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From cultural autonomy to advertising autonomy : the rise and development of European advertising self-regulation

Anne-Lauren Cunningham

To the Graduate Council:

I am submitting herewith a dissertation written by Anne-Lauren Cunningham entitled "From cultural autonomy to advertising autonomy : the rise and development of European advertising self-regulation." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Communication.

Ronald Taylor, Major Professor

We have read this dissertation and recommend its acceptance:

Roxanne Roland, Margaret Morrison

Accepted for the Council:

Carolyn R. Hodges

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

To the Graduate Council:

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Margaret Duncan

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Associate Vice Chancellor and
Dean of the Graduate School

FROM CULTURAL AUTONOMY TO ADVERTISING AUTONOMY:

THE RISE AND DEVELOPMENT OF EUROPEAN

ADVERTISING SELF-REGULATION

A Dissertation
Presented for the
Doctor of Philosophy Degree
The University of Tennessee, Knoxville

Anne-Lauren Cunningham
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DEDICATION

To Gram.

Thank you for teaching me to

sit up straight,

sketch instead of trace,

and sing even if I can't.

I love and miss you.

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ABSTRACT

Few critics have questioned the contention – championed by such international organizations as the newly formed European Advertising Standards Alliance (EASA) – that unfettered advertising is necessary for the development of a free and thriving world economy. In an effort to promote freer exchange of advertising worldwide, many organizations are working to coordinate European advertising self-regulatory codes and practice. However, the literature on the detrimental impact of cultural synchronization and on the media's, particularly advertising's, role in transporting culture raises concerns about how standardizing European advertising self-regulation might influence those cultural values that threaten capitalist values.

The literature on cultural synchronization, particularly Jhally's (1998) theories, suggests that standardized advertising self-regulation may erode cultural autonomy, leading to worldwide consumerism that displaces all other cultural values. In an attempt to better understand the role of European advertising self-regulation, qualitative interviews were conducted with representative from the organizations leading the coordination effort: European Advertising Standards Alliance, European Association of Advertising Agencies, European Advertising Tripartite, and World Federation of Advertisers. In addition, newsletters, speeches, memos and other documents produced by these organizations were examined; all of this in order to gain insight into the balancing act, within and among the organizations charged with shaping European advertising self-regulation, between maintaining cultural autonomy and advocating for advertising autonomy.

European unification was begun to help Member States compete on the world level with such economic forces as the US and Japan. Despite the fact that advertising industry representatives speak often about the need to preserve cultural diversity within and throughout the European Union, this research suggests that cultural autonomy is, for the advertising industry, an argument of convenience rather than conviction. The advertising industry sees measures to harmonize advertising self-regulation as a first step toward additional European legislation, which would necessarily strip the industry of its autonomy. As a shield against the threat of harmonization leading to regulation, advertising representatives argue that self-regulation's flexibility better protects cultural autonomy.

A look deeper into the data at self-regulatory and European Court of Justice decisions in cross-border advertising cases further indicates that unification necessarily places market values above traditional cultural values. So despite the advertising industry's discourse on the value of diversity, its actions and the motivation behind this rhetoric suggest that culture cannot stand in the way of progress, which, as Jhally (1998) warns is too often defined in monetary terms. With Britain, France, and Ireland setting the standards, European advertising self-regulation is moving, in fact, toward a more uniform system. Like any hegemony, this system favors those at the helm.

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INTRODUCTION

In January 1999, the euro became the official currency of the European Union. This move marked the next step in a progression toward a unified European marketplace. As reported in the *Irish Times*, "The introduction of the euro will prompt more than two thirds of corporates [sic] to change banks, accelerate lower prices in the cross-border payments market and spur further globalisation [sic]" ("Euro will be spur," 1998). Those supporting the creation of a single economic and monetary union (EMU) believe that the euro will lead to a stronger Europe, more able to compete in the world marketplace. Many critics, however, contend that the unifying currency is just another means to erode the autonomy of the individual European nations.

> For many who oppose the single currency, it is not merely an ill-advised undertaking, but a disastrous one: a stride further along the road to a European superstate that will submerge the individuality of the European nations in an unwieldy federation, hobbled by bureaucracy, commanding little popular support and imposing a crippling burden of regulatory and other costs on Europe's economies. (Currie, 1997).

