice known as ‘product placement’ is strictly forbidden”.

This material in sections 23 to 26 of the BCI Codes is not referred to in the directive. Thus the Irish codes are more detailed by the inclusion of this material limiting sponsorship of television broadcasts.

#### Regarding the rules on the duration and the insertion of the sponsorship:

- The RTE Sponsorship Guidelines states that “no sponsor’s message can appear within a TV programme.

Where commercial breaks appear within the programme the sponsor may be credited both going into and coming out of the break.

Credits at the beginning and end of a programme may be both visual and verbal but must not exceed 10 seconds in length. Where two or more sponsors are involved this may be extended to 15 seconds.

In and out of commercial breaks on television, credits may also be visual and verbal but must not exceed 7 seconds in length. On radio a verbal credit of similar duration can be given”.

- BCI Codes does not state any specific rules on the duration and insertion of sponsored programmes.

## **5. Product Placement - Surreptitious advertising**

The RTE Sponsorship Guidelines 2001 defines and prohibits product placement. The BCI codes states exactly the same principle about the practice known as product placement.

## **6. New advertising techniques**

### **a) Split screen techniques :**

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

### **b) Virtual advertising**

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

### **c) Interactive advertising**

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

## Radio

The radio legislation is the same as the law dealing with television advertising.

Section 3 of the 1990 act states that the total daily times for broadcasting advertisements should not exceed 7.5 per cent of the total daily programme transmission time and the maximum period so fixed to be given to advertisements in any one hour should not exceed five minutes<sup>2</sup>.

This was amended by s2 of the Broadcasting (Amendment) Act 1993 which empowers the Authority (RTE) to fix the total daily times for broadcasting advertisements, and the maximum period so fixed to be given to advertisements in any hour, subject to the approval of the Minister”.

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<sup>2</sup> Section 3 of the Broadcasting Act 1990 made specific provision for Atlantic 25 radio station. Section 3 stated “in the case of the sound broadcasting service known as ‘Atlantic 25’ operating on a longwave frequency and licensed under section 16 of the Principal Act, the total daily time for broadcasting advertisements shall not exceed 20 per cent. of daily programme transmission time and the maximum period to be given to advertisements in any one hour shall be as determined by the Authority”.

## **Internet and Mobile Phone**

Irish law does not currently regulate Internet advertising in terms of broadcasting, although the general law on consumer protection applicable to all media will apply to advertising on the Internet.

The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 became law in Ireland in May 2001, implementing Directive 97/7/EC.

However, there is no specific self-regulation on advertising, sponsoring or sales offers on the Internet. Individual Internet Service Providers may choose to abide by the codes of the Advertising Standards Authority of Ireland, and request that advertisers on their service do so.

The mobile telephones in Ireland only carry advertising from the network service provider. There is no specific self-regulation on advertising, sponsoring or sales offers on mobile telephones. Individual telephone companies may choose to abide by the codes of the Advertising Standards Authority of Ireland, and request that advertisers on their service do so.

**REPUBLIC OF IRELAND**

**- REPORT -**

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## TABLE OF CONTAINT

<b>TELEVISION .....</b>	<b>16</b>
<b>I. Advertising.....</b>	<b>16</b>
A. General regulation .....	16
1. General law on consumer protection containing rules on advertising applicable to all media..	16
2. Specific audiovisual regulation .....	17
a) Definitions .....	20
b) Authorisation to distribute advertising .....	26
c) General rules on the content of TV advertising .....	26
d) Rules on duration of advertising and insertion in or between programmes .....	29
➤ Identification of advertising (art.10.1/2 Directive) .....	29
➤ Additional rules on identifying advertising.....	29
➤ Insertion between programmes .....	30
➤ insertion during programmes .....	30
➤ Prohibition to insert advertising.....	31
➤ Duration .....	31
e) Surreptitious advertising (Art.10 Directive) .....	32
B. Regulation for Specific Products.....	33
1. Alcohol.....	33
2. Tobacco.....	35
3. Medicines .....	39
4. Cars .....	42
5. Media.....	43
6. Religions, politics and parties, social issues and groups .....	43
C. Self-Regulation.....	45
<b>II. Tele-shopping .....</b>	<b>46</b>
A. General regulation .....	46
1. General law on consumer protection applicable to all media .....	46
2. Specific audiovisual regulation .....	47
a) Definition.....	48
b) Authorisation .....	48
c) General rules on content .....	48
d) Rules on duration and insertion in and between programmes .....	49
B. Regulation for Specific Products.....	50
1. Alcohol.....	50
2. Tobacco.....	50
3. Medicines .....	50
4. Cars .....	50
5. Media.....	50
6. Religions, politics and parties, social issues and groups .....	50
C. Self-Regulation.....	51
<b>III. Sponsorship.....</b>	<b>51</b>
A. General regulation .....	51
1. General law on consumer protection applicable to all media .....	51
2. Specific audiovisual regulation .....	51
a) Definition.....	52
b) Authorisation to distribute sponsorship .....	53
c) General rules on content of TV sponsorship.....	54
d) Rules on duration and insertion in and between programmes .....	58
B. Regulation for Specific Products.....	59

1.	Alcohol .....	59
2.	Tobacco .....	60
3.	Medicines .....	60
4.	Cars .....	61
5.	Media.....	61
6.	Religions, politics and parties, social issues and groups. ....	61
C.	Self-Regulation.....	61
<b>IV.</b>	<b>Self-promotion .....</b>	<b>61</b>
<b>V.</b>	<b>Other promotion techniques .....</b>	<b>63</b>
1.	Product placement .....	63
<b>VI.</b>	<b>New advertising techniques .....</b>	<b>63</b>
1.	Split screen techniques .....	64
2.	Interactive advertising .....	64
3.	Virtual advertising.....	64
4.	Other new advertising techniques.....	64
<b>RADIO .....</b>	<b>65</b>	
<b>I.</b>	<b>Advertising.....</b>	<b>65</b>
A.	General regulation .....	65
1.	General law on consumer protection applicable to all media .....	65
2.	Specific audiovisual regulation .....	65
a)	Definition.....	65
b)	Authorisation to distribute advertising .....	65
c)	General rules on content .....	65
d)	Rules on duration and insertion in and between programmes and maximum amount of advertising.....	66
B.	Regulation for Specific Products .....	66
1.	Alcohol.....	66
2.	Tobacco .....	66
3.	Medicines .....	66
4.	Cars .....	67
5.	Media.....	67
6.	Religions, politics and parties, social issues and groups. ....	67
C.	Self-Regulation.....	67
<b>II.</b>	<b>Shopping (specify whether a technique similar to tele-shopping exists on radio).....</b>	<b>67</b>
A.	General regulation .....	67
1.	General law on consumer protection containing rules on distance sale, applicable to all media.....	67
2.	Specific audiovisual regulation .....	67
a)	Definition.....	67
b)	Authorisation .....	68
c)	General rules on content .....	68
d)	Rules on duration and insertion in and between programmes .....	68
B.	Regulation for Specific Products .....	68
1.	Alcohol.....	68
2.	Tobacco .....	68
3.	Medicines .....	68
4.	Cars .....	68
5.	Media.....	68
6.	Religions, politics and parties, social issues and groups. ....	68
C.	Self-Regulation.....	68

**III. Sponsorship..... 69**

# TELEVISION

## **I. Advertising**

### **A. General regulation**

#### **2. General law on consumer protection containing rules on advertising applicable to all media**

Contract law in Ireland is mainly common law, so issues concerning advertising, such as its legal status in the formation of contract, are defined by reference to precedent. However, a certain number of consumer protection statutes exist, including the Consumer Information Act, 1978 which deals with misleading advertising by building upon the Merchandising Marks Act, 1887. The Consumer Information Act, 1978 legislates for accuracy in information given in connection with goods or services, and prohibits false and misleading trade descriptions, false and misleading statements, false and misleading prices and false and misleading advertisements.

The definition of ‘advertisement’ in section 1 of the Consumer Information Act, 1978 simply states that it “includes a catalogue, a circular and a price list”. Thus advertising is not exhaustively defined as in the later legislation and codes considered in this report, but by implication the definition would encompass technological methods of advertising such as audio-visual. Section 8(1) of the 1978 act deals with misleading advertisements. It states that “a person shall not publish, or cause to be published, an advertisement in relation to the supply or provision in the course or for the purposes of a trade, business or profession, of goods, services or facilities if it is likely to mislead, and thereby cause loss, damage or injury to members of the public to a material degree.” Breach of this section is a criminal offence. To supervise this, section 8(3) empowers the Director of Consumer Affairs to apply to the High Court for an order prohibiting the publication of an advertisement which contravenes section 8(1).

The European Communities (Misleading Advertising) Regulations 1988<sup>3</sup> gives effect to Directive 84/450/EEC, which also prohibits misleading advertising and entitle the Director of Consumer Affairs to take proceedings in relevant cases.

The Consumer Credit Act 1995<sup>4</sup> relates to consumer credit, hire-purchase, hiring and money lending. In section 2 ‘advertisement’ is defined as including “every form of advertising, whether in a publication, by television or radio”. Part II of the act deals with the advertising of credit, hire purchase or consumer hire agreements. Section 21 requires

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<sup>3</sup> S.I. No. 134 of 1988

<sup>4</sup> The act gives effect to Council Directive no. 87/102/EEC of 22 December, 1986, as amended by Council Directive no. 90/88/EEC of 22 February, 1990

that an advertisement offering to provide credit shall, if mentioning a rate of interest, contain a clear and prominent statement of the annual percentage rate of interest charged, using a representative example if no other means is practicable, and no other rate of interest shall be included in the advertisement. Section 22 provides rules for advertising financial accommodation related to goods or services. Section 23 deals with advertising of consumer-hire agreements, and section 24 deals with comparative advertising for financial accommodation. Section 25 deals with advertising of credit without charge and section 26 deals with advertising of financial accommodation to comply with the act. Section 27 imposes an obligation on a provider of financial accommodation to ensure advertisements comply with the act and section 28 allows the Minister for Enterprise Trade and Employment to make further regulations relating to advertising of financial accommodation. Section 135 of the act deals with advertising of house loans.

### 3. Specific audiovisual regulation

#### Public broadcasting

National radio broadcasting began in Ireland in 1926, and was originally governed by the Wireless Telegraphy Acts, 1926 and 1956<sup>5</sup>. Television and radio broadcasting in Ireland are governed by the Broadcasting Authority Acts, 1960 to 2001, which are construed together as one act.

The Broadcasting Authority Act, 1960 was passed to enable an authority to be established for the purpose of providing a national television and sound broadcasting service<sup>6</sup>. The Irish national public service broadcasting authority was originally known as Radio Éireann (Irish Radio), and is now known as Radio Telefís Éireann, (Irish Radio and Television or RTÉ) as a result of section 3 of the Broadcasting Authority (Amendment) Act 1966.

RTÉ started national television broadcasting in 1961. RTÉ now operate three television channels, RTÉ 1, Network 2, and TG4<sup>7</sup>, as well as five radio channels – Radio 1, 2FM, Radio na Gaeltachta, Lyric fm and Ceol Net.

All advertising on the channels under the control of RTÉ must comply with the following legislation:-

(a) Codes prepared by the Broadcasting Commission of Ireland under Section 19 of the Broadcasting Act, 2001,

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<sup>5</sup> These acts are still in force but insofar as they applied to radio broadcasting, they have been supplanted by the Broadcasting Authority Acts, 1960 to 2001 and the Radio and Television Act, 1988.

<sup>6</sup> The act also amended and extended the Wireless Telegraphy Acts, 1926 and 1956.

<sup>7</sup> TG4 is the name currently given to the Irish language television station operating in Ireland, which was established in 1996. It was originally called Teilifís na Gaeilge, or TnaG. The Broadcasting Act 2001 allows for the establishment of TG4 as an independent statutory body, to be known as Teilifís na Gaeilge.

(b) Codes drawn up and amended from time to time by the Minister for Arts, Culture and the Gaeltacht under Section 4 of the Broadcasting Act, 1990

(c) Section 20 of the Broadcasting Authority Act, 1960, as amended,

(d) The provisions of Articles 10 to 18, inclusive, of Directive 89/552/EC<sup>8</sup> as amended by Directive 97/36/EC, and

Additional restrictions imposed by statute on various types of advertising. It is the duty of RTÉ to ensure that advertising accepted complies with the law in all its forms.

The regulatory codes currently in place are the RTÉ Code of Standards for Broadcast Advertising, written in 1985, the Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services, written in 1995 and amended in 1999, and the RTÉ Sponsorship Guidelines, written in 2001.

The relationship between these various codes is that 1985 RTÉ Code of Standards for Broadcast Advertising was created prior to the introduction of the EC Directive 89/552/EC, and applied solely to public broadcasting which was all that existed in Ireland at that time. Section 4 of the Broadcasting Act, 1990 required the Minister for Arts, Culture, Heritage and the Gaeltacht to draw up and amend codes on advertising, sponsorship and promotion. In 1995 the Minister, in exercise of her powers under s4 of the 1990 act, created the Broadcasting Commission of Ireland's<sup>9</sup> Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services. These codes drew upon the earlier RTÉ Codes, and are largely based on Directive 89/552/EEC. The Codes were amended in 1999 to take account of the amendment of Directive 89/552/EEC by Directive 97/36/EC. The BCI Codes apply to both public and independent broadcasters. In 2001 RTÉ created a new set of sponsorship guidelines.

#### Independent broadcasting

The Radio and Television Act, 1988 was passed to provide for the establishment of the Independent Radio and Television Commission (IRTC). Under this act, the IRTC's function was to enter into contracts to provide for sound broadcasting services and a television programme service additional to the services provided by RTÉ. TV3 signed a broadcasting contract with the IRTC in October 1997, and went on air in September 1998 as Ireland's first independent television channel. In addition, the IRTC currently licence 45 independent sound broadcasting services – made up of one national independent

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<sup>8</sup> References to Directive 89/552/EEC in this Section shall be construed as references to Directive 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and Council of 30 June 1997.

<sup>9</sup> Formerly known as the Independent Radio and Television Commission.

commercial radio station, twenty two local independent commercial radio stations, one special interest station in Dublin, fourteen community/ of community interest radio stations and seven hospital/institutional radio stations. Since the Broadcasting Act, 2001, the IRTC is now known as Coimisiún Craolacháin na hÉireann, or the Broadcasting Commission of Ireland (BCI).

