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## Regulating Product Placement in the European Union & Canada:

### Explaining Regime Change and Diversity

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# **Regulating Product Placement in the European Union & Canada: Explaining Regime Change and Diversity**

**Avshalom Ginosar & David Levi-Faur**

## **Abstract**

Product placement, the purposeful incorporation of commercial content into non-commercial settings, is a controversial form of advertisement. This paper compares the policy processes and diverging regimes for product placement in the European Union and Canada. While the new EU regime is restrictive, the Canadian regime is much more open to the purposeful incorporation of commercial content via product placement. We find that actor-centered approaches do not sufficiently explain the different outcomes, the different policy trajectories and the different policy frames in these two cases. To explain the differences in policy processes and outcomes, we analyze the different policy frames and the different discourses and actors' positions at the issue-expansion stage of the policy process. We find that regulators in both the EU and Canada have been successful in framing the issue and that, consequently, different policy regimes have emerged.

## **Regulating Product Placement in the European Union & Canada: Explaining Regime Change and Diversity**

Commercial competition, technological innovations and new forms of media consumption such as the internet and multi-channel broadcasting are changing advertisement markets worldwide. Broadcasters that were previously able to draw on “spot advertisements” as the major source of revenue find it increasingly difficult to protect their profits and markets. They are therefore turning to the purposeful incorporation of commercial content into non-commercial settings, known as “product placement” advertising (Avery and Ferraro, 2000; Russell and Belch, 2005). The changes in the rules of the games allow us to explore the politics and policy behind institutional changes in the broadcasting sector in Canada and the European Union.

Advertising is a controversial practice of capitalism, and, as we will see, product placement techniques are all the more contentious to the extent that they raise even more serious concerns about the integrity of the mass media and about the social and cultural effects of the commercialization of broadcasting. Product placement embeds commercial messages in editorial content, often without audiences being fully aware of it. For this reason, product placement has been often portrayed as a manipulative advertisement technique and has been regulated or prohibited altogether in some countries (Baerns, 2003; Balasubramanian, 1994). Product placement invites scrutiny because it shifts the balance between the social and the commercial in broadcasting in favor of the latter. Policymakers and regulators worldwide have responded differently to this challenge. Some perceive product placement as just another legitimate source of revenue; others see it as synonymous with surreptitious advertising and so prohibit it altogether. Yet others distinguish between surreptitious advertising (which should be prohibited) and product placement (which should be permitted) because it is identifiable.

This paper examines the policy processes that in 2007 led to the creation of two product placement regimes, in the European Union (EU) and Canada respectively.

The comparison between the EU and Canada is based firstly on the fact that the two constituencies initiated at the same time (2007) a policy process addressing (among other issues) advertising and product placement (PP), following very similar circumstances (changes in technological and economic environments that affected the broadcasting industry in the same way). In addition, the two face similar challenges: (1) promoting domestic cultural productions vis-à-vis the dominant American audiovisual industry (“cultural imperialism”); and (2) cultivating a common identity (a sense of “nationhood” in the Canadian case, and a sense of “cultural belonging” in the European case) (Sarikakis, 2007). The challenges of achieving social cohesion and cultural and/or political identity through media policy have in both cases become a significant issue for public policy. Collins (1995) argues that both sides of the Atlantic have embraced two types of determinism: technological determinism, in which social and cultural relationships are necessarily shaped by technological change; and cultural determinism, which suggests that a new political identity will necessarily arise from a new cultural identity. Furthermore, in many respects media policy developed in Europe along the same lines as it had previously in Canada. Most noticeable is the fact that private broadcasting began in Canada in the 1930s, long before it appeared in most European countries during the 1980s. Just as the Canadian government at the time aimed to assist private interest in broadcasting, so similar efforts were made in Europe during the 1980s, the era of liberalization (Young, 2003). Private sector involvement in broadcasting in Canada saw the spread of private cable companies as early as the 1960, long before they appeared in Europe. And this new technology was linked in Canadian discourse to issues such as nation-building, public access and community broadcasting, which were later to become prominent in the European context also (Sarikakis, 2007; Young, 2003). Another common issue is the threat of Americanization, both to national and cultural identity on the one hand and to the vitality of local production industry on the other. This issue has been a key element of Canadian discourse since the 1930s due to the spillover of the American broadcasting signal across the two countries’ long shared border and to the dependence of the Canadian broadcasting system on American audiovisual materials. Americanization element became a prominent issue in European broadcasting discourse only during the 1980, with the appearance of private broadcasters and the import of American

television programs (Ibid; Ibid). Lastly, the idea that data and information, including media content, is a free-flow product just like any other product in the globalized economy is fundamental in the Canadian case (Abramson & Raboy, 1999). A very similar economic approach to media policy can be seen in the creation of a single audiovisual market in the EU, most clearly in the legalization of cross-border broadcasting. The European Court of Justice (ECJ) ensured the implementation of this policy by forcing member states to change their national media regulations (Harcourt, 2005).

While the new regime in the European Union can be characterized as restrictive and socially oriented, the Canadian regime is oriented toward commercial interests and has permissive guidelines and regulations. The EU regime strengthens regulatory control over product placement while specifying the acceptable terms of its use. The EU's member states are allowed to regulate product placement even more strictly or to prohibit altogether. By contrast, in Canada there are no direct restrictions on the use of product placement; limits are set only on surreptitious advertising and via voluntary standards.

The paper explores the different balances between social values and norms on the one hand, and commercial interests and neoliberal values on the other that have emerged in Canada and the EU. We raise three main questions: (a) What forces and actors have shaped the product placement regimes in the European Union and Canada? (b) What are the differences between the European and the Canadian product placement regimes? (c) Why do these regimes differ? In order to explain the divergent approaches in the EU and Canada, we traced the policy process in the two jurisdictions and analyze the actors' positions. We found that actors' positions on product placement differed more across jurisdictions than across categories of interest. Business actors in Europe, including private broadcasters and advertising associations, were part of a wide consensus that resulted in an EU-level restrictive regime. Canadian actors by contrast expressed preferences for a more liberal regime. The preferences of business actors differed on the two sides of the Atlantic Ocean but not within their respective regimes. We suggest that this implies that actor-centered approaches and theories of regulatory capture (Stigler, 1971) do not successfully

explain the differences between the regulatory regimes. In both the EU and the Canadian cases, framing and institutional traditions were decisive to the outcome. Unlike what one might expect from the regulatory capture literature, the regulators were the actors who framed the policy discourses that dominated the creation of the new regimes.

## **1. Product Placement: The Emergence of the Issue**

Product placement has a long history. It was first used widely in the movie industry in the early 20th century (Newell, Salmon and Chang, 2006) and then also in commercial advertisements in the early days of American television (Russell and Belch, 2005; Newell, Salmon and Chang, 2006). Despite these early origins, product placement remained a marginal source of advertising revenue until the late 1980s (Russell and Belch, 2005). Compulsory license fees (in the case of publicly owned channels) and spot advertising (in the case of commercial television) were and still are the major sources for funding for broadcasters. Spot advertising is the broadcast of dedicated and distinctive commercial content between or within programs. Spot advertising made possible the continuous growth of commercial television for decades throughout the world, including in the EU and Canada<sup>1</sup>. Four major changes in the technological and business environments have led to a search for alternative sources of revenue for commercial broadcasting. First, the digital revolution enables individual viewers to access hundreds of television channels. This in turn makes it much more difficult and less useful to address the various television audiences with the same spot advertisements (Russell and Belch, 2005; Tiwsakul, Hackley and Szmigin, 2005). Second, new recording machines that enable viewers to skip advertisements may make spot advertising ineffective (Schejter, 2007; Wenner, 2004). Third, the internet presents competition from a new medium that is attracting advertisers' attention and a growing share of advertisers' budgets.<sup>2</sup> Fourth, product placement may prove to be easier and cheaper to produce than spot advertisements (Avery and Ferraro, 2000).

