



# **REGULATION ON ADVERTISING AIMED AT CHILDREN** IN EU-Member States and some neighbouring States

## **THE LEGAL FRAMEWORK**

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### THE LEGAL FRAMEWORK

#### Introduction

*by Dr. Susanne Nikoltchev, Legal Expert, European Audiovisual Observatory*

The following compilation of legal texts, short summaries, and other background information results from a query that I sent on 17 January 2000 to correspondents of the European Audiovisual Observatory in the legal information area. It is an *ad hoc* project that was neither in our action plan nor in our budget. The project only became possible because we approached it pragmatically using the good will of our network and working solely with the means available.

The project was triggered by one of the correspondents who needed urgently for his presentation to a national Parliament answers to two very interesting questions concerning the **regulation in EU-Member States of advertising targeting children/minors**, namely

1. Could you provide information of the actual legislation applicable in your country to the issue of advertising on TV aimed at children. If possible, could you quote the actual provisions of the broadcasting or TV-advertising regulation and/or send a copy of the text?
2. Are you aware of a recent overview/study/report of the existing provisions in EU-countries on content regulation and time/place/product restrictions on advertising targeting children/minors. If yes, please provide me with the references and/or send a copy.

Because regulation on the protection of minors is also of particular interest to Observatory users, I agreed to pass these questions on to the correspondents. I asked them for any kind of assistance they might be able to grant within the shortest delay and put it at their discretion in which of the three official languages of the Observatory (EN, FR, DE) they would wish to reply. Depending on the availability of our contacts, I received everything from a notification of the relevant website to a detailed description of the legal situation.

What you find hereinafter is the slightly edited and harmonised result of this information. If some countries are missing, it is because the responsible correspondent was not able to respond within the short time span available and because the query focused on Western Europe. The Observatory supplemented the information where possible – including relevant information concerning supranational and international rules. We are aiming to add the missing contributions. Given the positive experience with this study, we will also explore the option to complete it with information on Central and Eastern European countries.



If you wish to contribute to this effort and, therefore, would like to supply us with

- information on other countries  
(within Europe or countries with important audiovisual markets)
- supplements to the information presented hereinafter, and/or
- translations of relevant legal texts,

please contact [Susanne Nikoltchev@obs.coe.int](mailto:Susanne.Nikoltchev@obs.coe.int)

When reading the following texts, please keep in mind that this was an *ad hoc* project put together on a purely voluntary basis and not blessed by any budget. While we tried our best to assure the correctness of all information, the authors do not wish to resume any responsibility for the content.

The resulting replies to the questions on rules applicable to children & TV-advertisement and relevant background information are found in the following contributions covering

AU – Austria	GB – United Kingdom
BE – Belgium/Flemish Community	IE – Ireland
CH – Switzerland	IT – Italy
DE – Germany	NL – The Netherlands
DK – Denmark	NO – Norway
ES – Spain	PO – Portugal
FI – Finland	SE – Sweden
FR – France	

EU – European Union	Bibliographical References
CoE – Council of Europe	Internet Sites
ICC – International Chamber of Commerce	

We hope this information will prove enlightening and useful.

Susanne Nikoltchev, Strasbourg 25 Mai 2000



**A. Rules Applicable to the *Österreichischer Rundfunk* (Austrian Broadcasting Corporation and solely public broadcaster)**

Art. 1 § 5f Rundfunkgesetz (Broadcasting Act of 1994)

§ 5f. Die Fernsehwerbung darf Minderjährigen weder körperlichen noch seelischen Schaden zufügen und unterliegt daher folgenden Kriterien zum Schutz Minderjähriger:

1. Sie darf keine direkten Kaufappelle an Minderjährige richten, die deren Unerfahrenheit und Leichtgläubigkeit ausnutzen.
2. Sie darf Minderjährige nicht unmittelbar dazu auffordern, ihre Eltern oder Dritte zum Kauf der beworbenen Ware oder Dienstleistung zu bewegen.
3. Sie darf nicht das besondere Vertrauen ausnutzen, das Minderjährige zu Eltern, Lehrern oder anderen Vertrauenspersonen haben.
4. Sie darf Minderjährige nicht ohne berechtigten Grund in gefährlichen Situationen zeigen.

**B. Rules Applicable to Private Broadcasters**

§ 27 Kabel- und Satelliten-Rundfunkgesetz  
(Cable and Satellite Broadcasting Act of 1997)

Fernsehwerbung und Teleshopping dürfen Minderjährigen weder körperlichen noch seelischen Schaden zufügen und unterliegen daher folgenden Kriterien zum Schutz Minderjähriger:

1. Sie dürfen keine direkten Kaufappelle an Minderjährige richten, die deren Unerfahrenheit und Leichtgläubigkeit ausnutzen.
2. Sie dürfen Minderjährige nicht unmittelbar dazu auffordern, ihre Eltern oder Dritte zum Kauf der beworbenen Ware oder Dienstleistung zu bewegen.
3. Sie dürfen nicht das besondere Vertrauen ausnutzen, das Minderjährige zu Eltern, Lehrern und anderen Vertrauenspersonen haben.
4. Sie dürfen Minderjährige nicht ohne berechtigten Grund in gefährlichen Situationen zeigen.



## A. Preface

1. The provisions on advertising, sponsoring and teleshopping applicable for the television broadcasting organisations (public and private), which come under the jurisdiction of the Flemish authorities, are laid down in the Decree on Radio and Television Broadcasting, 25 January 1995, revised 1996, 1997, 1998 and 1999 (articles 80-92ter) (ref : “Flemish Broadcasting Law”).

2. Most of the provisions on advertising, sponsoring and teleshopping are nearly a literal transposition of Articles 10-20 of the TV-Directive of 3 October 1989, revised 30 June 1997.

Important with regard to children are especially the articles on the total ban on advertising for tobacco products (Art. 13 TV-Directive), on medicine for which a prescript by a doctor is needed (Art. 14 TV-Directive) and the content restrictions on TV-advertisements for alcoholic drinks (Art. 15 TV-Directive) : these articles are integrally transposed into the Flemish Broadcasting Law.

Also the other articles of the TV-Directive are transposed, e.g. with regard to the possibility of interruptions of programs (Art. 11 TV-Directive) and the content provisions of Art. 12 TV-Directive (human dignity, no discrimination, respect for other philosophic/religious/political ideas, no incitement on behaviour that damages health, security, environment).

## B. Legislation on Advertising and Children

1. Specifically with regard to minors Article 16 TV-Directive contains some content provisions in order to protect children. The Article is transposed integrally and literally into Article 81, 5° of the Flemish Broadcasting law.

2. In application of Article 3 § 1 of the TV-Directive, the Flemish Broadcasting Law also contains some stricter rules on TV-advertising and children.

- a. There is a total prohibition of interruption of children's programmes by or for advertising or teleshopping (TV-Directive only if children's programmes minus 30 minutes);
- b. there is a ban on advertising immediately before and after children's programmes. “Immediately” refers to a period of 5 minutes (art. 82 § 6);
- c. there is ban on sponsoring announcements (cfr. Art. 17, b TV-Directive in and immediately before and after childrens programmes. “Immediately” refers to a period of 5 minutes (Art. 87 § 1);
- d. there is a ban on teleshopping in a period of 15 minutes before and after childrens programmes (Art. 82bis, al. 3).



3. Art. 2, 11°bis gives a definition of children's programmes : programmes targeting children under 12 years old, which appears from the content, the time of broadcasting, the form, the presentation, the manner of announcement and the audience figures of these programmes;

4. Some regulations in application of the Flemish Broadcasting Law contain specific provisions with regard to children (Code for advertising and sponsoring on radio and television, approved by Decree of the Flemish Government of 20 September 1995).

- a. Advertising for sweets (chocolats, biscuits, lollies.) must contain a strictly defined logo (symbol) of a tooth brush and tooth pasta (Art. 13 § 1 of the Code);
- b. there is a ban on advertising for toys that resembles weapons and incites to violent, racist or xenophobic behaviour (Art. 13 § 2).

### **C. Enforcement**

1. Compliance with the provisions on advertising, sponsoring and teleshopping is secured by the *Vlaams Commissariaat voor de Media* (the Flemish Media Authority). The Flemish Media Authority can act with regard to cases of infringement upon either reception of a complaint or by conducting an *ex officio* investigation. If a procedure with right of defence, The Flemish Media Authority finds a Flemish broadcasting organisation to have infringed these rules, the Media Authority can impose sanctions.

The sanctions are enumerated in Article 116septies of the Flemish Broadcasting Law. They range from a warning with request to stop the infringement to administrative fines from 50.000 BEF – 500.000 BEF to ultimately the suspension or withdrawal of the licence to broadcast advertising and sponsoring or even the suspension or withdrawal of the broadcasting licence itself.

2. Until now, no sanctions were given for any infringement of the provisions on advertising, sponsoring and teleshopping on radio and television.



CH — Switzerland  
by Dr. Oliver Sidler, medialex, Luzern

The Swiss rules concerning advertising aimed at children are as follows:

**LRTV Radio and Television Law of 21 June 1997 ([RS 784.40](#))**

**Art. 18 Werbung**

(...)

<sup>5</sup> Religiöse und politische Werbung ist verboten, ebenso Werbung für alkoholische Getränke, Tabak und Heilmittel. Der Bundesrat kann zum Schutz der Jugend und der Umwelt weitere Werbeverbote erlassen.

**ORTV Radio and Television Decree of 6 October 1997 ([RS 784.401](#))**

**Art. 15 Unzulässige Werbung**

1 Verboten sind:

(...)

e. Werbung, die sich die natürliche Leichtgläubigkeit der Kinder oder den Mangel an Erfahrung bei Jugendlichen zunutze macht oder ihr Anhänglichkeitsgefühl missbraucht;

(...)



DE — Germany

by Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken

## A. Preface

The following compilation of rules concerning television advertising for minors (children and adolescents – a legal definition is given in § 1 (4) of the [Federal Act on the dissemination of writings being harmful to minors](#)) aims at providing a general overview over the existing German regulation in this field.

Dealing with the prescribed topic shows need for a brief description of the actual legal situation as regards broadcasting advertising rules in Germany, i.e. the legal framework for broadcasting in Germany must be outlined in order to explain the different legal sources which could prove advisable to consult for gaining the "full picture".

The competence for broadcasting matters in the Federal Republic of Germany is vested at the level of the Länder. Nevertheless, some issues might be dealt with at federal level where the focus of the rules is e.g. on commercial activity and thus the impact on broadcasting can be considered secondary.

The Länder have concluded an interstate agreement called "State Treaty for Broadcasting in the unified Germany" (*Staatsvertrag über den Rundfunk im vereinten Deutschland*), which has been amended lastly by the 4th amending State Treaty on Broadcasting. Since the latter has not yet come into force, reference will be made to the rules laid down in the Treaty as amended in 1996 which came into force on January 1st, 1997.

The [State Treaty on Broadcasting](#) (Article 1 of the State Treaty for Broadcasting in the unified Germany, henceforth: State Treaty – *Rundfunkstaatsvertrag*) sets out rules for public service broadcasting as well as for private broadcasters. It intends to harmonise the different legislation on State level in order to provide for a consistent legal framework throughout the entire country. The Länder have implemented the relevant rules into their proper legislation on public and/or private broadcasting by either citing the State Treaty provisions literally or contextually or by simply referring to the relevant provisions. As far as the State Treaty provisions are precise and exhaustive the legislators in the Länder have not been left with a considerable degree of appreciation as regards the way of implementation. Especially questions relating to advertising have been implemented in a way following consequently the conditions set by the State Treaty. Of course, this aspect reflects the necessity of implementing into German legislation the rules of the EC-directive 97/36. In order to supervise the activities of private broadcasters, the State Treaty establishes the State Media Authorities (*Landesmedienanstalten*) which are competent for authorising and monitoring private broadcasting organisations. These authorities have been given the competence to jointly issue guidelines i.a. for broadcasting advertising.

Besides the State Treaty, treaties have been concluded on the ARD and on the ZDF (the two main nationwide channels of public service broadcasting). As the State Treaty requests both ARD and ZDF to issue guidelines regarding i.a. the content, insertion and duration of advertising ([§ 16](#)), there exists an additional set of rules which governs the questions at hand for ARD and ZDF whereas the regional public service broadcasting activity as well as the broadcasts by private broadcasters on national or regional level are governed by the relevant State acts.



## **B. Legislation on Advertising and Youth**

### 1. State Treaty

The State Treaty prescribes certain principles relating to the content of advertising directed at minors or showing appearances of minors ([§ 7](#)):

In essence, advertising for minors must not take advantage of the inexperience of minors or prejudice their interests.

What concerns public service broadcasting, [§ 14 \(1\)](#) foresees that broadcasts for children must not be interrupted by commercials. The same regime applies to private broadcasting, [§ 44 \(1\)](#).

### 2. State legislation

For exemplary purposes reference is made to the Act on Broadcasting of the Saarland, which contains similar provisions in [§§ 15, 42 and 63](#).

### 3. Common Guidelines of the State Media Authorities for Advertising, for the Implementation of Separating Advertising from Programme, and for Sponsorship on Television dated 16 December 1997

These [guidelines](#), which came into force on 21 April 1998, aim at giving precision to the more generally formulated principles contained in the State Treaty.

a) No. 3 makes reference to § 7 and stipulates in para. 1 that advertising is forbidden if it

1. incites minors to make their parents or thirds buy an advertised product or request an advertised service;
2. exploits in an improper manner the special trust minors have in parents, teachers or other persons of trust;
3. shows minors in dangerous situations without founded necessity for such showing;
4. portrays the commitment of criminal offences or other misbehaviour by which persons are endangered or by which damages could occur in such a way as to make it something worth imitating or agreeing to;
5. uses "aleatoric" means of advertising (e.g. gratuitous lotteries, prize games) in such a way that is likely to mislead the targeted, or to appeal to them by disproportionate advantages, or to exploit their addiction to games, etc.;
6. shows minors as objects of sexual desire.

Furthermore, advertising for adolescents is forbidden if it contains direct appeals to buy products if such appeals exploit their inexperience or credulity, para. 2.



Para. 3 provides criteria for determining under which conditions advertising for children is forbidden:

1. The advertisement contains direct appeals to buy a product; messages that describe appeals in a more sublime manner are treated similarly.
2. The advertisement includes a statement on particular advantages of the product and such statement is held in manner which is not conform to the normal "speech" of children.
3. The advertisement promotes products which are the object of a children's broadcast and such commercial is part of an advertising block adjacent to such programme.
4. The commercial contains elements which are significant to a children's programme broadcast adjacent to the advertising block.

