



GOVERNMENT GAZETTE

Official publication of the Kingdom of the Netherlands since 1814.

Dutch Media Authority Regulation of 10 July 2012 providing policy rules on the permissibility, recognisability and delineation of advertising and teleshopping announcements in the media content provided by commercial media institutions (2012 Advertising policy rules for commercial media institutions)

The Dutch Media Authority,

Having regard to Articles 7.11 and 7.12 of the 2008 Media Act;

Having regard to Article 4:81 of the General Administrative Law Act (Awb);

Decrees:

Article 1 Purpose

These policy rules pertain to the legal requirements listed in the annex to this Regulation.

Article 2 Definitions

The following terms employed in this Regulation shall have the following meaning:

- a. *Directive*: Audiovisual Media Services Directive (Directive 2010/13/EU);
- b. *Amending Directive*: Directive amending (Television) Directive 89/552/EEC (Directive 97/36/EC);
- c. *Act*: 2008 Media Act;
- d. *Decree*: 2008 Media Decree;
- e. *Authority*: Dutch Media Authority;
- f. *commercial media content*: media content as referred to in Article 1 of the 2008 Media Act that is provided by a commercial media institution;
- g. *page*: all media content displayed on a single web browser screen, under a single teletext page number, or on any single screen of any other type of electronic dissemination;
- h. *video*: an electronic product containing moving imagery content in a way that is coherent, recognisable as such, and disseminated under an individual title;
- i. *audio*: an electronic product containing audio content in a way that is coherent, recognisable as such, and disseminated under an individual title;
- j. *recognisable as such*: the recognisability as referred to in Article 3.5a(1) of the Act;
- k. *clearly discernible*: the discernibility as referred to in Article 3.7(1) of the Act;
- l. *split-screen*: the simultaneous and parallel placement of both editorial content and advertising or teleshopping announcements within a single image;
- m. *surreptitious advertising*: surreptitious advertising as referred to in Article 1.1(1) of the Act, which, even in absence of any payment or remuneration in return therefore, may be accompanied by an aim to advertise;
- n. *scheduled period*: the total amount of time between a programme's starting time and the end time, which includes any and all advertising and teleshopping announcements, as well as any other interruptions of that programme broadcast during that period;
- o. *scheduled duration*: the time length of a programme, excluding any and all advertising and teleshopping announcements, or other interruptions of that programme;

Article 3 Recognisability

1. Advertising and teleshopping announcements are "recognisable as such" if the average circumspect consumer is capable of recognising these as advertising or teleshopping announcements.
2. Notwithstanding the provisions of the preceding paragraph, advertising and teleshopping announcements shown during or following the on-demand media content's video section will at all times be deemed "recognisable as such" if they contain a continuously visible



and clear denotation of 'reclame' (advertising), 'advertentie' (advertisement), 'telewinkelboodschap' (teleshopping announcement), or words to similar effect.

Article 4 Clearly Discernible

1. Advertising and teleshopping announcements shown during the video and/or audio sections of the programming will be deemed "clearly discernible" from all other programming, if they are preceded by, and conclude with, a visible and/or audible announcement of their commencement and conclusion.
2. Advertising and teleshopping announcements shown in the teletext environment will be deemed "clearly discernible" from all other teletext content, if they are placed in a separate frame that is not a part of the remaining teletext content.

Article 5 Split-Screening

1. In derogation of the provisions of article 4(1) "split-screened" advertising and teleshopping announcements made by way of spatial means will be deemed "clearly discernible" from all other editorial content of the programme if:
 - a. they are placed in a separate stationary frame that is not a constituent component of the programme and does not cover more than two-thirds of the overall available image;
 - b. they are adorned with a continuously visible and clear denotation of 'reclame' (advertising), 'advertentie' (advertisement), 'telewinkelboodschap' (teleshopping announcement), or words to similar effect; and
 - c. the editorial portion of the programme remains fully visible and is broadcast unabridged and without interruption.
2. Split-screened advertising and teleshopping announcements may only be broadcast during the programming of a reporting on or the depiction of a sporting event, or during live coverage of an event.
3. The share of split-screened advertising and teleshopping announcements shall count towards the maximum allowed amount of advertising permitted by the Act and the Decree.

Article 6 Individual Advertising or Teleshopping Announcements

Individual advertising or teleshopping announcements may, pursuant to article 3.8(2) of the Act be placed in the remaining programming, provided that the frequency with which this is done, does not exceed twice an hour.

