



Strasbourg, 21 November 2006

T-TT(2006)012rev

Opinions and Recommendations
adopted by
the Standing Committee on Transfrontier Television
(T-TT)

Introduction

Since 1 May 1993, date of entry into force of the European Convention on Transfrontier Television, until September 2002, the Standing Committee on Transfrontier Television (T-TT) has adopted nine Opinions, three Recommendations and one Statement, concerning respectively the interpretation and the application of the Convention.

This document, prepared by the Secretariat of the Directorate General of Human Rights, reproduces these texts and describes briefly beforehand the procedure foreseen within the Standing Committee for the adoption of Opinions and Recommendations.

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PROCEDURE FOR ADOPTION OF OPINIONS AND RECOMMENDATIONS WITHIN THE STANDING COMMITTEE

The Standing Committee

The Standing Committee on Transfrontier Television (T-TT), set up in application of Article 20 (1) of the European Convention on Transfrontier Television¹, began its work in June 1993 after the entry into force of the Convention on 1 May 1993. It brings together Delegates designated by the Contracting Parties² to the European Convention on Transfrontier Television, as well as Observer Delegates designated by States Parties to the European Cultural Convention³, which have not yet become Parties to the Television Convention. The European Communities are represented at the meetings of the T-TT by an Observer Delegate.

The functions of the Standing Committee are set out in Article 21 of the Convention:

"The Standing Committee shall be responsible for following the application of this Convention. It may:

- a. make recommendations to the Parties concerning the application of the Convention;
- b. suggest any necessary modifications of the Convention and examine those proposed in accordance with the provisions of Article 23;
- c. examine, at the request of one of more Parties, questions concerning the interpretation of the Convention;
- d. use its best endeavours to secure a friendly settlement of any difficulty referred to in accordance with the provisions of Article 25;
- e. make recommendations to the Committee of Ministers concerning States other than those referred to in Article 29, paragraph 1, to be invited to accede to this Convention."

Procedure for adoption of Opinions

The procedure to be followed by the Party/Parties wishing to obtain an **Opinion** on the basis of Article 21 (c) of the Convention, is set out in the Rules of procedure of the Standing Committee.

¹ *European Treaties Series* No. 132. Convention opened for signature on 5 May 1989.

² As from 1 March 1997: Cyprus, Finland, France, Germany, Hungary, Italy, Malta, Norway, Poland, San Marino, Slovakia, Switzerland, Turkey, United Kingdom and Holy See.

³ As from 1 March 1997: Albania, Andorra, Austria, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Greece, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Netherlands, Portugal, Romania, Russia, Slovenia, Spain, Sweden, "the Former Yugoslav Republic of Macedonia" and Ukraine.

Its Article 23 ("Requests for interpretation of the Convention") provides that:

- "1. Without prejudice to Chapter VI of these Rules, any question concerning the interpretation of the Convention submitted to the Committee pursuant to Article 21, paragraph c), of the Convention shall be presented in writing.
2. The request shall be communicated by the Secretariat to the delegates, observer delegates and observers.
3. Upon receipt of the request, the Secretary General shall fix the date of and convene a meeting of the Committee in accordance with the provisions of Articles 9 and 10 of these Rules, and place the request on the draft agenda.
4. If the Committee does not express an unanimous opinion, mention shall be made in the report of the Committee of the minority opinions, if the authors so request.
5. The text of the opinion of the Committee shall be transmitted to the Parties and the Committee of Ministers of the Council of Europe.
6. As a general rule, opinions of the Committee shall be public."

Procedure for adoption of Recommendations

Furthermore, the Standing Committee may, on the basis of Article 21 (a) of the Convention, make Recommendations to the Parties concerning the application of the Convention. The Rules of procedure set out the relevant procedure in Article 24 ("Recommendations relating to the application of the Convention")

- "1 In accordance with the provisions of Article 21, paragraph a), of the Convention, the Committee may address recommendations to the Parties aimed at facilitating and improving the application of the Convention.
2. The said recommendations shall be transmitted to the Parties and to the Committee of Ministers of the Council of Europe.
3. As a general rule, recommendations of the Committee shall be public."

OPINION No. 1 (1993)**ON THE TIME FRAME FOR THE BROADCASTING OF
CINEMATOGRAPHIC WORKS CO-PRODUCED BY THE BROADCASTER
(ARTICLE 10 (4))**

*(adopted by the Standing Committee on Transfrontier Television
at its 2nd meeting (16-17 December 1993))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 26 October 1993, the opinion of the Standing Committee on the interpretation to be given to the provisions of Article 10, paragraph 4 relating to the time frame for the broadcasting of a co-production.

In particular, the Delegate sought guidance on whether or not the one year time frame foreseen for the television screening of a cinematographic work co-produced by a broadcaster was absolute or, on the contrary, to be seen as flexible having regard to contractual arrangements worked out between rights holders and the co-producing broadcaster.

