
INFORMATION NOTE

Regulation of advertising and sponsorship for commercial radio broadcasting in selected places

1. Background

1.1 At its meeting held on 13 May 2010, the Panel on Information Technology and Broadcasting requested the Research and Library Services Division to provide background information on the regulation of advertising and sponsorship for commercial radio broadcasting in selected places. The purpose of this information note is to study the corresponding regulatory regimes during the non-election period in the United Kingdom (UK), Germany, Australia and the United States (US), with special reference to those advertising/sponsorship rules which are most relevant to news and current affairs programmes. As such, the information note will cover (a) the regulation of advertisement/sponsorship of political matter¹, (b) the transparency of advertising/sponsorship through the identification and separation of these commercial arrangements from other programming content, (c) the requirements for upholding editorial independence from commercial reference, and (d) additional requirements for advertising on, and sponsorship of, news and current affairs programmes.

¹ The UK, Germany, Australia and the US have instituted different broadcasting rules for advertising/sponsorship during the election period. In the UK, political parties receive a certain amount of media time free of charge during the election period. Likewise, political parties in Germany are allocated media time subject to reimbursement of costs during the election period. In contrast, Australia allows paid political advertising in the broadcast media during the non-election period. During the election period, broadcasters are subject to specific requirements such as giving all political parties contesting the election a reasonable opportunity to have election matter broadcast (the "equal access" rule). Same as Australia, the US allows the broadcasting of paid political advertising during the non-election period. During the election period, broadcasters must comply with rules designed to ensure that political candidates contesting the election have reasonable opportunities to access the broadcast media.

Table 1 – Overview of the regulatory environment

Places	Regulatory authorities	Regulatory framework
The United Kingdom	Office of Communications (Ofcom)	<p>Ofcom is a statutory authority established under the <i>Office of Communications Act 2002</i> to regulate the UK's broadcasting, telecommunications and wireless communications sectors. Ofcom has contracted out the regulation of broadcast advertising to the Advertising Standards Authority (ASA), while retaining its regulatory responsibility for sponsorship and other commercial arrangements.</p> <p>ASA is a self-regulatory industry body responsible for adjudication of any breaches of the advertising code developed by the Broadcasting Committee of Advertising Practice (BCAP) for radio advertising. BCAP is a tripartite body comprising advertising agencies, advertisers and representatives of broadcasters licensed by Ofcom.</p>
Germany	State Media Authorities	<p>There is no centralized regulatory authority for broadcasting in Germany. The regulation of media content falls within the jurisdiction of individual federal states (Länder). At present, there are 14 state government agencies – State Media Authorities – established to deal with regulatory issues at the state level.</p> <p>The individual broadcasting laws of Länder are complemented by the <i>Interstate Broadcasting Treaty</i> ratified by all state parliaments to set out a basic legal framework for regulating the broadcasting industry at the national level.</p> <p>Advertising in Germany is subject to self-regulation based on the voluntary codes of standards developed by the German Advertising Council, a self-regulatory industry body making up of 43 organizations from the advertising sector, the media, agencies, advertising professionals and research. The Council deals with consumer complaints relating to advertising.</p>

Table 1 – Overview of the regulatory environment (cont'd)

Places	Regulatory authorities	Regulatory framework
Australia	Australian Communications and Media Authority (ACMA)	<p>ACMA is a statutory authority established under the <i>Broadcasting Services Act 1992</i> for the regulation of broadcasting, radio communications, telecommunications and online content in Australia. It was formed on 1 July 2005 by the merger of two former government regulatory authorities – the Australian Communications Authority and the Australian Broadcasting Authority.</p> <p>ACMA has worked with the industry group – Commercial Radio Australia Limited (CRA) – to establish a co-regulatory scheme for the radio broadcasting industry. CRA has developed the <i>Commercial Radio Codes of Practice and Guidelines</i> in consultation with ACMA. ACMA monitors the codes and deals with unresolved complaints about activities breaching the codes.</p>
The United States	Federal Communications Commission (FCC)	<p>FCC was established under the <i>Communications Act of 1934</i> as the statutory regulator for the broadcasting and telecommunications industry in the US.</p> <p>The First Amendment to the US Constitution proscribes censorship of broadcasting materials and interference with freedom of expression in broadcasting. Such a proscription sets the boundary of the mandate of FCC to regulate programme content.</p> <p>A self-regulatory scheme has been administered by the National Advertising Division of the Council of Better Business Bureau for safeguarding good advertising standards in print and broadcast media. The Bureau is a non-profit organization aiming at developing and administering self-regulation programmes for the business community, including the advertising industry</p>

