
Regulation of Advertising in the Broadcasting Sector in Countries of the Former USSR

Although TV and radio advertising has many fans, numerous viewers and listeners regard it as nothing more than a necessary evil: necessary because it helps finance free-to-air channels and evil mainly because it interrupts programmes or its content is met with disapproval. Some forms of broadcast advertising, particularly purely commercial advertising, are typical of capitalist societies. Others, such as political advertising, find a home in various different social systems.

The financial potential and variety of possible forms and content of TV and radio advertising are the reason for and object of advertising legislation. In Western Europe, the relevant legal provisions are not only numerous, but also highly detailed. Their consistency was discussed in a previous *IRIS plus* (2003-8). But what about countries where broadcast advertising is a relatively new concept? What is the situation of advertising legislation in Eastern Europe, where commercial advertising did not exist until after the fall of the Berlin wall and all the economic changes that followed?

This *IRIS plus* describes the development of radio and TV advertising regulations in the former USSR states and the current situation of advertising law in these countries. It paints an extremely interesting picture covering a whole range of topics such as legislative drafting techniques, social advertising, political advertising, the language of advertising, content restrictions, advertising on state-controlled and public service channels, liability, monitoring and self-regulation.

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Regulation of Advertising in the Broadcasting Sector in Countries of the Former USSR

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Introduction

The economic model of the Union of Soviet Socialist Republics in the 1930s-1980s did not envisage the use of such a tool as commercial advertising. Not until 1987 was the institution of advertising restored to life when *Izvestia*, at that time one of the largest newspapers of the country, jointly with the German magazine *Burda* published the first advertisement for many years. After the collapse of the Soviet Union the situation in this sphere changed drastically. The advertising market became one of the most dynamic in the countries of the Commonwealth of Independent States (CIS) and the Baltic states. First of all it became significant for the audiovisual media. For example, in the Russian Federation the annual income from advertising via electronic mass media in post-crisis 1999 amounted to 355 million and in 2003 increased to 1.3 billion USD.¹ Commercial advertising is virtually the main source of income for both governmental (in some countries – public) and private broadcasters.

Unlike the basic legal regulation of mass media activities which existed in post-Soviet countries from 1990, statutory rules for advertising activities were established much later. The process of establishing a legal framework for advertising activities started in Russia in 1995, later it spread into other countries of the region. Today it is still in progress, sometimes governed by the European Convention on Transfrontier Television and – as is the case for the Baltics – the “Television without Frontiers” Directive, sometimes influenced by legal trends in Russia and other neighbouring countries. The goals of this comparative law review are to highlight and compare the special features, mistakes, advantages and new tendencies in the regulation of advertising on television that exist in the legislation of different countries.

Legislation²

Constitutions of the countries of the former USSR do not include provisions dealing with advertising. Usually statutes on the mass media include some basic rules which constitute the framework for advertising regulation. Most of the statutes on the mass media (which exist in 14 out of 15 post-Soviet states) establish quotas (caps) on the amount of advertising in the press and broadcasting in order to differentiate between regular mass media which enjoy certain economic benefits from the government and the so-called “advertising media”.³

In some countries statutes on mass media provide for even more detailed rules. For instance, the Kazakh Statute “On the Mass Media” of 23 July 1999 allowed for the dissemination of advertising of alcohol in electronic media from 11 p.m. until 6 a.m. (Article 14). This provision was amended after the adoption of the Statute “On Advertising” of 19 December 2003, Article 13 of the latter banned any promotion of alcohol. This example illustrates a common tendency of the amendment of advertising norms in the general mass media statutes by special statutes on advertising.

Special laws regulating advertising have been adopted in all of the countries of the region with only one exception – Turkmenistan.⁴ Few countries adopted laws devoted to television and radio broadcasting and they typically include provisions establishing detailed rules for dissemination of advertising by means of electronic mass media. Provisions concerning advertising on television and radio can be found in the Statutes on Television and Radio Broadcasting of Azerbaijan, Estonia, Latvia, Tajikistan and Ukraine, as well as the Statute on Public

Information of Lithuania. Another approach can be found in Armenia where the Statute on Television and Broadcasting in its Article 21 (“Advertising on television”) refers to the advertising legislation as regulating the placement of commercials.

Provisions establishing rules for advertising of some categories of goods can be found in special acts. For instance, the Statute on Advertising of Kazakhstan stipulates that advertising of tobacco is subject to provisions of special legislation. There are also a number of acts developing rules prescribed by statutes on advertising.

Finally, there are a number of provisions establishing the liability of the infringers of advertising law. Special regulations devoted to advertisers’ liability can be found mostly in administrative liability legislation. However, advertisers are subject to criminal sanctions as well. That is why provisions of administrative and criminal codes also constitute a system of advertising legislation.

Nevertheless the statutes on advertising now as before occupy the pivotal place in advertising legislation. The oldest Statute on Advertising which is still in force is in the Russian Federation.⁵ Judging by the structure and wording of the advertising statutes in a number of countries of the Commonwealth of Independent States, especially Belarus, Georgia, Kazakhstan, Tajikistan, Ukraine and Uzbekistan, this act became a model for their lawmakers.

In 1996 statutes on advertising were enacted in the Republic of Armenia and in Ukraine, in 1997 such statutes came into force in Belarus and Moldova, in 1998 – in Georgia, Estonia and Uzbekistan, in 1999 – in the Republic of Kyrgyzstan, in 2000 – in Latvia and Lithuania. At the moment the latest statutes on advertising have been enacted by the Parliaments of Kazakhstan and Tajikistan. The Statute of the latter state entered into legal force in August of 2003; of the former one – on 1 January 2004.

