



EUROPEAN BROADCASTING UNION

UNION EUROPEENNE DE RADIO-TELEVISION

*Legal Department*

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## **EBU MEMORANDUM ON VIRTUAL ADVERTISING**

### **The need for a clear framework for virtual advertising**

Virtual advertising can be defined as the use of electronic (imaging) systems which alter the broadcasting signal by substituting, or adding, venue advertising in the television picture. It is being used increasingly often in the transmission of sports events on television (for example, to allow advertisers and event sponsors to target particular geographical markets with different brand-names or messages) but it may also be used in the transmission of other events.

Experience over recent years has shown that self-regulation<sup>1</sup> and self-control by broadcasters cannot remove the legal insecurity currently surrounding this practice. Nor can they, on their own, prevent aggressive advertising and visual distractions liable to cause an adverse reaction from viewers. Firstly, general requirements in advertising and broadcasting law are subject to different interpretations and cast doubt on the very legality of this form of advertising (in terms of the separation of advertising and editorial content, the prohibition of surreptitious advertising, and the limitations on television advertising). Secondly, there have been several instances where virtual advertising has been inserted without the knowledge of broadcasters, and in other cases broadcasters have had no choice but to accept virtual advertising in order to transmit an event and thus satisfy the public's information requirements.

The EBU therefore welcomes initiatives taken by regulators in some countries to create a clear, specific and appropriate legal framework for virtual advertising. While it would not be appropriate to apply the rules on television advertising to virtual advertising replacing event advertising, the inter-relationship between virtual advertising and television advertising means that virtual advertising cannot be left unregulated. The EBU also welcomes federations' initiatives to set up rules for virtual advertising with regard to certain sports competitions.<sup>2</sup>

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<sup>1</sup> See the 1996 Draft EBU/ACT Code of Conduct on virtual advertising, which was approved by the EBU's Administrative Council but on which no final agreement could ultimately be reached with the ACT.

<sup>2</sup> See the FIFA Regulations for the Use of Virtual Advertising of December 1999.

The present memorandum puts forward a set of rules and principles which, in the EBU's view, should be implemented to ensure that recourse to virtual advertising is balanced, socially acceptable and viewer-friendly. These rules and principles should complement existing media and advertising legislation and self-regulatory codes.

The text below may also contribute to establishing a coherent, harmonized approach to virtual advertising throughout Europe (while each state would remain free to require television broadcasters under its jurisdiction to comply with stricter rules).

## **Proposed rules and principles**

### **Scope and definitions**

The following rules and principles apply to 'virtual advertising', i.e. the use of electronic (imaging) systems which alter the broadcasting signal by substituting, or adding, venue advertising in the television picture. 'Venue advertising' refers to the advertising visible at the venue where the televised event takes place; the 'televised event' may be any sports, cultural or other organized event which is transmitted on television (live or deferred, in full or in part).

The term 'broadcaster' herein is used in accordance with the definition in the "Television without Frontiers" Directive of the European Communities and in the European Convention on Transfrontier Television of the Council of Europe. This definition does not include the so-called 'host broadcaster' in its capacity of producer of the signal but does cover all broadcasters transmitting the event.

- 1. The use of virtual advertising must not change the quality of the programme, or transform or impair the appearance of the venue where the event is taking place.**

Concrete applications of this general principle can be found in points 2-6.

- 2. Virtual advertising may be inserted only on surfaces at the venue which are customarily used for advertising, subject to point 3 below.**

This means *inter alia* that virtual advertising may be placed only on spaces where advertising can be attached physically. For example, it would not be possible to insert virtual balloons carrying advertising.

- 3. Virtual advertising may be inserted on the field of play/surface, only outside competition times and only if there are no players/competitors on the field of play/surface.**

This special clause covers the insertion of virtual advertising on the surface of a (sports) competition. It applies regardless of whether there is already advertising there.

- 4. No virtual advertising may appear on persons or on their equipment.**

This ban would include competitors, performers, officials, spectators, etc.

- 5. Virtual advertising must not be inserted in a way that obscures, even in part, the television audience's view of the action/performance.**

This corresponds to the universally accepted practice that in the transmission of sports events there should be no advertising between the cameras and the action.

- 6. Virtual advertising should be in keeping with the overall look of the venue and should not have greater prominence than advertising seen at the venue.**

This would need to be determined in terms of colour, brightness, flashing and moving images, etc.

- 7. Virtual advertising must not use subliminal techniques.**

This would exclude recourse to physically weak advertising messages of which the viewer is not consciously aware.

- 8. Virtual advertising must not be used for products or services for which television advertising is prohibited in the country where the broadcaster is established. Virtual advertising which is specifically targeted at audiences in a single country must not be used as a means of by-passing the rules of that particular country. There shall be no virtual advertising for tobacco products.**

This confirms the establishment criterion as the primary criterion for determining the applicable law. In addition, it prevents the use of virtual advertising as a means of circumvention of the law of the country of reception. Irrespective of the national law, virtual advertising for tobacco products shall be prohibited completely.

**9. No virtual advertising may be specifically inserted in items for television news bulletins.**

This would allow news usage of the signal as it exists (e.g. as used for the live or deferred transmission of an event) but would not allow any subsequent modification or insertion of virtual advertising in the news item.

**10. No virtual advertising may be inserted in the signal by the event organizer, its agents or any third party without the prior agreement of the broadcaster(s) holding the transmission rights. Broadcasters' editorial responsibility for virtual advertising cannot be waived or transferred contractually.**

Broadcasters' editorial independence and responsibilities mean that they must retain editorial control over their programmes and ultimate control over the signal they transmit. Such responsibilities cannot be transferred to event organizers by blanket approval being given to virtual advertising.

**11. No virtual advertising may be inserted in the signal without the prior agreement of the event organizer, and no virtual advertising should break any existing contract with advertisers or sponsors of the event.**

This protects the contractual relationships between the parties involved in the event and, in particular, prevents ambush marketing.

**12. Broadcasters must inform their viewers, in an appropriate manner and in accordance with national law and practice, of the use of virtual advertising.**

The information should normally be given at the beginning and/or end of the programme. For broadcasters to be able to inform viewers, they need to ensure that they are themselves informed (see point 10 above).

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