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STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

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Updated compendium of the replies to the questionnaire on split-screen advertising

**Secretariat memorandum prepared
by the Directorate General of Human Rights**

Introduction

This document contains an updated compilation of responses to a questionnaire on split-screen advertising sent out last year by the Standing Committee.

Executive Summary

It is difficult to extract a general feeling or consensus from the responses to the consultation on split-screen advertising launched by the Standing Committee on Transfrontier Television. Views on this new type of advertising are quite divided. Some of the respondents express a strong opposition to this practice, mainly on the grounds of the separation principle in the European Convention on Transfrontier Television (they do not consider that spatial separation is sufficient to comply with this principle). However, other respondents underline the importance for broadcasters of raising revenue with new techniques in the digital context, and are therefore in favour of split screen techniques.

Overview of responses: some of the broadcasting regulatory bodies have not yet taken an official stand on this in the absence of split screen advertising in their countries (National Radio and Television Commission of Hungary, the Cyprus Radio-Television Authority and the Superior Audiovisual Council of the French-speaking Community of Belgium).

The regulatory bodies in favour of authorising this practice are the National Broadcasting Council of Latvia, the Lithuanian Radio and Television Commission, the Czech Council for Broadcasting and the Turkish Radio Television Supreme Council. These regulators nevertheless consider a number of rules on the size and duration of the advertising window should exist, and feel that split-screen should be forbidden in news, current affairs, religious programmes or programmes for children or films. The Slovak Broadcasting Council feels it might be appropriate to allow split-screen advertising in certain sports events, which do not have natural breaks, but says this should be further examined under the relevant provisions of their Broadcasting Act.

Regulators against this type of advertising are the Commissariaat voor de Media in the Netherlands, the Institute for the Media of Portugal (very strong opposition: says that arguments used to support split-screen are no more than *handy or ingenious attempts to circumvent the essence of some traditional and fundamental advertising principles* enshrined in the Convention and TWF Directive, and that it is fallacious to argue that spatial separation would be sufficient to comply with the core separation principle in the Convention). They mention that the advertising rules in the Convention should be amended if it is commonly felt that they are no longer suitable in the new environment, but that in the meantime, broadcasters and regulatory authorities should abide by the existing rules. The Swedish Broadcasting Commission and the Norwegian Mass Media Authority are also of this view.

The position expressed by producers and film directors associations is understandably against this type of advertising in films but consider that it could be allowed in sports or light entertainment programmes. The consumers associations hold similar views: they are against it in principle but consider that if unavoidable it could be authorised in light programme formats. ETVE underlines that contractual practice should decide whether this type of advertising is allowed or not and recalls that right holders will never agree in a sales contract to the insertion of split screen advertising on a major feature film on television.

Finally, the views of broadcasters, presented by the ACT and Turner Broadcasting, as well as those of publishers and advertisers (World Federation of Advertisers), are in favour of allowing split-screen advertising. They stress commercial companies should be allowed to develop these new techniques if they wish to do so, and underline that consumer demand should determine the acceptability or not of the new practices. Broadcasters must be allowed access to new forms of advertising if they are to remain competitive. ACT acknowledges that split screen would appear so far to be particularly attractive in sports programmes, less so in genres such as drama or documentary, but is not in favour of discriminating by genre. They argue that these are editorial rather than regulatory decisions.

The World Federation of Advertisers (WFA)

The WFA is pleased to provide an input into the ongoing revision of the Council of Europe's Convention on Transfrontier Television. The WFA is a unique, worldwide network, thanks to its dual membership: 46 national advertisers associations and nearly 30 corporate members. Through them, the WFA represents more than 5,000 businesses operating in a broad spectrum of sectors at national, regional and global level.

Although this submission mainly focuses on the issue of split-screen advertising, we are happy to provide some additional thoughts on other techniques, which our members are increasingly using.

Preliminary comments: new forms of advertising will be essential for the development of digital television in the EU, and in particular for the funding of production of a greater variety of high-quality media content.

As television channels continue to proliferate, it will prove increasingly difficult to maintain the same degree of regulatory intervention as has been the case in the past. "Lighter touch" regulation, which is future-proof and takes into account the convergence of media, is the only effective and practical solution, because the techniques change very fast. Detailed and prescriptive rules would always lag behind market developments.