Advertising Law in Russia as a Federation

There is one special feature important for an analysis of Russian advertising legislation. Russia is a federation, and both the federal parliament (State Duma) and the regional legislative bodies are authorised to pass laws. The Constitution of the Russian Federation (1993) in its provisions dealing with the competence of federal and regional authorities does not indicate directly the prerogative of any level of power to enact advertising legislation. This situation inevitably caused conflicts⁶ and was examined by the Constitutional Court of Russia in its decision of 4 March 1997.

The Constitutional Court heard a case based on two appeals on the constitutionality of the Federal Statute on Advertising. One appeal stated that regulation of advertising is part of the regulation of culture and should therefore be under the common jurisdiction of the Federation and its regions. Another said that since advertising (like the mass media for that matter) is not mentioned in the Constitution, it should be strictly under the jurisdiction of the regional authorities. The Court’s decision stated that whenever advertising law regulates issues of business, competition, common free market zone and the right to access commercial information, it is under federal legislation alone. In regard to other issues, regions of the Russian Federation are free to introduce acts of their own. As for joint jurisdiction there arise issues of: protection of the citizens’ right to obtain information, non-federal taxation, registration and licensing, and administrative control.⁷

European Convention on Transfrontier Television and Advertising Regulation in the FSU

Another important issue concerning advertising regulation is connected with the signing and ratification of the European Convention on Transfrontier Television (hereinafter – the Convention), following the harmonization of national legislation with the standards of the Convention.

At present only four states of the former Soviet Union (FSU) have ratified the Convention: Latvia, Lithuania, Moldova, and Estonia.⁸ Their advertising laws reflect the provisions of the Convention concerning advertising. However, even the legislation of those states that have not ratified this document often complies with its rules and sometimes even goes further.

General Provisions of Advertising Law

The general rules of such advertising are common to all the countries of the region: improper, illegal, false, unfair, unsubstantiated unethical and misleading advertising is banned. Commercials shall be separate from general programming. Comparative advertising is permissible under certain conditions. All the above-mentioned characteristics are treated and interpreted in a more or less similar manner by the statutory acts.

Another general rule establishes requirements to incorporate warning signs into advertising of some categories of goods and services. In all the FSU countries such warnings accompany advertising of products and activities that are subject to licensing and certification. This provision in general is considered by professional self-regulation organizations as excessive. Such organisations suggest restricting this rule and keeping it only for the advertising of some special categories of goods and services (medicines, tobacco, alcoholic beverages, financial services etc).⁹ In contrast, governmental bodies in Belarus, for example, believe that warnings should be more detailed and easier to distinguish. For instance, information concerning licensed services should not only contain notification that the product is licensed but also indicate the number of the license, name of the licensing body, and contain the date of issue of the license.

The only general limitation that has substantially different interpretations in various countries is so called “hidden” (in the Convention on Transfrontier Television’s words “surreptitious”) advertising. Some legislative acts treat this kind of information as being aimed at the indistinguishable attraction of a viewer’s interest to services, goods and persons (illegal product placement, for instance). Such an interpretation of this term is reflected in the statutes on advertising of Lithuania, Estonia, and Ukraine. This point of view is closer to the provisions of Article 13 of the European Convention on Transfrontier Television.

Another approach to this matter is a technical one. According to this, the use of special devices and equipment in order to influence a viewer’s subconscious is not allowed in advertising. For example, both the Russian and the Belarusian Statutes on Advertising prohibit the use of advertising which “expose a customer to influence that he (she) is unable to realise, by means of using special video insertions (double sound recording) or any other means” (Articles 10 and 8 respectively). Similar provisions can be found in the statutes of Azerbaijan, Kyrgyzstan, Moldova, and Tajikistan.

As a rule advertising legislation regulates relations important for the protection of public interests: therefore it should be part of public rather than private law. The freedom of advertising in terms of economics is comparatively high. Prices, terms, placement conditions and other contractual clauses are to be agreed upon by the interested parties in accordance with the general rules of the civil law of a particular country. However, some exceptions can be found.

For example, in Ukraine the highest broadcasting authority (National Television and Radio Broadcasting Council) is empowered to fix both minimum and maximum prices for the placement of TV commercials. There are also some protectionist rules in force in that country. According to the amended Article 8 of the Ukrainian Statute on television and radio broadcasting, dissemination of any “advertising products” shall be prohibited if television companies holding a Ukrainian broadcasting licence do not “benefit” as a result of such dissemination, thus restricting the freedom of retransmission of foreign (Russian) broadcasts.

There is a very extraordinary rule existing in Belarus: disseminators of advertising are obliged to register their tariffs for advertising placement with government bodies. This restriction, however, is not peculiar to advertising activities only. It is mandatory for all organisations providing any paid services.

Social Advertising

“Social” advertising law usually means information that refers to society and deals with issues important for public benefit. This approach is widespread in all countries of the region.

There are also two provisions which are common in regulation in this category: first, broadcasters are obliged to provide at least 5 per cent of advertising time free of charge for social advertising; second, social advertising shall be excluded from the cap of permissible advertising time and space.

The only country that increased the amount of free of charge social advertising was Tajikistan. According to Article 19 of the Statute on Advertising broadcasters are obliged to reserve 10 per cent of advertising time for social advertising. Another exception can be found in Moldova – no minimum amount of free of charge social advertising is prescribed by law.

