



Response to the European Commission Issues Paper on Commercial Communications

The Campaign For Press and Broadcasting Freedom

1. The CPBF was established in 1979. It is the leading independent membership organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership based, drawing its support from individuals, trade unions and community based organisations. It has consistently developed policies designed to encourage a more pluralistic media in the UK and to promote accountability, diversity and plurality in mass communications.

2. The CPBF has made general comments on the revision of the Television without Frontiers Directive in a separate document, and detailed submissions on three Issues Papers. These are the papers on *Commercial Communications*, *Protection of Minors and Human Dignity*, *Right of Reply* and *Media Pluralism*.

3. On many of the issues set out in the paper there are clear divisions between civil society and consumer groups on the one hand and advertising and commercial media groups on the other. There are powerful pressures towards 'deregulation' of controls on commercial communications from all main industry partners concerned – commercial broadcasters, content providers, advertisers, marketing communications specialists. Together these bodies also have considerable resources to deploy to influence regulatory outcomes. Those organised groups who oppose or raise concerns are generally resource-poor, either in total capacity or in the extent to which they devote resources to these issues. There is a need for further research on citizens' concerns and on the impact of proposed changes on the quality and range of information, ideas and imagery available to citizens and users in the EC. What is clearly at stake in the revision of the Television Directive is the balance between media and communications as private activities and the broader social and political duties, cultural diversity and pluralism that media systems must provide. The policy process must be conducted so as to facilitate democratic deliberation on the implications of deregulating controls on advertising and commercial communications.

4. Key principles for regulation of commercial communications

We believe the key principles that should guide policy include:

i. Separation of editorial and advertising

Advertising (commercial communications) and editorial content should be clearly separated in ways which are recognisable and explicit for users. Wherever such separation is not clear, due to the development of new media forms and channels, content providers must satisfy regulatory standards which ensure separation and

should be required to give guidance to users regarding separation in accordance with the promotion of media literacy (see below).

ii. Transparency and identification

Users of all audiovisual services, linear and non-linear, should always be aware when they are in a selling environment. To achieve this all providers of services have an obligation to ensure that commercial communications are clearly identified as such and distinguished from other media content.

iii. Editorial integrity and independence

Editorial content and programme agendas should not be distorted by external commercial interests or by the commercial business interests of content providers. There should be no restriction or impediment to the exercise of professional journalism from internal sources or from unfairly promoting the economic interests of advertisers, sponsors or business partners.

Comments on the Commercial Communications Issues paper (hereafter ‘fourth Issues Paper’)

The concept of audiovisual commercial communications

5. We support the view that qualitative rules should be extended from television advertising and teleshopping to cover all audiovisual commercial communications. While it is acceptable to offer a broad definition of commercial communications we believe that regulation should continue to distinguish specific promotional practices and apply detailed rules accordingly.

Identification of commercial communications

Product placement

6. The issues paper indicates support for removal of the ban on product placement. It proposes ‘clear identification at the beginning of the programme concerned’. We oppose relaxation of rules prohibiting product placement. It has been argued that product placement occurs anyway and so should be ‘legitimised’. In the UK successive television regulators (IBA, ITC, Ofcom) have prohibited product placement in UK programmes. Even though, non-domestic programming, notably US films and television, have been broadcast without restrictions on their embedded product placement, the rules have been strictly enforced for domestic production, with fines and other sanctions applied. These measures have proved successful and effective, on the whole, and provide ample evidence that regulatory control can be successfully implemented for regulated services,

7. The first issues paper makes the entirely erroneous claim that ‘product placement today in fact operates without any regulated environment’ – it is prohibited as a form of surreptitious advertising in the current Television Directive and banned in several regulatory systems including UK broadcasting. The efforts to justify relaxation on the grounds that product placement is ungovernable are unconvincing and unsupported.

8. Film and television have always shown a world of branded goods. However, the practice of promoting goods and services in programme content for financial or other commercial consideration has been strictly regulated in the UK and at EC level. The principles, first, of the separation of editorial and advertising and second, that programme agendas should not be distorted for commercial purposes have been central to the Western European model of broadcasting and are acknowledged in the issues papers and upheld by many respondents. The relationship between formal regulation and the wider outlook and behaviour of professionals is critical here. While product placement has become normalised in the United States and in the outlook of some audiovisual and marketing professionals, this has not yet been established in Europe.

9. Rather than argue for the inevitability of relaxation of rules, it is important to recognise the contribution that regulation has had, not simply in terms of formal regulation (command and control), but in shaping normative, ethical and professional behaviour. It is vital for the future 'self-regulation' of such practices that the EC retains clear rules prohibiting any form of promotion occurring within programmes in exchange for economic or other consideration. The strict prohibition on product placement in any EC sourced AV linear service should therefore remain.

10. The first issues paper states: 'For product placement to be made possible, the principle of separation should cease to be an essential criterion and should simply be one of the means to enable users to identify commercial content and to distinguish it from editorial content. This option has been supported by broadcasters and advertisers.' We reject this proposal. The principle of separation of editorial and advertising has been a key component of the European model of broadcasting which seeks to provide appropriate access for commercial communications while safeguarding consumers (transparency, disclosure) and broader communication rights and objectives (independence from commercial influence on programmes and content; integrity and independence of editorial within programmes and output; 'system-wide' protection against commercial speech).

