

New General Commercial Communications Code for Broadcasters

13th June 2017 | by Peter Bolger

On 1 June 2017, the revised BAI General Commercial Communications Code (the “Code”) came into effect.

The Code applies to all “commercial communications”, which are defined to include advertising, sponsorship, teleshopping and product placement, which promote goods or services carried on broadcasting services (i) operating under contract with the BAI; or (ii) established under Irish legislation. The Code does not apply to commercial communications carried on broadcasting services licensed in other jurisdictions (for example, broadcasters licensed by Ofcom in the UK) or to commercial communications carried on non-broadcasting services (for example, services provided over the internet, on on-demand audio visual services made available in Ireland).

Key changes

Sponsorship and Advertising

The Code now sets out more clearly the distinction between sponsorship and advertising, and requires there to be a clear separation between the two types of communication; for example, by ensuring that there is sufficient separation between sponsorship announcements scheduled before and after ad breaks and any advertisements for a sponsor in the ad breaks themselves. The distinction between sponsorship and advertising is recognised in both Irish and EU broadcasting legislation and it is an important one because there are limits to the amount of advertising that can be broadcast, whereas there is no time limit on sponsorship. A report issued by the BAI on the previous version of the Code notes that broadcasters had often struggled to meet the requirements of the Code relating to sponsorship, and that in some cases this was the result of differing interpretations of the Code. Hopefully the new provisions in the Code will now give some clarity to broadcasters and advertisers.

Sponsorship and Product Placement

The Code now includes a clear distinction between sponsorship and product placement. Sponsorship announcements and references may be shown during a programme but must not form part of a plot or narrative; i.e. they are limited to announcements declaring the sponsorship arrangement (for example, by using the words “sponsored by”). In contrast, product placement involves the inclusion of products or brands in a programme as part of the plot or narrative and, where such placement comes within the Code definition of paid product placement or prop placement, it will be subject to the additional provisions in the Code relating to product placement. This clarity will no doubt be welcomed by broadcasters, particularly given the increase in broadcasters using product placement and sponsorship as an alternative or additional means of generating advertising revenue.

Sponsorship of News and current affairs programmes

Sponsorship of news and current affairs programmes continues to be prohibited under the Code. However, the Code now expressly provides that weather, entertainment and traffic items may be sponsored. This is presumably intended to give effect to BAI guidance on the previous version of the Code, which states that sponsorship of these types of programmes is permitted.

Alcohol products

The revised Code includes a number of requirements for commercial communications relating to alcoholic beverages. In addition, alcohol sponsorship of sports bulletins, programmes and competitions within sports programmes is no longer permitted. Commercial communications are permitted for events or activities which have alcohol sponsorship, although the sponsor and the sponsor's product shall not be more prominent than the event or activity being promoted.

Sponsorship and Competition

The Code also sets out clear requirements relating to information to be provided to audiences in relation to sponsored competitions; for example, broadcasters are required to make information available to audiences such as (i) how to enter the competition; (ii) closing dates and times; and (iii) the means by which a winner is selected.

Comment

The European Commission is in the process of updating the Audiovisual Media Services Directive (AVMSD), in part to reflect the recent growth in video-on-demand services and video-sharing platforms. At present, there is a greater regulatory burden on television broadcasters and lighter regulatory requirements on on-demand service providers; this can be seen in the Code itself, which does not currently apply to on-demand services. The proposed new AVMSD is expected to introduce new regulations for companies such as Netflix and YouTube. The developments of the AVMSD will need to be monitored and, once the revised AVMSD is implemented, it is likely that further revisions to the Code will be required.

For further detail please contact Aideen Burke at aburke@lkshields.ie or Peter Bolger at pbolger@lkshields.ie.

About the Author



Peter Bolger
Partner

Peter is Head of our highly regarded Intellectual Property, Technology and Privacy team. He advises clients on all aspects of privacy law in respect of compliance, registration, international transfers, policies and audits including the GDPR.

T: +353 1 638 5877 **E:** pbolger@lkshields.ie