Light touch regulation is not a "carte blanche": our members recognize our responsibility in such a scenario. In an increasingly competitive world, the successful companies will be those that place the best interests of consumers at the heart of their marketing programmes. Enlightened self-interest will increasingly drive the need to behave responsibly.

It is crucial for the regulator to distinguish between the "push" nature of viewing passive television and the "pull" nature of interactive digital television.

As the viewer becomes more active and "pulls" content within an interactive environment, so he or she becomes more responsible for the interaction with the television and its content. Consumer demand rather than anything else will decide the fate of new advertising techniques.

Split-screen advertising: the World Federation of Advertisers is in favour of authorising split-screen advertising. Our members regard it as a natural development in the context of media convergence, where all platforms can potentially carry all services. There are various ways in which split-screens can be used.

It can be argued that split-screen advertising on television is hardly different from the split screens which consumers access on the Internet and, increasingly, on mobile phones. Once the take-up of digital television is gaining a critical mass in Europe (whether by cable, satellite or terrestrially), it is difficult to argue that the level of expectation of the average viewer in terms of broadcasting standards and protection of privacy are substantially different with regard to television compared with the other (new) media.

The WFA is therefore keen to emphasise that the regulation of new advertising techniques – not least split-screen advertising – must not discriminate television vis-à-vis other media. More broadly speaking, the regulation of electronic content should be technologically neutral as far as possible and draw from existing European legislation concerning the Internet.

We support the fundamental principle of the International Chamber of Commerce which have reiterated the need to make a clear distinction between advertising and content: the advertising part of a split-screen must be clearly marked.

As the consumer is becoming increasingly empowered with ever more sophisticated remote controls, filtering software and other technology, he or she will retain control over what amount of split-screen experience they consider desirable. The aggregate behaviour of viewers will ultimately decide the fate of this and other techniques.

Interactive advertising: interactive services are characterised by the possibility of viewers to interact with television programmes in two ways:

- by changing the content which appears on the screen – for example to access background information, to view more than one picture at a time, etc.
- by ordering products via the remote control, which represents a strong “pull element”, whereas in the non-interactive digital environment the advertiser can merely ‘track’ the viewer anonymously via the cable set-top box and alter the advertisement accordingly.

Research suggests that consumers’ attitudes towards interactive television are very positive. The following trends can be observed:

- consumers do want and will use interactive television. Acceptance is not a problem, provided a high-quality service is offered.
- they understand the difference between advertising and editorial content.
- on the whole, interactive television and advertising are regarded as no more than “TV with a bit of extra”.

In view of these developments, the WFA is of the opinion that interactive advertising, too, should be subject to light-touch regulation. By the time digital interactive television is widespread in Europe, viewers will use it with the same ease as they use the Internet and mobile phones. What is currently a market in its infancy will rapidly become a medium that is used in most households. Ultimately, consumers will decide on the success of this technique.

The argument for light-touch regulation is even stronger in the case of interactive television because viewers are consciously “pulling” content. This implies an active interest (one might say consent) to access this type of service. The consumer is in control, provided he or she is not misled and editorial content is clearly separated from advertising. The latter is particularly important in the cases of channels which are not dedicated “thematic” shopping channels, but where interactive advertising and services are simply added to enrich the programme.

Concluding remarks: the Council of Europe’s revision of its Convention on Transfrontier Television needs to take account of rapidly evolving technology, which can be used and accessed interchangeably on all platforms. The same holds true for the forthcoming revision of the EU Television without Frontiers Directive. Both need to be revised in a way that makes the legislation technologically neutral and valid for years to come.

Current regulation of the Internet and existing laws on misleading advertising show that a light touch approach is much better suited to a constantly evolving medium than detailed rules. The same should apply to new advertising techniques on television. The advertising industry believes that the development of new techniques does not in itself justify any additional legislative restrictions.

Such a light touch approach should be based on the distinction between the push- and pull-element of many of the new features. The consumer is technologically empowered to be the boss, provided the new services are transparent and the separation of advertising and editorial content is adequately labelled.