11. In the United States, media companies and associations have opposed all efforts by consumer and citizens' groups to require product placement to be identified in the end credits of audio-visual products.

12. There should be a requirement concerning the transmission or retransmission of any programme broadcast which has not otherwise been subject to EC regulation of product placement and in which product placement occurs. In such instances, there should be oral and written identification at the beginning of the programme and in end credits providing clear identification that the programme contains product placement. In each case a statement should be included that product placement is prohibited in EC sourced programmes. This would aid media awareness and media literacy. Such clear recognition would also assist in encouraging wider public debate favouring either a more stringent or relaxed regulatory approach when regulation is reviewed.

13. The former UK regulator, the Independent Television Commission expressed its concern about the way in which commercial communication and programme material were becoming increasingly integrated, 'including the degree of transparency to

viewers'. Transparency and disclosure alone, however, are not enough. The system-wide requirements of democratic, diverse and independent media are incompatible with programme agendas being unduly shaped by economic power and influence. There is a role for purely commercial media but regulation should ensure the dominant media provision is regulated or organised to secure public service provision and principles. (ITC 1996:2). In 1991, the ITC's first Director of Advertising and Sponsorship Frank Willis argued (cited in Leggatt, T. (1993) 'The Sponsorship of Television Programmes' in Sir R. Shaw (ed) *The Spread of Sponsorship in the Arts, Sports, Education, The Health Service and Broadcasting*, Newcastle: Bloodaxe):

Transparency should not be seen as a substitute for the principle of non-interference in editorial, but as reinforcing it. If interference is taking place, it is more likely to be detected if the potential interferer is publicly identified.

We concur with this view. Transparency is one element of the safeguards that enable citizens/consumers to assess the nature of the communication and of the interests that shape it. However, transparency is not a satisfactory or sufficient safeguard for commercial speech. The Commission's Issues Papers convert 'transparency' from being a consumer-protection safeguard to become a mode of disclosure justifying the integration of commercial speech and media content. We reject this. The key principle justifying regulation is that of non-interference in editorial. Where commercial communication occurs between or outside of programme/ editorial content then transparency should be ensured. The interests of those promoting services should be declared, or be otherwise explicit, so that viewers/users may make their own assessment of the value and integrity of the information provided.

Surreptitious advertising

14. The first issues paper states: 'such representation is not considered to be surreptitious advertising if the public is informed of its existence by any means.' This definition is far too broad. It is not sufficient that some means of information is used. Such a formulation would allow information to appear without sufficient proximity and prominence in time and space to the 'surreptitious advertising'. The Directive should instead affirm clear rules (minimum standards) on transparency and disclosure and prohibit 'surreptitious advertising'. Such rules may be described in accompanying documentation to keep pace with evolving forms and efforts to integrate media content and commercial communications.

Telepromotions

15. Telepromotions should be prohibited – incompatible with principle that programme agendas should not be distorted for commercial purposes. Current interpretation allows presented and other 'trusted guides' to promote and plug good or services provided they are kept separate from other parts of the programme by optical/and of acoustic means. Need strict rules on who may be permitted to promote, which exclude news presenters and reporters, presenters of children's programmes

Non-commercial communications

16. Whereas the e-commerce Directive requires non-commercial communications relating to the goods services or image of a company or organisation or to be "compiled in an independent manner", in its first Issues Paper, the Commission has

reduced the requirement for independent compilation to one of no financial compensation. If adopted, this definition would permit many types of advertising currently deemed to be surreptitious. The requirement for independent compilation should be restored.

References to sponsors (Issue 5: Identification of sponsored content)

17. In the Interpretative Communication on the Advertising Provisions in the current Directive, the Commission ruled that no explicit reference could be made to a sponsor's products or services "except where such a reference serves the sole purpose of identifying the sponsor or making explicit the link between the programme and the undertaking sponsoring it." [C (2004) 1450, p. 14.] In its fourth Issues Paper however, the Commission now states that references to a sponsors products or services are allowed provided that they "are not given undue prominence." The precise and narrow provision outlined in the former has become looser and far more subjective in the latter. Were the EU to adopt this criterion, surreptitious advertising could still take place in "non-commercial" sponsored programmes, and viewers would be less, rather than better, informed about the commercial provenance of many of their programmes.

Application of the rules

18. The economic and strategic value for advertisers to run transnational advertising campaigns, and their accompanying pro social benefits, need to be balanced with strengthening democratic governance of commercial communications and respect for social and cultural values approved within individual Member states. Revision of the TVWF Directive should not prevent countries from imposing stronger rules on advertising and commercial communications than those set out in Directive itself. We concur with other civil society and consumer groups in calling for legal backstop powers to underpin the application of codes of conduct or co-regulatory measures.

19. It is essential that the regulatory regime is sufficiently robust to apply penalties and sanctions for breaches. The regulation of communications must be conducted to ensure the full participation of civil society, with the realisation of social and cultural rights and equitable economic relations elevated above more narrow economic, commercial or industrial interests.

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