

RNA – Radio Nazionali Associate

Observations to the issue paper on Commercial Communications addressed to the Directorate – General Information Society and Media of the European Commission

Comments

I – Rules common to all audiovisual commercial communications

Issue 1: The concept of audiovisual commercial communications

We agree with the expert's group suggestion for technologically neutral rules which cover both linear and non-linear broadcasting services. An increasing number of media technologies will be able, in the near future, to deliver both kind of services and therefore a common set of rules covering all audiovisual services should be envisaged.

The possible definition of "audiovisual commercial communications", as suggested by the issue paper, to cover all kinds of commercial communications and to be subject to a common set of qualitative rules seems to be a reasonable approach to the difficulties created to regulation by the convergence process.

Issue 2 and Issue 3 – Rules on human dignity and the protection of minors - Rules relating to public health consideration.

Rules on human dignity and the protection of minors should apply to all services broadcasted, linear and non-linear. As underlined in the issue paper, a coherent legal framework covering all audiovisual services would simplify the balance between the needs of the internal market and the protection of basic principles. In RNA's view no difference between linear and non-linear services should be applied.

The implementation of "qualitative" rules in order to ensure greater legal coherence in the balance between the free movement of audiovisual commercial communications in the internal market and the protection of a set of basic principles, as considered by the Commission, is not to be opposed. Nevertheless, if radio is to be included, its particular

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characteristics (local/regional and national broadcasting, community services) must be taken into account and be differentiated from other mediums like television.

Issue 4 – Identification of commercial communications in general, including sponsored spots.

The directive should contain more precise provisions and, particularly, should strengthen the basic rule of the block principle with limited possibilities for exceptions. The separation and identification principle should be a binding commitment and broadcasters must be required to clearly inform the viewer, by appropriate means, when advertising messages are transmitted.

This leads to the conclusion that identification of advertising should be both optical and acoustic and the word advertising should appear continuously.

Product placement should be avoided as much as possible. If such forms of advertising will be included, their value and duration must be taken into account when calculations for the limits of television advertising are made.

Issue 5 - Identification of sponsored content in particular.

Sponsoring has the same nature and pursues the same aims of any other form of advertising. It should be submitted to the same rules.

Isolated advertising and teleshopping must remain the exception.

As a general rule product placement is a sort of surreptitious advertising that should not be allowed.

The broadcasters should be able to exercise responsible judgement on the scheduling of advertising and in particular should be in a position to identify in advance inappropriate juxtapositions between advertising material and programmes in order to avoid distress or offence to viewers. Product placement should be banned particularly when it only serves advertising purposes and it is not indispensable for the conduct of the programme.

Sponsorship messages should be considered as advertising messages in every respect. Accordingly the rules relating to advertising duration should be the same provided for spot advertising (maximum quantity of advertising stated under art. 18 of the EU Directive) without any increase of the maximum volume.

Furthermore sponsor credits must not be integrated within any part of the programme and they must not exceed a certain time.

Issue 6 – Application of the rules

Member States should, as proposed, be forced to take into full account the developments of codes of conduct and co-regulation mechanisms. Nevertheless, we recommend to avoid that single Member States may, in the transposition process into national law, create exceptions for some subjects like local broadcasters which have today the possibility of using advanced technologies, like satellite distribution/broadcasting and similar.

II – Quantitative rules on television advertising

Issue 1 and 2 – Hourly and daily advertising limits. Hourly and daily limits applied to teleshopping.

Advertising volume and the frequency of interruptions are the main cause of discomfort to the viewers. Television broadcasters should be bound by stricter rules concerning the duration of advertising, particularly as regards the hourly amount. The limitation of the amount of the advertising within a given one-hour period should be strictly applied in order to avoid that the same limitation is “de facto” disregarded.

Any arguments in favour of relaxing the current time limits it is not shareable. That’s the reason why any simplification of the rule must lead to the adoption of a unique percentage for television advertising on an hourly basis so to avoid the balance to be upset during the time frame within which the programmes get the highest attention. In this context the limits imposed by national law, if they are more restrictive, must be maintained.

All kind of advertising messages (spots, teleshopping, telepromotions) having the same nature should be included in the maximum transmission time determined on hourly basis.

As for telepromotions, they are a form of television advertising based on the interruption of programmes by slots devoted to the presentation of one or more products or services, where the programme presenters, or other people playing a leading role in the

programme, momentarily swap their role in the programmes in progress for one as promoters of the goods or services which are the object of the advertising presentation.

These kind of advertising messages do not comply with art. 10 of the Directive which provides that advertising must be readily recognizable as such and kept quite separate from other parts of the programme. The general interest purpose of these provisions is to avoid any confusion between advertising and other items of the programme service. Programmes which fail to observe the principle of separation between advertising and editorial content are prohibited.

Issue 3 – Insertion of advertising

Art. 11 of the Directive provides that advertising and teleshopping spots shall be inserted between programmes or, provided certain specified conditions are fulfilled, may 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.

Clearly this article is aimed at protecting the viewers from excessive advertising and their interests to enjoy the integrity and the value of the programme. The insertion of advertising requires that the programme is interrupted without undermining its value and integrity. This is true for any kind of programmes, since art. 11 covers any possible situation. Par. 2 of the same article does not require interruptions simply because it refers to programmes which are structurally composed of different ("autonomous") parts or they contain intervals, so the insertion of advertising is permitted in correspondence to the interval between the parts or in the intervals. As to the aims pursued, it seems that the integrity of a programme and the interests of the viewers may be better protected if the transmission of the programme (a film, for example) is not disturbed by artificial breaks that should be basically prohibited.

A natural break should be better defined, for example as a point at which some interruption in programming would in any case occur.

Telepromotions interrupting tv shows conducted by the same anchorman as the show must not be allowed in any case, as they generate confusion for the consumers.

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Possible changes in the legislative framework for introducing more flexibility to insert advertising during programmes could deeply affect the general interest objectives pursued by the Directive and should not be permitted in any case.