There are some special requirements for social advertisement in countries of the CIS. For instance, in Tajikistan social advertising shall be considered as such only if it is based on information provided by public authorities.

Attitudes towards social advertising are very uncertain. Official bodies, which are as a rule providers of this kind of information, tend in general not to place social advertising. As an illustration of the unreceptiveness of official authorities to the necessity for social advertising, the Statute on Advertising of Kazakhstan does not deal with social advertising at all. As another example, Lithuania’s experience can be considered. The Statute on Advertising there stipulates that social advertising shall be subject to special regulation. However, no rules concerning social advertising were found in other acts concerning the activities of broadcasters or other mass media.

Political Advertising

In all countries of the region the regulation of political advertising is not part of advertising legislation per se. Statutes on advertising clearly specify that they do not deal with political advertising. Moreover, this term can not be found in any other acts of CIS and Baltic region countries.

This fact can be explained by the specifics of the development of legislation in these countries. In the early 1990s lawmakers treated political and commercial advertising as relatively similar kinds of activities that should be regulated by general advertising legalisation. There were plans to adopt special laws on political advertising. However, in practice the law developed in another way: political advertising became part of *electoral* legislation.

Electoral laws usually do not use the term “advertising”, but call it “agitation” or “canvassing”. Agitation is considered as part of the

equal rights of candidates and is regulated in a very different way from commercial advertising and is based on a different set of principles.

Sponsorship

The value of such a concept as sponsorship has not been appreciated either by the governments or the mass media. Usually the statutes make no distinction between sponsorship and advertising. The countries of the Baltic region excluded sponsorship from advertising statutes. Rules concerning sponsorship can be found in provisions of broadcasting statutes. As a rule said acts do not amplify the requirements of the "Television without Frontiers" Directive concerning sponsorship.

The degree of sponsorship regulation in the region is insignificant. The main specific feature in the regulation of sponsorship common to the legislation of the countries of the region is that sponsors are strictly prohibited from interfering in the content of sponsored programmes. In most of the countries sponsorship of political and information programmes is prohibited.

As a result of careless regulation of sponsorship this kind of promotion is considered by both advertisers and advertising disseminators as an additional form of placement of commercial information. Usually broadcasters tend to use sponsorship in order to evade restrictions prescribed by law – either for the caps on advertising or for the promotion of restricted categories of goods and services. As an example of this approach one may consider a situation that took place in Russia in 1996. After the provision of the Statute on Advertising banning the advertising of alcoholic beverages in electronic mass media entered into legal force, a number of television programmes began to be sponsored by an organisation that produced and distributed *Kremlevskaya* vodka. Before broadcasts of the programmes the following announcement was made: "Kremlevskaya" presents...". Russian courts found that this form of sponsorship was illegal since its main aim was to attract the audience's interest and to promote alcoholic beverages.¹⁰

Misunderstanding on the part of Russian lawmakers of the role of sponsorship in supporting events important for society caused problems with broadcasts of the Russian football premier league matches. According to a recent amendment to the Federal Statute "On Advertising", advertising of beer shall be allowed in electronic media from 10 p.m. to 7 a.m. only. This rule has been applied *inter alia* to broadcasts of football matches mostly sponsored by brewery companies. As a result beer brewing companies announced that they were not going to support financially sports events. Before the law entered into legal force 70 per cent of football competitions were sponsored by such companies and the total *quantum* of support amounted to 50 million USD annually.¹¹ The Russian government recently proposed as a solution to the problem an amendment making an exception for advertising of beer during broadcasts of sports events.

Language of Advertising

The problem of languages of advertising is closely connected with the process of the formation and development of national identity in former USSR countries. In legislation this process is reflected in statutes on an official language and its correlation with other languages, especially languages of national minorities. There are two basic approaches to the problem of language of advertising. According to the first view, advertising as a general rule must be in the state (or official) language with a set of exceptions. The second approach is based on the declared principle of freedom of choice of languages for advertising.

Among countries of the region more followers can be found for the first point of view. According to Article 5 of the Statute of the Republic of Armenia on television and radio, broadcasting shall be in the Armenian language except for broadcasts for national minorities. The Statute on Advertising allows advertising in other languages if it is

placed in a mass medium using foreign languages. Similar provisions can be found in the legislation of Azerbaijan and Ukraine.

According to the Belarusian Constitution both the Belarusian and Russian languages are official in the Republic. As applied to advertising it means that the dissemination of commercials is allowed only in these languages (Article 4 of the Statute on Advertising). There are only three exceptions to that rule: for mass media using other languages, for advertisements which are addressed to a number of persons speaking other languages, and for advertising of trade marks. Similar provisions can be found in the Russian legislation.

In Kyrgyzstan broadcasting is permitted in any language. However, according to the Statute on Advertising there are only two official languages of advertising – Kyrgyz and Russian. The languages of national minorities of Kyrgyzstan, though, can also be used in advertising.

Current Georgian legislation states that the language of the media is the state language, while at the same time it guarantees the right of national minorities to receive and impart information in their own languages. Similar provisions can be found in the Tajik Statute on advertising. According to its Article 5 advertising shall be in the state language with the exception of mass media broadcasts in the languages of national minorities and in foreign broadcasters.

Moldova establishes a cap on broadcasters' languages: at least 65 per cent of broadcasts shall be in the Moldavian (Romanian) language. The Latvian Statute on Radio and Television originally established priority of broadcasting in the official (Latvian) language too. According to its Statute on Television and Radio of 10 October 1996 only up to 20 per cent of public broadcasters' annual broadcasting time and up to 25 per cent of the total amount of broadcasting time of private television programmes could be allocated for other languages (Article 19). However, these provisions were annulled by a Decision of the Constitutional Court of Latvia of 5 June 2003. This apparently means that any language is permitted for advertising in Latvia.

