[BE] New Draft Media Decree and Product Placement

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The draft of a new Flemish Media Decree introduces, for the first time, a regulation on product placement. As the law currently stands, product placement is submitted to the common advertising regulation of the *Omroepdecreet* (Flemish Decree on Radio-broadcasting and Television). The relevant provision is article 105, which prohibits advertising in audiovisual programmes, unless unavoidable. Advertisements belonging to "the ordinary living environment or ordinary streetscape", presented unintentionally and without any emphasis, are to be considered as being unavoidable (§1). The same holds true of advertisements in reporting sports competitions or cultural events, if these are displayed neither more often, longer or larger than is necessary for competent reporting of the event (§2) . Furthermore, revealing products or services with the intention of making them available as a prize is permitted, if no unwarranted attention is paid to them (§§3 and 4) . Finally, mentioning names or trademarks is acceptable, if this is justified and necessary for the content of the programme (§5) . Article 109 (sponsoring) adds that sponsored programmes may never be influenced in such a way so as to affect the responsibility and editorial independence of the broadcasting company nor may these programmes encourage the purchase or hire of products and services.

The *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media - monitoring and enforcement of media regulation), when testing against article 105, does use the term product placement. Despite the wording of article 105, no advertisement (which normally implies a financial or other compensation or a promotional effect) has to occur in order that this principle be applied (see VRM vs. VRT 14 December 2007 (2007/065); VRM vs. VMMa 14 December 2007 (2007/064)).

The final draft of a new Flemish Media Decree (4 December 2008) allows product placement in the programmes and under the conditions stipulated in the Audiovisual Media Services Directive (art. 95-97). Nevertheless, some slight differences appear. Unlike the Directive, the draft does not articulate a basic prohibition on product placement, although the *Raad van State* (Council of State) did encourage doing so, in order to bring both texts closer together (advice of 10 September 2008). The provision of goods or services on a free of charge basis, such as production props or prizes, with a view to their inclusion in a programme,

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is prohibited in the children's programmes of the public broadcasting corporation (VRT). In the future, the Flemish Government can expand this prohibition to all children's programmes (art. 95, 2). Finally, only programmes produced or commissioned by the media service provider itself or a company affiliated to it must clearly inform viewers about product placement (art. 96, §1, 4). The new regulation will be applicable to television services only (art. 94) and to programmes (linear and on-demand) produced after 19 December 2009 (art. 96, §2).

The Flemish Government approved this draft on 5 December 2008. The next step will be sending the draft to the Flemish Parliament. The final approval by the Parliament should take place before the regional elections (June 2009), although the recent replacement of the Minister of Media may cause some delay.

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