Table 2 – Principal governing legislation and codes of practice

Places	Legislation/codes of practice
The United Kingdom	(a) <i>Ofcom Broadcasting Code</i> (issued pursuant to Section 319 of the <i>Communications Act 2003</i>); and (b) <i>Radio Advertising Standards Code</i> (developed by the Broadcasting Committee of Advertising Practice).
Germany	(a) <i>Interstate Broadcasting Treaty</i> ; and (b) <i>Joint Directives of the State Media Authorities for Advertising, for the Implementation of the Separation of Advertising and Programming, and for Sponsorship in Radio</i> .
Australia	(a) <i>Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000</i> ; (b) <i>Broadcasting Services (Commercial Radio Advertising) Standard 2000</i> ; (c) <i>Broadcasting Services (Commercial Radio Compliance Program) Standard 2000</i> ; and (d) <i>Commercial Radio Codes of Practice and Guidelines</i> .
The United States	(a) <i>Communications Act of 1934</i> ; and (b) Federal Regulations enacted by FCC to implement the statutory provisions of the <i>Communications Act of 1934</i> .

Table 3 – Regulation of political advertisement/sponsorship during the non-election period

Places	Regulatory framework
The United Kingdom	<p>Political advertising is prohibited. Ofcom is required to ensure that no advertisement:</p> <ul style="list-style-type: none"> (a) is broadcast by, or on behalf of, a body whose objectives are wholly or mainly of a political nature; (b) is directed towards any political end; or (c) shows undue partiality in matters of political or industrial controversy or relating to current public policy. <p>Rule 9.2 of the <i>Ofcom Broadcasting Code</i> stipulates that no channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium.</p>
Germany	<p>Advertising of a political, ideological, or religious nature is prohibited. Furthermore, political, ideological, or religious associations may not sponsor broadcasts.</p>
Australia	<p>When broadcasting political matter, the licensee must ensure that the broadcast contains an announcement which identifies (a) the name and location of the person who has authorized and requested the broadcast, and (b) the names of all persons delivering an address or making a statement within the broadcast.</p> <p>Where the political matter is broadcast at the request of a political party, the broadcast should contain an announcement which identifies (a) the name of the authorizing party, (b) the town, city or suburb of the principal office of the political party, and (c) the name of the person responsible for giving effect to the authorization.</p>
The United States	<p>When a station is furnished with material (such as record or script) for use in connection with the broadcasting of political matter, the station must make a sponsorship announcement of receiving such material and identifying the party or parties furnishing the material for the broadcast.</p> <p>The sponsor of any political broadcast matter must be identified no matter whether any consideration has been received by the station for the broadcast. In addition, the disclosure must be made at the beginning <i>and</i> end of a programme that is more than five minutes in length, or at the beginning <i>or</i> end of a programme that is five minutes or less.</p>

Table 4 – Requirements for identification and separation of advertising/sponsorship from other programming content

Places	Advertising	Sponsorship
The United Kingdom	<p>Advertising messages for a station's own commercial activities, or those on which it works with a commercial partner, must be clearly distinguishable as advertising and separated from other programming. Licensees must ensure that the distinction between advertising and programming is not blurred and listeners are not confused between the two.</p> <p>Advertisements which have a similar style and format to editorial content² must be separated from programming by material such as a jingle/station identification or by scheduling in the middle of a break.</p>	<p>The relationship between the sponsor and the sponsored channel or programme must be transparent.</p> <p>Sponsorship credits must be short branding statements, which may contain legitimate advertising messages (slogans, addresses, phone numbers, web addresses etc).</p> <p>Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor.</p> <p>Sponsorship credits must be broadcast at the beginning and/or end of the programme. During longer sponsored programmes (e.g. concerts), they must be broadcast as appropriate for the degree of transparency required.</p>
Germany	<p>Advertising shall be readily recognisable as such and must be distinctly separated from other parts of the programme by acoustic means. Infomercials, which are advertising presented as editorial content, must be clearly identified as advertisement and not confused with editorial content.</p>	<p>In programmes which are partially or wholly sponsored, the fact of the sponsorship must be pointed out in justifiable brevity and in an appropriate manner at the beginning or end of the programme.</p>

² Editorial content means all non-advertising content in a publication or broadcast.

Table 4 – Requirements for identification and separation of advertising/sponsorship from other programming content (cont'd)

Places	Advertising	Sponsorship
Australia	Commercial radio licensees must present advertisements in such a manner that listeners are able to distinguish them from other programme material. Apart from this general requirement, Australia has not prescribed any detailed requirements to ensure separation of advertising from other programming content.	Licensees are required to broadcast during current affairs programmes: (a) on-air disclosure of commercial agreements between sponsors and presenters that have the potential to affect the content of those programmes; and (b) on-air disclosure of the payment of production costs by advertisers or sponsors.
The United States	<p>The <i>Communications Act of 1934</i> covers any situation where payment has been made for matter to be broadcast, thereby including commercial references (such as advertising and sponsorship) and other paid-for broadcast.</p> <p>Section 317 of the <i>Communications Act of 1934</i>, known as the sponsorship-identification rules, stipulates that when a broadcast station has received or been promised payment for airing of programme material, the station is required at the time of airing to broadcast:</p> <p>(a) that the material is sponsored, paid for or furnished, either in whole or in part; and (b) by whom or on whose behalf such payment is made.</p> <p>Section 507 of the <i>Communications Act of 1934</i>, known as the payment-disclosure rules, requires that any broadcast station employee, or person involved with the supply, production or preparation of a programme, who receives payment for the provision of programme material to be broadcast must disclose this information to the station prior to the airing of the programme. The same disclosure requirement is also imposed on the person providing the payment, and on the programme suppliers and producers who may have information about such payment.</p>	

