

Dutch Media Authority regulations from July 10, 2012 establishing policies concerning the permissibility, recognisability and delineation of advertising and teleshopping announcements in broadcasts of commercial media organisations (Policy on advertising commercial media organisations 2012)

July 10, 2012

The Dutch Media Authority,

with regard to Articles 7.11 and 7.12 of the Media Act

2008, with regard to Article 4:81 of the General

Administrative Law, concludes:

Article 1 Applicability of the regulations

The policy stipulations established in these regulations apply to the legal requirements as defined in the annex to these regulations.

Article 2 Definitions

Whenever used in these regulations the following terms have the meanings indicated:

- a. *directive*: Audiovisual Media Services Directive (Directive 2010/13/EU);
- b. *amendment directive*: Directive on the Amendment of Television Directive 89/552/EEC (Directive 97/36/EC);
- c. *law*: Media Act 2008;
- d. *decree*: Media Decree 2008;
- e. *authority*: Dutch Media Authority;
- f. *commercial media broadcasts*: media broadcasts pursuant to Article 1 Media Act 2008 that are provided by a commercial media organisation;
- g. *page*: all media broadcasts displayed via the internet on a single browser screen, via teletext under a single page number and via all other types of electronic distribution channels on a single monitor;
- h. *video*: an electronic product with moving image content that is a single entity and is recognisably transmitted as such under a separate title;
- i. *audio*: an electronic product with audio content that is a single entity and is recognisably transmitted as such under a separate title;
- j. *recognisable as such*: can be recognised in the sense of Article 3.5a, paragraph 1, of the law;
- k. *clearly differentiated*: differentiation in the sense of Article 3.7, paragraph 1, of the law;
- l. *split screen*: the simultaneous and parallel placement within a single image of editorial content and advertising or teleshopping announcements;
- m. *surreptitious advertising*: surreptitious advertising in the sense of Article 1.1, paragraph 1, of the law, where the promotional intention may also be present without payment or compensation in return;
- n. *scheduled period*: the total time between the start and finish of a programme, including advertising and teleshopping announcements and other interruptions broadcast during that programme;
- o. *scheduled duration*: the length of the programme, not including advertising and teleshopping announcements and other programme interruptions;

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 due to their nature and content.
2. Without prejudice to the provisions of paragraph one, advertising and teleshopping announcements that are broadcast before, during or after the end of the video portion of the media broadcast must be considered «recognisable as such» if they contain a continuously visible denotation of «advertising», «advertisement», «teleshopping announcement», or words to similar effect.

Article 4 Clearly Distinguishable

1. Advertising and teleshopping announcements within the video and/or audio portion of the programme broadcast are considered «clearly distinguishable» from further programme broadcasts if they are preceded by and concluded with a visible and/or audible announcement of their beginning and conclusion.
2. Advertising and teleshopping announcements within teletext are considered «clearly distinguished» from all further teletext content if they are placed in a separate frame that is not a part of the rest of the teletext broadcast.

Article 5 Split Screen

1. Contrary to the stipulations of article 4, paragraph one, advertising and teleshopping announcements in the form of «split screen» are considered «clearly distinguishable» by spatial means from all other editorial content of the programme where:
 - a. these are placed in a separate stationary frame that is not a component of the programme and does not cover more than two-thirds of the overall image;
 - b. these show a continuously visible denotation of «advertising», «advertisement», «teleshopping announcement», or words to similar effect; and
 - c. the editorial portion of the programme remains fully visible and is broadcast completely and uninterrupted.
2. Advertising and teleshopping announcements in the form of «split screen» are exclusively possible during the programme broadcast consisting of the report or broadcast of a sporting event or during live coverage of an event.
3. The proportion of advertising and teleshopping announcements in the form of «split screen» are included in the maximum amount of advertising specified in the law and the decree.

Article 6 Individual Advertising or Teleshopping Messages

Placement of individual advertising or teleshopping announcements in the other programme broadcast under article 3.8, paragraph two, of the law is possible, if the frequency is limited to no more than twice per clock hour.

