

VDZ – Association of German Magazine Publishers

Revision of the TVWF Directive: Comments on the issues papers by the "Information Society and Media" Directorate-General for the Liverpool Conference on audiovisual media (July 2005)

Issues paper 4: Commercial communications

VDZ – Verband Deutscher Zeitschriftenverleger e. V. is the umbrella organization of German magazine publishers and their online services. Its members include more than 400 publishing houses, organized in seven federal-state associations, who publish over 3,000 magazines and hence account for around 90% of the German magazine market. The share of supplementary electronic issues is growing continuously here, as is the share of independent electronic issues. The purpose of the Association is to protect and represent the common ideal and economic interests of magazine publishers.

VDZ is pleased to have this opportunity to comment on the debate concerning the revision of the Television Without Frontiers Directive. Considering the current status of debate, we will restrict ourselves to what we consider to be the most important issues papers. Although our comments are separated according to the issues papers, we recommend that you consider these as one context where necessary.

Summary of issues paper 4

I. Question 1: Editorial (audiovisual) media contents must be clearly distinguished from "commercial (audiovisual) communications".

The tried-and-tested and relatively clear-cut definitions of the TVWF Directive should be given preference in relation to the undefined legal term of "commercial communications". Furthermore, the concept of "commercial communications" is not necessary for a revised TVWF Directive. Should, however, a revised TVWF Directive be introduced, unambiguous and clear-cut legal definitions will be required for the exclusion of editorial media content. This could, for example, be accomplished in a manner like that used in Article 2 f), 2nd half-sentence, 2nd bullet point of Directive 2000/31/EC (Directive on electronic commerce).

I. Question 4: The requirement to separate advertising from the programme service is a key precondition for independent, reality-based and fictional media content. As such, it must be preserved for television like for all mass media. Therefore product placement must remain illegal in as far as products, brands and services etc. are integrated for advertising purposes into editorial programmes. Europe should avoid the otherwise threatening advent of advertising-controlled editorial offices. Public interest in European societies in maintaining the separation requirement is much higher than the interest in retaining quantitative advertising rules to their current extent.

1. The requirement to separate advertising from the programme service is one of the few fundamental requirements for mass media in democratic market economies. This

requirement is by no means technology-dependent. It is an indispensable instrument that enables independent, journalistic and editorial content, especially for television. Furthermore, any attempt to remove the separation requirement by legalising the purchase of parts of editorial content for advertising purposes would also jeopardise the possibilities for independent information and entertainment in all media. This holds particularly true for the acceptance of product placement as the paid insertion of products, brand names, services, etc. into editorial programmes for advertising purposes. Since public opinion is formed to a substantial extent via the mass media, this issue concerns a quality standard which is as important for democracy as it is as a locational advantage that deserves to be defended for a modern Europe. Like with all important standards, violations are inevitable. Needless to say, however, such violations do not justify the abolition of the standard but call for sanctions instead.

2. Product placement as an act of purchasing parts of editorial content violates the separation principle and is hence not acceptable even if is unambiguously identified as such *throughout its entire duration within the programme*. Without such unambiguous identification, viewers would be misled *in addition to the violation of the separation principle*. Needless to say that such a form of deception may not be legalised by "further developing" the definition of surreptitious advertising according to which surreptitious advertising by product placement is not to be considered as surreptitious advertising if the insertion of product placement is mentioned at the beginning of the programme.

3. Even if the advertising industry were to increase its overall advertising budget after a legalisation of product placement, the separation principle and hence the ban on product placement as a central precondition for independent media should not be abandoned. The general interest in independent media is much more important for democratic societies than a potential increase in advertising sales on television would be.

4. In fact, however, even the assumption of higher total advertising expenditure on the part of the advertising industry is not convincing. If a ban on advertising exists *for certain products*, the abolition of such bans will motivate manufacturers, who were so far *barred* from any advertising, to start spending on advertising which was formerly not possible. It is, however, completely unlikely that advertisers who account for relevant television advertising shares will generally increase their advertising budgets which are centrally distributed to the different media if they are given the opportunity to buy space for their advertising messages in television series, films, magazines, talkshows and gameshows broadcast under editorial responsibility. Changes in advertising budgets have their reasons, but these do not lie in the approval of product placement. Reports from the US, for example, suggest that advertising budgets for product placement are not increased, but that more than a 100 million dollars from advertising budgets are re-channelled from TV spots to product placement (reference below).

