



Full title	The Media Act 2008 (Mediawet) Extracted key provisions relating to Responsibility/ Obligations of public media institutions, in addition to specific rules relating to advertising and teleshopping.
Guidelines	Dutch Media Authority regulations establishing policies concerning the permissibility, recognisability and delineation of advertising and teleshopping announcements in broadcasts of Public Media Institutions (Policy Rules/ Guidelines – advertising – Public Media Institutions 2011) ¹
Relevant sections from Media Act	Chapter 2 – Public Media Services; Title 2.5. Further Regulations of Public Media Services: <ul style="list-style-type: none"> • Responsibility and Obligations (section 2.5.1.) Art. 2.88b • Advertising and Teleshopping (section 2.5.2.) Specific Rules: Arts 2.94 – 2.98
TV/ Radio/ VOD	Articles 2.94 to 2.97 of the Act specify the specific conditions with regard to advertising on radio and television. ² Under Art. 2.98, the rules provided in Arts 2.94 – 2.97 on advertising and teleshopping will apply to “other media offerings” of public media institutions – such as VOD / on-demand media services. ³
Recognisability & Prohibition of surreptitious advertising (Art. 2.88b)	<ul style="list-style-type: none"> • Advertising and teleshopping spots and sponsored media output must be recognisable as such (Art. 2.88b(1) Media Act) <ul style="list-style-type: none"> ◦ <i>Whether within the video and/or audio part of the media offeror within the text and/or graphic part of the media offer, advertising and teleshopping spots are “recognisable as such” if the average circumspect consumer is capable of recognising these as advertising or teleshopping spots due to their nature and content</i> (Art. 3.1 and Art. 3.5 Policy Guidelines) • No subliminal techniques must be used in advertising and teleshopping messages and sponsored media output (Art. 2.88b(2) Media Act) • The media output must not contain surreptitious advertising (Art. 2.88b(3a) MA) or product placement (Art. 2.88b(3b) MA) <p>Note: <i>Advertorials are not permitted. Including a hyperlink to commercial third parties in an editorial context is permitted provided the hyperlink fits within the context and is applied in a neutral manner and does not lead to a page where a direct transaction can take place</i> (Point 13, Explanation by article CvdM Policy: Advertising)</p>

¹ http://www.gregsregs.com/downloads/NL_CvdM_PolicyRules_Advertising_PublicMediaServices_2011_NL.pdf

² Point 11, Explanation of policy Guidelines/ Rules – Advertising – Public Media Institutions

³ Point 1, Explanation of Policy Guidelines – Advertising – Public Media Institutions

URL of source: Media Act 2008 (In Dutch) <http://wetten.overheid.nl/BWBR0025028/2017-02-01>

CvdM Policy Guidelines (In Dutch):

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Advertising and
Teleshopping
(Arts 2.94 - 2.97)

Clearly Distinguishable

- Advertising and teleshopping messages must be clearly distinguishable from the other content of the programme by acoustic or visual/optical means (Art. 2.94(1) Media Act)
 - *Advertising and teleshopping spots within the video and/or audio portion of the media offer are considered "clearly distinguishable" from the rest of the media offer if they are preceded by and concluded with a visible and/or audible frame stating "advertising / reclame", "Advertisement / advertentie", "teleshopping message / telewinkeloord", "Ster", or similar* (Art. 3.2 Policy Guidelines – Advertising)
 - *Advertising and teleshopping spots within the text and/ or graphic part of the media offer are considered "clearly distinguishable" from the media offer if they are placed in a separate frame that is not a part of the rest of the media offer and stating "advertising / reclame", "advertisement / advertentie", "teleshopping message / telewinkeloord", "Ster", or similar.* (Art. 3.6 Policy Guidelines – Advertising)