There are several countries that have declared freedom of advertising languages. In Kazakhstan advertising can be disseminated in the state as well as in other languages. There are no restrictions of advertising language in Estonian, Lithuanian, and Uzbek legislation. As an example of such an approach the Statute on Advertising of Uzbekistan stipulates that advertising shall be "in the state language of the Republic of Uzbekistan or according to the advertiser's wishes – in other languages" (Article 5).

Restrictions and Limitations concerning Content of Television Programmes

There are several categories of programmes that it is not permitted to interrupt by commercial breaks. The list of these categories is wider than the one provided for in the Convention on Transfrontier Television.

The first category of such programmes includes broadcasts of official events. The main difference lies in the list of events that shall not be interrupted. In some countries the extent of such events is very vague. For instance, according to Article 17 of the Statute of Uzbekistan on Advertising it is not allowed to interrupt "broadcasts of official events and ceremonies".

A rule of the Armenian law is narrower, but still is not clear enough. Article 9 of the Statute on Advertising prohibits interrupting official announcements.

Legislation of other states contains either approximate or fixed lists of events that can not be interrupted. For example, there is a more or less definite list of events broadcasts of which shall not be interrupted in the Azerbaijani and Ukraine statutes on television and radio broadcasting and in the Tajikistan's statute on advertising.

A distinctive approach is peculiar to the Latvian legislation: the Statute on television and radio broadcasting allows for interrupting the translation of official celebrations if the organisers of such events give their permission to broadcasters.

A specific provision can be found in the legislation of Kazakhstan. According to Article 8 of the Statute on Advertising the dissemination of advertising in any programmes of any broadcasters in a time of national mourning is strictly prohibited.

In countries that have public television companies usually the same rule is to be applied to these broadcasters. For instance, according to the Statute on Lithuanian National Television and Radio of 8 October 1996 advertising on public television shall be prohibited during a period of national mourning (Article 6). The legislation of Moldova includes the same provision.

Another category of programmes which is common to all countries is religious ones. A prohibition on interrupting broadcasts of this category of programmes can be found in laws of all countries of the region.¹² The same similarity can be traced in provisions dealing with programmes for children. The establishment of an absolute ban on the interruption of broadcasts of these two categories of programmes resulted in a sharp decrease in the amount of these programmes (particularly children's programmes) in the television programming of many countries. In order to counteract this negative tendency, the Russian new draft law on advertising contains provisions which would allow for the interruption of children's programmes by advertising if the duration of such programmes exceeds 25 minutes.¹³ Similar positions can be found in Article 11 of the Tajik Statute on Advertising and in the statutes on television and radio broadcasting of the countries of the Baltic region – children's programmes may be interrupted by advertising if the duration of such programmes exceeds 30 minutes.

There can also be found two specific exceptions to the common rule in the legislation of Kazakhstan and Uzbekistan. In the former it is allowed to interrupt a broadcast of children's programmes with advertising directed at children, in the latter – with social advertising.

Bans and Restrictions on Advertising of Different Categories of Goods and Services

There are some limitations imposed on the advertising of tobacco, spirits, weapons, medicines, medical equipment and financial (insurance) services.

Advertising of tobacco in television programmes is strictly prohibited in all countries of the region.

In regard to the advertising of alcohol there is no unified rule. The statutes that were enacted in the middle of the 1990s usually included very detailed rules concerning advertising of both categories of products and sometimes established a date from which this kind of advertising was strictly prohibited. For instance, Article 16 of the Russian Statute on Advertising of 18 July 1995 establishes a number of limitations for broadcasting advertising of both alcohol and tobacco, and Article 33 prohibits advertising of such products from 1 January 1996. Other countries introduced total bans on alcohol and tobacco advertising in electronic mass media on a specified date after the date of entry into legal force of their statutes on advertising. For instance, in Georgia a special statute established a ban on the advertising of tobacco and spirits in electronic media from 1 April 2003.

Those acts that were enacted at the end of the 1990s usually include a total ban on advertising of these products on television. As a rule the prohibition on advertising in electronic media of alcohol and tobacco do not come into legal force a while after the law was enacted. The reason for that is to give broadcasters an opportunity to complete existing contracts and to find alternative sources of revenue.

Advertising of alcohol on television is under a total ban in the following countries of the region: Belarus, Georgia, Kazakhstan, Tajikistan, Turkmenistan and Ukraine.

The Russian Federation is not included in this list. As was mentioned above, according to the Statute on Advertising the advertising of alcoholic beverages is not allowed in Russia. At the same time it is important to take into account that this ban does not apply to beer. According to Article 2 of the Statute "On State Regulation of Production and Circulation of Ethyl Alcohol, Spirit-based and Alcohol Products" of 22 November 1995 beer is not considered as an alcoholic drink and is subject to special regulation. For that reason, until the end of 2003, advertisements for beer were broadcast according to the general rules of advertising legislation. The dissemination of advertising of beer in the electronic mass media was restricted only from 1 January 2005 by amending the statute on advertising.¹⁴

In a number of countries the advertising of alcohol in the electronic media is allowed. Some states permit the advertising of both strong drinks and alcoholic beverages with a low concentration of spirit (for example, Armenia); other countries allow the promotion of light alcoholic beverages only.