* * *

In application of Article 21 (c) of the Convention and on the basis, in particular, of the *travaux préparatoires* of the Convention, the Standing Committee concluded that "*Article 10 (4) of the Convention, in referring to cinematographic works co-produced by the broadcaster, implicitly accepts that the rights holders and the co-producing broadcaster enjoy contractual freedom so as to allow them to conclude agreements which depart from the one-year time limit*".

OPINION No. 2 (1994)**ON THE NOTION OF "RETRANSMISSION" (ARTICLE 2 (B))**

*(adopted by the Standing Committee on Transfrontier Television
at its 3rd meeting (15 February 1994))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 3 November 1993, the opinion of the Standing Committee on the interpretation to be given to Article 2, sub-paragraph b of the Convention, relating to the notion of "retransmission".

The essential facts presented by the Delegate were as follows:

"The broadcaster RTL intends to establish a Swiss programming window on the RTL Television channel. To do so, RTL Switzerland, which is mainly in Swiss hands, has lodged an application for a licence for a regional language television programme. The Swiss Federal Council is the competent decision-making authority.

RTL Plus Germany has a shareholding in the capital of RTL Switzerland amounting to 30%. The two companies collaborate on a contractual basis.

The programme service for Switzerland will be produced in Switzerland. The programme includes two slots of thirty minutes each (6.45 p.m. to 7.15 p.m. and 7.45 p.m. to 8.15 p.m.). The first slot is devoted to information and culture, while the second concentrates on entertainment (situation comedies).

The Swiss window will be broadcast from Zürich. The up-link will be carried out from an earth station on Swiss territory, the up-link going to the Eutelsat satellite. The signal will transit through a relay station in Hamburg so as to continue up to the Kopernikus II satellite. Using a repeater in the Kopernikus II satellite, RTL already broadcasts a parallel programme containing three advertising slots specifically intended for the Swiss public between 7.15 p.m. and 11.15 p.m.

The Swiss cable networks which are equipped with equipment for receiving remote instructions provided by RTL receive the RTL parallel programme from the Kopernikus satellite. In the future, they will switch from Astra to Kopernikus II from 6.45 p.m. to 11.15 p.m. The remote switching action will be carried out from the Swiss RTL studios in Zürich. The Swiss cable networks, which are not equipped with an adequate switching device, will continue to receive the German RTL Plus programme from the Astra satellite.

The Swiss programming window is financed by advertising as well as a contribution provided in return for services carried out for the benefit of RTL Plus Germany."

* * *

In application of Article 21 (c) of the Convention, and on the basis of the facts as stated, the Standing Committee concluded that *"the original programme service up-linked from Germany will constitute a retransmission within the meaning of Article 2, sub-paragraph b of the Convention"*.

As regards the one-hour local programming window, the Standing Committee concluded that *"the editorial and technical control will be exercised by a broadcaster up-linking to the satellite from Switzerland. The latter broadcaster will be clearly distinct from the German broadcaster. For these reasons, the said broadcaster will fall within the jurisdiction of the Swiss authorities, and will be subject to Swiss legislation"*.

In coming to these conclusions, the Standing Committee wished to stress that *"its opinion is based solely on the specific facts of the particular case. Other situations presenting similar but not identical features would need to be considered on their merits."*

OPINION No. 3 (1995)**ON THE NOTION OF "BROADCASTER" (ARTICLE 2 (C))**

*(adopted by the Standing Committee on Transfrontier Television
at its 6th meeting (24-25 April 1995))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 27 April 1994, the opinion of the Standing Committee on the interpretation to be given to Article 2 (c) of the Convention and to paragraph 55 of the Explanatory Report, relating to the notion of "broadcaster".

According to Article 2 (c) of the Convention, " *broadcaster*" means the natural or legal person who composes television programme services for reception by the general public and transmits them or has them transmitted, complete and unchanged, by a third party".

The Delegate believed that these definition should be interpreted in a way which exclude from the benefits of the Convention broadcasting organisations which have not been duly licensed or otherwise authorised by the competent authority of a Contracting Party or any other country. He considered that this interpretation was borne out by the provisions of Article 6 (1) of the Convention.

* * *

In application of Article 21 (c) of the Convention and following the discussions held at its 4th, 5th and 6th meetings (23-24 June 1994, 22-23 November 1994 and 24-25 April 1995), the Standing Committee concluded that *"the guarantees offered by Article 4 of the Convention only apply to broadcasting organisations which have a lawful status under the domestic law of a transmitting Party. This conclusion follows on from the provisions of Article 5 and Article 6 (1) of the Convention, as well as from the instrument's overall objectives. In case of doubt over the lawful status of a broadcaster, the authorities of the receiving Party should contact the authorities of the transmitting Party referred to in Article 19 of the Convention. Should the authorities of the transmitting Party provide a declaration to the effect that the broadcaster enjoys a lawful status on the territory of the transmitting Party, this shall be conclusive of the broadcaster's status. Should the authorities of the transmitting Party refuse to provide the declaration, or fail to provide it after the lapse of a reasonable period of time, or declare that the broadcaster has no lawful status in its domestic law, the authorities of the receiving Party are not obliged to allow the retransmission of the programme services of the broadcaster. Without prejudice to the application of other relevant international rules, the authorities of the receiving Party could invoke the procedures contained in Articles 25 and 26 of the Convention"*.

