



**Expert Seminar on
“The European Convention on Transfrontier Television
in an Evolving Broadcasting Environment”**

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“How to Regulate New Advertising Techniques”

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Introduction

In this brief paper, I have tried to identify and define those aspects of television that could be classed as “new advertising techniques”, and have made some comments about any regulatory issues that are raised. At the seminar on the 6th December, I hope to show delegates some examples to illustrate the advertising developments discussed here.

Background

As delegates are aware, the European Convention on Transfrontier Television bears many similarities to the EU “Television Without Frontiers” Directive. The process has already started towards a full review of the Directive during 2002, and the question of regulating new advertising techniques is exercising minds as it is expected to be a key issue in the revised Directive. The subject has been discussed, for example, at the last two meetings of EPRA.

One point to have emerged from the discussions so far is that there is considerable unanimity on the subject of preserving a clear distinction between advertising and programmes. This point was also emphasised by Commissioner Viviane Reding in her speech at the RTL Group Management Conference in June 2001. Her emphasis was to ensure that the consumer could distinguish between advertising and editorial content. I would also like to focus on this key point when discussing some of the new advertising techniques. Inevitably I will be speaking mainly on the basis of UK experience (and may go over some familiar ground) but I hope delegates from other States will recognise common issues and see the seminar as an opportunity to share and update others on experiences and viewpoints. I have also indicated in italics specific issues for possible discussion at the seminar.

I have identified five main headings for discussion in this paper under the heading of “new advertising techniques”:

- Interactive television
- Virtual advertising
- Split-screen advertising
- All advertising channels
- Surreptitious advertising and product placement

1. Interactive television (iTV)

The opportunity to create interactive content (enabling the viewer to change what appears on the screen, or to provide information back to the broadcaster/advertiser via a return path) offers the potential for advertisers to engage with viewers in a much more active manner than that provided by linear advertisements.

In the UK, interactivity to date has taken two forms – *dedicated interactive services* and *enhanced programming/advertising*.

Dedicated interactive services (e.g. BSkyB’s **Sky Active** service) are stand-alone interactive applications such as shopping malls, holiday booking services and games, accessed via the electronic programme guide (EPG). These may offer links to a “walled garden” of retailers controlled by the broadcaster (as is the case with Sky Active and some of the UK’s digital

cable offerings) and may in the future give access either to protected internet sites, or even potentially to the full world wide web.

These services tend to raise few regulatory concerns, largely because the viewer has deliberately chosen to enter the service from the EPG and therefore largely knows the content in advance, and is aware that he/she is in a commercial environment. It is different from the linear television environment where viewers can be “surprised” by the content of advertising. There are also no separation issues, since there is no editorial material in the traditional sense for the advertising to be separated from. The ITC therefore has decided only to regulate such content as is directly in the control of the broadcaster. For example, a shopping mall service would have the content of its portal screen regulated by the ITC, but not the content of all the individual “shops”, whilst a games playing service may have the whole of its content regulated by the ITC.

Three points are worth mentioning here:

- A complication for the regulator is now becoming apparent, in that it is sometimes possible to enter the same interactive service either via the EPG or by choosing to interact with a linear programme. Since the same material can be accessed from both sources, there is a need to determine whether the more relaxed rules for dedicated interactive services apply, or the tougher regime relating to enhanced programming (see below).
- By not regulating the commercial/shopping elements of dedicated interactive services, the ITC avoids having to regulate the actual purchase of the product, although this takes place on the television screen in the home. This is important, because the one-to-one interactive commercial transaction, which takes place over a telephone line, is the remit of the telecommunications or the e-commerce regulators, not the television regulators.
- Existing laws generally differentiate between broadcast material and “**information society**” material when determining which legal framework applies. Interactive services on television operate on the boundary between the two and conflicts can arise. The ITC’s approach to dedicated interactive services ensures that we remain firmly on the broadcasting side of the fence!

Delegates may wish to discuss these points at the seminar.

Enhanced programme services

The second form of interactivity relates to enhancements to programme services. These can take three forms:

- Editorial enhancements to programmes

These arise when non-commercial content (such as background to news, sports events or dramas) is accessed from the programme concerned.

- Advertising enhancements to programmes

These arise where commercial material is accessed either directly or indirectly from a linear programme. They can be combined with editorial enhancements, for example

when viewers are given access to screens offering a combination of editorial material and banner advertisements.