Article 7 Advertising for Medical Treatment

Advertising for medical treatment as referred to in Article 3.7(2)(a) of the Act shall mean advertising for treatment provided pursuant to an agreement for the provision of medical treatment as referred to in Article 7:446 of the Dutch Civil Code.

Article 8 Share

1. The share of advertising announcements shall be limited in both volume and duration and shall not be dominant.
2. Advertising announcements shown during the media content's video and/or audio section shall not be deemed to have satisfied the requirement stipulated in the first paragraph, if the share of advertising and teleshopping announcements exceeds the maximum share as mentioned in the Act and the Decree.
3. Advertising announcements shown on teletext shall not be deemed to have satisfied the requirement stipulated in the first paragraph if the space devoted to advertising and teleshopping announcements exceeds twenty percent of the page's total space, unless the entire page consists of advertising announcements.

Article 9 Final Provision

1. This Regulation shall be made public by its publication both in the Government Gazette and on the Dutch Media Authority's website (www.cvdm.nl).
2. This Regulation will enter into force on 01 September 2012.
3. This Regulation will be subjected to an evaluation.



4. This Regulation shall be referred to as the "2012 Advertising policy rules for commercial media institutions".

*Dutch Media Authority,
T. Bahlmann,
President.*

*M. de Cock Buning,
Commissioner.*



ANNEX TO THE 2012 ADVERTISING POLICY RULES FOR COMMERCIAL MEDIA INSTITUTIONS

Article 1.1(1) of the 2008 Media Act

The following terms used in this Act, and the legal provisions based upon it, shall have the following meaning:

commercial media service: A media service provided pursuant to Chapter 3 of this Act;

commercial media institution: A person or legal person providing commercial media services and for the purposes of the application of this Act falling under Dutch jurisdiction;

Authority: The Dutch Media Authority referred to in Article 7.1;

event: A sports or cultural event organised for, and accessible to, the general public;

media service: A service which is under the editorial responsibility of a media service provider and has as principal purpose the provision of media content using public electronic communications networks as referred to in Article 1.1(h) in the Telecommunications Act [Dutch: Telecommunicatiewet].

on-demand media service: A media service providing media content that is consumed at the individual request of the user and at a time of his choosing;

broadcasting service: A media service related to the provision of media content determined pursuant to a chronological schedule drafted by the institution responsible for the media content and which a broadcasting transmitter or broadcasting network disseminates in encrypted or non-encrypted form for its simultaneous reception by the general public or a section thereof;

programme: An electronic product consisting of audio or visual content that is clearly delineated, recognisable as such, and disseminated by a broadcasting service under an individual title;

programming: All media content disseminated by a broadcasting service;

surreptitious advertising: The mentioning or displaying of names, brands, logos, products, services or activities of persons, companies or institutions in manners other than pursuant to this Act, under the proviso that such mentioning or displaying may be reasonably assumed as done with the objective, or joint objective, of advertising, which objective will in any event be deemed present if such mentioning or displaying is done in return for financial or similar remuneration;

sports competition: A match, or the preparation for a match organised by, or under the auspices of, an NOC*NSF recognised national sports association and/or its constituent parts, or a comparable international (umbrella) sports association, or any other match, or the preparation for a match, in a sport recognised as such by the NOC*NSF;

teletext: Television programme solely consisting of static text images which the viewer may view in an order and at a time of his discretion, and disseminated via the same broadcasting frequency the broadcasting transmitter or broadcasting network uses for the dissemination of other television programmes;

television programme: Programme containing visual content, either augmented by audio content, or not.

Article 3.5a of the 2008 Media Act

1. Advertising and teleshopping announcements, sponsored programming and product placement are recognisable as such.
2. Advertising and teleshopping announcements, sponsored programming and product placement programming should remain free of any subliminal techniques.
3. All programming must remain free of surreptitious advertising.

Article 3.6 of the 2008 Media Act

1. Any commercial media institution incorporating advertising or teleshopping announcements in its programming, must subscribe to the Dutch Advertising Code [Dutch: *Reclame Code*], or any such similar code drawn up by the *Stichting Reclame Code* [Advertising Code Foundation], and will consequently be subject to said body's oversight.
2. Subscription is demonstrated by means of providing the Authority a written statement to that effect issued by the *Stichting Reclame Code*.