Article 7 Advertising for Medical Treatments

Advertising for medical treatments, as specified in article 3.7, paragraph two, under a, of the law, refers to advertising for treatments performed on the basis of an agreement for the provision of medical treatment under article 7.446 Dutch Civil Code.

Article 8 Proportionality

1. The proportion of advertising messages is restricted in terms of volume and duration and may not be dominant.
2. For advertising within the video and/or audio portion of the programme broadcast, the stipulations of the first paragraph have not been met where the proportion of advertising and/or teleshopping announcements is greater than the maximum volume specified in the law and the decree.
3. For advertising messages within teletext, the stipulations of the first paragraph have not been met where the space utilized for advertising and teleshopping announcements exceeds twenty percent of the overall page space, unless the page consists entirely of advertising announcements.

Article 9 Final Stipulations

1. These regulations shall be made public by means of publication in the Staatscourant (Dutch Government Gazette) and on the Dutch Media Authority website (www.cvdm.nl).
2. These regulations shall come into force on September 1, 2012.
3. These regulations shall be evaluated.
4. These regulations will be cited as the Policy on Advertising Commercial Media Organisations 2012.

DUTCH MEDIA AUTHORITY,

Prof. Tineke Bahlmann
Chairman

Prof. Madeleine de Cock Buning
Commissioner

APPENDIX POLICY ON ADVERTISING COMMERCIAL BROADCASTING ORGANISATIONS 2012

Article 1.1, paragraph one, of the Media Act 2008

In this law and the pursuant provisions the following definitions apply:

commercial media service: media service provided under the stipulations of chapter 3;

commercial media organisation: natural person or legal entity that provides a commercial media service which for the purposes of this law is subject to the authority of the Netherlands;

Authority: Dutch Media Authority, defined in article 7.1;

event: a sports or cultural event that is organised and accessible to the general public;

media service: service that consists of the provision of media broadcasts by means of public electronic communication networks as specified in article 1.1, part h, of the Telecommunications Act, for which the provider bears editorial responsibility;

on-demand media service: media service that consists of the provision of media broadcasts upon individual request at such time as is desired by the user;

broadcasting service: media service concerning the provision of media broadcasts that, based on a chronological schedule established by the organisation, transmits encoded or non-encoded media broadcasts via a broadcasting company or broadcasting network for simultaneous reception by the general public or a specific group of the general public;

programme: electronic product with video or audio content that is clearly delimited and is identifiably transmitted as such under a specific title;

programme broadcasts: all media broadcasts transmitted via a broadcasting service;

surreptitious advertising: all instances other than those under the provisions of the law where names, brands, logos, products, services or activities are mentioned or displayed with a presumed primary or secondary advertising objective, with the explicit provision that this objective is deemed present where any such presentation or mention takes place against a financial or similar compensation;

sports competition: a competition or the preparation for a competition, organised by or under the auspices of an NOC*NSF recognised national sports association and its sectors, or by comparable international associations with or without umbrella organisations or another competition or the preparation for a competition for a sport that has been recognised as such by the NOC*NSF;

teletext: television programme that consists solely of static text images that can be viewed by the viewer in the order and at the time of his determination, which is transmitted via the same transmission frequency of a broadcasting company or broadcasting network as that which is used for the distribution of other television programmes;

television programme: programme with video content, either with or without audio content.

Article 3.5a of the Media Act 2008

1. Advertising and teleshopping announcements, sponsored programme broadcasts and product placement are recognisable as such.
2. Subliminal techniques shall not be utilized in advertising and teleshopping announcements, sponsored programme broadcasts and programme broadcasts with product placement .
3. The programme broadcasts are prohibited from containing surreptitious advertising.

Article 3.6 of the Media Act 2008

1. A commercial media organisation that incorporates advertising or teleshopping announcements in its programme broadcasts, must be affiliated with the Dutch Advertising Code or a similar code established by the Dutch Advertising Code Foundation, and is therefore subject to monitoring by the Dutch Advertising Code Foundation.
2. Affiliation is demonstrated by means of a written statement by the Dutch Advertising Code Foundation that is presented to the Authority.