OPINION No. 4 (1995)**ON CERTAIN PROVISIONS ON ADVERTISING AND SPONSORSHIP
(ARTICLES 12 (1) (3); 13 (1) (4); 14 (2) (4); 17 (1))**

*(adopted by the Standing Committee on Transfrontier Television
at its 6th meeting (24-25 April 1995))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 16 January 1995, the opinion of the Standing Committee on the interpretation to be given to Articles 12 (1)(3); 13 (1)(4); 14 (2)(4); and 17 (1) concerning sponsorship.

Article 12 (1)(3)

The Delegate sought to ascertain whether tele-shopping is only mentioned by way of example or, on the contrary, as the exclusive form of advertising referred to in Article 12, paragraphs 1 and 3 in the context of "direct offers to the public". In particular, the Delegate sought guidance on whether it is possible to consider other forms of advertising such as "*dauerwerbesendungen*", "telepromotions" and extended advertising features as also covered by Article 12, paragraphs 1 and 3, insofar as they constitute "direct offers to the public".

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that *"the text of the Convention reflects the concern of its authors to ensure that the provisions on advertising would not be overtaken by developments in the advertising industry. Being aware of the rapid emergence of different forms of commercial advertising which required more time than is permissible for ordinary spot advertising, the authors of the Convention intentionally worded Article 12, paragraphs 1 and 3 in a non-exhaustive manner. Although between 1986 - 1989, when the Convention was being drafted, tele-shopping may have appeared to be the only form of "extended advertising" on television, other practices now exist. Thus, tele-shopping is only mentioned by way of example. This interpretation is borne out by the wording of Article 12, paragraphs (1) and (3) as well as by the relevant sections of the Explanatory Report (paragraphs 168, 173, 175).*

Paragraphs 1 and 3 are an exception to the general 15% transmission-time rule, expressed in the first sentence of Article 12, paragraph 1, and therefore the forms of advertising of the type mentioned in the request of the Delegate must comply with the relevant provisions laid down in Article 12 for these forms of advertisements. In particular, the Standing Committee stresses that the development of such forms of advertising may in no circumstances constitute a pretext for increasing the daily amount of spot advertising beyond the 15% maximum laid down in Article 12, paragraph 1, first sentence".

Article 13 (1)

The Delegate sought to ascertain the meaning of "in principle" in the clause: "In principle, advertising shall be transmitted in blocks", contained in the final sentence of paragraph 1 of Article 13. For example, the Delegate sought clarification on the approach to be followed in the following circumstances: if the daily broadcasting of individual spots corresponds, in terms of transmission time, to 5% of the total transmission time of spots broadcast in the course of the day, is the criterion "in principle" satisfied; alternatively, should the criterion "in principle" be applied with respect to the type of programmes during which the individual spots are shown?

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that *"the Convention does not establish an exhaustive list of different circumstances. Paragraph 177 of the Explanatory Report provides several examples of circumstances in which individual spots are permissible. For example, reference is made in paragraph 177 to the "case of a single long advertisement; or where the period available for advertising is very short, as between the rounds of a boxing or wrestling match; or where the broadcaster has insufficient advertising orders to permit a grouping of spots. National authorities have thus a margin of appreciation to evaluate case by case whether or not an exception can be made to the rule on block advertising. However, the "ratio" of the Convention's provision is clear: block advertising is the overriding rule, and the possibilities for exceptions are limited"*.

Article 13 (4)

The Delegate sought to ascertain the meaning of "current affairs programmes" in the sentence "advertisements shall not feature, visually or orally, persons regularly presenting news and current affairs programmes", in paragraph 4 of Article 13. The Delegate sought guidance on whether the provision only refers: to programmes dealing with political affairs? to any entertainment or discussion programme ("talk shows"), provided they refer to news and information? The Delegate also sought to ascertain whether the prohibition in paragraph 4 is absolute or, on the contrary, only applicable to situations where, given the type of product highlighted or the context, the viewer might be mistaken as to the advertising nature of the message.

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that *"paragraph 186 of the Explanatory Report contains a definition of the notion of current affairs, stricto sensu: the term "current affairs" refers to strictly news-related programmes such as commentaries on news, analysis of news developments and political positions on events and news. This being said, there may be cases where it will be difficult to determine whether a particular programme is a current affairs programme. In these cases, the principle behind this provision must be borne in mind namely, to avoid confusion between "information" and "advertising". Paragraph 183 of the Explanatory Report states that the provision "aims to ensure that the renown of persons regularly presenting news and current affairs programmes is not exploited in such a way that audiences are no longer able to distinguish between news and advertising"*.

"These criteria are to be used by national authorities when faced with cases which are not clear-cut".

Article 14 (2)

The Delegate sought to ascertain the meaning of the term "autonomous parts" in the sentence "... in sports programmes, advertisements shall only be inserted between the autonomous parts or in the intervals", contained in paragraph 2 of Article 14. The Delegate pointed out that certain sports programmes are devoted to sports not involving playing-field changes, half-time breaks, rounds or other similar interruptions/breaks.