5. Advertising budgets would certainly be re-distributed. Pressure would inevitably increase on media adhering to the separation principle, such as magazines and newspapers, to open up their editorial content to the wishes of advertisers. And if the print media were the only area adhering to separation and independent editorial teams, whilst advertising messages could lawfully penetrate the editorial offices of other (audiovisual) media, it is evident that funds would be re-channelled from independent reading media to audiovisual media content where advertisers would then have the possibility to co-determine content. This would first and foremost affect those reading media which place particular emphasis on independent content and thereby take the necessary function of the media in democratic societies particularly seriously.

6. Funds, however, which are re-channelled from financing independent reading media towards financing audiovisual media do not necessarily generate additional revenue for television stations. Reports from the US indicate that advertising funds for product placement increasingly "stick" to agencies and producers without reaching the television stations at all (reference below in the text). In as far as advertising funds are re-channelled from TV advertising spots to product placement and are finally pocketed by third parties, legalising product placement would even reduce the advertising revenue on the part of television stations.

7. Abandoning the separation requirement by permitting product placement would not constitute a real liberalisation of advertising, but would instead mark the beginning of an approval of advertising-controlled editorial offices. So whilst the general interest in independent media demands that the separation requirement remain in place and rules out the approval of product placement, an easing of quantitative requirements for television advertising (insertion rules and advertising time restrictions) would constitute a real liberalisation of advertising which will be much easier to accept. In this case, liberalisation of advertising would be possible in favour of television *without violating priority structure standards*.

I. Question 2: Expanding the advertising content restrictions in question to media other than television programmes or to other content types appears to be unnecessary.

I. Question 3: Expanding the advertising bans in question beyond television or to other content types is not necessary. On the other hand, the proposal to permit objective information about the products and services referred to in Article 14 is welcomed. In that case, however, there will be no reason to restrict the permissibility of such information to audiovisual media of any kind whatsoever and to ban such information in reading media.

I. Question 6: Strengthening effective advertising self-regulation is welcomed in the form in which it already widely exists in different systems of the Member States. On the other hand, European specifications for shaping self-regulation or even obligations to replace self-regulation with co-regulation by governments or European authorities must be strongly rejected.

II. Quantitative advertising rules: Refer to I. above, question 4 under 7.

Detailed comments on issues paper 4: Commercial communications

I. Common rules

Question 1: The concept of audiovisual commercial communications

It is doubtful whether the terminological concept of "commercial communications" will result in any improvement. Especially due to its focus on "serving" with the aim of directly promoting commercial interests of all kinds, the definition has no profile and is endless. Accordingly, with its positive description, the definition fails to provide the vital distinction from editorial media content. This is why editorial media content is not clearly excluded from the scope of the directive until this takes place in the negative exclusion contained in the definition of "commercial communications" as set forth at the end of Art. 2 f) of Directive 2000/31/EC on electronic commerce. *"The following do not in themselves constitute commercial communications:: [...] – communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration."*

Furthermore, we do not consider it to be necessary to include this term in the TVWF Directive. The definitions in Article 1 c) – f) with the respective subsequent rules have proven their worth. If there is a need for change, this must be tackled in a clear and transparent manner on the basis of the particular issue. The vague general clause would similarly blur any rules relating to it.

If, however, the term of "commercial communications" which is questionable as a legal term is still to be introduced into a revised TVWF Directive, a clear-cut definition of the exclusion of editorial media content is needed in the directive. The definition of the term on page 2 of the issues paper is insufficient in this respect. This exclusion could take place as described in the above-quoted Article 2 f), 2nd half-sentence, 2nd bullet point of Directive 2000/31/EC (Directive on electronic commerce).

I. Question 4: Identification of commercial communications: The requirement to separate advertising from the programme service must be maintained, including the ban on product placement.

First of all, we welcome the general move by the Commission to attempt to liberalise the affected industries during its revision of the TVWF Directive. As will be shown below, a softening of the separation requirement would not mean *liberalising advertising*, but would constitute a wrong decision in terms of media policy which would additionally fail to yield any relevant economic benefits. Contrary to this, liberalisation potential clearly exists in conjunction with quantitative advertising restrictions and bans on advertising.