Article 3.7 of the Media Act 2008

1. Advertising and teleshopping announcements are clearly distinguished from other programme broadcast content by acoustic, visual or spatial means.
2. The programme broadcasts shall not contain advertising or teleshopping announcements for:
 - a. Medical treatments; and
 - b. Alcoholic beverages between the hours of 6:00 AM and 9:00 PM.
3. The name of a programme channel may state or display the names or logos or brand names of persons, companies or organisations in a neutral fashion.
4. The Authority may impose further regulations for such mention or display referred to under paragraph three, regulations that must be approved by the Minister.

Article 3.8 of the Media Act 2008

1. The programme broadcast on a programme channel may not consist of advertising or teleshopping announcements for more than twelve minutes per clock hour.
2. With due observance of this section, programme broadcasts consisting of the coverage or rendition of sports events may by exception entail that individual advertising or teleshopping announcements are moved to other programme broadcasts.

Article 3.9 of the Media Act 2008

1. In programme broadcasts on a programme channel uninterrupted teleshopping blocks shall amount to no less than fifteen minutes.
2. Teleshopping blocks shall be recognisable as such throughout the entire broadcast by the utilisation of visual and acoustic methods.
3. Article 3.8, paragraphs one and two, does not apply to teleshopping blocks.

Article 3.10 of the Media Act 2008

1. Advertising or teleshopping announcements will be inserted only where these are not detrimental to the integrity, the character or the consistency of the programme concerned, and the rights of right holders are not prejudiced.
2. Advertising or teleshopping announcements will not be inserted in programmes that consist of the transmission of church services or religious gatherings.

Article 3.11 of the Media Act 2008

The following programmes will contain a maximum of 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 younger than twelve years old, where the scheduled period for the programme is longer than thirty minutes.

Article 3.13 of the Media Act 2008

Television programmes that consist of event coverage will only contain advertising or teleshopping announcements during the natural breaks of the event itself or between the individual components of that event.

Article 3.14 of the Media Act 2008

1. In departure from articles 3.8 and 3.11 a television programme channel may be provided which:
 - a. consists exclusively of self-promotional advertising announcements; or
 - b. consists exclusively of teleshopping announcements.
2. The programme broadcasts of a television programme channel stipulated under paragraph one may contain advertising announcements in accordance with the provisions governing the insertion of advertising announcements in the television programme broadcast.

Article 3.29d of the Media Act 2008

Commercial on-demand media services are subject to articles 3.5, 3.5a, 3.6, 3.7, paragraph two, preamble and under a, 3.15 through 3.19c and 3.26 with the exception of articles 3.16, paragraph four, and 3.19b, paragraph three, subsection b.

Directive Considerations

(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.

Amendment Directive Considerations

(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.

Article 20 Directive

3. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of programmes, taking into account natural breaks in and the duration and nature of the programme concerned, and the rights of right holders are not prejudiced.
4. 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 thirty minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least thirty minutes, provided that the scheduled duration of the programme is greater than thirty minutes. No television advertising or teleshopping shall be inserted during religious services.

Article 23 Directive

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.
2. Paragraph one 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 Dutch Civil Code

1. An agreement to provide medical treatment – referred to in the present section as the medical treatment agreement – is the agreement under which a natural or legal person, the care provider, engages himself in the course of his medical professional practice or medical business towards another, the principal, to perform medical actions which directly affect the principal personally or a specific third party. The person who is directly affected by the medical actions is referred to as 'the patient'.
2. The term 'medical actions' means:
 - a. all actions – including examinations and providing medical consults – directly affecting a person and intended to cure that person of a disease, to prevent that person from contracting a disease or to assess the state of that person's health or which constitute 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.