For these reasons, advertisers and broadcasters have gradually increased their use of product placement. Recent research of PQ Media<sup>3</sup> reveals that spending on product placement in the United States grew by 33.7 percent to \$2.9 billion in 2007 and at a compound annual growth rate of 40.8 percent from 2002 to 2007. A Nielsen Company survey<sup>4</sup> suggests that there was a rise of six percent in product placement in prime-time television programs in the US during the first quarter of 2008. These figures from 2007–8 confirm the PQ Media forecast in 2006 that global product placement spending would continue to grow and reach almost \$14 billion by 2010<sup>5</sup>. According to Fremantle Media's estimates<sup>6</sup>, product placement on European television could bring revenues of €150 million by 2010. The PQ Media report cites the United Kingdom, Spain and Italy as three of 15 leading markets in which product placement is growing. Canada stands out in this report as the fastest-growing product placement market after China, the US and India. In 2008 the Canadian product placement market grew by 27 per cent to C\$32 million, with television accounting for about \$26 million of that sum<sup>7</sup>.

This growing market has prompted scholars and regulators worldwide to pay much more attention to product placement, as a unique type of advertising. Balasubramanian (1994: 29-30) addresses product placement as one type of "hybrid message", meaning that a product is promoted within the program/movie as an integral part of its content. In the same way, Tiwsakul, Hackley and Szmigin (2005) define product placement as "a promotion placed in a non-promotional entertainment context, where the promotional intent is not made explicit" (p. 98). Russell and Belch's (2005) definition is: "the purposeful incorporation of a brand into an entertainment vehicle" (p. 73). Avery and Ferraro's (2000) definition is: "attempts to influence viewing audience via the planned placement of branded products in movies or television programs, either for a contractual fee or by donation" (p. 217). They claim that product placement poses "a question of deception". Schejter (2006: 4) asserts that it is "a message chosen by advertisers in a context designed to mislead audience about their control over the content".

Three concerns in particular have been raised in the discussion on the governance of product placement, namely, undue influence exerted by product placement on viewers, the integrity of journalistic values, and creative independence. The first concern is that audiences cannot always adequately distinguish between commercial content and editorial content. This raises the question of whether the viewers should always have the right to know when and by whom they are influenced – in this case, a commercial influence (Balasubramanian, 1994; Avery and Ferraro, 2000). This issue is most clearly associated with two sensitive issues: first, because a product placement is not clearly identified as an advertisement and in many cases the product or service is identified with television and movie stars, children are especially vulnerable to manipulation (Stinger, 2006); and second, product placement might involve contentious products such as tobacco, alcoholic beverages and high-fat food. Public concerns have been raised as well with respect to editorial, journalistic and creative independence (Baerns, 2003; Wenner, 2004). Because a product is embedded within the program's script, advertisers may want to adapt the script as much as possible to their commercial interests. At the same time, the producer or the broadcaster would like to reduce production costs as much as possible by charging the advertiser for the product placement. In this way, the advertiser can gain significant influence over a program's content, which would reduce the responsibility and the independence of the creators.

These two conflicting causes for concern – the economic and the socio-cultural – are examined in the European and Canadian policy processes. This does not mean that product placement has acquired the status of a major policy issue. Ginosar and Levi-Faur (2009) suggest that its emergence on the EU agenda is best understood as “policy by the way”. As we will demonstrate here, it has been a relatively minor issue on the Canadian regulatory agenda.

## **2. The Old Regimes**



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Product placement was governed before 2007 in both the EU and Canada by general provisions of their advertisement regimes. These general advertisement regimes, not unlike policy regimes in other arenas, were and still are a patchwork of regulations contingent on the medium (for example, television, radio, print, web), audience (children vs. adults), type of product (for example, consumer goods, drugs, alcohol, tobacco), type of programming (news vs. entertainment), the identity of the regulator (state, independent state agency, trade association, self-regulation, consumer organization), method of enforcement (voluntary, criminal, civil) and level of governance (supra-national, federal, national and provincial). This complex mosaic of advertising regulation (which is often typical of the regulation of other issues as well) creates a reality in which rules and governance arrangements are decided not in a systematic and comprehensive way but in an ad hoc and incremental manner that is affected by the type of policy problem, the distribution of power and the saliency of the issue with the general public. Within this reality, economic and social concerns are interrelated in the various levels and sections of advertisement rules. Most of these rules have focused on spot advertising since this has been the major advertising practice. Product placement as such has not been a distinctive issue within the old advertising regimes.

Advertising regimes can be compared on the basis of five main characteristics (see Table 1). First, multi-level governance in advertisement and media regulation is more developed in the EU than in Canada. The provinces in Canada, unlike the member states of the EU, exert control over a limited number of issues – advertising of alcohol, for example. Second, the role of voluntary associations at the federal level is stronger in Canada than in the EU, but both regimes represent hybrids of voluntary and state regulation. In Canada, advertising on radio and television channels is subject to federal regulation by the Canadian Radio, Television and Telecommunication Commission (CRTC), which implements the Broadcasting Act. In addition, advertising content in Canada is subject to the industry's self-regulation authority, the Advertising Standards Canada (ASC),<sup>8</sup> and to the Ethics Code of the Canadian Association of Broadcasters (CAB), in which clauses 13 and 14 refer specifically to

advertising. In the EU, directives govern media and advertising regulations and shape the national regulation framework, but there is a self-regulation body as well – the European Advertising Standards Alliance (EASA) – which promotes the establishment of self-regulation bodies in the EU member states and adjudicates between them when there are cross-border complaints. But the EASA does not directly regulate the industries and has no advertising code of its own; rather, it encourages the national self-regulation organizations to adopt the International Chamber of Commerce’s Codes of Marketing and Advertising Practice.<sup>9</sup>

**Table 1: The old product placement advertising regimes in the EU and Canada**

Regulatory issues	The European Union (TVWF Directive) *	Canada	
		State regulation	Civil regulation
<b>Level of governance</b>	The EU sets minimal rules regarding any aspect of broadcasting advertising and enables member states to set more detailed or stricter rules. No voluntary regulation at the EU level, only at the level of most of member states.	The Canadian Radio, Television and Telecommunication Commission (CRTC) sets rules on the amount of advertising and refers broadcasters to the industry’s self-regulatory code regarding certain issues.	The Canadian Association of Broadcasters (CAB) Code and The Canadian Code of Advertising Standards (ASC) both deal mainly with advertising content regulations.
<b>Restrictions on the amount of advertising</b>	Hourly: 20% (12 minutes) Daily: 15%	Hourly: 20% (12 minutes)	No reference
<b>Restrictions on the content of advertisements</b>	Explicit prohibition of offense and discrimination with respect to human dignity, religious and political beliefs, race, sex, nationality.	No direct reference to advertising content. A general prohibition of any abusive comment on the basis of race, national or ethnic origin, color, sex, sexual orientation, age or mental or physical disability.	Explicit prohibition of offense and discrimination with respect to race, national origin, religious, sex, age.
<b>Restrictions on advertising of certain products</b>	Prohibition on advertising tobacco and medicinal products, restrictions on advertising alcoholic beverages.	Restrictions on advertising alcoholic beverages are specific to CRTC code and provincial laws; restrictions on advertising food and drugs are in the Food and Drugs Act.	No reference
<b>Restrictions on advertising on specific types of program</b>	Prohibition on advertising during religious services, prohibition on advertising during news, current	Compliance with the ASC/CAB Code for Advertising to Children is a condition of license.	Restrictions on advertising in children programs are included within the ASC

