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**EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION**

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**STANDING COMMITTEE ON TRANSFRONTIER TELEVISION**

**(T-TT)**

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**41st meeting  
9 and 10 October 2006  
Human Rights Building, Strasbourg  
Room 20 RC Jardin**

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**Request for interpretation of Article 18, paragraph 3,  
of the European Convention on Transfrontier Television**

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## **Introduction**

On 22 September 2006, the Delegate of Turkey submitted the following request for interpretation of Article 18, paragraph 3, of the European Convention on Transfrontier Television, for consideration by the Standing Committee:

*“We are now preparing a secondary regulation for the thematic channels. In respect of this, there are some discrepancies between the broadcasters and the Supreme Council on the sponsorship of the current affairs programmes. Since Article 18 (3) prohibits sponsorship of current affairs programmes, thematic news channels claim that they cannot survive if these programmes are not sponsored. Therefore we would like to ask the opinion of the delegates and would like to learn their applications in terms of current affairs programmes and thematic channels.”*

## **Relevant provisions of the European Convention on Transfrontier Television (ECTT)**

### **Article 7: Responsibilities of the broadcaster**

[...]

3. The broadcaster shall ensure that news fairly presents facts and events and encourages the free formation of opinions.

## **Chapter III Advertising and Tele-shopping**

### **Article 11: General standards**

1. Advertising and tele-shopping shall be fair and honest.
2. Advertising and tele-shopping shall not be misleading and shall not prejudice the interests of consumers.
3. Advertising and tele-shopping addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities.
4. Tele-shopping shall not exhort minors to contract for the sale or rental of goods and services.
5. The advertiser shall not exercise any editorial influence over the content of programmes.

### **Article 12: Duration**

1. The proportion of tele-shopping spots, advertising spots and other forms of advertising, with the exception of tele-shopping windows within the meaning of paragraph 3, shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.

2. The proportion of advertising spots and tele-shopping spots within a given clock hour shall not exceed 20%.
3. Windows devoted to tele-shopping programmes broadcast within programme services which are not exclusively devoted to tele-shopping shall be of a minimum uninterrupted duration of 15 minutes. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified by optical and acoustic means.
4. For the purposes of this Article, advertising shall not include:
  - announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
  - announcements in the public interest and charity appeals broadcast free of charge.

**Article 13: *Form and presentation***

1. Advertising and tele-shopping shall be clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means. In principle, advertising and tele-shopping spots shall be transmitted in blocks.
2. Advertising and tele-shopping shall not use subliminal techniques.
3. Surreptitious advertising and tele-shopping shall not be allowed, in particular the presentation of products or services in programmes when it serves advertising purposes.
4. Advertising and tele-shopping shall not feature, visually or orally, persons regularly presenting news and current affairs programmes.

**Article 14: *Insertion of advertising and tele-shopping***

1. Advertising and tele-shopping shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this Article are fulfilled, advertising and tele-shopping spots may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced.
2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and tele-shopping spots shall only be inserted between the parts or in the intervals.
3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than forty-five minutes, may be interrupted once for each complete period of forty-five minutes. A further interruption is allowed if their scheduled duration is at least twenty minutes longer than two or more complete periods of forty-five minutes.

4. Where programmes, other than those covered by paragraph 2, are interrupted by advertising or tele-shopping spots, a period of at least twenty minutes should elapse between each successive advertising or tele-shopping break within the programme.

5. Advertising and tele-shopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when their scheduled duration is less than thirty minutes, shall not be interrupted by advertising or tele-shopping. If their scheduled duration is thirty minutes or longer, the provisions of the previous paragraphs shall apply.

#### **Article 15: Advertising and tele-shopping of particular products**

1. Advertising and tele-shopping for tobacco products shall not be allowed.

2. Advertising and tele-shopping for alcoholic beverages of all varieties shall comply with the following rules:

(a) they shall not be addressed particularly to minors and no one associated with the consumption of alcoholic beverage in advertising or tele-shopping should seem to be a minor;

(b) they shall not link the consumption of alcohol to physical performance or driving;

(c) they shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal problems;

(d) they shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(e) they shall not place undue emphasis on the alcoholic content of beverages.

3. Advertising for medicines and medical treatment which are only available on medical prescription in the transmitting Party shall not be allowed.

4. Advertising for all other medicines and medical treatment shall be clearly distinguishable as such, honest, truthful and subject to verification and shall comply with the requirement of protection of the individual from harm.

5. Tele-shopping for medicines and medical treatment shall not be allowed.

#### **Article 16: Advertising and tele-shopping directed specifically at a single Party**

1. In order to avoid distortions in competition and endangering the television system of a Party, advertising and tele-shopping which are specifically and with some frequency directed to audiences in a single Party other than the transmitting Party shall not circumvent the television advertising and tele-shopping rules in that particular Party.

2. The provisions of the preceding paragraph shall not apply where:

(a) the rules concerned establish a discrimination between advertising and tele-shopping transmitted by a broadcaster within the jurisdiction of that Party and advertising and tele-

shopping transmitted by a broadcaster or any other legal or natural person within the jurisdiction of another Party, or

(b) the Parties concerned have concluded bilateral or multilateral agreements in this area.