In the case of a sound broadcasting service or television programme service contracted under the Radio and Television Act, 1988, all advertising must comply with the following legislation:-

- (a) Codes prepared by the Broadcasting Commission of Ireland under Section 19 of the Broadcasting Act, 2001,
- (b) Section 10 of the Radio and Television Act, 1988;
- (c) Codes drawn up and amended, from time to time by the Minister for Arts, Culture and the Gaeltacht under Section 4 of the Broadcasting Act, 1990
- (d) The provisions of Articles 10 to 18, inclusive, of Directive 89/552/EC<sup>10</sup> as amended by Directive 97/36/EC, and
- (e) Additional restrictions imposed by statute on various types of advertising. It shall be the duty of the broadcaster<sup>11</sup> to ensure that advertising accepted complies with the law in all its forms.

The regulatory codes currently in place for independent broadcasting are the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services

#### The Broadcasting Act, 2001

The most recent legislation, the Broadcasting Act, 2001 became law on March 14<sup>th</sup> 2001. This new legislation deals directly with broadcast advertising. Part III of the act deals with standards in broadcasting, and section 19 states that the Broadcasting Commission of Ireland shall, acting upon the direction of the Minister for Arts, Heritage, Gaeltacht and the Islands, make codes and rules with respect to programme material. Section 19(b) refers to a code “in respect of advertising, teleshopping material, sponsorship and other

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<sup>10</sup> References to Directive 89/552/EEC in this Section shall be construed as references to Directive 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and Council of 30 June 1997.

<sup>11</sup> ‘Broadcaster is not defined by the 1988 act, but ‘broadcast’ is defined as “the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not”.

forms of commercial promotion”. To date no such new codes have been prepared under the Broadcasting Act, 2001.

Thus at the present time, the codes in place for both national and independent broadcasting are those created under section 4 (1) of the Broadcasting Act, 1990, plus the RTÉ Sponsorship Guidelines. Section 4 empowered the Minister for Arts, Culture and the Gaeltacht to draw up “codes governing standards, practice and prohibitions in advertising, sponsorship or other forms of commercial promotion in broadcasting services” which RTÉ and other broadcasting and television programmes service contractors shall comply with. The Minister for Arts, Heritage, Gaeltacht and the Islands, in the exercise of his powers under s4(1) of the Broadcasting Act 1990, has drawn up Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services, which are currently in place. These codes were created in 1995 and amended in 1999<sup>12</sup>. The Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services are hereinafter referred to as the BCI Codes.

a) Definitions

**Broadcaster**

According to s2 of the Broadcasting Act, 2001 “ ‘**broadcaster**’ means a person who supplies a compilation of programme material for the purpose of its being transmitted or relayed as a broadcasting service (whether that person transmits or relays that material as a service or not)”.

Thus the Broadcasting Act, 2001 does not directly distinguish between natural and legal persons as in the directive. However, section 11(c) of the Interpretation Act, 1937 states that “the word ‘person’ shall, unless the contrary intention appears, be construed as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons as well as an individual”<sup>13</sup>.

The focus in the Irish legislation is on the supply of the programme material, whereas the directive focuses on the exercise of editorial responsibility. The Irish legislation and the directive also distinguish between the compilation of the material and transmitting or relaying of the material in a slightly different manner.

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<sup>12</sup> The Broadcasting Act, 2001 repealed section 4 (1) of the Broadcasting Act, 1990, thus all new codes will be created under s19 of the 2001 Act.

<sup>13</sup> The Interpretation Act, 1937 will be repealed by the passing of the Interpretation Bill, 2000. Section 14(c) of the Interpretation Bill, 2000 provides that “ ‘person’ shall be construed as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual”, i.e. the same definition as s11(c) of the Interpretation Act, 1937.

In the directive, the definition of ‘broadcaster’ in article 1(b) is linked to the definition of ‘television broadcasting’ in article 1(a). No such direct link is made in the Irish legislation, although the rules of statutory interpretation allow for such a schematic approach.

### **Television broadcasting**

The Broadcasting Act, 2001 provides a definition of a ‘broadcasting service’. It is not a specific definition of ‘television broadcasting’ as in the directive, because the Broadcasting Act, 2001 applies to other media besides television.

According to s2 of the 2001 act, a “ ‘**broadcasting service**’ means a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telegraphy, a cable or MMD system or a satellite device, directly or indirectly for reception by the general public, whether the material is actually received or not, but does not include such a service that is provided by the Internet”.

Further definitions in s2 state that a

“**cable system**’ means a wired broadcast relay system”,

“**MMD system**’ means a multipoint microwave distribution system used for transmission of broadcasting services on a point to point basis”

“**the ‘Internet**’ means a system commonly known by that name”.

This contrasts with the directive definition of “television broadcasting”. Both pieces of legislation refer to material relayed to or received by the public. The Irish legislation is more specific in listing and defining methods of communication. Both pieces of legislation list exclusions; the directive excludes “communications service providing items of information or other message on individual demand”, and the Broadcasting Act, 2001 excludes services provided by the Internet.

One major difference between the two is that the directive definition of television broadcasting specifically includes “the communication of programmes between undertakings with a view to their being relayed to the public”. The Irish law is silent on this point.

### **Television advertising**

The Broadcasting Act, 2001 does not provide a definition of television advertising, because it’s scope is not limited to television. Advertising is referred to in s19(b) and (c) of the act, which states that the Broadcasting Commission of Ireland shall produce codes and rules with respect to programme material if directed to do so by the Minister for Arts, Heritage, Gaeltacht and the Islands. To date, no codes have been produced under the 2001 Act.

The RTÉ Code of standards for Broadcast Advertising applies to public sector broadcasting i.e. RTÉ and TG4. Section 1 of the RTÉ Code defines **advertisement** as “any item of publicity inserted in the programmes broadcast by RTÉ in consideration of payment made to that body. The Broadcasting Authority Act, 1960 provides that references to advertisements shall be construed as including references to advertising matter in sponsored programmes, that is to say, programmes supplied for advertising purposes by or on behalf of an advertiser”.

As stated in part I.A.2. of this report, the current operable set of codes are the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship, and other forms of Commercial Promotion Broadcasting Services, created under section 4 of the Broadcasting Act, 1990.

The BCI Codes provide a definition of an **advertisement** in section 2. Section 2.1 starts with the somewhat aspirational statement that “the nature and format of advertising on broadcasting services can vary greatly and can change over time. It is desirable therefore that in defining the word ‘advertisement’ it would be done in an organic and dynamic way to allow for future developments and should seek to embrace those forms of publicity which one seeks to bring within the code while identifying, as far as possible, those forms which one may wish to exclude from the intended understanding of the concept”.

Section 2.2(i) further provides “in the context of these codes the word ‘advertisement’ shall be construed as:

(i) any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotion purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment”.

This definition is based on article 1(c) of the directive as originally enacted, prior to the amendments of Council Directive 97/36/EC.

However, the BCI Codes are more detailed than the directive, giving further clarification of inclusions and exclusions to the definition of advertising:

Section 2.2 (ii) of the BCI Codes states that advertising shall also be construed as:

(ii) including references to advertising matter in sponsored programmes, i.e., programmes supplied for advertising, commercial or promotional purposes by or on behalf of an advertiser or programmes financed, in whole or in part, by advertisers for advertising, commercial or promotional purposes, subject to the exception at 2.3 (vii) below.

The air time given to the advertisements referred to above (and not excluded under section 2.3) shall be taken into account by the Broadcaster for the purpose of calculation of the advertising time limits then in force”.

Section 2.3 of the BCI Codes then provides for certain exclusions from the definition of advertising. Section 2.3(i) of the BCI Codes states that “advertising shall not denote informational announcements about upcoming programmes on the services on which the announcement is made or informational announcements about upcoming programmes on related or unrelated services. In this context information shall mean the date and time of transmission of the named programme/programmes including ‘trailer’ excerpts and a brief description of the programmes’ contents”.

Section 2.3 (ii) of the BCI Codes states that advertising shall not include appeals given air-time free of charge to any Registered Charity.

Section 2.3 (iii) of the BCI Codes states that advertising shall not denote public service information announcements including warnings about public safety and health.

Section 2.3 (iv) of the BCI Codes states that advertising shall not denote information announcements of forthcoming concerts, recitals or performances whether intended for broadcasting or not given by the National Symphony Orchestra, the RTÉ Concert Orchestra, and other RTÉ performing groups or of any other comparable groups which are employed by or under contract to R.T.É. or by or under contract to a sound broadcasting contractor or television programme service contractor established under the Radio and Television Act, 1988, to which the public are allowed entry free of charge.

Section 2.3 (v) of the BCI Codes states that advertising shall not denote announcements of forthcoming concerts, recitals or performances organised by RTÉ, sound broadcasting contractors or a television programme service contractor, whether intended for broadcasting or not, to which the public are allowed entry free of charge.

Section 2.3 (vi) of the BCI Codes states that advertising shall not denote announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster, to which the public are allowed entry free of charge.

Names of the concerns (shopping centres, commercial or retail outlets, supermarkets, etc.) providing facilities for outside broadcasts may be credited at the beginning and/or end of the programme and at prudent intervals during the programme on an informational basis. Promotional references to the concerns during the programme shall be considered advertising. In the case of non-broadcast events jointly sponsored by the broadcaster and one or more commercial concerns, informational accreditation of the joint sponsor(s) may be given in broadcast announcements without it constituting advertising.

Section 2.3 (vii) of the BCI Codes states that accreditation of a sponsor under the conditions prescribed under the Codes of Standards, Practices, and Prohibitions relating to Sponsorship in Broadcasting Services shall not constitute advertising.

In 1999 the BCI Codes were amended. A new section 2.4.1 was inserted to deal with self-promotional advertisements, which will be dealt with in part IV of this report.

### **Surreptitious advertising**

The Broadcasting Act, 2001 does not provide a definition of surreptitious advertising and does not refer to it. However, section 8.2 of the BCI Codes prohibits surreptitious advertising. Paragraph 8.2 defines surreptitious advertising as “meaning the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising purposes and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration”.

This is the same definition as in article 1(d) of the directive.

## **Sponsorship**

The Broadcasting Act, 2001 does not provide a definition of sponsorship. Sponsorship is referred to in s19 (b) and (c) of the act, by which the Minister can direct the Broadcasting Commission of Ireland to make codes and rules about standards in broadcasting, including sponsorship. This has not yet been done.

The RTÉ Sponsorship Guidelines 2001 define sponsorship in section 1. The definition states that “sponsorship is a relationship entered into with a broadcaster and any organisation with the objective of promoting products, goods, interests or services for a consideration”.

The guidelines further state that “**distinction is needed between what sponsorship is and what advertising is.** Advertising is a message from a commercial or other body contained in a recognisable and separate entity, a commercial break. Sponsorship credits stand apart from commercial breaks and the minutage allowed for them”.

The BCI Codes of Standards, Practice And Prohibitions in Advertising, *Sponsorship*, and other forms of Commercial Promotion Broadcasting Services provide a definition of an advertisement in s2.2 (ii) which states that advertising shall be construed as: “including references to advertising matter in sponsored programmes, i.e., programmes supplied for advertising, commercial or promotional purposes by or on behalf of an advertiser or programmes financed, in whole or in part, by advertisers for advertising, commercial or promotional purposes, subject to the exception at 2.3 (vii)”.

This definition is quite different to that in article 1(e) of the directive. Specifically the limitation in the directive that the sponsor not be engaged in television broadcasting or audio-visual production does not apply in the BCI Codes.

The BCI Codes are more specific than the directive because they refers to programmes supplied for advertising, commercial or promotional purposes as well as those to which contributions are made.

Part II of the BCI Codes provides a definition of sponsorship in paragraph 20.1 This definition states that “sponsorship shall be construed for the time being as any contribution made directly or indirectly by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audio-visual works, to the financing of television or radio programmes with a view to promoting its name, its trade mark, its image, its activities or its product”.

This is largely similar to the definition in article 1(e) of the directive, with the following minor difference: the BCI codes refers to any contribution made directly or indirectly by an undertaking, whereas the directive simply refers to any contribution made.

## **Teleshopping**

Teleshopping is referred to in s19 of the Broadcasting Act, 2001 in relation to standards in broadcasting. Section 19(18) states “in this section ‘teleshopping material’ means material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property”.

This is similar to the definition in article 1(f) of the directive. The Irish definition refers to “other property”, whereas the directive is slightly more expansive in referring to “immovable property, rights and obligations”. The only difference is that the directive refers to supply “in return for payment” whereas the Irish code is silent on that point.

The BCI Codes also provide a definition of teleshopping in section 18.4. This paragraph states that “teleshopping is a form of commercial promotion in broadcasting services which when transmitted constitutes direct offers to the public of goods and other property (whether real or personal) or services”.

This is different to the definition in the directive, as the Irish code predates the amendment of the directive in 1997 which inserted the definition of teleshopping<sup>14</sup>.

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<sup>14</sup> RTÉ Code of Standards for Broadcast Advertising from 1985 does not does not provide a definition of teleshopping and does not refer to it. However, the code does deal with mail order shopping, in section 19. Section 19 provides as follows:

### Mail Order Advertising

Advertisements for goods offered by mail order will not be accepted unless:

- (a) The name of the advertiser is prominently displayed at the address given in the advertisement,
- (b) Adequate arrangements exist at that address for enquiries to be handled by a responsible person available on the premises during business hours.
- (c) Samples of the goods advertised are made available there for inspection
- (d) An undertaking has been received from the advertiser that money will be refunded in full to buyers who can show justifiable cause for dissatisfaction with their purchases or with a delay in delivery.
- (e) If required, arrangements are made for an approved independent organisation to receive and hold monies forwarded by television or radio respondents until it has been certified that the goods have been dispatched.

Advertisers who offer goods or services by mail order must be prepared to meet any reasonable demand created by their advertising, and should be prepared to demonstrate, or where practicable to supply samples of, the goods advertised to Radio Telefís Éireann.

b) Authorisation to distribute advertising

Irish law does not distinguish between public and independent broadcasters in relation to their authorisation to distribute advertising. Advertising makes up part of the broadcasting output of RTÉ 1, Network 2, TG4 and TV3. Both the public and independent broadcasters are subject to legal regulation on advertising, as explained in part 1.A.2 of this report.

c) General rules on the content of TV advertising

**Note:** For clarity and convenience, sections 1.A.2.c -e. of this report dealing with television advertising also deals with teleshopping, where appropriate, as the rules are the same in many instances.

**Article 12**

As stated previously, section 19 of the Broadcasting Act 2001 deals with standards in broadcasting. According to s19(1) “the Broadcasting Commission shall, upon being directed by the Minister to do so and in accordance with the provision of this section, prepare –

- (a) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service (other than advertising and other activities as aforesaid falling within paragraph (c)) and
- (b) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service, being advertising and other activities as aforesaid which relate to matters likely to be of direct and indirect interest to children”.

