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Modern advertising rules

The updated TV without Frontiers directive lays down some basic principles governing advertising, and at the same time simplifies and liberalises rules on inserting advertising in TV programmes and on new advertising techniques. These changes aim to stimulate competition to supply audiovisual media services, which should in turn widen consumer choice, promote economic growth and help to create new jobs in the EU.

Advertising rules in the current TV without Frontiers Directive safeguard the public interest, by protecting consumers, minors and right holders, and ensuring respect for the integrity of audiovisual works. These rules must remain proportionate to their objectives also over time. A wide public consultation on the review of the TV without Frontiers Directive revealed substantial changes in potential audiovisual markets and highlighted the need to revise advertising rules.

Whilst the current Directive covers only scheduled broadcasting services including televised advertising, the Commission's proposal for a new directive sets out some basic "qualitative" requirements for advertisements that accompany on-demand audiovisual media content. At the same time, the new directive removes a number of restrictions on advertising within linear audiovisual services, including traditional TV broadcasting.

Minimum qualitative requirements for non-linear services

Under the updated TV without Frontiers directive, all audiovisual advertising, whatever medium is used to deliver it, would have to meet basic requirements, already known for traditional TV broadcasting, including an obligation to identify the advertiser, not to link alcohol consumption to enhanced physical performance or to driving, a prohibition on surreptitious advertising and certain restrictions on advertising directed at minors. These requirements would in future apply to all such content, irrespective of the technology that delivers it, thus ensuring proportionate consumer protection also in a "multimedia world".

Simpler and more flexible rules for linear services

The update of the TV without Frontiers directive would remove quantitative limits on advertising and greatly simplify the rules on inserting advertisements in TV programmes. The current three-hours-per-day limit on advertising would be dropped – in practice, no non-specialist TV channel in Europe comes near it, so it is clearly superfluous and incompatible with the principle of better regulation. Insertion rules would be made simpler and more flexible. Broadcasters, and not regulators, would be permitted to choose the best moment to insert advertising in programmes, rather than being obliged, as they are now, to allow at least 20 minutes between advertising breaks. The new directive specifies that cinematographic films,

childrens' programmes, current affairs programmes and news must not be interrupted more than once every 35 minutes. The 12-minute upper limit on all advertising in any given hour would stay.

Broadcasters are not expected to misuse the extra flexibility offered by the proposed update, because in a market in which the supply of audiovisual media content is growing exponentially, to do so would risk damaging their own economic interest - consumers would simply switch to other channels or other service providers. Ensuring viewers' comfort, and respecting right-holders' rights, is likely to prove a more effective way to compete.

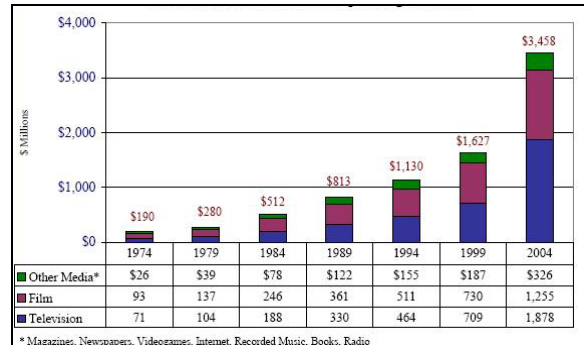
Promoting competitiveness

The new Television without Frontiers directive would support the use of new forms of advertising. Split-screen, virtual advertising, mini-spots and interactive advertising would all be permitted by the proposed new directive, which also clarifies rules on "product placement" (placing a specific brand, such as James Bond's Aston Martin, in a TV show or film), whether provided on traditional TV or via an on-demand service. Product placement as such is not addressed as such by the current TV without Frontiers Directive, which prohibits this only if it takes the form of "surreptitious advertising" by a broadcaster. Product placement is nonetheless common practice in independently produced works and feature films, without any appropriate consumer protection and without clear rules that would give investors in content certainty on the laws applicable.

With regard to the increasing use of personal video recorders, which enable viewers to skip advertising, the proposed modernisation of the TV without Frontiers directive would include a clear legal framework for product placement, in which misleading the consumer is prohibited, while product placement that is clearly identified at the beginning of a programme would be permitted, subject to appropriate rules and safeguards for viewers' essential interests, such as the exclusion of product placement from news, current affairs and children programmes.

Recent figures from countries that do permit product placement suggest that clear rules on it should help the European audiovisual industry to become more competitive, especially vis-à-vis the USA. An independent study published in September 2005 found that product placement accounts for 1.7% of the total advertising revenues of free-to-air broadcasters in the USA and had grown by an average of 21% per year between 1999 and 2004¹.

Product placement spending in the US media



Source: PQ Media LLC, March 2005

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¹ See the final report of the *Comparative study on the impact of control measures on the televisual advertising markets in European Union Member States and certain other countries*, pp. 60-61.