## **Chapter IV Sponsorship**

### **Article 17: *General standards***

1. When a programme or series of programmes is sponsored in whole or in part, it shall clearly be identified as such by appropriate credits at the beginning and/or end of the programme.
2. The content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes.
3. Sponsored programmes shall not encourage the sale, purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services in such programmes.

### **Article 18: *Prohibited sponsorship***

1. Programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising and tele-shopping of which are prohibited by virtue of Article 15.
2. Companies whose activity includes, *inter alia*, the manufacture or sale of medicines and medical treatments may sponsor programmes by promoting the name or the image of the company, to the exclusion of any reference to medicines or specific medical treatment available only on medical prescription in the transmitting Party.
3. Sponsorship of news and current affairs programmes shall not be allowed.

## **Relevant extracts from the Explanatory Report**

### ***Article 7 - Responsibilities of the broadcaster***

#### ***Paragraph 3***

165. This paragraph embodies an important principle, which is moreover reflected in codes of conduct of professional organisations of journalists, and aims to guarantee the plurality of information sources and the independence of news programmes. Those responsible for programme services and journalists in charge of news services have a moral responsibility towards the public not only for the reporting of news but also for their comments on events and their developments.

166. The reference to the free formation of opinions concerns, *inter alia*, respect of Parties' rules regarding electoral or political campaigns, without prejudice to freedom of expression.

### ***Chapter III - Advertising and tele-shopping***

#### ***Article 11 - General standards***

205. The principles embodied in this Article confirm and reinforce those already set out in Recommendation No. R (84) 3 on principles on television advertising and Recommendation 952 (1982) of the Parliamentary Assembly on international means to protect freedom of expression by regulating commercial advertising. Similar concerns are also reflected in codes of conduct such as the International Code of Advertising Practice of the International Chamber of Commerce (ICC), a code which members of the European Broadcasting Union (EBU) agreed to follow when they adopted the Declaration on Principles regarding Commercial Advertising by DBS.

206. Examples of general standards to which this Article refers can be found in Article 12 of the revised Directive, which stipulates that television advertising shall not (a) prejudice respect for human dignity; (b) include any discrimination on grounds of race, sex or nationality; (c) be offensive to religious or political beliefs; (d) encourage behaviour prejudicial to health or to safety; (e) encourage behaviour prejudicial to the protection of the environment.

207. In addition to the principles set out in this Article, it follows from Article 7 of the Convention that advertising and tele-shopping programmes must comply with the standards set out in paragraphs 1 and 2 thereof.

#### ***Paragraph 1***

208. It follows from the provisions of this paragraph that advertising and tele-shopping should not unfairly discredit the products or services of competitors.

#### ***Paragraph 2***

209. This paragraph underlines the importance attached to respecting viewers' interests. This responsibility of advertisers and providers of tele-shopping programmes *vis-à-vis* consumers is the corollary of the freedom of commercial speech which they enjoy: they should not, for example, take advantage of the trust or lack of knowledge of consumers.

210. It follows from paragraph 126 above that the provisions of this paragraph 2 and of paragraph 1 are without prejudice to the civil or criminal law liability of the broadcaster in these matters and to the rules on unfair competition.

#### ***Paragraph 3***

211. This paragraph supplements the provisions of Article 7, paragraph 2, on the protection of minors. In addition to the general principle for respect of the individual's interests affirmed in paragraphs 1 and 2, the Convention accords specific protection of the interests of children and adolescents. The will to protect such interests is already reflected in principle 5 of Recommendation No. R (84) 3 and the codes referred to in paragraph 205 above.

212. From Article 16 of the revised Directive, examples can be derived of the manner in which minors shall be protected against any advertising as well as tele-shopping programmes which could cause moral or physical harm to them. Thus, advertising and tele-shopping programmes shall respect the following criteria: (a) they shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity; (b) they shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised; (c) they shall not exploit the special trust minors place in parents, teachers or other persons; (d) they shall not unreasonably show minors in dangerous situations.

***Paragraph 4***

213. In addition to compliance with the general standards set out in the paragraphs 1 to 3, tele-shopping shall not exhort minors to contract for the sale or rental of goods or services.

***Paragraph 5***

214. This paragraph confirms an important principle: the editorial independence of the broadcaster *vis-à-vis* advertisers in respect of the content of programmes. In relation to sponsored programmes, however, this provision is without prejudice to the general rule contained in Article 17, paragraph 2.

215. The term "advertiser" means the natural or legal person for whom advertising or, as the case may be, tele-shopping is broadcast.

***Article 12 - Duration***

216. The provisions of this Article are designed to maintain a balance between the needs of certain broadcasters for advertising revenue and respect for the independence of the broadcaster and the integrity of programmes, bearing in mind current and future trends in the mode of financing of programme services.