No such codes and rules have as yet been drawn up by the Broadcasting Commission of Ireland under the 2001 Act.

General rules on the content of television advertising are found in the RTÉ Code of Standards for Broadcast Advertising, from 1985. The general introduction to the RTÉ Codes states “the general principle which governs all broadcast advertising is that it should be legal, honest, decent and truthful. It is recognised that this principle is not peculiar to broadcasting, but is one which applies to all reputable advertising in other media in this country. Nevertheless, broadcasting, and particularly television, because of its intimate penetration of the home, raises problems which do not necessarily occur in

other media and it is therefore essential to maintain a consistently high quality in broadcast advertising”<sup>15</sup>.

More recent general rules on the content of television advertising and teleshopping material are found in the BCI Codes, drawn up by the Minister for Arts, Heritage, Gaeltacht and the Islands under s4 (1) of the Broadcasting Act, 1990.

Section 4.1 of the BCI Codes sets the general aspirational standard for broadcast advertising. That section, which is very similar to the general introduction to the RTÉ Code states “the general principle which governs all broadcast advertising is that it should be legal, honest, decent and truthful. Broadcasting, and particularly television broadcasting, because of its constant presence in the home, raises problems which do not necessarily occur in other media and it is therefore essential to maintain a consistently high quality in broadcast advertising”. Section 4.2 states that “these codes are intended to be applied in the spirit as well as in the letter”.

The general standards on the content of television advertising are contained in section 5 of the BCI Codes. Section 5.1 states “advertising shall not –

- (i) prejudice respect for human dignity,
- (ii) include any discrimination on grounds of race, sex or nationality,
- (iii) be offensive to religious or political beliefs, or
- (iv) encourage behaviour prejudicial to the protection of the environment.

According to s18.4 of the BCI Codes, section 5 of the BCI Codes shall also apply to teleshopping material. Section 5 is similar to and based upon article 12 of the directive as amended. However, the major difference between the Irish and EU legislation is that the Irish legislation is more expansive in stating that advertising shall not encourage behaviour prejudicial to health and safety, as in article 12(d) of the directive. This is also in section 11 of the BCI Codes, which is headed ‘Health and Safety’<sup>16</sup>.

## **Article 16**

Section 14 of the BCI Codes deals with ‘Advertising and Children's Programmes’.

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<sup>15</sup> The general introduction to the RTÉ Code of Standards for Broadcast Advertising 1985, goes on to state aspirationally that “because of the particular qualities of radio and television, RTÉ and all advertisers making use of these media must accept a high degree of responsibility towards the family and the community in general – particularly with regard to the changed role of women in Irish society, the special needs of children, community responsibility for the advancement of education and culture, decency and decorum in production and propriety in the presentation of advertising”.

<sup>16</sup> Section 11 of the BCI Codes states “advertisements should not encourage behaviour prejudicial to health or safety. Advertisements should not without justifiable reason depict or describe situations which show dangerous practices or a disregard for safety. Special care should be taken in advertisements directed towards or depicting children”.

Section 14.1 of the BCI Codes states that “advertisers must exercise the utmost care and discrimination with regard to the content and presentation of advertisements transmitted during breaks within or near or adjacent to programmes designed for children”.<sup>17</sup>

Section 14.2 of the BCI Codes states that “advertisements shall not exhort children to buy a product or service by exploiting their inexperience or credulity”.

Section 14.3 of the BCI Codes states that “advertising shall not exploit the special trust minors place in parents, teachers or other persons”.

Section 14.4 of the BCI Codes states that “advertisements shall not directly encourage minors to persuade their parents or others to purchase or make enquiries about the goods or services being advertised”.

Section 14.5. of the BCI Codes states that “advertisements shall not unreasonably show children in dangerous situations”. Section 14.5 should be read in conjunction with section 11 on Health and Safety where it states “Special care should be taken in advertisements directed towards or depicting children”.

Section 14 of the BCI Codes is based on article 16 of the directive as amended. The opening of section 14.1 and article 16 are different. Section 14 of the BCI Codes appears to be limited to advertisements transmitted within or near childrens’ programmes. There is no such limit in the directive. This is a major difference between the Irish and European laws, and as a result the Irish protection of child viewers is less effective than that in the directive.

According to s18.4 of the BCI Codes, section 14 of the BCI Codes shall also apply to teleshopping material. Section 18.6 of the BCI Codes states that “teleshopping material shall not exhort minors to contract for the sale or rental of goods or services”. This section was inserted by the amendments to the BCI Codes in 1999, and is identical to article 16.2 of the directive, which was inserted by amendment in 1997.

The advertising of products aimed at children, particularly toys, has been an issue of some debate in the Irish media in recent years, but advertising targeted at children is still common. The Broadcasting Commission of Ireland has stated that it will give priority to the introduction of new Codes and Rules specifically relating to children's advertising, as provided for in s19(c) of the Broadcasting Act, 2001.

### Children and the advertising of alcohol

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<sup>17</sup> This is very similar to the wording of s25 of the old RTÉ Code of Standards for Broadcast Advertising. The general introduction to the RTÉ Code of Standards for Broadcast Advertising 1985 talks about broadcaster’s responsibilities to the special needs of children. Section 25 of the Code deals with ‘Advertising and Children's Programmes’. It states that “advertisers must exercise the utmost care and discrimination with regard to the content and presentation of advertisements intended for transmission near or adjacent to programmes designed for children”. Appendix 1 of the Code provides further detail on the child audience, the child in advertisements and advertisements for toys and games.

As explained in part I.B.1. of this report, Irish broadcasters are subject to clear policies on the advertising of alcohol<sup>18</sup>. Section 15 (e) of the BCI Codes states that “broadcasters will ensure that alcoholic drink advertisements are not transmitted in or around programmes primarily intended for young viewers or listeners; advertisers are required to take account of the age profile of the viewers and listeners so that advertisements are communicated, so far as it is possible, to adults”. Section 15(i) of the BCI Codes states that “advertisements for alcoholic drink may not be aimed specifically at minors or, in particular, depict minors consuming these beverages”. This is identical to article 15(a) of the directive.

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

➤ **Identification of advertising (art.10.1/2 Directive)**

Article 10 of the directive is mirrored by section 8 of the BCI Codes, as amended in 1999, which deals with ‘Identification of Advertisements’<sup>19</sup>.

Section 8 of the BCI Codes, as amended, states that “advertisements and teleshopping material shall be clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means. In principle, they shall be transmitted in blocks and isolated advertising spots shall remain the exception”. This is the same as article 10.1 and article 10.2 of the directive, apart from some minor differences in wording.

➤ **Additional rules on identifying advertising**

The BCI Codes provide for two additional rules on the identification of advertising, which are not present in the directive.<sup>20</sup> Section 8.3 states that “advertisements shall not

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<sup>18</sup> Appendix 4 to the RTÉ Code of Standards for Broadcast Advertising, dealing with the advertising of alcohol, states that “advertising for alcoholic drinks must not be directed at young people or encourage young people or other non drinkers to begin drinking. Treatments which are likely to appeal to young persons must not be used and children must not be seen or heard in any advertisement for alcoholic drink”.

<sup>19</sup> Section 4 of the RTÉ Code of Standards for Broadcast Advertising 1985 deals with ‘Programme Separation’. It states that “No advertisement may include anything that states, suggests or implies, or could reasonably be taken to state, suggest or imply, that any part of any programmes broadcast by RTÉ has been supplied or suggested by an advertiser. This shall not apply to sponsored programmes”.

Section 5 of the RTÉ Codes deals with Identification of Advertisements. It states that “an advertisement must be clearly distinguishable as such and recognisably separate from the programmes”.

The initial statement of section 5 is similar to that in Article 10.1 of the directive, but the later detail is different. (As stated below the RTÉ Code does not deal with the issues in Article 10.4.).

<sup>20</sup> These rules are also in the RTÉ Code of Standards for Broadcast Advertising 1985. Section 5 (a) states that “situations and performances reminiscent of broadcast programmes must not be used in such a way as to blur the distinction between programmes and advertisements. In marginal cases, the acceptance of an advertisement having such themes may depend upon some positive introductory indication that this is the advertiser’s announcement”.

feature, visually or orally, persons regularly presenting news and current affairs programmes, and the expression 'News Flash' must not be used as an introduction to an advertisement, even if preceded by an advertiser's name.

Section 8.4 states that “situations and performances reminiscent of broadcast programmes must not be used in such a way as to blur the distinction between programmes and advertisement. References to programmes are unacceptable in advertisements”.

A clarification at the end of the rules states as follows: “NOTE: These rules do not prohibit the inclusion of an advertisement by reason only of the fact that it is related in subject matter to an adjacent programme e.g. advertisements for farm products and fertilizers in intervals around a farming programme”.

➤ **Insertion between programmes**

Section 9, as amended, of the BCI Codes is entitled 'Insertion of Advertisements'. Section 9.1 states that “advertisements and teleshopping material shall be inserted between programmes. Provided the conditions contained in paragraphs 9.2 to 9.5 are fulfilled, advertisements and teleshopping material may also be inserted during programmes in such a way that the integrity and value of the programme taking into account natural breaks in and the duration and nature of the programme and the rights of the rights holders are not prejudiced”.

This is exactly the same as article 11.1 of the directive as amended.

➤ **insertion during programmes**

Section 9.2 of the BCI Codes, as amended, provides that “in programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements and teleshopping material shall only be inserted between the parts or in the intervals”.

This is exactly the same as article 11.2 of the directive as amended.

Section 9.3 of the BCI Codes, as amended, states that “the transmission of audio-visual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than forty-five minutes, may be interrupted once for each complete period of forty-five minutes. A further interruption is allowed if their scheduled duration is at least twenty minutes longer than two or more complete periods of forty-five minutes.

This is exactly the same as article 11.3 of the directive as amended.

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(b) “the expression "News Flash" must not be used as an introduction to an advertisement, even if preceded by an advertiser's name”.

Section 9.4 of the BCI Codes, as amended, states that “where programmes, other than those covered by paragraph 9.2 are interrupted by advertisements, a period of at least twenty minutes should elapse between each successive advertising break within the programme.

This is exactly the same as article 11.4 of the directive as amended.

➤ **Prohibition to insert advertising**

Section 9.5 of the BCI Codes, as amended, states that “advertisements shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when their scheduled duration is less than thirty minutes shall not be interrupted by advertisements. If their scheduled duration is for thirty minutes or longer, the provisions of the previous paragraphs shall apply”.

This is exactly the same as article 11.5 of the directive as amended.

Thus overall, section 9 of the BCI Codes is identical to article 11 of the directive.

➤ **Duration**

RTÉ

Section 20(3) of the Broadcasting Authority Act, 1960 which applies to RTÉ states that “the total daily time fixed by the Authority for broadcasting advertisements, and the distribution, determined by the Authority, of that time throughout the programmes, shall be subject to the approval of the Minister”.

In addition, section 31(1) of the Broadcasting Act 2001, which applies to RTÉ, states that “in the case of a broadcasting service provided by the Authority (not being a broadcasting service which consists of programme material supplied by it pursuant to a contract entered into under this Act), the total daily times for broadcasting advertisements and teleshopping material fixed by the Authority and the maximum period so fixed to be given to advertisements and teleshopping material in any hour shall be subject to the approval of the Minister.

This provision also applies to TG4 (formerly known as Teilifís na Gaeilge), the Irish language station operated by RTÉ since 1996. Section 49 of the Broadcasting Act 1990 states that “in the case of a broadcasting service provided by Teilifís na Gaeilge (not being a broadcasting service which consists of programme material supplied by it pursuant to a contract entered into under this Act), the total daily times for broadcasting advertisements and teleshopping material fixed by Teilifís na Gaeilge and the maximum period so fixed to be given to advertisements and teleshopping material in any hour shall be subject to the approval of the Minister”.

Currently, RTÉ and TG4 can show six minutes of advertising or teleshopping material per hour. However, they can broadcast up to seven and a half minutes of advertising or teleshopping material per hour in peak times, provided that the daily allocation of advertising time is not exceeded<sup>21</sup>.

### Independent broadcasting

Section 19(3) of the Broadcasting Act, 2001, states that the Broadcasting Commission of shall “in accordance with subsection (5) makes rules with respect to – the total daily time that shall be allowed for the transmission of advertising and teleshopping material on a broadcasting service or sound broadcasting service, being a service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act or the Act of 1988, and the maximum period that’ shall be allowed in any given hour for the transmission of advertising and teleshopping material on such a broadcasting service or sound broadcasting service and the Commission may make different such rules with respect to different classes of broadcasting service or sound broadcasting service”.

Currently, TV3 may show ten minutes of advertising or teleshopping material per hour.

Under article 18 of the directive as amended, the portion of transmission time allocated to advertising and teleshopping spots shall not exceed 20% of daily transmission time. Thus under the current Irish law, both public and independent broadcasters are subject to stricter regulation than that in the directive<sup>22</sup>.

#### e) Surreptitious advertising (Art.10 Directive)

Section 8.2 of the BCI Codes prohibit surreptitious advertising. Section 8.2 defines surreptitious advertising as “meaning the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising or purposes and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration”. Section 8 has been amended to also apply to teleshopping material, by section 18.5 of the BCI Codes.

Section 8.2 of the BCI Codes first defines surreptitious advertising and then prohibits it, and the prohibition is expressed in the same terms as in the directive.

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<sup>21</sup> Previously, section 3 of the Broadcasting Act 1990 limited the amount of advertising to be broadcast per day. Section 3 stated that the total daily times for broadcasting advertisements should not exceed 7.5 per cent. of the total daily programme transmission time and the maximum period so fixed to be given to advertisements in any one hour should not exceed five minutes.

<sup>22</sup> Section 12 of the BCI Code entitled ‘Time Limits on Certain Forms of Advertising’ states “forms of advertising such as direct offers to the public for the sale, purchase, or rental of products or for the provision of services shall not exceed one hour per day of the broadcasting service”.

## **B. Regulation for Specific Products**

Note: For clarity and convenience, section 1.B1.-6 of this report dealing with television advertising also deals with teleshopping, where appropriate, as the rules are the same in many instances.

### **1. Alcohol**

As previously stated, section 19 of the Broadcasting Act, 2001 states that the Broadcasting Commission of Ireland shall, acting upon the direction of the Minister for Arts, Heritage, Gaeltacht and the Islands, make codes and rules with respect to programme material. Section 19(b) refers to a code “in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion”. To date no such new codes have been prepared under the Broadcasting Act, 2001.