ANNOTATION

General

1. The Media Act 2008 entered into force on 1 January 2009. This law is meant as an amendment to the digital and multimedia reality. The law was once again modified on 19 December 2009, as a result of the implementation of the Audiovisual Media Services Directive (hereafter: the directive). A number of changes were implemented, including a broadening of the regulations for advertising and sponsoring for commercial broadcasters, such as an allowance for the use of split screen techniques.
2. The legislature's objective is to avoid distortions of competition between commercial broadcasters based in the Netherlands and broadcasters operating from other Member States but that also have the Netherlands as their target audience market.
3. Upon the implementation of the law the regulations for commercial broadcasters remain directly linked to the term broadcast services. The directive required an elaboration of the regulations to include on-demand audiovisual media services. To this end the law introduced a new definition of on-demand media services that for the commercial media services concerns only moving images, either with or without audio. On-demand radio services that are commercial are not brought within the scope of the law. According to the legislature these services must first be given the opportunity to develop further (Parliamentary Documents II 2008/09, 31 876, nr. 3, pg. 6). The restriction to moving video content is established in article 3.29a, of the law, which defines the term commercial on-demand media service.
4. The extensive modifications and new regulations call for a further description and explanation of the supervision of the regulations for advertising and teleshopping. This policy aims to provide that.

Broadcast Services versus On-Demand Media Services

5. A broadcasting service, or linear media service, arbitrarily transmits the information on the basis of a chronological schedule for simultaneous reception by the general public or a specific group of the general public, where the viewer/ listener exerts no influence on the time at which the information is transmitted. However, an on-demand media service, also referred to as video on demand or a non-linear media service, transmits the information upon the specific request by the user. Therefore, the elementary difference between both services is the freedom of choice of the user with respect to viewing the broadcast. This is best illustrated by the example of the transmission of a sports event via internet. If the sports event can be viewed live via internet, this broadcast is considered a broadcast service, even if the user has to click on a number of different buttons on the website before being able to see the images. In contrast, if the user can view the sports event via the internet at a later time at his own discretion, this is considered an on-demand media service. Which on-demand services are subject to monitoring by the Authority is defined in the Classification Commercial On-Demand Media Services Policy 2011.
6. In the event that programmes of the commercial media organisations can be viewed live via the internet, this constitutes both a broadcasting service and a television programme. The general advertising regulations apply in full. Pursuant to article 1.1, paragraph one of the law, teletext is also considered a television programme. However, due to the specific nature of teletext, which consists primarily of text and graphics, the general advertising regulations are not fully applicable in this case. The explanatory notes to article 8 of this policy address the application of limitations on the proportion of advertising announcements within teletext. A limited number of advertising regulations is applicable to on-demand media services. This will be addressed in more detail in the explanatory notes.

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

7. For the regulation of advertising within commercial media broadcasts it is not relevant which type of distribution platform is used for its transmission. Broadcast services most frequently transmitted via (digital) cable networks, but may also be transmitted via IPTV-networks or mobile television services. Increasingly, on-demand media services are available not only via internet, but also via other digital distribution platforms (for example, via the television or mobile telephone).
8. Commercial media broadcasts that are transmitted in a linear fashion by means of digital cable, IPTV, mobile network or another distribution platform, are considered programme broadcasts, so that the valid advertising regulations for television and radio programmes are fully applicable. These are broadcast services, even though they are transmitted via another (digital) distribution platform such as internet. For example, this means that the hourly restriction of 12 minutes of advertising as established in article 3.8, paragraph one, of the law applies.