The requirement to separate advertising and the programme service is a necessary requirement for media in democratic market economies. The fact that it is violated just like all other rules does not justify its abolition, but highlights its relevance and necessity. Violations can be and are sanctioned. Without the separation requirement, it would not be possible to defend independent editors. Its protection is absolutely vital for the TVWF Directive, too. The decision in favour of maintaining the separation of advertising and the programme service on television instead of the – perceivable or concealed – mixing of advertising and programmes will have an influence on the future shaping of all European mass media that simply cannot be underestimated. Europe should take care not to call to life a process at the end of which the editorial content of its mass media is excessively influenced by advertising money.

Separation requirement even for television irrespective of technical developments

The separation of advertising and the programme service can under no circumstances be "technically" justified, unjustified or even "technically obsolete". In technical terms, advertising and programmes can be separated or mixed in all media, both today and tomorrow. The only question is what media policy aims to achieve. This should be a rhetoric question for citizens in a free democratic society expecting independent media.

Separation is more than just the possibility to identify paid programme elements

Those in favour of removing the ban on separation sometimes try to create the impression that the identification of advertising parts in the editorial content of fiction or documentary series, magazines, talkshows and gameshows is the decisive factor and that separation is merely a dispensable additive. The opposite is correct. The separation principle includes the identification capability because separation demands distinguishability and hence the capability to identify both sides. The separation requirement, however, has a decisive function going beyond the capability to identify. It permits the defence of independent editors and programme content against the aspirations of advertisers as well as advertising and/or marketing departments.

Product placement in the meaning of the paid insertion of brand names, products, services, etc. for advertising purposes into the editorial part of a programme simply means that the corresponding editorial content is no longer determined independently by the medium but by the paying advertiser. It is hence not a solution but a contradiction in itself if it is sometimes suggested that product placement be permitted on condition that the customer is not permitted to influence the programme content. This is because the real purpose of the content is the positive ("for advertising purposes") programme part presenting the brand, service, etc.

Even the *perceivable* mixing of advertising and the programme service threatens editorial independence

Even the permissibility of *perceivable* inclusion of advertising communications into editorial programme content threatens and ultimately damages the independence of editorial content. Mere identification without separation means that economic and cultural reports as well as series, etc. can use parts of their content to advertise on condition that this can be identified (no matter how). In other words, it is then legitimate for magazines, reports, series, shows, etc. to highlight, refer to in positive terms or advertise certain brands, products, companies, services, etc. *What this in fact means is that editorial content is purchased and is hence no longer independent.* This holds true even if the purchased communications are clearly perceivable during broadcasting. If this were applied to the print area, this would mean that reports on politics (except for news whatever this may mean), economics, sports and culture would be allowed to present positive coverage of certain companies, organizations, products, services, etc. against payment on condition that this remains perceivable. If, however, advertisers are by law permitted to "purchase" parts of elements of editorial content, this will adversely affect the chances of all media to protect the independence of their editors.

Concerning the proposals to abandon the clear identification of advertising communications in editorial content (surreptitious advertising) in addition to the removal of separation – which must be rejected – refer to the information below (page 10).

Maintaining the separation requirement for news underpins the necessity to maintain this separation for the entire programme

The proposal to maintain the ban on product placement exclusively for news programmes is not convincing. If product placement does not pose a problem, this must also hold true for news programmes. Or does it constitute a problem because news is relevant for forming opinions in a democracy, so that its independence must be protected against any influence by third parties, including advertisers? In this case, however, one should not forget that opinions are formed not just by news programmes, but also - and not to a lesser extent - in fiction programmes, such as series, films and formats like magazines, talkshows, etc. The news-related ban shows very clearly that even those who support product placement are aware of the risk for editorial independence. Product placement must hence remain prohibited in all formats. This is the only way.

Separation requirement protects the independence of opinion forming in a democracy

Democratic societies clearly depend on independent media. They are the only way to ensure that the diversity of different information, opinions and attitudes enters the public debate, thereby protecting a vital precondition for democracy to exist. In this context, it is not regrettable but, on the contrary, it should be seen as a positive sign of the free constitution of state and society, if media, including editors, receive a substantial part of their revenue from advertising funds. The claim of independence refers to editorial programmes rather than to advertising which, as such, is clearly separated from the programme service. At the same time, it is also becoming evident that the separation requirement is a means necessary to help secure the independence of editorial media content. For without the separation requirement, media companies wishing to protect their editors' independence would be deprived of the means to protect themselves against the influence of advertisers.