Following para. 4, these rules apply *mutatis mutandis* to advertisements for which minors act.

b) No. 6 stipulates a ban relating to long advertising for children as does No. 12 for teleshopping.

c) No. 10 para. 1 gives a definition of what is to be regarded as a children's programme.

d) No. 14 might become relevant if there is need for defining whether references in programmes to ancillary material has to be considered as advertising.

e) No. 2 recommend broadcasters to take into consideration the Code of Conduct issued by the German Advertising Council (*Deutscher Werberat* – see below 5.).

#### 4. Both ARD and ZDF refrain from formulating own detailed rules on advertising and children but refer to the Code of Conduct of the German Advertising Council (see below 5.).

#### 5. The German Advertising Council (*Werberat*)

The German Advertising Council has been established as a body of self-regulation responsible for dealing with consumer complaints relating to advertising in all kinds of media. When taking into consideration the complaints the Council first examines whether another public or private body could be competent or whether the complaint is manifestly unfounded. If the Council decides to handle the complaint it verifies whether a breach of the [Code](#) can be established. In the affirmative, the Council disposes of different options, i.e. it can see to persuade the "advertiser" (the company for whose purposes the commercial had been produced and which decided on its distribution) to amend the advertisement in such form as to safeguard its conformity with the Code, or to refrain from having it published in future. If necessary, the Council may as *ultima ratio* issue a public expression of disapproval provided that the advertiser does not respond to the allegation or that he does not agree neither to modify nor to stop the further publishing of the advertisement.



In essence, the different provisions set out by the Code of Conduct are comparable to the guidelines issued jointly by the State Media Authorities. Nevertheless, the Code gives some examples of what would be regarded as a breach of its norms.

## 6. Other relevant legislation

Besides the existence of special legislation on federal level relating to the advertising of tobacco or medicinal products, it might be important to consider another set of rules which deals with the dissemination of writings (books, newspapers, information and communication services, not including broadcasting in the narrower sense) being harmful to minors.

The relevant [Act](#) does not allow any kind of advertising for such products which have been considered as being dangerous for the intellectual development of minors.



DK — Denmark

by Susanne Nikoltchev, European Audiovisual Observatory (compiling texts)  
With the help of Prof. Elisabeth Thuesen, Law Department, Copenhagen Business  
School

## **A. The Ministry of Culture's Consolidation Act No. 75 of 29 January 1997 The Danish Broadcasting Act**

Promulgation of the Radio and Television Broadcasting Act, cf. Consolidation Act No. 666 of 5 July 1996 with the amendments pursuant to Act No. 1208 of 27 December 1996.

Full Text available in English at [http://www.fs.dk/uk/acts/a\\_tvuk.htm](http://www.fs.dk/uk/acts/a_tvuk.htm)

### Chapter 8: Advertising and programme sponsorship

70. The Minister for Culture shall lay down rules concerning the inclusion of advertisements in programme services, including rules for their identification, scheduling, content and scope.

## **B. The Ministry of Culture's Executive Order No. 489 of 11 June 1997 Executive Order concerning Radio and Television Advertising and Programme Sponsorship**

Full text available in English at [http://www.fs.dk/uk/acts/b\\_tvuk.htm](http://www.fs.dk/uk/acts/b_tvuk.htm)

Pursuant to Sections 70, 73(8) and 76(2) of the Danish Broadcasting Act, cf. Consolidation Act No. 75 of January 29, 1997, the following shall be stipulated:

Chapter 1

### *Scope*

1.-(1) This Executive Order shall apply to advertisements and sponsoring of programmes of all types for radio and television, cf. Section 1 of the Danish Broadcasting Act.

(2) Unless otherwise stated, the rules governing television broadcasting in general shall also apply to teletext.

*Special rules on certain products and services, etc.*

12.-(1) It shall be prohibited to show advertisements for beverages with an alcohol content of 2.8 pct. by volume or more.

(2) The following rules shall apply to advertisements for alcoholic beverages with an alcohol content of less than 2.8 pct. by volume:

- 1) They may not be particularly targeted at minors, and especially not show minors drinking such beverages.

....

*Special rules on the protection of children and young people under the age of 18*



**16.** Advertisements directed at children and young people may not be presented in such a way that they may have a mentally or morally detrimental effect on such persons. They may not be presented in such a way that they exploit children and young people's natural credulity and loyalty, or their special confidence in parents, teachers or others. They may not undermine such persons' authority and responsibility.

**17.** Advertisements may not unnecessarily show minors in dangerous situations, or encourage or incite children and young people to stay in or enter dangerous areas, use dangerous products or generally put themselves in dangerous situations.

**18.** Advertisements may not directly appeal to children and young people to persuade others to buy the advertised product, or promise them prizes as a reward for winning new purchasers.

**19.** Advertisements may not undermine social values, for example by conveying the impression that the possession, use or consumption of a product in itself will give children or young people physical, social or psychological advantages over other children or young people, or that the failure to own, use or consume such a product may have the opposite effect. It shall not be permitted for advertisements to be designed to give children and young people the impression that their failure to own, use or consume the relevant product will in any way make them less privileged than other children and young people, or expose them to contempt or ridicule.

**20.-(1)** Particular care shall be taken to ensure that advertisements will not mislead children and young people as to the size, value, type, durability or performance of the advertised product. Advertisements for toys shall give a clear indication of the toy's actual size. Where the use or the shown or described result of the product requires an extra attachment (e.g. batteries), this shall clearly be stated. Where a product forms part of a series, this shall be clearly indicated, as shall how to obtain the series.

(2) Statements of price may not give children and young people an unrealistic idea of the value of the product, e.g. by using the word "only". No advertisement may suggest that the advertised product is easily affordable by any family.

(3) Advertisements shall indicate the degree of skill required to use the product. Where the result of the use of the product is shown or described, the result presented in the advertisement shall be reasonably achievable by an average child in the age group for which the product is designed.

**21.** Figures, puppets and similar which are important and regular elements in children's programmes may not appear in advertisements for products of particular interest to children. Persons affiliated with children's programmes may not advertise products of particular interest to children.

**22.** Advertisements for chocolate, sweets, soft drinks, snacks and similar may not indicate that the product may replace regular meals.

**23.-(1)** Children under the age of 14 may only appear in television advertisements where such appearance is either a natural element of the depicted environment, or necessary *in order* to explain or demonstrate the use of products associated with children.

(2) Children under the age of 14 may not recommend or provide testimonials endorsing products or services of any kind.

## Chapter 6

### *Commencement*

**35.-(1)** This Executive Order shall come into force on July 1, 1997.

(2) At the same time Executive Order No. 108 of February 8, 1994 concerning Radio and Television Advertising and Programme Sponsorship shall be revoked.



## **C. Children, Young People and Marketing Practices Guidelines from the Consumer Ombudsman**

Full text available in English at <http://www.fs.dk/uk/acts/ukguidel.htm>

### 1.0 Introduction

This booklet is primarily published as a set of guidelines for advertisers and marketers. It describes the rules and principles applying for marketing practices in relation to children and young people. The booklet presents the Consumer Ombudsman's idea of how the existing rules in this area should be interpreted.

...

The guidelines express the points of view that the Consumer Ombudsman will use in the future administration of the Danish Marketing Practices Act in relation to marketing directed towards children and young people.

### 2.0 Laws and regulations

The Danish Marketing Practices Act does not include specific rules on marketing practices directed towards children and young people. Such cases are based on the general clause on good marketing practices in section 1 of the Marketing Practices Act. When deciding what good marketing practices are in relation to children and young people, article 14 of the International Code of Advertising Practice should also be considered.

In the executive order of the Danish Ministry of Cultural Affairs concerning radio and television advertising and programme sponsorship there are specific rules on the protection of children and young people in relation to television and radio advertising.

The guidelines issued by the Consumer Ombudsman on marketing of beer, wine, spirits and other alcoholic beverages contain rules with the objective of protecting young people.

In the same way the tobacco guidelines issued by the Danish Ministry of Health contain rules with the objective of protecting young people.

### 3.0 Definition of "children" and "young people"

No absolute age limits have been defined for the terms of "children" and "young people" in relation to marketing practices. As a first rule the age limit should be 18 years.

Advertisers and marketers should assess the marketing practices objectively and in this respect consider whether the form and contents of the marketing, its target group and the product itself give rise to special precautions to be taken for the protection of children and young people.

### 4.0 Identifying advertising

It is the general rule that advertising in all media should appear as advertising irrespective of the form of the advertising. This is a very important rule if marketing is directed towards children and young people.

...

### 8.0 Marketing directed towards children and young people in specific media



#### 8.1 Television commercials

Special rules protecting children and young people below the age of 18 apply for television commercials. The rules are given in the executive order of the Ministry of Cultural Affairs concerning radio and television advertising and programme sponsorship.

#### 9.0 Marketing in public places where marketing is not directed towards children and young people

...

Television commercials for pornographic videos and other sex products should only be broadcast late at night when children do not normally watch television.

Television commercials with violence or sex should only be broadcast late at night when children do not normally watch television.

### **D. Political Media Agreement**

A political Media Agreement covering the period 2001 - 2004 has been established between the Danish government, the Socialistic Popular Party and the Center - Democrats on 28 March 2000.

The Danish title is: *Medieaftale* 2001-2004.

concerning advertisement directed at children Point 4 of the *Medieaftale* stipulates the following:

"A prohibition shall be established against advertisements directed at children and against advertisements for products intended to children inserted into blocs of advertisements around broadcast programmes for children, hereunder trailers related to programmes for children. The prohibition shall enter into force within 5 minutes before and 5 minutes after broadcast programmes for children".

So far no bill thereon has been introduced in Parliament.

The Danish text of the *Medieaftale* is available at

[http://www.kum.dk/dk/con-36\\_STD\\_1427.htm](http://www.kum.dk/dk/con-36_STD_1427.htm)

(go to: 21.03.2000: Forslag til medieaftale)



ES — Spain

by Alberto Pérez Gómez, Dirección Audiovisual Comisión del  
Mercado de las Telecomunicaciones

## **A. Description of the Rules Applicable**

### **1. Law 25/1994**

The main rules concerning TV advertising addressed to minors can be found in the Spanish Law 25/1994 (of 12 July 1994, on the implementation of the “Television without Frontiers” Directive), as amended by the Law 22/1999 (of 7 June 1999).

Chapter IV of Law 25/1994 regulates the protection of minors. Art. 16 of the Law 25/1994, which reproduces almost literally Art. 16 of the Directive, covers advertising and teleshopping targeting minors. According to Art. 16 of the Law 25/1994, television advertising should not contain images or messages that can morally or physically damage minors. The following principles must be followed: 1) Advertising must neither incite minors to purchase a product or service based on their inexperience or incredulity, nor force their parents or guardians to do so; 2) It must not exploit the special trust children place in their parents, teachers or other persons (such as professionals who participate in children programs) or, eventually in fiction characters; 3) It shall not without justified reason/cause show children in dangerous situations; 4) Advertising or teleshopping concerning toys must not induce misconceptions about the characteristics of the toys, their security, or the skills needed for safe usage. Teleshopping shall comply with all these requirements and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.

Art. 10.2 of the Law 25/1994, which covers television advertising and teleshopping for alcoholic beverages, establishes that this kind of advertising may not be specifically aimed at minors or, in particular, depict minors consuming these beverages.

A breach of Art. 16 or Art. 10 of the Law 25/1994 is regarded as a serious infringement that can be punished, according to Art. 20 of the Law 25/1994, with a fine of up to 50 million pesetas (300.000 Euros).

Law 25/1994 sets the basic principles on this subject. The administrative authority with power for the control, inspection, and sanction of national TV channels is the Ministry of Development (*Ministerio de Fomento*). The Autonomous Communities implement and execute this basic legislation in relation with the broadcasters under their respective jurisdictions (cable operators, regional and local terrestrial broadcasters).

### **2. Regulation of Autonomous Communities**

Some Autonomous Communities have adopted provisions that affect advertising on TV aimed at children. These provisions can be found in



- a) Acts which regulate the rights of minors in general, and which include some specific provisions on TV advertising targeting minors. For example, the Madrilian Act 6/1995 on the protection of childhood regulates advertising addressed to or using children, imposing thus more detailed and stricter rules in this field to the broadcasters under the jurisdiction of the Autonomous Community of Madrid.
- b) Acts which regulate particular products, like drugs (in some Autonomous Communities, tobacco products and alcoholic beverages are considered as such; see, e.g., the Galician Act 2/1996, on drugs), and which include some articles that impose some restrictions on the advertising of those products addressed to minors.
- c) Acts which have as their specific aim the regulation of the distribution or advertising of alcoholic drinks addressed to minors (e.g., the Act of the Autonomous Community of Castilla-La Mancha 2/1995, or the Act of the Autonomous Community of Extremadura 4/1997).

### 3. International Obligations

It must also be stated that the European Convention on Transfrontier Television of the Council of Europe has been signed and ratified by Spain (Instrument of Ratification of the European Convention on Transfrontier TV, published in the Spanish Official Journal – *Boletín Oficial del Estado, BOE* – on 19 January 1998). Art. 11.3 of the European Convention, which covers general standards for advertising, states that advertisements addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities. Art. 15.2 establishes that advertisements for alcoholic beverages of all varieties shall not be addressed particularly to minors and no one associated with the consumption of alcoholic beverages in advertisements should seem to be a minor.

### 4. Self-Regulation

There are also some self-regulatory codes of conduct which affect TV advertising targeting minors, such as the Code of Conduct of Advertising Aimed to Children of the Spanish Association of Toys Manufacturers, or the Code of Conduct of the Spanish Advertising Self-Regulatory Association, which has been widely accepted by the industry.

Art. 28 of the Code of Conduct of the Spanish Advertising Self-regulatory Association states that advertising messages addressed to children must be handled extremely carefully. They must neither exploit the natural ingenuity, immaturity, inexperience or credulity of children or adolescents nor take advantage of their sense of loyalty. Advertising messages that are either addressed to children or adolescents, or susceptible of influencing them, must not contain declarations or visual presentations which might damage them mentally, morally, or physically. Special care will be taken to ensure that advertisements do not mislead children as to true size, value, nature, durability or performance of the advertised product. If extra items (for example, batteries) are required to use the product, or to produce the results described or shown (for example, paint) this must be explicitly pointed out. Advertisements must not overestimate the degree of skill possessed by children, or the protection achieved through age limits with regard to the enjoyment or use of the products”.