Share/ Proportion

- No more than twelve minutes per hour can be allocated to advertising and teleshopping messages (including framing⁴) (Art 2.95(1c))
 - *For advertising within the video and/or audio portion of the media offer, the proportion of advertising and teleshopping messages is restricted/ limited in terms of volume and duration, not dominant and not greater than the maximum specified in the law and the decree.* (Art. 5.1 – Policy Guidelines)
 - *For advertising messages within the text and/ or graphic part of the media offer the proportion of advertising and teleshopping messages is restricted/ limited in terms of volume and duration, not dominant and is in any case not more than ten percent of the space of a page.* (Art. 5.2 – Policy Guidelines)
- The framing can only account for a maximum of a 1/3 of the time used for the advertising and teleshopping spots (Art. 2.95(2) MA)

Placement (including commercial break policy/ interruption regime)

- Advertising and teleshopping messages are placed in the programme in such a way that they (Art. 2.96(1a-c) Media Act):
 - are contained in blocks; blocks which, for television programmes (inclusive of frames) last for at least one minute;
 - must not immediately precede or connect directly to programmes of a religious or spiritual nature on Sundays, unless the institution responsible for the content of such programmes has raised no objection, and
 - are not included in programmes, unless in accordance with provisions described in Article 2.97 (below).
- Each teleshopping message in a programme must not exceed one minute in duration, and a block as referred to in Art 2.96(1a), must consist of a maximum of two-thirds of the duration of teleshopping messages (Art 2.96(2) MA)

Interruption Rules

⁴ The CvdM policy guidelines – advertising - define "framing" (Art. 2(g)) as: "*Framework / box / block within which advertising and teleshopping announcements are placed; in commercials/ teleshopping messages in the video and/or audio portion of the programme via an announcement, in commercials / teleshopping messages in the text and/or graphic portion of the programme in the form of a visible demarcation of the programme...*"

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- Advertising and teleshopping spots may only be inserted in/ during programmes when:
 - the programme concerned lasts longer than 90 minutes in respect of TV and over 45 minutes for radio (Art 2.97(1a) MA)
 - the programme concerned consists of the full coverage or the full presentation of an event (Art. 2.97(1b) MA)
 - they are inserted during the natural breaks in the event or between the individual parts occurring in the event and the block/ window must last for at least one minute (Art 2.97(1c) MA)
 - the institution responsible for the corresponding content has raised no objection on the basis that the integrity, character or consistency/ coherence of the programme is impaired (Art 2.97 (d) MA), and
 - this does not affect/prejudice the rights of the right holders (Art 2.97(e) MA)
 - Advertising or teleshopping messages are prohibited in programmes of a religious or spiritual nature and programmes aimed in particular at children under the age of twelve. (Art 2.97(2) MA)
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Article 2.98 (Other media offerings)

OTHER MEDIA OFFERINGS

- Articles 2.94 to 2.97 apply as far as possible mutatis mutandis⁵ to “other media offerings” of public media services. For Article 2.96 (1a), the preceding sentence applies only to the other media offerings with image/ video content, whether or not with audio/ sound content⁶ (Art. 2.98 Media Act)
 - *With the entry into force of the Media Act 2008 on January 1, 2009, pursuant to article 2.98 of the Act, the rules for advertising and teleshopping no longer apply only to radio and television programmes, but – as far as possible - also to all other media offerings by the public media institutions. Characteristic of the ‘other media offering’ mentioned in article 2.98 is that it is audiovisual in nature and is distributed electronically. It does not matter whether the content consists of video, audio, text and graphic information such as photographs and other images or a combination of them. For example, the term, ‘other media offerings’, may include: a website or on-demand media service offered by a public media institution (e.g. Missed broadcast / uitzending gemist⁷). (Point 1, Explanation of Policy Guidelines – Advertising – Public Media Institutions)*
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PUBLIC MEDIA INSTITUTION ON-DEMAND MEDIA SERVICES

Recognisable and clearly distinguished

- Advertising and teleshopping spots may only be placed within an on-demand media service prior to or after the requested video or audio, without prejudice to the provisions of Article 2.97 of the Act (Art. 3.3 CvdM Policy Guidelines – Advertising)
 - Advertising and teleshopping spots at the beginning or the end of the video or audio offered in an on-demand media service need not be included in blocks as referred to in Article 2.96 (1) (a) of the Act (Art. 3.4 CvdM Policy Guidelines – Advertising)
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⁵ i.e. with the necessary changes having been made or with consideration of the respective differences.