The single currency debate has received extensive coverage in European and American media as well as on both government-sponsored and independent Internet web sites. While this debate rages on, the question of standardization of media practices, particularly advertising self-regulation, has largely gone unnoted. Few critics have stepped forward to question the contention – championed by such international organizations as the International Chamber of Commerce (ICC), European Association of Advertising Agencies (EAAA), and newly formed European Advertising Standards

Alliance (EASA) – that unfettered advertising is necessary for the development of a free and thriving world economy. In an effort to promote freer exchange of advertising worldwide, many such organizations are working to coordinate European advertising self-regulatory codes and practice.

Just as with the introduction of the euro, such a move toward unified advertising self-regulation threatens to "submerge the individuality of the European nations." Insofar as advertising self-regulation reflects and impacts national culture, the standardization of self-regulatory codes and/or practices offers a microcosm of the challenges facing the European Union (EU) as it tries to balance unity with diversity. In an effort to better understand advertising self-regulation's evolving role in the EU, this dissertation examines how the four sister organizations most directly involved in the development of European advertising self-regulation: EASA, EAAA, World Federation of Advertisers (WFA), and European Advertising Tripartite (EAT); interpret their roles as promoters of advertising self-regulation, and what impact they foresee the standardization of European self-regulation having on national cultural autonomy.

The Question of Culture

Before discussing self-regulation's impact on culture, it is important to consider the nature of culture itself. Griswold (1994) defines culture as "the expressive side of human life – behavior, objects, and ideas that can be seen to express, to stand for something else" (p. 11). Culture stands for the beliefs, customs, and values of a given society or group of people. This view of culture eliminates the distinction often drawn between high and low culture, for traditional cultural values are just as beneficial and admirable as modernity. As Griswold explains "we must speak of cultures, not simply

culture, for the obvious reason that nations, and communities within or across nations, have their own, equally meritorious cultures" (p. 8).

Why Protect Cultural Autonomy?

Many fear that the diversity of cultures among nations may be eroding. The belief that all cultures are created equal raises serious concerns about cultural synchronization, also known as cultural globalization or imperialism. Cultural synchronization refers to the process by which dominant cultures infiltrate and supercede satellite cultures. Invariably, the dominant culture imposed upon these traditional cultures supports industrialization and modernity, the underpinnings of capitalism. Hamelink (1983) explains how the erosion of culture can lead to the devastation of entire societies.

> The adequacy of the cultural system can best be decided on by the members of the society who face directly the problems of survival and adaptation....Critical for a society's chances of survival are the internal capacity and external freedom to develop its cultural system autonomously. (p. 1)

Given the definitional link between culture and society, it follows that any change in one would necessitate change in the other. But more than this, Hamelink argues that cultural values evolve to fit the economic and environmental constraints faced by a society. When values that may be perfectly harmless in one society are adopted by or imposed upon others, the effects can be devastating. He offers several examples of such cultural erosion, perhaps the most noteworthy being the importation of baby formula to Third World countries.

Westernized doctors and marketing campaigns have convinced women in economically deprived nations to supplant breast-feeding with powdered baby formula.

Whereas bottle-feeding is a safe, convenient alternative for many American women and allows them greater freedom to pursue careers out of the home, bottle-feeding offers Third World women few of these advantages and can in fact be deadly. "An effective, adequate, and cheap method has been exchanged for an expensive, inadequate, and dangerous product" (p. 15). Many mothers mix the formula with contaminated water, try to save money by diluting the formula, and face starving children when they can no longer afford the formula and can no longer lactate themselves. Hamelink contends "the baby food drama painfully illustrates how serious the contribution of advertising to cultural synchronization may be" (p. 15).

Of course this is an extreme example. Some may argue that most cultural synchronization is simply a natural progression toward modernity. Since the Enlightenment, many societies have placed greater emphasis on science, technology, and objectivity (Nandy and Deshingkar, 1994). If one accepts these positivist values as beneficial, then the erosion of traditional cultures in favor of postmodern capitalism and scientific inquiry can be considered progressive rather than destructive. The fault in this interpretation, according to Masini (1994), is that objectivity, science, and technology have displaced the values of traditional cultures and left nothing of substance in their wake. "[Industrialization and urbanization] paved the way for the so-called cultural globalization of the 'erosion' of existing cultures, creating a vacuum of values or, according to Godwin Sogolo, an 'alienation' from values" (p. 11). Ferrarotti (1985) explains that "through the relevant social behavior, [industrialization] corrodes and transforms basic ideas and values" (p. 48). He hypothesizes that the process of industrialization results in basic tensions:

> (1) between traditional practices and the need for rationalization of productive cycles; (2) between a highly personalized type of human relation in which individuals and groups see themselves as "friends" or "enemies" and a depersonalized and psychologically neutral type of relation which is prevalently required in technically and industrially advanced societies. (pp. 48-49)

Like Masini and Sogolo, Ferrarotti believes that industrialization fails to offer alternatives to the traditional values it displaces. "When it has found conditions suitable for beginning it shows itself to have its own ideologically neutral logic of development which does not need to borrow external justification" (p. 49).