217. This Article aims at ensuring that the amount of transmission time devoted to tele-shopping spots, advertising spots and other forms of advertising broadcast by programme services not exclusively devoted to tele-shopping, is neither excessive nor detracts from the function of television as a medium of information, education, social and cultural development and entertainment. Paragraph 1 establishes a general balance calculated over a 24-hour period; paragraph 2 is designed to prevent this balance from being upset by an excessive concentration of advertising and tele-shopping spots during prime time; paragraph 3 establishes a ceiling on the number of daily tele-shopping windows and the daily amount of broadcasting time which can be devoted to tele-shopping windows. Paragraph 4 excludes certain types of announcements from the application of the present Article.

***Paragraph 1***

218. This paragraph specifies that the total amount of tele-shopping spots, advertising spots and other forms of advertising taken together, shall not exceed 20% of the daily transmission time. At the same time, it is specified that the total amount of daily transmission time devoted to advertising spots only should not exceed 15%. In fact, the substance of this provision has not changed since it was already the case that where tele-shopping activities were authorised, in a transmitting Party, the total daily percentage of transmission time devoted to advertising (the



definition of which included tele-shopping activities) could be increased to 20%, provided that the amount of spot advertising did not exceed 15%.

219. It is however to be noted that this paragraph is to be considered in the light of paragraph 3, which is designed to avoid an excessive amount of tele-shopping programmes within programme services which are not exclusively devoted to tele-shopping, over a 24-hour period (see below, paragraph 224).

220. Subject to the foregoing and depending on the number of hours the programme service is transmitted per day, programme services not exclusively devoted to tele-shopping are free to determine how much time shall be devoted respectively to tele-shopping spots, advertising spots and other forms of advertising. Therefore, a given programme service which is not exclusively devoted to tele-shopping could transmit 15% of advertising spots and 5% of tele-shopping spots and other forms of advertising or 10% advertising spots and 10% of tele-shopping spots and other forms of advertising or even 20% of tele-shopping spots and other forms of advertising and no advertising spots.

### ***Paragraph 2***

221. This paragraph provides that the total amount of advertising and tele-shopping spots within a given clock-hour period shall not exceed 20%. As indicated in paragraph 217 above, its purpose is to avoid an excessive concentration of advertising and tele-shopping spots during prime time in programme services which are not devoted exclusively to tele-shopping.

222. In order to calculate the percentage of advertising in both paragraphs 1 and 2 of this Article, it is also necessary to bear in mind Article 2, sub-paragraph f; it follows that the forms of advertising, publicity or announcements in the public interest referred to in paragraph 104 above, which are excluded from the concept of "advertising" in Article 2, sub-paragraph f, are not to be included in these calculations.

### ***Paragraph 3***

223. The revised Directive distinguishes, as regards channels not exclusively devoted to tele-shopping, between transmission time devoted to tele-shopping spots, advertising spots and other forms of advertising on the one hand and, on the other hand, transmission time devoted to tele-shopping windows. In addition, the revised Directive applies to channels exclusively devoted to tele-shopping or self-promotion, without conventional programme elements such as news, sports, films, documentaries and drama. It was decided that the provisions of the Convention should be brought in line with these distinctions made in the Directive. Therefore, this Article was re-formulated extensively in order to take account of the fact that tele-shopping is now considered to be different from advertising.

224. Whereas paragraph 1 fixes global percentages of the daily transmission time authorised for tele-shopping spots, advertising spots and other similar forms of advertising, paragraph 3 acts as a counter-balance in order to avoid an excessive amount of tele-shopping in programme services which are not exclusively devoted to tele-shopping over a 24-hour period as well as to avoid an excessive number of interruptions of the regular programme service of a broadcaster. Paragraph 3 therefore provides that tele-shopping windows in programme services which are not exclusively devoted to tele-shopping shall be of a minimum uninterrupted duration of 15

minutes and that the maximum number of windows per day shall be eight. In addition, their overall duration shall not exceed three hours per day.

#### ***Paragraph 4***

225. In order to avoid distortions of competition, the derogation provided for under this paragraph is limited to announcements concerning products which fulfil the dual condition of being both ancillary to and directly derived from the programmes of a broadcaster. In this respect, the term "ancillary products" is understood as referring to products intended specifically to allow the viewers to benefit fully from or to interact with these programmes (for example, an ancillary product will be a book or a video cassette distributed by a broadcaster in support of a programme dedicated to teaching foreign languages, so that the public can supplement teaching).

226. The derogation also applies to announcements by broadcasters in connection with their own programmes, such as the identification of the broadcaster or programme service, the display of the schedule of upcoming programmes services, the preview of films and other programme services in advance, programme trailers announcing forthcoming programmes of the broadcaster, as well as self-promotional messages.

227. Finally, the derogation applies to announcements in the public interest and charity appeals broadcast free of charge by broadcasters. It will be recalled that such announcements and appeals are covered by the definition of advertising (see paragraphs 51 and 104 above).