## **B. Texts of the Applicable Rules**

### 1. Law 25/1994

*Ley 25/1994, de 12 de julio, por la que se incorpora al Ordenamiento Jurídico Español la Directiva 89/552/CEE, sobre la coordinación de Disposiciones Legales, Reglamentarias y Administrativas de los Estados Miembros relativas al ejercicio de actividades de Radiodifusión Televisiva*

[http://www.sgc.mfom.es/legisla/radio\\_tv/ley25\\_94.htm](http://www.sgc.mfom.es/legisla/radio_tv/ley25_94.htm)

*Artículo 11. Publicidad de bebidas alcohólicas.*

*La publicidad de bebidas alcohólicas deberá respetar lo dispuesto al efecto en la Ley 34/1988, de 11 de noviembre, General de Publicidad, y los siguientes principios:*

*a) No podrá estar dirigida específicamente a las personas menores de edad, ni en particular presentar a los menores consumiendo dichas bebidas.*

*Artículo 16. Protección de los menores frente a la publicidad.*

*La publicidad por televisión no contendrá imágenes o mensajes que puedan perjudicar moral o físicamente a los menores. A este efecto, deberá respetar los siguientes principios:*

*a) No deberá incitar directamente a tales menores a la compra de un producto o de un servicio explotando su inexperiencia o su credulidad, ni a que persuadan a sus padres o tutores, o a los padres o tutores de terceros, para que compren los productos o servicios de que se trate.*

*b) En ningún caso deberá explotar la especial confianza de los niños en sus padres, profesores u otras personas.*

*c) No podrá, sin un motivo justificado, presentar a los niños en situaciones peligrosas.*

### 2. Law 22/1999

*Ley 22/1999, de 7 de junio, de Modificación de la Ley 25/1994, de 12 de julio, por la que se incorpora al Ordenamiento Jurídico Español la Directiva 89/552/CEE, sobre la coordinación de disposiciones legales, reglamentarias y administrativas de los Estados miembros, relativas al ejercicio de actividades de radiodifusión televisiva*

[http://www.sgc.mfom.es/legisla/radio\\_tv/ley22\\_99.htm](http://www.sgc.mfom.es/legisla/radio_tv/ley22_99.htm)

*Artículo Doce. El artículo 11 pasa a ser artículo 10 y queda modificado en los términos siguientes:*



1. Se modifica la rúbrica del artículo, que queda redactada de la siguiente manera:

*"Artículo 10. Publicidad y televenta de bebidas alcohólicas."*

3. El actual artículo 11 pasa a ser el apartado 2 del artículo 10 con el siguiente texto:

*"2. La publicidad y la televenta de las restantes bebidas alcohólicas deberá respetar los siguientes principios:*

*a) No podrán estar dirigidas específicamente a las personas menores de edad ni, en particular, presentar a los menores consumiendo dichas bebidas."*

*Artículo Dieciocho. El artículo 16 queda modificado en los siguientes términos:*

1. La rúbrica del artículo 16 queda redactada de la forma siguiente:

*"Artículo 16. Protección de los menores frente a la publicidad y la televenta."*

2. El texto del artículo, pasa a ser apartado 1 del mismo, con las siguientes modificaciones:

*a. El texto de la letra b) se sustituye por el siguiente:*

*"b) En ningún caso, deberá explotar la especial confianza de los niños en sus padres, en profesores o en otras personas, tales como profesionales de programas infantiles o, eventualmente, en personajes de ficción."*

*b. Se añade una letra d) al apartado 1 con el siguiente texto:*

*"d) En el caso de publicidad o de televenta de juguetes, éstas no deberán inducir a error sobre las características de los mismos, ni sobre su seguridad, ni tampoco sobre la capacidad y aptitudes necesarias en el niño para utilizar dichos juguetes sin producir daño para sí o a terceros."*

3. Se crea un apartado 2 en el artículo 16 con el texto siguiente:

*"2. La televenta deberá respetar los requisitos que se prevén en el apartado 1 y, además, no incitará a los menores a adquirir o arrendar directamente productos y bienes o a contratar la prestación de servicios."*

3. Code of Conduct of the Spanish Advertising Self-Regulatory Association  
(in English): <http://www.aap.es/aap/ingles/CODCONIN.HTM>

4. Code of Conduct of Advertising Aimed to Children  
of the Spanish Association of Toys Manufacturers  
(in Spanish): <http://www.aap.es/aap/castell/codjuque.htm>



FI — Finland  
by Marina Östrerlund-Karinkanta, Finnish Broadcasting Company YLE,  
EU and Media Unit

## A. Preface

In Finland the public service broadcaster YLE is prohibited from broadcasting television advertising according to the Act on the Amendment of the Act on the Finnish Broadcasting Company (Act No. 746/1998, <http://www.yle.fi/fbc/thisis/act.html>).

The commercial television companies' operations are based on operating licences on the basis of the Act on Television and Radio Operations (Act No. 744/1998, <http://www.mintc.fi/index.html>). This act also covers television advertising and children. However, this is not a central media policy issue in Finland in the way it is for instance in Sweden. In this connection, the act merely implements the EC's Television Directive.

The Act on Television and Radio Operations gives the Consumer Ombudsman the responsibility for supervising compliance with the Act with regard to the ethical principles of advertising, teleshopping spots and the protection of minors. The Consumer Ombudsman has given guidelines about children and marketing. They are based upon the Consumer Protection Act and its Chapter 2, Regulation of Marketing (Act No. 38/1978). The guidelines are found in English at <http://www.kuluttajavirasto.fi/englanti/guidelines/list/lapseng.html>

The guidelines also include rules about children and television advertising.

In addition guidelines concerning advertising have been agreed between the Nordic countries. They were released in 1991. In 1999 a report on Nordic co-operation concerning TV and radio advertising was published by the Nordic Council of Ministers (TemaNord 1999:541).

The commercial television company MTV3 Finland has released rules about television advertising. In addition to the channel's own operating principles, MTV3's Television Advertising Regulations are based on the [ICC International Code of Advertising Practice](#), laws, decrees and instructions and regulations issued by the Consumer Ombudsman and other officials. MTV3's Television Advertising Regulations (May 1999) are presented in English at <http://www.mtv3.fi/media/regulations> and they include a chapter on children and advertising.

## B. Texts of the Applicable Rules

### 1. The Act on Television and Radio Operations (Act No. 744/1998)

The Act has the following rulings relevant to the issue of advertising on TV aimed at children:

Section 23  
Ethical principles of advertising and teleshopping spots



Television and radio advertising or teleshopping spots shall not prejudice respect for human dignity nor be offensive to religious or political beliefs. They shall not encourage behaviour prejudicial to health, public safety or the environment and nor shall they include any discrimination on grounds of race, sex or nationality.

#### Section 25 Protection of minors

Television and radio advertising shall not cause moral or physical detriment to minors. Television and radio advertising shall not:

- 1) exhort minors to buy a product or service by exploiting their inexperience or credulity;
- 2) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- 3) exploit the special trust minors place in parents, teachers or other persons; nor
- 4) unreasonably show minors in dangerous situations.

Teleshopping spots shall correspondingly comply with the provisions of paragraph 1. In addition, they shall not exhort minors to contract for the sale or rental of goods and services.

#### Section 35 Supervisory authorities

It shall be the duty of the Telecommunications Administration Centre to supervise compliance with this Act and the provisions and regulations issued thereunder with the exception of provisions the supervision of whose compliance has been entrusted to the Consumer Ombudsman.

The Consumer Ombudsman shall supervise compliance with sections 23 and 25 of this Act. Under the Consumer Protection Act (1978/38), the Consumer Ombudsman may also address broadcasts violating the provisions of chapter 4 of this Act if their contents constitute unsuitable or misleading marketing from the point of view of consumers.

## 2. The Consumer Ombudsman's guidelines on children and advertising

The following texts are from the chapters concerning television, source:

<http://www.kuluttajavirasto.fi/englanti/guidelines/list/lapseng.html>

### **Television commercials**

The main consideration in TV commercials aimed at children is that they be easily recognized.

- See to it that the presentation of your commercial can be distinguished from other TV programs with respect to image, text and sound.
- Commercials must not affect children harmfully.

### **Time limits and broadcasting times**

Children's TV programs - especially if they last less than 30 minutes - may not include commercial breaks.

- Commercials featuring frightening elements such as loud noises and aggressive images must not be broadcast at a time when they might be viewed by small children.



### **Technical realization**

Special care must be taken to distinguish TV ads from children's programs.

- TV commercials must not use excerpts of children's programs being broadcast at the same time, nor may they feature the same characters.
- Animated children's programs should not be cut up by animated commercials.
- Violence must not be included in any form in advertising aimed at children.
- Attempts to persuade a child to buy a product are forbidden. More particularly, sales pitches may not be put into the mouths of familiar cartoon characters or other children.
- Children's programs may not be sponsored.

### **Direct marketing and telesales**

As children have a limited ability to grasp the commercial nature of advertising, they easily imagine that in direct marketing the advertiser is personally interested in them. This misconception is rendered easy by the child's self-centered thinking.

- Direct-mail advertisements must not be addressed to children. Even if such mail is addressed to the children's parents it is forbidden to print cartoon characters on such mail or to include invitations for a child to open the letter or buy the product in question.
- If the target group of your mail-order advertising are children or youngsters, make sure to state that if the client is under 18 years of age the order form must be signed by his parents.
- Do not sell products to children on TV shopping programs. They are often broadcast at hours when children are alone at home and may purchase the product without their parents' knowledge.

## 3. MTV3 Finland's Television Advertising Regulations

Source: <http://www.mtv3.fi/media/regulations>

### **Chapter 6 "Children and advertising"**

#### **Children as viewers**

In designing commercials special attention should be given to the fact that children comprise a considerable portion of the viewing audience. Commercials must not have a detrimental influence on children physically or morally. Particular care should be taken with regard to the following:

- Commercials must not present situations which if imitated by children might cause injury to themselves or others.
- Commercials should avoid appealing to children's strong emotions. They should not take advantage of children's fear of being alone or abandoned, for example.
- A commercial may not suggest that buying or using the product will make a child physically, socially or psychologically better than others or that not having the product will have the opposite effect.
- Commercials for product intended for children may not include expressions regarding price such as "only, just, for mere pocket money" etc or direct appeals to children such as "buy, try, you will get or you will experience" etc.
- Commercials advertising sweets, soft drinks, snacks etc should not give the picture that they can replace regular food.



- Commercials must not directly encourage children to get their parents or other persons to buy the product or give the picture that everyone can afford the product.
- Commercials advertising toys and hobby items may not use presentations or special effects which might give children a misleading impression of the product or its use. The principle is that the product must be present in the form in which it is available commercially. If the product must be assembled, painted, moulded etc, the result shown in the commercial must be what a child can achieve with reasonable effort. The commercial must not give an exaggerated impression of the ease of the work involved.

### **Children as performers**

Children may be used in commercials if they are a natural part of the environment presented or are indispensable to show how the product is used. In such cases care must nevertheless be taken not to create the impression that children are being exploited in order to sell the product. Children may not make direct sales pitches in commercials. Children may not make characterizations of the product or enterprise in commercials. Children may not appear in commercials in situations in which they behave in a way which is counter to generally accepted norms. In deciding whether to use children in commercials, it is advisable to submit the script to MTV3's customer service in advance.



## A. La loi

L'utilisation des mineurs dans la publicité ainsi que les effets des messages publicitaires sur le jeune public sont réglementés en France par l'article 7 du décret du 27 mars 1992 (Journal officiel 28 mars 1992) qui reprend l'article 16 de la directive "Télévision sans frontières". Selon ce texte : "La publicité ne doit pas porter préjudice aux mineurs. A cette fin, elle ne doit pas :

- 1) Inciter directement les mineurs à l'achat d'un produit ou d'un service en exploitant leur inexpérience ou leur crédulité ;
- 2) Inciter directement les mineurs à persuader leurs parents ou des tiers d'acheter les produits ou les services concernés ;
- 3) Exploiter ou altérer la confiance particulière que les mineurs ont dans leurs parents, leurs enseignants ou d'autres personnes ;
- 4) Présenter sans motif légitime des mineurs en situation dangereuse".

Ce décret est applicable « aux organismes du secteur public et des différentes catégories de services autorisés de télévision diffusés en clair par voie hertzienne, terrestre ou par satellite » (article 1er).

## B. Mécanismes de contrôle

Le Conseil supérieur de l'audiovisuel exerce un contrôle a posteriori de l'application de ce texte. Il peut interdire toute nouvelle diffusion d'un message non conforme à ces prescriptions. C'est ainsi qu'il a récemment fait cesser la diffusion d'une publicité présentant une petite fille sur une patinoire avec une sucette (situation dangereuse).

Le Bureau de vérification de la publicité (BVP), association à but non lucratif dont l'objet est de mener dans l'intérêt du public une action en faveur d'une "publicité loyale honnête et véridique", a pour tâche de répondre aux demandes d'avis qui lui sont adressées à l'effet de savoir si une publicité (déjà réalisée ou en projet) est conforme à la réglementation en vigueur et de prendre toutes les mesures qui s'imposent pour faire cesser les manquements aux réglementations publiques et professionnelles. Dans la pratique, l'avis du BVP est presque systématiquement réclamé par les régies publicitaires. A ces pouvoirs de conseil et de contrôle s'ajoute une compétence en matière d'élaboration de recommandations qui, quoique n'ayant pas force obligatoire, ont valeur de référence pour tout professionnel de la publicité.

Le BVP a notamment émis une recommandation spécifique aux enfants (Légicom 18, p. 6). Celle-ci prévoit que l'enfant peut être présenté nu dans une publicité lorsque son comportement est naturel et qu'il correspond aux attitudes qu'il est susceptible d'adopter habituellement dans son environnement quotidien.



Pour plus d'informations : BVP, 5 rue Jean Mermoz, 75008 Paris – Tel : 0033 143 59 89 45



GB — United Kingdom  
Susanne Nikoltchev, European Audiovisual Observatory (compiling texts)  
With the help of Prof. Tony Prosser, IMPS-School of Law, University of Glasgow

## A. Preface

The provisions of the Broadcasting Act 1990 concerning advertising do not contain any specific restrictions on advertising for children. However, section 9 of the Act requires the Independent Television Commission to publish a Code on Advertising Standards and Practice, and observance of the code will be a condition of the licence granted to the broadcaster. The Code was issued December 1998 and can be found at <http://www.itc.org.uk/>

## B. Relevant Rules of The ITC Code of Advertising Standards and Practice

### 1. Foreword

- ...
- (b) This is the Code which the ITC has adopted for the purpose of this statutory duty with respect to advertising. Rules on sponsorship and more detailed rules on the scheduling of advertisements are published separately in the **ITC Code of Programme Sponsorship** and in the publication, **ITC Rules on the Amount and Scheduling of Advertising**.
- ...
- (d) This Code applies to all television programme services licensed by the ITC under the Broadcasting Act 1990 and the subsequent Broadcasting Act 1996...
- ....
- (f) The Broadcasting Act 1990 expressly reserves the right of the ITC to impose requirements which go beyond those in this Code. The methods of control open to the ITC include powers to give directions to exclude not only classes and descriptions of advertisements but individual advertisements – either in general or in particular circumstances. ...
- ...
- (h) For the purposes of additional guidance on interpretation of the Code, the ITC will from time to time either issue supplementary guidance notes of its own or indicate approval of guidance to advertisers issued by the television companies themselves. ... (see below C. and D.)
- ... (i) ...