Jhally (1998) argues that capitalism and the cult of consumption, far from alienating us from our values, actually imparts a new value system. This system teaches us that happiness and self-worth are found in the consumption of products. Jhally contends that the marketplace for products, in appealing to the worst in human nature and devaluing the best, actually erodes society, leaving only self-interested individuals. We are left, not with a valueless society, but a group of disconnected people with empty, misguided values.

The problem, therefore, with cultural synchronization is twofold. First, the norms and behaviors of the dominant culture may be inappropriate for the circumstances of those living in satellite societies. More importantly, cultural globalization de-emphasizes traditional values, replacing them with ideals generally associated with consumer culture, which places import in material possessions and capitalist competition rather than human interaction. Cultural synchronization, driven by ideals of the free market economy, thereby, destroys the marketplace of culture where a diversity of values, norms, and customs compete and provide checks and balances on one another, and replaces it with a

marketplace of valueless products. Not all cultures are created equal; consumer culture alienates individuals and feeds on the baser human tendencies: "greed, vanity, insecurity, competitiveness, materialism" (Fox, 1984, p. 7). It is, therefore, important to examine the institutions that contribute to cultural synchronization and promote consumer culture.

The Media As Cultural Conduits

Critical research of international communications suggests that media play a key role in transporting culture, helping the dominant nation's culture and ideologies displace the indigenous culture. As Goulet (1994) explains with regards to the current state of cultural evolution:

> All cultures and cultural values are assaulted by powerful forces of standardization. These forces homogenize, dilute and relegate diverse cultures to purely ornamental, vestigial or marginal positions in society. The first standardizing force is technology, especially media technology. Television, film, radio, electronic musical devices, computers and telephones operate, together and cumulatively, as potent vectors of such values as individualism, hedonistic self-gratification, consumerism and shallow thinking. (p. 30)

Hamelink (1983) argues that the rise of transnational corporations and the move toward a world market pose a significant threat to cultural independence.

> [The] world market and world customer demand an optimal synchronization of cultural values so that authentic national characteristics do not jeopardize the unity of the transnational system. The satellite countries therefore are incorporated into the transnational system by the persuasive marketing of cultural values that legitimize metropolitan interests. (p. 6)

Like Goulet, Hamelink believes that communications technologies play an important role in this process. He argues that "the international flow of communications has, in fact, become a main carrier of transnational cultural synchronization" (p. 7).

Hamelink and other researchers investigating the media's possible impact on cultural diversity have tended to focus on the role of communications technology with little attention to media institutions. For a better understanding of advertising's impact, as an institution, on ideology and culture, one must turn to the advertising literature. As long ago as 1954, Potter argued that:

> advertising now compares with such long-standing institutions as the school and the church in the magnitude of its social influence. It dominates the media, it has vast power in the shaping of popular standards, and it is really one of the very limited group of institutions, which exercise social control. (p. 167)

In Potter's opinion, advertising is one of the defining institutions of the American consumer culture.

Schudson (1984) is reluctant to compare advertising to religion but, nonetheless, views advertising as a powerful cultural agent. "Strictly as symbol, the power of advertising may be considerable. Advertising may shape our sense of values even under conditions where it does not greatly corrupt our buying behavior" (p. 210). Schudson argues that advertising's function compares to that of socialist realist art to subtly sell society on an ideology – the ideology of consumerism.

> In the case of advertising, people do not necessarily "believe" in the values that advertisements present. Nor need they believe for a market economy to survive and prosper. People need simply get used to, or get used to not getting used to, the institutional structures that govern their lives. Advertising does not make people believe in

> capitalist institutions or even in consumer values, but so long as alternative articulations of values are relatively hard to locate in the culture, capitalist realist art will have some power. (p. 232)

Jhally (1998), in his belief that advertising is the defining institution of capitalist systems, identifies the values imparted by advertising and defines how this process works. He explains that the very function of advertising is to "create a culture in which identity is fused with consumption." As a powerful force, "advertising has colonized the culture and driven out other things in favor of commercial discourse." Advertising, acting as the "voice of the marketplace," teaches us that happiness equals consumption. Consumption is the only true value in a consumer culture.