Forms of Commercial Media Broadcasts

9. The various forms of commercial media broadcasts call for a further explanation of the regulations for advertising and teleshopping. This policy aims to provide this.
10. This policy distinguishes between various forms of commercial media broadcasts in which advertising and teleshopping announcements may appear, irrelevant of the distribution technique.
 - a. First, there are advertising and teleshopping announcements within the video and/or audio portion of the media broadcasts provided by a broadcast service (the programme broadcasts).
 - b. Second, there are advertising and teleshopping announcements transmitted before, during and/or after the individually requested videos within an on-demand media service. The advertising and teleshopping announcements in the video portion are usually in the form of a so-called pre-roll: a commercial that is presented prior to the start of the requested video or audio. Advertising and teleshopping announcements may also interrupt the media broadcast or be placed on screen simultaneously and parallel to the editorial content by means of split screen. The commercial on-demand audio service (radio service) is as described previously not within the scope of the law, and therefore does not fall within the scope of this policy.
 - c. Third, advertising and teleshopping announcements within teletext can be distinguished. Pursuant to article 1.1, paragraph one, of the law, teletext must be considered a television programme.
11. This policy deliberately does not address advertising and teleshopping announcements that are not a component of the video and/or audio portion of media broadcasts and are not a component of teletext, such as banners or other advertisements in the text shell surrounding the videos that are offered within programmes such as Programma Gemist (Missed Programmes) of SBS. This contrary to the policy on advertising for public media organisations, in which this topic, following the principle of non-commercialism, is regulated. This also means that the maximum proportion of advertising announcements on the website is not limited to a maximum of 20%, as is the case for teletext pages. However, if an advertising announcement consists of, or links through to media broadcasts provided by a media service, this must of course be regarded as an independent media service, which must consequently comply with all applicable legal requirements (for media).

12. Which advertising regulations apply to the advertising and teleshopping announcements within the commercial media broadcasts depends on the form taken by the commercial media broadcasts.
13. Articles 3.5a through 3.14 of the law establishes the specific conditions with respect to advertising and teleshopping on radio and television. Pursuant to article 3.29d of the law a limited number of these rules are equally applicable to commercial on-demand media services. This concerns rules on the recognisability of advertising and teleshopping announcements and the prohibition of surreptitious advertising (article 3.5a), the affiliation with the Dutch Advertising Code (article 3.6) and the prohibition of advertising and teleshopping announcements for medical treatments (article 3.7, paragraph two, subsection a, of the law).

Explanatory Notes per Article

Article 2

(Definitions)

14. De terms used in these regulations are based on the law, in which a number are defined under article 1.1, of the law. If these regulations use terms that are not defined in the law, these are defined in the terms under article 2 of these regulations.
15. Surreptitious advertising is defined in the law, but is further clarified in article 2 of these regulations. In providing a response to a prejudicial question, the Court (Third Chamber) has ruled that surreptitious advertising must be interpreted as meaning that the *intent* for surreptitious advertising may also be deemed present where there is no financial or other compensation given in return (ECJ EC 19 June 2011, case C-52/10).
16. With respect to the rules of interruption for commercial media organisations, the legislature has distinguished between «scheduled period» en «scheduled duration» in the directive (article 20, paragraph two) and in the law (article 3.11). For the calculation of the number of allowed interruptions of films, news and news commentary, the total duration between the start time and the end time of a programme, the «scheduled period», irrelevant of the duration of the interruption of the programme by advertising and teleshopping announcements and other media broadcasts must be considered. This means that in addition to the duration of the programme, the «scheduled duration», the advertising and other interruptions (such as self-promotion) must also be counted, so that advertising interruptions may be inserted sooner and more frequently. According to the directive and the law, a news broadcast with a «scheduled duration» of 25 minutes may be interrupted only once by at least 5 minutes of advertising and other interruptions, because this means that the «scheduled period» will be at least 30 minutes. Programmes specifically intended for children younger than twelve years may also be interrupted no more than once per «scheduled period» provided the «scheduled duration» of the programme is greater than thirty minutes.

Article 3 (Recognisability)

17. This provision lays down the interpretation of the stipulations on advertising and teleshopping, as these have always been utilized by the Authority for radio and television. This provision refers to advertising and teleshopping announcements within the video and/or audio portion of the media broadcast and within teletext of a commercial media organisation, regardless of the utilized transmission technique or distribution platform. Therefore, this refers to both programme broadcasts and all other media broadcasts, including on-demand media services.
18. In general, advertising announcements in media broadcasts must be recognisable as advertising. The referential consumer used until now, the 'average viewer' as defined by the ARRvS (TROS – Aktua in Bedrijf, 21 August 1997) is no longer sufficient. This is why reference is made to the average consumer of the European Court of Justice, i.e. 'the average circumspect consumer' (ECJ EC 16 July 1998, case C-210/96, Gut Springenheide). Advertising or teleshopping in media broadcasts are «recognisable as such» where these are readily recognisable as an advertising or teleshopping announcement by the average circumspect consumer.
19. Without prejudice to the above, advertising and teleshopping announcements that are transmitted before, during or after the video portion of the on-demand media broadcast shall be «recognisable as such» where they are accompanied by a continuously visible clear annotation of «advertising», «advertisement», «teleshopping announcement», or words to that effect. The requirement that the advertising and teleshopping announcements are clearly distinguishable from the further content of the programme broadcast does not apply to on-demand media broadcasts. However, the announcement must be recognisable as an advertising announcement. To that end, the announcement may be accompanied by a continuously visible and clear annotation, or be made recognisable as an advertising announcement by other means.