According to Article 15 of the Armenian Statute on Advertising, tobacco advertising is allowed under a number of conditions dealing with the content and placement of advertising. Such advertising shall not seek to convince the viewer that tobacco has a health-giving effect, induce a person to consume it excessively, nor promote a high level of concentration of nicotine in tobacco as an advantage. It is not permitted to address minors in advertisements for tobacco nor to show smoking in them. Such advertisements may not be placed in electronic mass media from 7 a.m. until 9 p.m. Finally, advertising of tobacco shall be accompanied by information notifying about harm to health.

Similar provisions are included in the Moldavian Statute on Advertising. The restrictions contained in this law are even stricter. Placement of tobacco advertising shall not be allowed from 7 a.m. until 10 p.m. It is also prescribed by the law that warning about harm to health caused by smoking shall last at least 3 seconds of such an advertisement on a television channel.

In Latvia television advertising of beer and wines is allowed. Article 24 of the Statute on Television and Radio of 24 August 1995 includes requirements regarding the content of such advertising and does not provide for any restrictions on the time of placement of such commercial breaks.

A common problem of the countries where advertising of alcohol is banned or is very severely restricted is the existence of the so-called "umbrella brands". Producers or advertisers of alcoholic beverages (usually spirits) register one common trade mark for both alcoholic drinks and some other goods (most often mineral water or foodstuffs). An advertising campaign on television refers to a "permitted" good, while the design of the product and the campaign slogan is clearly interrelated with an alcoholic beverage. In fact, it is a form of surreptitious advertising. However, it is very hard for government bodies to prove the fact of such violations, because it requires complicated areas of expertise, holding public opinion polls and other types of investigation. While the supervisory bodies of some countries are ready to undertake these procedures, other countries try to prohibit this practise by law. For instance, according to the Belarusian draft law amending the Statute on Advertising, if a trade mark is registered for a group of products, advertising of any these products is subject to the most restrictive rules of advertising established for a good or service from this group. In other words, if, for example, brandy and confectionary are registered under single trade mark, in order to promote confectionary one has to comply with the rules established for advertising the spirit.

Very special regulation of financial services exists in most of the countries of the region. This fact has historical roots which can be clearly traced to 1993-1994 when both the Russian and other CIS financial markets and people's finances were seriously damaged by the

fraudulent activities of so called "financial pyramids". At that time several commercial enterprises organised wide advertising campaigns and consumers were "guaranteed" high incomes. As a result a lot of people were giving their money to companies which distributed it among old-established consumers. As long as the mass of investments was growing the situation was normal. When the number of people came to the critical point when money brought in by newcomers was not enough to meet the promises given to old-established consumers the whole system collapsed. In order to prevent the possibility of occurrences of this kind very strict restrictions were imposed on the advertising of financial, insurance, investment services and securities, first by decrees and then by statutes. According to Article 17 of the Russian Statute on Advertising it is not allowed to adduce in advertisements information that is not strictly interrelated with the service, or to guarantee or even assume possible profits, or conceal any conditions concerning the agreement. Similar regulation can be found in most countries of the region. These restrictions are wide-ranging for dissemination of such advertising by means of broadcasting in particular. It is impossible to include all the conditions of an agreement into a TV commercial lasting just for a few seconds. Today experts believe that the regulation of advertising of financial services is excessive and expect a relaxation of the above restrictions. On the one hand, in the modern situation, financial organisations working for a long time in a market have instruments for predicting possible profits, while the authorities have effective control mechanisms on entrepreneurs' actions in the sphere. That is why a new bill in Russia suggests softening the rules for advertising of such services. Probably, lobbyists for new rules may cite as examples statutes of the countries which contain sufficient, more liberal regulation and do not have any serious problems with deceitful actions by financial companies.

The rules for advertising medicines, medical services and methods of treatment do not vary greatly from country to country. In all the countries of the region advertising of medicines available only by prescription is prohibited.

As a rule the advertising of weapons is prohibited except for civilian weapons. Usually it is allowed to broadcast advertising of permitted weapons in the night hours, as a rule from 10 p.m. till 7 a.m. However, a curious loophole can be found in a number of acts. For instance, Article 16 of the Russian Statute on Advertising and Article 17 of the Tajik Statute on Advertising include a provision allowing advertising of weapons in electronic mass media after 10 p.m. The statutes do not specify until what time it is permitted to broadcast such commercials, and consequently advertisers have in theory a right to disseminate this kind of advertising into the new day. Probably, such defects in the laws are caused by an absence of practice in the implementation of the said rules. In fact, there is no advertising of weapons on Russian television at all.

There are restrictions on the advertising of other specific goods and services in some countries. In Estonia it is prohibited to advertise gambling and prostitution. According to Article 14 of the Ukrainian Statute on Protection of Public Morals of 20 November 2003 advertising of erotic and sexual products including text or images of a sexual character is allowed only in erotic mass media.

Advertising Caps

The variety of methods that regulate caps on advertising is enormously wide. All these methods may be compared with the standards established by the European Convention on Transfrontier Television. Provisions of the legislation of the countries that have ratified the Convention follow its rules explicitly.

As to other states the extent of regulation differs. There are two factors important for the quantitative aspect of advertising: units of caps (in per centages or in minutes) and periods of time the caps refer to. Some laws establish caps for a twenty-four hour period of broadcasting. In Tajikistan the amount of advertising in the course of 24 hours of broadcasting shall not exceed 30 per cent, in Azerbaijan and

Kyrgyzstan - 25 per cent, in Russia, Belarus, and Kazakhstan - 20 per cent. In Ukraine the amount of advertising shall not exceed 15 per cent per day.