Article 3.7 of the 2008 Media Act

1. Advertising and teleshopping announcements are clearly discernible from other programming content by acoustic, visual or spatial means.
2. Programming shall not contain any advertising or teleshopping announcements for:
 - a. Medical treatments; or
 - b. Alcoholic beverages between the hours of 6 am and 9 pm.
3. A programme channel's name may mention or display the names, logos, or brand names of persons, companies or institutions in a neutral fashion.
4. The Authority reserves the right to impose further regulations for such mentioning or displaying as referred to



in paragraph three, with such regulations requiring ministerial approval.

Article 3.8 of the 2008 Media Act

1. The programming broadcast on a programme channel may not contain more than twelve minutes of advertising or teleshopping announcements per hour.
2. Subject to the provisions of this section, individual advertising or teleshopping announcements may be inserted into programming consisting of the coverage or rendition of sports events and may, by exception, also be inserted into other programming.

Article 3.9 of the 2008 Media Act

1. Any teleshopping blocks aired within programme channel programming shall amount to no less than fifteen minutes in length, without interruption.
2. Visual and acoustic means shall render teleshopping blocks recognisable as such for the entire duration of their airing.
3. Article 3.8(1) and (2) do not apply to teleshopping blocks.

Article 3.10 of the 2008 Media Act

1. Only advertising or teleshopping announcements not detrimental to the integrity, the character or the consistency of the programme concerned, nor the rights of its rights holders, will be eligible for inclusion in a programme.
2. Advertising or teleshopping announcements will not be inserted into programmes providing coverage of church services or religious gatherings.

Article 3.11 of the 2008 Media Act

The following programmes may not contain more than one block of advertising or teleshopping announcements per thirty-minute programmed period:

- a. programmes consisting of films;
- b. programmes consisting of news or commentary on the news; and
- c. programmes that are specifically intended for children below the age of twelve, provided that their scheduled duration exceeds thirty minutes in length.

Article 3.13 of the 2008 Media Act

Television programmes that consist of event coverage may only contain advertising or teleshopping announcements during the event's natural breaks or in between its usual individual components.

Article 3.14 of the 2008 Media Act

1. In derogation of the provisions of Articles 3.8 and 3.11, airing is permitted of television programme channels consisting exclusively:
 - a. of self-promotional advertising announcements; or
 - b. teleshopping announcements.
2. The programming of a television programme channel as mentioned in paragraph 1 may contain advertising announcements in accordance with the provisions governing the insertion of advertising announcements into television programming.

Article 3.29d of the 2008 Media Act

With the exception of Articles 3.16(4) and 3.19b(3)(b), the Articles 3.5, 3.5a, 3.6, 3.7(2) opening clause and (a), 3.15 – 3.19c and 3.26 shall equally apply to on-demand commercial media services.

Considerations of the Directive

(81) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. In order to remain proportionate with the goals of general interest, regulation should allow a certain degree of flexibility with regard to television broadcasting. The principle of separation should be limited to television advertising and teleshopping, and product placement should be allowed under certain circumstances, unless a Member State decides otherwise. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques.



Considerations of the Amending Directive

(34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;

(35) Whereas, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;

(39) Whereas it is necessary to make clear that self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels; whereas, in particular, trailers consisting of extracts from programmes should be treated as programmes; whereas self-promotion is a new and relatively unknown phenomenon and provisions concerning it may therefore be particularly subject to review in future examinations of this Directive.

Directive - Article 20

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.
2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

Directive - Article 23

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.
2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.

Article 7:446 of the Dutch Civil Code

1. The agreement for the provision of medical treatment - hereinafter in this section referred to as the medical treatment agreement – is the agreement under which a person, or legal person, i.e. the care provider, in the course of the performance of his medical profession, or medical business commits himself to performing medical actions which directly affect the principal personally, or a specific third party. The person who is directly affected by the medical actions is hereinafter referred to as the 'patient'.
2. 'Medical actions' are to be understood as:
 - a. all actions – including examinations and the provision of medical advice – directly affecting any person and aimed at curing that person of an illness, preventing that person from contracting an illness, or assessing the state of that person's health, and/or offering said person obstetrical assistance;
 - b. actions other than those referred to under (a) which directly affect a person and which are carried out by a physician or dentist acting in a professional capacity.



