



The Advertising Association

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ADVERTISING ASSOCIATION SUBMISSION

EUROPEAN COMMISSION CONSULTATION ON THE REVIEW OF THE TELEVISION WITHOUT FRONTIERS DIRECTIVE

Preamble

The Advertising Association (AA) is a federation of 25 trade associations and professional bodies representing the advertising and promotional marketing industry, including advertisers, agencies, the media and support services in the UK. It is the only body that speaks for all sides of an industry worth over £16.5 billion in 2001. Further information about the AA, its membership and remit is available on our website at:

www.adassoc.org.uk

Introduction & Overview

The AA welcomes the opportunity to respond to the public consultation by the European Commission on the review of the Television Without Frontiers Directive (TVWF). The AA does not advocate a revision of the Directive that would lead to more detailed, prescriptive rules being laid down at the European level. Better governance can be achieved through varied means and the AA believes that 'more legislation' in the broadcasting area is not the answer where other mechanisms can be proved to be more efficient and effective. The AA believes that the current prescriptions of TVWF successfully provide for the regulation of the audio-visual environment. The AA supports flexibility at a national level and the encouragement of self-regulation.

This consultation by the European Commission provides the opportunity for all social partners to provide input to any possible future review of the audio-visual landscape within the scope of TVWF. This contributes towards addressing the need to 'govern ourselves better, together' within the EU, and the AA applauds the openness and transparency of DG Education & Culture regarding the stakeholder consultation. The AA agrees that its position paper may be made wholly or partly available on the europa website once the consultation has closed, and confirms that no parts of this position paper should be treated as confidential or unattributable.

Specific Comments

Country of Origin Principle

The Country of Origin control mechanism - the centrepiece of the TVWF Directive - is vitally important, encouraging and allowing the free movement of broadcasting services within the Internal Market. The AA urges the Commission not to tamper with revision of such a clause in any forthcoming review of the Directive. Where derogation is permissible at the Member State level, the AA would not like to see extension of the scope in this area. Broadcasters must continue to have legal certainty as provided for in Article 2, and any watering down may cause the breakdown of the Internal Market for broadcasting services.

It is a myth perpetuated by those who fail to understand industry's interest in the Internal Market that the enforcement of Country of Origin control is an industry objective without thought for or consideration of consumer/viewer interests. Only the consistent application of Country of Origin control can ensure that the Internal Market functions effectively (providing a means towards the removal of market barriers) and that consumers are able to benefit from the extended choice and opportunities presented by true freedom of movement for goods and services.

Separation Principle

The TVWF Directive states that "advertising shall be readily recognisable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means". The AA believes that the principle is an important one, allowing viewers to readily identify what is advertising and what is a programme, ensuring transparency for advertising communications. However, modern practice and regulation has evolved the process for separation and the AA feels that separation by 'optical and/or acoustic' means has become the norm the use of such a phrase within TVWF should be removed. How separation is ensured need not be prescribed within an EU measure, but laid down at the national level.

Insertion

The AA believes that detailed rules at the European level on insertion are unnecessary, and should be removed from the text. It would be sufficient to retain a general principle that advertising should be inserted in natural breaks, with further details left to be fleshed out at the national level.

Respect for human dignity and non-discrimination

The AA keenly has watched the development of DG Employment & Social Affairs' policy in the area of gender equality, and notes the preparation of an EU Directive on the principle of equality between women and men. The AA believes that Article 12 of the TVWF sufficiently covers the general nature of non-discrimination on grounds including that of sex in the area of broadcast advertising. The adaptation and implementation of rules covering this subject are matters that can and should only be dealt with on the basis of subsidiarity at the national level.

Alcoholic Beverages

The AA sees no need to revise this section of the TVWF Directive. The principles enshrined are important and fully respected by the responsible UK advertising industry.

Protection of Minors

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Medicinal Products

Under the existing TVWF Directive, the advertising of prescription only medicines (POM) is prohibited. The so-called Pharmaceutical Advertising Directive (92/28) extended the TVWF ban on POM advertising to cover other media and also includes "any form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products". Directive 2001/83 of the European Parliament and the Council on the Community code relating to medicinal products for human use was agreed on 6 November 2001, acting as a codification of a multitude of EU measures in this area dating back some 35 years. The European Commission (DG Enterprise) launched in November 2001 proposals for the review of pharmaceutical legislation which included a pilot-project on the 'dissemination of information' in the three disease areas of: acquired immune deficiency syndrome; asthma and chronic bronco-pulmonary disorders; and diabetes.