Some countries established quotas on the amount of advertising for every hour of broadcasting. For instance, in Armenia it is not allowed to place more than 10 minutes of advertising in the course of every hour of broadcasting. A similar provision can be found in Uzbekistan. The only difference lies in units of measurement - there is 10 per cent rule in Uzbekistan.

Finally, the statutes of a number of countries establish more complex rules regulating the amount of advertising. Such regulation includes a maximum limit both per hour and per day. According to the Georgian Statute on Advertising the amount of advertising in the course of 24 hours shall not exceed 15 per cent, in the course of every hour - 20 per cent.

Advertising Rules in Programmes of State and Public Broadcasters

Eight countries of the region introduced in legislation provisions concerning the activities of public broadcasters. However, specific provisions have not been embodied in a number of countries as yet. There are no public broadcasts in Ukraine. In Azerbaijan the President's Decree establishing the public broadcasting company was signed in November 2004. Today public television companies operate in Armenia, Georgia, Moldova and in the Baltic countries.

The legislation of those countries which have public television is not unified in the issues concerning the admissibility of commercial advertising. Though a license is still to be awarded for a public broadcaster in Ukraine, according to Article 30 of the Ukrainian Statute on Television and Radio advertising in programmes of public broadcasters shall be prohibited. The Georgian statute on public broadcasting, which entered into force on 1 January 2005, established the same rule (and here the rule is enforced). Countries that do have functioning public broadcasters tend either to reduce as much as possible the amount of commercial advertising or to limit its placement in this type of broadcasting. For instance, according to Article 28 of the Statute of the Republic of Armenia on Television and Radio it is not allowed to interrupt broadcasts of any programmes of a public broadcasting company with commercial advertising, while the cap for commercial advertising between programmes shall not exceed five per cent of broadcasting time. The Statute on Television and Radio Broadcasting of Estonia provides for a similar rule (Article 35). In Lithuania it is not allowed to place advertising during programmes of exclusively educational and cultural content broadcast on public broadcasting channels. There are also special restrictions on the content of advertising in public broadcasting programmes imposed by the Statute on Lithuanian National Radio and Television.

However, problems with sources of revenues for public broadcasting often make it necessary for parliaments to tolerate advertising. As an example the situation of the Moldavian National Public Television Company may be considered. A Statute regulating its activities stipulates that the Company shall be allowed to place advertising in accordance with the general rules (Article 11). This reference norm was apparently considered as a temporary measure until the law on the license fee enters into legal force. An attempt to guarantee the financial independence of the Company was made in 2001 when the draft law instituting such a fee was initiated in the parliament. However, the opposition rejected the bill without debate. For that reason commercial advertising is still allowed in Moldavian public television broadcasts.¹⁵

Countries that have only state broadcasting channels provide for two ways of regulation of advertising in these channels. The first approach implies regulation by general provisions of law of the amount and sometimes the content of advertising in state television programmes. The second approach is that state broadcasters are sub-

ject to the general rules of advertising law, but government bodies are authorised to establish special rules concerning the dissemination of advertising for state broadcasting channels.

The first point of view is close to Belarussian and Tajik legislation. In the former country the amount of advertising in programmes of state broadcasters may not exceed 10 per cent in the course of 24 hours. In the latter state the same maximum amount of advertising is permissible in the course of every hour of broadcasting.

The second approach is probably more popular in other countries of the former USSR. The state broadcasters of Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Uzbekistan and Ukraine have the right to place commercial advertising in accordance with the general rules of advertising.

As an example of a more complex broadcasting policy, the Russian experience can be considered. There are no special restrictions on the amount and rules of advertising placement in state broadcasting companies in the Russian legislation. The State owns two national broadcasting channels: "Russia" and "Culture". Both of them are managed by one holding company – the Federal State Unitary Enterprise "The Russian Television and Radio Broadcasting Company" (RTR). There are no limitations concerning advertising in its Charter which was approved by an Ordinance of the Russian Government of 26 February 2004. Moreover, one of the goals of the RTR is to make profit (Article 10 of the Charter). For the realization of this purpose the company has a right to produce and place advertising. The largest broadcaster in the RTR which is "Russia" has the widest broadcast area and is one of the most popular channels in Russia, oriented towards information and entertainment. It disseminates advertising like any other commercial broadcaster. Another state channel "Culture" which broadcasts educational programmes, programmes on art and culture, etc. does not place advertising at all.

Liability, Supervision and Self-Regulation

Liability Rules

The "golden rule" of liability of disseminators of information is that a broadcaster that disseminates information can be liable for breach of the rules of dissemination but not for the content of advertisements. Broadcasters are accountable for the time, place and amount of advertising placed in their programmes. This is a type of regulation which is very widespread in the legislation of countries of the region. However, some exceptions can be noted. The Statute on television and radio broadcasting of Latvia provides for joint liability of both producers of advertisements and broadcasters disseminating these advertisements where they are illegal or false. An unusual rule can be found in Ukraine: Article 30 of the Ukrainian Statute on television and radio broadcasting provides for the liability of broadcasters for dissemination of advertising of "low technical or artistic level".

A disseminator of advertising is also liable for actions based on an intention to break the law. The most widespread example of such infringement is surreptitious advertising. Supervisory bodies usually have serious problems with proving of the facts of such infringements.