EXPLANATORY MEMORANDUM

General

1. The 2008 Media Act entered into force on 1 January 2009. This Act seeks to amend the law to match the digital and multimedial practice. Following the implementation of the Audiovisual Media Services Directive (hereafter: the Directive), the Act was subsequently subjected to a second amendment effective 19 December 2009. A number of changes were implemented, including an easing of the regulations for advertising and sponsoring for commercial broadcasters, which, for example, came to allow the use of split-screen techniques.
2. The Act aims to mitigate the disadvantage Dutch commercial broadcasters are at compared to broadcasters targeting Dutch audiences, yet operating from other Member States.
3. The Act sees regulations for commercial broadcasters remain directly linked to the term broadcast services. The Directive required regulations to be extended to include on-demand audiovisual media services. The Act has introduced a new definition of on-demand media services, which, as far as commercial media services are concerned, only pertains to moving images, with or without accompanying audio content. The Act does not apply to on-demand commercial radio services. The legislator has granted these services the opportunity to develop themselves further (*Kamerstukken* [English: Parliamentary Documents] II 2008/09, 31 876, no. 3, p. 6). The moving visual content restriction can be found included in Article 3.29a, of the Act, which offers a definition of the term *on-demand commercial media service*.
4. The extensive amendments and new regulations call for a more detailed explanation of oversight of compliance with the regulations for advertising and teleshopping. These policy rules aim to provide that.

Broadcast Services v On-Demand Media Services

5. A broadcasting service, a.k.a. a linear media service, arbitrarily disseminates its information to the general public, or a section thereof, according to a chronological schedule for simultaneous reception, whereby the viewer/ listener is unable to exert any influence on the time at which the information is disseminated. An on-demand media service, however, a.k.a. video on-demand, or a non-linear media service, disseminates its information upon the specific request therefore by the user. The elementary difference between both services therefore, is the freedom of choice the user enjoys with respect to when to view the broadcast. This is perhaps best illustrated by sports events disseminated via the internet. Live broadcasts of sports events disseminated via the internet, are deemed broadcast services, even if they require the user to effect a number of clicks on a website before being able to actually view the coverage. Deferred broadcasts of sports events disseminated via the internet and viewed by the viewer at a time of his own discretion, are, however, deemed on-demand media services. Which on-demand media services are subject to Authority oversight is set out in the 2011 Policy rules on the classification of on-demand commercial media services.
6. When commercial media institution programmes can be viewed live via the internet, they are deemed both a broadcasting service and a television programme. Regular advertising regulations apply in full to such programmes. Pursuant to Article 1.1(1) of the Act, teletext is also deemed a television programme. However, due to its specific nature, i.e. primarily made up of text and graphics, regular advertising regulations do not apply to teletext in full. The explanatory notes to Article 8 of these policy rules address the application of caps on the proportion of advertising announcements within teletext in more detail. A limited number of advertising regulations applies to on-demand media services. This will be explained in more detail in the explanatory notes by article.

Regulation of Advertising Irrespective of the Type of (Digital) Distribution Platform

7. Advertising regulations do not attach any relevance to the type of distribution platform used in the dissemination of advertising within commercial media content. Broadcast services will largely disseminate their content via (digital) cable networks, but may also do so via IPTV-networks or mobile television services. On-demand media services are increasingly not only being made available via the internet, but also via other digital distribution platforms (e.g. via television or mobile phones).
8. Commercial media content disseminated in a linear fashion by means of digital cable, IPTV, mobile network or other distribution platform, are considered programming, therefore invoking the full application of the same advertising regulations governing television and radio programmes. These are considered broadcast services, albeit that they disseminate via another (digital)



distribution platform such as the internet. This, for example, sees the twelve-minute hourly cap on advertising stipulated in Article 3.8(1) of the Act also applying.