Article 4 (Clearly Distinguished)

Advertising with the video and/or audio portion of the programme broadcasts and within teletext

20. For advertising and teleshopping announcements within the video and/or audio portion of the programme broadcast and within teletext, these must be «clearly distinguished» from the content of the other programme broadcast.
21. Where there are advertising and teleshopping announcements within the video and/or audio portion of the programme broadcast, a choice can be made, dependent on the medium ((internet) television or (internet) radio) for a visible and/or audible distinction. This may for example be achieved by use of the terms «advertising», «advertisement», «teleshopping announcement», or words to that same effect.
22. Where there are advertising and teleshopping announcements within teletext, the distinction must be visual in nature. The advertising and teleshopping announcement must be placed in a visibly separate frame that is clearly deviates from the other teletext broadcast in terms of design and/or colour. The advertising and teleshopping announcement may furthermore be accompanied by the term «advertising», «advertisement», «teleshopping announcement», or words to that same effect.

Advertising before, during or after videos within an on-demand media service

23. For advertising and teleshopping announcements before, during or after videos within an on-demand media services, the regime is less strict. The advertising and teleshopping announcements must be recognisable as such and videos within an on-demand media service may not contain surreptitious advertising. However, the requirement that advertising and teleshopping announcements must be clearly distinguished from the other content of the programme broadcast does not apply to on-demand media broadcasts. The separation principle is limited to television advertising and teleshopping (consideration 81 of the directive). This is justified because viewers have an increasing number of options to avoid advertising. Examples include the option viewers have to manually or automatically skip advertisements (by scrolling) as soon as the distinction starts.
Although pre-roll advertisements are most common, programmes may 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 proportion of advertising and teleshopping announcements, there are in principle no restrictions for commercial on-demand media services (see article 8).

Advertising within the video and/or audio portion of the programme broadcasts on internet

24. In addition to on-demand media services the media broadcasts on internet may also consist of linear broadcast services (programme broadcasts), which at times may even be transmitted simultaneously on different platforms. In those cases, the advertising regulations regarding advertising volume and the interruption regime as they apply for traditional television and radio programmes apply in full. The fact that transmission takes place via the internet is irrelevant to the fact that this is a linear media broadcast, to which the general regulations apply.

Article 5 (Split Screen)

25. Split screen is the simultaneous and parallel placement in a single image of editorial content and advertising or teleshopping announcements.
26. It is important that the audience is aware that it is watching an advertisement. This is why the advertising or teleshopping announcement must be recognisable as such and must be clearly distinguished from the rest of the programme. In the case of split screen, this distinction is not made in terms of time, but is limited to a spatial distinction by the manner in which it is presented.