Violations of the separation requirement underpin its importance – sanctioning is without doubt possible

The fact that the separation requirement – just like all rules relevant in society – is violated, and since this requirement is and will remain discussed in all media, does not mean that this requirement is superfluous but highlights its importance and necessity. Violations of the separation requirement can be and are prosecuted in practice. That sanctions can be imposed in all media is demonstrated by the consequences of the product placement scandals in German public-service television, as well as court proceedings against private television shows, against electronic press websites, or by the fine imposed by the British Ofcom upon Channel 4.

Removing the separation requirement for television will also constitute a massive threat to the independence of print editors – the role of media agencies

An end to the separation requirement for television content would mean a massive threat to newspapers and magazines. Germany is not the only country where a few media agency networks account for the lion's share of relevant brand advertising, managing the advertising budgets of many brand manufacturers and deciding which share of a budget is to be earmarked for advertising on television, in print or in other advertising media. The market and contract power of these agencies will be compounded by the growing concentration of agency networks. For instance, only a handful of independent agency networks are active in the market for large-scale media buying in Germany which is decisive for consumer magazines and on which fierce competition takes place especially with television. The market leader alone accounts for around 40%, i.e. €6bn, of the advertising volume. If all

media are now to be prevented from selling editorial content as advertising, a publisher eager to maintain the independence of his medium is in fact in a position to defend his editors. But if it is possible to lawfully purchase editorial content for advertising purposes on television and in other audiovisual media, it is almost certain that this prospect will increase the pressure on magazine editors. When magazines and newspapers then stick to the separation principle and deny editorial coverage for advertising purposes, it can be assumed that advertising money will be re-channelled from print media to editorial television content. Ultimately this will deal a heavy blow to reading media which continue to operate under the separation requirement, struggling to defend their independence.

If the separation requirement for television were to be removed, prospects for independent print editors will deteriorate further as in more and more cases not only the media buyer is responsible for all media but the seller of advertising space on the media side is also responsible for the magazines, electronic press and TV of one integrated media house.

It should be noted here only briefly that we are unable to explain why the presentation of the publishers' concerns was reduced to financial matters in the issues paper.

Effects of the continuous growth of the electronic press

The threat to the independence of editorial content, including that of print content, in the case of a removal of the separation requirement for audiovisual media is exacerbated by the fact that an increasing share of the press is being electronically distributed (e-paper, websites, future e-ink, etc.). Electronic press can be read and videos (non-linear) and television (linear) can be viewed via the Internet as one path of distribution. Contrary to stubborn legend this *does not* mean convergence of (electronic) press, film and television. All it means is one (additional) uniform path of distribution and the screen as a uniform terminal unit for different media (refer to the VDZ comments on issues paper 1).

This, however, facilitates the change between press websites (mostly containing text and static pictures) and published, video-driven audiovisual programmes and also television programmes. Each of these players on the opinion-shaping and advertising market can cover the same topics in their very own way. This shows that the removal of the separation requirement and the legalisation of the purchase of editorial content for advertising purposes for television and other video and film products "merely" puts the future media order on shaky ground and threatens the independence of all media. It goes without saying that an advertising message embedded in editorial content is the most attractive form from an advertising point of view. It cannot be skipped or missed or switched over. Furthermore, it may have a trust bonus. And best of all is when it is not perceived as advertising at all because its existence only needs to be mentioned at the beginning and end of the programme. Many recipients of editorial content do not even recognise or are no longer aware of such a hint. This means that electronic audiovisual media have a massive competitive lead in that it is permitted to mix editorial content and advertising in a manner that threatens media independence. This puts the electronic (and traditional) press at a disadvantage which, as a reading medium, is a necessary precondition for a successful and competitive information society.

It would, however, be completely wrong to now demand the removal of the separation principle for the press, too. It would be equally undesirable if editors neglected the electronic press and had to rely increasingly on audiovisual formats *due to the better possibility of mixing advertising and editorial content*. This is, however, another risk which product placement in television programmes and other audiovisual media content poses.

Increase in total advertising volume by permitting product placement?