When read together, the bodies of literature on the detrimental impact of cultural synchronization and the literature on the media's, particularly advertising's, role in transporting culture raise concerns about how standardizing European advertising self-regulation might influence those cultural values that threaten capitalist values. Can contra-capitalist values survive, or will they be displaced by consumer culture? The literature on cultural synchronization, particularly Jhally's theories suggests that standardized advertising self-regulation will erode cultural autonomy, leading to worldwide consumerism that displaces all other cultural values. In an attempt to better understand the role of European advertising self-regulation, this dissertation examines the balancing act, within and among the organizations charged with shaping European advertising self-regulation, between maintaining cultural autonomy and advocating for advertising autonomy.

The changeover to the euro is scheduled for completion by January 2002 (Europa, n.d.d). As the world braces itself for a unified European marketplace, it is critical that we look beyond the purely economic repercussions to the possibility of cultural casualties. European advertising self-regulation provides a case study for the challenges and changes facing European institutions. Furthermore, the advertising industry and its handling of unification are particularly important given that advertising is the voice of the marketplace and a major communications force, shaping cultural norms and values. The number of countries forming advertising self-regulatory bodies increases each year. In only six years, membership in EASA has grown to at least 21 regulatory boards in 20 countries, with corresponding members in New Zealand and South Africa. Previous research suggests that EASA began with an understanding of the diverse cultures, business practices, and regulations of European countries; but since February 1997 EASA's focus has turned to the convergence of national systems into one pan-European standard (Taylor, 1998). Research conducted at this formative stage of European unification is needed to shed light on the process itself and the fallout of standardization. This study also adds to our understanding of the role advertising regulators do and should play in safeguarding cultural autonomy.

The following chapter offers a brief overview of the current literature on advertising self-regulation, particularly as it functions in the US. Chapter Three places this study within the qualitative paradigm and details the qualitative methods of data gathering and analysis. Before detailing the findings of this inquiry, Chapter Four presents a sketch of European advertising self-regulation, beginning with a brief history of the EU's formation followed by a discussion of EASA, WFA, EAT, and EAAA's roles

in coordinating national codes. Chapter Five details the research results, explaining how industry representatives interpret concerns about cultural autonomy. While the participants tends to discuss self-regulation, particularly as it relates to culture, in broad, conceptual terms, their actions, as seen in cross-border advertising decisions, offer a somewhat different interpretation. The final chapter looks deeper into the data to see beyond just what the participants say. In doing so, Chapter Six places these findings in the context of our current understanding of the interaction between advertising, regulation and culture, addresses implications for European culture, and offers suggestions for future research.

An almost overwhelming number of organizations have shaped advertising self-regulation, both nationally and internationally. And because these groups are generally referred to by their initials, any discussion of advertising self-regulation can look somewhat like a bowl of alphabet soup. It may, therefore, be helpful to refer to Appendix A for a list of abbreviations.

CHAPTER TWO

LITERATURE REVIEW

Over the last 30 to 40 years several studies have examined systems of self-regulation. Common to nearly all these studies is the basic belief that self-regulation is a better alternative than government intervention. The vast majority of the research has focused on American systems of self-regulation. While many of the alternatives to self-regulation offered or examined by these studies are uniquely American, the issues they raise are not. Most American-based research has addressed the careful balance to be found between controlling advertising and curtailing the market. Europe must resolve these same issues as it moves toward a unified marketplace.

Advertising Self-regulation Defined

Advertising is arguably the most criticized and closely monitored marketing function; yet members of free-market societies generally believe the market to be self-correcting – as long as consumers are well informed they will make intelligent decisions. Capitalism suggests that companies prosper by delivering quality products at a reasonable price and honestly informing consumers through advertising. As Boddewyn (1992) explains, "Under a laissez-faire system, the control of advertising behavior is left to competitors who run better ads and to consumers who refuse to patronize bad advertisers" (p. 4). Even so, some control of advertising is necessary in order for the system to work. Boddewyn lists six functions of effective regulation:

1. developing standards;
2. making them widely known and accepted;
3. advising advertisers before ads are released;
4. pre- and/or post-monitoring of compliance with the standards;

5. handling complaints from consumers, competitors, and other interested parties; and
6. penalizing bad behavior in violation of standards, including publicizing wrongdoings and wrongdoers. (p. 4)

In this view, regulation, through a system of education and punishment, supports the free-market system by curtailing damaging advertising. Effective regulation requires systemized codes, guidelines, and/or procedures.