The Council for Broadcasting (Czech Republic)

The Czech Council for Broadcasting is in favour of authorising split-screen advertising on condition that all rules applicable to full-screen advertising also apply to this new practice, that is, clear/distinct identification, full-time labelling of split-screen advertising; time limits; the same restrictions on insertion for certain programme types (that is, forbidding it during news and current affairs, religious or children's programmes); protection of minors; banning of certain kinds of products and services, etc. We consider that both the static or moving banner types of split-screen advertising are acceptable forms.

Consumers and Users Association (ACU – Italy)

We wish to express our complete disagreement as regards the use of any modality of split-screen advertising and in all types of television programme. In our opinion it could represent a serious attempt to the physical and mental health of viewers, disturbing their attention capacity and stressing their sight organs.

We think that the well being of the public must be a priority over any other interest. This is the reason why we would ask the Standing Committee on Transfrontier Television to ban this advertising practice and to declare it incompatible with the European Convention on Transfrontier Television.

The Independent Radio and Television Commission (Ireland)

IRTC operates under the 1988 Radio and Television Act. This empowers the Commission to licence one television service. The licence was awarded to TV3 and this station commenced broadcasting in September 1998.

The Broadcasting Act 2001 established a new regulatory body, the Broadcasting Commission of Ireland. This will incorporate the existing IRTC and will have new powers to licence additional channels on a variety of platforms and to regulate programme content and advertising on all channels operating within the state. While the legislation has been enacted, no commencement order has yet been finalised. Therefore, our comments below on split-screen are based on the IRTC remit only.

The IRTC has not taken any formal position on split screen advertising. It is worth noting that the Commission has not received any request from TV3 to introduce such advertising.

Likewise, the Commission has not considered which forms of split-screen advertising should be authorised or not. When examining such issues the Commission is cognisant of practices in other EU countries and favours discussion and where possible agreement on such matters at EU level.

The IRTC has not considered the specific rules which should apply to the presentation of split-screen advertising. It would suggest that sponsorship credit guidelines could be considered as a suitable model for split screen commercial content with full-blown advertising confined to traditional methods.

Current sponsorship guidelines could be considered as a starting point for examining in what type of programmes split-screen seems more appropriate. This would exclude news and current affairs from such techniques. Equally, special consideration would have to be given to areas such as the protection of minors.

Office of the Prime Minister (Malta)

It is a fact that on-line advertising has established itself as a serious competitor to TV advertising with the result of decreased financial income for TV broadcasters. Advertising on this medium is not yet regulated and it would therefore be justified to conditionally authorize the use of the new split-screen advertising technique and ensure, as much as possible, a level playing field. During recent meetings of the Standing Committee, it has been confirmed that this technique is being practiced in a number of countries and in some cases, particularly in the case of Germany, it is being permitted under specific conditions. Even in Malta split screen television is being used but up to now by only one private station. From a monitoring exercise carried out by the Broadcasting Authority it resulted that split screen is used only during the dead hours from midnight to circa 6.00 a.m.

There are various forms of split-screening which are being practised and these may increase through the development of other techniques in the future. It is therefore important to limit this technique to specific practices where the advertising window is clearly separated and identifiable from the content of the programme being broadcast. It is also imperative that split screen is not used during all programmes but only during certain programmes. For instance, split screen should not be used during say news bulletins, major events and current affairs programmes. On the other hand, programme promotions (which are not considered to constitute advertising) and other information such as weather information and the station's programme schedule, the date and time may easily be inserted in the split screen as these are not considered to constitute advertisements.

If split-screen is used, there should be a clear indication that the window contains advertising material and it should not occupy more than one-third of the screen. The sound track of the advertising slot should not, at any time, disrupt the sound track of the main programme.

The split-screen advertisement together with any advertisements broadcast on the big screen should fall within the time limits for advertising specified in the regulations, that is, 12 minutes per clock hour of advertisements. In this way, during a particular clock hour, the

broadcaster will still be able to broadcast advertisements up to 12 minutes but he may chose to do so in a full screen or in a split screen.

Split-screen advertising should only be permitted in programmes broadcast during the dead hours or programmes whose duration exceeds four hours [+ or -] and on condition that the advertising window appears on the screen only during intervals and stoppages. This would ensure that the programme content is not disrupted and that no inconvenience is caused to the viewer.