	affairs, documentaries, and children’s programs when they are shorter than 30 minutes.		Code and the CAB code.
<b>Requirement to identify ads</b>	“Television advertising shall be readily recognizable as such.”	No reference.	No reference.
<b>Requirement to separate advertisement from other content</b>	“Television advertising shall be readily kept quite separate from other parts of the program service by optical and/or acoustic means.”	Commercial message is defined as such when broadcast “in break within program or between programs”.	“Broadcasters shall ensure that advertising material within a newscast is clearly distinguishable from the news information adjacent to it” (CAB Code).
<b>Rules on surreptitious advertising</b>	“Surreptitious advertising shall be prohibited.”	No reference.	“No advertisement shall be presented in a format or style that conceals its commercial intent” (ASC Code).

\*Civil regulation at the EU level was omitted from the table because the European Advertising Standard Alliance (EASA), the supranational self-regulation organization, has no advertising code of its own and it does not directly regulate advertising practices. See more in the text.

Third, the restrictions on the amount and distribution of advertising are very similar in the EU and the Canadian regimes. In the EU and its member states there are limitations on the number of advertising minutes per broadcasting hour. For example, in the UK and France the limits on the amount of advertising are seven and six advertising minutes per hour respectively, and in Germany the limit is 15 percent of daily transmission time<sup>10</sup>. The Television without Frontier (TVWF) Directive [1989]<sup>11</sup> restricts advertising spots to 15 percent of daily transmission time and to 20 percent of any transmission hour<sup>12</sup>. The Canadian Television Broadcasting Regulation of 1987 (The Broadcasting Act) allows a maximum of 12 advertising minutes per broadcasting hour<sup>13</sup>.

Fourth, in both regimes there are limitations on offensive content and restrictions on certain programs and certain audiences. At both EU and member-state regulatory levels there are references to certain restrictions on advertising in children’s and current affairs programs<sup>14</sup> and restrictions on advertising of harmful products such as alcohol, tobacco and medicinal products, and of medical treatments available only on prescription.<sup>15</sup> The Canadian Broadcasting Act refers to provincial laws on the

advertising of alcoholic beverages and to the CRTC Code, which is specifically aimed at these products<sup>16</sup>. As for the advertising of food and medicine, the Broadcasting Act refers to the restrictions included within the Food and Drugs Act<sup>17</sup>. Advertising directed to children is regulated in Canada by the Broadcast Code for Advertising to Children published by the CAB. Compliance with this self-regulation code is a condition for obtaining a license for all broadcasters subject to the CRTC.<sup>18</sup> Another reference to advertising directed to children and minors can be found in the Advertising Standards Canada (ASC) Code, clauses 12 and 13.

Fifth, the main difference between the two jurisdictions from our point of view is that the EU regime explicitly embraced both the identification principle (the obligation to identify commercial message) and the separation principle (the obligation to separate commercial message from other content). In addition, the EU's Television without Frontiers (TVWF) directive explicitly prohibited the use of surreptitious advertising<sup>19</sup>. In Canada, by contrast, neither the CRTC regulations nor the ASC Code contain any explicit reference to the identification and separation principles. Only an indirect reference to the two principles can be found within the interpretation chapter of the Broadcasting Act<sup>20</sup>. Article 2 defines a "commercial message" as one which "is broadcast in a break within a program or between programs". There is no prohibition of surreptitious advertising; but the ASC Code, under the title "Disguised Advertising Techniques", states: "No advertisement shall be presented in a format or style that conceals its commercial intent." All in all, our comparison of the two old regimes reveals different approaches to advertising. The European approach, as expressed in the TVWF directive, is stricter and more restrictive than the Canadian approach.

### **3. The Policy Process**

Product placement entered the regulatory agenda in the EU and Canada in the context of technological and economic change – the emergence of new means of mass communication, such as the internet, multi-channel television and cellular phones.

Politics matters, however, and the EU proactive approach to regulation, as manifested in periodic reviews of the regulatory framework, is important for understanding agenda setting and the policy process. The fourth report on the application of the EU's TVWF directive (January 2003) indicates that the EU Commission would "examine the legal implications of new advertising techniques"<sup>21</sup>. The public consultation process that followed the report culminated in a document titled *The Future of European Regulatory Audiovisual Policy*, where the Commission reported that most participants believed that the new advertising techniques were compatible with the terms of the directive, but asked the Commission to clarify this issue<sup>22</sup>. The term "product placement" does not appear in this document, nor was it mentioned in the Interpretive Communication, published by the Commission in April 2004, that dealt with product placement<sup>23</sup>.

It was only in 2005, relatively late in the policy process that shaped the new media regime in Europe, that the issue of product placement appeared clearly on the EU agenda: first in an EU seminar in Luxembourg in May 2005, then in "issue papers" published in July 2005, a public consultation on 5 September 2005, and the Liverpool Conference, titled "Between Culture and Commerce", in December 2005. Following these events and discussions, the Commission published its first legislative proposal for the revision of the TVWF Directive in December 2005<sup>24</sup>. Although there is no explicit permission of product placement in the legislative proposal, there is no explicit prohibition of it. A restrictive regulatory regime is implied, whose most noteworthy element is probably the obligation to indicate product placement in the title of any program that contains it (the identification principle). Another major event in the European policy process was the public hearing at the European Parliament in June 2006, where one of the panels of the Parliament dealt with product placement. Unlike the Commission, the European Parliament supported retaining the explicit prohibition of product placement as a general principle and allowing it only under certain specific circumstances.<sup>25</sup> This position was shared by five of the six committees that participated in this discussion. Only the Committee of Women Rights and Gender Equality demanded the complete prohibition of product placement. One

point of initial disagreement is that, while the Commission suggested that information about product placement should be given only at the beginning of a program, the Parliament asked for announcements on product placement at the beginning and at the end of a program, as well as every 20 minutes during the program<sup>26</sup>. After some discussions between the two sides, it was decided that product placement would be identified at the start and at the end of a program and after all advertising breaks.

Changes in the technological and economic environments have also opened the way for the Canadian regulator (the CRTC) to reconsider advertising regulation and product placement. The CRTC Public Notice, which was titled “Review of Certain Aspects of the Regulatory Framework for Over-the-air Television”<sup>27</sup>, aimed to revise the Canadian policy document from June 1999, titled “Building on Success – A Policy Framework for Canadian Television”. The 2006 Notice of Public Hearing was indeed the first time that a CRTC policy document had directly referred to product placement, but still only as one example of “non-traditional forms of advertising” (Article 33). The Commission indicated that advertisers and broadcasters were concerned about the decline in the effectiveness of traditional advertising and therefore had developed techniques such as product placement. Specifically, the CRTC raised the question whether it “should consider restricting its limitation of 12 advertising minutes per hour to traditional commercial messages inserted as breaks in the program schedule?”<sup>28</sup> The CRTC asked as well whether it should amend any other issue regarding broadcasting advertising in response to economic and technological developments. Following the public hearing, the CRTC published its new broadcasting policy document on 17 May 2007, focusing on financially strengthening the over-the-air television sector. Some deregulation of advertising restrictions was considered as one of the most important means for achieving this aim.