Types of Commercial Media Content

9. The different types of commercial media content in existence call for a more detailed explanation of the regulations on advertising and teleshopping. These policy rules aim to provide that.
10. These policy rules make a distinction between the various types of commercial media content that may include advertising and teleshopping announcements, irrespective of the manner in which they are disseminated.
 - a. First, there are the advertising and teleshopping announcements included in the video and/or audio section of the media content provided by a broadcast service (programming).
 - b. Second, there are the advertising and teleshopping announcements aired before, during and/or after the individually requested videos consumed within an on-demand media service platform. The advertising and teleshopping announcements aired in the video section will usually take the form of a so-called pre-roll: a commercial that is presented prior to the start of the video or audio requested. Advertising and teleshopping announcements may also interrupt the media content provided, or, alternatively, be aired simultaneously or parallel to the editorial content thereof, using a split-screen. As already stated in the foregoing, the Act does not apply to on-demand commercial audio services (radio services), which is why they are also excluded from the scope of these policy rules.
 - c. Third, there are the advertising and teleshopping announcements included within teletext. Pursuant to Article 1.1(1) of the Act, teletext is to be considered a television programme.
11. These policy rules deliberately do not address advertising and teleshopping announcements that are neither a component of the video and/or audio section of any media content, nor a component of teletext, such as banners or other advertisements in the text frame surrounding the videos provided within programmes such as SBS's *Programma Gemist* [English: Missed Programmes]. This is contrary to the Advertising policy rules for public media institutions, which, for reasons of the full application of the principle of non-commercialism, does regulate this subject. This also means that the maximum share of advertising announcements on the website is not capped at 20%, as it is for teletext pages. However, should an advertising announcement either consist of, or link through to media content provided by a media service, then that will naturally have to be deemed an independent media service, which will consequently be forced to comply with any and all of the legal (media) requirements that apply to it.
12. Which advertising regulations apply to the advertising and teleshopping announcements within the commercial media content depends on the type of commercial media content.
13. Articles 3.5a through 3.14 of the Act establish the specific conditions that apply to advertising and teleshopping announcements aired on television and radio. Pursuant to Article 3.29d of the Act, a limited number of these rules equally apply to on-demand commercial media services. These concern rules on the recognisability of advertising and teleshopping announcements and the prohibition of surreptitious advertising (Article 3.5a), the subscription to the Dutch Advertising Code (Article 3.6) and the prohibition of advertising and teleshopping announcements for medical treatments (Article 3.7(2)(a) of the Act).

Explanatory Notes by Article -

Article 2 (Definitions)

14. The terms employed in these policy rules are based on the Act, a number of which can be found defined in Article 1.1, of the Act. Any terms employed in these policy rules not defined in this article, can be found defined in Article 2 of these policy rules.
15. Surreptitious advertising can be found defined in the Act, but is further clarified in Article 2 of these policy rules. In response to request for a preliminary ruling, the European Court of Justice (Third Chamber) has ruled that surreptitious advertising is to be interpreted in such a way as meaning that the provision of payment or of consideration of another kind is not a necessary condition for establishing the element of **intent** in surreptitious advertising (ECJ, 19 June 2011, case C-52/10).
16. The rules on insertions applying to commercial media institutions as per the Directive (Article 20, paragraph 2) and per the Act (Article 3.11) make a distinction between *scheduled period* and *scheduled duration*. Any calculation of the number of allowed insertions during films, news and commentary on the news must



take into account the total duration between a programme's start time and its end time, the scheduled period, irrespective of the length of time during which a programme is interrupted by advertising and teleshopping announcements and other media content. This means that in addition to the programme's duration, its *scheduled duration*, advertising and other insertions (e.g. self-promotion) also count towards the allowed total, i.e. allowing for advertising insertions to be inserted sooner and more frequently. Any news broadcast with a *scheduled duration* of 25 minutes may be interrupted by at least 5 minutes of advertising and other insertions on no more than one occasion, as doing so will ensure that the *scheduled duration* will be 30 minutes. Programmes that are specifically intended for children below the age of twelve, may also be interrupted no more than once per *scheduled period*, provided that their *scheduled duration* exceeds 30 minutes in length.

Article 3 (Recognisability)