This type of advertising should not be permitted in childrens' programmes as well as during religious broadcasts, news bulletins, current affairs programmes and programmes concerning political broadcasting during election time.

European Publishers Council (EPC)

The European Publishers Council is in favour of authorising split-screen advertising. This is part of the new transmission mechanic. It is just an extension of the Internet and an outcome of convergence. EPC considers that it is neither practical nor possible to prevent it due to the increasing number of tv channels and the reduced impact of advertising during breaks. It is extremely important to make advertising laws more flexible and open to new forms of creativity. New forms of advertising will help fund the take up of new digital channels and should not, if at all possible, be stifled at this stage. Advertisers will find it more difficult in a multi-channel market to reach their target audience. The days of broadcasting duopoly, when a channel could expect to reach over 50% of the population - have long gone although some of the publicly funded broadcasters will continue to deliver mass audiences through free to air channels.

The main advantage of new services are that they allow advertisers to address a targeted element of the population. This is happening already on the Internet. We want to make sure that across both Internet and tv media, traditional media companies are not disadvantaged through regulation by comparison to our competitors in the isp / telecom world. Advertising revenues will remain essential to the funding of high quality content by media companies. We need to be able to experiment to innovate.

All forms of split-screen should be authorised. As a general rule only, at least 50% of the screen should be given over to non-advertising content. Germany has authorised split screen advertising since the Rundfunk-Staatsvetrag of April 2000.

As long as it is clearly marked which part of the screen is carrying advertising, the industry should be left to self regulate. Technology will move too fast for statutory regulation at this stage. There are several types of split-screen advertising under development and trial and these must be allowed to develop without the application of anachronistic regulation. One thing is certain: if the advertising becomes too intrusive, either by size or sound, it will not be effective. Viewers will always be able to move in and out of split-screen situations by using their remote control. As with all forms of advertising, industry will work together with consumer focus-groups to develop these new forms of advertising to find a consensus view as to what is acceptable to consumers and what is practicable in terms of presentation and delivery. Media companies are well aware that consumers are easily able to cancel subscriptions or switch channels so every effort will be made to operate within the bounds of

consumer acceptance. Trials have shown that some of the new types of split screen advertising are very attractive to consumers because they are less intrusive than traditional breaks in the programming.

As markets converge further, viewers will in the future have the possibility to switch between ip based content from the web and broadcast based content from tv. EPC is not in favour of the adoption by the Standing Committee of stricter rules for tv than the web. On the contrary, there is the opportunity to inject more flexibility now into the regulation of television.

EPC is not in favour of any prohibitions on the Internet at this stage. As far as tv is concerned, there should be no prohibitions beyond the Europe-wide agreements which already prevent any form of advertising during certain types of programmes (e.g. children's or news programmes). Even these EPC feels should be reviewed in an era of multi-channel choice. On the other hand, there will be types of programming which lend themselves more naturally to split-screen advertising, e.g. sport. It will be very important for media companies to amortise the cost of acquiring certain types of expensive programme rights and new forms of advertising will contribute. Many programmes may include an interaction with the advertisements to give viewers the opportunity to obtain more information on a given topic as well as possibilities for online purchasing etc.

CEPI (European Coordination of Independent Producers)

CEPI is in favour of authorising split-screen advertising in sports or light entertainment programmes. However, we are not in favour of authorising split-screen advertising in TV movies or series. Although German law now allows the latter, broadcasters will not make use of this possibility.

All types of advertising should be named and identified as such, for which there must be some rules. This means that the law should require that the part of the screen carrying advertising should be identified as such with a sign/symbol.

ETVE (European Television Enterprises)

ETVE has no official viewpoint on split-screen advertising. In general, since ETVE is a grouping of commercially oriented companies/organisations, it favours non-interference and minimal legislation. Such matters should be dealt with in sales contracts. It is clear that no major feature film on television will appear with split-screen advertising, unless the rights holder agrees to this.

AEC (Association of European Consumers)

AEC considers that consumers are already flooded with advertising and does not in principle favour additional and even more disturbing texts appearing on the screen.

If absolutely unavoidable, split-screen advertising could possibly be authorised during certain games or teleshopping programmes. On the other hand, it should not be allowed during films,

series or cultural programmes. AEC would not like television to be reduced to a pure American style system of marketing.