In many respects advertising self-regulation can be understood as the industry's effort to gain respectability with consumers without substantially restricting the industry's function. At the heart of self-regulation is the understanding that if the industry does not set its own standards, someone else will. Strict self-regulation and government control are not, however, the only answers. Boddewyn (1988) argues that "several forms of advertising control usually coexist and complement each other" (p. 4). He offers six forms of advertising regulation, four of which are hybrids of self-regulation:

1. Self-discipline: Norms are developed, used, and enforced within the firm only.
2. Pure self-regulation: Norms are developed, used, and enforced by the industry in a peer-evaluated system.
3. Co-opted self-regulation: The industry voluntarily involves outsiders, consumers or government, in the development and enforcement of norms. The outsiders are internalized in the process.
4. Negotiated self-regulation: Outsiders perform the same function as in coopted self-regulation but remain outside the organization.
5. Mandated self-regulation: An agency is ordered to or designated by the government to enact norms.
6. Pure regulation: The government controls the development, use, and enforcement of norms. (p. 7)

As seen here, self-regulation takes many forms from purely peer-based regulation to government dictated self-regulation. The common thread distinguishing self-regulation

from government control is that the industry has some say in what its standards will be and how those dicta will be enforced. In fact, in self-regulatory systems the industry is left to police itself and only when the system fails does the government or judicial authority come into play. Therefore, all systems involving industry-set and -enforced standards, even those that incorporate outside participation by government or consumers, rest under the umbrella of advertising self-regulation.

An Overview of American Advertising Regulation

A Note published in the Harvard Law Review ("Developments in the Law," 1967) "discusses the many evils, actual and potential, associated with modern advertising and evaluates certain difficulties that may be associated with attempts to impose legal controls" (p. 1010). Based on the philosophical argument that consumers should be protected and the economic argument that dishonest advertising undermines the free market system, this Note contends that there is certainly a need for advertising controls. The author supports the need for advertising controls with an extensive history of American advertising regulation, and an overview of the various forms of regulation.

Written before the formation of the National Advertising Division of the Council of Better Business Bureaus/National Advertising Review Board (NAD/NARB) and Children's Advertising Review Unit (CARU), the section on voluntary regulation deals with efforts by individual advertisers, trade associations, the media, and Council of Better Business Bureaus (CBBB). The author considers individual advertisers' attempts to be "the most important level of self-regulation – the base on which all other private regulatory efforts must build" (p. 1139). This is because advertisers have the most to gain

in terms of loyal customers and increased confidence in the industry. Advertisers are also most likely to undermine the system with excessive or false advertising.

But self-regulation, by any party, may encounter problems. "Nongovernmental efforts to regulate advertising have an inherent restrictive impact on competitive methods and so are to some extent in conflict with purposes of antitrust laws" (p. 1159). Self-regulation, therefore, must substantially serve the public's welfare and must not overreach reasonable bounds. Self-regulation should not interfere with government regulation of advertising and should not enforce compliance in such a way that entry into the market is restricted. When these criteria are met, the author indicates, advertising self-regulation can effectively eliminate at least some of the evils of advertising.

While self-regulation may be useful, Best (1985) argues that private litigation is the most effective form of advertising control. Beginning with the basic question "Who controls advertising?" and moving to the more difficult question "Who should control advertising?," Best compares cases of public regulation by the Federal Trade Commission (FTC), self-regulation primarily through the NAD, and private litigation under section 43(a) of the Lanham Act. As he explains, all of these controls deal with the same substantive areas of advertising and require proof of all advertising claims. This overlap means that "to compare the relative strengths of the regulators one must focus not on the substantive standards, but on the application of the standards in particular cases. There are three critical stages in this process: selecting cases, evaluating advertisements, and framing remedies" (p. 16).

Overall, Best determines that private litigation is superior to both federal involvement and self-policing.

> ...private litigation is the best process for controlling many kinds of troublesome advertising. It is faster than actions by the FTC or other governmental units; its substantive outcomes reflect public concerns; its remedies have the force of law; and it will ordinarily be brought into action only against ads whose falsehoods have been effective in the marketplace. (p. 4)

Still he recognizes the need for self-regulation in a supporting role. Self-regulation is quick and cost efficient; however, he warns, "the NAD has only slight power to create standards, and its coercive power is also limited, so relying on it for strong deterrence or for establishing respected general guidelines would be unwise" (p. 50). Best's research as well as the Harvard Note suggests some of the limitations faced by self-regulators – the need to regulate without impeding free trade and without the force of law to ensure compliance with standards. While European nations may not have the same means of resolving this problem (for example, private litigation may not offer the same remedies in France as in the US), the issue of balancing freedom with control remains the same.