As such, general rules on the content of television advertising are found in the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services, drawn up by the Minister for Arts, Heritage, Gaeltacht and the Islands under s4 (1) of the Broadcasting Act, 1990.

Section 15 of the BCI Codes deals with the advertising of alcohol. It states as follows: “The advertising of alcoholic drink may be accepted by broadcasters provided it complies fully with the following criteria:-

Alcoholic drink advertising and teleshopping material must not encourage young people or other non-drinkers to begin drinking - it must be cast towards brand selling and identification only”.

This provision is specific to the Irish code. It is different from article 15(a) of the directive which is a prohibition of advertising aimed at minors, whereas this part of the Irish codes is more aspirational in tone, and also applies to ‘other non-drinkers’ as well as young people.

Section 15 (b) of the BCI Codes states “this code recognises a voluntary code whereby spirit based alcoholic drinks (i.e. whiskey, gin, vodka, brandy, etc.) are not advertised on radio or television. The code is framed on the assumption that this situation will continue”<sup>23</sup>.

This provision is specific to the Irish code.

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<sup>23</sup> Section 23(q) of the RTÉ Code of Standards for Broadcast Advertising 1985 provides that advertisements for “alcoholic spirits i.e. ‘hard’ liquor products, are unacceptable. However, section 28 of the RTÉ Code states that “the advertising of alcoholic drink may be accepted by RTÉ provided it complies with the regulations set out in Appendix 4”.

Section 15 (c) of the BCI Codes states “this code will apply to all other alcoholic drinks, i.e., beers, wines, sherries, fortified wines, vermouths, liqueurs, etc”.

This provision is specific to the Irish code.

Section 15 (d) of the BCI Codes states “where soft drinks are promoted as mixers this code will apply in full. When promoted as refreshments in their own right soft drinks are not subject to this code, but due care should be exercised if bar or similar locations are used”.

This provision is specific to the Irish code.

Section 15 (e) of the BCI Codes states “broadcasters will ensure that alcoholic drink advertisements and teleshopping material are not transmitted in or around programmes primarily intended for young viewers or listeners; advertisers are required to take account of the age profile of the viewers and listeners so that advertisements are communicated, so far as it is possible, to adults”.

This provision is specific to the Irish code.

Section 15 (f) of the BCI Codes states “advertising and teleshopping material shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light”.

This is identical to article 15(e) of the directive.

Section 15 (g) of the BCI Codes states “advertisements and teleshopping material shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilizer or a means of resolving personal conflicts”.

This is also identical to article 15(d) of the directive, apart from the additional use of the word ‘tranquilizer’ in the BCI codes.

Section 15 (h) of the BCI Codes states “advertising and teleshopping material shall not place emphasis on high alcoholic content as being a positive quality of the beverages”.

This is identical to article 15(e) of the directive.

Section 15 (i) of the BCI Codes states “advertisements and teleshopping material for alcoholic drink may not be aimed specifically at minors or, in particular, depict minors consuming these beverages”.

This is identical to article 15(a) of the directive. When coupled with section 15(a) and s15(e) of the Irish code above, the Irish legal position is stricter in prohibiting the targeting of alcohol advertising and teleshopping to minors and young people.

Section 15 (j) of the BCI Codes states “the advertising of alcoholic drinks should not create the impression that consumption of such beverages contributes towards sexual attraction and success, or social success.

This is very similar to article 15(c) of the directive. The major difference is that the Irish law is more stringent in that it prohibits the linking of alcohol to sexual attraction, as well as the sexual success mentioned in the directive.

Section 15 (k) of the BCI Codes states “advertisements shall not link the consumption of alcohol to enhanced physical performance or to driving”.

This is identical to article 15(b) of the directive.

According to s18.5 of the BCI Codes, these prohibition also apply to teleshopping material.

In conclusion, the current Irish law is stricter than that required by the EU directive. Although all parts of article 15 of the directive are reproduced exactly in section 15 of the BCI Codes, the addition of another set of other rules increases the regulation of alcohol advertising (and teleshopping material).

## 2. Tobacco

Tobacco advertising on television has long been subject to regulation. Section 23 of the RTE Code of Standards for Broadcast Advertising 1985 states that advertisements for certain products and services will not be accepted. Section 23(p) prohibits the advertising of “cigarettes, cigars and tobacco products”.

Section 13 of the BCI Codes as amended states that “all forms of advertising and teleshopping materials for cigarettes, cigars and other tobacco products shall be prohibited. NB An advertiser who markets more than one product may not use advertising copy devoted to an acceptable product for purposes of publishing the brand name or other identification of an unacceptable product”.

The initial part of s13 of the BCI Codes is very similar in language to article 13 of the directive, the only difference being the mention of cigars in the BCI Codes. The additional prohibition on advertising of other products with the same brand name arguable makes the BCI Code more stringent (although it may not add anything to the ban on “all forms of television advertising” in article 13 of the directive.).

Ireland has recently introduced draft legislation, the Public Health (Tobacco) Bill, 2001 which will totally prohibit the advertising of tobacco products in all media. This bill will repeal the current legislation which controls tobacco advertising – the Tobacco (Health Promotion and Protection) Act, 1988, and the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978. As a consequence, this report will now deal with both the existing legislation and the proposed changes.

## **Existing Irish Law**

The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978 is an act which provides for the control and regulation (including the prohibition) of advertising of tobacco products and of other means of promoting the sale of such products (including sponsorship).

According to section 1 of the 1978 Act “ ‘advertisement’, in relation to a tobacco product, includes every form of recommendation of the product to the public, including, in particular—

- (a) the statement of the name of the product or of any brand, trade description or designation by reference to which the product is sold, where such a statement may reasonably be regarded as a recommendation of the product to the public, and
- (b) the statement of any properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to a purchaser of the product, and cognate words shall be construed accordingly”.

Section 2 of the act provides that “the Minister for Health may make regulations for the control and regulation of—

- (a) advertising of tobacco products,
- (b) sponsorship,
- (c) any other activities which are intended or are likely to promote the sales of tobacco products”.

Section 2 (2) states “without prejudice to the generality of subsection (1) of this section, regulations under this section may provide for all or any of the following—

- (a) the prohibition of particular kinds of advertising of tobacco products,
- (b) the prohibition of particular kinds of sponsorship,
- (c) the control of the form, content and frequency of advertisements of tobacco products,
- (d) the restriction of expenditure on advertising of tobacco products and on sponsorship,
- (e) a requirement that an advertisement for a tobacco product (or a particular kind of such an advertisement) shall include a notice or statement (in such form as shall be specified in the regulations) indicating the risk to the health of persons associated with the use of the product,
- (f) a requirement that a package, container or wrapper in which a tobacco product (or a particular tobacco product) is packed or offered for sale shall bear a notice or

statement (in such form as shall be specified in the regulations) indicating the risk to the health of persons associated with the use of the product,

- (g) a requirement that any person engaged in the importation, manufacture, sale, promotion or distribution of tobacco products shall furnish to the Minister such information as the Minister considers necessary for the purposes of this Act,
- (h) the prohibition of any offers to sell tobacco products of a particular brand at prices lower than those otherwise obtaining for that brand by making available to persons a coupon or similar document or otherwise,
- (i) the prohibition on the sale of tobacco products at prices which are so much lower than those at which tobacco products of a similar type or character are at the material time being sold that the sale at the lower prices constitutes in the opinion of the Minister a sales promotion device,
- (j) the prohibition of the use, in relation to the sale or purchase of tobacco products, of vouchers, trading stamps, coupons, premia, tokens or gifts,
- (k) the enforcement, of regulations under this section by officers of the Minister and by officers of a health board established under the Health Act, 1970”.

The Tobacco (Health Promotion and Protection) Act 1988 amended section 3 of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978 by substituting the following penalties for breach of the act:

Section 3. (1) A person who contravenes a regulation under section 2 of this Act shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000, or
- (b) on conviction on indictment, to a fine not exceeding £10,000.

(2) Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of any person who, when the offence is committed, is a director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

(3) Summary proceedings in relation to an offence under this section may be brought by the Minister or by an officer, appointed by the Minister for that purpose, of the Minister or of a health board”.

## **Proposed Irish Law**

The Public Health (Tobacco) Bill, 2001 seeks to control the sale, marketing and smoking of tobacco products. This legislation prohibits all advertising of tobacco products in all media, not simply television advertising.

Section 2 of the bill states that “ ‘advertisement’ includes, in relation to a tobacco product, every form of recommendation of the product to the public and in particular –

- (a) (i) a statement of the name of the manufacturer or importer of a tobacco product, the name of any brand of tobacco product, or
  - (ii) a statement of any trade description or designation, or a display or any other publication of a trademark, emblem, marketing image or logo, by reference to which the product is marketed or sold, in circumstances where such statement, display or publication may reasonably be regarded as a recommendation of the product to the public, and
  - (b) a statement of the properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to the purchaser of the product,
- and cognate words shall be construed accordingly”.

This proposed new definition is far more specific than that in the directive because it applies to tobacco advertising in a multitude of forms. The Irish bill does not specify payment as part of the definition, nor is it limited to television advertising.

Section 33(1) of the Public Health (Tobacco) Bill, 2001 states “ Subject to sections 34 and 35, a person who advertises a tobacco product shall be guilty of an offence”.

Section 34 of the bill provides that the Tobacco Control Agency (established under section 9 of the bill) may exempt certain tobacco advertising in certain foreign publications circulated in Ireland. Section 35 exempts advertising directed at persons engaged in the sale or distribution of tobacco products.

Section 38 of the bill also prohibits certain marketing practises, which can be interpreted to include advertising<sup>24</sup>. Section 38(6) makes it “an offence for a person to supply free of charge to a member of the public any tobacco product for the purposes of promoting the consumption of that product”.

Section 38 (7) of the bill makes it “ an offence for a person to supply or sell to a member of the public any voucher, coupon or other document or thing (intended to be used as a substitute for money) for the purposes of its being used as payment or part payment, or otherwise exchanged, for a tobacco product.

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<sup>24</sup> Section 38(2) states “it shall be an offence for a person to manufacture, import, supply, sell or invite an offer to purchase an oral smokeless tobacco product”. Section 18(4)(c) states that “it shall be an offence for a person to – otherwise supply to, or invite an offer to purchase by, any person” a tobacco product which does not bear the required public health warning. Likewise, s38(5)(c) makes it an offence to supply to, or invite an offer to purchase by, any person” a tobacco product which does not bear a number as prescribed by the Minister.

Section 38 (8) makes it an offence for a person to sell or supply a tobacco product, or invite an offer to purchase by a member of the public of a tobacco product where part of the consideration to be given to the purchaser is a gift, token trading stamp, coupon or other document or thing that may be exchanged for or used as payment or part payment for certain goods.

A criticism being made of the draft proposals is that it fails to include a ban on advertising of cigarette products during the televising of the Formula One Grand Prix. Previously, the Minister for Health had asked RTÉ to use technology to remove cigarette advertising from Formula One races when they was being broadcast.<sup>25</sup>

In summary, television advertising and teleshopping material for cigarettes and other tobacco products is currently prohibited by Irish law, in the same form as in the directive. Draft new legislation will extend this prohibition on advertising to other media.

### 3. Medicines

#### General law

The advertising of medical preparations and products is governed by Regulations made by the Minister for Health as follows:

- Medical Preparations (Licensing, Advertisement and Sales) Regulations, 1984 - 1994.
- Medical Preparations (Advertising) Regulations, 1993 -1996
- Medical Preparations (Labelling and Package Leaflets) Regulations, 1993.
- Medical Preparations (Prescription and Control of Supply) Regulations, 1993 -1996
- European Communities (Cosmetic Products) Regulations, 1990 – 1998

The Medical Preparations (Advertising) Regulations, 1993- 1996 require that a person shall not advertise a medical preparation in respect of which a product authorisation has not been granted. The regulations also require that a person who advertises a medical preparation to the general public shall ensure that such advertising conforms to the requirements set out in schedule 2 of the regulations. Schedule 2 requires that advertising must comply with fourteen specific requirements, for example that they contain information necessary for the correct use of the medical preparation.

‘Advertising’ is defined in section 2 of the 1993 Regulations as “(i) every form of advertising, whether in a publication, or by the display of any notice, or by means of any letter (whether circular or addressed to a particular person), press release or other document, or by words inscribed on any article, or by the exhibition of a photograph or cinematograph, or by way of sound recording, sound broadcasting or television or in any other way,

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<sup>25</sup> O’Connor A., *Ash criticise lack of Grand Prix advert ban*, Irish Times, 10<sup>th</sup> August 2001

- (ii) any form of door to door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medical preparations and including in particular
- (a) the advertising of medical preparations to the general public,
  - (b) the advertising of medical preparations to persons qualified to prescribe or supply them,
  - (c) visits by medical sales representatives to persons qualified to prescribe medical preparations,
  - (d) the supply of samples of medical preparations,
  - (e) the provision of inducements to prescribe or supply medical preparations by the gift, offer or promise of any benefit or bonus, whether in money or in kind,
  - (f) the sponsorship of promotional meetings attended by persons qualified to prescribe or supply medical preparations,
  - (g) the sponsorship of scientific congresses attended by persons qualified to prescribe or supply medical preparations and in particular payment of their travelling and accommodation expenses in connection therewith, and cognate words shall be construed accordingly”.

Section 18.1 of the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services states “the R.T.É. Authority and the Independent Radio and Television Commission<sup>26</sup> shall draw up and implement procedures in accordance with the General Guidelines in this code relating to the advertising and promotion of the following goods and services:- Medicines and medical treatments”.

Section 18.3 states “advertising and teleshopping material for medicinal products and medical treatments which are available only on prescription is prohibited”<sup>27</sup>.

This is similar to article 14 of the directive, the only difference being the reference to jurisdiction in the directive. Appendix 3 to the BCI regulates the advertising of medicines and treatments. Appendix 3(2) states that “advertisements for medicines and medical treatment which are only available on prescription shall be prohibited”.

In addition, section 18.7 of the BCI Codes states that “teleshopping material for medicinal products, which are subject to a marketing authorisation within the meaning of Council Directive 65/65/EEC as amended by Directive 93/39/EEC, shall be prohibited”.

### Contraceptives

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<sup>26</sup> Now known as the Broadcasting Commission of Ireland, since the Broadcasting Act 2001.

<sup>27</sup> Section 26 of the RTÉ Code of Standards for Broadcast Advertising 1985 states that advertisements for medicines and treatments will only be accepted if it complies with the regulations set out in Appendix 2.