#### ***Article 13 - Form and presentation***

##### ***Paragraph 1***

228. The purpose of this provision is to avoid any confusion between advertising or tele-shopping programmes and the other items of the programme service. It is based on principles 6 and 7 of Recommendation No. R (84) 3 on principles on television advertising. It established that advertising and tele-shopping programmes shall be clearly distinguishable as such and separate from the other items of the programme service with a view to guaranteeing the function of television as a medium of information, education, social and cultural development and entertainment, as well as the editorial independence of the broadcaster; this principle is moreover to be found in various codes such as that of the ICC.

229. As a general rule, advertising and tele-shopping programmes should be transmitted in blocks comprising two or more separate spots. There may be circumstances where individual spots are permissible, in the case for example of a single long advertisement; or where the period available for advertising or tele-shopping 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. But these situations should remain the exception. In its Opinion No. 4 (1995) on certain provisions on advertising and sponsorship, the Standing Committee expressed the view that national authorities have a margin of appreciation to evaluate on a case-by-case basis 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.

230. In this context, reference must be made to the relatively new techniques of 'virtual advertising'. Today, it is technically feasible to produce 'virtual' images (images of which the quality and the context in which they are presented are such that the viewer who has not been warned, may perceive them as real images). The questions raised by the use of such images in news and current affairs programmes have been the subject of profound investigation within the Standing Committee. In its Recommendation No. R (96) 1 concerning the use of virtual images in news and current affairs programmes, it considered 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 considered that, within the framework of Article 7 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 a news item;
- thirdly, the viewer must be clearly informed, by appropriate means, when virtual images are being used.

231. Furthermore, the Standing Committee examined the questions raised by the use of virtual techniques 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.

232. In its Recommendation No. R (97) 1 concerning the use of virtual advertising notably during the broadcast of sports events, the Standing Committee considered 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.

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

234. Furthermore, without prejudice to any other indications which might be necessary in the future, the Standing Committee stressed 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.

### ***Paragraph 2***

235. This paragraph confirms principle 10 of Recommendation No. R (84) 3. It prohibits the transmission of physically weak visual or oral advertising messages or tele-shopping of which the recipient is not consciously aware; such messages are contrary to the principles of identification and separation embodied in paragraph 1.

236. It follows from the concept of advertisement retained in Article 2, sub-paragraph f, that this prohibition also relates to subliminal messages aimed at advancing a cause or idea.

### ***Paragraph 3***

237. The absence of identification and separation from the other items of the programme service also justifies prohibiting surreptitious advertising or tele-shopping programmes, in particular the presentation of products or services in programmes when it serves advertising purposes. It should be recalled that the revised Directive defines surreptitious advertising as the representation in words or pictures of goods, services, the name, the trade mark 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 advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration. A distinction must be made between the broadcasting by a broadcaster of cinematographic films containing product placement for which the broadcaster cannot be held responsible and audiovisual works containing product placement, which have been conceived for television. In this second case, the broadcaster must ensure that these works are in conformity with the provisions of paragraph 3.

238. The forms of presentation of products or services which are prohibited under this paragraph are those which attach a value judgment to a product or service (such as extolling the merits of the product or service or expressing a preference for a particular product or service in relation to other similar products or services) or which use the same terms or visual elements as those used in a spot advertisement for the product or service concerned.

239. On the other hand, the presentation of a product or service of broadcasters or third parties is authorised when it only refers to its characteristic features for information purposes, or when such presentation is necessary for the conduct of the programme (such as game shows in which the prizes comprise the products or services of the sponsor, announcements for films in a programme devoted to the cinema, or for literary works in a literary programme).

### ***Paragraph 4***

240. This paragraph 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 or tele-shopping.

241. Having regard to the principles of identification and separation established in paragraph 1, it is important that this prohibition is not limited to the particular programme service in which the person regularly presents news or current affairs programmes.

242. This provision is linked to Articles 7, paragraph 3, 14, paragraph 5, and 18, paragraph 3, in so far as it highlights the importance attached to news; this is also the reason why the prohibition is limited solely to persons regularly presenting news and current affairs programmes.

243. The term "current affairs" refers to strictly news-related programmes such as commentaries on news, analysis of news developments and political positions on events in news. In its Opinion No. 4 (1995) on certain provision on advertising and sponsorship, the Standing Committee concluded that although this is a definition *stricto sensu*, "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".

244. The reference to "orally" is intended to exclude use being made of the presenter's voice in advertising, without the person actually appearing on the screen.

#### ***Article 14 - Insertion of advertising and tele-shopping***

245. This Article aims to establish a reasonable balance between the financial interests of the broadcaster and advertiser, on the one hand, and the interests of viewers, authors and creators or providers of tele-shopping programmes, on the other hand. It establishes the conditions in which programmes may be interrupted by advertising or tele-shopping.

246. Paragraph 1 establishes that advertising and tele-shopping shall be inserted between programmes; subject to fulfilment of the conditions in the subsequent paragraphs, they may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced. This general requirement applies in all the cases specified in the subsequent paragraphs of this Article where programmes may be interrupted by advertising and tele-shopping.