Even if the purchase of editorial content for advertising purposes (product placement) were to be permitted and if the advertising industry were to subsequently increase its advertising budget, the separation principle and hence the ban on product placement should not be removed. The general interest in independent media is more important for democratic societies than a potential increase of advertising sales on television would be.

Even the assumption that the advertising industry would increase its advertising expenditure as a consequence of product placement approval is not plausible. It may be that the removal of advertising bans for certain products may induce *manufacturers formerly barred from advertising* to create new advertising budgets. We hence urgently recommend that the EU revises the bans on advertising currently in place for certain products. It is, however, unrealistic to believe that the brand manufacturers relevant for television will increase their advertising budgets as a whole simply because they are then able to lawfully purchase advertising in programmes under editorial responsibility. There are many reasons behind the volume of advertising budgets and their decrease or increase, but these reasons do not include product placement. Reports from the US, for example, suggest that advertising budgets for product placement are not increased, but that more than 100 million dollars from advertising budgets are re-channelled from TV spots to product placement¹.

Re-channelling of advertising funds to product placement to the disadvantage of reading media

Advertising budgets will be re-distributed. Pressure will inevitably increase on media adhering to the separation principle, such as magazines and newspapers, to open up their editorial contents to the wishes of advertisers. And if the print media were the only area adhering to separation and independent editorial teams, whilst advertising messages could lawfully penetrate the editorial offices of audiovisual media, it is evident that funds would be re-channelled from independent reading media to audiovisual media contents where advertisers would then have the possibility to co-determine contents. This would first and foremost affect especially those reading media which place particular emphasis on independent content and thereby take their democratic function particularly seriously.

Funds for product placement do not necessarily reach television channels

Funds re-channelled from reading media to audiovisual media do not necessarily benefit television stations. It is quite possible that product placement money goes to third parties only. Reports from the US suggest that advertising money for product placement is increasingly pocketed by agencies and producers.² Given a re-channelling of money from traditional TV advertising spots, product placement would even lead to declining revenue on the part of television stations.

Removing the separation principle – a necessity or helpful in competition with the US?

If some people argue that European producers are at a disadvantage in competition with the US because US TV content can be produced with money from product placement, there are several answers to this.

Although the US has many advantages in many areas it does not necessarily have to serve as a role model for Europe in all respects. Independence of media editors, also from

¹ pte-presetext, 20 June 2005, <http://www.presetext.de/pte.mc?pte=050620041>.

² pte-presetext, 20 June 2005, <http://www.presetext.de/pte.mc?pte=050620041>.

advertisers, is a structural element of a framework for democratic media which European countries and the EU should not put at risk.

Furthermore, it is not plausible that the questionable measure of legalising the sale of film content for advertising purposes might in any way diminish the real competitive advantage of US TV content and other audiovisual media, *i.e. the much larger first-viewer market*.

Importance of the separation principle is greater than advertising-time and insertion rules – real liberalisation of competition would be possible here

Whilst democratic societies generally have a keen interest in maintaining the separation principle in all media and for television, this interest is not mentioned in the issues paper. The issues paper does, however, refer to this general interest in order to justify quantitative advertising rules for television. There is, in fact, considerable general interest in the ban on buying editorial content for advertising purposes, *i.e. in maintaining separation*. Compared to this interest, there is a much lower interest in whether advertising separated from the programme service accounts for a slightly larger share in an hour or day. The same applies to the question as to whether a shorter, additional interruption for advertising which does not violate the separation principle should be permitted. There are reasons to maintain time restrictions for advertising as well as insertion rules. It must be seen very clearly that the weight of these reasons does not outweigh the overwhelming general interest in maintaining the separation of programmes and advertising. So if Europe wants to do something for advertising on television, this could be carried out on the basis of advertising time restrictions and insertion rules *without violating more important basic rules for independent media*.

Conclusion on the separation principle

In the final analysis, abandoning the separation principle will, at best, yield insignificant advantages only. In any case, these uncertain advantages are so out of proportion to the many and massive disadvantages for media and society that only a positive commitment on Europe's part to the separation of advertising and the programme service would constitute a sensible step towards supporting Europe's media.

Discarding direct and clear identification of product placement would not only violate the separation principle, but would also legalise surreptitious advertising

Buying editorial content (product placement) violates the separation principle is not acceptable even when the placement is clearly identified as commercial communications during the time of its presentation. There can be no doubt that viewers, listeners and readers must always be able to unambiguously and clearly identify advertising as such. This also results from the separation principle. Advertising disguised as editorial communications is misleading. This holds true for any medium. Needless to say that clear identification means that the average viewer is capable of identifying the advertising nature of *commercial communications, i.e. in this case placement, throughout the time of its presentation*.