The National Advertising Review Board

Zanot's 1979 monograph briefly outlines the history of American self-regulation beginning with the publication of the *Printers Ink Statute* in 1911 and leading to the formation of the NARB in 1971. As his research shows, consumers and consumerist movements can be powerful forces in shaping advertising regulation. As Zanot explains, the late 1960s and early 1970s saw a change in consumers' attitudes toward advertising. The public as well as government was becoming more suspicious of advertisers and more concerned with consumer protection. Recognizing the threat of government intervention, the industry took matters into its own hands:

> As in earlier attempts at self-regulation, self-interest on the part of the establishment appears as the primary motive force. Social and political forces had sufficiently coalesced in this period so that advertising practitioners perceived that a new and stronger method of self-regulation could simultaneously reduce deception in the marketplace and serve to soften public criticism and disarm government regulation. (Zanot, 1979, p. 35)

Working from the model provided by the British Advertising Standards Authority (ASA), a plan for a peer-review board was soon proposed, eventually resulting in the NARB's formation. Zanot's extensive review of NARB documents and trade journal articles provides a detailed history of the NARB's formation. Just one year after his original historiography, Zanot (1980) published a review of the NARB's first eight years of casework dealing with deceptive advertising. According to Zanot, the original Statement of Organization and Procedure stated that the NARB would develop a set of advertising standards for evaluating truth and accuracy (p. 20). As it turns out, standards never emerged; rather, cases were judged individually. This study effectively accomplishes what the NARB set out to do for itself. Based on NARB documents, case decisions, and personal interviews with NARB staff, Zanot provides an overview of the standards previously used to define truth and accuracy and offers guidelines for future decisions.

Other researchers have used the existing scholarship regarding self-regulation rather than the actual content or application of advertising self-regulation in order to see how self-regulation and our understanding of it have changed over time. Preston's (1983) survey of the literature up to 1983 provides a broad overview of research related to advertising regulation, of which self-regulation is just one small part. Shortly after the

original study Preston (1987) published a second, extended review, covering 1983-1987. In this later study, Preston offers only a cursory overview of research on advertising self-regulation, placed in the broader context of related topics such as: defining and determining deception, substantiation requirements, children's advertising regulation, First Amendment issues, and advertising by professionals. Thus, Preston's research allows one to see how self-regulation differs from other types of advertising controls.

Rogers (1991) conducted a similar review of the literature to provide a map of how American advertisers throughout the 1980s tried to self-regulate the industry. Rogers briefly distinguishes self-regulation from government regulation and discusses codes and guidelines offered by key organizations such as the NAD, NARB, CARU, American Association of Advertising Agencies, and American Advertising Federation (AAF). The bulk of the study details the regulatory practices of the industry including trade associations, media, individual advertisers, and foreign countries. Rogers concludes, "The decade of the 1980s was a period that provided a laboratory for advertising self-regulation. Consumer activism abated, and the FTC deliberately abdicated some of its power to NAD/NARB and CARU. Generally, self-regulation was not found wanting" (pp. 386-87). Rogers comment demonstrates that researchers have tended to look favorably on self-regulation.

Media Clearance Practices

Several American studies have examined the restriction of advertising through media clearance boards. These boards review potential advertising to determine its accuracy, tastefulness, and appropriateness for the medium's audience. Researchers have examined the clearance practices across all media types but with an emphasis on the

broadcast media. At the heart of this research is the question, can self-regulation sufficiently safeguard the public's interests?

Deregulation of the American broadcast industry during the 1980s may explain why researchers, in the last ten years, have focused on broadcast clearance practices. As government intervention has decreased, the onus has been placed on the media to pick up the slack and ensure that deceptive or distasteful advertising does not reach the public. Prior to 1982, the National Association of Broadcasters (NAB) regulated questionable or unsavory advertising practices through its NAB Code. Among other things, the NAB offered prescreening of advertisements to see that they complied with the Code (Abernethy, 1993). The Justice Department, however, sued the NAB under anti-trust laws claiming that Code sections recommending limits in the number of commercials per hour raised the price of advertising (U.S. v. National Association of Broadcasters, 1982). The NAB suspended all Code activities in 1982 to settle the lawsuit. The NAB's advertising review procedures were also dropped even though they were not part of the lawsuit, leaving the clearance responsibilities up to individual stations (Abernethy, 1993, p. 16).