247. Paragraph 2 refers to programmes consisting of autonomous parts (such as game shows with rounds, magazine programmes) or sports programmes or similarly structured events or performances (concerts, opera or theatre, etc.) comprising intervals. Advertising and tele-shopping may only be inserted between the autonomous parts or in the intervals. In its Opinion No. 4 (1995) on certain provisions on advertising and sponsorship, 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.

248. Paragraph 3 specifies that the transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and

documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes. This means that the transmission of a feature film or a film made for television, the scheduled duration of which is 90 minutes, may be interrupted twice by advertising or tele-shopping; where the scheduled duration is 110 minutes or more, a further interruption is authorised. In keeping with the spirit of this paragraph, documentaries having a degree of artistic merit are to be assimilated to feature films and other films. Such works are very similar to the latter, both in themselves and in the audience they reach. The same rules must accordingly be applicable to them.

249. The broadcaster nevertheless remains free to determine at what point the interruption should occur, provided the general requirements in paragraphs 1 and 4 are respected. Therefore, where the broadcaster transmits a film made for television, the scheduled duration of which is 50 minutes, he may, for example, choose to insert advertising after a period of 25 minutes has elapsed; where the scheduled duration of the film is 100 minutes, he may, for example, choose a first interruption after a period of 35 minutes has elapsed, followed by a second interruption after a further period of 35 minutes; where the scheduled duration is 120 minutes, he may, for example, choose a first interruption after 40 minutes have elapsed, a second interruption after a period of 80 minutes and a final interruption after 100 minutes.

250. Paragraph 4 of this Article contains a further general requirement, over and above the specifications in paragraphs 3 and 5, to the effect that at least 20 minutes should elapse between each successive advertising or tele-shopping break within the programme. The programmes referred to in paragraph 2 have been excluded from this requirement in so far as a period of less or more than 20 minutes may elapse - depending on the programme - before the end of the autonomous part or before the interval.

251. In exceptional circumstances where it is not practicable to adhere rigidly to the exact application of this 20 minutes rule, the broadcaster may allow a subsequent break slightly less than 20 minutes after the preceding one.

252. The first sentence of paragraph 5 reflects the concern that religious services should not be interrupted by advertising or tele-shopping, which corresponds moreover to the current practice of broadcasters. The second sentence covers a series of concerns: firstly the importance attached to news and current affairs programmes (reflected elsewhere in the Convention); secondly the desire to respect religious beliefs and convictions; thirdly, the protection of children and young persons from an excessive amount of advertising or tele-shopping inserted in programmes designed especially for them; finally, the desire to avoid advertising interruptions in documentaries of a limited duration. Accordingly, where the scheduled duration of such programmes is less than 30 minutes, advertising or tele-shopping may not be inserted in them; where their scheduled duration is 30 minutes or more, the provisions of the preceding paragraphs apply, according to the nature of the programme concerned.

#### ***Article 15 - Advertising and tele-shopping of particular products***

253. This Article develops the concerns expressed in principle 4 of Recommendation No. R (84) 3 on principles on television advertising and reflects the increasingly restrictive position of member States with regard to the advertising of certain specific products. Similar principles are also to be found in certain codes of practice such as those mentioned in paragraph 205 above.

***Paragraph 1***

254. This paragraph prohibits advertising and tele-shopping for tobacco products: cigarettes, cigars, pipe tobacco or cigarette tobacco, chewing tobacco, snuff or any other tobacco-based product.

255. The prohibited advertising is advertising within the meaning of Article 2; consequently this provision does not deal with advertising placed in certain events which are transmitted or retransmitted in television programme services, in so far as these have been excluded from the Convention's field of application (see, however, paragraph 100 above *in fine*).

***Paragraph 2***

256. Alcoholic beverage means any beverage with an alcoholic content, whatever the degree of alcohol; it includes among others, cider, beer, shandy, wine.

257. Advertising and tele-shopping for alcoholic beverages are subject to a number of rules aimed at ensuring the protection of consumers (in particular, minors) and preventing an excessive consumption of such beverages prejudicial to health.

258. The rules are designed to prevent the consumption of such beverages from being presented in an attractive light (physical performance, therapeutic qualities, etc.) and to prevent advertising and tele-shopping from boasting the high or low alcoholic content of a given beverage.

***Paragraphs 3 and 4***

259. Two reasons justify the inclusion of common rules on advertising for medicines and medical treatment: firstly, the risk that such advertising could encourage their abusive consumption; secondly the fact that, due to the absence of harmonisation of legislations and to the internationalisation of television advertising, domestic legislation on medicines and medical treatment will have an increasing impact beyond national territories.

260. The provisions embodied in paragraphs 3 and 4 of this Article are inspired by two Resolutions, AP (95) 1 (on the classification of medicines which are obtainable only on medical prescription) and the attached list of medicines available on medical prescription, as well as AP (83) 1 (on regulations governing the advertising of medicines to the public) resulting from the Partial Agreement in the Social and Public Health Field concluded within the Council of Europe. They follow the distinction made in those resolutions between medicines and medical treatment which are only obtainable on medical prescription and those which are not.