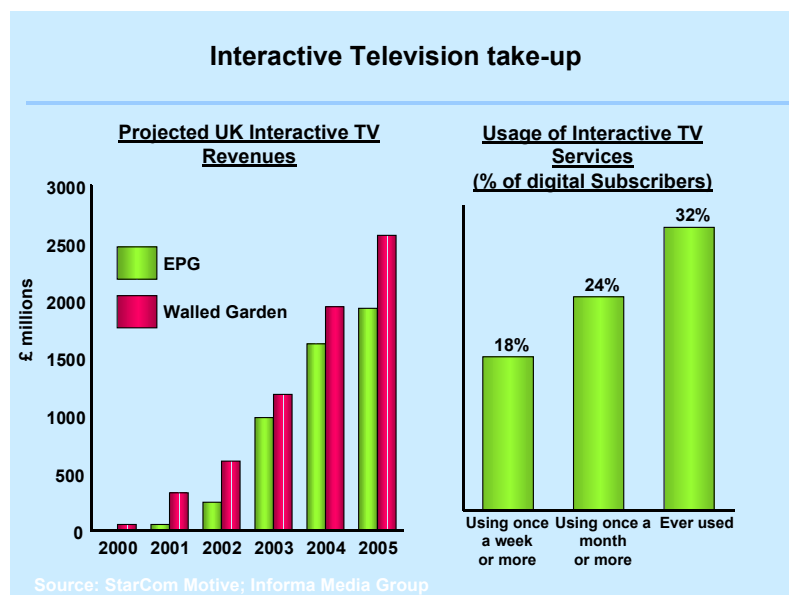
- Advertising enhancements to advertisements

These are enhancements accessed through an advertisement or sponsorship credit to obtain more information about a product or where to buy it.

The main regulatory issue is the fact that viewers have entered the interactive environment from conventional programmes. This may lead them to expect a level of consumer protection closer to that of linear television services, particularly in relation to protection of children and misleading advertising. Crucially, there are also concerns about the possible impact of interactive services on the integrity of linear programmes. For example, a music video programme might be influenced in its choice of what music to play by the stock levels or availability of the CD titles that can be purchased via interactive links from the programme.

In providing initial guidance to broadcasters, the ITC has suggested that viewers should not be directed straight from a programme to a single advertisement. In other words, an intermediate screen after the “first click” should offer at least some non-commercial material. We have also suggested that the interactive icon that appears on the television screen to indicate the availability of interactive options should not be commercially branded. The ITC has also stressed that advertising content must be distinguishable from editorial content, even though that separation may be spatial, not temporal. Finally, we believe there are the same needs as in the linear world for the separation of some categories of programmes from certain types of advertising – particularly where children are concerned. We would not for example permit an interactive commercial site selling alcohol to be accessed from a children’s programme.

It seems certain that iTV will have a major role to play in helping to secure the future of digital television. Revenues for interactive television have been forecast for the UK as high as £2.5 billion by 2005. Even if the reality is less, we are still looking at a substantial market, with spend in 2001 at around £500 million. It is also reported that 18% of those who have iTV use the services once a week or more, and 24% once a month (this figure is of course growing all the time).



Since there are currently around 8.5 million homes capable of viewing iTV, that suggests one and a half million regular users, with another half million occasional users. Therefore, it will surely be important to achieve a balanced and pragmatic regulatory regime which takes into account iTV's unique position at the crossroads between television, telecommunications and the internet.

Delegates may wish to discuss this point. In particular, how explicit in this area should the framework rules in the new Directive or the Convention be, and how much should be left to individual member States to determine?

2. Virtual advertising

Most delegates will be familiar with the concept of virtual advertising. Companies such as EPSIS and PVI have developed technology to manipulate the broadcast signal of events in order to allow the altering or adding of advertising or other data to suit different markets. An example of the application of virtual advertising would be to allow a particular sponsor at an event to target different markets by advertising different brands in each receiving country, or for an event to sell advertising space ten times over to different sponsoring companies in each receiving nation. Virtual advertising techniques could also allow a sponsor or advertiser to take account of local laws, which would otherwise prevent the message being shown in all countries simultaneously. For example, an alcoholic drinks company sponsoring an international sporting event could remove its branding for transmissions in any country where alcohol advertising is prohibited.

Some of the regulatory implications of virtual advertising were discussed at a recent EPRA meeting. Like Germany, the UK has allowed virtual advertising provided it is only used to **replace existing advertising** at the event, and provided the viewer is informed that the system is being used. What can happen when this element of control is not in place is admirably, and rather frighteningly, demonstrated by the PVI demonstration tape, which I hope to show at the seminar.

The ITC's greater concern relates to broadcaster involvement in "selling" virtual advertising. We have sought to prevent this in our Sponsorship Code (and have effectively discouraged much use of virtual advertising in the UK). The ITC believes that for the broadcaster to become involved in selling virtual advertising is one step away from product placement which could affect the editorial independence of the broadcaster when covering such an event. A broadcaster involved in selling virtual advertising inevitably has a motivation for ensuring that the virtual advertising they have sold is prominently seen during their coverage of the event.

