European Commission: Communication to Clarify Interpretation of Advertising Provisions in Television Without Frontiers Directive

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As announced in its Communication on the future of European regulatory audiovisual policy published last December (see IRIS 2004-1: 6), the European Commission has adopted an Interpretative Communication on certain aspects of the provisions on televised advertising in the "Television without Frontiers" Directive. The aim of the Communication is to clarify how the rules on advertising in the Directive apply to certain commercial practices and advertising techniques, which have emerged in recent years. This should help increase legal certainty for all parties concerned. The Communication only clarifies existing rules and does not create any new ones.

As pointed out by the Commission, "the Communication shows that new advertising techniques and new forms of advertising are compatible with the Directive, provided that their use respects the objectives of general interest pursued by the Directive" (namely the right of viewers to a clear separation between advertising and editorial content, their protection against excessive advertising and the respect of the integrity of audiovisual works).

The first part of the Communication analyses the meaning of the basic relevant rules of the Directive and how these apply to a number of commercial practices. For instance, the Commission clarifies how the provisions of Article 11 (insertion of advertising and teleshopping) apply to sports programmes; it specifies how mini-spots must be used to comply with the Directive; and looks at how the Directive applies to telepromotions. Clarifications are also given as regards surreptitious advertising and teleshopping.

The Communication then specifies how the provisions of the Directive apply to new advertising techniques, namely split screen, interactive advertising and virtual advertising.

Split screen advertising (i.e. the simultaneous or parallel transmission of editorial and advertising content) is considered to be compatible with the Directive, "provided it is readily recognisable and kept quite separate from other parts of the programme by acoustic or optical means", so as to avoid any confusion between the two for viewers. A spatial separation between editorial and

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advertising content is thus considered to comply with the rules of the Directive. Split screen advertising must also not prejudice the integrity of the programme and is fully covered by the provisions on the presentation, insertion, duration and content of advertising.

As regards interactive advertising, the Commission notes that, being a service supplied on individual demand, this is an information society service and is thus outside the scope of the Directive. However, interactive advertising is usually accessed by the viewer through an advertisement broadcast in the context of a linear programme. The Communication thus specifies that as long as the viewer has not entered the interactive environment, the context is one governed by the Television without Frontiers Directive. Therefore, the provisions of the Directive apply with regard to separation of advertising and editorial content, to advertising content and to the protection of human dignity and of minors. However, once the viewer, on a voluntary and informed basis has entered into the interactive environment, then the provisions of the Electronic Commerce Directive will apply.

Finally, the Commission also considers that virtual advertising complies with the Directive, provided it respects a number of conditions.

Commission interpretative communication on certain aspects of the provisions on televised advertising in the "Television without frontiers" Directive, published in OJ C102/2 of 28 April 2004

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