Given that the DG Enterprise proposals are currently being negotiated through the legislative process, and that the European Commission approved the proposals in this area, the AA believes that the prescription in Article 14 of the TVWF is unnecessary and should be removed from the Directive so as not to prejudice the outcome of any future pilot study and to allow POM information dissemination should this be allowed at a future stage.

Self-regulation

The AA urges the European Commission to ensure a protective umbrella at the EU level under which self-regulation of the market will flourish. The reality of convergence requires flexible remits - flexibility and adaptability are vital for industry to maintain consumer trust.

The Communication from the Commission: Action plan "Simplifying and improving the regulatory environment" (COM (2002) 278 final) was welcomed by the AA where it stressed the need for simplification of the regulatory environment combined with improvement of legislative procedures and institutional practices. The AA welcomes the Communication where it indicates that appropriate use can be made of alternatives to legislation and recalls the consensus on the use in the broadcasting arena of self-regulation within an appropriate legal framework, that was reached at the recent Hellenic EU Presidency Conference in Corfu (May 2003).

In order to inform the forthcoming debate, the AA believes that the UK model for a self-regulatory system for broadcasting advertising - which is currently under discussion between the UK advertising and broadcasting sector and Ofcom to create a forward thinking framework for broadcast advertising - could form the basis of DG Education & Culture thinking in this area.

The advertising industry advocates the use of self-regulation wherever possible due to its greater flexibility and efficiency. The AA recognises, however, the need for significant consultation at the European level between business and the European Commission as a whole in order to clarify the notions of self-regulation and co-regulation at the European Level, especially in the audio-visual sector. These mechanisms are used in everyday discussion and at very practical levels throughout the Member States in varied sectors and policy areas, however the terminology and descriptors are imprecise and divergent. The mechanisms and legal implications of the legislator defining objectives, and then industry implementing a law, need to be better and more fully explored by the European Commission to ensure consistency across the board. The AA urges DG Education & Culture to work with the Secretariat-General on these issues.

Encouraging new advertising techniques across the European Union

The AA hopes that new forms of advertising techniques will be encouraged by the European Commission and, in the absence of European regulation, permitted at a national level. However, we note that their development will emerge from essentially commercial rather than political considerations. Above all, the broadcasting sector

should be guaranteed the freedom, flexibility and opportunity to continue to evolve innovative and creative new techniques that will showcase programming and commercial communications for the benefit of the industry, viewers, consumers and other stakeholders. The broadcasting sector is a highly competitive market place and given the situation over the last few years (as fully recognised in the EC Bird & Bird study) there is a need to secure its future viability.

The on-going development of new forms of advertising techniques offers the ideal opportunity for the European Commission to lay down the challenge to industry to respond by looking towards workable and future-proofed solutions. The AA would welcome such an opportunity, working together with members of the European Advertising Standards Alliance and wider industry through self-regulation. Industry does not need, nor want, to be hampered by inflexible statutory remits based on a current snapshot view of today's developments. New advertising techniques are essential to the future of broadcasting and should be encouraged (rather than hindered) by the development of self-regulatory mechanisms designed to enhance consumer trust and confidence in broadcasting services.

Conventional broadcasting and the Internet

The AA believes that it may be premature at this stage to consider the viability of any 'regulatory umbrella' to include both 'conventional and Internet broadcasting'. Many significant changes and new developments have occurred in these areas of information provision and commercial communication in recent years, not least in the area of EU measures relating to information society services. The AA view is that broadcast regulation must continue to cover only the licensees as provided with licenses through statutory provisions. Nonetheless, the AA supports greater reliance on self-regulation in the future, and plays an active role in the development of self-regulation through the European Advertising Standards Alliance. The AA urges the EU to delegate powers of code making and enforcement to self-regulatory bodies at national level where appropriate.

The E-Commerce Directive has already established a legal framework for the provision of Internet services, including advertising contained therein, which in many ways mirrors the legal framework established through the TVWF Directive. It is also important to be in a secure position to assess the political impact of the increasingly clear distinction that can be made between commercial information identified and sought by the customer (a major feature of much on-line commercial communication), and communications that are enabled by the producer and directed at the customer without having been requested in the same way.

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