For example, during retransmission of a ski competition, could each individual downhill race be considered as "an autonomous part", or does this term cover any downhill event within a given category? During the retransmission of an athletics event, does the term "autonomous part" apply to every competition involving individual performances such as the javelin? Is a 100m race an "autonomous part" if it takes place within the framework of an athletics competition? Regarding collective events, for example during a football game when the action is interrupted by injury, ball-out-of-play, etc, are these to be considered as "autonomous parts", or does this term only refer to half-time? During the retransmission of a bicycle race, the broadcaster may interrupt the progress of the event to highlight groups of riders. Are sequences focused on each group (eg the leading group) to be considered an "autonomous part"?

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that *"the notion of "autonomous part" during sports programmes must, generally speaking, correspond to natural breaks which are in keeping with the sport in question. This means that, in principle, attempts by the broadcaster to create artificial breaks are contrary to the spirit of the Convention. This being said, there may be cases where, bearing in mind the nature of a particular sports event (for example, a cycle race) artificial breaks introduced by the broadcaster may be justified. In these contexts, national authorities may enjoy a margin of appreciation, it being understood that the overriding rule expressed in paragraph 1 of Article 14 must be borne in mind namely, the need to avoid prejudice to the integrity of programmes"*.

Article 14 (4)

The Delegate sought to ascertain how the provision "twenty minutes should elapse between each successive advertising break" should be interpreted. Is the provision binding or non-binding?

* * *

In application of Article 21 (c), the Standing Committee concluded that *"the provision is binding, but a number of very restrictive exceptions may be authorised. This is confirmed by paragraph 194 of the Explanatory Report. National authorities thus have a reduced margin of appreciation in this area."*

Article 17 (1)

The Delegate sought to obtain further information on the arrangements for satisfying the obligation set out in paragraph 1 of Article 17 (mention of the sponsor): does this provision simply require the sponsor to be "identified" or must the sponsor be identified in accordance with particular rules? Must the identification of the sponsor be limited to the beginning or the end of the programme to the exclusion of any other on-screen reference (for example, in the trailers or during the programme)? Alternatively, must there be at least one mention at the beginning or at the end of the programme, without excluding the possibility of other references either outside or during the programme? In addition to the identification of the name and brand name of the sponsor, can reference be made to the latter's activities and products?

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that, *"under paragraph 1 of Article 17, mention of the sponsor is obligatory. The Convention requires that the public be informed that a programme has been sponsored (this information could be useful to viewers so as to alert them to the possible risk of the sponsor exercising editorial influence over the content of the programme). Only one possibility for mentioning the sponsor is expressly referred to in the Convention namely, in the credits at the beginning and/or at the end of the programme. This is in fact a minimum requirement. The Standing Committee is of the opinion that it is to a certain extent for the broadcaster and the relevant national authority to assess in each case the appropriateness of authorising additional mentions of the name of the sponsor, such as credits inserted during the programme, or after an advertising break (reminder), or even outside the programmes in the trailers. This degree of flexibility should, in any event, be applied with the aim of ensuring that any mention of the sponsor should be geared to informing the public of the fact that a particular programme is being sponsored. Furthermore, particular care should be taken to the need to avoid moves towards para-advertising practices which could distort the essence of sponsorship"*.

OPINION No. 5 (1995)**ON FREEDOM OF RECEPTION AND RETRANSMISSION (ARTICLE 4)**

*(adopted by the Standing Committee on Transfrontier Television
at its 6th meeting (24-25 April) 1995))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 20 February 1995, the opinion of the Standing Committee on the interpretation to be given to Article 4 of the Convention, according to which "the Parties shall ensure freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention".

In particular, he sought to ascertain whether:

(i) a Contracting Party to the Convention may introduce legal requirements concerning quotas of European works, domestic production and programme items produced by independent producers for a programme service directed at viewers in that Party, but broadcast (especially by satellite) from the territory of another Contracting Party;

(ii) should such requirements be permissible under the Convention, whether the Contracting Party may restrict retransmission of programme services in cable networks (without prejudice to direct reception by means of satellite dishes) which do not meet these requirements.

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that *"freedom of retransmission of transfrontier programme services on the territory of a Contracting Party is a fundamental rule of the Convention. It should be stressed that under Article 5 of the Convention, it is for the transmitting Party (as defined by this article) to ensure that programme services transmitted by entities or by technical means within its jurisdiction comply with the terms of the Convention.*

As a general principle of interpretation, exceptions to fundamental human rights provisions (Article 4 in casu) must be narrowly construed. Thus, Article 24 ("alleged violations of the Convention"), in addition to setting out the procedure for overcoming difficulties between Contracting Parties, enumerates exhaustively and restrictively the circumstances which justify provisional suspension of the retransmission of a transfrontier programme service.

In accordance with Article 24 (4) "the provisional suspension of retransmission shall not be allowed in the case of alleged violations of Articles 7, paragraph 3, 8, 9 or 10."