It is worth noting in passing that the ITC received a large number of complaints from viewers about the animated advertising hoardings at the side of the pitch used during Channel 5's coverage of the Albania vs England football match in April 2001. Whilst this was not virtual advertising, the effect of the animation resulted in much greater prominence than usual for these advertising hoardings, with corresponding negative reaction from viewers.

3. Split screen advertising

The ITC has accepted for some time that the changing nature of television demands a new approach to the problem of separation. With the increasing emphasis on information-society-

type formats, and the relative decline of the old linear model, we recognise that we could end up blocking the development of a whole new industry by prohibiting advertising and editorial from appearing on the same screen. Whilst still insisting on clear visual separation, so that the layout leaves the viewer in no doubt as to the nature of what is on the screen, we do allow both editorial and commercial material to co-exist happily side by side. This subject too was discussed by EPRA.

It is worth noting that this approach is not confined to the new world of interactive or digital television. Bloomberg, the formerly analogue financial channel, has its screens displaying text financial market details, with the commercial break filling 25% of the screen. Bloomberg has been in existence for a number of years. Digital examples include Sky Sports displaying the text details of latest football scores together with banner advertising, whilst running commercial breaks in the quarter screen. This approach of combining editorial and advertisements is now fairly widespread in the UK.

We have, however, not yet considered the German experience of both advertising and programming audio-visual streams on screen at the same time. Among our concerns in this case would be:

- whether any superimposed text containing important information with advertisement would be clearly visible to the viewer using this format
- how the editorial integrity of programmes might be compromised – or appear to be compromised – by appearing on screen side by side with advertising
- Whether the visual effect would be too confusing or distracting for viewers

Delegates may wish to discuss this point.

4. All-advertising channels

Whilst acknowledging the importance of a distinction between advertising and programmes, the ITC has for some time considered that there may be a case for a more relaxed approach to all-advertising channels beyond the only two categories currently sanctioned by the Directive – namely teleshopping and self promotional channels. For example, a proposal was made recently in the UK to launch a television channel featuring property advertised for sale. This is not teleshopping, because there is no direct offer for sale, nor is it self-promotion, but is potentially an attractive use of the television medium in a commercial context that is difficult to reconcile with the Directive. Another possibility would be a car sales channel. Again, no transaction would be likely to take place on-line. Therefore, it could not be classed as teleshopping. But it seems to us very difficult to argue convincingly that such channels should not be allowed to exist.

Delegates may wish to discuss their own interpretations of this limitation in the current Directive/Convention.

It is also clear that advertisers wish to become more involved in programme making. Current rules allow funding of programmes or sponsorship but subject to strict regulation preventing the reference to advertiser-funders or sponsors in the programmes themselves. The ITC fully support such a stance in relation to conventional television channels, and especially to those with public service obligations. But, at a time when satellite and cable delivery systems

allow for a virtually unlimited number of channels, we wonder whether there should not be a place for “programmes” funded by advertisers that may include their products.

As an example, BMW recently produced a series of short narrative films featuring their cars. These were made by award winning directors and also featured a number of distinguished human actors. At present, they would struggle to find a place on UK television – there would be undue prominence concerns on a conventional channel, they were not teleshopping and would fall foul of the current definition of material allowed on a self-promotional channel. Provided the viewer was left in no doubt about the funding arrangements behind such films, should they be allowed on television? One approach may be to redefine self-promotional channels, which are currently defined in such a way as to exclude conventional programming (sport, drama etc) from such channels.

Delegates may wish to discuss

5. Surreptitious advertising and product placement

I do not propose to dwell on this subject, as surreptitious advertising is not a “new technique”. However, there is little doubt that as the boundaries between commercial and editorial material become less clear, thanks to iTV, virtual advertising and indeed internet on TV, the possibilities for product placement increase. For example, if a television programme allowed the viewer to interact to buy some of the items shown in the programme, perhaps a car used by the leading actor, or the trainers worn by the hero, the suspicion must be there that money had changed hands to have the products featured. Virtual advertising provides almost endless opportunities to have brand names appearing in programmes, in a way that will often be transparent to the viewer. As has always been the case, however, it is almost impossible to prove that there was payment to feature a product.

In the UK, we will continue to employ the principle of “undue prominence” to control the excessive appearance of commercial products in programming. In effect this means that no product may appear more prominently in a programme than can be editorially justified. This is a very effective regulatory tool, giving the regulator a considerable degree of discretion, and removes the need to prove any illicit financial transaction. We believe it will prove to be sufficiently effective in the iTV and virtual advertising world.

Conclusions

In the previous pages, we have looked at some of the challenges facing television content regulators from new advertising techniques in the age of convergence. It is clear that the new TWF Directive is going to have to take a quite different approach, both by recognising the new services that already exist, and by being flexible enough to cater for other new services during the life of the legislation.

The ITC believes it is possible to combine pragmatism with a derestrictive approach to the development of new markets, whilst still retaining a strong element of viewer protection where appropriate.