Directors Guild of Norway

The Directors Guild of Norway is against split-screen advertising. It is considered that this type of advertising is not compatible with the European Convention on Transfrontier Television.

National Union of Consumers (UNC)

The National Union of Consumers (UNC) is not in favour of authorising split-screen advertising.

If it were authorised, split-screen advertising should be identified as such and “separate from other items”; it should be inserted and followed by a special sound track; it should not last more than 2 minutes, during which the word “advertisement”- or something similar - should be visible on the screen.

Split-screen advertising seems more appropriate in, for example, programmes such as variety shows, while it does not seem appropriate in programmes for children or teenagers, nor during the news.

Furthermore, it would be very risky if advertisements were made by the presenters or leading actors of programmes which were then interrupted by advertising. This can create ambiguous situations in which it is not always easy to distinguish programmes from advertising.

Superior Audiovisual Council (French-speaking Community of Belgium)

Split-screen advertising is not yet practiced to date in the French Community of Belgium and the CSA has not taken yet an official position on whether this type of advertising should be authorised or not.

This being said, if this type of advertising were to be authorised, a revision of the Audiovisual Decree would become necessary, in particular the chapter on advertising, which, *inter alia*, contains the principle on the separation of advertising from other programme items.

Turner Broadcasting (United Kingdom)

We are in favour of allowing split-screen advertising. We firmly believe that commercial companies should be allowed to develop these new techniques if they wish to do so. If consumers consider that such advertisements are detrimental to their viewing experience then they will choose not to watch the service in question. Whenever possible, existing regulation should be translated from the linear television environment to the split-screen environment; no higher levels of regulation should be added simply for the split-screen or interactive environment.

We do not believe it is necessary for particular types of split-screen advertising to be mandated or prohibited. We believe it is adequate for the existing rules specifying such things as a requirement for advertising to be clearly distinguishable or recognisably separate from editorial content to be applied to split-screen advertising.

With regard to the presentation of split-screen advertising, we believe that the ITC has adopted a sensible approach to this issue. Their rule states that "Advertising which is not specifically selected by the viewer must not predominate over programme material." This can be combined with the separation requirements previously mentioned.

We do not think that it is necessary to distinguish between different types of programming. The Convention contains no prohibitions on spot advertising for any particular programme type - except during a religious service - and therefore we do not think that the introduction of split-screen advertising is significant enough to merit the introduction of additional rules for particular programme types. Existing rules about what may be advertised, for example in children's programmes, can be transposed into the split-screen environment.

Lithuanian Radio and Television Commission

The Lithuanian Radio and Television Commission is in favour of authorising split-screen advertising. It is considered that two types of split-screen should be permitted: the simultaneous broadcasting of editorial and advertising content, and scrolling advertising text broadcast at the bottom of the screen. The rules enshrined in the European Convention on Transfrontier Television as well as those in the Lithuanian laws on Provision of Information to the Public (art. 39) and on advertising should apply to split-screen advertising. Nevertheless, the Lithuanian Radio and Television Commission considers that a split-screen advertisement should not occupy more than $\frac{1}{4}$ of the screen.

Turkish Radio Television Supreme Council

Split-screen advertising is regulated in Turkey under the Regulation on Advertising dated 20 November 1994. Under the heading of "Insertion of Advertising" in Article 18 of the mentioned Regulation, rules on split-screen advertising have been specified.

The Radio Television Supreme Council is in favour of regulating this practice since it is frequently used by broadcasters, especially during the broadcasting of sports programmes. Besides the specific rules on insertion, other general rules on advertising should also be taken into account by broadcasters who want to insert split-screen advertising.

The Radio Television Supreme Council is in favour of authorising split-screen advertising, in the form of advertising windows, scrolling advertising text and logos.

The size and duration of the advertising windows should be limited. It would not be permitted to insert split-screen advertising acoustically, since this could prejudice the integrity, value, effectiveness and message of the programme.

Sports programmes are the most appropriate ones for this type of advertising. The Supreme Council would not permit split-screen advertising during the broadcast of news, current affairs, religious programmes or programmes for children.