261. In the absence of harmonisation of legislations in this field, the regulations of the transmitting Party, within the meaning of Article 5, paragraph 2, are to constitute the reference for determining medicines and medical treatment obtainable only on medical prescription; however, it is possible that neighbouring Parties clarify, through bilateral agreements, the situation of medicines and medical treatment which are available only on prescription in one Party and not in the other.

262. According to paragraph 3, advertising for medicines and medical treatment which are available only on medical prescription are prohibited. *A contrario*, this paragraph will not apply to medicines or medical treatment which are available in a transmitting Party without a medical prescription; paragraph 4 will apply in such cases.

263. Paragraph 4 subjects advertising for other medicines and medical treatment to a number of general requirements: they must be honest, truthful, subject to verification and comply with the requirement of protection of the individual from harm. These requirements appear in more specific terms in the aforementioned recommendations of the partial agreement and in various professional codes, establishing, inter alia, that advertising must not contain exaggerated expressions or treatment indications of too general a nature, suggestions that good health is likely to be endangered if the product is not used, offer a diagnosis or treatment by correspondence, suggest that the efficacy or the safety of a product is due to the fact that it is "natural", or be addressed to children, induce fear, etc.

264. For the implementation of paragraphs 3 and 4 of this Article, it will be important to make use of the provisions on the exchange of information set out in Article 19 of the Convention.

#### ***Paragraph 5***

265. Medicine means any substance or combination of substances which is used for treating or preventing disease in human beings, as well as any substance or combination of substances, which may be administered to human beings with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in human beings. This definition takes particularly account of the meaning given to the term medicines by European Community Law. In this context, the term "substance", which is used in this definition, as referring to any matter irrespective of origin which may be (i) human, e.g. human blood and human blood products; (ii) animal, e.g. micro-organisms, whole animals, parts of organs, animal secretions, toxins, extracts, blood products etc.; (iii) vegetable, e.g. micro-organisms, plants, parts of plants, vegetable secretions, extracts etc.; (iv) chemical, e.g. elements, naturally occurring chemical materials and chemical products obtained by chemical change or synthesis. It is worth recalling that the prohibition under Article 15 (5) does not apply to non-medicinal products, like shampoos, beauty products etc.

266. Tele-shopping for medicines and medical treatments shall not be allowed. The notion of 'medical treatment' shall be interpreted in the light of the regulations existing in each Party. For example, in certain Parties there are provisions which include in the category of "medical treatment" products or services such as prostheses, products claiming health effects or spa treatments (see paragraphs 259 to 262 above).

#### ***Article 16 - Advertising and tele-shopping directed specifically at a single party***

267. This Article lays down that, where a particular audience in a single Party is targeted specifically and with some frequency by advertising or tele-shopping programmes in a programme service transmitted from another Party, the advertising or tele-shopping programmes concerned shall not circumvent the rules governing television advertising or tele-shopping in the Party in which the audience is targeted. The purpose of this Article is therefore to avoid situations whereby advantage is taken in the transfrontier character of a programme service and of the different rules applicable to television advertising or tele-shopping in the



Parties, in order to circumvent the television advertising or tele-shopping rules in a single Party other than the transmitting Party, thereby creating distortions in competition or affecting the equilibrium of its television system.

268. It is to be noted that this Article does not prohibit the targetting of a particular audience other than that of the transmitting Party, but merely aims to ensure that, when an audience in a single receiving Party is targetted by advertising or tele-shopping programmes, there is a reasonable equality of opportunity between, on the one hand, advertising or tele-shopping programmes transmitted by entities or by technical means within the jurisdiction of the transmitting Party concerned and, on the other hand, advertising or tele-shopping programme transmitted by entities or by technical means within the jurisdiction of the receiving Party concerned (including those which are not transfrontier in character in the case of the latter Party).

269. This Article provides two exceptions to the rule of non-circumvention of the television advertising or tele-shopping rules of the Party in which the audience is targetted. The first exception concerns cases in which the television advertising or tele-shopping rules establish discriminations on the basis of the origin of advertising or tele-shopping (for example, stating that advertising emanating from another Party are not allowed in respect of a particular product, whereas advertising transmitted by entities or by technical means within the jurisdiction of the Party concerned are allowed). Clearly such rules would be contrary to the notion of equality of opportunity referred to in paragraph 268 above.

270. The second exception, which is not necessarily cumulative with the first one, covers the case where the Parties concerned have concluded bilateral or multilateral agreements in this area, either prior to the adoption of the Convention, or subsequently.

271. The criteria mentioned in this Article ("specifically", "with some frequency", "single Party"; "circumvention") are cumulative; in the absence of one criterion, advertising cannot be considered to be prohibited.

272. In order to determine whether advertising or tele-shopping is specifically directed at audiences in a single Party other than the transmitting Party, the following additional elements might, for example, be retained:

- the (name of the) product or service advertised or shown in the framework of a tele-shopping programme;
- the currency used in advertising or tele-shopping;
- the selling points mentioned;
- the language used in advertising or tele-shopping (speech and/or subtitle).