⁶ Meaning: Art. 2.96(1a) – requirement of advertising/ teleshopping blocks lasting at least 1 minute - will not apply to other media offerings via audio transmission or radio services.

⁷ The online portal of the public broadcaster: www.uitzendinggemist.net

URL of source: Media Act 2008 (In Dutch) <http://wetten.overheid.nl/BWBR0025028/2017-02-01>

CvdM Policy Guidelines (In Dutch):

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Advertising in video or audio within on-demand media service

- For advertising and teleshopping spots in the video and / or audio part of the media offer within an on-demand public media service, the advertisement is in principle placed before or after the requested video or audio. Usually there will be so-called pre-roll advertisements. This does not apply only when it comes to sports programmes and other offers as referred to in article 2.97 of the law. In that case, the advertising messages may interrupt the video in accordance with programme interruption rules. The rules regarding the minimum duration of one minute for an advertising block have not been adopted for advertising and telemarketing spots that are shown at the beginning or end of the video or audio within an on-demand public media service. In those cases, it is undesirable to hold on to/ observe a minimum duration of one minute for advertising because the requested videos are often of short duration, especially when it comes to single clips (Point 23, Explanations by article, CvdM Policy Guidelines: Advertising)

Share

- Advertising in the video and / or audio part of an on-demand public media service usually takes place in the form of pre-rolls that are placed before the videos. Because these are videos to be requested by the individual user and not broadcasts of which the total duration can easily be determined, the hourly maximum of Article 2.95 (1) (c) of the Act and the annual maximum of Article 5 of the Decree are difficult to apply and maintain here. At present, the duration of the commercials for the individual videos within a missed broadcast⁸ are shown for a maximum of 15 seconds. The Dutch Media Authority considers this current practice to be a correct interpretation of the aforementioned principle (as per Art. 5 CvdM Policy and Points 13/14) that advertising within public media services must be limited in volume and not dominant (Point 31, Explanations by article, CvdM Policy Guidelines: Advertising)

WEBSITE OFFERED BY A PUBLIC MEDIA INSTITUTIONAdvertising in video or audio within broadcasting on the Internet

In addition to on-demand media services, the public media offerings on the Internet may also consist of linear broadcasting services, or programmes, sometimes broadcast simultaneously on other platforms. Advertising rules on advertising volume and interruption regime (commercial breaks) as applicable to traditional television and radio programmes can and should be applied in full. The fact that it is broadcast over the internet does not affect the fact that we are dealing with linear media services that are subject to the usual rules. Unlike on-demand media services, pre-roll advertisements are unauthorized (prohibited) because the viewer or listener misses part of the broadcast, for example, in case of simulcast/ simultaneous live broadcast of a sports game on a public website. (Point 24 Explanations by article, CvdM Policy Guidelines: Advertising)

Key Points from Policy Guidelines (Explanation of Policy Guidelines: Advertising)

Advertising within video and / or audio vs advertising within text and / or graphical information (Points 6-9 Explanation Policy Guidelines: Advertising)

Point 6: The different forms of public media offer necessitate a more detailed explanation of the rules for advertising and teleshopping. This policy aims to provide for this and, more specifically, this policy aims to further elaborate on Article 2.98 of the Act.

⁸ *uitzending gemist* (online portal for on-demand content from public broadcaster) <http://www.uitzendinggemist.net/>

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Point 7: In this policy, a distinction is made between the location of the advertising and teleshopping spots. Firstly, there are advertising and teleshopping spots in the video and / or audio part of the media offer. Advertising and teleshopping spots in the video and / or audio part of the media offer occur in the broadcasting services of the public media institutions. With the national public broadcaster these commercial messages are recorded in blocks broadcast under the responsibility of The STER. At the regional and local media institutions, the advertising can be provided by the media institutions themselves. Advertising messages can also be included in the video or audio part of on-demand media services. The advertising and teleshopping spots in the video part usually take the form of a so-called pre-roll: a commercial that is shown before the requested video or audio starts.