Supervision: Basic Provisions

Control mechanisms vary from country to country. The substantial difference is in the status of the bodies in charge of control over advertising, their competence and the status of professional (trade) self-regulation bodies. As a rule all post-Soviet states use government bodies for the purposes of monitoring infringements of the advertising laws and imposing sanctions (usually fines) for infringements or at least for initiating the imposition of such impositions by a court. In most countries of the region the control functions are exercised by antimonopoly authorities. In some countries, in addition to government bodies some control functions are given to consumers' rights protection organisations and television and radio broadcasting super-

visory bodies. Self-regulation bodies usually have consultative (advisory) powers prescribed by law. Very seldom do these bodies have authority delegated by governmental bodies. More often self-regulation bodies act as non-governmental organisations having power over their members only by virtue of the agreement of their members.

Administrative Control

There are two major issues concerning control over compliance with advertising law in the legislation of the former USSR countries: how supervisory bodies are formed and what is the extent of their competence?

Two approaches can be found to the former matter. The first principle of formation is based on the prerogative of the executive to supervise implementation of laws. Most of the countries follow this principle and establish special government agencies in order to control legality of advertising. Such agencies include bureaucrats, usually experts in antimonopoly law. Another special feature which characterises this concept is the absence of specialisation of control bodies. Usually there is a single body supervising the legality of advertising in broadcasting, in the press, and so on. Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan are examples of this view.

The second principle is based on the idea of the priority of consumer rights and the need for specialisation of supervisory bodies. The idea results in the formation of state bodies including representatives both of official bodies and non-governmental organisations. Agencies of this type function in the Baltic countries, plus Moldova and Ukraine. For instance, in Moldova the Coordinating Council on Television and Radio was established by the Statute on Television and Radio. Its members are appointed jointly by the President, the Parliament and the Government. The Council is authorised to regulate and supervise the activities of broadcasters, including advertising.

The bodies of administrative control in the whole region have at least some of the following types of authority: to prevent and suppress facts of improper advertising, to direct to the disseminators of such information requests to cease infringements of advertising law, to order dissemination of "counter-advertising" (in Baltic countries – refutation of improper advertising), to provide materials concerning infringements of legislation to the prosecutor's office, to bring a suit against infringers of the law and to impose fines.

In some countries such bodies may interpret advertising law. For example, according to Article 25 of the Armenian Statute on Advertising the supervisory body is authorised "to give an official interpretation of the legislation of the Republic of Armenia on advertising".

The watershed characteristic defining the extent of the competence of government agencies lies in the capacity either to impose fines or to bring a suit. In Armenia, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Uzbekistan and Ukraine¹⁶ supervisory bodies are authorised to impose fines on infringers of advertising law. In Azerbaijan, Belarus, Estonia and Tajikistan fines may be imposed only by the courts. To impose fines on advertisers seems to be a very important power for a supervisory body, as the amount of such sanctions may be very high, sometimes potentially critical for mass media entities.

Usually the concentration of controlling powers in the hands of government bodies causes the increase and predominance of formal offences, *i.e.* violations of law which can be easily found and proved in practise. For instance, research into the cases at the supervisory body of Kyrgyzstan in 2000-2001 revealed that an overwhelming majority of punished infringements of the rules of advertising related to a violation of the duty to place warning signs concerning certification or licensing of products and services. In the Russian Federation in 2001 the share of similar violations was in excess of 50 per cent of the total amount. A similar proportion was typical for Belarus.¹⁷

Self-Regulation Bodies

The status of self-regulation bodies everywhere remains advisory. As a rule statutes on advertising include provisions concerning the activities of self-regulation organisations. However, in some countries of the region, namely Armenia, Azerbaijan, Belarus, Georgia and Kazakhstan statutes on advertising do not guarantee specific rights for such organisations at all.

Self-regulation bodies usually are only allowed by law to participate in drawing up legislative acts, to supply their expertise, to cooperate with official authorities, and to act in the name of consumers for the protection of the rights of the latter.

Self-regulation organisations are actively using those opportunities granted to them by law in order to improve advertising legislation and practice. For instance, the Russian Council on Advertising¹⁸ contributed to the codification of Russian advertising law. In 1997 the Council proposed to incorporate all regulations concerning advertising into the single Federal Statute on Advertising. In 1998 these proposals were embodied in amendments to a number of laws.

The process of making corporate rules also takes place in countries of the region. In Ukraine the non-governmental organisation All-Ukraine Advertising Coalition raised an objection to amendments to the Statute on Advertising to establish a monopoly of Ukrainian language in advertising.¹⁹ In this case the self-regulation organisation failed.

Self-regulation bodies do as much as they can in order to create both corporate codes of practice and mechanisms concerning liability for violations of corporate rules. There are a variety of ethical codes approved by professional unions, advertisers, disseminators of advertising and self-regulation bodies in every FSU country. For instance, in Russia the Advertising Code was approved by 12 companies controlling almost 100 per cent of the advertising market. The Code includes detailed regulation of matters concerning improper advertising from an ethical point of view. However, it does not have real mechanisms of implementation. There are no procedures for dispute resolution in the Code. Self-regulation bodies themselves admit that today the mere existence of ethical standards is not sufficient.

Another important type of activity of self-regulation bodies is the organisation of expertise concerning the content of advertisements. Such expertise may be relied on both before an administrative inquiry takes place and in the course of such an inquiry. Usually government bodies willingly use the facilities of non-government organisations when assumed infringements of advertising law deal with ethical or any other qualitative aspect of advertising.