### 2. The ITC Code of Advertising Standards and Practice

#### **40 Alcoholic Drink**

- (a) Advertising for alcoholic drinks must not be directed at people under 18 or use treatments likely to be of particular appeal to them. Children must not be seen or heard in an advertisement for alcoholic drink. In advertisements for drinks containing 1.2% alcohol by volume or less, anyone associated with drinking must be, and appear to be, at least 18 years old. In all other advertisements for alcoholic drinks they must be, and appear to be, at least 25 years old.



- (b) No advertisement for alcoholic drink may feature any personality whose example people under 18 are likely to follow or who has a particular appeal to people under 18.

... (m)...

**GENERAL NOTES:**

- (i) *These rules apply principally to advertisements for alcoholic drinks but the incidental portrayal of alcohol consumption in other advertisements must always be carefully considered to ensure that it does not contradict the spirit of these rules.*

...

**41 Advertising and Children**

Particular care should be taken over advertising that is likely to be seen by large numbers of children and advertisements in which children are to be employed. More detailed guidance is given in Appendix 1.

**Appendix 1: Advertising and Children**

**1 The Child Audience**

At times when large numbers of children are likely to be viewing, no product or service may be advertised and no method of advertising may be used which might result in harm to them physically, mentally or morally, and no method of advertising may be employed which takes advantage of the natural credulity and sense of loyalty of children. For the purposes of this Code, unless otherwise stated, the Commission normally regards as children those aged 15 years and under.

**2 Misleadingness**

Children's ability to distinguish between fact and fantasy will vary according to their age and individual personality. With this in mind, no unreasonable expectation may be stimulated, for example, of the performance of toys and games by the excessive use of imaginary backgrounds or special effects.

**3 Toys and games etc.**

Advertisements for toys, games and other products of interest to children must not mislead, taking into account the child's immaturity of judgement and experience. In particular:

- (a) The true size of the product must be made easy to judge, preferably by showing it in relation to some common object by which it can be judged. In any demonstration it must be made clear whether the toy can move independently or only through manual operation.
- (b) Treatments which reflect the toy or game seen in action through the child's eyes or in which real life counterparts of the toy are seen working must be used with due restraint. There must be no confusion as to the noise produced by the toy – eg a toy racing car and its real life counterpart.
- (c) Where advertisements show results from a drawing, construction, craft or modelling toy or kit, the results shown must be reasonably attainable by the average child and ease of assembly must not be exaggerated.

**4 Competitions**



If there is to be a reference to a competition for children in an advertisement, the published rules must be submitted in advance to the licensee. The value of the prizes and the chances of winning one must not be exaggerated.

**5 Direct Exhortation**

Advertisements must not exhort children to purchase or to ask their parents or others to make enquiries or purchases.

**6 Appeals to Loyalty**

No advertisement may imply that unless children themselves buy or encourage other people to buy a product or service they will be failing in some duty or lacking in loyalty.

**7 Inferiority**

No advertisement may lead children to believe that if they do not have or use the product or service advertised they would be inferior in some way to other children or liable to be held in contempt or ridicule.

**8 Direct Response**

No advertisement may invite children to purchase products or services by mail, telephone or e-mail.

**9 Restriction on Times of Transmission**

- (a) Advertisements for the following must not be transmitted during children's programmes or in the advertisement breaks immediately before or after them – alcoholic drinks, liqueur chocolates, matches, medicines, vitamins or other dietary supplements, slimming products, treatments and establishments, 15 and 18 rated film trailers, lotteries, pools or bingo.

*NOTE TO Rule 9(a):*

*In the case of alcoholic drinks, slimming products, treatments and establishments, and of lotteries, pools and bingo, additional restrictions apply. See rule 19(a) above, Appendix 3 rule 35(a) below and Section 4 of the ITC Rules on the Amount and Scheduling of Advertising.*

- (b) Except in circumstances approved by the Commission, the following will be acceptable only after 9pm:
- (i) advertisements in which children are shown having any medicine, or vitamin or other dietary supplement administered to them;
  - (ii) advertisements for medicines, or vitamins or other dietary supplements which use techniques that are likely to appeal particularly to children, such as cartoons, toys or characters of special interest to children.
- (c) Children must not be shown self-administering medicines or vitamins or other dietary supplements unless prior permission is given by the Commission.

*NOTES TO RULES 9(a), (b) AND (c):*

*(i) For the purposes of rules 9(a), (b) and (c), "medicines" are classified as products which carry a product licence (See Appendix 3) and "dietary supplements" are classified as isolated or highly purified or concentrated products sold in forms resembling medicines, eg vitamins, minerals and amino acids.*



(ii) *In the case of a product which cannot easily be distinguished from a medicine, or where the advertising itself contributes to such a lack of distinguishability, particularly with regard to very young children (those five years old and under), rules 9(a), (b) and (c) should be applied.*

(iii) *Where an exemption is sought under 9(b) & (c) it is likely to be granted only in relation to products such as those for oral hygiene, skin preparations including acne treatments and externally-applied decongestants. The exemption will be granted only if the Commission is fully satisfied that harm is unlikely to arise as a result of very young children's responses to the advertisements.*

- (d) Advertisements in which personalities or other characters (including puppets etc) who appear regularly in any children's television programme on any UK television channel, present or positively endorse products or services of particular interest to children must not be transmitted before 9pm. This does not apply to public service advertisements or to characters specially created for advertisements.

**NOTE:**

*Rule 9(d) does not apply to programmes which are not currently on air and have not been carried on any channel for a period of at least two years.*

- (e) Advertisements for merchandise based on children's programmes must not be broadcast in any of the two hours preceding or succeeding transmission of the relevant programme or of episodes or editions of the relevant programme.
- (f) Advertisements which contain material which might frighten or cause distress to children must be subject to appropriate restrictions on times of transmission designed to minimise the risk that children in the relevant age group will see them. Trailers for 15 or 18 rated films must not be shown in or around children's programmes and, depending on content, may require more rigorous timing restrictions.

**10 Prices**

- (a) Except in the case of services carrying advertising directed exclusively at audiences outside the UK, advertisements for expensive toys, games and similar products must include an indication of their price.
- (b) A product will not be regarded as expensive if it is reasonably widely available at a retail price below that specified by the Commission from time to time.
- (c) Where a range of products is featured in a single advertisement only the most expensive item need be priced.
- (d) Where more than one item is priced, each price must clearly refer to a particular item.
- (e) When parts, accessories or batteries which a child might reasonably suppose to be part of a normal purchase are available only at extra cost, this must be made clear.
- (f) The cost must not be minimised by the use of words such as "only" or "just".

**11 Safety**

Any situations in which children are to be seen or heard in advertisements should be carefully considered from the point of view of safety and it should be borne in mind that, in some circumstances, bad examples set by adults might also encourage dangerous emulation.

In particular:

- (a) **Road Safety**



- (i) children must not appear to be unattended in street scenes unless they are obviously old enough to be responsible for their own safety;
  - (ii) children must not be shown playing in the road;
  - (iii) children must not be shown stepping carelessly off the pavement or crossing the road without due care;
  - (iv) in crossing busy streets, children must be seen to use pedestrian crossings;
  - (v) children must behave in accordance with the Highway Code, whether as pedestrians, cyclists or passengers.
- (b) **General Safety**
- (i) children must not, for example, be seen leaning out of windows, climbing or tunnelling dangerously, or playing irresponsibly in or near water;
  - (ii) small children must not be shown climbing up to high shelves or reaching up to take things from a table above their heads;
  - (iii) medicines, disinfectants, antiseptics and caustic or poisonous substances must not be shown within reach of children without close parental supervision, nor may children be shown using these products in any way;
  - (iv) children must not be shown using matches or any gas, petrol, paraffin, mechanical or mains-powered appliance which could lead to them suffering burns, electrical shock or other injury;
  - (v) children must not be shown driving or riding on agricultural machines (including tractor-drawn carts or implements); scenes of this kind could encourage contravention of the Agriculture (Safety, Health and Welfare Provisions) Act 1956;
  - (vi) an open fire in a domestic scene in an advertisement must always have a fireguard clearly visible if a child is included in the scene.

## 12 **Danger**

No advertisement may encourage children to enter strange places or to converse with strangers (for example, in an effort to collect coupons, wrappers, labels, etc). The details of any collecting scheme must be submitted to the licensee who must be satisfied that it contains no element of danger to children.

## 13 **Exploitative Presentation**

Advertisements must not portray children in a sexually provocative manner. Treatments in which children appear naked or in a state of partial undress require particular care and discretion.

## 14 **Clubs**

No advertisement dealing with the activities of a club may be accepted without the submission of satisfactory evidence to the licensee that the club is properly and responsibly supervised.

## 15 **Good Manners and Behaviour**

Children in advertisements should be reasonably well mannered and well behaved.

## 16 **Children as Presenters**

Children must not be used formally to present products or services which they could not be expected to buy themselves. This applies whether or not such products are of interest to them. Nor may they make in relation to any product or service, significant comments on characteristics of which they cannot be expected to have direct knowledge.



## **17 Testimonials**

Children must not be used to give formalised personal testimony. This does not, however, preclude children giving spontaneous comments on matters in which they would have an obvious natural interest.

## **Appendix 3: Medicines, Treatments, Health Claims, Nutrition and Dietary Supplements**

### **14 Medicines and Children**

No advertisement for a medicinal product may be directed at people under the age of 16.

## **Appendix 5: Religious Advertising**

### **4 Acceptable Categories**

- (a) Advertising is acceptable for any of the following purposes:
- (i) publicising events such as services, meetings or religious festivals;
  - (ii) describing an organisation's activities and how to contact it;

....

### **13 Children and Young People**

- (a) No advertisement for the purposes of rule 4(a)(i) or 4(a)(ii) above may be designed to appeal particularly to people under 18 and no such advertisement may be broadcast in breaks in or immediately before or after programmes principally directed at audiences under 18, or likely to have particular appeal for such audiences.
- (b) Advertisements for responsible, commercially available publications and merchandise based on religious themes and designed for children or young people may be broadcast in breaks in or adjacent to programmes for such people, provided the marketing of the products concerned is not ancillary to a recruitment or fund raising purpose.

## **Appendix 6: Statutes Affecting Television Advertising**

The following statutes and regulations made under them are among those which may restrict or control or otherwise affect television advertising or should be particularly noted. This list is not exhaustive, particularly in relation to statutes with limited territorial scope, for example, for Northern Ireland, Scotland, etc.

### **(a) General**

Children and Young Persons (Harmful Publications) Act 1955  
Children and Young Persons Act 1933 (Scotland 1937)  
Children and Young Persons Act 1963 (including the Children (Performances) Regulations 1968)

.....



## **C. Advertising Guidance Note No. 9**

### Television Advertising Scheduling Restrictions: Children And Young People

1. Advertising scheduling restrictions play an important role in the ITC's policies for the protection of children and young people. The purpose of this note is to explain the objectives of the various types of scheduling restrictions most commonly used.

#### **Not Immediately Adjacent To Children's Programmes**

2. For the purpose of the ITC's various codes "children" are normally defined as those of 15 or under. "Children's programmes" are those which are primarily designed for this audience. They include both whole channels such as "Nickelodeon" specialising in the child audience and designated segments of the schedules of general channels, for example Children's ITV (CITV).

3. The advertising which is shown in the breaks immediately adjacent to these programmes is not necessarily all targeted at children themselves. Advertisers also use these breaks to reach parents with young children, for products such as nappies, household detergents and packaged food. However, while parents often do choose to watch these programmes with their children, ITC policy is based on the premise that many children are likely to be watching unaccompanied and it seeks to ensure, so far as possible, that parents can have a high degree of confidence that none of the advertising which appears around these programmes will be unsuitable for children, including those in the youngest age categories.

4. This restriction is used most commonly in the following situations:

- (i) for certain products (eg. alcohol, slimming, medicines, 15 or 18 rated cinema films or videos, lotteries and football pools), which are inherently unsuitable for purchase or use (at least unsupervised) by children and where parents might be concerned that advertising could stimulate an unhealthy precocious interest. Although it is unlikely that advertisers in these categories would wish to target a child audience, these restrictions put the matter beyond doubt. They also ensure that advertisers who are targetting the parents of young children, for example on slimming products, are not able to use advertising breaks which, because of the programme context, might also be particularly influential with children. Modern research on television advertising is giving increasing weight to programme context in assessing the influence which advertising has. Children are more likely to be attentive to, and regard as relevant to themselves, advertising which is broadcast adjacent to programmes targeted at them and in breaks which also include advertising which they see as "for them" e.g. advertising for toys and some types of breakfast cereal;
- (ii) advertising which is potentially frightening or distressing to very young children (3-5);
- (iii) advertising which contains even relatively mild references to sexual behaviour.



### **Not Immediately Adjacent to Programmes of Particular Appeal to Those Under 18**

5. In the case of two product areas - alcohol and slimming products - it has been recognised that the critical age group for abuse or harm may be older children and adolescents. The definitions of children's programmes do not include those programmes which are particularly popular with and targeted at this age group, e.g. the Australian soap "Home and Away". For this reason the ITC requires that where audience measurement shows that a programme is likely to be relatively more popular with adolescents than for the population as a whole the breaks in this programme should not be available for alcohol or slimming advertising. This policy reflects the point referred to above that the programme context in which advertisements appear affects the perceived relevance of the advertising to the audience of the programme concerned. It needs to be emphasised that in the case of both alcohol and slimming advertising the ITC also imposes content rules designed to ensure that, whenever it is broadcast, advertising in these categories does not contain elements which children and adolescents are likely to relate particularly strongly to as part of their generation "sub-cultures".

### **Not Pre-7.30 P.M.**

6. This restriction is used mainly for treatments which are potentially frightening or distressing to a wider band of younger children (c.3-7). Since it is not always easy to anticipate how children will react this is sometimes a restriction which is imposed after a campaign has begun if there appears to be genuine evidence of a problem with younger children. It is sometimes necessary to use this restriction for harder hitting public safety or charity campaigns. Advertisements which portray harm to children can be particularly upsetting. The restriction is also sometimes used when the issue is a risk that children might harm themselves or others by seeking to copy something they see in an advertisement. Depending on the seriousness of the risk, and the age group likely to be affected, still later scheduling (e.g. post-9 p.m.) may be necessary in these cases. A post-7.30 p.m. restriction can significantly reduce the likelihood of a commercial being seen by 3-7 year olds but will be less effective in relation to older children.