Point 8: Secondly, advertising and teleshopping spots that appear in the text and / or graphical part of the media offer can be distinguished. These advertising and teleshopping spots can for instance be displayed on a page of a website of a public media institution or on a page within teletext⁹ which, pursuant to article 1.1 (1) of Media Act must be regarded as a television programme. Furthermore, advertising and teleshopping spots can be part of an on-demand media service, for example in the text envelope/ shell that surrounds the videos offered within Missed Broadcasts (i.e. *uitzending gemist*¹⁰ - online portal for on-demand content from public broadcaster). It is irrelevant here whether the media offer is offered on request/ on-demand, such as with Missed Broadcast or in linear form such as with teletext. Characteristic of this category of media offering is that the content consists of text and graphic information (photographs and other still images). This usually also applies to the advertising and teleshopping spots included in that part of the media offer, which are usually offered in the form of banners or other advertisements. This means that not all advertising requirements written for television and radio programs can be applied in full.

Point 9: It is important to keep in mind that as soon as public media offerings are offered on a website, a hybrid form is created in which both video and / or audio and text and / or graphic information can occur on the same page. This also has consequences for the advertising messages on that page. These can take the form of pre-rolls as well as banners or other advertisements.

Illustrated with an example: the on-demand public media service, "Missed Broadcast"¹¹ also contains text and graphic information that is placed around and next to the videos to be requested. As a result, the forms of advertising within the same service usually differ substantially. For example, a promotional message can be shown in the form of a pre-roll prior to the video of a television program that can be requested, while an advertisement in the form of a banner can also appear on the same page. The above applies not only to the Missed Broadcast (*uitzending gemist*) of the national public broadcaster but also to other websites of national, regional and local media institutions where video and / or audio is offered on-demand. The same applies to television and radio programmes (broadcast services) that are broadcast on an internet site because in many cases there is also a combination of video and / or audio on the one hand and text and / or graphical information on the other.

⁹ *teletext*: television programme that consists solely of static text images that can be viewed by the viewer in the order and at the time of his determination, which is transmitted via the same transmission frequency of a broadcasting company or broadcasting network as that which is used for the distribution of other television programmes (Art. 1.1(1) Media Act)

¹⁰ <http://www.uitzendinggemist.net/>

¹¹ i.e. *uitzending gemist*

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Location of Advertising Messages / Spots

Point 10: Which advertising rules apply to the advertising and teleshopping spots within the public media output therefore depends on whether there is a broadcasting service or an on-demand media service, but also on the location where these commercial messages are placed. Is the advertisement offered in the video and / or audio part of the media offer or in the text and / or graphical part of the media offer?

Point 11: The specific conditions relating to advertising on radio and television are included in Articles 2.94 to 2.97 of the Act. Pursuant to Article 2.98 of the Act, these rules apply as much as possible to the other media offerings of the public media services. This concerns:

- 1) the recognisability and distinctiveness of advertising and teleshopping spots,
- 2) the share/ proportion of the advertising and teleshopping spots, and
- 3) the placement of the advertising and teleshopping spots (including the interruption regime/ commercial breaks).

Limited in Volume/ Quantity and Duration and not dominant

Point 13: Application of the principle of non-commerciality should be expressed, inter alia, in terms of a limited amount/ volume and duration of advertising and teleshopping messages. In addition to the amount/ volume and duration, the appearance of advertising and teleshopping messages should not cause the advertising and teleshopping messages to be dominant. Application of the principle of non-commerciality should also be reflected in a recognizable separation between editorial expressions of the broadcaster on the one hand and commercial expressions of third parties on the other. Direct offers with a view to the supply of goods or services in return for payment of third party products and services are not allowed outside of advertising blocks, including teleshopping. The inclusion of an advertisement in the form of an editorial article ("advertorial") is not allowed. Including a hyperlink to commercial third parties in an editorial context is permitted provided the hyperlink fits within the context and is applied in a neutral manner and does not lead to a page where a direct transaction opportunity is offered.