Institute for the Media (ICS - Portugal)

Although split-screen advertising has not yet emerged in the Portuguese audiovisual landscape, this new technique raises several questions which already concern our national regulatory authorities.

As regards this subject, we would like to underline that during the current year, our organisation intends to promote an open dialogue with representatives of the main television broadcasters under Portuguese jurisdiction, with a view to evaluating and adopting common & updated standards on television advertising. Accordingly, split screen advertising is a topic that surely will be impossible to avoid.

In the meantime, our task is to express our views concerning the questionnaire addressed to us on this subject by the Standing Committee.

Nevertheless, we believe that there would be substantial advantages in considering such questions in the context of a wider discussion embracing other new advertising techniques, as they all raise a number of common fundamental problems in terms of their regulation.

The possible arguments for and against the permission and the use of split-screen advertising were already correctly identified and perhaps sufficiently discussed in the previous meetings of the Standing Committee.

Having carefully considered these fundamental premises, we definitely stand against any possibility of authorising split-screen advertising - at least at the current stage of regulation of television advertising as established namely in the European Convention on Transfrontier Television and in the «Television Without Frontiers» Directive.

We do not ignore that such a practice is already widely used by several broadcasters and even enshrined in the national rules of a few States which are Parties to the European Convention on Transfrontier Television (and, in some cases, Member States of the European Union as well). However, and with due respect to other positions on this issue, our view is that the arguments used to support practices such as split-screen are no more than handy or ingenious attempts to circumvent the essence of some traditional and fundamental advertising principles enshrined in the Convention and TWF Directive, international instruments which such countries previously committed themselves to fully respect.

Namely, in our understanding it is fallacious to argue that *spatial* separation would be sufficient to comply with the core principle established in the Convention concerning the need for a clear identification of advertising as such and, in particular, its separation from the other items of a programme service. For instance, an in-depth analysis of the rules set out in Article 14 of the Convention clearly shows that a *temporal* separation is also required in this context¹.

¹ The same applies, *mutatis mutandis*, to paragraph 1 of Article 10.

Furthermore, the rules related to «*scheduled duration*» - and the very concept itself - would become meaningless if the above argument prevailed.

On the other hand, if by any chance a coexistence was accepted between the rules related to the concept of «*scheduled duration*» and a mere *spatial* separation of split-screen advertising, how would the duration of split-screen advertising be included in the calculation of the overall time allocated to advertising in general?

Concerning the point related to the integrity and value of the programmes, we definitely agree with most of the concerns already raised and explored by the ITC on this subject ². Furthermore, in this context, we do not necessarily share the view supported by Germany according to which split-screen diminishes the "negative impact" of normal advertising interruptions on a programme... unless such normal advertising interruptions were accordingly eliminated or substantially reduced: *quod erat demonstrandum*...

The ICS believes that it is essential to adopt an open-minded and pragmatic approach regarding split-screen and other advertising techniques, taking due account of the substantial changes which have taken place in the television sector over the last years, in the light of technological and market developments.

We would like to stress that we share the concern about the need to make an effort to achieve a fair balance between the interests of broadcasters and viewers in this particular context, and we agree that there is a need for a consistent framework between the different levels of regulation as regards this practice, as well as the need to have a coherent treatment for audiovisual services over television and other delivery platforms such as the Internet - bearing in mind that such distinctions have been and will become increasingly blurred in the light of convergence.

If it is commonly felt that such rules are no longer suitable in the light of the fundamental changes which have occurred over the last years in this sector - and we certainly agree with such a point of view - they should then be amended and adapted accordingly. In the meantime, and taking into account the fundamental interests of viewers, we believe that the attitude of broadcasters and regulatory authorities towards split-screen advertising should remain consistent with the rules currently in force - and therefore applicable - to television advertising.

Additionally, EU Member States must be particularly aware of the necessary coherence that should be maintained between the provisions of the Convention and the TWF Directive, in terms of their interpretation and application. Therefore, it would be premature if the Standing Committee adopted a position which might be incompatible with the final results of the initiatives that the European Union is currently carrying out concerning the specific issue of the development of new advertising techniques, in the wider context of the foreseen review of the TWF Directive.

² Cf. Doc. T-TT(2000) Misc 2, 12.09.2000.