An example of even more close cooperation between self-regulation bodies and official agencies exists in Russia where a consultative body – the Expert Council on Advertising Practice was recently established by the Federal Antimonopoly Agency in order to provide expertise in advertising practice and cooperation between the antimonopoly agency and self-regulation organisations. The Council includes both bureaucrats and advertising experts. Its decisions are nonbinding for government bodies; however, the participation of the officials in the activities of the Council results in the high efficiency of its decisions. It is important to emphasize that Russian authorities were not obliged to form the Council according to any law. The administrative practice of the Russian antimonopoly body itself made clear the necessity for such co-regulation bodies.

Conclusions

Advertising legislation in countries of the former Union of Soviet Socialist Republics emerged as a theoretical scheme in the mid-nineties. It still reflects a backlash of dominant ideas and shocking events of that period of time. The problems of realisation of social advertising, political advertising and sponsorship concepts illustrate the non-viability of a number of regulatory norms. A number of restrictions are archaic and for that reason constrain advertising markets. The absence of new approaches to these problems in the legislation of most countries of the region is a troubling tendency.

The regulation of specific advertising activities in electronic mass media is not a widespread tendency in the region. While some countries adopted television and radio broadcasting laws which take into account the transformation of broadcasting principles and specific methods and rules of advertising in electronic mass media, others continued the extensive development of regulation, based on amendments to old advertising laws necessitated by the most clear and annoying problems. However, today there is an obvious need for specific regulation of the activities of broadcasters in disseminating advertising and even more importantly for the establishment of supervisory agencies in the sphere. As the experience of states signatories to the European Convention on Transfrontier Television arising from the harmonization of their national legal systems shows, ratification of the Convention sufficiently simplifies the standard-setting activities in the field of advertising law.

One of the most striking tendencies of the development of advertising law is the reluctance of government bodies to reduce their regulation and supervisory powers. When this trend is accompanied by a broad restriction on advertising of a number of categories of goods and services, the overall picture looks quite frustrating. However, these tendencies are seriously counterbalanced by the activities of self-regulation bodies.

1) For statistics see: Mikhail Fedotov. *Pravo massovoi informatsii v Rossiiskoi Federatsii* (Mass Information Law in the Russian Federation) – Moscow, *Mejdunarodnye otnoshenia*, 2002; *Medienrecht im Vergleich Deutschland – Russland* (Mass Media Law in Germany and Russia) – Berlin, Kenninghausen & Neumann GmbH, 2004.

2) Legislative acts of former USSR countries concerning advertising are available in Russian on the web site of the Moscow Media Law and Policy Centre: www.medialaw.ru

3) This distinction is also important for those counties that collect fees for registration of mass media entities. "Specialized advertising mass media entities" usually pay higher registration fees and taxes.

4) The statutory law of Turkmenistan does not deal with advertising activities at all. According to information provided by Turkmen expert Andrei Aranbaev the advertising market in this country is controlled by the monopoly state broadcasting company which establishes prices and rules governing advertising placement on television. The report of Mr. Aranbaev is available in Russian at: <http://www.medialaw.ru/publications/zip/54/turkmen.htm>

5) The Federal Statute of the Russian Federation on Advertising is available in English at: http://www.medialaw.ru/e_pages/laws/russian/advertising_eng/advertising_eng.html

6) For instance, in September 1995 the Statute of *Tumenskaya oblast* (region of the Russian Federation) was adopted. The Statute established a total ban on the advertising of tobacco and alcohol by any means while the Federal Statute allowed the advertising of these goods by means of outdoor advertising and advertising in the press. The regional Statute was repealed by the Legislative Assembly of *Tumenskaya oblast* in 2002.

7) Joint jurisdiction means that regional governments can adopt statutes and other legal instruments regulating these spheres. But such acts shall not contradict federal legislation.

8) The Convention entered into legal force in Latvia on 1 January 1998, in Estonia on 1 May 2000, in Lithuania on 1 January 2001, and in Moldova on 1 July 2003. Two more states – Ukraine and Georgia – have signed but not yet ratified the Convention.

9) For more details see the Report of the Russian Advertising Council for 1999. Available in Russian at: http://outdoor-ad.rus.net/oa/general/99_deyat.htm

10) For more details see the Information letter of the Presidium of Supreme Arbitration (economic) Court of the Russian Federation of 25 December 1998.

11) http://www.gazeta.ru/2004/10/13/oa_136390.shtml

12) In Estonia the restriction is even stricter – it is also not allowed to place advertising before or immediately after a religious service.

13) Text of the Russian draft law on advertising is available at: <http://www.arpp.ru/zakonoreklame.doc>

14) For details concerning advertising of beer in Russia see Dimitry Golovanov, *Beer Advertising Restricted*, IRIS 2004 – 8, p. 14

15) For more details concerning the funding of public television and radio in Moldova see report of Igor Ivanov available in Russian at: <http://www.public-tv.ru/index.sema?a=articles&ppid=1&pid=1&id=53>

16) Before the Ukrainian Statute on advertising was amended in 2003-2004 a special differentiation could be found in the powers of supervisory bodies: antimonopoly agencies were authorised to impose fines for infringements of advertising law, while state consumer protection bodies were obliged to go to court in order to impose sanctions on infringers for other infringements of advertising law.

17) For more details see Review of the CIS Executive Committee "O gosudarstvennom regulirovani reklamnoi deyatel'nosti v stranah SNG" ("On governmental regulation of advertising activities in the CIS countries"), available in Russian at <http://www.cis.minsk.by/russian/regulir14.htm>

18) Member of the European Alliance on Standards in Advertising.

19) <http://www.adcoalition.org.ua>