Following on the heels of the NAB Code's demise, the Federal Communications Commission (FCC), the organization charged with overseeing the operation of the broadcast industry, began pulling back on its regulation of advertising. In 1984, the ban on infomercials, or program length advertisements, was lifted. The following year, the FCC relaxed clearance guidelines for deceptive advertising (Wicks, 1994). All researchers of the broadcast clearance studies reviewed herein mentioned one or both of these deregulatory measures as the impetus for their research. With the October 1989

adoption of the "Television Without Frontiers" directive, which "establishes the legal frame of reference for the free movement of television broadcasting services in the [European] Union in order to promote the development of a European market in broadcasting and related activities," (Europa, n.d.a) Europe is likely to face many of the same deregulatory issues seen in the deregulation of American media. It, therefore, may be informative to examine American self-regulation in light of deregulation.

In 1987, Bruce Linton, author of the NAB-published *Self-Regulation in Broadcasting* (1967), published an article revisiting this topic. He examined whether television broadcasters have policies regarding acceptable advertising and what types of advertising tend to be regulated. He found that 98 percent of stations have some sort of policy for acceptable advertising and programming. Most of the written guidelines pertain to advertising rather than programming and most are in the form of memorandum rather than a codified manual. Network affiliates are more likely than independent stations to rely on written standards and to refer to the old NAB Code in making decisions. Political advertising was found to be the most regulated type of advertising. Also mentioned were movie trailers for R-rated films and alcohol advertising, especially for liquor. Other advertising concerns include acceptability of advertising copy and time and spot separations, although, these were not pressing concerns.

Linton (1987) concluded from his research that, "There is no evidence ... that the demise of the [NAB] Code has resulted in significant changes in what may be seen from the networks. The absence of the Code may be felt more keenly at the station level. Decision-making is more complicated and there are few experts available to them" (p. 490). Whereas station managers and advertisers used to call on NAB staff to answer

difficult questions, they must now puzzle them out unassisted. This problem is complicated by increased competition for advertising revenue and lack of communication about acceptance standards within media organizations. On the other side of the fence, concerned citizens and the continued threat of government re-regulation stand in an effort to keep advertising and media practices in check. Linton ends by writing, "Whether or not [the stations'] responses are appropriate or sufficiently in the 'public interest' will continue to be debated, as they were in the days of the Code" (p. 490).

Certainly he was right about the continued debate. Linton's was one of the first studies to examine post-deregulation clearance practices and appears to have cast the mold for further media clearance research. Several subsequent studies have imitated his methodology in order to add to his findings and keep alive the debate over broadcast self-regulation of advertising. Rotfeld, Abernethy, and Parsons published studies in the *Journal of Advertising* (1990a) and *Journal of Consumer Affairs* (1990b), both the result of a survey dealing with television advertising standards. Similar to Linton, Rotfeld et al. found that, of the 426 stations that responded to the survey, 97 percent follow the abolished NAB Code to some extent. Others rely on AAF and CBBB codes. However, only 54 percent of the respondents said they have some form of written guidelines (1990a; 1990b). Those with written policies and a designated clearance officer tend to have more stringent clearance practices. However, network affiliation and market size do not appear to influence the veracity of a station's regulatory efforts. Overall, Rotfeld, et al. found little consistency in clearance standards. Like Linton, they believe that this leads to greater confusion for broadcasters and advertisers (1990a).

Despite the variety of standards, the rejection of commercials and requests for claim substantiation are generally rare. Some stations never challenge advertising claims. Instead, they focus on how well the commercials fit the station's audience. In other words, "station managers do tend to express concern for protections of the audience, but such protection is often a concern for tasteless or offensive advertising that might generate complaints, not protection from potential deception" (Rotfeld, et al., 1990b, p. 408). The researchers concluded that government intervention is necessary in order to protect the public from cleverly cloaked deceptions. Financial and time constraints simply do not allow television stations to do the job properly (1990b).

Specifically addressing the relationship between economics and clearance practices, Wicks (1991) hypothesized that larger, more profitable stations would have more formal clearance practices. Following in the footsteps of Linton and Rotfeld, Abernethy and Parsons, Wicks tested her assumptions by issuing a survey to all commercial television stations listed in the *Broadcasting Cablecasting Yearbook*. Size and profitability were tested separately against the formality of clearance practices, which was operationalized as:

- the number of policy areas;
- the number of policy sources;
- the types of policy sources;
- the types of ads a station bans; and
- the form in which the advertising policies were most often communicated. (p. 61)

Wicks found that as profitability increases the number of policy areas and policy sources increases. For example, profitable stations are more likely to stay abreast of FTC policies even though this is no longer required under FCC regulation. Profitable stations

also are more likely to ban certain types of product advertising such as contraceptives or alcohol and to codify their policies in some form of a written manual. Thus, it appears that more profitable stations do enact stricter, more formalized regulations. In extrapolating these findings to European self-regulation, one might hypothesize that smaller, less financially powerful and stable countries would have more lenient self-regulatory standards than wealthier countries. Also, European countries such as Britain and France have government-supported media, making the media less dependent on advertising revenue. These media, therefore, may enforce stricter guidelines.