Thus, a Contracting Party may not suspend provisionally retransmission of programme services broadcast from the territory of another Contracting Party which do not comply with the requirements of Article 10 paragraph 1 (cultural objectives)".

OPINION No. 6 (1995)**ON THE LEGAL FRAMEWORK FOR "INFOMERCIALS"**

*(adopted by the Standing Committee on Transfrontier Television
at its 7th meeting (21-22 November 1995))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 26 October 1995, the opinion of the Standing Committee on the legal framework for "infomercials", in the light of the current text of the Convention.

In particular, the Delegate sought guidance on the following questions: are "infomercials" compatible with the Convention? should "infomercials" be considered purely and simply as advertising; what standards should be applied to "infomercials"? in particular, should there be a requirement to broadcast a permanent logo with the mention "infomercial" or "ad reporting" during the broadcast so as to warn the public?

* * *

In application of Article 21 (c) of the Convention, the Standing Committee concluded that *"an infomercial" or commercial information film is a form of advertising which is compatible with the European Convention on Transfrontier Television. An "infomercial" is covered by the definition of advertising contained in Article 2 (f) of the Convention, namely: "Advertisement" means any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect desired by the advertiser, for which transmission time has been given to the advertiser for remuneration or similar consideration.* The aim of an "infomercial" is clearly to "promote the sale, purchase or rental of a product or service" even if its form gives it a strong informational character.

Thus, infomercial programmes are subject to the rules of the Convention on advertising and must, in particular, respect the following provisions:

- *Article 12 (length of advertising), paragraphs 1 and 3. The Committee believes that this Article applies to "infomercials" in the same way as it applies to teleshopping;*
- *Article 13 (form and presentation), paragraph 1. The Committee believes that Article 13, paragraph 1, requires an "infomercial" to be clearly identified as such. The Committee believes that the best form of identification would be to insert a permanent logo mentioning "infomercial";*
- *Article 13, paragraph 4. The Standing Committee believes that Article 13, paragraph 4, requires that individuals regularly presenting news and information programmes must not be used, visually or orally, in an "infomercial".*

OPINION No. 7 (1996)**ON THE APPLICATION OF THE CONVENTION TO ADVERTISING
TRANSMITTED VIA TELETEXT SERVICES**

*(adopted by the Standing Committee on Transfrontier Television
at its 9th meeting (13-14 June 1996))*

In application of Article 23 of the Rules of procedure, a Delegate requested, by letter dated 26 October 1995, the opinion of the Standing Committee on whether information transmitted on the television screen via teletext in return for payment by third parties should be considered to be advertising, and if so whether the Convention's rules on advertising should apply.

* * *

In application of Article 21 (c) of the Convention, and following the discussions held at its 7th, 8th and 9th meetings (21-22 November 1995, 22-23 February 1996, 13-14 June 1996), the Standing Committee concluded that "*teletext services are broadcasting and as such within the scope of the European Convention on Transfrontier Television. The broadcaster has editorial responsibility for their content having regard in particular to Article 7 of the Convention. However, given the specific nature of teletext services, the Convention's rules on advertising and sponsorship (chapters III and IV of the Convention) do not apply as such.*

In the framework of a possible revision of the Convention, the Standing Committee proposes to consider the desirability of drafting a specific provision on advertising and sponsorship on teletext in the context of a possible revision of the Convention".

OPINION No. 8 (1997)**ON ADVERTISING ADDRESSED TO
CHILDREN AND ADVERTISING FOR ALCOHOLIC BEVERAGES**

*(adopted by the Standing Committee on Transfrontier Television
at its 14th meeting (11-12 September 1997))*

In application of Article 23 of the Rules of procedure, an observer Delegate asked for guidelines from the Standing Committee on how the Convention affected national regulations which prohibited advertising addressed to children under the age of 12 and advertising for alcoholic beverages. Noting that some advertisers delocalised in order to circumvent this ban and sent their advertising from abroad, the observer Delegate wished to know whether the Convention applied directly to advertisers or only to broadcasters; in the latter case, the national authorities would be free to apply their own, stricter rules to advertisers.

* * *

Pursuant to article 21 (c) of the Convention, the Standing Committee adopted the following Opinion:

"The Standing Committee recalls that broadcasters must ensure that all items of the programme services they broadcast, including advertising, conform to the rules of the Convention, notably Article 11, with regard to advertising addressed to children, and Article 15, with regard to advertising for alcoholic beverages.

These provisions do not exclude that advertisers who use television as a communication medium may be subject at national level to different rules, in particular stricter rules. For example, national legislation may impose a total ban on advertising addressed to children under the age of 12 or advertising for alcoholic beverages.

It may be that in order to circumvent this legislation, an advertiser chooses to broadcast such advertisements on a foreign programme service and relies on the Convention to ensure that the national authorities comply with the principle of the free reception of his/her advertisements, which can thus be classified as "transfrontier".

The Standing Committee points out that, in this case, provisions of Article 16 of the Convention apply, subject to the provisions of Article 27, paragraph 1 and Article 32, paragraph 1 (a) of the Convention."