### **Not Pre-9 P.M.**

7. This is used for the material which is most potentially distressing to children as well as that which is more sexually explicit in character, e.g. condom advertising or where there are grounds for serious concern about possible harmful emulation. It needs to be emphasised here that the standards which apply to advertising at this time, as at earlier times, remain a great deal more rigorous than those which apply to programmes. In the case of programmes, viewers make a conscious decision about what they choose to watch and are able, from the programme listings, to identify those programmes genres which may contain material which is stronger than they may prefer to see. Advertisements, on the other hand, are not pre-selected and, whereas the ITC does permit after 9 p.m. advertising which might be more explicit than many parents would wish their children to see, it is still significantly more restrained than some programme material appearing at the same time in areas such as violence, bad language or sexual explicitness, where stronger material may be justified by editorial context. It is well established from audience research, both by the ITC and other organizations, that the 9 p.m. "watershed" policy is well understood and positively supported by the vast majority of parents. It also needs to be emphasised that the ITC does not - either for programmes or for advertisements - regard the 9 p.m. "watershed" as a "waterfall". On more than one occasion the ITC has reprimanded television companies



for including violent, sexually explicit scenes or those containing particularly strong language in the opening sequences of drama programmes beginning at 9 p.m., even though these might have been acceptable later on in the same programme. The ITC has also made it clear that advertising with a post-9 p.m. restriction is not acceptable in the advertising break preceding a programme scheduled to start at 9 p.m., when it can be assumed that much of the audience for the preceding programme will still be present.

### **Very Late Restrictions**

8. Occasionally the television companies will clear advertisements for broadcast only very late at night, e.g. post 11 p.m. The ITC Code permits this in cases where the product sector is not itself prohibited (examples of prohibited sectors are tobacco and pornography) but where the content and style of the advertisement might be objectionable to a significant part of the general audience, although not necessarily to the younger adult, late-night audience. Much of the material which appears on this basis is cinema-related, i.e. advertisements for 18-rated feature films or video releases, or commercials made primarily for showing in cinemas. In terms of explicitness this material is well within the standards applicable to programmes shown at the same time.

March 1996; re-issued July 1997; December 1998.

### **D. Advertising Guidance Note No. 12**

Audience indexing: Identification of programmes likely to appeal to children and young people.

1. This guidance note is designed to assist in the correct scheduling of those advertisements with a timing restriction requiring a separation from programmes of particular interest to children and young people. It indicates the practical measures broadcasters and sales houses must take to ensure that such programming is correctly identified.

2. The specific advertising scheduling restrictions are primarily detailed in Rule 4.2.1 of the **ITC Rules on the Amount and Scheduling of Advertising**. Advertising Guidance Note No. 9 (Television Advertising Scheduling Restrictions: Children and Young People) explains the underlying policy on such separations and can usefully be read in conjunction with this Guidance Note.

#### **Products affected**

3. Advertisements for alcoholic drinks, bingo, certain religious matter and for slimming products, treatments or establishments must not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.

4. Advertisements for lotteries and pools are subject to the same restriction, save that the age threshold is, for legal reasons, 16.



5. Advertisements for female sanitary protection products are subject to the same restriction, save that the age threshold is 10.

### **Programmes affected**

6. The ITC will take the view that a programme will have “particular appeal” to the relevant age range when audience measurement shows that it is likely to be *relatively* more popular with that age range than for the population as a whole.

7. In the case of products with a scheduling restriction of 16 or 18, the ITC will normally regard the restriction as relevant to any programme where the 10-15 audience, indexed against the all-individuals audience, produces an index greater than 100. In the index range 100 to 120, particular circumstances may occasionally make the scheduling restriction not appropriate but licensees should assume that an index of 120 or more will automatically bring the programme within the scope of this restriction. If the restriction is not to apply to programmes at or beyond an index of 120 the ITC must be satisfied *in advance* that the context of the programme justifies such an interpretation (e.g. if the high proportion of younger viewers is clearly not directly associated with the nature of the programme, such as a general news programme clearly not targeted at younger viewers). The ITC believes it unlikely that there will be many programmes achieving a 120+ 10-15 index which will not attract the scheduling restriction.

8. In the case of sanitary protection products, the ITC will normally regard the restriction relevant to any programme where the 4-9 audience against all individuals produces an index of significantly greater than 100.

9. The ITC recognises that, for certain channels, the verifiable audience data available may not be sufficient to apply the index criteria referred to above. In these cases, licensees will be expected to be able to demonstrate the application of the spirit and intention of the rule based on such hard audience information as is available to them and a knowledge of their audience profiles.

10. Channels devoted to children's programmes, or where the generality of the programme content might reasonably be expected to be of particular appeal to children, will be unlikely to be able to carry at any time advertising requiring a separation from programmes of interest to children and young people. For the avoidance of doubt, note also that advertising with "post 7.30 pm" and "post 9 pm" etc. timing restrictions may not be scheduled in or around programmes of interest to children.

11. Nothing in this Guidance Note removes the need for all licensees to take into account, for the purposes of appropriate and sensitive scheduling, all characteristics of a programme in addition to the viewing index.

### **Monitoring.**

12. The ITC receives regular reports designed to identify possible breaches of the above restrictions and will follow up, as necessary, with the licensees concerned.

February 1999.



IE — Ireland

*by Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway*

Control of Advertising in Ireland is largely self-regulatory. The Advertising Standards Authority for Ireland (ASAI) is a self-regulatory body established by the advertising industry. The ASAI administers two Codes – the Code of Advertising Standards and the Code of Sales Promotion Practice – which are based on the Codes established by the International Chamber of Commerce. The Codes apply to the media (print and broadcasting), cinema and outdoor advertisements.

Essentially, the Codes require that all commercial advertisements and promotions:

- should be legal, decent, honest and truthful;
- should be prepared with a sense of responsibility to consumers and to society;
- should respect the principles of fair competition generally accepted in business.

The Code of Advertising Standards contains special provisions in relation to advertising and children.

In essence, the Code states that

- an advertisement should contain nothing that is likely to result in physical, mental or moral harm to children;
- an advertisement should not exploit the loyalty, vulnerability or lack of experience of children;
- an advertisement addressed to children should not feature products that are unsuitable for children; it should make it easy for them to judge the actual size, characteristics and performance of the product advertised, and should not exaggerate what is attainable by an ordinary child using the product.

In the specific case of the advertising of alcoholic drink, advertisements should not be directed at young people or in any way encourage them to start drinking.

The provisions relating to advertising and children contained in the Code of Sales Promotion Practice are broadly similar to those outlined above. In addition, the Code provides that sales promotions addressed to or likely to attract children should make it clear that parental permission is required if prizes and incentives might cause conflict between children and their parents.

The full text of the Codes is available at <http://www.asai.ie>



IT — Italy

by Maja Cappello, *Autorità per le Garanzie nelle Comunicazioni, Napoli*

## A. Preface

In Italy the following provisions rule the issue:

Art. 8(1) of Law 30/08/90, n. 223 which bans advertising in cartoons;

Art. 3 of Decree 30/11/91, n. 425, concerning advertising and eventual detriment of minors, implementing Article 16 of the TVWF Directive 89/552;

Art. 3(5) of Law 30/04/98 n. 122, concerning advertising in children's programmes, implementing art. 11(5) of the TVWF Directive as amended by Directive 97/36

Recent case law of the *Autorità per le Garanzie nelle Comunicazioni* (Communications Authority) shows that the total ban of advertising in cartoons has been replaced by the provisions of the Directive allowing advertising in children's programmes if they last more than 30 minutes.

## B. Texts of the Applicable Rules

1, *Legge 6 Agosto 1990, N. 223.*

### ***Disciplina Del Sistema Radiotelevisivo Pubblico E Privato.***

#### **TITOLO II NORME PER LA RADIODIFFUSIONE**

#### **CAPO I DISPOSIZIONI GENERALI**

#### **Art. 8. Disposizioni sulla pubblicità**

*1. La pubblicità radiofonica e televisiva non deve offendere la dignità della persona, non deve evocare discriminazioni di razza, sesso e nazionalità, non deve offendere convinzioni religiose ed ideali non deve indurre a comportamenti pregiudizievoli per la salute, la sicurezza e l'ambiente, non deve arrecare pregiudizio morale o fisico a minorenni, e ne è vietato l'inserimento nei programmi di cartoni animati.*

#### **TITOLO IV SANZIONI**

#### **Art. 31. Sanzioni amministrative di competenza del Garante e del Ministro delle poste e delle telecomunicazioni**



1. Il Garante, in caso di inosservanza delle disposizioni di cui agli articoli 8, escluso il comma 10, 9, 20, 21 e 26, dispone i necessari accertamenti e contesta gli addebiti agli interessati, assegnando un termine non superiore a quindici giorni per le giustificazioni.

## **TITOLO V NORME TRANSITORIE E FINALI**

### **Art. 33. Norme per i soggetti autorizzati**

2. Le norme di cui agli articoli 8 (fatto salvo quanto disposto dal comma 16 dell'articolo 15); 9 ai commi 7 e 15 dell'articolo 15; ai commi 1, 2, 4, 5 e 6 dell'articolo 20; all'articolo 31, hanno efficacia a decorrere dal trecentosessantacinquesimo giorno dalla data di entrata in vigore della presente legge; per i concessionari privati esercenti attività di radiodiffusione sonora in ambito nazionale e locale hanno efficacia a decorrere dal settecentotrentesimo giorno dalla data di entrata in vigore della presente legge: a tal fine le norme riferentisi ai concessionari privati per la radiodiffusione sonora e televisiva rispettivamente in ambito nazionale e locale si applicano ai soggetti di cui all'articolo 32 i quali eserciscano rispettivamente alla data di entrata in vigore della presente legge, reti nazionali, ovvero emittenti e reti locali, così come definite ai sensi del comma 11 dell'articolo 3 e del comma 3 dell'articolo 21. Fino al 31 dicembre 1992, la percentuale di cui al primo periodo del comma 7 dell'articolo 15 è fissata al 3 per cento e gli eventuali ulteriori contratti di cui al medesimo periodo possono riguardare anche emittenti televisive locali.

### 2. Decreto 30 novembre 1991, n. 425.

#### **Regolamento concernente attuazione degli articoli 13, 15 e 16 della direttiva del consiglio delle comunita' europee del 3 ottobre 1989 (89/552/CEE), relativi alla pubblicita' televisiva dei prodotti del tabacco e delle bevande alcoliche ed alla tutela dei minorenni.ecologia.**

#### **Art. 3**

##### **Norme a tutela dei minorenni**

1. La pubblicita' televisiva, allo scopo di impedire ogni pregiudizio morale o fisico ai minorenni, non deve:

- A) esortare direttamente i minorenni ad acquistare un prodotto o un servizio, sfruttandone l'inesperienza o la credulita';
- B) esortare direttamente i minorenni a persuadere genitori o altre persone ad acquistare tali prodotti o servizi;
- C) sfruttare la particolare fiducia che i minorenni ripongono nei genitori, negli insegnanti o in altre persone;
- D) mostrare, senza motivo, minorenni in situazioni pericolose.

Il presente decreto, munito del sigillo dello stato, sara' inserito nella raccolta ufficiale degli atti normativi della repubblica italiana. E' fatto obbligo a chiunque spetti di osservarlo e di farlo osservare.

### 3. Legge 30 aprile 1998, n. 122

#### **Differimento di termini previsti dalla legge 31 luglio 1997, n. 249, relativi all'Autorità per le Garanzie nelle Comunicazioni,**



**nonché norme in materia di programmazione e di interruzioni pubblicitarie  
televisive  
pubblicata nella Gazzetta Ufficiale n. 99 del 30 aprile 1998**

*Art. 3.  
(Disposizioni in materia di pubblicità televisiva)*

*5. La pubblicità e la televendita non possono essere inserite durante la trasmissione di funzioni religiose. I notiziari e le rubriche di attualità, i documentari, i programmi religiosi e quelli per bambini, di durata programmata inferiore a trenta minuti, non possono essere interrotti dalla pubblicità o dalla televendita. Se la loro durata programmata è di almeno trenta minuti, si applicano le disposizioni di cui al presente articolo.*



## NL — The Netherlands

by Natali Helberger, Institute for Information Law (IViR), University of Amsterdam

### A. Preface

In the Netherlands, there is no specific law concerning advertising targeting minors. Relevant regulations are spread over a number of general laws which also include provisions on advertising targeting minors. Moreover, only few regulations specifically concern TV advertising aimed at this group. In this context, Article 13 *Nederlandse Reclame Code* (NRC) should be mentioned, as it is transforming Article 16 of the Television Without Frontiers Directive.

Further regulations on the protection of minors are contained in codes dealing with advertisements for products which are generally felt to be potentially harmful, such as alcohol, tobacco, gambling and sweets (irrespective of whether such advertisements are seen by minors or adults). These codes do not deal exclusively with TV advertisements; however, they do include provisions on TV advertisements, including those aimed specifically at minors. (See *Code voor Alcoholhoudende Dranken* (alcohol-containing drinks), *Reclame Code Casinospelen* (gambling), *Code voor Sigaretten en Shag* (cigarettes and tobacco), Code for Direct Response Advertising, *Code voor Zoetwaren* (sweets) and *Warenwet – Speelgoed* (toys)).

In addition, general principles govern the transmission of advertisements, such as the prohibition of misleading advertisements, of abusing fear or inexperience, and of violating the principles of good taste and decency (Articles 2-10 NRC).

Dutch law distinguishes between children and minors. "Minors" or "youths" are defined as persons younger than 18, whereas "children" are defined as persons younger than 12 (Article 13.1 NRC). Most of the existing regulations are targeted at the protection of minors. (One exception is Article 13.1 NRC, which deals with the protection of children.)

In praxis, courts tend to very strictly apply existing specific and general regulations when dealing with cases of advertisements directed at minors.

For further information, see also Prof. J. J. C. Kabel, *Reclame voor of met kinderen*, in: *Praktijkboek Reclamerecht I*, ed. M. van Delft-Baas, mr M. Dellebeke, Prof. F.W. Grosheide, mr. N. Hagemanns, mr. J.J C. Kabel, 1978 Kluwer Deventer, Supplement February 1996, Section M.

### B. Overview of the most important regulations

As far as rules exist, they state either general prohibitions to target advertisements at minors as well as obligations concerning labelling or the placement of advertisements or restrict the time at which certain advertisements may be broadcast. Laws may also include specific restrictions as regards the content.

#### 1. Specific provisions on advertisements targeting at minors



Under Dutch law, it is not generally prohibited to target advertisements at minors. Exceptions can be found in the specific codes dealing with generally potentially harmful products, such as alcohol and tobacco, etc. For example, it is not allowed to target spot advertisements for alcohol, gambling or tobacco specifically at minors (see Articles 13, 22, section 2 *Code voor Alcoholhoudende Dranken*, Article 6 section 1 *Reclamecode Casinospelen en Kansspelautomaten*, Article 12 section 1 – 12 section 3 *Reclamecode voor Tabaksproducten*).