Historically, the advertising and sale of contraceptives has been an issue of cultural and religious sensitivity in Ireland. The Health (Family) Planning Act 1979 - 1993 deal with the control of advertising and display of contraceptives. Section 7(1) states “a person shall not take any part in, or procure, the publication of an advertisement or notice in relation to contraception or contraceptives, or display, or procure the display of, contraceptives, except to such extent as may be allowed by, and in accordance with, regulations for the purposes of this section”. A person who contravenes this section, or regulations for the purposes of this section, shall be guilty of an offence.

Section 23 of the RTÉ Code of Standards for Broadcast Advertising 1985 states that advertisements for certain products and services will not be accepted. Section 23(j) prohibits the advertising of contraceptives”.

This remains the law, and contraceptives are not advertised on television in Ireland, (or on radio, or in the cinema).

#### Abortion

The Irish Constitutional ban on abortion has caused great cultural and religious debate in Ireland for the last two decades<sup>28</sup>. Section 10 of the Health (Family) Planning Act 1979-1993 states “nothing in this Act shall be construed as authorising—

- (a) the procuring of abortion,
- (b) the doing of any other thing the doing of which is prohibited by section 58 or 59 of the Offences Against the Person Act, 1861 (which sections prohibit the administering of drugs or the use of instruments to procure abortion or the supplying of drugs or instruments to procure abortion), or
- (c) the sale, importation into the State, manufacture, advertising or display of abortifacients”.

In relation to advertising abortion as a medical service, the Regulation of Information (Services Outside The State For Termination of Pregnancies) Act, 1995 applies. This act prescribes the conditions subject to which certain information relating to services lawfully available outside the state for the termination of pregnancy may be given to individual women or the general public. In this context, the acts amend the Indecent Advertisements Act, 1889, and the Censorship of Publications Acts, 1929 to 1967.

Section 4 of the Health (Family) Planning Act 1979- 1993 provides that “it shall not be lawful

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<sup>28</sup> Article 40.3.3 of Bunreacht na hÉireann (Irish Constitution) states that “the State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right. This subsection shall not limit freedom to travel between the State and another state. This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state”.

- (a) to display a notice (including an advertisement) containing act information<sup>29</sup> in or at a place to which the public have access whether upon payment or free of charge, or
- (b) to distribute without solicitation by the recipients a book, newspaper, journal, magazine, leaflet or pamphlet, or any other document, or a film or a recording (whether of sound or images or both), containing act information”.

Section 14 provides that “the Indecent Advertisements Act, 1889, and the Censorship of Publications Acts, 1929 to 1967, are hereby amended as follows:

- (a) sections 3 and 4 of the Indecent Advertisements Act, 1889, shall not apply to printed or written matter referred to in those sections,
- (b) subsection (1) of section 16 of the Censorship of Publications Act, 1929, shall not apply to a book or periodical publication referred to in that subsection, and
- (c) section 7 of the Censorship of Publications Act, 1946, shall not apply to a book referred to in that section and section 9 of that Act shall not apply to a periodical publication, advertisement or notice referred to in that section, in so far, but only in so far, as Act information is published in the printed or written matter, book or periodical publication, advertisement or notice or in a book or publication to which the printed or written matter, advertisement or notice relates and the information and the method and manner of its publication are in compliance with this Act.

Thus according to current Irish law, adverts for abortion may not be broadcast by broadcasting companies within the jurisdiction.

Thus, in comparison with article 14 of the directive as amended, appendix 3 to the BCI Codes is very lengthy and detailed. Appendix 4 states that advertisements should not refer to any medicine, product, appliance or advice in terms likely to lead to its use for the treatment of listed illnesses or conditions<sup>30</sup>. However, the core prohibition in article 14 of the directive, on advertising or teleshopping material for medical products and treatments only available on prescription, is reproduced in the BCI Codes, even though additional detail is given on the interpretation of this provision.

#### 4. Cars

There are no specific rules on the advertising of cars in the Irish legal system.

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<sup>29</sup> This Act applies to information that—

- ( a ) is likely to be required by a woman for the purpose of availing herself of services provided outside the State for the termination of pregnancies, and
- ( b ) relates to such services or to persons who provide them,

and information to which this Act applies is referred to in this Act as "Act information".

<sup>30</sup> A listed illness or condition is one listed in Appendix 4 to the BCI Codes. Currently there are 86 listed conditions, from albuminuria to whopping cough.

## 5. Media

Section 24 of the RTÉ Code of Standards for Broadcast Advertising 1985 deals with the advertising of books, magazines and periodicals. Section 24 states that “all advertisements for books, magazines, periodicals and other printed material must comply with the Censorship of Publications Acts, 1929, as amended by the Acts of 1946 and 1967”.

There are no other specific rules on the advertising of media in the Irish legal system.

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

### Religion and Politics

Section 18 of the Broadcasting Authority Act 1960, as amended, which applies to RTÉ, states that “it shall be the duty of the Authority to secure that, when it broadcasts any information, news or feature which relates to matters of public controversy or is the subject of current public debate, the information, news or feature is presented objectively and impartially and without any expression of the Authority's own views.

(2) Nothing in this section shall prevent the Authority from transmitting political party broadcasts”.

According to section 20(4) of the Broadcasting Authority Act 1960, as amended, states that the Authority shall not accept any advertisement or teleshopping material which is directed towards any religious or political end or has any relation to any industrial dispute. This section allows now advertising of newspapers, periodicals, etc and noticeboard type of advertising of religious events or ceremonies where the language used does not address the merits of a particular faith or belief or of becoming a member of any religion or religious organisation.

Section 9 of the Radio and Television Act 1988 deals with the duty of independent broadcasting contractors in relation to programmes. Section 9(2) states “ nothing in subsection (1) (a) or (1) (b) shall prevent a sound broadcasting contractor from transmitting political party broadcasts: provided that a sound broadcasting contractor shall not, in the allocation of time for such broadcasts, give an unfair preference to any political party”.

Section 10(3) of the Radio and Television Act states that “no advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute”.

Section 17 of the BCI Codes deals with “Politics, Religion and Industrial Relations”. Section 17 states “in this regard, the provision of section 20(4) of the Broadcasting Authority Acts 1960-1993, in the case of broadcasting services operated by the R.T.E

Authority, and section 10(3) of the Radio and Television Act, 1988, in the case of services established under that Act, and any amendments thereof, shall apply”.

The major case in this area is Coughlan v. Broadcasting Complaints Commission [1998]<sup>31</sup>. During the 1995 referendum to remove the ban on divorce from the Irish Constitution, RTÉ allowed the major Irish political parties, all of whom supported a Yes vote in the referendum, to transmit party political broadcasts during the referendum campaign. RTÉ also allowed two non party groups to transmit broadcasts, one in favour of divorce and one against. The applicant complained to the Broadcasting Complaints Commission<sup>32</sup> that RTÉ had infringed s18 of the Broadcasting Act 1960, as amended by the Broadcasting Authority (Amendment) Act 1976. The BCC rejected Mr Coughlan’s complaints.

Section 13 of the Broadcasting Act 1960, as amended, provides that RTÉ must uphold the Constitutional liberty of expression. Mr Coughlan argued that in the case of a referendum, RTÉ should not exercise its permissive power under s18 of the 1960 act and allow uncontested political broadcasts. He argued that 42.5 minutes of uncontested broadcast time were allocated to the Yes side, and 10 minutes to the No side.

The Broadcasting Complaints Commission decided that RTÉ did not breach its statutory obligations and dismissed the complaint. Mr Coughlan then sought a judicial review of the decision in the High Court. Mr Justice Carney considered the applicable caselaw. He stated “in my view a package of uncontested or partisan broadcasts by the National Broadcasting Service weighted on one side of the argument is an interference with the referendum process of a kind contemplated by Hamilton C.J<sup>33</sup> as undemocratic and is a constitutionally unfair procedure”. He held that the imbalance of time allocated to the two sides must lead to the conclusion that RTÉ supported one side of the argument. A declaration was made that RTÉ’s allocation of uncontested broadcast time was significantly unequal and therefore constitutionally unfair.

While the Coughlan case deals with the allocation of broadcast time for political purposes rather than advertising of political purposes, it is clear that the courts may intervene to judicially review issues of broadcast policy, which includes advertising and teleshopping material.

### Social issues and groups

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<sup>31</sup> IEHC 62 (24th April, 1998).

<sup>32</sup> The Broadcasting Complaints Committee was established by s4 of the Broadcasting Authority (Amendment) Act 1976, which inserted a new section 18(a) into the Broadcasting Authority Act 1960.

<sup>33</sup> In McKenna v An Taoiseach (No.2) 1995 IR 37

There are no specific rules on the advertising by groups or relating to social issues in the Irish legal system, apart from the control of certain content under the Censorship of Publications Acts, 1929 –1967, and the Prohibition of Incitement to Hatred Act, 1989

### C. Self-Regulation

The advertising industry in Ireland is regulated by the Advertising Standards Authority of Ireland, known as the ASAI. The ASAI is an independent self-regulatory body established in 1981, which is financed by the advertising industry. It is stated to be “committed in the public interest to promoting the highest standards of advertising and sales promotion”<sup>34</sup>.

Self-Regulation is achieved by means of ASAI members’ voluntary compliance with the ASAI Code of Advertising Standards (fourth edition, 1995) and the ASAI Code of Sales Promotion Practice, (2nd edition, 1995). The ASAI’s objective is to ensure that all commercial advertisements and promotions are ‘legal, decent, honest and truthful’.

The ASAI Code of Advertising Standards applies to commercial advertisements. Non-commercial advertisements, i.e. those which express the advertiser's position on a political, religious, industrial relations, social or aesthetic matter or an issue of public concern, are not subject to the code.

Section 1.1 of the ASAI Code of Advertising Standards defines an advertisement as “a paid-for communication addressed to the public or a section of it, the purpose being to influence the behaviour of those to whom it is addressed. It is characteristic of an advertisement that an advertiser pays a third party to communicate his message”. Section 1.3 states that the code applies to, *inter alia*,

- commercials broadcast on television or radio or screened in cinemas,(s1.3(d))
- advertisements carried on audiotapes, videotapes, viewdata services and other electronic and computer systems, (s1.3(e)).

The code does not apply to, *inter alia*,

- advertisements whose principal purpose is to express the advertiser's position on a political, religious, industrial relations, social or aesthetic matter or on an issue of public interest or concern, ,(s1.4(f))
- specialised advertisements addressed to the medical and allied professions (s1.4(m)).

The main general rule of the ASAI is at s2.1 ASAI Code of Advertising Standards- “all advertisements should be legal, decent, honest and truthful”. More specific general rules deal with issues of legality, taste and decency, sexism and stereotyping, vulnerable persons, honesty, truthfulness, matters of opinion, fear and distress, safety, violence and anti-social behaviour, protection of privacy, testimonials and endorsements, prices, free

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<sup>34</sup> ASAI Code of Advertising Standards (fourth edition, 1995).

offers, availability of products, comparisons, guarantees, exploitation, imitation, recognisability and other requirements.

In addition there are sectoral rules dealing with health and beauty, slimming, children, alcoholic drink, financial services and products, distance selling, employment and business opportunities, occasional trading and environmental claims.

The ASAI also has a code of Sales Promotion and Practice which applies to sales promotions which provide additional benefits to purchasers. This code has general rules about public interest, substantiation, legality, honesty, truthfulness, protection of consumers, suitability, availability, quality, children, presentation, terms of the promotion, administration, free offers, promotions with prizes, advertisement promotions, charity-linked promotions, promotions and the trade, and data protection.

The ASAI is a founder member of the European Advertising Standards Alliance.

## **II. Tele-shopping**

### **A. General regulation**

#### **1. General law on consumer protection applicable to all media**

The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 became law in Ireland in May 2001. It implemented Directive 97/7/EC.

The regulations are aimed at protecting consumers from the risks of distance selling. A distance contract is defined as one which is concluded between a consumer and a supplier under an organised distance sale or service provision scheme run by the supplier. The regulations apply when a consumer and supplier are not physically in each other's presence prior to the conclusion of the contract, with the result that the consumer is unable to see the product or ascertain the nature of the service prior to concluding the contract. The regulations apply to teleshopping, according to the definition of 'means of communication' in article 2(4), as listed in Schedule 1 to the regulations<sup>35</sup>. Certain types of contract are also specifically excluded from the regulations.

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<sup>35</sup> The other 'means of communication' covered by Article 2(4), as listed in Schedule 1 are: unaddressed printed matter, addressed printed matter, standard letter, press advertising with order form, catalogue, telephone with human intervention, telephone without human intervention (automatic calling machine, audiotext), radio, videophone (telephone with screen) videotext (microcomputer and television screen) with keyboard or touch screen, electronic mail, and facsimile machine (fax).

Under article 4 of the regulations, a distance contract will only be enforceable by the supplier against the consumer if the supplier has provided the information set out in Schedule 3 of the regulations i.e.

- the name and address of the supplier,
- the description and price of the goods,
- the delivery costs and arrangements,
- a cancellation clause,
- the cost of using distance communications,
- the period for which the offer or price remains valid, and
- the minimum duration of a contract in case of contracts to be performed permanently or recurrently.

There is an implied condition in a distance contract that the consumer has a ‘cooling off’ period of seven working days in which to cancel the contract without reason and without penalty or charge, except the cost of returning the goods. Failure to comply with this regulation is a criminal offence.

Certain contracts are entirely excluded from the regulations, e.g. contracts for the sale of land. Other contracts are exempted from certain provisions, e.g. those involving accommodation.

## 2. Specific audiovisual regulation

For clarity and convenience, section I. of this report dealing with advertising also dealt with teleshopping, where appropriate, as the rules are the same in many instances.

The RTÉ Code of Standards for Broadcast Advertising, which were written in 1985, made no mention of teleshopping. When the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship, and other forms of Commercial Promotion Broadcasting Services were written in 1995, no reference was made to teleshopping, as the codes predated the amendment of the directive in 1997. As a result, the codes were amended in 1999 to change most reference to advertising to also apply to teleshopping material.

Section 4.1 of the BCI Codes states that “the general principle which governs all broadcast advertising is that it should be legal, honest, decent and truthful”. This provision was extended to cover teleshopping material by s18.5 of the codes, as amended in 1999.

Section 5.1 of the BCI Codes state that “advertising and teleshopping material shall not -

- (i) prejudice respect for human dignity,
- (ii) include any discrimination on grounds of race, sex or nationality,
- (iii) be offensive to religious or political beliefs, or
- (iv) encourage behaviour prejudicial to the protection of the environment”.

Section 6.1 of the BCI Codes states that “advertisements and teleshopping material shall not be misleading or shall not prejudice the interest of consumers”.

