



Commercial Communications

I – Rules Common To All Audiovisual Commercial Communications

It is also necessary to identify a strong set of basic rules in relation to advertisement, with regards to communications which are detrimental to human dignity, in protection of minors and in protection of the principle of non-discrimination, which should cover all types of advertising and commercial communications.

Issue 4: Identification of Commercial Communications in General

An opening to the possibility of carrying out product placement within television programmes must absolutely be considered. This would make it possible to overcome the numerous interpretation and application difficulties witnessed to date in courts in defining the cases of product placement.

It would be sufficient to maintain the basic principle by which an advertising message and/or product placement must be visible and recognisable to the eyes of the viewer (by means of specific visual or acoustic indications), or the establishment of quantity limits for product placement, based on the different types of programmes.

This would guarantee greater freedom for broadcasters and producers, a decrease in the legal cases in this area (to date very abundant and just as uncertain and varying in their conclusions) and at the same time, it would guarantee an effective protection for the viewers, who are put in the condition to be aware of the advertising/commercial contents of the message.

The fact that this type of legislative innovation would allow a potential decrease of actual interruptions during the broadcast of programmes (advertising revenues would increase thanks to product placement) should not be ignored.

However, it is important to note that allowing product placement can undoubtedly increase the revenues of European producers (especially if independent), as well as broadcasters' revenues: the economic commitment of a broadcaster for the production of programmes by European independent producers could be increased by product placement as it is a source of financing production.

II - Quantitative Rules on Television Advertising

Issue 1: Hourly and Daily Advertising Limits

The position of the European Commission is fully acceptable, as it considers the current hourly advertising limit as well-proportioned, however, at this point the daily advertising limit is superfluous and could be eliminated without causing an excess in advertising.

To this end, the introduction of a new definition within the TVWF Directive would be desirable, reusing the “commercial communications” definition already introduced by the EEC Directive 2000/31 on Electronic Commerce.

According to this, “commercial communications” are “all forms of communications directly or indirectly aimed at promoting goods, services or the image of an enterprise, organisation or company. The following are not commercial communications per se:

- 1) information used for direct access to the activities of an enterprise, company or organisation
- 2) communications related to goods, services or the image of that enterprise, company or organisation, created independently, against no payment.”

This would definitively exclude from the definition of commercial communication any kind of self-promotion messages involving the promotion of programmes, channels and the television broadcast service .

These kind of communications are meant to present the viewers with the editorial line of the broadcaster, and therefore their content is mainly creative and original, rather than commercial. The type of communication is more similar to a programme, as for their content, rather than a commercial communication *strictu sensu* and thus also in terms of application of the relevant rules.