273. It is to be noted that the mere fact of subtitling or dubbing advertising concerned in several languages may not necessarily preclude the application of this Article. This would be the case, for example, where notwithstanding such dubbing or subtitling, elements referred to in paragraphs 271 and 272 above clearly illustrate that a single audience is in fact being targetted by advertising or tele-shopping concerned.

274. The notion of circumvention referred to in this Article does not imply that, when a particular audience is being targetted in a given single Party, the broadcaster must first acquire detailed knowledge of all the television advertising or tele-shopping rules in that Party, but rather a broad understanding thereof. It follows that failure to respect rules of an obscure, ambiguous or imprecise character would not qualify as circumvention for the purposes of this Article. Indeed, in this as in other matters, the principles of legal certainty, accessibility and proportionality should be applied.

275. It is understood that, where different advertising or tele-shopping regimes apply to different broadcasters in a Party, for example public and private broadcasters, the most favourable treatment principle shall apply to advertising or tele-shopping specifically targetted at the audience of that Party.

276. It will be for the Party in which the audience is specifically targetted by advertising or tele-shopping in programme services transmitted by entities or by technical means within the jurisdiction of another Party to provide elements to illustrate that the circumvention of its television advertising or tele-shopping rules could lead to distortions in competition or the endangering of its television system.

277. It follows from the preceding paragraphs, for example, that:

- a programme service containing advertising or tele-shopping for products or services the television advertising or tele-shopping of which is prohibited in a receiving Party would not be considered contrary to this Article unless such advertising or tele-shopping are specifically and with some frequency directed solely to audiences in that Party in order to circumvent its advertising or tele-shopping rules;
- a programme service containing a percentage of advertising or tele-shopping which is superior to that authorised in a receiving Party or advertising or tele-shopping which are inserted in a manner which is not authorised in a receiving Party would not be considered contrary to this Article, subject to conformity with the provisions of Articles 12 and 14 of the Convention. However, notwithstanding conformity with Articles 12 and 14, this Article would be applicable if advertising or tele-shopping in question are specifically and with some frequency directed solely to audiences in that Party and can clearly be considered as circumventing the advertising or tele-shopping rules in that Party;
- a programme service transmitting with some frequency advertising or tele-shopping for products or services exclusively available in one receiving Party and in the language of that Party would not be considered contrary to this Article unless the transmission of such advertising circumvents the advertising or tele-shopping rules in that Party.

#### ***Chapter IV - Sponsorship***

##### ***Article 17 - General standards***

278. In accordance with the provisions of Article 2, sub-paragraph h., the notion of sponsored programmes does not embrace sponsored events (see above, paragraph 110).

### ***Paragraph 1***

279. This paragraph embodies the principle that sponsored programmes must be clearly identified as such. The identification of the sponsor is a means of warning viewers that special interests might be involved in the production of the programme. Consequently surreptitious sponsorship (when the sponsor is not identified in any way) is prohibited under this paragraph.

280. Furthermore, the possibility for viewers of immediately identifying the sponsor constitutes, for the sponsor, the guarantee of obtaining the desired increase in renown in return for his/her participation in the direct or indirect financing of a programme.

281. The appropriate credits at the beginning or end of the programme may, subject to the choice of the sponsor, be the company name or the name of one of its most well-known products, logo or any other means of identifying the sponsor, on the condition that such credits do not contain specific promotional elements (encouragement to purchase, reference to the quality or the effectiveness of the product, etc.; see above, paragraph 107). In its Opinion No. 4 (1995) on certain provisions on advertising and sponsorship, 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. It does not prohibit the insertion of the name and/or logo of the sponsor at other times than the beginning and/or end of the programme, provided that any such reference to the sponsor is not repeated excessively during the programme.

282. It will be for the broadcaster to choose whether the credits will be at the beginning or end of the programme, or both.

### ***Paragraph 2***

283. The principle underlying this provision is that the broadcaster retains full responsibility over the content and scheduling of the sponsored programme and, consequently, editorial independence with regard to programmes. This paragraph therefore echoes a similar concern expressed in Article 11 paragraph 5, in relation to advertising (see above, paragraph 214).

### ***Paragraph 3***

284. Having regard to the concept of sponsorship used in Article 2, subparagraph h., the purpose of this paragraph is to exclude any promotion of a product or service of the sponsor within the sponsored programme. Such promotion would be tantamount to advertising and would therefore be prohibited under Article 13, paragraphs 1 and 3. However, the mere fact of the acknowledgement of the identity of the sponsor in accordance with Article 17, paragraph 1, shall not in itself be taken as encouraging the purchase or rental of the sponsor's products or services.

285. The reference in this paragraph to the promotion of a third party's products or services is designed to avoid the emergence of practices of cross-sponsorship between two or more sponsors and two or more sponsored programmes.

286. In the case of game shows and quizzes in which the prizes comprise the products or services of the sponsor, one single oral or visual reference to the name or logo of the sponsor or to the same product or service is allowed as information for the public. With the exception of this and the other cases referred to in paragraph 239, any other form of presentation of products or services within sponsored programmes is prohibited.