The EU’s product placement regime was created as a “policy by the way” issue during the discussions on the revisions of the TVWFD and as part of an effort to change media regulation in a way that it would cover all audio-visual media services

(both broadcasting and on-demand services). The main aim of the Canadian policy process was promotional – to ensure sufficient revenues for the industry. In the European case, the Commission and the Parliament, as supranational authorities, led and shaped the policy process while member states' national authorities acted and presented their positions like any other participants from the industry and the public. In this sense, the European process can be seen as a new chapter in the Europeanization of national media policies – a process which had advanced slowly since the mid-1980s and where the media sector was one more platform for the building of the European polity (Harcourt, 2002; Humphreys, 2004). In the Canadian case, the discussions were held at a lower level of government, and the regulatory approach was less active and less ambitious than that in Europe. The policy process reflects the central role of the CRTC within the Canadian media sector. Yet it also reflects the policy equilibrium where a self-regulatory body, the ASC, became a significant actor in Canadian advertisement policy.

#### **4. Divergent Regimes: The EU vs. Canada**

The two new regimes that have emerged from the policy processes described above are presented in two basic documents: the European Audiovisual Media Service Directive (AVMSD),<sup>29</sup> which was published on 11 December 2007; and the Canadian document titled “Determinations Regarding Certain Aspects of the Regulatory Framework for Over-the-air Television” (PN CRTC 2007-53),<sup>30</sup> which was published on 17 May 2007. The new European AVMS Directive draws a distinction between prohibited surreptitious advertising and legitimate product placement. Consequently, while the new European regime explicitly prohibits the use of product placement<sup>31</sup>, it allows it under several restrictive conditions. First, product placement is permitted only in certain programs, namely, cinematographic works, films and series, sports programs and light entertainment. It is prohibited in children's programs and news and

current affairs programs<sup>32</sup>. Second, even in programs in which product placement is permitted, there are certain limitations<sup>33</sup>: (a) product placement shall not influence the responsibility and editorial independence of the broadcaster; (b) product placement shall not directly encourage the purchase or rent of goods or service; (c) product placement shall not give undue prominence to the product; and (d) viewers shall be clearly informed of the existence of product placement by announcements at the start and the end of the program and when a program resumes after an advertising break. Third, product placement is prohibited for certain products<sup>34</sup>, such as tobacco, medicinal products and treatments which are available only on prescription. It can be argued that the new European product placement regime is more liberal than the old one; but it is still very restrictive. The new Directive allows EU member states to set stricter rules,<sup>35</sup> which means that the long list of restrictions included in the AVMSD creates only minimum standards, and member states may preserve the policy of total prohibition of product placement.<sup>36</sup> Note also that the EU regime does not build on voluntary codes and does not have the equivalent of the Canadian ASC<sup>37</sup>.

Since the AVMS directive enabled member states to adapt their national legislation to the directive's principle until December 2009, the current situation is not clear. According to EPRA's (European Platform of Regulatory Authorities) report from October 15<sup>th</sup>, 2009, only two countries (France and Belgium) have completed most of the AVMS transposition. In eight countries the transposition is still being dealt with by parliament, six countries are in a process of preparing to present bills to parliament, and eight other countries are in the very preliminary stages of the transposition process (see Appendix).

Unlike in Europe, the new Canadian regulations, like the old ones, do not directly address product placement and its social and cultural implications. The only reference to the practice in the new CRTC policy document is to the effect that product placements (like other non-traditional forms of advertising) are removed from the calculation of the maximum number of advertising minutes that can be broadcast<sup>38</sup>. It



means that Canadian broadcasters may use the practice of product placement and yet not be concerned about their profits from the traditional mode of advertising, that is, spot advertisements. For Canadian broadcasters, product placement turns out to be an additional, unrestricted source of revenue. It is worth noting that this new regulation of non-traditional advertising, including product placement, is just one part of a new advertising policy that gradually eliminates any limitation on the amount of permitted advertising. Effective from 1 September 2007, the permitted amount of traditional advertising increased from 12 to 14 minutes per hour in peak viewing periods. From 1 September 2008, the amount increased to 15 minutes per hour for all viewing time. From 1 September 2009, there are no restrictions on the amount of advertising, reflecting the CRTC's declared intention that "broadcasters [should] have the flexibility to maximize advertising revenues to respond to the negative impact of audience fragmentation"<sup>39</sup>.

As said, advertising content in Canada is regulated by the ASC Code, but neither the code nor its affiliated interpretation guidelines have been revised. In an e-mail message<sup>40</sup>, Janet Feasby, the ASC's Vice President, confirmed that she is "not aware of any regulatory or self regulatory restrictions dealing with product placement in Canadian broadcasting". She referred us to Clause 2 of the ASC Code (discussed earlier), which prohibits the concealment of the commercial intent of advertising, as the only (indirect) reference to product placement. Ms Feasby added that the ASC had not received complaints from Canadian consumers about this issue. This is confirmed by Christina A. Bisanz, Executive Director of the Consumers Council of Canada. In an e-mailed response to our question, Ms Bisanz stated that this consumer organization "has not addressed this issue" or taken a position on it<sup>41</sup>. A legal opinion published in 2006<sup>42</sup> declared that "there are no explicit legal restrictions against product placement in Canada". According to this judgment, "advertisers must still be cautious to ensure that the placements do not contravene other advertising and marketing laws..." In other words, the Canadian advertising regime pays no specific attention to product placement and in practice allows this technique with no specific restrictions. We can conclude by saying that the Canadian regime, unlike the European one, is a liberal-permissive one. Table 2 compares the two regimes.

**Table 2: Product placement regimes – a comparison**

	<b>The European Union</b>	<b>Canada</b>
<b>Regime orientation</b>	Product placement is allowed under severe limitations.	Product placement is referred to only with regard to advertising time calculation.
<b>Restriction on programs</b>	Prohibited in children’s, news and current affairs programs.	No specific reference to product placement in certain programs.
<b>Restrictions on products</b>	Prohibition on tobacco and medicinal products and treatments available on prescriptions.	No specific reference to product placement.
<b>The relation between product placement and traditional advertising</b>	No specific reference.	Decision in 2007 that product placement shall not be calculated within the allowed maximum time limit of advertising until 9/2009. (After September 2009, there are no time limitations)
<b>The nature of the use of product placement</b>	(1) No influence on the responsibility and editorial independence of the broadcaster; (2) no direct encouragement to purchase or rent goods or services; (3) no undue prominence to be given to the product; (4) announcement about product placement at the start and the end of the program.	No direct references. An indirect reference is the prohibition of advertising which conceals its commercial intention.