Section 6.2 of the BCI Codes states that “no advertisement or teleshopping material shall contain any element of spoken or visual presentation which is calculated to mislead either directly or by implication, with regard to the merits of the product or service advertised or its suitability for the purpose recommended”.

a) Definition

As stated in part I.A.2.a of this report, ‘teleshopping’ is referred to in s19 of the Broadcasting Act, 2001 in relation to standards in broadcasting. Section 19(18) states “in this section ‘teleshopping material’ means material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property”.<sup>36</sup> As previously stated, this definition is similar to that in article 1(f) of the directive.

The BCI Codes also provides a definition of teleshopping in section 18.4. This paragraph states that “teleshopping is a form of commercial promotion in broadcasting services which when transmitted constitutes direct offers to the public of goods and other property (whether real or personal) or services”.

b) Authorisation

There is no distinction drawn in Irish law between general broadcasters, whether public or independent, and teleshopping channels. No teleshopping channels exist at the present time.

c) General rules on content

The general rules on the content of teleshopping material are the same as those dealing with advertising, see section 1.A.2. c. of this report. For clarity and convenience, section 1.A.2.c. of this report dealing with advertising also dealt with teleshopping, where appropriate.

Section 19(1)(b) of the Broadcasting Act 2001 states that the Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section, prepare a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, **teleshopping material**, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service

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<sup>36</sup> The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 refers to teleshopping but does not define it.

Section 19 (1)(c) of the Broadcasting Act 2001 requires that the Commission shall make a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, **teleshopping material**, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service, being advertising and other activities as aforesaid which relate to matters likely to be of direct or indirect interest to children.

Section 19(3) states that the Commission shall, in accordance with subsection (5), make rules with respect to-

(a) the total daily times that shall be allowed for the transmission of advertisements and **teleshopping material** on a broadcasting service or sound broadcasting service, being a service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act or the Act of 1988, and

(b) the maximum period that shall be allowed in any given hour for the transmission of advertisements and **teleshopping material** on such a broadcasting service or sound broadcasting service, and the Commission may make different such rules with respect to different classes of broadcasting service or sound broadcasting service.

(4) The codes under subsection (1) and the rules under subsection (3) shall, respectively, provide for the matters required to be provided for by Chapters IV and V of the Council Directive<sup>37</sup>.

No new codes have been created under s19 of the Broadcasting Act 2001, thus the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship, and other forms of Commercial Promotion Broadcasting Services created under section 4 of the Broadcasting Act 1990 still apply, as previously explained in section I.A.2.c. of this report.

d) Rules on duration and insertion in and between programmes

In section 9 of the BCI Codes dealing with the insertion of advertising into programmes, references to advertising now also apply to teleshopping according to s18.5 of the codes, as amended in 1999. Thus the general rules on duration of advertising and insertion of adverts within and between broadcasts as explained in section 1.A.2.d of this report also apply to teleshopping.

Sections 12 of the BCI Code deals with the ‘Time Limits on Certain forms of Advertising’. Section 12 states that “forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of service shall not exceed one hour per day on any broadcasting service”.

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<sup>37</sup> Directive 89/552/EEC as amended by Directive 97/36/EC.

To date, Irish television occasionally features teleshopping spots, but as yet there are no dedicated teleshopping programmes. No distinction is drawn between teleshopping spots and teleshopping programmes in the applicable legislation or Codes.

## **B. Regulation for Specific Products**

### 1. Alcohol

Section 15 of the BCI Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion Broadcasting Services deals with advertising of alcohol. This reference to advertising now also applies to teleshopping according to s18.5 of the codes, as amended in 1999, see section I.B.1 of this report.

### 2. Tobacco

As explained in section 1.B.2 of this report, s13 of the BCI Codes states that “all forms of advertising for cigarettes, cigars and other tobacco products shall be prohibited”. This reference to advertising now also applies to teleshopping according to s18.5 of the BCI Codes, as amended in 1999.

### 3. Medicines

Section 18.7 of the BCI Codes states that “teleshopping material for medicinal products, which are subject to a marketing authorisation within the meaning of Council Directive 65/65/EEC as amended by Directive 93/39/EEC, shall be prohibited”.

### 4. Cars

There are no specific rules dealing with teleshopping material relating to cars in the Irish legal system.

### 5. Media

There are no specific rules dealing with teleshopping material relating to media in the Irish legal system.

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

Section 17 of the BCI Codes deals with “Politics, Religion and Industrial Relations”. Section 17 states “in this regard, the provision of section 20(4) of the Broadcasting Authority Acts 1960-1993, in the case of broadcasting services operated by the R.T.É Authority, and section 10(3) of the Radio and Television Act, 1988, in the case of services established under that Act, and any amendments thereof, shall apply”.

This reference to advertising now also applies to teleshopping according to s18.5 of the BCI Codes, as amended in 1999, as explained in section I.B.6 of this report.

## **C. Self-Regulation**

As explained in section 1.C of this report, advertising in Ireland is self regulated by the ASAI. Section 1.2 (a) of the ASAI Code defines an advertisement as “as a paid-for communication addressed to the public or a section of it, the purpose being to influence the behaviour of those to whom it is addressed. It is characteristic of an advertisement that an advertiser pays a third party to communicate his message”. This definition would include teleshopping material, although it is not explicitly stated.

Section 1.3(d) of the ASAI Code on Advertising Standards specifies that the code applies to different media including “commercials broadcast on television or radio or screened in cinemas”.

Section 8 of the ASAI’s Code of Advertising Standards deals with ‘Distance Selling’. The section sets out the rules governing transactions for goods or services in which the buyer and the seller, having been brought into communication through an advertisement, conduct their business without meeting face-to-face. The rules are similar to those in the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001, but of course the 2001 regulations take priority in case of a conflict as they represent mandatory requirements of national law.

## **III. Sponsorship**

### **A. General regulation**

#### **1. General law on consumer protection applicable to all media**

There are no general laws on consumer protection containing rules on sponsorship, applicable to all media in Ireland, unless advertising is defined to include sponsorship, in which case the material in part I.A.1 of this report applies.

#### **2. Specific audiovisual regulation**

Section 4 of the Broadcasting Act, 1990 provided that “the Minister shall draw up and may amend, from time to time as he thinks proper, codes governing standards, practice and prohibitions in advertising, sponsorship or other forms of commercial promotion in broadcasting services and the Authority, every sound broadcasting contractor and the television programmes service contractor shall comply with every such code in relation to its broadcasting services”.

The Minister for Arts, Heritage, Gaeltacht and the Islands, in the exercise of his powers under s4(1) of the Broadcasting Act 1990, drew up Codes of Standards, Practice and

Prohibitions Relating to Sponsorship in Broadcasting Services, referred herein as the BCI Codes.

Recently, however, the Broadcasting Act, 2001 repealed section 4 of the Broadcasting Act, 1990. Under the Broadcasting Act, 2001, the Broadcasting Commission of Ireland has now been given responsibility to draw up codes and rules in relation to programming and advertising standards, which when introduced will be applicable to all broadcasters, both public and independent.

Section 19(1) of the Broadcasting Act, 2001 states that the Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of that section prepare –

a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, **sponsorship** and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service (s19(1)(b))

a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, **sponsorship** and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service, being advertising and other activities as aforesaid which relate to matters likely to be of direct and indirect interest to children. (s19(1)(c))

No such codes and rules have as yet been drawn up by the Broadcasting Commission of Ireland under the 2001 Act. The Commission's stated intention is that it will engage in a wide-ranging consultation process with all interested parties, including broadcasting organisations, the advertising industry and representatives of consumer interests, prior to the introduction of new codes under the act. Section 19(2) states that a direction of the Minister shall specify that the Commission shall give priority to the preparation of the code in s19(1)(c) concerning advertising of matters of interest to children.

Thus in summary, the current situation is that the sponsorship of broadcasting is still governed by BCI Codes made under s4 of the 1990 Act.

a) Definition

Neither the Broadcasting Acts, 1960 to 2001, nor the Radio and Television, Act, 1988 provide a definition of sponsorship.

RTÉ created new guidelines on sponsorship, which are effective as of 1<sup>st</sup> May 2001. The RTÉ Sponsorship Guidelines state that “Sponsorship is a relationship entered into with a broadcaster and any organisation with the objective of promoting products, goods, interests or services for a consideration. Distinction is needed between what sponsorship is and what advertising is. Advertising is a message from a commercial or other body contained in a recognisable and separate entity, a commercial break. Sponsorship credits stand apart from commercial breaks and the minutage allowed for them”.

This definition is not similar in wording to that in article 1(e) of the directive, although the substance of a relationship between broadcaster and another with a view to promoting property is similar.

As stated in part 1.A.2.a of this report, the BCI Codes provide a definition of an advertisement in s2(ii). Section 2(ii) states that “advertising shall be construed as: including references to advertising matter in **sponsored** programmes, i.e., programmes supplied for advertising, commercial or promotional purposes by or on behalf of an advertiser or programmes financed, in whole or in part, by advertisers for advertising, commercial or promotional purposes, subject to the exception at 2.3 (vii)”

This definition is quite different to that in article 1(e) of the directive. Specifically the limitation in the directive that the sponsor not be engaged in television broadcasting or audio-visual production does not apply in the Irish code.

The BCI Codes are more specific than the directive because they refer to programmes supplied for advertising, commercial or promotional purposes as well as those to which contributions are made.

Sponsorship is further defined in Part II of the BCI Codes. Part II is known as the Codes of Standards, Practice and Prohibitions Relating to **Sponsorship** in Broadcasting Services. Section 20.1 states that “sponsorship shall be construed for the time being as any contribution made directly or indirectly by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audio-visual works, to the financing of television or radio programmes with a view to promoting its name, its trade mark, its image, its activities or its product”.

Section 22 of the BCI Codes provide further details on types of sponsorship. Accordingly, “sponsorship occurs where any or all of the following are present:-

(i) cash injection,

(ii) investment in kind and supply of goods, services or knowledge.

22.1 Cash injection is the provision of direct funding by a sponsor.

22.2 Investment in kind is the acceptance of facilities or services from a sponsor.

22.3 Supply of prizes/goods in radio and TV programmes”.

This is largely similar definition to that in article 1(e) of the directive, with the following difference: the BCI Codes refers to any contribution made directly or indirectly by an undertaking, whereas the directive simply refers to any contribution made.

#### b) Authorisation to distribute sponsorship

Irish law does not distinguish between public and independent broadcasters in relation to their authorisation to carry sponsored programmes. Sponsored television programmes have become increasingly common in Ireland in recent years, mirroring the early days of Irish public broadcasting when sponsored programmes were also common.

c) General rules on content of TV sponsorship

RTÉ

The RTÉ Sponsorship Guidelines 2001 states that “the presence of sponsorship must be clearly indicated to the programme audience. Furthermore a sponsor should have no editorial input or involvement in programming or scheduling, nor should they appear to have any. This is the core principle of this Code. With this overriding principle in place both sponsor and broadcaster can exploit the full opportunities of a worthwhile relationship. The general improvement in quality and diversity made available by sponsorship adds strength to the overall schedule. Organisations can take full advantage of attractive commercial propositions by being associated with programmes of value and interest”.

Section 2 of the RTÉ Sponsorship Guidelines deals with Sponsor Credits

“Sponsored programmes (as opposed to coverage of sponsored events) cannot include the name of the sponsor in the title of the programme.

The nature of the sponsorship must be made clear in the credits, thus;

- (a) A sponsor funding part of whole of a programme should say one of the following two lines, ‘Sponsored by.....’ or ‘ In association with.....’.
- (b) If a sponsor provides / makes the programme this too must be made clear, e.g. ‘Produced by.....’
- (c) No credit can in anyway allow the broadcaster to abdicate its full responsibilities, e.g. ‘Brought to you by .....’.

Current advertising straplines or those used in the past three years may not be used in sponsorship credits. Nor can **credits** be subsequently used for advertising material while the sponsorship relationship is still in place.

Credits may however be programme related and may also include product use.

While credits and advertising messages must be different, credits must still comply with all relevant Advertising Codes of Practice in force at the time.

Credits must not be confused with station announcements or news items thus the use of Continuity Presenters or Newsreaders is not acceptable either for visual purposes or as voiceovers.

In all cases RTÉ remains the final arbitrator on the suitability of credits”.

Comparison with Directive

The RTÉ Sponsorship Guidelines are not based on the directive, in the same way that the BCI Codes are. Thus certain principles from the directive are echoed in the RTÉ Guidelines, but not directly referenced.

The RTÉ Sponsorship Guidelines on ‘Editorial Integrity’ contain a statement somewhat similar to Article 17.1 (a) of the directive, but overall the RTÉ guidelines are more aspirational in tone.

In section 2 of the RTÉ Sponsorship Guidelines on ‘Sponsor Credits’, the first and third points contain statements which are somewhat similar to Article 17.1 (b) of the directive.

The RTÉ Sponsorship Guidelines on ‘Unsuitable Sponsors’ contain a statement very similar to Article 17.2 of the directive, which prohibits tobacco companies from sponsoring television programmes.

The RTÉ Sponsorship Guidelines on ‘Unsuitable Sponsors’ contain a statement somewhat similar to Article 17.3 of the directive, which allows sponsorship by pharmaceutical companies but prohibits promotion of medical products or treatments only available on prescription.

Overall, the broad principles of article 17 of the directive are repeated in the RTÉ Sponsorship Guidelines, but not in the terms used in the directive.

### BCI Codes

Section 19 of the BCI Codes on sponsorship provides an introduction to sponsorship, which is aspirational in tone. That section states that “editorial integrity is an essential basis for a broadcaster's output. Equally, the sponsorship of certain programmes is an attractive commercial proposition for many organisations, particularly corporate advertisers. It should be seen as a legitimate part of a broadcaster's revenue and a means of enhancing existing programmes or of making programmes which otherwise could not be included in the schedules”.

“Broadcasters should ensure that the programming responsibilities imposed by sections 18(1), 18(2), 18(1B), and Section 17 of the Broadcasting Authority Act, 1960 (inserted by Section 13 of the Broadcasting Authority (Amendment) Act, 1976) in the case of R.T.É., and Sections 9 and 18 of the Radio and Television Act, 1988, in the case of the Independent Broadcasting Contractors operating under the auspices of the Independent Radio and Television Commission<sup>38</sup>, must not be prejudiced by sponsorship”.

Section 20.1 of the BCI codes deals with the responsibilities of broadcasters. Section 20.1 states that “it is the responsibility of broadcasters to ensure that editorial integrity is not influenced by the presence of sponsorship. A sponsor:-

(i) must not be involved in the manufacture, supply or provision of a product or service which is listed as unacceptable in the Code of Standards, Practice and Prohibitions in

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<sup>38</sup> Now known as the Broadcasting Commission of Ireland, since the Broadcasting Act, 2001.