Table 5 – Requirements for upholding editorial independence from commercial reference

Places	Requirements
The United Kingdom	<p>Broadcasters must maintain the independence of editorial control over programme content and ensure that programmes are not distorted for commercial purposes.</p> <p>A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.</p> <p>Any promotional reference to the sponsor, including trademark, image, services or products, or to any of its other direct or indirect interests (e.g. associated companies), is prohibited. Nevertheless, non-promotional references are permitted provided they are editorially justified.</p>
Germany	<p>Editorial independence is guaranteed by a prohibition on advertising or advertisers influencing programming either contentwise or editorially.</p> <p>Content and the scheduling of a programme must not be influenced by the sponsor in such a way as to affect the broadcaster's responsibility and impair editorial independence.</p>
Australia	<p>Australia does not prohibit commercial arrangements that have the potential of affecting the content of programming, but requires the disclosure or identification of such potential influence. In other words, commercial influence is permissible as long as the audience is aware of who is trying to persuade them. However, only current affairs programmes are required of such a disclosure requirement.</p>
The United States	<p>The US does not prohibit sponsor influence on programme content. As distinct from Australia, the disclosure requirement applies to all types of programmes.</p>

Table 6 – Additional requirements for advertising of, and sponsorship on, news and current affairs programmes

Places	Additional advertising/sponsorship rules
The United Kingdom	<p>If used in an advertisement, expressions and sound effects associated with news bulletins need particular care. Listeners must be able to quickly recognise the message as an advertisement.</p> <p>Station presenters and newsreaders are permitted to voice advertising messages provided that they do not compromise their impartiality obligations and a clear distinction is made between the programming material and the advertising material.</p> <p>News bulletins and news desk presentations on radio cannot be sponsored.</p>
Germany	<p>There are no restrictions on advertising during news and current affairs programming, nor are any persons who might be associated with news and current affairs prevented from appearing in advertisements. However, sponsorship on news and current affairs programmes is prohibited.</p>
Australia	<p>Advertisements are prohibited from being presented as news programmes.</p> <p>Current affairs coverage must be either:</p> <ul style="list-style-type: none"> (a) free of commercial influence or editorially independent from sponsors or advertisers; or, (b) if such influence does exist – through advertising and sponsorship arrangements with the potential of affecting the content of current affairs programmes – it must be readily transparent to listeners.
The United States	<p>Disclosure obligations for paid-for broadcast apply irrespective of programme format, i.e. there is no distinction between news and current affairs programming and other content in the application of the sponsorship-identification and payment-disclosure rules.</p>

Table 7 – Statutory sanctions for breach of the advertising/sponsorship rules

Places	Statutory sanctions available to the regulator
The United Kingdom	<p>Ofcom is empowered to:</p> <ul style="list-style-type: none"> (a) issue a direction not to repeat an advertisement; (b) issue a direction to broadcast a correction or a statement of Ofcom's findings; (c) impose a financial penalty of up to £250,000 (HK\$3 million) or 5% of the qualifying revenue, whichever is greater; (d) shorten or suspend a licence; or (e) revoke a licence.
Germany	<p>A State Media Authority is empowered to:</p> <ul style="list-style-type: none"> (a) give a formal warning against any breach of licence conditions or legal requirements by a broadcaster; (b) impose a financial penalty of up to €500,000 (HK\$5.4 million); or (c) suspend or revoke a licence.
Australia	<p>ACMA is empowered to:</p> <ul style="list-style-type: none"> (a) impose an additional condition on a licensee; (b) accept an enforceable undertaking from a licensee to secure its future compliance with the industry codes of practice; (c) refer the matter for prosecution as an offence; (d) apply to the Federal Court for a civil penalty order obliging a licensee to pay a pecuniary penalty for breach of licence conditions; (e) issue a remedial direction; or (f) suspend or revoke a licence.

Table 7 – Statutory sanctions for breach of the advertising/sponsorship rules (cont'd)

Places	Statutory sanctions available to the regulator
The United States	FCC is empowered to: <ul style="list-style-type: none"> (a) issue cease and desist orders to suspend an activity in question; (b) impose a monetary forfeiture of as much as US\$25,000 (HK\$194,000) per day, up to a maximum of US\$250,000 (HK\$1.9 million); (c) refuse to renew a licence; or (d) shorten or revoke a licence.

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