

**BRAF MAIN TOPIC on November 19th-20th, 2015**  
**YEREVAN**  
**ARMENIA**

*„Commercial communication (CC) with all its aspects covering its legal framework and implementation, product placement, sponsorships, teleshopping, public spots, the programs which are not allowed to take commercial communications, the products which cannot be the subject of CC, broadcasting principles applied to CC”*

**Some aspects regarding regulation and self regulation  
of audiovisual commercial communications  
in Romania**

While the entire structure of the linear and non-linear regulatory field is under scrutiny, and we have in mind the fact that the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values" analyzes key aspects: the regulatory differentiation between linear and non-linear services, new approaches towards the country of origin principle and the option towards promoting the country of destination principle in the future and so many other things that regard all the work that regulatory authorities do, **after programs are broadcast** so that the audiovisual market is functional and the public interest is served, **it is crucial to discuss about self regulation**. Self regulation is the best and the most efficient tool to prevent law infringements, avoid hurting the public, before programs are broadcast.

The Audiovisual Law no. 504/2002 and the regulatory Council decisions no. 220/2011 and 320/2012 transpose into the national legislation at the level of effects the provisions in the Audiovisual Media Services Directive.

In keeping with the EU and the national legislation provisions, *audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.*

While broadcasters' compliance with the legal framework regarding the commercial communication is monitored by the Council and is sanctioned if necessary, only after broadcasting, the Romanian Advertising Council, *a professional, non-governmental, non-profit and independent organization* unfolds a copy advice and self-regulation activity in advertising. The activity of the Romanian Advertising Council is based on the Code of Advertising Practice, prepared by its members. The Code is a set of ethical rules to be respected by all those involved in advertising and any form of commercial communication. RAC has 57 members: companies, advertising agencies, media and associations. In turn, the Council is a member of other European (EASA - European Advertising Standards Alliance) or global (IAA - International Advertising Alliance) organizations

Starting June 2009 the Romanian Advertising Council (RAC) is the depositary for the Ethical code for food product advertising targeting children. Therefore, intimations regarding problems handled by this code are in remit for RAC and are reviewed by it.

In a signed protocol with RAC, the National Audiovisual Council asks for RAC's opinion on aspects regarding advertising addressed to children, on the advertising for High Fat Salt Sugar food for children, for food and soft drinks, on commercial communication for beer, for telecommunication services and products and also for cosmetics and food supplements.

The Council takes the final decision regarding the nonobservance of the audiovisual legislation for commercial communications after receiving RAC's point of view, which is only consultative but not binding.

**Regarding the main BRAF topic:** „Commercial communication (CC) with all its aspects covering its legal framework and implementation, product placement, sponsorships, teleshopping, public spots, the programs which are not allowed to take commercial communications, the products which cannot be the subject of CC, broadcasting principles applied to CC” the following aspects must be mentioned”

- the distinction made in the secondary legislation between commercial communication and public interest announcements and /or the so called: „**Non-commercial campaigns**”
- since the definitions of commercial communication is well known and implemented by most of the countries in keeping with the Audiovisual Media Services Directive, in the present text we shall only mention what is accepted in Romania as being **non-commercial messages in keeping with art 141 in Decision 220/2011 regarding the Audiovisual Code**<sup>1</sup>:
  - a) public interest announcement assumed by a public institution or public authority during an alerting, warning and acknowledging action unfolded under special law provisions, not promoting the image of an institution;
  - b) the social campaign unfolded by an association or legally established foundation during an exclusively social activity that addresses the society or the community;
  - c) charity appeal under a humanitarian philanthropic activity in support of persons in difficulty; the charity appeal shall specify the person under whose responsibility the donated money and goods have been collected and used.
- The special conditions under which non-commercial messages may be broadcast are stipulated in art 42 in the same decision, as follows:

**„ART. 142**

Non-commercial messages shall not be included in the time allotted to advertising and shall comply with the following cumulated conditions:

- a) messages shall be broadcast free of charge, without any equivalent direct or indirect pending obligation;
- b) these messages shall be kept in a separate block from commercial advertising messages and shall be identified between neutral spacing with the reference “Public interest message/messages”;
- c) these messages shall make no commercial reference; sponsors ‘ logos may be presented only in charity appeals at the end of the spot and must not surpass a cumulated 3 second duration.”

