

# *NEW ADVERTISING TECHNIQUES*

*Overview of regulation and self-regulation in the  
Member States*

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# *New advertising techniques*

- interactive advertising
- split screen techniques
- virtual advertising

# *Interactive advertising*

- ◆ Viewer can provide information to the broadcaster/advertiser through a return path
- ◆ Digital TV, Internet, Mobile phone

# *Which regulation applies to interactive advertising in general?*

- ◆ General regulation on consumer protection and advertising (misleading/comparative advertising)
- ◆ Regulation on data protection and privacy
- ◆ Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce
- ◆ National and international self-regulatory codes (general and by sector)

# ***Interactive advertising on digital television***

- ◆ Viewer can access a range of interactive commercial services :
- ◆ from a linear TV programme
- ◆ by using the Electronic Programme Guide
- ◆ from a TV advertising spot (generally the last in the break)

# *Application of TV regulation to interactive advertising on digital television*

- ◆ Nature of the services on digital TV?
- ◆ television broadcasting - information society services
- ◆ information society services: Any service, normally provided for remuneration, at a distance, by electronic way and **at individual request of a recipient of services** (point to point)
- ◆ television broadcasting : initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form of TV programmes intended **for reception by the public** (point to multipoint)
- ◆ Crucial demarcation line between both services : intended for reception by the public/provided at individual request.

# *Application of TV regulation (continued)*

- ◆ The user who deliberately decides to interact and goes into commercial interactive services :
- ◆ Information society services on individual demand :TV regulation is not applicable.
- ◆ Services offered by the broadcaster and “intended for reception by the general public” : TV regulation applies
- ◆ TV Directive TV WF: rules on advertising apply to TV-programmes
- ◆ Application of TV regulation :
- ◆ entering interactive commercial services from a linear TV-programme
- ◆ simultaneous presence of a TV-programme and other commercial content or links on 1 screen (split screen)

# ***ITC guidance note on interactive television***

- ◆ **Basic principles can be applied to interactive television:**
- ◆ the nature of different types of content has to be transparent to the viewer
- ◆ clear distinction between advertising and programmes (can be spatial on digital TV)
- ◆ **entering commercial information from a linear TV-programme:**  
first click on a neutral interactive icon - intermediate screen: editorial content (min.50%) and commercial links

# ***EGTA Code of conduct relating to interactive services***

- ◆ Necessity to establish a set of principles that are technologically neutral
- ◆ Flexible minimum framework enabling to develop interactive services taking into account the interests of users
- ◆ Content of the Code: rules on identification of advertising and advertisers, financial transactions, misleading advertising, ethical values and protection of minors.

# Conclusion:

- ◆ Except for the guidance note of ITC and the EGTA self-regulatory code, there exists no specific regulation on interactive advertising
- ◆ In general it can be said that the technique is starting to develop (most member states: experimental stadium). It's importance can grow together with the take up of digital television
- ◆ Majority opinion of media professionals:
- ◆ interactive advertising should be subject to light touch, flexible rules which allow further development of this technique, and digital television in general
- ◆ the existing legal framework seems adequate and sufficient
- ◆ justification can be found in the fact that the viewer/consumer is actively and deliberately "pulling" content

# *Split Screen techniques*

- ◆ Technique which allows simultaneous presentation of editorial material and commercial information on the same screen by separating it into 2 or more parts
- ◆ Use: Analogue and Digital television, Internet
- ◆ Digital television/Internet: TV regulation applies to which extent? Only for this part of the screen showing a TV-programme?

# ***Split screen technique on analogue television***

- ◆ Subject to TV-regulation
- ◆ Could be considered as contrary to the principle of clear separation of advertising and programmes (art.10 Directive) or the rules on insertion of advertising in programmes (art.11 Directive)
- ◆ Several Member states prohibit the use of the technique on the basis of these considerations (ex Netherlands, Portugal, Sweden, Norway, France...)
- ◆ Other Member States allow the use (ex Germany, UK...)

# *Split screen continued*

- ◆ **Germany:**
- ◆ specific regulation :
- ◆ clear separation of advertising and program by optical means
- ◆ mention of the word “advertising” on the relevant part of the screen
- ◆ the duration of the advertisement is fully counted for the purposes of calculating the overall maximum amount of advertising
- ◆ prohibited during religious programs and programs for children and young people

# *Split screen continued*

- ◆ **United Kingdom:**
- ◆ **ITC** permits the use of split screen techniques:
- ◆ on digital television: in the interactive environment separation between TV-programme and advertising/commercial links can be spatial (not temporal)
- ◆ on analogue television: split screen techniques are allowed in a restricted form (textual information on a program during advertising)

# *Conclusion*

- ◆ Opinions on the evolution of this technique and its eventual success are very divergent
- ◆ National public authorities tend to prohibit the use of this technique on the basis of the separation principle
- ◆ If acceptance of this technique on a European level is judged opportune, clear rules seem necessary to avoid legal uncertainty and diverging interpretation of the principle of separation between advertising and program

# *Virtual Advertising*

- ◆ Electronic insertion of advertising messages or logos in a programme
- ◆ Generally used in sports programmes
- ◆ The situation in the Member states is divergent (prohibited - expressly authorized - tolerated -not used on this moment)

# *Virtual advertising continued*

- ◆ Some Member States prohibit the use of this technique on the basis of the prohibition of surreptitious advertising or the rules on insertion of advertising in programs (ex. Italy, France, Norway, Portugal ...)
- ◆ Specific regulation exists in the UK and Germany (rules inspired by the EBU Code on virtual advertising):
  - ◆ information to the viewer
  - ◆ only replacing of existing on site advertising
  - ◆ ITC guidelines (UK) also include an obligation to preserve picture quality and a prohibition for broadcasters to sell virtual advertising
- ◆ Other Member states have no specific regulation but seem to tolerate the use of this technique (Spain, Greece, Austria...) Some reported no actual use of this technique (Finland, Denmark)

# *Conclusion*

- ◆ The situation in the Member states is differing as to the admissibility of this technique. Also, there is no consensus on the importance of this technique for European broadcasters.
- ◆ If the acceptance of this technique on a European level is judged opportune, clear rules seem necessary as to avoid legal uncertainty or different interpretation of existing TV-regulation.

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