## **5. Actor-centered Analysis; Variations across Jurisdictions and Type of Actors**

In order to explain the divergence between the regimes in Canada and the European Union, we have analyzed first the positions of the actors. Our hypothesis in this regard was that the relatively conservative-restrictive regime that emerged in the EU reflects the strength of actors that expressed public interests while the liberal regime in Canada reflects the strength of the business actors. The analysis is based on the actors’ positions as reflected in their submissions to the European Commission’s public

consultation in 2005 and to the Canadian Public Hearing of 2006. In the European case, 177 position papers were submitted, of which we analyzed 154. Of these papers, 78 papers (51 percent) included positions on product placement. In the Canadian case, 110 position papers were submitted, but only 24 of them (22 percent) included actors' positions on product placement. The actors were classified into eight categories: citizens, state actors (governmental departments and state regulatory authorities), non-governmental organizations (NGOs) (religious groups, minors' protection organizations, etc.), public broadcasters, private broadcasters and private producers, advertising firms and advertising associations, trade unions and trade associations, and other business actors (including other media organizations, like print media and internet providers). Actors' positions were also categorized as liberal or restrictive. In the European case, a liberal position implies supporting the permissive regime for product placement, while a restrictive position implies a view that either endorses product placement under certain limitations or seeks to prohibit it altogether. In Canada, a liberal position means excluding product placement from the total amount of advertising per broadcasting hour, or eliminating any regulation on advertising, including product placement. The restrictive position implies the inclusion of product placement within the time allowed for advertising.<sup>43</sup> Our initial findings (presented in Table 3) suggest that there is a significant difference between European and Canadian actors' positions on product placement. While in Europe the vast majority of actors supported the restrictive position, in Canada most of the actors favored the liberal approach (excluding product placement, as a form of other non-traditional advertising, from the calculation of the allowed amount of advertising).

**Table 3: Actors' positions on product placement**

	<b>N</b>	<b>Liberal position</b>	<b>Restrictive position</b>
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<b>EU</b>	78	6%	94%
<b>Canada</b>	24	87%	13%

Source: positions papers submitted to the European Commission's public consultation in 2005 and to the Canadian Public Hearing of 2006.

More significant are the positions associated with the actors' categories (see Table 4).<sup>44</sup> In Europe, only one third of private broadcasters and producers (who are the direct beneficiaries of product placement) and 12 percent of trade unions and associations supported the liberal approach. But the majority of these two groups and all the other groups of actors supported the more restrictive approach. In the Canadian case, only one NGO (out of two) and only two trade unions organizations (out of five) supported the restrictive position. All the other actors, even a state actor and a public broadcaster, supported the liberal position.

We also found that most of the European "industrial actors" (private broadcasters and producers, advertising associations, trade associations and other business actors) who supported the restrictive position adopted the "light" version of it, that is, certain limitations rather than prohibition. On the other hand, almost half of the Canadian "industrial actors" recommended the further promotion of liberalization rather than just excluding product placement from the maximum permitted time for advertising. These actors supported the elimination of restrictions on advertising in general, and the time limitation in particular, in order to strengthen the competitive edge of the industry. These findings falsify the hypothesis presented above – with the result that the outcome of the policy process is not explained by the supposed dominance of a certain sector (public/civil or business) in each jurisdiction. Therefore, we argue that actor-centered approaches cannot deal with two issues: first, explaining the variations in the preferences of business actors across the two polities; and second, explaining the convergence among the actors within each of the policy networks during the policy process.

**Table 4: Positions by actors' categories**

Actors' sector	Europe			Canada		
	N	Liberal position	Restrictive position	N	Liberal position	Restrictive position
<b>Citizens</b>	-	-	-	1	100%	-
<b>State actors</b>	11	-	100%	1	100%	-
<b>NGOs</b>	13	-	100%	2	50%	50%
<b>Public broadcasters</b>	6	-	100%	1	100%	-
<b>Private broadcasters and producers</b>	14	29%	71%	11	100%	-
<b>Advertising associations and firms</b>	7	-	100%	1	100%	-
<b>Trade associations and trade unions</b>	8	12%	88%	5	60%	40%
<b>Other business actors</b>	19	-	100%	2	100%	-
<b>Total</b>	78	6%	94%	24	87%	13%

Source: positions papers submitted to European Commission's public consultation in 2005 and to the Canadian Public Hearing of 2006

## **6. Divergent Framing: Product Placement as a Problem and as a Solution**

As our first hypothesis, which was based upon the actor-centered approach, was falsified, we now present an alternative hypothesis and consider the peculiar aspects of divergent framing of the issue on the two sides of the Atlantic Ocean. We claim that different framing processes are central features in the policy process that led the stakeholders in each of the two jurisdictions through different policy trajectories. Framing, as Rein and Schon argue, “leads to different views of the world and creates multiple social realities” (1991: 264). It is “a way of selecting, organizing, interpreting, and making sense of a complex reality so as to provide guideposts for knowing, analyzing, persuading and acting” (p. 263). “To frame is to select some aspects of perceived reality and make them more salient in the communication text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation for the item described” (Entman, 1993: 55). Kohler-Koch (2000) adds that framing is a process of discrimination between competing frames. Framing problems in particular ways (choosing a certain frame) restricts policy choices and makes particular policy outcomes more likely (Mazey and Richardson, 1997).

We suggest that the European and the Canadian regulators opt for different frames of the issue in order to restrict the policy choices of the participants in the policy processes and to make their particular (different) policies more likely to be adopted. While in the EU policy process product placement was framed as a *problem*, in Canada it was framed as a “solution”. The EU’s “problem” is a new technological and economic reality against which the viewers and creators should be protected by responsible regulators. Yet the same new economic and technological reality is the “solution” for the problem of the Canadian broadcasting industry’s financial well-being. The strategic ability of the regulators to use different frames weakens the “regulatory capture” hypothesis.

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Let us start with Canada. In its notice of the public hearing in 2006 (which started the change process in Canada), the CRTC introduced four objectives, two of which were about the ability of broadcasters to broadcast “high quality Canadian programming”<sup>45</sup>. One of these objectives (see Table 5) suggests a direct linkage between the desired aim of encouraging Canadian programs and the need to enhance the economic strength of Canadian broadcasters. The regulator then raises the question whether it should “consider restricting its limitation of 12 advertising minutes per hour to traditional commercial messages inserted as breaks in the program schedule”. The document explains that, according to the regulations from 1987, non-traditional advertising, including product placement, should be counted within the 12 minutes limitation, but that “both advertisers and broadcasters have raised concerns about the continuing effectiveness of traditional advertising messages”. In short, when addressing the stakeholders, the Canadian regulator frames the issue by referring to product placement as a source of revenue in order to enable the industry to broadcast “high quality Canadian programming”. There is no reference at all, within this notice, to other social considerations. Product placement is thus seen as a *solution* (a source of revenue for Canadian broadcasters).