Failure to enable such clear identification would not only mix advertising and editorial content, but would also deceive viewers through surreptitious advertising. This also holds true if it is sufficient to announce (with or without further specification) at the beginning of a programme the later occurrence of commercial communications (product placement). For only few viewers of a programme or of sections with inserted product placement watch the opening credits, and even fewer consciously perceive the announcement and understand its meaning. And even if this awareness exists, in many cases perception of the advertising

programme part will not be linked to the opening credits at a later point in viewing time. It would then be misleading by the legislator to simply exclude this kind of surreptitious advertising from the definition of the legal term. And this is precisely what is proposed by the definition of "surreptitious advertising" on page 2 when it intends to set forth that an announcement or presentation of goods or services deliberately inserted for advertising purposes or additionally capable of deceiving viewers constituted surreptitious advertising as defined in sentence 1 of the definition, but is not "considered to be" surreptitious advertising "if the public is informed of its existence by any means." The reference to the "existence" already shows that it is not advertising – i.e. placement – as such that is to be identified during its presentation, but that only the mere existence somewhere and sometime in the programme must be announced. This becomes apparent on pages 4 seq. where an obligation to provide clear identification "at the beginning of the programme concerned" is offered.

I. Question 2 – Expanding the content restrictions in question to other media and types of commercial communications does not seem appropriate

Articles 12 and 16 contain bans on communications designed to protect important assets. However, these bans are sometimes vague. This is, for example, the case with the ban on offences against political or religious beliefs or the ban on encouraging behaviour prejudicial to the protection of the environment according to Article 12. Such rules would be very problematic as general restrictions for public communications. Remember that biased, polemic comments by opponents of Islam, Christianity or other religions – which are protected by the freedom of opinion – will often violate the respective religious feelings of other believers. Also remember that, as a central part of the freedom of the press and of opinion, it is legitimate to publicly advocate jobs in the car industry rather than environmental protection, or the fun-driven use of fast, petrol-guzzling cars.

Pursuant to the current TVWF Directive, these restrictions on communications are restricted in two respects. On the one hand, to television and, on the other – within this medium – to advertising and teleshopping. In the field of television, historical reasons and the special nature of this audiovisual presentation medium (special suggestive effect of film on the eye-reliant human being, lean-back medium, and many more) allow in the vast majority of countries the curtailing of the freedom of opinion more than in other media (cf. VDZ's comments on issues paper 1). Regulatory intervention in content may go further, without these stronger restriction instruments applying to media which continue to be freer, especially the traditional and electronic press. Even expanding such content restrictions to non-linear, audiovisual content services – including, for example, all films in as far as they are delivered by data networks – is problematic. And this is true even if advertising only is to be dealt with. Furthermore, these broadcast-specific barriers are no longer only to restrict audiovisual *advertising* in non-linear, audiovisual services, but also *other non-linear, audiovisual "commercial" communications*. This would mean that, for example, a company would have full freedom of expression in a company magazine, which is to be classified as a form of commercial communications, whilst the above-discussed restrictions would have to be accepted when covering the same topics in a video offered on the company's homepage on the Internet. This highlights one weakness in the endless definition of commercial communications. Content barriers which may be justified for (television) advertising are not necessarily justified for all other forms of commercial communications.

We consider such content barriers for television advertising and teleshopping to be legitimate and in conformity with human rights. We do not consider an expansion to other types of

communications than advertising (e. g., other corporate communications) or to other media, such as film (non-linear audiovisual content services) to be reasonable or "coherent".

This is also why we are unable to endorse the opinion that expanding these communications barriers would achieve greater compliance with the aim of protecting fundamental principles. But there is yet another point that must be mentioned: Within the EU Member States, there are legitimate and legitimately diverging boundaries between the freedom of expression and communication bans. If, for instance, Germany forbids and punishes public communications using certain symbols of the national-socialist regime, this does not hinder other Member States to have good reasons for classifying the same communications as being protected by the freedom of opinion for their society and territories. This ultimately applies to the majority of boundaries between freedom of expression and restrictions on free expression. These different boundaries are a fundamental expression of the different societies and cultures especially with a view to the nuances which are so vital when it comes to freedom of the press. This cultural diversity has to be respected and encouraged by the Community. And the Court of Human Rights in Strasbourg monitors compliance with minimum European standards in terms of both freedom and restrictions within the discretionary scope of the European Convention for the Protection of Human Rights.