## 2. Regulations concerning the content of a spot advertisement

Article 13 NRC is the central provision in the context of the content regulation of advertisements targeting minors. Under this article, advertisements which are clearly aimed at children may not take advantage of the inexperience or limited comprehension of children, or of the particular confidence children have in parents, teachers or other persons. Furthermore, it is prohibited to show an advertisement intended to encourage minors to persuade their parents to purchase the product shown (Article 13 section 2 NRC). Also, advertisements may not mislead minors concerning the qualities of a product or lead them into a dangerous situation.

Note that Article 13 section 3 NRC extends protection also to teleshopping. In addition, teleshopping spots may not lead minors to conclude contractually binding agreements.

Generally, spot advertisements may not show minors gambling or using critical products, such as alcohol or tobacco (Article 6 section 2 *Reclamecode Casinospelen en Kansspelautomaten*, Article 14 *Code voor Alcoholhoudende Dranken*, and Article 12 section 3 *Reclamecode voor Tabaksproducten*, respectively). As far as spot advertisements for alcohol are concerned, they may not show youth idols drinking alcohol (Article 15 *Code voor Alcoholhoudende Dranken*).

Furthermore, spot advertisements may not suggest that the use of a certain product is an expression of adulthood (Article 16 *Code voor Alcoholhoudende Dranken*, Article 12 section 4 *Reclamecode voor Tabaksproducten*). It is also prohibited to show an advertisement which suggests that the use of a certain product may be e.g. not harmful to health (Article 4 *Code voor Zoetwaren*, see also Article 20 section 1 *Code voor Alcoholhoudende Dranken*).

### *Labelling*

Service providers are not generally obliged to label advertisements which are directed at minors.

However, specific provisions on the labelling of advertisements can be found in e.g. the *Code voor Zoetwaren* (although this provision is not aimed directly at minors, but more generally at advertisements for sweets). According to Article 6 of this code, advertisers are obliged to show a toothbrush in spot advertisements for sweets. This provision also regulates in a quite detailed manner the way in which the toothbrush has to be included in the picture. Further provisions on labelling can be found in the codes on advertisements for alcohol and tobacco (Article 21 *Code voor Alcoholhoudende*



*Dranken*, Article 8 section 1 *Reclamecode voor Tabaksproducten*). Again, these provisions are not restricted to spot advertisements specifically directed at or likely to be seen by minors.

#### Time Restrictions

Specific time restrictions are laid down in Article 22 section 2 *Code voor Alcoholhoudende Dranken*. Spot advertisements for alcohol generally should be shown at a time when it is unlikely that minors will be watching (i.e. late evenings). Exceptions are possible for e.g. specific programmes (such as cooking programmes) as long as the programme itself is not specifically aimed at minors. The provision states, furthermore, that the burden of proof in this matter lies with the advertiser.

#### Restrictions on the placement of advertisements

More common are restrictions on the place where or the type of media in which specific advertisements may be shown. For example, under Article 7 section 4 *Reclamecode Casinospelen en Kansspelautomaten* it is prohibited to place spot advertisements in programmes which are generally directed at minors. In addition, advertisements may be not placed in types of media which are specifically intended for minors, such as special TV programmes, feature films, news programmes for youths, etc..

The same applies to advertisements for tobacco (Article 13 section 1, 13 section 2, 14 section 1, 14 section 2 *Reclamecode voor Tabaksproducten*). Furthermore, it is prohibited to show TV or audio-visual advertisements for tobacco in places which are primarily visited by youths, such as pop concerts (Article 15 section 3 *Reclamecode voor Tabaksproducten*).

#### Sponsoring

Article 52a *Mediawet* prohibits the sponsoring of public broadcasters' programmes which are directed at minors.

## C. Text of the applicable rules

### **Nederlandse Reclamecode**

*Artikel 13, lid 1 Reclame die kennelijk geheel of gedeeltelijk tot kinderen – d.w.z. minderjarigen tot 12 jaar / wordt gericht, mag niets in woord, geluid of beeld bevatten waardoor kinderen op enigerlei wijze worden misleid over de mogelijkheid en eigenschappen van het aangeboden product.*

#### *Toelichting bij artikel 13.1*

*In reclame gericht op kinderen dient rekening te worden gehouden met hun bevattingsvermogen en verwachtingspatroon, met name m.b.t. het speelplezier en de prestaties van het product.*



*Artikel 13, lid 2 Reclame op televisie mag minderjarigen geen morele of fysieke schade berokkenen en moet daarom voor hun bescherming voldoen aan de volgende criteria:*

- a) Zij mag minderjarigen niet tot de aankoop van een bepaald product aanzetten door te profiteren van hun onervarenheid of hun goedgelovigheid;*
- b) Zij mag minderjarigen er niet rechtstreeks toe aanzetten hun ouders of anderen te overreden tot de aankoop van producten waarvoor reclame wordt gemaakt;*
- c) Zij mag niet profiteren van het speciale vertrouwen dat minderjarigen hebben in ouders, leerkrachten of anderen;*
- d) Zij mag minderjarigen niet zonder reden in gevaarlijke situaties tonen.*

*Artikel 13, lid 3 Telewinkelen moet aan de in 13.2 genoemde eisen voldoen en mag daarenboven minderjarigen er niet toe aanzetten overeenkomsten te sluiten voor het kopen of huren van producten.*

### **Code voor Alcoholhoudende Dranken**

*Artikel 13 Reclame-uitingen mogen niet speciaal zijn gericht op minderjarigen.*

*Artikel 14 Reclame-uitingen mogen geen drinkende of tot het drinken van alcoholhoudende dranken opwekkende personen uitbeelden, die zich in hun uitingen in het bijzonder tot minderjarigen richten.*

*Artikel 15 Reclame-uitingen mogen geen dringende of tot het drinken van alcoholhoudende dranken een teken van volwassenheid is en niet-gebruik een teken van onvolwassenheid. Evenmin mogen in reclame-uitingen uitgebeelde personen de indruk wekken, dat zij al op minderjarige leeftijd alcoholhoudende dranken gebruikten.*

*Artikel 20, lid 1 Reclame-uitingen mogen geen positief verband leggen tussen drinken en het beoefenen van een sport die lichamelijke inspanning vereist. Met name mogen zij niet suggereren dat het gebruik van alcoholhoudende dranken de sportprestatie in positieve zin beïnvloedt.*

### **Artikel 21**

- a. Voor reclame-uitingen die worden uitgezonden via de televisie, geldt dat twee op de vijf uitzendingen voorzien moeten zijn van een educatieve slogan, waarbij ieder merk minimaal eenmaal per jaar een educatieve slogan dient te voeren. De slogan dient duidelijk zichtbaar te zijn en de consument aan te sporen tot verantwoord gebruik of een waarschuwing te bevatten tegen misbruik. Voorts dienen de slogans voor wat betreft het tijdstip van uitzending gelijkmatig over de beschikbare reclameblokken te worden verspreid.*
- b. Voor reclame-uitingen die in bioscopen, theaters, besloten televisiecircuits en discotheken door middel van film en video worden vertoond, anders dan genoemd in artikel 22, geldt dat iedere reclame-uitingen dient te worden voorzien van een educatieve slogan.*
- c. Voor reclame-uitingen die worden uitgezonden via de televisie, geldt dat iedere uitzending, direct voorafgaand aan, tijdens of direct volgend op een sportprogramma, voorzien moet zijn van een educatieve slogan.*



*Artikel 22, lid 2* Voor radio en televisie geldt dat reclame voor alcoholhoudende dranken niet specifiek gericht mag zijn op minderjarigen. Dit betekent in principe `s avonds, maar reclame rond of tijdens speciale programma`s (zoals kookprogramma`s) is toegestaan, mits uitdrukkelijk vaststaat dat deze programma`s gericht zijn op en in meerderheid worden bekeken of beluisterd door meerderjarigen. De bewijslast ligt bij de adverteerder.

### **Reclamecode Casinospelen en Kansspelautomaten**

*Artikel 6, lid 1* In reclame-uitingen moet grote zorgvuldigheid en terughoudendheid worden betracht ten opzichte van kwetsbare groepen, met name minderjarigen. Reclame mag niet specifiek op minderjarigen gericht zijn.

*Artikel 6, lid 2* In reclame mogen geen minderjarigen worden afgebeeld.

*Artikel 7, lid 4* Radio- of televisieprogramma`s geheel of hoofdzakelijk gericht op minderjarigen mogen door Holland Casino en haar vestigingen en de exploitanten van kansspelautomaten niet worden gesponsord.

*Artikel 8* Er zal geen reclame worden gemaakt via en rondom specifiek op minderjarigen gerichte media, dan wel delen van deze media (inserts, bijlagen, speciale (radio- en tv-) programma`s, bioscoopfilms etc.).

### **Reclamecode voor Tabaksproducten**

*Artikel 8 lid 1* Reclame-uitingen, (mede) op de consument gericht, zullen zijn voorzien van de aanduiding „Breng de gezondheid ernstige schade toe“...

*Artikel 12, lid 1* Reclame-uitingen mogen niet gericht zijn op beïnvloeding van de jeugd ten gunste van het aangeprezen product.

*Artikel 12, lid 2* Reclame-uitingen zullen geen voorstellingen en/of aanprijzingen bevatten die in het bijzonder de jeugd aanspreken.

*Artikel 12, lid 3* Reclame-uitzendingen zullen geen personen beneden 30 jaar afbeelden.

*Artikel 12, lid 4* Reclame-uitingen zullen geen verband leggen tussen het gebruik van tabaksproducten en (on)volwassenheid, in die zin dat zij niet de indruk mogen wekken dat dit gebruik een teken van volwassenheid zou zijn en het niet gebruiken van tabaksproducten een teken van onvolwassenheid.

*Artikel 13, lid 1* Reclame-uitingen zullen niet gevoerd worden in media die overwegend appelleren aan jeugdigen.

*Artikel 13, lid 2* De industrie zal zich ten aanzien van reclame-uitingen onthouden van het gebruik van media waarvan niet bekend is of zij overwegend appelleren aan jeugdigen.



*Artikel 14 lid 1 Reclame-uitingen zullen niet worden geplaatst in de in bijlage 3 genoemde gedrukte media, speciaal bestemd voor jeugdigen, of met een lezerbestand dat voor 25% of meer bestaat uit jeugdigen.*

*Artikel 14, lid 2 Reclame-uitingen zullen voorts niet worden geplaatst in gedrukte media op pagina's die artikelen bevatten die speciaal bestemd zijn voor en/of geacht mogen worden voornamelijk gelezen te worden door jeugdigen.*

*Artikel 15, lid 1 Reclame-uitingen zullen niet worden opgevoerd in:*  
*a. ruimten, hoofdzakelijk ingericht voor bijeenkomsten van jeugdigen;*  
*b. Discotheken;*  
*c. opleidingsinstituten*

*Artikel 15, lid 2 Reclame-uitingen zullen niet gevoerd worden bij evenementen die specifiek bestemd zijn voor, dan wel naar verwachting voor meer dan 25% worden bezocht door jeugdigen.*

*Artikel 15, lid 3 Reclame-uitingen via audiovisuele media zijn niet toegestaan:*  
*a. In ruimten die in hoofdzaak bestemd zijn voor verblijf in gezinsverband;*  
*b. Op zogenaamde popfestivals.*

### **Code voor Zoetwaren**

*Artikel 4 De reclame mag geen verband leggen tussen de consumptie van zoetwaren en gezondheid ... Door een verwijzen naar een relatief laag suikergehalte mag niet de indruk worden gewekt, dat de kans op het ontstaan van cariës relatief gering is.*

*Artikel 6 Televisiereclame voor zoetwaren zal een door de Reclame Code commissie vastgestelde, gestileerde afbeelding van een tandenborstel tonen en wel – hetzij (dia)positief, hetzij 9 (dia) negatief- ter keuze van de adverteerder:*  
*a. Gedurende de gehele uitzenduur ter grote van minimaal een tiende van de hoogte van het filmbeeld;*  
*b. Gedurende drie seconden van de film ter grote van minimaal een tiende van de hoogte van het filmbeeld;*  
*c. Beeldvullend gedurende anderhalve seconde van de overeengekomen uitzenduur, al dan niet met een dienovereenkomstige verkorting van de reclameboodschap.*

### **Mediawet**

*Artikel 52a 1. De programmaonderdelen van instellingen die zendtijd hebben verkregen, kunnen worden gesponsord.*  
*2. In afwijking van het eerste lid, worden de volgende programmaonderdelen niet gesponsord:*  
*a. programmaonderdelen, bestaande uit nieuws, actualiteiten of politieke informatie;*  
*b. programmaonderdelen die in het bijzonder bestemd zijn voor minderjarigen beneden de leeftijd van twaalf jaar;*



- c. *Programmaonderdelen waarin ten behoeve van consumenten informatie wordt versterkt over producten of diensten.*



NO — Norway

by Dag Grønnestad, Secretary to the Norwegian Committee on Cinema Policy

## A. Description of the Rules Applicable

The Norwegian Broadcasting Act (chapter 3-1) states that:

"Advertising can not be broadcast in connection with childrens programs. Advertising specifically directed towards children is not to be broadcasted whatsoever."

The provisions of the Broadcasting Act further states that children's programs may be defined:

- with regard to the content and form of the program
- as to whether children up to the age of 13 are represented
- with regard to when the programme is scheduled
- with regard to potential viewers at the point of time it is scheduled
- with regard to actual audiences
- with regard to language

Advertising may not be broadcasted within 10 minutes before or after childrens programs.

The provisions also provide guidelines for judging whether advertising is directed towards children. It may be regarded as directed towards children

- when a product or a service of special interest to children is promoted
- with regard to schedule
- when children up to the age of 13 are represented
- when animation or other presentational forms that particularly appeals to children is used

Furthermore the provisions state that advertising that promotes products or services of special interest to children and young people, may not include characters or figures that within 12 months prior, frequently or during a longer period of time also have been central elements in childrens programs or programs for young people.

As a general rule the provisions state that particular attention must be paid to children and young people, referring to the fact that children and young people's experiences are limited and that they are considered to be easy to manipulate.

On 5 November 1999 the Ministry of Children and Family Affairs appointed a committee to evaluate the commercial pressure against children and young people in Norway. The committee is scheduled to submit its report on 1 October 2000. It is expected to discuss the expediency of the Broadcasting Act and Marketing Act, in particular, with a view to regulating commercial pressure against children and young people.