Advertising and other forms of Commercial promotion in Broadcasting Services (Part I of the code),

(ii) must not be associated with a programme which addresses an audience to which its commercials are not permitted to appeal (e.g. alcoholic drink sponsorship of youth programmes is not permitted) or during which it would not be permitted to advertise,

(iii) should not have an involvement in the editorial content of the programme or appear to do so.

Note: This is not intended to inhibit normal communication between a sponsor and a broadcaster”.

Section 21 of the BCI Codes deals with the general standards required of sponsored programmes. According to s21 “sponsored programmes shall meet the following requirements in addition to the more specific requirements for each programme category:

(i) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;

(ii) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of the programmes; (In view of this identification requirement, logos would be acceptable as ‘bumper’ credits around advertising breaks during the programme).

(iii) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services other than in advertisements in commercial breaks”.

Section 21.2 of the BCI Codes states “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, the advertising of which is prohibited by the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial Promotion in Broadcasting.

The subsidiary of a manufacturer or brand-seller of products, the advertising of which is prohibited, who uses a name or a trademark that differs completely from the manufacturers and whose activity is different from the production, distribution or provision of services in relation to such products may sponsor programmes”.

Section 21.3 of the BCI Codes states “sponsorship involvement in any programme must not constitute advertising as defined in the Codes of Standards, Practice and Prohibition in Advertising and other forms of Commercial Promotions in Broadcasting Services”.

### In comparison with article 17 of the directive

Article 17(a) of the directive dealing with sponsorship and editorial independence is reflected in s20.1(iii) and s21(i) of the BCI Codes. Section 21(i) is identical to article 17.1(a) of the directive.

The first phrase of section 21(ii) of the BCI Codes is identical to article 17.1 (b) of the directive, with additional explanatory information in the BCI Codes.

The first phrase of section 21(iii) of the BCI Codes is identical to article 17.1(c) of the directive, the only difference being the insertion of the clarifying explanation “other than in advertisements in commercial breaks” in the Irish code.

Section 21.2 of the BCI Codes is very similar to the old wording of article 17, prior to its amendment in 1997. Section 21.1 of the BCI Codes does not explicitly mention cigarettes and tobacco products, but they are implicitly covered by the reference to products and service the advertising of which is prohibited. Section 21.2 then provides additional information about different products and services of subsidiary companies, which is not contained in the directive.

Section 23 of the of the BCI Codes deal with categories of programmes. Section 23.1 states that “sponsorship of news, current affairs and religious programmes is prohibited”. This is very similar to the effect of article 17.4 of the directive. The BCI Codes then goes on to give further detail in section 23.1 where it states “for the purposes of this section, magazine and information style programmes are not considered to be news/current affairs programmes”. Section 23.2 further provides that “reports and interviews for news and current affairs programmes must not be set in such a way as to give undue commercial prominence to any company”. Thus the Irish code contains the same prohibition as the directive, while also providing guides to the interpretation of the prohibition.

Article 17.3 of the directive deals with television sponsorship by undertakings involved in the manufacture or sale of medicinal products and medical treatment. This is not an issue that is directly addressed in the Irish codes (although appendix 3 to the codes prohibits advertising for medicines and medical treatment which are only available on prescription). Thus in this case the directive is more strict than the Irish regime.

Section 23.3 of the BCI Codes states that “ special events coverage may involve the broadcaster in agreeing logistical and facilities support from commercial or Public Service bodies. In such circumstances credits and on-air acknowledgements of contributors may be permitted provided:-

(i) acknowledgements take the form of a statement of information and are not based on copy supplied to the programme makers.

(ii) credits are consistent with the programme style”.

In relation to sports programmes, section 23.4 of the BCI Codes states that “sponsors must be clearly identified as such by the name and/or logo of the sponsor at the beginning

and/or end of programmes. Product placement by the sponsor is forbidden as is the display of advertising material “in studio””.

Section 23.5 of the BCI Codes states that “broadcasters must ensure that coverage of sporting events, in terms of the actual decision to cover and method of coverage is not in any way influenced by the presence of a sponsor or sponsorship.

Section 25.1 of the BCI Codes states that “presenters and other ‘on-air’ personnel must not make gratuitous reference to commercial products or services”.

Section 25.2 of the BCI Codes states that “under no circumstances shall presenters and other ‘on-air’ personnel advertise or promote during the course of a programme any products or events with which they are associated”.

Section 25.3 of the BCI Codes states that “product endorsement by programme presenters during the course of a programme is prohibited irrespective of source or purchase arrangement”.

Section 26 of the BCI Codes states that “it is not always possible in the interests of authenticity to avoid references to the names of commercial products or services or their incidental portrayal in radio and television programmes, but the practice known as ‘product placement’ is strictly forbidden”.

This material in sections 23 to 26 of the BCI Codes is not referred to in the directive. Thus the Irish codes are more detailed by the inclusion of this material limiting sponsorship of television broadcasts.

#### d) Rules on duration and insertion in and between programmes

As stated above, section 19(1) of the Broadcasting Act, 2001 empowers the Minister for Arts, Heritage, Gaeltacht and the Islands to direct the Commission to prepare codes and rules with respect to programme material.

#### RTÉ

Section 2 of the RTÉ Sponsorship Guidelines deals with ‘Sponsor Credits’. This states that “as well as being of great benefit to the sponsor it is also essential that any association be clearly indicated at both the beginning and end of a programme”.

Section 2 also states that “no sponsor’s message can appear within a TV programme. Where commercial breaks appear within the programme the sponsor may be credited both going into and coming out of the break.

Credits at the beginning and end of a programme may be both visual and verbal but must not exceed 10 seconds in length. Where two or more sponsors are involved this may be extended to 15 seconds.

In and out of commercial breaks on television, credits may also be visual and verbal but must not exceed 7 seconds in length. On radio a verbal credit of similar duration can be given”.

### BCI Codes

Currently the BCI Codes of Standards, Practice and Prohibitions Relating to Sponsorship in Broadcasting Services made under the Broadcasting Act, 1990, remain in place. There are no specific rules on the duration and insertion of sponsored programmes in the current codes. However, the BCI Codes dealing with the duration and insertion of advertising apply to sponsored programmes as the definition of ‘advertisement’ includes reference to advertising matter in sponsored programmes, as explained in part 1.A.2.d of this report.

## **B. Regulation for Specific Products**

### 1. Alcohol

#### RTÉ

Section 3 of the RTÉ Sponsorship Guidelines 2001 has a section dealing with ‘unsuitable sponsors’. “A product or service not acceptable under prevailing advertising codes may not be a sponsor. A product or service not acceptable for advertising in specific time bands or programme type cannot sponsor programmes in those time bands or of that type”. Thus for example, a company producing alcoholic spirits/‘hard liquor’ may not sponsor a programme.

#### BCI Codes

However, as explained above, section 20.2(ii) of the BCI Codes states that a sponsor must not be associated with a programme which addresses an audience to which its commercials are not permitted to appeal (e.g. alcoholic drink sponsorship of youth programmes is not permitted) or during which it would not be permitted to advertise. However, this is an example of unacceptable sponsorship, rather than specific regulation of sponsorship by alcohol undertakings.

A controversial issue in Ireland is been the sponsorship of the Gaelic Athletic Association (GAA) All-Ireland Hurling Championships by the Guinness drinks company. Although this is sponsorship of a sporting event rather than television broadcasts, the media coverage of hurling (Ireland’s national sport) ensures that the Guinness brand name and logo are prominent on both television and radio sports and news coverage. The continued sponsorship has been criticised by the Minister for Health<sup>39</sup>, the Irish Medical Organisation<sup>40</sup> and other groups and individuals.

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<sup>39</sup> Moran S., Drinks funding debate set to come to a head, *Irish Times*, February 20<sup>th</sup> 2001

## 2. Tobacco

### RTÉ

In section 3 of the RTÉ Sponsorship Guidelines dealing with ‘unsuitable sponsors’ it states that “persons or companies generally known for their manufacture or supply of tobacco products cannot be sponsors”.

### BCI Codes

Section 21.2 of the BCI Codes provides that “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, the advertising of which is prohibited by the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial Promotion in Broadcasting”. Thus the sponsorship of broadcasting by tobacco companies is prohibited.

However, section 21.2 goes on to state that “the subsidiary of a manufacturer or brand-seller of products, the advertising of which is prohibited, who uses a name or a trademark that differs completely from the manufacturers and whose activity is different from the production, distribution or provision of services in relation to such products may sponsor programmes”.

## 3. Medicines

### RTÉ

In section 3 of the RTÉ Sponsorship Guidelines dealing with ‘unsuitable sponsors’ it states that “while pharmaceutical companies may be sponsors, no mention or association with any of their products, only available on prescription, is acceptable”.

### BCI Codes

Section 21.2 of the BCI Codes provides that “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, the advertising of which is prohibited by the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial Promotion in Broadcasting”. Thus the sponsorship of broadcasting by companies marketing medicines and medical treatment which are only available on prescription is prohibited. As stated above, appendix 3 to the BCI Codes prohibits advertising for medicines and medical treatment which are only available on prescription, but makes no mention of sponsorship.

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<sup>40</sup> O' Morain P., Call for new legislation to restrict alcohol advertising, *Irish Times*, April 20<sup>th</sup> 2001

#### 4. Cars

There are no specific rules regulating the sponsorship of broadcasting under this heading.

#### 5. Media

##### RTÉ

Section 3 of the RTÉ Sponsorship Guidelines lists types of programmes which are not suitable for sponsorship. News programmes and current affairs programmes are among those listed which cannot be sponsored. These types of programmes would perhaps be among those which media companies would wish to sponsor.

##### BCI Codes

There are no specific rules regulating the sponsorship of broadcasting under this heading in the BCI Codes.

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

##### RTÉ

Section 3 of the RTÉ Sponsorship Guidelines lists types of programmes which are not suitable for sponsorship. Religious programmes cannot be sponsored. The guidelines state that “no specific interest can use commercial opportunities to influence personal beliefs”.

##### BCI Codes

There are no specific rules regulating sponsorship under these headings in the BCI Codes.

### **C. Self-Regulation**

As explained previously, the advertising industry in Ireland is self-regulated by the Advertising Standards Authority of Ireland’s codes on Advertising Standards and Sales Promotions. Neither of these codes refer specifically to sponsorship. However, they may be interpreted to include sponsorship because of the definition of advertisement in the BCI Codes, as explained in section 1.A.2.a of this report.

### **IV. Self-promotion**

Section 19 of the Broadcasting Act 2001 empowers the Minister for Arts, Heritage, Gaeltacht and the Islands to make codes and rules with respect to advertising, teleshopping material, sponsorship and other forms of commercial promotion employed

in any broadcasting service or sound broadcasting service. This reference to ‘other forms of commercial promotion’ would arguable cover self promotion and self promotion channels. To date, no such rules have been made under this provision. There are currently no self promotion channels in existence in Ireland.

## RTÉ

In section 3 of the RTÉ Sponsorship Guidelines it states that “with the objective of avoiding confusion among audiences, station announcements and station continuity should remain free from sponsorship”. Section 4 states that “the objective of station promotion or trailers for upcoming programmes is to alert audiences and provide general information about the broadcasters’ programme. The sponsors presence should therefore be secondary. Only one display of the sponsor’s logo may appear during the programme promotion”.

## BCI Codes

Self promotion is only mentioned in the BCI Codes, in relation to self promotional advertisements by a broadcaster, which are covered by the Codes according to sections 2.1 and 2.2. Sections 2.1 and 2.2 of the BCI Codes provide definitions of ‘advertisement’ and section 2.3 provides for exclusions from the definition, as explained in section 1.A.2.a of this report.

Section 2.3 (iv) of the BCI Codes states that “advertising shall not denote information announcements of forthcoming concerts, recitals or performances whether intended for broadcasting or not given by the National Symphony Orchestra, the R.T.É. Concert Orchestra, and other R.T.É. performing groups or of any other comparable groups which are employed by or under contract to R.T.É. or by or under contract to a sound broadcasting contractor or television programme service contractor established under the Independent Radio and Television Act, 1988”.

Section 2.3 (vi) of the BCI Codes states that “advertising shall not denote announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster. Names of the concerns (shopping centres, commercial or retail outlets, supermarkets, etc.) providing facilities for outside broadcasts may be credited at the beginning and/or end of the programme and at prudent intervals during the programme on an informational basis. Promotional references to the concerns during the programme shall be considered advertising. In the case of non-broadcast events jointly sponsored by the broadcaster and one or more commercial concerns, informational accreditation of the joint sponsor(s) may be given in broadcast announcements without it constituting advertising”.

Section 2.4.1 of the BCI Codes was inserted in 1999. It states that “Subject to the exclusions provided for in paragraph 2.3 above, self-promotional advertisements on television by a broadcaster, including the promotion of a broadcaster's ancillary commercial activities and ventures and cross media promotion of a broadcaster's other or

related broadcasting or non-broadcasting activities, where such activities or ventures involve the supply of goods or services in return for payment or other remuneration, shall be subject to these codes”.

Section 2.4.2 of the BCI Codes states that “insofar as they relate to television advertising, the exclusions provided in paragraph 2.3 (iv) and (vi) of the 1995 codes shall apply only where the public are allowed entry free of charge as the case may be to the said concerts, recitals, performances or events”.

## **V. Other promotion techniques**

### **1. Product placement**

#### **RTÉ**

Section 4 of the RTÉ Sponsorship Guidelines 2001 defines and prohibits product placement. Section 4 states that “product placement is the inclusion of, or reference to a product or service within a programme for which consideration is received by a broadcaster. This is not allowed as it implies editorial involvement”.

#### **BCI Codes**

Section 26 of the BCI Codes deals with the use of brand names or branded goods. Section 26 states “it is not always possible in the interests of authenticity to avoid references to the names of commercial products or services or their incidental portrayal in radio and television programmes, but the practice known as ‘product placement’ is strictly forbidden”.

#### **Prize offers**

Section 4 of the RTÉ Sponsorship Guidelines 2001 states as follows “sponsors may provide prizes to programmes and broadcasters may mention the prize together with a brief factual statement. No prizes should be offered which appear in an editorial context anywhere else in the programme. Prizes offered by way of audience competitions must not include questions relating to the product. Questions connected to sports and music events, music, film, video, theatre and book reviews are exempt from this provision. In general, prizes should be seen as adding value to the programme content”.

The BCI Codes are silent on this point.