RECOMMENDATION (96) 1**CONCERNING THE USE OF VIRTUAL IMAGES
IN NEWS AND CURRENT AFFAIRS PROGRAMMES**

*(adopted by the Standing Committee on Transfrontier Television
at its 11th meeting (5-6 December 1996))*

Today, it is technically possible to produce "virtual" images (the quality of which, as well as the context in which they are shown, are such that the unsuspecting viewer might believe they are real). The issues raised by the use of such images in news and current affairs programmes were considered with attention by the Standing Committee.

* * *

In application of Article 21 (a) of the Convention and 24 of its Rules of procedure, the Standing Committee adopted the Recommendation set out below.

"The Standing Committee believes that the use of virtual images in news and current affairs programmes falls under the editorial responsibility of the broadcaster. In certain cases, virtual images may be an effective means of presenting and explaining facts or events to the public. The Standing Committee considers that, within the framework of Article 7 (3) of the Convention (responsibilities of the broadcaster), the use of virtual images in news and current affairs programmes needs to comply in particular with the following principles:

- *firstly, the use of virtual images must be necessary or helpful to illustrate information or a hypothetical version of the event being discussed;*
- *secondly, the broadcaster should not use virtual images to manipulate or distort the content of an information;*
- *thirdly, the viewer must be clearly informed, by appropriate means, when virtual images are being used."*

RECOMMENDATION (97) 1**CONCERNING THE USE OF VIRTUAL ADVERTISING
NOTABLY DURING THE BROADCAST OF SPORTS EVENTS**

*(adopted by the Standing Committee on Transfrontier Television
at its 12th meeting (20-21 March 1997))*

Virtual techniques are sometimes used to insert advertising messages, notably during the broadcast of sports events, either by the virtual replacement of advertising messages on hoardings around the ground, or by inserting new, sometimes three-dimensional images in other parts of the picture.

In the transfrontier context, virtual image technology may, in certain cases, permit the masking of messages banned by law in the receiving country without affecting the broadcast of the sporting event. Sometimes, however, these techniques help to increase the presence of advertising on the screen under conditions which are detrimental to the perception and the understanding of the event.

In application of Article 21 (a) of the Convention and Article 24 of its Rules of procedure, the Standing Committee adopted the Recommendation set out below.

"The Standing Committee believes that the broadcaster, who is exclusively responsible for the content of the signal produced and/or broadcast, should retain ultimate control over this content. Given his/her responsibility towards the viewers, the broadcaster must ensure that virtual advertising messages comply with the rules of the Convention, and in particular that virtual advertising, in its presentation and content, meets the requirements stemming from Articles 7, 11 and 13 of the Convention.

In this respect, the Standing Committee notes the appropriateness of self-regulation and welcomes the code of conduct on virtual advertising adopted in 1996 by the European Broadcasting Union and the Association of Commercial Television in Europe.

Furthermore, without prejudice to any other indications which might be necessary in the future, it should be stressed at this stage that:

- *the presence of virtual advertising messages during the broadcast of sports events should be indicated to the viewers, by appropriate means, at the beginning and the end of the programme concerned;*
- *in no case should virtual advertising messages transform the perception or the understanding of the event, or be detrimental to its visibility".*

OPINION No. 9 (2002)**ON SPLIT-SCREEN ADVERTISING**

*(adopted by the Standing Committee on Transfrontier Television
at its 30th Meeting (29-30 April 2002))*

In application of Article 22 of the Rules of Procedure, a Delegate requested by letter dated 7 August 2000 the opinion of the Standing Committee on the practice of split-screen advertising which was beginning to appear in Europe, and in particular whether it was a form of advertising covered by the Convention and, in the event it was, under what conditions it should be admissible.

The issues raised by the use of split-screen advertising techniques were considered with attention by the Standing Committee at its 25th, 26th, 27th, 28th, 29th and 30th meetings. The Committee acknowledged that the Convention primarily focused on traditional spot advertising, but that some of the new forms of television advertising which were developing, including the practice of split-screen advertising, could legally-speaking be placed under the category of “other forms of advertising” used in the Convention, as well as under the general definition of “advertising” in Article 2 (f) of the Convention.

* * *

In application of Article 21 (c) of the Convention, and following the discussions held during its 25th to 30th meetings, the Standing Committee agreed that “*split-screen advertising is covered by the Convention, but it cannot be regarded as acceptable under the Convention, unless it satisfies the following criteria: (i) a clear and recognisable separation of programming and advertising content and (ii) full compliance with all the other requirements of the Convention, in particular Articles 7 (responsibilities of the broadcaster), 11 (general advertising standards), 12 (duration of advertising), 13 (form and presentation of advertising), 14 (insertion of advertising) and 15 (advertising of particular products)*”.