17. This provision stipulates the interpretation of the provisions on advertising and teleshopping, as the Authority has always applied it in respect of radio and television. The provision pertains to advertising and teleshopping announcements included in the video and/or audio section of the media content and in the teletext section of a commercial media institution, irrespective of the technique employed in their dissemination and/or the platform employed in their distribution. This therefore concerns both programming as well as all other media content, including on-demand media services.
18. As a rule, advertising announcements included in media content must be recognisable as advertising. The *average-viewer* standard as defined in the ARRvS ruling (TROS – Aktua in Bedrijf, 21 August 1997) employed to date, is no longer deemed sufficient. This is why reference is made to the average-consumer standard employed by the European Court of Justice, i.e. 'the average consumer who is reasonably observant' (ECJ, 16 July 1998, case C-210/96, Gut Springenheide). Advertising or teleshopping announcements included in media content are deemed *recognisable as such*, in those instances where the average consumer who is reasonably observant recognises them as being an advertising or teleshopping announcement.
19. Notwithstanding the foregoing, advertising and teleshopping announcements shown before, during or following the media content's video section will at all times be deemed 'recognisable as such' if they contain a continuously visible and clear denotation of 'reclame' (advertising), 'advertentie' (advertisement), 'telewinkelboodschap' (teleshopping announcement), or words to similar effect. The requirement for advertising and teleshopping announcements to be clearly discernible from other programming content does not apply to on-demand media content. The announcement does, however, need to remain recognisable as advertising. To that end, the announcement may be accompanied by a continuously visible and clear denotation to that effect, or otherwise be made recognisable as an advertising announcement.

Article 4 (Clearly Discernible)

Advertising during the media content's video and/or audio sections and within teletext

20. Advertising and teleshopping announcements shown during the media content's video and/or audio sections and within teletext should be *clearly discernible* from other programming.
21. Insofar as advertising and teleshopping announcements shown during the media content's video and/or audio sections are deemed in existence and depending on the medium employed, i.e. (internet) television, or (internet) radio, one may elect to employ a clearly visible and/or clearly audible delineation. This could take the form of a notice mentioning 'reclame' (advertising), 'advertentie' (advertisement), 'telewinkelboodschap' (teleshopping announcement), or words to similar effect.
22. Insofar as advertising and teleshopping announcements shown during teletext are deemed in existence, the clear delineation will need to be of a visual nature. Such advertising and teleshopping announcements will need to be placed in a separate frame that is clearly different from all other teletext content in terms of its appearance and/or colour. The advertising and teleshopping announcements may furthermore be accompanied by such words as 'reclame' (advertising), 'advertentie' (advertisement), 'telewinkelboodschap' (teleshopping announcement), or words to similar effect.

Advertising aired before, during or following videos within on-demand media services

23. A less stringent legal regime applies to advertising and teleshopping announcements aired before, during or following videos within an on-demand media service. There, advertising and teleshopping announcements are required to be recognisable as such and videos provided within an on-demand media service must remain free of surreptitious advertising. The requirement for advertising and teleshopping announcements to be clearly discernible from other programming content does, however, not apply to on-demand media content. The principle of separation should be limited to **television** advertising and teleshopping (consideration 81 of the Directive). This is justified because viewers enjoy an



increasing number of options to avoid advertising. Examples include the option viewers have to manually, or automatically, skip advertising (by scrolling forward) immediately upon commencement of the distinction.

Although this will mainly involve pre-roll advertisements, programmes may, of course, also be interrupted by (individual) advertising and teleshopping announcements without distinction, provided the advertising and teleshopping announcements are recognisable as such. With respect to the share of advertising and teleshopping announcements, one should note that, in principle, on-demand commercial media services are not subject to any restrictions in that respect (see point 30 above, Article 8).

Advertising within the video and/or audio sections of on-line programming

24. In addition to on-demand media services, on-line media content may also consist of linear broadcast services (programming), which may at times even be simultaneously disseminated on more than one platform. In such instances, the advertising regulations on advertising volume and the insertion regime as they apply to traditional television and radio programmes will apply in full. The fact that dissemination is being done via the internet does not take anything away from the fact that this is linear media content governed by all of the regular legislation.

Article 5 (Split-Screening)