Swedish Broadcasting Commission

The Swedish Broadcasting Commission is against authorising split-screen advertising. This practice is clearly incompatible with the provisions of the European Convention on Transfrontier Television (and the TWF Directive), especially as regards the separation principle. The Swedish Broadcasting Commission considers that the notion of "spatial separation" is a nonsense, a conclusion which can be easily drawn from the Explanatory Report to the Convention.

The Swedish Broadcasting Commission strongly recommends against any decision by the Standing Committee in favour of split-screen advertising. Not only do we believe that such a decision would be incompatible with the Convention, but we also feel that undermining such an important principle as the separation one, by ways of a dubious (at best) interpretation, would seriously damage the credibility of the Convention. Other provisions could then be interpreted in a similar manner.

If it were felt that this practice should be allowed, the Swedish Broadcasting Commission considers that a re-wording of the relevant provisions of the Convention would be necessary. However, the Commission does not at present see any urgency in this respect, and has therefore not considered under which conditions split-screen advertising could be allowed in the framework of a revised Convention.

Mass Media Authority (Norway)

The Mass Media Authority is not in favour of authorising split-screen advertising. Such an advertising technique would interfere considerably with programmes and be a nuisance for viewers. We agree with the concerns voiced against split-screen advertising, and consider that this type of advertising is incompatible with the existing provisions in the Convention.

If such a technique were introduced, it should be restricted in order to minimise its impact on viewers. Appropriate measures should be taken to make it clearly distinguishable as advertising.

Split-screen advertising should be prohibited in programmes aimed at children, in news and current affairs programmes, documentaries, religious programmes and feature films. It should also be considered whether to limit, or even entirely prohibit, split-screen advertising during prime-time.

Council for Broadcasting and Retransmission (Slovak Republic)

The recently adopted Act on Broadcasting and Retransmission (enacted in October 2000) does not authorise split-screen advertising³.

³ Article 34 of this Act stipulates that: (1) Television advertising and teleshopping shall be recognizable and clearly separate from other parts of the programme service in a way that they are not interchangeable with these other parts of the programme service; in the broadcasting of a radio programme service, acoustic means shall be used for separation, and in the broadcasting of television programme services, both acoustic and visual means will be used. (2) Advertising and teleshopping in the broadcasting of television programme services shall be

At present, the use of split-screen advertising is an exception in Slovak programmes. A few cases have occurred, mainly in sport events covered live, and broadcasters were warned for the breach of the relevant legal provisions.

The Broadcasting Council is involved in the discussion on split-screen within the EPRA Platform, bearing in mind the possible deregulation of advertising in the Television without Frontiers Directive when the latter is revised in 2002. In fact, the interpretation of the relevant article in the Directive can lead to the interpretation that split-screen is a legitimate form of advertising, since there is a choice between optical and/or acoustic means for ensuring separation of advertising from other parts of the programme; this could be understood as the possibility of achieving separation in time or in space. The wording in the European Convention on Transfrontier Television is identical.

In principle, split-screen advertising could be tolerated in certain special sports events, which do not have natural breaks, and sport activities that last for relatively long periods of time (vg. Formula1 racing, cycling competitions, marathon races, etc.). Such cases must first be legally examined under the relevant provisions in the Act. On the other hand, split screen advertising can not be acceptable in programmes aimed at children, religious programmes, news or current affairs.

Cyprus Radio-Television Authority

The Cyprus Radio-Television Authority applies, in its work, Law 7(I) of 1998 on Radio and Television Stations (as subsequently amended) and the Regulations on Radio and Television Stations of 2000 (10/2000). The aforesaid Law and Regulations do not include any specific provisions regarding split-screen advertising and the Authority has not adopted a position in this regard. There are, however, provisions in the aforesaid Law concerning advertising, sponsorship and teleshopping which have a bearing on the subject of split-screen advertising.

In accordance with section 33(2)(a) of the Law 7(I) of 1998 on Radio and Television Stations (as subsequently amended), "television advertising and teleshopping shall be readily recognizable as such and kept separate from other parts of the programme service by optical and acoustic means".