## B. Texts of the Applicable Rules



## 1. Lov om kringkasting (Broadcasting Act)

### *Kap. 3. Reklame, sponsing.*

*Overskriften endres ved lov 14 jan 2000 nr. 5 (i kraft 20 jan 2000 iflg. res. 14 jan 2000).*

#### *§ 3-1. Varighet, innhold*

*Reklameinnslag skal samlet ikke overstige 15 prosent av kringkastingsselskapets daglige sendetid. Kongen kan gjøre unntak fra denne bestemmelse for sending av tekstplakater i lokalfjernsyn.*

*Det kan ikke sendes reklameinnslag i tilknytning til barneprogram eller reklameinnslag som særlig er rettet mot barn.*

*Fjernsynsselskap kan ikke sende reklame for livssyn eller politiske budskap. Dette gjelder også tekstfjernsyn.*

*Kongen kan gi nærmere regler om utsending av, innholdet i, omfanget av og tilsynet med reklamesendinger.*

*Endret ved lover 17 des 1993 nr. 126, 25 juni 1999 nr. 51 (i kraft 1 juli 1999 iflg. res. 25 juni 1999 nr. 704). Endres ved lov 14 jan 2000 nr. 5 (i kraft 20 jan 2000 iflg. res. 14 jan 2000).*

## 2. Forskrift om kringkasting (Provisions)

### *§ 3-6. Reklame og forholdet til barn og unge under 18 år*

*Det må tas hensyn til at all reklame kan bli sett eller hørt av barn, og det må vises særlig aktsomhet overfor barn og unges påvirkelighet og manglende erfaring.*

*Det kan ikke sendes reklameinnslag for produkt eller tjenester som er av særlig interesse for barn og unge der det deltar personer eller figurer som i løpet av de siste 12 måneder regelmessig eller over en lengre periode har fremstått som viktige element i barne- eller ungdomsprogram i en radio- eller fjernsynskanal som mottas i Norge.*

*Det kan ikke sendes reklameinnslag som særlig er rettet mot barn, jf. lovens § 3-1. Ved vurderingen av om reklame er særlig rettet mot barn skal det bl.a. legges vekt på følgende elementer:*

- om reklamen gjelder et produkt eller en tjeneste av særlig interesse for barn, sendetidspunkt for reklamen,*
- om det medvirker barn under 13 år,*
- om det benyttes animasjon eller annen presentasjonsform som særlig appellerer til barn.*

*Det kan ikke sendes reklameinnslag 10 minutter umiddelbart før og etter barneprogram.*



*Et program er å anse som et barneprogram når barn anses å være den primære målgruppe for programmet. Ved vurdering av om et program er å anse som et barneprogram skal det bl.a. legges vekt på følgende elementer:*

- programmets innhold og form,*
- hvorvidt barn under 13 år deltar,*
- når programmet sendes,*
- hvem som er potensielle seere i forhold til sendetidspunktet,*
- faktiske seere,*
- språkbruken i programmet.*



PO — Portugal

by Helena Sousa, Departamento de Ciências de Comunicação, Universidade de Minho

The Publicity Code (Código de Publicidade) covers the issue of advertising targeting minors. The Code can be found at [http://www.aacs.pt/legislacao/codigo\\_da\\_publicidade.htm](http://www.aacs.pt/legislacao/codigo_da_publicidade.htm)

## 1. (Unauthorized) Translation Relevant Provisions of the *Código da Publicidade* (Law Decree nº330/90 of 23 October)

### Art.14 (Minors)

1- Advertising specially targeting minors should always take into consideration their psychological vulnerability and should not:

- a) directly incite minors - exploring their inexperience and ingenuity - to acquire a given product or service;
- b) directly incite minors to persuade their parents or others to buy products or services;
- c) contain elements which might endanger their physical and moral integrity, namely by inciting them to violence;
- d) explore the special trust minors have in their parents, tutors or teachers.

2 - Minors can only be the principal intervenients in advertising messages when there is a direct relationship between them and the product.

### Art.20 (Advertising in Schools)

It is forbidden advertising to alcohol, tobacco and any sort of pornographic material in schools as well as in publications, programmes and activities targeting minors.

### Art. 25 (Advertising on television)

4 - Newsbulletins, political programmes, actualities, religious programmes and programmes for children, lasting less than 30 minutes, cannot be interrupted for advertising.

## 2. Original text of the *Código Da Publicidade* (Decreto-Lei n.º 330/90 de 23 de Outubro)

### *Artigo 14º* (Menores)

*1 - A publicidade especialmente dirigida a menores deve ter sempre em conta a sua vulnerabilidade psicológica, abstendo-se nomeadamente, de:*

- a) Incitar directamente os menores, explorando a sua inexperiência ou credulidade, a adquirir um determinado bem ou serviço;*
- b) Incitar directamente os menores a persuadirem os seus pais ou terceiros a comprarem os produtos ou serviços em questão;*



- c) Conter elementos susceptíveis de fazerem perigar a sua integridade física ou moral, bem como a sua saúde ou segurança, nomeadamente através de cenas de pornografia ou do incitamento à violência;*
- d) Explorar a confiança especial que os menores depositam nos seus pais, tutores ou professores.*

*2 - Os menores só podem ser intervenientes principais nas mensagens publicitárias em que se verifique existir uma relação directa entre eles e o produto ou serviço veículado.*

*Artigo 20º  
(Publicidade em estabelecimentos de ensino)*

*Publicidade em estabelecimentos de ensino ou destinada a menores.  
É proibida a publicidade a bebidas alcoólicas, ao tabaco ou a qualquer tipo de material pornográfico em estabelecimentos de ensino, bem como em quaisquer publicações, programas ou actividades especialmente destinados a menores.*

*Artigo 25º  
(Inserção de publicidade na televisão)*

*4 - Os telejornais, os programas de informação política, os programas de actualidade informativa, as revistas de actualidade, os documentários, os programas religiosos e os programas para crianças com duração programada inferior a trinta minutos não podem ser interrompidos por publicidade.*



SE — Sweden  
*by Niklas Karlendal, Ministry of Culture, Media Division, Stockholm*

The Swedish rules concerning advertising aimed at children are as follows:

Radio- and television act (1996:844)

Chapter 7

Section 4

Commercial advertisements in a television transmission may not have the purpose of attracting the attention of children under the age of twelve.

Persons or characters who play a prominent role in programmes primarily intended for children under the age of twelve may not appear in commercial advertisements in a television transmission.

Section 7

3rd paragraph

Commercial advertisements may not occur immediately before or after a programme or part of a programme which is principally intended for children under the age of twelve except when it is a message referred to in Section 8.

(Messages referred to in Section 8 are messages indicating the sponsors of a sponsored programme)



## A. EC Legislation

### 1. English Version

**Council Directive (89/552/EEC) of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities**  
**and**

**Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities**

Unofficial consolidated version prepared by the services of the Commission

NB: This is an unofficial text. For the authoritative texts of the two directives, reference should be made to the Official Journal of the European Communities L 298 of 17 October 1989, p. 23, and L 202 of 30 July 1997, p.60 .

### Article 16

1. Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations.

2. Teleshopping shall comply with the requirements referred to in paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.

### Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.



3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

<http://www.europa.eu.int/comm/dg10/avpolicy/twf/tvconse.html>

## 2. French Version

**Directive 89/552/CEE du Conseil du 3 octobre 1989 visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à l'exercice d'activités de radiodiffusion télévisuelle**  
**et**

**Directive 97/36/CE du Parlement européen et du Conseil du 30 juin 1997 modifiant la Directive 89/552/CEE du Conseil du 3 octobre 1989 visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à l'exercice d'activités de radiodiffusion télévisuelle**

Version consolidée officielle préparée par les services de la Commission

NB : Ceci est une version inofficielle. Le texte officiel des deux directives figure au Journal Officiel des Communautés Européennes L 298 du 17 octobre 1989, p. 23 et L 202 du 30 juillet 1997, p.60.

### **Article 16**

1. La publicité télévisée ne doit pas porter un préjudice moral ou physique aux mineurs et doit, de ce fait, respecter les critères suivants pour leur protection :

- a) elle ne doit pas inciter directement les mineurs à l'achat d'un produit ou d'un service, en exploitant leur inexpérience ou leur crédulité ;
- b) elle ne doit pas inciter directement les mineurs à persuader leurs parents ou des tiers d'acheter les produits ou les services concernés ;
- c) elle ne doit pas exploiter la confiance particulière que les mineurs ont dans leurs parents, leur enseignants ou d'autres personnes ;
- d) elle ne doit pas, sans motif, présenter des mineurs en situation dangereuse

2. Le télé-achat doit respecter les obligations visées au paragraphe 1 et, en outre, il ne doit pas inciter les mineurs à conclure des contrats pour la vente ou la location de biens et de services.

### **Article 22**

1. Les Etats membres prennent les mesures appropriées pour que les émissions des organismes de radiodiffusion télévisuelle qui relèvent de leur compétence ne comportent aucun programme susceptible de nuire gravement à l'épanouissement physique, mental ou moral des mineurs, notamment des programmes comprenant des scènes de pornographie ou de violence gratuite.



2. Les mesures visées au paragraphe 1 s'étendent également aux autres programmes qui sont susceptibles de nuire à l'épanouissement physique, mental ou moral des mineurs, sauf s'il est assuré, par le choix de l'heure de l'émission ou par toute mesure technique, que les mineurs se trouvant dans le champ de diffusion ne sont normalement pas susceptibles de voir ou d'entendre ces émissions.

3. En outre, lorsque de tels programmes sont diffusés en clair, les Etats membres veillent à ce qu'ils soient précédés d'un avertissement acoustique ou à ce qu'ils soient identifiés par la présence d'un symbole visuel tout au long de leur durée.

<http://www.europa.eu.int/comm/dg10/avpolicy/twf/tvconsf.html>

### 3. German Version

**Richtlinie 89/552/EWG des Rates zur Koordinierung bestimmter Rechts- und  
Verwaltungsvorschriften der Mitgliedstaaten über die Ausübung der  
Fernsehtätigkeit vom 3. Oktober 1989  
und**

**Richtlinie 97/36/EG des Europäischen Parlaments und des Rates vom 30 Juni 1997  
zur Änderung der Richtlinie 89/552/EWG des Rates zur Koordinierung bestimmter  
Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über die Ausübung der  
Fernsehtätigkeit**

Konsolidierte inoffizielle Fassung erstellt von den Dienststellen der Kommission

NB: Dies ist ein inoffizieller Text, erstellt von den Dienststellen der Kommission.  
Der offizielle Text der beiden Richtlinien wurde im Amtsblatt der Europäischen  
Gemeinschaften L 298 vom 17. Oktober 1989, S.23, bzw. L202 vom 30. July  
1997, S. 60 veröffentlicht.

### **Artikel 16**

(1) Die Fernsehwerbung darf Minderjährigen weder körperlichen noch seelischen Schaden zufügen und unterliegt daher folgenden Kriterien zum Schutz Minderjähriger:

- a) Sie soll keine direkten Kaufappelle an Minderjährige richten, die deren Unerfahrenheit und Leichtgläubigkeit ausnutzen.
- b) Sie soll Minderjährige nicht unmittelbar dazu auffordern, ihre Eltern oder Dritte zum Kauf der beworbenen Ware oder Dienstleistung zu bewegen.
- c) Sie soll nicht das besondere Vertrauen ausnutzen, das Minderjährige zu Eltern, Lehrern und anderen Vertrauenspersonen haben.
- d) Sie soll Minderjährige nicht ohne berechtigten Grund in gefährlichen Situationen zeigen.



(2) Teleshopping muß die in Absatz 1 genannten Anforderungen erfüllen und darf darüber hinaus Minderjährige nicht dazu anhalten, Kauf- oder Miet- bzw. Pachtverträge für Waren oder Dienstleistungen zu schließen.

## Artikel 22

(1) Die Mitgliedstaaten ergreifen angemessene Maßnahmen, um zu gewährleisten, daß Sendungen von Fernsehveranstaltern, die ihrer Rechtshoheit unterworfen sind, keinerlei Programme enthalten, die die körperliche, geistige und sittliche Entwicklung von Minderjährigen ernsthaft beeinträchtigen können, insbesondere solche, die Pornographie oder grundlose Gewalttätigkeiten zeigen.

(2) Die Maßnahmen gemäß Absatz 1 gelten auch für andere Programme, die die körperliche, geistige und sittliche Entwicklung von Minderjährigen beeinträchtigen können, es sei denn, es wird durch die Wahl der Sendezeit oder durch sonstige technische Maßnahmen dafür gesorgt, daß diese Sendungen von Minderjährigen im Sendebereich üblicherweise nicht gesehen oder gehört werden.

(3) Werden derartige Programme in unverschlüsselter Form gesendet, so sorgen die Mitgliedstaaten dafür, daß ihre Ausstrahlung durch akustische Zeichen angekündigt oder durch optische Mittel während der gesamten Sendung kenntlich gemacht wird.

## B. Case Law of the European Court of Justice

### 1. English Version

#### **KO v. De Agostini and KO v. TV-Shop**

Joined Cases *Konsumentombudsmannen (KO) v. De Agostini (Svenska) Förlag AB (C-34/95)* and *Konsumentombudsmannen (KO) v. TV-Shop i Sverige AB (C-35/95 and C-36/95)*, judgement of 9 July 1997.

by Johan H. Lans, published in the *Legal Guide to Audiovisual Media in Europe* (publication of the European Audiovisual Observatory 1999)

It has been disputed whether the control stated by the “Television without Frontiers” Directive only concerns “broadcasting” regulation, or if it also covers regulation of misleading advertising. Article 2a.1 and the 17<sup>th</sup> recital of the unamended Directive had led to discussions about whether it is possible to apply national marketing regulations and the Directive concerning misleading advertising (Council Directive 84/450/EEC of 10 September 1984 relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States concerning Misleading Advertising) to transfrontier television broadcasts.

In the *De Agostini*-case The ECJ assessed the relationship between EC and national marketing regulations in the context of television advertising. The Court held that the “Television without Frontiers” Directive does not preclude a Member State from taking



measures against an advertiser with regard to advertising broadcast from another Member State, provided that those measures are taken pursuant to general legislation for consumer protection against misleading advertising and that they do not prevent the retransmission of broadcasts as such. The Directive only partially co-ordinates advertising and its content, and it does not automatically exclude the application of rules other than those specifically relating to broadcasting.

The Court also stated that a domestic provision prohibiting advertising aimed at children under 12 years of age is not as such in conflict with EC law. However, the Directive precludes the application of such a prohibition if the advertising is broadcast from another Member State. Member States may no longer apply provisions specifically designed to control the content of television advertising with regard to minors.

The Court thus distinguished between on one hand national regulations on advertising concerning issues that are not covered by the Directive (i.e., protection of consumers against misleading advertising, which is regulated by the Directive concerning misleading advertising), and on the other hand national regulations on advertising concerning issues that are specifically addressed by a complete set of provisions in the Directive (i.e. Articles 16 and 22 concerning protection of minors as regards television programmes and advertising). In the first case, the receiving state is allowed to take measures to protect consumers with regard to (national) advertisers, as the Directive only undertakes a partial co-ordination of advertising. The Member State cannot, however, introduce a secondary control on the television programmes broadcast with regard to broadcasters established in other Member States. In the second case, the receiving state is prevented from applying national regulation, as the issue is completely regulated by the Directive, and such application would mean a secondary – and illegitimate – control in addition to the control exercised by the Member State having jurisdiction.