Point 14: An advertisement, for example, in the form of a "button" or "banner", whether or not hyperlinked to the advertiser's site, should be clearly identifiable as such and be provided with the reference: "*Advertisement / Advertentie*"; "*Advertising / Reclame*"; "*Teleshopping / Telewinkelen*"; "*Submitted Communication / Ingezonden Mededeling*" or similar words - in the advertising or teleshopping message. A public media institution is responsible for compliance with the provisions, even if a third party carries out the advertising operation for the broadcaster's site (s) or, as in the case of the national public media institutions, the STER operates and looks after advertising.

Advertising in text or graphic information

Point 25: In the case of advertising and teleshopping in the text and / or graphic part of the media offer - usually in the form of banners or other advertisements - the frame/ box must be visual in nature. This also applies to the so-called 'web commercials' where a video can be played within an advertisement. The word "*advertisement / reclame or advertentie*", "*teleshopping spot / telewinkeldoorschap*" or - in the case of national public media offerings - "STER" must be mentioned in the advertisement. Furthermore, the advertisement or teleshopping spot must be placed in a visibly separate/ distinctive framework/ box that differs clearly from the rest of the media offer in terms of design.

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Share / Proportion

Note: *For advertising messages within the text and/ or graphic part of the media offer the proportion of advertising and teleshopping messages is restricted/ limited in terms of volume and duration, not dominant and is in any case not more than ten percent of the space of a page (Art. 5.2 CvdM Policy: Advertising)*

Point 32: A maximum proportion of advertising messages in the text and / or graphical section of the media offerings, such as on internet or teletext pages, is not easy to determine. On the internet, advertising usually takes the form of so-called banners or buttons. Setting a limit on the maximum size of the ad is difficult in practice where banners and buttons are used in all sorts of sizes and can be tailored to the wishes of the advertiser. A limit on the number of advertisers on a single page has the disadvantage that it does not take into account the common practice on the internet whereby banners change content so much by automatically rotating advertisers.

Point 33: In order to adequately reflect the possibilities of new advertising techniques and for the sake of enforceability, adopted as much for the technology-neutral approach, including as a general premise that advertising is limited in quantity and duration and is not dominant. In any event, the Media Authority finds that this is not the case if the banners or other ads together occupy more than ten percent of the space of one page. In addition, it is considered as a page that can be seen in one browser screen. Any advertising and teleshopping spots within the video and / or audio section of a page (on the web usually in the form of a pre-roll) are excluded from the calculation of the ten percent. The Media Authority will act if it appears that the total share of banners, buttons or other ads on a single page exceeds this limit. The ten percent limit refers to advertising and teleshopping messages within the text and / or graphic part of the media offer. These may include advertisements in the form of banners or buttons on web pages, but also for ads on teletext pages.

Point 34: The Media Authority emphasizes that the ten percent is a maximum standard. Advertising may also be dominant and not limited in volume if the share is less than ten percent of the page. For example, the Media Authority also considers dominant and hence unauthorized advertising techniques that allow extra windows to be unscrambled on the same webpage, such as "pop-ups", "pop-unders" (where the advertisement becomes visible when the main window is closed by the user) and "hover banners" (where the advertisement remains intact when the user scrolls through the page content). The use of so-called "video overlay" ads are not permitted by the Media Authority for public media institutions. With this advertising form, an ad is shown - usually over a portion of the video - while playing the video. The intrusive and dominant nature of these advertising forms is not compatible with the public media remit. In addition, such advertising techniques may create an unwanted form of interruption of the media offer. The 'web commercials' - where an advertising video is played within a banner - will only be regarded as non-dominant if the video in question is not played until the user chooses, for example by clicking on the banner.

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