In accordance with section 33(2)(d) of Law 7(I) of 1998 on Radio and Television Stations (as subsequently amended), "surreptitious advertising and teleshopping are prohibited". It is noted that in section 2 of the above mentioned Law, "advertising" is defined as "any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment" whilst "surreptitious advertising" is, at the same section, defined as "the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve as advertising and might mislead the public as to its nature. Such representation is

transmitted in blocks and separate from other parts of the programme service. Broadcasting of isolated advertising and teleshopping spots shall remain an exception.

considered to be intentional in particular if it is done in return for payment or for similar consideration".

Despite the fact that currently there are no particular provisions in Law 7(I) of 1998 on Radio and Television Stations (as subsequently amended) and in the Regulations on Radio and Television Stations of 2000 as regards split-screen advertising, section 33(2)(f) of the aforesaid Law provides that "in programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements and teleshopping shall only be inserted between the parts or the intervals".

Association of Commercial Television (ACT)

The ACT is very grateful for having had the opportunity to present our views on this subject, and examples of split-screen advertising, to the Standing Committee in April this year. Our presentation to the Standing Committee set out our views, and our brief answers to the Committee secretariat's questionnaire are submitted for the sake of completeness.

ACT is in favour of authorising split-screen advertising. We believe it is a form of advertising which benefits consumers (e.g. research by SevenOne Media in Germany, quoted in the ACT presentation to the Standing Committee) as well as media operators.

As a general principle we would prefer to see a presumption that all forms of split-screen should be permitted unless expressly prohibited, rather than vice versa. This is a fast moving market and it is impossible to list certain forms which should and should not be permitted, especially at European level. To do so would be to fail the most important criterion set down by Commissioner Reding for regulatory intervention in this area, i.e., that regulation should be future proof.

Broadcasters must be allowed access to new forms of advertising if they are to remain competitive against other forms of content delivery, which we understand is in the interests of European society. All forms of split-screen should be permitted so long as they are in compliance with the rules below.

At European level it is appropriate only to lay down general principles for national regulatory authorities (NRAs) to flesh out as appropriate in their marketplaces. Transparency - i.e., labelling/identification as advertising - is one such principle. So is the fact that split-screen should not be fully accounted against advertising minutage.

Other matters such as general rules of consumer protection are either already covered elsewhere by horizontal EU directives, or, for detailed matters such as duration and use of soundtrack, are better suited to the flexible and adaptable structures of NRAs, often delegated to the media operator. Indeed, self-regulation and co-regulation may be appropriate methods for delivering many policy goals in this area.

We should bear in mind that split-screen has not been invented for advertising only, but also to show the time on the screen during TV programmes (breakfast television), to give additional information about the programme (the running banner at the bottom of the picture, often used for breaking stories or stock market or sporting updates).

Its commercial application would appear so far to be particularly attractive in sports programmes, much less so in genres such as drama or documentary which are better suited to conventional advertising breaks. However, these are editorial rather than regulatory decisions.

We would not discriminate by genre as we feel that to do so would be to stifle innovation and possibly discriminate against certain types of producer.

National Radio and Television Commission (Hungary)

Although television broadcasters regularly use split-screen techniques for other purposes (eg. to broadcast the credits of a film in parallel with the preview of the next programme item, or to display stock market share quotes during economic news programmes), no such advertisement has been broadcast in Hungary so far. Given this situation, the National Radio and Television Commission of Hungary has not yet adopted an official position on the question of split-screen advertising.

National Broadcasting Council (Latvia)

The National Broadcasting Council is in favour of authorising split-screen advertising in its different forms, for example scrolling banner text, logo, etc. The Council considers that the following rules should apply to the presentation of split-screen advertising:

- it should be identified;
- the advertising sound track should not be allowed;
- the size of the advertising window should not occupy more than $\frac{1}{4}$ part of the screen;
- the advertising limits in the Convention (20% per hour and 15 % of daily transmission time) should not apply.

Split-screen advertising seems more appropriate in sports programmes and live events, so that the viewer does not lose contact with the broadcast, as well as in entertainment programmes, such as musical and youth programmes and series.

Split-screen should be forbidden in children and religious programmes, in films and information programmes (e.g. documentaries).

Commissariaat voor de Media (Netherlands)

This type of advertising is forbidden in the Netherlands because of the unclear distinction between editorial and commercial content.