27. If the advertising does not take up an excessive amount of space, the split screen technique allows viewers to continue watching the programme during the commercial programme. It is important that the editorial programme can be followed fully, completely and unhindered. Consequently the commercial must be transmitted parallel to the programme and can not be placed in or through it. Furthermore, the editorial content must be made smaller in order to make room for the frame within which the advertising or teleshopping announcement is presented. In order to be able to continue to follow the editorial programme, the frame within which the advertising or teleshopping announcement is presented may cover no more than two-thirds of the total screen. Furthermore, the frame must be static on screen, and the background of the frame must be clearly distinguishable from the editorial content of the programme. This means that a video overlay is not possible because this would make it more difficult to make the distinction with the editorial content, and make it more difficult to follow the editorial content in an unhindered fashion.
28. Split screen falls within the scope of the directive. However, this form of advertising is only compatible with the directive if all other provisions for advertising and teleshopping announcements are also met. According to the legislature this means that the advertising and teleshopping announcements must be distinguished from the content of the programme by optical or acoustic means – for instance by the use of windows or bars or the display of the text «advertisement» (Parliamentary Documents II, 2007/08, 31 356, nr. 3, pg. 68). In order to ensure a clear distinction between advertising and teleshopping announcements and editorial content, the Authority considers it important that in addition to the distinction methods described in the previous note number, that the words «advertisement», «teleshopping announcement» or words to that effect are visible on screen for the duration of the broadcast of the split screen advertisement
29. The split screen technique is intended for situations where regular programme-interrupting advertisements are not possible or are difficult to achieve. According to the legislature, this is particularly the case for (sports) events without natural breaks (Parliamentary Documents II, 2007/08, 31 356, nr. 3, pg. 68). As the law does not impose any restriction to that effect it has been decided in the second paragraph of this provision to only allow split screen advertising and teleshopping announcements during programme broadcasts consisting of:
- the rendition or coverage of a sports event; or
 - the live coverage of an event.
30. The time spent on split screen advertising is included in the application of the provisions concerning the maximum advertising volume.
31. For the sake of clarity, article 5 of these policy regulations does not apply to advertising announcements that are transmitted during the commercial break. For example, this applies to the advertising technique *Special Advertising*, in which an advertisement can be incorporated into the design of the opening or closing image of the commercial break (potentially ancillary to self-promotion), provided the advertising announcement does not coincide with the editorial content of a programme and that all other provisions for advertising and teleshopping announcements are met.

Article 6 (individual advertising or teleshopping announcement)

32. For commercial on-demand media services, a individual advertising or teleshopping announcement is quite common. Advertising or teleshopping announcements broadcast on linear television during a programme are also no longer required to be transmitted in blocks (a block consists of two or more advertisements). Pursuant to article 19, paragraph two, of the directive, individual advertising and teleshopping announcements remain exceptions, barring broadcasts of sports events. The Explanatory Memorandum on individual advertising or teleshopping announcements includes the following: «The repeal of the so-called «20 minute rule» in de Directive entails more flexibility for commercial broadcasters. As a result, programmes may be interrupted more frequently for advertising. Subsequently, there is a rising demand among commercial broadcasters for shorter commercial breaks.» (Parliamentary Documents II, 2008/09, 31876, nr. 3, pg. 22, 4th full paragraph). However, individual advertising or teleshopping announcements should remain the exception, the principal line states. Only during programme broadcasts consisting of the report or coverage of sports events are individual commercials always permitted.

For sports, the requirement is that these are programmes that actually and predominantly consist of the report or coverage of a sports competition or sports event. Article 1.1 of the law defines the term sports competition. It is important to state that the sport is officially recognised by the NOC*NSF.

33. There are a number of sports that have no (natural) break, such as a Formula 1 race or a cycling race. There are also sports for which the natural break occurs after the completion of an independent component (such as after a set in tennis; see Decision Authority of 24 June 1999, PTZ/HO/3567). These independent components are completed by obtaining a certain number of game points, rather than being completed after a specific period of time. The duration of such breaks is not always long enough for multiple advertising announcements. In these cases it is difficult for a broadcaster to schedule a commercial break. Consequently, the insertion of individual advertising or teleshopping announcements is allowed in the event of sports programmes.
34. Other programmes may insert individual advertising or teleshopping announcements only on exception. The exception entails that individual advertising announcements are allowed in the further programme broadcasts, but their number must be limited to no more than two per clock hour.
35. Naturally the Authority shall ensure that the repeated interruption of a programme by individual advertising announcements complies with article 3.10, paragraph one, of the law.
36. For the sake of clarity it is stated here that the (policy) rules for individual advertising or teleshopping announcements also apply to advertising or teleshopping announcements that are transmitted between different programmes. After all, article 3.8, paragraph two, of the law speaks of individual advertising or teleshopping announcements in the *programme broadcast* and not about individual advertising or teleshopping announcements.