Such differences can also be seen in the fact that – as issues paper 1 "Rules applicable to audiovisual content services" rightly acknowledges – there are no European standards of public decency which would allow the terms "pornography" or "gratuitous violence" to be defined. It should therefore be left to the Member States to define these notions (page 3 of Issues paper 1), and this is also why there is no uniform ban on pornography throughout Europe. The same, however, applies, albeit with certain differences, to the details of many content barriers which are crucial here. It hence makes sense that the E-commerce Directive permits certain exceptions to the country of origin principle.

I. Question 3: Advertising bans and advertising restrictions

We are unable to see any necessity to expand advertising bans and restrictions which are specific for broadcasting to other audiovisual media and forms of communications other than those subject to the current TVWF Directive.

We welcome the idea of permitting increased presentation in public media of objective information on pharmaceutical products and medical treatments referred to in Article 14 (1). The publication of reliable information on pharmaceutical products is in the interest of many citizens. The source of the information content must be ensured in this context. In line with the proposal contained in the issues paper, this can be accomplished on the basis of standards laid down by national bodies for the self-regulation of advertising. On condition that quality assurance is guaranteed, it must then, however, also be possible to publish this information in the advertising section of print media. There is no reason whatsoever to permit such information in (certain) audiovisual media and to prohibit it in reading media.

I. Question 4: See above, directly after question 1

I. Question 6: Application of the rules

With regard to the advertising sector, the Commission considers suggesting that the Member States increasingly consider the efforts made so far in order to create codes of conduct and co-regulation measures in conjunction with implementation.

We welcome such a trend in as much as it recognises and strengthens the self-regulation measures in place in the Member States. The different European Member States operate a

host of effective self-regulation systems for advertising. The differences in the design of these systems are often based on the cultural, social and legal characteristics of the individual Member States. The functioning of a self-regulation system must be assessed from case to case within the framework of the given environment. This variety of systems for the design of regulating the content of commercial communications is not a disadvantage but instead reflects the cultural diversity which the Community has to respect and to encourage.

We therefore reject any European attempt to lay down organisation patterns and the like for national self-regulation systems. This is all the more applicable to any obligation to supplement self-regulation by elements of government control, sanctions, etc. (co-regulation). Every combination of private communication control and government supervision involves serious hazards for the freedom of communication.

Furthermore, any rules for the design of self-regulation systems or even an obligation to replace real, voluntary self-regulation by a system which is more or less under government control (co-regulation) would also jeopardise tried-and-tested, effective self-regulation mechanisms. For this could result in lasting damage to support for self-regulation on the part of the industries concerned.

Furthermore, the difference between press and broadcasting must be considered in this case, too. Even if one believes that more power of governments to control broadcasting content (see above I. question 2, 2nd paragraph and VDZ comments on issues paper 1) would also permit rules for the organisation of advertising self-regulation or even co-regulated advertising self-regulation, this would by no means justify similar intervention in the self-regulation system of the electronic press.

II. Quantitative requirements for television advertising

Although there are reasons to maintain quantitative advertising regulations (time restrictions and insertion rules) for television, even the complete removal of such restrictions would affect public interests to a much lesser extent than legalising the mixing of the programme service and advertising through the purchasing of editorial programme elements for advertising purposes (product placement). Compared to the general interest in the protection of independent media content by maintaining the separation requirement, there is a much lower interest in whether advertising separated from the programme accounts for a slightly larger share in an hour or day. The same applies to the question as to whether additional insertions of advertising are permitted.

It is not convincing if public interest is referred to as a point for maintaining insertion rules and perhaps even maximum advertising times, whilst general interest in the separation principle – which is much stronger – is not taken into consideration. In the final analysis, permitting product placement does not mean liberalising advertising, instead it constitutes statutory permission to mix editorial content and advertising. This weakens and threatens the independence of editorial content – a development that must be avoided in a free democratic society.

In contrast to this, liberalisation of television advertising would be possible in the field of quantitative rules without violating priority principles.