## **VI. New advertising techniques**

1. Split screen techniques

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

2. Interactive advertising

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

3. Virtual advertising

There are no specific rules on this under Irish law or guidelines. These technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

4. Other new advertising techniques

There are no specific rules on these under Irish law or guidelines. These techniques are not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities exist on this issue. No projects of regulation of self promotion currently exist.

# RADIO

## **I. Advertising**

### **A. General regulation**

**Note:** for the most part, the law deal with radio advertising is the same as that dealing with television advertising, as the relevant Irish legislation, the Broadcasting Acts 1960 to 2001 and the Radio and Television Act 1988, deal with both radio and television. In addition, the RTÉ Sponsorship Guidelines apply to both radio and television, as do the Broadcasting Commission of Ireland Codes.

#### 1. General law on consumer protection applicable to all media

The general law on consumer protection relating to advertising, applicable to all media, is the same as previously explained in section 1.A.1 of this report dealing with television.

#### 2. Specific audiovisual regulation

This is the same as previously explained in section I.A.2 of this report dealing with television.

##### a) Definition

The definitions of ‘broadcaster’ and ‘broadcasting service’ in the Broadcasting Act, 2001 both cover radio broadcasting, see section 1.A.2.a. of this report dealing with television.

There is no specific definition of ‘radio’ in the relevant Irish legislation. “Sound broadcasting service” is defined in the Radio and Television Act 1988, as “a broadcasting service which transmits, relays or distributes, by wireless telegraphy, communications, sounds, signs or signals intended for direct reception by the general public whether such communications, sounds, signs or signals are actually received or not”. The Broadcasting Act 2001 states that the phrase shall have the same meaning it has in the 1988 act.

##### b) Authorisation to distribute advertising

All broadcasters, both public and independent, may distribute advertising, provided that it complies with the relevant legislation and codes on content, as discussed in this report.

##### c) General rules on content

The general rules on content of radio advertising, are the same as those which apply to television advertising, as previously explained in section 1.A.1 of this report dealing with television.

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

Previously, section 3 of the Broadcasting Act 1990 limited the amount of advertising to be broadcast per day, as explained at 1.A.2.d. of this report dealing with television. Section 3 of the 1990 act states that the total daily times for broadcasting advertisements should not exceed 7.5 per cent of the total daily programme transmission time and the maximum period so fixed to be given to advertisements in any one hour should not exceed five minutes<sup>41</sup>.

This was amended by s2 of the Broadcasting (Amendment) Act 1993 which empowers the Authority (RTE) to fix the total daily times for broadcasting advertisements, and the maximum period so fixed to be given to advertisements in any hour, subject to the approval of the Minister”.

Thus the rules on duration and insertion of advertising in and between radio programmes are the same as those which apply to television advertising, as previously explained in section1.A.1.d of this report dealing with television.

**B. Regulation for Specific Products**

1. Alcohol

The rules on advertising of alcohol on radio are the same as those which apply to television advertising, as previously explained in section1.B.1 of this report dealing with television.

2. Tobacco

The rules on advertising of tobacco on radio are the same as those which apply to television advertising, as previously explained in section1.B.2 of this report dealing with television.

3. Medicines

The rules on advertising of medicines on radio are the same as those which apply to television advertising, as previously explained in section1.B.3 of this report dealing with television.

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<sup>41</sup> Section 3 of the Broadcasting Act 1990 made specific provision for Atlantic 25 radio station. Section 3 stated “in the case of the sound broadcasting service known as ‘Atlantic 25’ operating on a longwave frequency and licensed under section 16 of the Principal Act, the total daily time for broadcasting advertisements shall not exceed 20 per cent. of daily programme transmission time and the maximum period to be given to advertisements in any one hour shall be as determined by the Authority”.

#### 4. Cars

The rules on advertising of cars on radio are the same as those which apply to television advertising, as previously explained in section 1.B.4 of this report dealing with television.

#### 5. Media

The rules on advertising of the media on radio are the same as those which apply to television advertising, as previously explained in section 1.B.5 of this report dealing with television.

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

The rules on advertising of religions, politics and parties, social issues and groups on radio are the same as those which apply to television advertising, as previously explained in section 1.B.6. of this report dealing with television.

### **C. Self-Regulation**

As explained previously, advertising in Ireland is self regulated by the ASAI. Section 1.3 (d) of the ASAI Code specifies that the code applies to different media including “commercials broadcast on television or radio or screened in cinemas”. Thus radio advertising is self regulated in the same manner as television advertising, see section 1.C of this report dealing with television.

## **II. Shopping (specify whether a technique similar to tele-shopping exists on radio)**

No technique similar to teleshopping exists on radio in Ireland. However, if it did, it would be covered by the rules on teleshopping as explained in section II.A to II.C of this report dealing with television.

### **A. General regulation**

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

This as the same as in section II.A.1 of this report dealing with television.

#### 2. Specific audiovisual regulation

This as the same as in section II.A.2 of this report dealing with television.

##### a) Definition

This as the same as in section II.A.2.a of this report dealing with television.

b) Authorisation

This is the same as in section II.A.2.b of this report dealing with television.

c) General rules on content

These are the same as in section II.A.2.c of this report dealing with television.

d) Rules on duration and insertion in and between programmes

These are the same as in section II.A.2.d of this report dealing with television.

**B. Regulation for Specific Products**

1. Alcohol

These are the same as in section II.B.1 of this report dealing with television.

2. Tobacco

These are the same as in section II.B.2 of this report dealing with television.

3. Medicines

These are the same as in section II.B.3 of this report dealing with television.

4. Cars

These are the same as in section II.B.4 of this report dealing with television.

5. Media

These are the same as in section II.B.5 of this report dealing with television.

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

These are the same as in section II.B.6 of this report dealing with television.

**C. Self-Regulation**

Radio advertising is self-regulated in the same manner as television advertising, as explained in section 1.C of this report dealing with television.

### **III. Sponsorship**

Sponsored programmes were very common in the early days of Irish radio broadcasting. The rules on sponsored radio broadcasting are the same as for sponsored television broadcasting, as in section III.A to III.C of this report dealing with television.

#### **A. General regulation**

##### 1. General law on consumer protection applicable to all media

This is the same as in section III.A.I of this report dealing with television.

##### 2. Specific audiovisual regulation

This is the same as in section III.A.2 of this report dealing with television.

###### a) Definition

This is the same as in section III.A.2.a. of this report dealing with television.

###### b) Authorisation

This is the same as in section III.A.2.b. of this report dealing with television.

###### c) General rules on content

These are the same as in section III.A.2.c of this report dealing with television.

###### d) Rules on duration and insertion in and between programmes

These are the same as in section III.A.2.d of this report dealing with television.

#### **B. Regulation for Specific Products**

##### 1. Alcohol

These are the same as in section III.B.1 of this report dealing with television.

##### 2. Tobacco

These are the same as in section III.B.2 of this report dealing with television.

##### 3. Medicines

These are the same as in section III.B.3 of this report dealing with television.

4. Cars

These are the same as in section III.B.4 of this report dealing with television.

5. Media

These are the same as in section III.B.5 of this report dealing with television.

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

These are the same as in section III.B.6 of this report dealing with television.

**C. Self-Regulation**

This is the same as section 1.C of this report dealing with television.

**IV. Self-promotion**

There are no self-promotion radio channels in existence in Ireland. This is the same as section IV of this report dealing with television.

Other promotion techniques

**V. Presentation of products/services in programmes**

These are the same as section V.a of this report dealing with television.

**VI. New advertising techniques**

This is the same as section VI of this report dealing with television.

## CINEMA

### **I. Advertising**

#### **A. General regulation on advertising**

The Censorship of Films Acts 1923-1992 provide for the censorship and classification of cinema films by the Official Censor of Films. Section 5(1) of the Censorship of Films Act 1923, states “no picture<sup>42</sup> shall be exhibited in public by means of a cinematograph or similar apparatus unless and until the Official Censor has certified that the whole of such picture is fit for exhibition in public”. Section 5(2) makes it a criminal offence to publicly exhibit any picture without certification by the Official Censor.

A strict legal interpretation of this provision means that all advertising shown in the cinema should be submitted to the Official Censor’s officer for classification in advance of screening. In reality, very few advertisements are submitted for classified to the film censor’s office. However, the practical enforcement of the criminal breach of this provision is not a priority for the Gardaí.

The general law on consumer protection relating to advertising, applicable to all media, is the same as previously explained in section 1.A.1 of this report dealing with television.

#### **B. Rules on Specific Products**

##### **1. Alcohol**

There is no specific legislation dealing with advertising of alcohol in the cinema.

##### **2. Tobacco**

The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978 controls the advertising of tobacco products in cinemas by prohibiting it. If and when the Public Health (Tobacco) Bill, 2001 becomes law, it will also prohibit the advertising of tobacco products in cinemas. Section 33 of the bill provides that “a person who advertises a tobacco product shall be guilty of an offence”.

##### **3. Medicines**

There is no specific legislation dealing with advertising of medicines in the cinema.

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<sup>42</sup> ‘Picture’ is an Irish expression for cinema film. Section 13 of the act provides a partial definition of ‘picture’ which “includes any optical effect produced by means of a cinematograph or similar apparatus”.

#### 4. Cars

There is no specific legislation dealing with advertising of cars in the cinema.

#### 5. Media

There is no specific legislation dealing with advertising of media in the cinema.

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

There is no specific legislation dealing with advertising of religions, politics and parties, social issues and groups in the cinema.

### **C. Self-regulation**

The Cinema Advertising Association is a British trade association of cinema advertising contractors operating in the UK and Ireland. It describes its primary functions as “to promote, monitor and maintain standards of cinema advertising, including pre-vetting all cinema commercials to ensure conformity with the British Codes of Advertising and Sales Promotion and the Advertising Standards Authority for Ireland”. Thus the bulk of advertising shown in Irish cinemas is vetted by the CAA in London, who ensure that it complies with the ASAI’s codes, as explained in section I.C of this report dealing with television. In practice, such self regulation ensures that, for example, adverts for products aimed at adults, such as alcohol, are only shown with suitable films.

As explained in section 1.C of this report dealing with television, advertising in Ireland is self regulated by the ASAI. Section 1.2 (a) of the ASAI Code defines an advertisement as “as a paid-for communication addressed to the public or a section of it, the purpose being to influence the behaviour of those to whom it is addressed. It is characteristic of an advertisement that an advertiser pays a third party to communicate his message”. This definition would take in teleshopping material, although it is not explicitly stated. Section 1.3(d) specifies that the code applies to different media including “commercials broadcast on television or radio or screened in cinemas”.

## **II. Sponsorship**

Cinema film releases are increasingly tied into sponsorship and merchandising deals. However, these are usually as a result of contracts negotiated outside of Ireland. There is no specific regulation of film sponsorship in Ireland, except in the case of sponsorship by a tobacco company.

### **A. General regulation**

### **B. Rules on Specific Products**

1. Alcohol

There is no specific legislation dealing with sponsorship of cinema by alcohol undertakings.

2. Tobacco

The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978 controls the sponsorship of events by tobacco companies in cinemas by prohibiting it. If and when the Public Health (Tobacco) Bill, 2001 becomes law, it will also prohibit sponsorship by tobacco companies.

3. Medicines

There is no specific legislation dealing with sponsorship of cinema by medicinal undertakings.

4. Cars

There is no specific legislation dealing with sponsorship of cinema by car undertakings.

5. Media

There is no specific legislation dealing with sponsorship of cinema by media undertakings.

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

There is no specific legislation dealing with sponsorship of cinema by religions, politics and parties, social issues and groups

**C. Self-regulation**

No specific regulation or self-regulation exists for sponsorship of cinema in Ireland.

## INTERNET

As explained in section 1.A.2.a of this report, s2 of the Broadcasting Act 2001 defines a 'broadcasting service' as "a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telegraphy, a cable or MMD system or a satellite device, directly or indirectly for reception by the general public, whether the material is actually received or not, but does not include such a service that is provided by the Internet". Section 2 of the Broadcasting Act 2001 also states that " 'the Internet' means the system commonly known by that name".

Thus Irish law does not currently regulate Internet advertising in terms of broadcasting, although the general law on consumer protection applicable to all media will apply to advertising on the Internet, see part 1.A.1 of this report.

As explained in section II.A.1 of this report, the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 became law in Ireland in May 2001, implementing Directive 97/7/EC.

These regulations are aimed at protecting consumers from the risks of distance selling. A distance contract is one which is concluded between a consumer and a supplier under an organised distance sale or service provision scheme run by the supplier. The regulations apply when a consumer and supplier are not physically in each other's presence prior to the conclusion of the contract, with the result that the consumer is unable to see the product or ascertain the nature of the service prior to concluding the contract. Thus the regulations apply to 'videotex (microcomputer and television screen with key board or touch screen' and 'electronic mail', according to the definition of 'means of communication' in article 2(4), as listed in Schedule 1 to the regulations.

However, there is no specific self-regulation on advertising, sponsoring or sales offers on the Internet. Individual Internet Service Providers may choose to abide by the codes of the Advertising Standards Authority of Ireland, and request that advertisers on their service do so.

## **MOBILE PHONE**

In general, mobile telephones in Ireland only carry advertising from the network service provider.

As explained at II.A.1 of this report dealing with television, the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations, 2001, which implemented Directive 97/7/EC became law in Ireland in May 2001. The regulations are aimed at protecting consumers from the risks of distance selling. A distance contract is one which is concluded between a consumer and a supplier under an organised distance sale or service provision scheme run by the supplier. The regulations apply when a consumer and supplier are not physically in each other's presence prior to the conclusion of the contract, with the result that the consumer is unable to see the product or ascertain the nature of the service prior to concluding the contract. Thus the regulations apply to telephone with and without human intervention, according to the definition of 'means of communication' in article 2(4), as listed in Schedule 1 to the regulations. The regulations also apply to videophone (telephone with screen).

The definition of 'distance contract' in the regulations specifically excludes a contract which "is made with telecommunications operators through the use of public payphones".

Article 4(2) of the BCI Codes states that where the supplier makes contact with the consumer by means of telephone communication, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear. If this is not done, such a distance contract made by such means shall not be enforceable by the supplier against the consumer.

Under article 12 of the 2001 regulations, a distance contract shall not be enforceable by a supplier against a consumer if made by means of an automated calling system such as an automatic calling machine without human intervention, unless the consumer has given his or her prior consent to such means being used.

However, there is no specific self-regulation on advertising, sponsoring or sales offers on mobile telephones. Individual telephone companies may choose to abide by the codes of the Advertising Standards Authority of Ireland, and request that advertisers on their service do so.