Article 7 (Advertising for medical treatments)

37. For the definition of the term medical treatment the Authority adheres to the definition of an agreement concerning medical treatment specified in article 7.446 Dutch Civil Code. Pursuant to that article, an agreement to provide medical treatment – referred to in the present section as the medical treatment agreement – is the agreement under which a natural or legal person, the care provider, engages himself in the course of his medical professional practice or medical business towards another, the principal, to perform medical actions which directly affect the principal personally or a specific third party.

Article 8 (Proportionality)

38. With respect to the proportion of advertising announcements, the general principle is that it is limited and not dominant. With respect to advertising within the video and/or audio portion of the media broadcast provided by the broadcast service, the proportion may in no case exceed the maximum specified in article 3.8, paragraph one of the law. As article 3.8, of the law does not apply to teleshopping announcements, this provision regarding the proportion of advertising announcements does not apply to teleshopping announcements.
39. The circumstances that a broadcasting service may be (exclusively) transmitted via internet, is of no effect. As this concerns programme broadcasts pursuant to article 1, paragraph one of the law, article 3.8, paragraph one of the law is fully applicable. The linear nature of the media broadcasts allow for an easy application of the hourly maximum set by the media law.
40. A recurring question concerning the calculation of the maximum volumes for advertising within the programme broadcasts is to what extent self-promotion must be counted toward the advertisement maximum volumes. In that respect, article 23, paragraph two, of the directive and considerations 34, 35 and 39 of the modification directive are important.

It may be inferred from these considerations that in the event that a broadcasting organisation promotes its own products, services, programmes or networks, such announcements are in principle not taken into account in the calculation of the maximum broadcast time per day or per clock hour for advertising and teleshopping (consideration 34 modification directive). In order to avoid distortions of competition, this exception applies only to announcements about products that are simultaneously ancillary 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 modification directive). Such self-promotion is a specific form of advertising that need not be taken into account in the calculation of maximum advertising volume. This is also expressed in article 23, paragraph two, of the current directive. For example, this means that advertising for broadcast channels of the commercial media service that are transmitted during advertising broadcast time do not have to be counted toward the maximum advertising volume. But these must be, as this concerns a (special form of) advertising, transmitted during advertising broadcast time.

Other forms of self-promotion, i.e. programme announcements in the form of trailers, must be considered programmes (consideration 39 modification directive). Because this concerns editorial content, these announcement also do not count toward the maximum advertising volumes.

41. Advertising and teleshopping announcements before the individually requested videos within an on-demand media service are usually presented in the form of pre-rolls; commercials that are shown before the video starts playing, but they may also come in the form of programme interrupting advertising. Because this concerns videos that are requested by individual users and these are not broadcasts of which the total duration is easily determined, the hourly maximum specified in article 3.8, paragraph one, of the law is difficult to uphold in this case. Moreover, the legislature has also decided to declare that the hourly maximum of 20% is not applicable to on-demand media broadcasts.
42. It is not easy to determine a maximum proportion of advertising announcements within teletext. Defining the limitation in terms of the dimensions of the advertisement does not correspond to the actual practice where graphic designs in all shapes and sizes are utilized and are tailored to the needs of the advertiser. Setting a limit to the number of advertisement sources on one teletext page is difficult as it does not take into account the fact that refreshing the page means that another advertisement from another source will be shown.
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 has been selected, where the general principle is that advertisements must be limited in numbers and duration and must not be dominant. The Authority considers these principles upheld where the advertisements on a teletext page, which also features editorial information, together do not take up more than twenty percent of the available space of a single page.
44. The Authority does not consider it contrary to the general principles that the proportion of advertising announcements must be limited and non-dominant, when a teletext page consists completely of advertising announcements. Users may visit editorial teletext pages without being confronted with special advertising pages on teletext. In this case, it is permitted to set up a full page as an advertising page, provided the advertising announcement(s) do(es) not coincide with the editorial content of a programme and that all other provisions for advertising and teleshopping announcements are met.