STATEMENT (2002) 1**ON HUMAN DIGNITY AND THE FUNDAMENTAL RIGHTS OF OTHERS**

*(adopted by the Standing Committee on Transfrontier Television
at its 31st Meeting (12-13 September 2002))*

The Standing Committee on Transfrontier Television of the Council of Europe, meeting in Strasbourg on 12-13 September 2002, has issued the following Statement, calling for increased vigilance by broadcasters and regulatory bodies as regards those television programmes which may be contrary to human dignity and the fundamental rights of others:

“Recent practice in some European countries has shown that in developing competitive programme policies, designed to protect market share and boost the economic potential and revenues of their stations, some broadcasters draw on programmes formats and ideas which can infringe upon human integrity and dignity and expose the participants in these programmes to a complete loss of their private life, as well as to gratuitous physical or psychological suffering.

In this context, the Standing Committee considers it necessary to recall the fundamental principles concerning human rights protection contained in the European Convention on Human Rights, as well as in Article 7 of the European Convention on Transfrontier Television, which lays down the primary responsibility of broadcasters as regards programme content, and provides that the presentation and content of programmes shall respect the dignity of the human being and the fundamental rights of others.

Broadcasters are of course free to design their programme schedules and the content of their programming but under Article 7 of the Convention, general limits for content also apply: for example, obscene/pornographic images or racist, homophobic or xenophobic expressions are all proscribed. In this context, the Standing Committee recalls Recommendation No. R (97) 19 on the portrayal of violence in the electronic media, adopted by the Committee of Ministers of the Council of Europe in 1997.

The Standing Committee draws the attention of broadcasting regulatory authorities in States Party to the Convention and other European countries, as well as broadcasters in these countries, to the need to pay particular attention to those programme formats which, depending on how they are produced and presented, may contain elements contrary to the general limits foreseen in Article 7 of the Convention, and could thus endanger respect for human life or dignity. In particular, the Standing Committee calls on regulatory authorities and broadcasters:

- to co-operate and discuss among themselves on a regular basis on the question of television programmes which might contravene human integrity or dignity, with a view to seeking consensual co-regulatory or self-regulatory solutions - as far as possible - as regards such programmes;
- to avoid contractual arrangements between broadcasters and participants whereby the latter relinquish substantially their right to privacy, since this may represent an infringement of human dignity. Contractual arrangements should be designed to protect the most vulnerable parties, namely the participants who may be tempted to waive their rights in the pursuit of popularity and money.”

RECOMMENDATION (04) 1
ON THE PROTECTION OF MINORS
FROM PORNOGRAPHIC PROGRAMMES

*(adopted by the Standing Committee on Transfrontier Television
at its 37th meeting on 11-12 October 2004)*

In application of Article 21 (a) of the Convention and Article 24 of its Rules of procedure, the Standing Committee adopted the Recommendation set out below:

“As already underlined in its Statement (2002) 1 on Human Dignity and the Fundamental Rights of Others, the Standing Committee recalls that the Parties to the European Convention on Transfrontier Television must ensure that programme services under their jurisdiction respect human dignity and the fundamental rights of others (Article 7, paragraph 1 of the Convention).

The Standing Committee reaffirms also the importance that it attaches to the protection of minors from programmes which might harm their physical, mental or moral development.

The Committee notes that, as a result of the growing competition between a large number of television services in Europe, an increase in the number of programme services or broadcasts which constitute an infringement of Article 7 paragraph 1, letter a) of the Convention can be observed in some countries.

This phenomenon is particularly worrying with respect to free-to-air programme services containing pornographic content, which can be easily accessible by minors and seriously impair their development.

In view of the necessity to protect minors from exposure to programme services or broadcasts which constitute an infringement of Article 7 paragraph 1, letter a), the Committee invites the Parties to the Convention:

- a) to assess to what extent broadcasters under their jurisdiction comply with the requirements set out in Article 7, paragraph 1, letter a) and, if that is not the case, to take, without delay, measures to meet these requirements, and in any case, in line with Article 7, paragraph 2 of the Convention, to ensure that children and adolescents are prevented from accessing programme services or broadcasts which constitute an infringement of Article 7, paragraph 1, letter a);*
- b) to co-operate between themselves, providing each other with information and any other type of assistance in order to effectively implement the above measures, and to promote the full co-operation between broadcasting regulatory authorities in this area;*
- c) to report within one year to the Committee on the measures which they may have taken under the preceding paragraphs. In the light of this information, the Committee will re-examine the situation in order to take any measures in its area of competence that it may consider appropriate to ensure the protection of minors.”*

OPINION No. 10 (2006)**ON FREEDOM OF RETRANSMISSION (ARTICLE 4)**

*(adopted by the Standing Committee on Transfrontier Television
at its 40th meeting (10-11 April 2006))*

In application of Article 22 of the Rules of Procedure, a Delegate requested, by communication of 5 April 2005, the opinion of the Standing Committee on the interpretation to be given to Article 4 of the Convention.

In particular, the Delegate sought to ascertain whether:

Freedom of retransmission under Article 4 of the European Convention on Transfrontier Television allows cable distributors to freely retransmit broadcast signals from a neighbouring country, that is also Party to the Convention, captured within the spill-over area, without providing evidence of compliance with relevant copyright and neighbouring rights laws.