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<sup>1</sup> <http://www.cna.ro/Decision-no-220-dated-February.html>

*Product placement, sponsorship, teleshopping*

<p align="center"><b>Product placement in primary legislation</b></p> <p><b>Law no. 504/July 11th, 2002 The Audiovisual Law</b></p>	<p align="center"><b>Product placement in secondary legislation</b></p> <p><b>Decision no.220/2011 regarding regulation of the audiovisual code</b></p>
<p><b>Art. 31 - (1) <u>Product placement shall be prohibited</u></b></p>	<p><b>Chapter 3 Product Placement</b></p>
<p>(2) By way of derogation from par. 1, product placement shall be admissible:</p> <p>a) in cinematographic works, films and series made for audiovisual media services, sports programs and entertainment programs;</p> <p>b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a program.</p>	<p><b>ART. 100</b></p> <p>(1) Product placement means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a program, in return for payment or for similar consideration.</p>
<p><b>(3) The derogation provided for par. 2, (a) <u>shall not apply to children’s programs.</u></b></p>	<p>(2) Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, by the reference, “This program contains / has contained product placement’ as well as by the 30 pixels symbol “PP” using white color on a black background, in a legible way for minimum 5 seconds.</p>
<p>(4) Programs that contain product placement shall meet at least all of the following requirements:</p> <p>a) their content and, in case of television broadcasting their scheduling shall in no circumstance be influenced in such away as to affect the responsibility and editorial independence of the media service provider;</p> <p><b>#M9</b></p> <p>b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>c) they shall not give undue prominence to the</p>	<p>(3) The reference in par.(2) will be eliminated after a six-month period since the present code comes into force.</p>

product in question;	
(5) Programs where product placement is inserted, shall contain clear information on it and shall be appropriately identified at the start and at the end of the program, and when a program resumes after an advertising break, in order to avoid any confusion on the part of the viewer.	(4) Product placement does not exclude sponsorship and/or broadcasting advertisements for the same products or services during the same program if the provisions in <a href="#">art. 97</a> par. (9) and other conditions stipulated by the <a href="#">Audiovisual Law</a> are complied with.
(6) Requirements in par .(5) shall not apply to the program that has neither been produced nor commissioned by the media service provider itself or by a company affiliated to the media service provider.	
<b>(7) Product placement of tobacco products or cigarettes or other products of undertakings whose principal activity is the manufacture or sale of such products, as well as product placement of medicinal products or medical treatments available only on prescription are <u>forbidden</u>.</b>	

**Product placement and sponsorship**  
in Decision 220/2011 regarding regulation of the audiovisual code  
Chapter 2  
Sponsorship

**(9) The sponsor's announcement must not make any reference to the advertising or to the product placement broadcast in connection with the sponsor's products or services.**

- ❑ **Primary legislation in Romania i.e. the Audiovisual Law no.504/2002 provides rules for commercial communication in CHAPTER I 3<sup>1</sup> AUDIOVISUAL COMMERCIAL COMMUNICATIONS. The text is available at: <http://www.cna.ro/The-Audio-visual-Law,1655.html>**
- ❑ Secondary legislation in Romania regarding commercial communication rules and implementation provisions in **linear media services** are available in Title VIII "Audiovisual Commercial Communications" of the Decision no.220/2011 at : <http://www.cna.ro/Decision-no-220-dated-February.html>
- ❑ Secondary legislation in Romania regarding commercial communication rules and implementation provisions for **on demand media services** are available in CHAPTER V Rules on commercial communications broadcast by on demand audiovisual media services of the Decision no. 320/2012 concerning the provision of on demand audiovisual media services at: [http://www.cna.ro/IMG/pdf/NAC\\_Decision\\_No.\\_320\\_2012.pdf](http://www.cna.ro/IMG/pdf/NAC_Decision_No._320_2012.pdf)