25. Split-screening is the simultaneous and parallel placement within a single image of both editorial content and advertising or teleshopping announcements.
26. It is important that the viewer is aware that he is watching advertising. This is why the advertising or teleshopping announcement must be recognisable as such and must be clearly discernible from the rest of the programme. In split-screening, this distinction is not made in terms of time, but is merely in a spatial sense, i.e. in the manner in which it is presented.
27. If the advertising is found not to take up an excessive amount of space, split-screening allows viewers to continue watching the programme during the commercial. It is important that the editorial programme can be followed in full, unabridged and unhindered. This consequently demands that the commercial be aired parallel to the programme and not inserted in it. This also demands that the editorial content be reduced in size in order to make room for the advertising or teleshopping announcement frame. In order for the viewer to be able to continue to follow the editorial programme, the size of the advertising or teleshopping announcement frame should not exceed two-thirds of the total surface of the screen. Furthermore, the frame must remain static on screen, with its background clearly distinguishable from the programme's editorial content. This prevents the use of video overlays, as this would make it harder to make the distinction with the editorial content, and make it more difficult for the viewer to follow the editorial content in an unhindered fashion.
28. Split-screening falls within the scope of the Directive. This form of advertising, however, will only be compatible with the Directive if all other provisions for advertising and teleshopping announcements are also observed. The legislator has interpreted this as requiring the advertising and teleshopping announcements to be distinguished from the content of the programme by optical or acoustic means, e.g. through the use of windows or bars or by denoting the word 'advertentie' (advertisement) (Kamerstukken II, 2007/08, 31 356, no. 3, p. 68). In order to ensure a clear delineation between advertising and teleshopping announcements and editorial content, the Authority considers it important that in addition to the distinction methods described in the previous section, the words 'reclame' (advertising), 'advertentie' (advertisement), 'telewinkelboodschap' (teleshopping announcement), or words to similar effect are visible on screen for the duration of the broadcast of the split-screened advertising.
29. This split-screening technique is intended for use in situations where programme-interruptive advertising cannot be (properly) screened. The legislator feels that this holds true in respect of (sports) events that do not feature any natural breaks (Kamerstukken II, 2007/08, 31 356, no. 3, p. 68). Whereas the Act does not impose any restriction to that effect, the second paragraph of this provision only allows split-screened advertising and teleshopping announcements during programming consisting of:
 - the reporting or coverage of a sports event; or
 - the live coverage of an event.
30. The time taken up by split-screened advertising counts towards the maximum total amount of advertising allowed.
31. For the sake of clarity, Article 5 of these policy rules does not apply to advertising announcements that are disseminated during the scheduled commercial break. This applies e.g. to the Special Advertising advertising technique, in which an advertising announcement can be incorporated into the design of the opening or closing image of the scheduled commercial break (plus, potentially, some added self-promotion), provided the advertising announcement does not coincide with the editorial content of a programme and all other provisions for advertising and teleshopping announcements are adhered to.



Article 6 (Individual Advertising or Teleshopping Announcements)

32. On-demand commercial media services quite commonly use individual advertising or teleshopping announcements. Advertising or teleshopping announcements broadcast during a programme on linear television are also no longer required to be transmitted in blocks (a block consists of two or more commercials). Pursuant to Article 19(2) of the Directive, individual advertising and teleshopping announcements remain the exception, except in sports event broadcasts. The Explanatory Notes include the following on individual advertising or teleshopping announcements: "The repeal of the so-called *20-minute rule* in the Directive offers commercial broadcasters more flexibility. Programmes may consequently more frequently be interrupted for advertising. This has created a growing demand among commercial broadcasters for having shorter commercial breaks." (Kamerstukken II 2008/09, 31 876, no. 3, p. 22, 4th paragraph (in full)). However, individual advertising or teleshopping announcements should, in principle, remain the exception. The rule providing for the insertion of individual commercials into programming consisting of the coverage or rendition of sports events remains unaffected. Sports event coverages are programmes that actually and predominantly consist of the rendition or coverage of a sports competition or sports event. Article 1.1 of the Act stipulates the requirements to be satisfied for an event to be considered a sports competition. Important in that respect is that the sport has at least been officially recognised as a sport by the NOC*NSF.
33. A number of sports do not feature any (natural) breaks, e.g. a Formula 1 race or a cycling race. Then there are sports which feature natural breaks following the completion of an independent component (e.g. following a set in tennis; see the Authority Decision of 24 June 1999, PTZ/HO/3567). These independent components are completed once a certain number of game points are won, as opposed to a specific period of time lapsing. Such breaks do not always last sufficiently long to allow the airing of multiple advertising announcements. Such cases make it hard for a broadcaster to schedule the insertion of a commercial break. This is why the insertion of individual advertising or teleshopping announcements into sports programmes has been allowed.
34. The insertion of individual advertising or teleshopping announcements into other programmes will only be allowed on exception. This exception entails that individual advertising announcements may be inserted into the remaining programming, provided that the frequency with which this is done, does not exceed twice an hour.
35. The Authority will, of course, ensure that the repeated interruptions of a programme by individual advertising announcements meets the demands of Article 3.10(1) of the Act.
36. Please note that the (policy) rules on individual advertising or teleshopping announcements do, of course, equally apply to advertising or teleshopping announcements aired in between different programmes. Article 3.8(2) of the Act, speaks of individual advertising or teleshopping announcements within **programming**, not individual advertising or teleshopping announcements within the **programme**.