In application of Article 21 c) of the Convention and following the discussions held at its 39th and 40th meeting, the Standing Committee concluded that:

Freedom of retransmission as guaranteed by Article 4 of the European Convention on Transfrontier Television does not constitute an absolute right. As an aspect of the more general right to freedom of expression and to hold opinion and to receive and impart information and ideas without interference by public authority and regardless of frontiers, it is subject to respect for the principles derived from Article 10 of the European Convention on Human Rights, in particular of its second paragraph. According to this provision, “The exercise [of the right to freedom of expression and to hold opinion and to receive and impart information] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, (...) for the protection of the reputation or the rights of others, (...)”

In the present case, the exercise of freedom of retransmission can legitimately be subject to restrictions for the protection of the rights of others as are prescribed by law and necessary in a democratic society, in particular copyright and neighbouring rights of broadcast organisations.

Thus, freedom of retransmission as guaranteed by Article 4 of the European Convention on Transfrontier Television does not exempt cable distributors retransmitting broadcast signals from a neighbouring country, that is also Party to the Convention, captured within the spill-over area, from compliance with relevant legislation on copyright and neighbouring rights of broadcast organisations.

OPINION No. 11 (2006)**ON THE NOTION OF “ANNOUNCEMENTS IN THE PUBLIC INTEREST”**

*(adopted by the Standing Committee on Transfrontier Television
at its 41st meeting (9 and 10 October 2006))*

By virtue of Article 22 of the Rules of Procedure, on 7 April 2006, a Delegate requested the opinion of the Standing Committee on the interpretation to be given to Article 12, paragraph 4, of the European Convention on Transfrontier Television.

The Delegate sought to ascertain:

- a) the extent of the notion of “announcements in the public interest” and, in particular, whether elements like the nature of the requesting body, the targeted public, the topic and its presentation should be taken into consideration in order to appreciate the “public interest” nature of an announcement;
- b) how to consider a governmental campaign of public interest launched just before an election campaign.

In application of Article 21, paragraph 1, sub-paragraph (c) of the Convention and following discussions held at its 41st meeting, the Standing Committee adopted the following opinion:

The Standing Committee recalls that, for the purposes of Article 12 of the European Convention on Transfrontier Television (limitations as to the duration of advertising), announcements in the public interest are not considered as advertising.

The notion of announcements in the public interest under Article 12, paragraph 4, should be understood as covering announcements that pursue a purely social benefit or altruistic objective, regardless of the public or private nature of the requesting body. The identity of the latter, the subject of the announcement and its content can be relevant as indicative of or revealing the public interest.

Paragraph 104 of the Explanatory Report to the revised Convention provides some examples of announcements in the public interest, namely those that concern road safety or health campaigns.

A governmental campaign in the public interest launched just before or screened during an electoral campaign which meets the above-mentioned requirements would not be considered as advertising for the purpose of the limitations set out in Article 12 of the Convention as to the duration of advertising.

Nevertheless, announcements in the public interest are bound by the general rules set forth by Article 7 and 11 of the European Convention on Transfrontier Television (responsibilities of the broadcaster and general standards).

OPINION No. 12 (2006)**ON THE PROHIBITION OF SPONSORSHIP OF NEWS
AND CURRENT AFFAIRS PROGRAMMES**

*(adopted by the Standing Committee on Transfrontier Television
at its 41st meeting (9 and 10 October 2006))*

By virtue of Article 22 of the Rules of Procedure, on 22 September 2006, a Delegate requested the opinion of the Standing Committee on the interpretation to be given to Article 18, paragraph 3, of the European Convention on Transfrontier Television.

The Delegate sought to ascertain:

With a view to adopting secondary legislation, how should the prohibition of sponsorship of current affairs programmes be interpreted in the context of thematic news channels. The Delegate in question indicated that broadcasters argue that the sustainability of news service through thematic channels cannot be ensured if these programmes are not sponsored.

In application of Article 21, paragraph 1, sub-paragraph (c), of the Convention and following discussions held at its 41st meeting, the Standing Committee adopted the following opinion:

The Standing Committee recalls that, according to Article 2, paragraph (h), of the Convention, sponsorship is “the participation of a natural or legal person, who is not engaged in broadcasting activities or in the production of audiovisual works, in the direct or indirect financing of a programme with a view to promoting the name, trademark, image or activities of that person”.

It also recalls that the obligations of broadcasters, set out in Article 7, paragraph 3, of the Convention, include the need to ensure that news fairly present facts and events and encourage the free formation of opinions. In prohibiting the sponsorship of current affairs programmes, Article 18, paragraph 3, of the Convention seeks to ensure the effectiveness of this objective, to guarantee the independence of news and current affairs programmes (cf. paragraph 291 of the Explanatory Report to the revised European Convention on Transfrontier Television) and to prevent confusion between information and the promotion of the interests of the sponsor.

This prohibition has to be interpreted strictly.

Consequently, the prohibition does not extend to programmes that cannot be categorised as news and current affairs programmes, as clarified in paragraph 292 of the Explanatory Report, which states that “current affairs refers to strictly news-related programmes such as commentaries on news, analysis of news developments and political positions on events in the news”.

On the other hand, forms of commercial communication other than sponsorship are not prohibited.