**Table 5: divergent framing of product placement**

Canada	The European Union
<p>“Objective B: To provide Canadian OTA [over-the-air] television licensees with greater clarity regarding regulations that affects certain costs and revenues so that they are in a position to propose maximum contributions to the production, acquisition and broadcast of high quality Canadian programming.”</p> <p>Question A: “...Should the Commission consider restricting its limitation of 12 advertising minutes per hour to traditional commercial messages inserted as breaks in the program schedule?”</p> <p><b>(CRTC Notice of Public Hearing)</b></p>	<p>“Article 10(4) is related to the definition of surreptitious advertising in Article 1(d). The aim is to prohibit non-identifiable advertising that is broadcast within programs, a violation of the principles of recognisability and separation in paragraph 1. As shown by the interpretive communication on advertising, applying this provision is tricky, as it is sometimes difficult in practice to distinguish between surreptitious advertising and a simple, harmless reference to product or brand.”</p> <p>Question: “should this provision be maintained or clarified in the light of the principle of the recognisability and separation of advertising?”</p> <p><b>(Focus Group 2 paper: “Level of Detail in Regulation of Television Advertising”)</b></p>

The EU Commission, in contrast, has framed product placement as a *problem* (see also Table 5). Two relevant documents<sup>46</sup> reflect the Commission policy’s preferences, which formed the background of the 2005 public consultation and of the Commission’s proposal for the revision of the TVWF Directive<sup>47</sup>. Under the subtitle “Protection of Viewers and Rights Holders”, the Focus Group’s paper addresses the



principle of “being able to recognize and distinguish advertising from editorial content”. While referring to the prohibition of surreptitious advertising, it asks: “Should this provision be maintained or clarified in the light of the principle of the recognizability and separation of advertising?” The Issue Paper refers much more explicitly to the social concerns arising from product placement while linking this issue to the identification and separation principles: “For product placement to be made possible, the principle of separation should cease to be an essential criterion and should simply be one of the means to enable users to identify commercial content and to distinguish it from editorial content” (Issue 4, p. 4). It is worth noting that most parts of this Issue Paper deal with protecting audiences by restricting advertising in various respects (for example, it refers to unhealthy products such as tobacco and alcohol).

Each of these two different frames of the issue reflects a new stage of each constituency's policy path regarding broadcast advertising. As for Canada, the current policy can be identified in previous policy documents. For example, the notice (the call for positions) refers (in provision 31) to the Broadcasting Act, which requires a broadcasting system to include “a significant contribution from the Canadian independent production sector”. This policy is followed by “Building on success – A policy framework for Canadian Television” (Public Notice CRTC 1999-97) published in 1999, which emphasizes the connection between Canadian production and the financial capacity of the local industry. On the other hand, the European current policy (the AVMS Directive) is based on the TVWF Directive, which addresses (as we showed earlier) social concerns in order to protect audiences from the negative effects of advertising. This policy is reflected within the EU DG's answer to our email inquiry: “*The AVMS.... Gives the audiovisual industry legal certainty in this area and allows it to exploit this new means of financing. On the other hand, the AVMS Directive also contains some limits on product placement and guarantees for the consumer...*”<sup>48</sup>

Both Rein and Schön (1996) and Hall (1993) emphasize the importance of political discourse in the search by certain social and economic interests for legitimacy. Schmidt and Radaelli (2004: 197) argue that discourse needs to be understood “within an institutional context which is constituted by the vast range of rules that set actors’ common frame of reference and help shape not only actors’ perceptions and preferences, but also their modes of interactions”. We argue that the institutional context (which is reflected in a certain policy path) varies across nations and regimes and leads to different policy outcomes. It is reasonable to expect actors’ arguments for their positions to accord with their obvious preferences. But our findings reveal that actors’ argumentations as reflected in their submitted positions do not necessarily accord with their direct self-interests, but rather follow the framing of the issue, as demonstrated earlier.

For example, it is understandable that Canadian broadcasting organizations in the over-the-air (OTA) business, like CanWest MediaWorks Inc., CTV Inc. and Corus Entertainment Inc., have cited the need for new sources of revenue as an argument for liberalizing advertising regulation, including exempting non-traditional advertising from the 12-minute limit. The same position was expressed by competitors of the OTA television industry, such as cable companies and associations like Bell Canada, Shaw Communications, Telco TV and Quebecor Media. Even independent broadcasters, like Independent Specialties, Astral Media Inc., Independent Small Market TV Broadcasters, Alliance Atlantis Communications Inc. and Aboriginal Peoples Television Network (APTN), expressed the same view. Not surprisingly, the advertising industry, represented by the Association of Canadian Advertisers, shared the same view of the broadcasting industry. Unlike with these two industries, the positions of unions and creators’ organizations were not in such harmony. While the Directors Guild of Canada, the English Language Arts Network, and the Coalition of the Canadian Audio-visual Unions (CCAUI) cited the revenue argument in support of exempting non-traditional advertising from the time limitation, the Canadian Conference of Arts expressed strong objection to any relaxation of advertising restrictions in the name of the public interest. By contrast, even a state actor, namely, the Ontario Ministry of Culture, supported the industry position of relaxation of the restrictions on advertising, and cited the same revenue argument. A public

organization, Friends of Canadian Broadcasting, shared this position and emphasized (as some of the industry’s actors did) the competition that the Canadian broadcasting industry faced from US television, in which product placement is not regulated at all. Another public organization, Our Public Airways, limited its objection to deregulating product placement to the public channels. Table 6 presents some examples of these positions.

**Table 6: Canadian actors’ positions (selected examples)**

<b>Actor</b>	<b>Position on product placement</b>
<b>CanWest Media</b>	“At this time, we recommend the elimination of any restrictions regarding non-traditional advertising... The limitation of twelve (12) advertising minutes per hour should only apply to traditional commercial messages inserted as breaks in the program schedule.”
<b>Bell Canada</b>	“Bell urges the Commission to consider relaxing its definition of advertising to exclude non-traditional ads, such as product mentions and placements, from the ambit of the 12-minute limit.”
<b>Friends of Canadian Broadcasting</b>	“Friends notes an enormous inequity in the fact that US prime time shows with significant product placement air in Canada without consequence while smaller specialty Canadian programs ...are subject to frame-by-frame scrutiny by the Commission... Friends recommends that the Commission deregulate advertising content that is not in the form of 15, 30 or 60 second spots.”
<b>Directors Guild of Canada and the Coalition of Canadian Audio-visual Unions</b>	“The popularity of PVRs, TIVO’s and other such devices, which allow consumers to record programs and skip through commercials on replay, have encouraged more and more advertisers to find ways of embedding their messages in the body of programs in a manner that precludes such avoidance. Moreover, the many signals coming in from the United States contain more advertisements than are allowed for Canadian broadcasters... Thus, in the CCAU’s view, it may make sense for the Commission to limit the ambit of the regulation to

traditional commercial messages...”

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Most of the European actors who presented views on the issue trod the path which had been paved by the Commission’s policy papers, that is, to allow product placement under certain limitations. It should come as no surprise that consumer organizations and other public organizations either did not approve of the use of product placement (The European Consumers Organization, BEUC, and the two British public organizations, Mediawatch and the Campaign for Press and Broadcasting Freedom, CPBF), or approved of it only under severe restrictions (The European Alliance of Listeners and Viewers Association [EURALVA] and the Voice of Listeners & Viewers). In the same way, it is understandable that a public broadcaster such as the BBC or a professional organization like the European Federation of Journalists (EFJ) should express negative positions on product placement. In similar vein, we can mention the positions of state actors such as the Lithuanian Ministry of Culture, the Ministry of Tourism & Culture of Malta and the government of the United Kingdom, most of which adopted negative positions toward product placement on the grounds that audiences needed protection from unrecognizable advertising. The same argument was central to the positions of many other participants who were in favor of allowing the use of product placement but with limitations. Most of these actors cited the identification principle as the major necessary restriction on the practice. They included even industrial actors from both the broadcasting and the advertising industries: The Association of Commercial Television in Europe (ACT), The European Broadcasting Union (BDU), The European Association of Communication Agencies (EACA), The European Group of Television Advertising (EGTA), Fox International Channels, The Voice of British Advertisers, RTL Group, Versatel Deutschland, World Federation of Advertisers (WFA), etc. Table 7 presents some examples of European actors’ positions.