In both cases, the Court once again confirmed the principle that a broadcaster is under the jurisdiction of the Member State where it is established.

## 2. French Version

### **KO contre De Agostini et KO contre TV-Shop**

Arrêts conjoints *Konsumentombudsmannen (KO) contre De Agostini (Svenska) Förlag AB (C-34/95)* et *Konsumentombudsmannen (KO) contre TV-Shop i Sverige AB (C-35/95 et C-36/95)* du 9 juillet 1997.

par Johan H. Lans, publié dans de *Guide juridique de l'audiovisuel en Europe* (publication de l'Observatoire européen de l'audiovisuel 1999)

Le contrôle de la radiodiffusion prévu par la directive "Télévision sans frontières" a déjà fait l'objet de controverses : concerne-t-il uniquement la régulation de la "radiodiffusion" ou couvre-t-il également la publicité trompeuse ? L'article 2a.1 et le motif 17 du préambule de la directive non amendée avaient suscité des discussions visant à établir s'il était possible d'appliquer aux émissions de télévision transfrontalières des réglementations nationales relatives aux transactions commerciales et la directive en



matière de publicité trompeuse (Directive 97/55/CE du Parlement Européen et du Conseil du 6 octobre 1997 modifiant la directive 84/450/CEE sur la publicité trompeuse afin d'y inclure la publicité comparative).

Dans l'affaire *De Agostini*, la Cour européenne de Justice a étudié les relations entre le Traité de l'Union et les règles nationales applicables aux transactions commerciales dans le contexte de la publicité télévisée. La Cour a retenu que la directive n'empêche pas un Etat membre de prendre des mesures à l'encontre d'un annonceur faisant de la publicité pour une émission provenant d'un autre Etat membre, si ces mesures sont prises en accord avec la législation générale de protection du consommateur contre la publicité trompeuse et qu'elles n'empêchent pas la retransmission des émissions en tant que telles. La directive ne coordonne que partiellement la publicité et son contenu ; elle n'exclut pas automatiquement l'application de règles autres que celles spécifiquement dédiées à la radiodiffusion.

La Cour a également établi qu'une disposition intérieure qui interdit une publicité s'adressant aux enfants de moins de 12 ans n'entre pas pour autant en conflit avec la législation communautaire. Toutefois, la directive empêche l'application d'une telle interdiction si la publicité est diffusée depuis un autre Etat membre. Ceux-ci ne peuvent plus appliquer des dispositions spécifiquement destinées à contrôler le contenu de la publicité télévisée destinée aux mineurs.

Ainsi, la Cour apporte une distinction entre d'une part, les règles nationales de la publicité sur les points non couverts par la directive (à savoir, la protection des consommateurs contre la publicité trompeuse, qui dépend de sa propre directive) et d'autre part, les textes nationaux sur la publicité relatifs à des aspects spécifiquement abordés par la directive (à savoir, les articles 16 et 22 concernant la protection des mineurs en matière d'émissions et de publicités). Dans le premier cas, l'état récepteur est habilité à prendre des mesures de protection des consommateurs vis-à-vis des annonceurs nationaux, tandis que la directive n'entreprend qu'une coordination partielle de la publicité. Toutefois, l'Etat membre ne peut pas introduire un contrôle secondaire sur les programmes diffusés par des organismes de radiodiffusion établis dans d'autres Etats membres. Dans le second cas, l'état récepteur n'est plus habilité à appliquer sa législation intérieure, étant donné que la question est entièrement traitée par la directive et qu'il s'agirait alors d'un contrôle secondaire exercé par l'Etat membre compétent.

Dans les deux cas, la Cour a reconfirmé le principe selon lequel un diffuseur relève de la compétence de l'Etat membre dans lequel il est établi.

### 3. German Version

#### **KO gegen De Agostini und KO gegen TV-Shop**

Verbundene Rechssachen Konsumentombudsmannen (KO) gegen De Agostini (Svenska) Förlag AB (C-34/95) und Konsumentombudsmannen (KO) gegen TV-Shop i Sverige AB (C-35/95 und C-36/95), Urteil vom 9. Juli 1997.

von Johan H. Lans, veröffentlicht in *Juristischer Führer für audiovisuelle Medien in Europa* (Publikation der Europäischen Audiovisuellen Informationsstelle 1999)



Umstritten ist auch die Frage gewesen, ob sich die in der Fernsehrichtlinie angesprochene Aufsicht auf die Sendetätigkeit beschränkt oder auch die Regelungen zu irreführender Werbung abdeckt. Art. 2a.1 und die 17. Erwägung der früheren Richtlinie hatten Anlaß zu Kontroversen darüber gegeben, ob es möglich ist, innerstaatliche Vermarktungsvorschriften sowie die Bestimmungen der Richtlinie über irreführende Werbung (Richtlinie 84/450/EWG des Rates vom 10. September 1984 zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über irreführende Werbung) auf das grenzüberschreitende Fernsehen anzuwenden.

Im Fall *De Agostini* untersuchte der EuGH die Beziehungen zwischen den Gemeinschaftsbestimmungen und nationalen Vermarktungsvorschriften im Bereich der Fernsehwerbung. Nach Auffassung des Gerichtshofs hindert die Fernsehrichtlinie einen Mitgliedstaat nicht daran, Maßnahmen gegen Werbetreibende zu erlassen, wenn es sich um Werbespots aus einem anderen Mitgliedstaat handelt, sofern diese Maßnahmen unter Einhaltung der allgemeinen Verbraucherschutzgesetzgebung gegen irreführende Werbung erfolgen und die Übertragung von Sendungen als solche nicht verhindern. Die Richtlinie koordiniere nur teilweise die Werbung und deren Inhalt und schließe nicht automatisch die Anwendung von Vorschriften aus, die sich nicht ausdrücklich auf die Fernsehtätigkeit beziehen.

Nach Auffassung des EuGH stehen innerstaatliche Vorschriften, die an Kinder unter 12 Jahren gerichtete Werbung untersagen, nicht unbedingt im Widerspruch zum Gemeinschaftsrecht. Zulässig sei ein derartiges Verbot nach den Bestimmungen der Richtlinie allerdings dann nicht, wenn der Werbespot aus einem anderen Mitgliedstaat gesendet werde. In diesem Fall dürften die Mitgliedstaaten Bestimmungen zur inhaltlichen Überwachung an Minderjährige gerichteter Fernsehwerbung nicht mehr anwenden.

Der Gerichtshof unterschied also bei den nationalen Werbevorschriften zwischen Bereichen, die von der Richtlinie nicht erfaßt sind (der Verbraucherschutz vor irreführender Werbung wird beispielsweise von der Richtlinie über irreführende Werbung geregelt), und jenen, die in der Richtlinie ausdrücklich und umfassend geregelt sind (z. B. der Schutz Minderjähriger bei der Ausstrahlung von Fernsehsendungen und Werbung, der Gegenstand von Art. 16 und Art. 22 der Fernsehrichtlinie ist). Im ersten Fall sei der Empfängerstaat befugt, gegenüber (inländischen) Werbetreibenden Maßnahmen zum Schutz der Verbraucher zu ergreifen, da die Richtlinie die Werbetätigkeit nur teilweise regle. Der Mitgliedstaat dürfe jedoch keine Zweitaufsicht über Fernsehprogramme einführen, die von Fernsehveranstaltern mit Sitz in anderen Mitgliedstaaten ausgestrahlt werden. Im zweiten Fall sei der Empfängerstaat nicht berechtigt, nationale Vorschriften anzuwenden, da dieser Bereich vollständig von der Richtlinie geregelt werde. Die Anwendung derartiger Bestimmungen würde darauf hinauslaufen, daß neben der Kontrolle durch den die Rechtshoheit ausübenden Mitgliedstaat eine – unzulässige – Zweitkontrolle erfolge.

In beiden Fällen bekräftigte der Gerichtshof noch einmal den Grundsatz, daß Fernsehveranstalter der Rechtshoheit des Mitgliedstaates unterstehen, in dem sie ansässig sind.



## C. Communications/Conclusions/Papers

### 1. Schlussfolgerungen des Rates vom 17. Dezember 1999 über den Jugendschutz im Licht der Entwicklung digitaler audiovisueller Medienangebote (ABI C 08 vom 12. Januar 2000, S.8)

In seinen Schlussfolgerungen geht der Rat nicht speziell auf die Problematik der auf Kinder gerichteten Werbung, sondern allgemein auf Aspekte des Jugendschutzes im Zeitalter der digitalen audiovisuellen Medien ein. In diesem Rahmen fordert der Rat eine fortlaufende Kontrolle der Jugendschutzsysteme durch die jeweiligen Mitgliedstaaten. Diese sollen außerdem die von der Kontrollaufgabe betroffenen Branchen und Stellen zusammenführen, um zu prüfen, wie größere Klarheit bei der Bewertung und Einstufung audiovisueller Inhalte erzielt werden kann. Schließlich sollen die Mitgliedstaaten ihre Arbeiten zur Umsetzung der Empfehlung 98/560 EG vom 24. September 1998 zur Steigerung der Wettbewerbsfähigkeit des europäischen Industriezweigs der audiovisuellen Dienste und Informationsdienste durch die Förderung nationaler Rahmenbedingungen für die Verwirklichung eines vergleichbaren Niveaus in bezug auf den Jugendschutz und den Schutz der Menschenwürde (ABI. L 270 vom 7. Oktober 1998, S. 48) fortsetzen.

Der Rat ersucht die Kommission die Zusammenführung der betroffenen Branchen und Verbände auf europäischer Ebene zu betreiben, um gleichfalls auf größere Klarheit bei der Bewertung und Einstufung audiovisueller Inhalte hinzuwirken und den Austausch von für den Jugendschutz relevanten Informationen zu fördern. (Daneben soll die Kommission auf die Entwicklung technischer Möglichkeiten und Aufklärungsmaßnahmen hinwirken.)

*Title in English:* Council Conclusions of 17 December 1999 on the protection of minors in the light of the development of digital audiovisual services

*Title in French:* Conclusions du Conseil du 17 décembre 1999 sur la protection des mineurs compte tenu du développement des services audiovisuels numériques

### 2. Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC)(OJ L 270 of 7 October 1998 p. 48)

The Recommendation addresses the protection of minors in relation to audiovisual and information services made available to the public notwithstanding the means of conveyance and, hence, including broadcasting services. The recommendation does not focus on the protection of minors in the context of advertisement though it makes reference to the relevant provisions in the Television without Frontiers Directive. Yet the Council stresses some general aspects that are also of relevance to this issue.

In particular, the Recommendation links the enhancement of the competitiveness of the audiovisual and information services industry to the development of an environment that



favours co-operation between the enterprises in the sector on matters concerning the protection of minors. It underlines that the global nature of communications necessitates an international approach to their protection and that the development of a common indicative framework at European level helps to promote European values and permits to contribute decisively to the international debate. The Recommendation underlines that whereas national regulatory and self-regulatory frameworks reflect cultural and national differences, the coordination of national initiatives and of the bodies responsible for their implementation as well as the exchange of information on a European level could strengthen the effectiveness of national measures.

While respecting the principle of subsidiarity, the Council recommends that the Member States as a supplement to the regulatory framework promote co-operation of all relevant parties, encourage broadcasters in their jurisdiction to carry out research and to experiment, on a voluntary basis, with new means of protecting minors.

The Council further recommends that the industries and parties concerned follow suit in co-operating with the relevant authorities in order to achieve a representation of all parties concerned at national level and with a view to facilitate participation in coordination at European and international level. Concerning broadcasting services, innovation through the development of new technical means for the protection of minors or improvement of existing ones shall be encouraged. Yet avoiding potentially harmful content remains the most important step.

The Council invites the Commission to support, where appropriate, the networking through existing financial instruments and to promote international co-operation.



**European Convention on Transfrontier Television**  
Strasbourg, 5 May 1989

*Article 11 - General standards*

...

- (3) Advertisements addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities.

*Article 15 - Advertising of particular products*

- (1) Advertisements for tobacco products shall not be allowed.
- (2) Advertisements for alcoholic beverages of all varieties shall comply with the following rules:

a) they shall not be addressed particularly to minors and no one associated with the consumption of alcoholic beverages in advertisements should seem to be a minor;

<http://www.coe.fr/eng/legaltxt/132e.htm>

**Convention européenne sur la télévision transfrontière**  
Strasbourg, 5 mai 1989

Article 11 - Normes générales

...

- (3) La publicité destinée aux enfants ou faisant appel à des enfants doit éviter de porter préjudice aux intérêts de ces derniers et tenir compte de leur sensibilité particulière.

Article 15 - Publicité pour certains produits

- (1) La publicité pour les produits du tabac est interdite.
- (2) La publicité pour les boissons alcoolisées de toutes sortes est soumise aux règles suivantes:

a) elle ne doit pas s'adresser particulièrement aux mineurs; aucune personne pouvant être considérée comme mineur ne doit être associée dans une publicité à la consommation de boissons alcoolisées;

<http://www.coe.fr/fr/txtjur/132fr.htm>



ICC – International Chamber of Commerce  
*by Elisabeth Thuesen, Law Department, Copenhagen Business School*

On 2 December 1986, the International Chamber of Commerce (ICC) has issued a codex on advertising practice, which lays down guidelines for fair advertising. Such guidelines contribute to clarify the sense of good marketing practices in national law in relation to children. The Codex pronounces that advertising may not exploit the credulity or inexperience of children or misuse their sense of loyalty and may not represent anything, which could injure them spiritually, morally or physically, according to Art. 13. The annexed guidelines concerning advertising for children provide that advertising may not create probability of confusion with editorial articles. Advertising may not express toleration of illegal violence, undermine social values or expose the children to unsafe situations, nor may it encourage the children to persuade others to make purchases. It may not be misleading or confer the children with an unrealistic conception of real economic values. (taken from *Legal protection of the child consumer regarding sales promotion of products in EU*, in Juridisk Institut (ed.) Julebog 1998. Jurist- og Økonomforbundets Forlag, Copenhagen 1998.)



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[http://europa.eu.int/comm/dg10/avpolicy/key\\_doc/parental\\_control/index.html](http://europa.eu.int/comm/dg10/avpolicy/key_doc/parental_control/index.html)

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## Internet Sites

### **Focus: advertisement:**

Association AEF (Advertising Education Forum) based in Brussels  
[www.aeforum.org](http://www.aeforum.org)

Institute for Information law (IViR)  
<http://www.ivir.nl/documentation/bronwijzer.html>  
(Reclame- en Consumentenrecht)

### **Focus: children**

UNESCO  
International and Regional Declarations and Resolutions – Children and Media  
<http://www.nordicom.gu.se/unesco/declarations.html>