### ***Article 18 - Prohibited sponsorship***

#### ***Paragraph 1***

287. This paragraph establishes that, when the principal activity of a natural or legal person is the manufacture or sale of products, or the provision of services, the advertising or tele-shopping of which is prohibited under Article 15, he/she may not sponsor a programme. This is to prevent such a person from benefiting, through sponsorship, from the indirect advertising of his/her products or services.

288. Among criteria for determining whether the activity in question is the principal activity, the following might be mentioned: the share of the revenue drawn from the activity in relation to the global revenue of the natural or legal person; the activity for which the person is mainly known by the public (for example: the prior establishment of the activity in relation to connected activities); the nature of the connected activities (for example: when such activities are closely linked to the principal activity).

289. *A contrario*, Article 18 implies that the possibility of sponsoring programmes is available to any natural or legal person whose "principal" activity falls outside the scope of Article 15. This includes natural or legal persons who do not have access to television advertising, for example where the advertising of certain products or services is confined to other media than television.

#### ***Paragraph 2***

290. Companies in the pharmaceutical sector willingly give financial support to major cultural events. Since, through sponsorship, they may encourage the creation and televised broadcasting of such events, this Convention authorises them to sponsor programmes at the transfrontier level. However, in the case of companies whose activity includes, *inter alia*, the manufacture or sale of medicines and medical treatment available only on medical prescription in the transmitting Party, their sponsorship may consist of the promotion of the name, trademark, image or activities of the company, including the reference to the name of one of the company's products, but in no circumstances may it refer to a specific medicine or medical treatment available only on medical prescription. If this were not the case, it could lead to the circumvention of Article 15 (3), which clearly prohibits television advertising for these kinds of medicines and medical treatment.

#### ***Paragraph 3***

291. This paragraph reflects the special interest of the member States of the Council of Europe in the guarantee of the plurality of information sources and the independence of news and current affairs programmes. The prohibition of the sponsorship of such programmes reinforces the principles embodied in the preamble, Article 7, paragraph 3, and Article 13, paragraph 4.

292. The term "current affairs" in this Article refers to strictly news related programmes such as commentaries on news, analysis of news developments and political positions on events in the news (see paragraph 243 above).

**Relevant extracts from opinions and recommendations adopted by the Standing Committee on Transfrontier Television (T-TT)**

**Opinion No. 4 (1995) on certain provisions on advertising and sponsorship**

**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 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. 6 (1995) on the legal framework for "infomercials"**

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**

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**

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 (97) 1 concerning the use of virtual advertising notably during the broadcast of sports events**

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**

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)*".

\* \* \*

**Elements for a draft reply to the request from the Turkish delegation, prepared by the Secretariat**

In essence, the question asked is:

*With a view to adopting secondary legislation, how should the prohibition of sponsorship of current affairs programmes contained in Article 18, paragraph 3, of the European Convention on Transfrontier Television be interpreted in the context of thematic news channels. Broadcasters argue that the sustainability of news service through thematic channels cannot be ensured if these programmes are not sponsored.*

The obligations of broadcasters, set out in Article 7, paragraph 3, of the Convention, include the need to ensure that news programmes fairly present facts and events and encourage the free formation of opinions. Article 18, paragraph 3, of the Convention seeks to ensure the effectiveness of this objective by prohibiting the participation of a person or entity in the direct or indirect financing of current affairs programmes with a view to promoting their "name, trademark, image or activities"; the contrary could create confusion between information and the promotion of the interests of the sponsor. This is also why, under Article 13, paragraph 4, persons regularly presenting news and current affairs programmes should not feature in advertising and tele-shopping.

The prohibition of sponsorship of current affairs programmes contained in Article 18, paragraph 3, of the Convention has to be interpreted strictly. Consequently, (i) the prohibition does not extend to programmes that cannot be categorised as current affairs programmes and (ii) forms of advertising that do not qualify as sponsoring (as those terms are defined in the Convention) are not prohibited.

(i) It should be recalled that paragraph 186 of the Explanatory Report clarifies that "current affairs" refers to strictly news-related programmes such as commentaries on news, analysis of news developments and political positions on events and news. The prohibition contained in Article 18, paragraph 3, of the Convention would not extend to programmes broadcast by thematic news channels that do not qualify as current affairs programmes.

(ii) While advertising in general is not prohibited, especial attention must be paid to ensure that advertising screened by thematic news channels complies with the rules set out in the Convention. Attention might be drawn in particular to the following provisions of the Convention: Article 11, paragraph 5 (the advertiser shall not exercise any editorial influence over the content of programmes); Article 13, paragraph 1 (advertising shall be clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means and shall, in principle, be transmitted in distinct blocks) and paragraph 3 (advertising shall not feature, visually or orally, persons regularly presenting news and current affairs programmes); Article 14, paragraphs 1 and 2 (advertising shall be inserted between programmes or between distinct or autonomous parts of programmes); Article 14, paragraph 4 (at least twenty minutes should elapse between each successive advertising break within the programme).