**Table 7: European actors' positions (selected examples)**

<b>Actor</b>	<b>Position on product placement</b>
<b>Association of Commercial Television in Europe</b>	“We do not have any objection to – indeed, we have advocated – the notion that commercial communications need to be clearly identified. Viewers have the right to know when someone is ‘selling’ them something. This principle of identification is not only good policy, it is in fact in broadcasters’ interest if we are to retain the confidence of our viewers. This principle should also extend to cover product placement deals.”
<b>The European Consumers Organization</b>	“Product placement and many other new forms of ‘integrated’ marketing are in clear breach of the industry’s own code and represent an erosion of editorial independence... the requirements which have existed until now of identifying advertising and at the same time separating it from editorial content are the most elementary principles of media policy. They must in no event be jettisoned.”
<b>The BBC</b>	“The BBC is concerned about the proposed relaxation of rules on surreptitious advertising. Allowing product placement, even under limited and clearly defined circumstances, would entail a major change in the economic and editorial conditions content providers operate in.”
<b>International Advertising Association</b>	“Product placement is clearly to be accepted as a legitimate means of commercial communication. On the other hand, it is not to be used to bypass the current rules on restricted products or programmes and it must comply with the existing framework. Identification at the beginning of the programme is an acceptable solution.”
<b>RTL Group</b>	“If product placement is to be authorised, it should comply with the principle of identification. In addition, RTL Group considers that product placement regulation in regard to public health is legitimate and would support extending the public health principles, i.e. prohibiting tobacco and prescription medicines, and regulating the presentation of alcohol. We would also favour the

## 7. Conclusions

European actors, industrial and public alike, favored the restrictive regime while in Canada most actors, regardless of category, supported the more permissive regime. Actors' positions on the use of product placement were significantly divided across political jurisdictions rather than categories of interest. We argue that these divergent positions reflect differences in the framing of the issue: it has been framed as a solution in Canada and as a problem in the EU. For the Canadian actors, product placement was a solution to the economic viability of the broadcasting industry and to the need to improve the competitiveness of the Canadian broadcasting industry; they saw product placement as a legitimate and necessary source of revenue, and presented the linkage between the financial strength of the broadcasting industry and its obligation to provide high-quality Canadian programs. In Europe, by contrast, the regulator's documents and the policy papers of most of the participants (regardless of their categories) acknowledged the need to protect the viewers against commercial interests, the importance of the identification of any commercial message (including product placement) and the obligation to protect editorial independence from commercial influence.

Comparing the two policy processes which led to the new product placement regimes thus reveals similarities and differences across constituencies that do not reflect different actors' categories. It was expected that in each case the new regime would reflect the preferences of the most powerful coalition of actors, which is one of the main predictions of actor-centered theories of “business capture” (Stigler, 1971; Peltzman, 1976). Given this assumption, it was reasonable to hypothesize that the relatively restrictive regime in the EU reflects the strength of state and NGO actors who represent the public interest, while the more permissive regime in Canada reflects

the dominance of industrial actors. But our findings falsify this hypothesis. In Europe, most industrial actors supported the conservative regime, not the liberal-permissive one; while in Canada state and some of the NGO actors were in favor of the liberal-permissive regime rather than the conservative-restrictive one. In both cases, actors presented positions that did not reflect their presumed interests.

The findings support institutional theories of politics and policy (March and Olsen, 1984). Interests are framed within institutions and not outside them. The policy process is dependent on the way an organization shapes the collective behavior of actors, privileges some interests at the expense of others (Hall & Taylor, 1996). Political actors associate certain actions with certain situations by “rules of appropriateness” (March and Olsen, 1984), creating a “social logic of appropriateness” (Hall and Taylor, 1996). In Canada it was appropriate to support a new product placement regulation aiming to strengthen the broadcasters financially, leading to “high quality Canadian programs”. In turn, this reflects more entrenched attitudes toward media governance in Canada which on the one hand is concerned with cultural nationalism and on the other hand is characterized by broadcasting ownership and broadcasting regimes that resemble the US more than Europe. This is not surprising probably since the threat of Americanization has been a key element of the Canadian discourse since the 1930s due to the presence of the US Broadcasting industry over the border. This happened much later in Europe most significantly during the 1980 with the rise of commercial broadcasting (Sarikakis, 2007; Young, 2003). In Europe the logic of appropriateness has driven the relevant actors to support a new policy which allows the use of product placement only under severe restrictions in order to safeguard the integrity of the message, to protect minors and to preserve creative and journalistic independence.

We can conclude that (a) framing politics is directly linked to the logic of appropriateness in each constituency; (b) the framing of policy discourses affects the outcomes of policy processes; and (c) the analysis and comparison of policy frames may provide a better explanation for policy and/or regime differences between

jurisdictions than actor-centered analysis does. We hope that our findings not only explain the policies adopted by the specific jurisdictions in this study but also add to the body of literature that successfully builds on the neo-institutionalist approach to policy studies.

## Appendix

Here are some examples of the AVMS Directive in different stages of implementation. We refer only to the implementation of EU policy regarding product placement:

- (1) **The United Kingdom**: in 2008 the UK government decided in favor of the status quo. That is, continuing with the prohibition of product placement. The former Culture Secretary, Andy Burnham, explained that product placement could confuse viewers by blurring the boundaries between advertising and editorial content. However, Burnham's successor, Ben Bradshaw, proposed changing the government's policy (on September 16<sup>th</sup>), in light of two arguments: (a) product placement is predicted to be worth up to £100m a year to the industry and (b) it would help alleviate the British industry's competitive disadvantage vis-à-vis the US and other rivals. Following the new resolution, the government launched a public consultation on the issue, which was closed on 8 January 2010. In addition, Ofcom (the UK's independent regulator) announced that following the government's new position and consultation, it would extend its review of the Broadcasting Code (launched on 15 June 2009), referring to sections 9–10 of the code, which deal with advertising. Ofcom announced that, under the AVMS Directive, product placement is prohibited in all children's programs (whether the programs are produced in the UK or acquired from outside the UK).
- (2) **France**: on December 15, 2009, the High Council of Audiovisual (CSA) decided to approve the use of product placement under certain conditions, very similar to the minimum standards laid down by the EU AVMS Directive. PP in France will



be allowed only in films, dramas, music videos, and audiovisual. In these types of program, PP should not influence the content and scheduling of programming and should not affect the responsibilities or editorial independence of channels. PP must not directly encourage the purchase or rental of goods and services. PP of products whose advertising is prohibited (such as alcohol, tobacco, drugs and firearms) is likewise prohibited. Programs with PP must include a symbol at the beginning, after each commercial break, and during the end credits.

(3) **Germany:** in November 2009, the federal states' prime ministers decided to allow PP on condition that the existence of PP was announced before and after the program as well as after each commercial break. This rule will be applied to in-house productions as well as to outside productions (foreign programs and movies).

(4) **Sweden:** The AVMS Directive has not yet been implemented. The government intends to introduce a new Radio and Television Act which is supposed to enter into force by 1 July 2010. The new Act will include a certain provision regarding PP which reflects the main provisions of the AVMS Directive regarding this issue. Two topics are outstanding: (a) broadcasters must inform the viewers about the existence of PP; (b) a product which is placed within the program must not be given undue prominence.

(5) **Italy:** the government approved (in August 2008) PP in accordance with the AVMS Directive. It stressed the prohibition on the practice within children's programs.