Article 7 (Advertising for Medical Treatment)

37. The Authority understands the term medical treatment as to equate to treatment provided pursuant to an agreement for the provision of medical treatment as referred to in Article 7:446 of the Dutch Civil Code. The Article provides that an agreement for the provision of medical treatment is one under which a person, or legal person, i.e. the care provider, in the course of the performance of his medical profession, or medical business commits himself to performing medical actions which directly affect the principal personally, or a specific third party.

Article 8 (Share)

38. As a principle, advertising announcements are to enjoy but a limited share within programming and should not be dominant. Insofar as advertising shown during the media content's video and/or audio sections is concerned, said share should never be found to exceed the maximum specified in Article 3.8(1) of the Act. As Article 3.8 of the Act does not apply to teleshopping announcements, the provision on the permitted share enjoyed by advertising announcements does not apply to teleshopping announcements.
39. The circumstance that a broadcasting service may be (exclusively) transmitted via internet, is of no effect. As this concerns programming pursuant to Article 1(1) of the Act, Article 3.8(1) of the Act equally applies in full. The media content's linear nature makes it easy to apply the hourly maximum stipulated in the media legislation.
40. A recurring question regarding the calculation of the maximum allowed volumes for advertising within programming is the extent to which self-promotion is to be counted towards said maximum allowed advertising volumes. Relevant in this respect are



Article 23(2) of the Directive and considerations 34, 35, and 39 of the Amending Directive. These considerations learn that daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these is, in principle, not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping (consideration 34 of the Amending Directive). In order to avoid distortions of competition, this exception only applies to announcements concerning products that fulfil the dual condition of being both ancillary to, and directly derived from, the programmes concerned. The term *ancillary* refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes (consideration 35 of the Amending Directive). Such self-promotion is a specific form of advertising which need not be taken into account in the calculation of maximum advertising volume. This is also expressed in Article 23(2) of the current Directive. For example, this means that a commercial media service advertising its own content during designated advertising broadcast time will not have to be counted towards the maximum advertising volume. They will, however, as they concern a (special form of) advertising, have to be aired during designated advertising broadcast time.

Other types of self-promotional activities, i.e. advertising in which the broadcaster promotes its own programmes, in what are known as trailers, should also be treated as programmes (consideration 39 of the Amending Directive). These announcements also do not count toward the maximum advertising volumes, as they constitute editorial content.

41. Advertising and teleshopping announcements aired prior to the individually requested videos within an on-demand media service are usually presented in the form of pre-rolls, commercials that are shown prior to the playing of the video of the viewer's choosing, but they may also come in the form of programme-interrupting advertising. As this concerns videos that are played at the request of their individual user and these are not broadcasts whose total duration is easily determined, the hourly maximum specified in Article 3.8(1) of the Act is difficult to both apply and enforce. Moreover, lawmakers have also elected to exclude the application of said 20% hourly maximum to on-demand media content.
42. Determining the maximum share enjoyed by advertising announcements within teletext is not easy. Limiting advertising in terms of their size would leave the provision at odds with practice, as graphic designs tend to come in all shapes and sizes and can be tailored to the needs of the advertiser. Limiting advertising in terms of the number of advertisers advertising on a single teletext page is difficult as it does not take into account the fact that refreshing the page could show a different advertisement from a different advertiser.
43. In order to do justice to the possibilities offered by new advertising techniques and in the interest of enforceability, an approach that is as technology-neutral as possible was selected. Its general principle dictates that advertisements be limited in their number and duration and may not be dominant. The Authority considers these principles upheld in all cases where all of the advertisements displayed on a teletext page, which also features editorial information, do not take up more than twenty percent of the available space of a single page.
44. The Authority does not feel that teletext pages consisting solely and fully of advertising announcements contravenes the general principle that the share enjoyed by advertising announcements must be limited and non-dominant. This is because viewers will still be able to visit editorial teletext pages without being confronted by special advertising pages. I.e. publishing a full page with advertising only is permitted, provided the advertising announcement(s) do(es) not coincide with the editorial content of a programme and all other provisions on advertising and teleshopping announcements are satisfied.