(6) **Poland:** the AVMS Directive has not yet been implemented. The Ministry of Culture and National Heritage prepared an amendment to the Polish Broadcasting Act in which PP would be allowed under the AVMS Directive's conditions. The legislative process is supposed to be completed during 2010.

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<sup>1</sup> For example, television advertising revenues in Canada increased between 2002 and 2006 by 5.7 percent annually (Canadian Association of Broadcasters, 2007). Private conventional television revenues grew continuously, from CA\$562,036 million in 1980 to CA\$2,187,197 million in 2007 (Statistics Canada, 2008). The picture in Europe is quite similar: the annual average growth was ten percent in the 1980s and 1990s (Carat Crystal and Bird & Bird, 2002). Total revenues of EU broadcasting companies rose from €44.7 billion in 1997 to €72 billion in 2000, an average annual growth rate of about 12 percent. The income of European television companies from advertising during this period increased at an annual rate of 11.6 percent. The recession of 2001–2 led most television companies to report huge losses, but since 2003 financial reports have shown a moderate improvement, despite a sharp decline of annual growth from about 12 percent to about 1.4 percent (European Audiovisual Observatory, 2005).

<sup>2</sup> Screen Digest has recently forecast that by 2012 total European TV advertising revenues will have fallen to second place after online (internet) advertising (Screen Digest, 2008). In Canada, internet advertising revenues increased between 2002 and 2006 by 55 percent annually (Canadian Association of Broadcasters, 2007)

<sup>3</sup> Available at: <http://www.pqmwdia.com/about-press-20080212-bemf.html> (14.8.08)

<sup>4</sup> Available at: <http://www.reuters.com/article/pressRelease/idUS82123+05-May-2008+PRN20080505> (14.8.08)

<sup>5</sup> Available at: <http://www.mediaincanada.com/articles/mic/20060817/product.html> (12.8.08)

<sup>6</sup> See: <http://www.guardian.co.uk/media/2007/dec/11/advertising.television/print>

<sup>7</sup> Available at: <http://www.commercialalert.org/news/featured-in/2008/07/ad-nauseam> (15.2.09)

<sup>8</sup> The ASC is the national advertising sector's body. It has 170 members: advertisers, advertising agencies, media organizations, and suppliers to the advertising sector. The ASC published in 1963 its 14-clause Code of Standards, which has been reviewed and revised

periodically. The Code is supplemented by Interpretation Guidelines that provide guidance on the interpretation and application of the Code's clauses.

<sup>9</sup> For more details see EASA's Advertising Self-Regulation Charter (2004) and the EASA's Statement of Common Principle and Operating Standards of Best Practice (2002). Both available at: <http://www.easa-alliance.org>

<sup>10</sup> As to the UK, see Article 1.1 of "the Rules on the Amount and Distribution of Advertising". As to France, see the Hans-Bredow Institute report on *Media System of France* (2005). On Germany, see the *Online Journal Recht* (OJR), available at: [www.ojr.de](http://www.ojr.de)

<sup>11</sup> Council Directive 89/552/EEC, published on 3 October 1989 and amended by EC Directive 97/36/EC in June 1997

<sup>12</sup> TVWF Directive, Chapter 4, Article 18 (1)

<sup>13</sup> Broadcasting Act, Article 11 (1) (a)

<sup>14</sup> TVWF Directive, Chapter 4, Article 11 (5), Article 16 (1).

<sup>15</sup> TVWF Directive, Chapter 4, Articles 13–15.

<sup>16</sup> Broadcasting Act, Article 6 (1) (a–c).

<sup>17</sup> Broadcasting Act, Article 7 (1).

<sup>18</sup> Public Notice CRTC 1993-99; see also: [http://www.crtc.gc.ca/en/INFO\\_SHT/b300.htm](http://www.crtc.gc.ca/en/INFO_SHT/b300.htm)

<sup>19</sup> TVWF Directive, Chapter 4, Article 10 (1-4)

<sup>20</sup> Department of Justice, Canada, "Broadcasting Act", SOR/87-49

<sup>21</sup> COM (2002) 778 final, published on 6 January 2003.

<sup>22</sup> COM (2003) 784 final, published on 15 December 2003.

<sup>23</sup> Interpretive Communication 2004/C 102/02, published on 28 April 2004.

<sup>24</sup> Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC (COM (2005) 646), published on 13 December 2005.

<sup>25</sup> The European Parliament, A6-0399/2006. Available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2006-0399+0+DOC+XML+V0//EN&language=EN#title1>

<sup>26</sup> See, for example, Amendments 56, 60, 126, 127 at the Parliament Amendments document.

<sup>27</sup> Broadcasting Notice of Public Hearing CRTC 2006–5.

<sup>28</sup> CRTC 2006–5, Article 39.

<sup>29</sup> Directive 2007/65/EC of the European Parliament and of the Council.

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<sup>30</sup> Broadcasting Public Notice CRTC 2007-53.

<sup>31</sup> AVMSD, Article 3g (1)

<sup>32</sup> The prohibition of product placement in children's programs is explicit. The prohibition in other types of program (like news) is implied by the fact that these programs are not mentioned by name in the list of programs in which product placement is allowed.

<sup>33</sup> AVMSD, Article 3g (2a–d).

<sup>34</sup> AVMSD, Article 3g (3).

<sup>35</sup> AVMSD, Article 3(1)

<sup>36</sup> Member states have to adapt their local legislation and regulation to the AVMSD provisions until 19 December 2009.

<sup>37</sup> The European Advertising Self-Regulation Alliance (EASA) is a voluntary supra-national organization whose main goal is promoting self-regulation organizations within the EU member states. The EASA handles cross-border complaints only by transferring them to the relevant state or self-regulation authorities according to the country-of-origin principle.

<sup>38</sup> PN CRTC 2007-53, Article 43.

<sup>39</sup> Public Notice CRTC 2007-53, Article 43.

<sup>40</sup> E-mail message sent by Janet Feasby, Vice President of the Advertising Standards Canada, received on 13 February 2009.

<sup>41</sup> Email message sent by Christina A. Bisanz, Executive Director of the Consumers Council of Canada, received on 17 February 2009.

<sup>42</sup> Les Chaiet and Jeff Scanlon, "keeping your product placements legal", publishes in Advertising & Marketing Bulletin, September 2006.

<sup>43</sup> These definitions are based on the different references to product placement regulation formulated in the regulators' calls for positions papers.

<sup>44</sup> The N in each category within this table is quite small and the percentage differences might be misleading. Still, we think it is worthy to separately present the different categories of actors in order to demonstrate that actors' positions are divided across jurisdictions much more than across actors' types.

<sup>45</sup> Broadcasting Notice of Public Hearing CRTC 2006-5, provision 23. The other two objectives were about digital/HD television and about the economic status of small market television stations.

<sup>46</sup> The first document is the working paper of Focus Group No.2, which the Commission established in 2004 following the first public consultation in 2003. This group dealt with the

“Level of detail in regulation of television advertising”. The second document is the Issue Paper which the Commission published following the Focus Group work and before the Liverpool conference which was convened in September 2005 and titled “Between Culture and Commerce”.

<sup>47</sup> Proposal for a directive of the European Parliament and of the Council amending Council directive 89/552/EEC (COM (2005) 646), published on 13 December 2005.

<sup>48</sup> An email exchange with Gregory Paulger, written on behalf of Commissioner Reding, 4 December 2009.