Wicks found that size, however, is not as clearly associated with formality of clearance practices. There is some support for the notion that the types of ads banned varies by station size and strong support for the idea that size influences the number of policy areas addressed. However, stations of all sizes tend to communicate verbally. Larger stations are only somewhat more likely to have a written manual and to rely on the old NAB Code. Many of Wicks' findings are supported by a later study she conducted that looked at how managerial, organizational, and market factors specifically impact infomercial clearance practices (1994).

Wicks' research is useful in drawing out some of the contentions made by previous researchers. It appears that the demands of profitability do impact the effectiveness of self-regulation. Stations that are struggling to increase or maintain profits may not be in a position to question or refuse advertising. In addition, Wicks takes the interesting approach of examining the impact of station size, whereas, previous research focused on how network affiliation or market size affect clearance practices. As a result of her work and previous studies, we know the types of advertising that tend to fall under

scrutiny, political and liquor, and that broadcasters are generally reluctant to use their power to reject or demand changes to advertising. In addition, one can generate a list of variables likely to affect clearance practices; station size, station profitability, previous membership in the NAB, existence of written guidelines, presence of a clearance official, and number of audience complaints, to name a few.

Several subsequent and concurrent studies have looked at how these and other variables impact radio. Rotfeld and Abernethy (1992) used the format of their television studies to examine radio clearance practices. Similar to the findings regarding television they conclude that stations rarely question advertising claims. Concern over advertising practices is driven by the fear of offending and, thus, losing listeners. As they explain, "Incentives for radio stations to even attempt to play [a policing] role are weak to nonexistent as the stations' primary revenue source is from advertising accepted" (pp. 372-73).

Abernethy (1993) drew on the findings of the television studies to develop a model for radio advertising clearance practices. He tested the model using a mail survey of 1000 randomly selected radio stations. The final model shows that the number of audience complaints, station market power, number of products never accepted, existence of a written code, and presence of a clearance officer influence the percent of ads rejected. The percent of ads for which substantiation is requested is affected by the existence of a written code, a station clearance officer, and degree to which the station follows the NAB Code. Most interesting about Abernethy's study is that he tested for the inter-relatedness of the independent variables. He found that "the influences on clearance activities are strongly interrelated. The strength and significance of these relationships

suggest that future researchers should be wary of examining influences on the clearance process independently" (p. 25).

As previously explained, deregulation of the American broadcast industry provided an impetus for researchers to examine the self-regulation of that industry. But the interest in media clearance practices does not stop there. Similar studies have been conducted looking at the clearance practices of magazines and newspapers with many of the same findings. Parsons, Rotfeld, and Gray (1987) surveyed 107 consumer magazines and found that "standards and policies vary widely among periodicals ...a majority of publications have no formal, written policies except those stated on their rate cards and so follow a commonsense approach in determining advertising suitability" (p. 209). Unlike broadcasters who tend to rely on the former NAB Code or CBBB or AAF guidelines, magazine publishers, who are the ultimate decision-makers, generally rely on their own history and ideologies to determine whether an ad is satisfactory. Parsons et al. conclude that, "The notion that the industry will provide the strong consumer protection that government chooses not to supply is not supported by this data" (p. 210).

Rotfeld and Parsons (1989) expanded on their findings with another survey of 142 magazines. This time the researchers wanted to know who makes the decisions and how policies are set, the nature of the policies and how they are motivated, and how formally or rigidly the policies are applied. Much like previous findings, Rotfeld and Parsons discovered that decisions were driven by the profit motive. "Even concerns that could be labeled consumer protection seem more often to be reflective of an interest in avoiding or responding to consumer complaints, driven by an interest in retaining readership loyalty" (p. 40). Above all else publishers are concerned with establishing and maintaining an

image for their publication. Where that image requires special care, as with youth-oriented magazines, more stringent standards are followed. It appears from these studies that magazine publishers are even more lax than broadcasters in setting and following clearance practices.

Pasternack and Utt (1988) went a bit further than the magazine research in their study of newspaper clearance practices. In addition to asking who determines policy, how it is implemented, and what types of advertising are regulated, Pasternack and Utt looked at how circulation and geographic location affect clearance standards and managers' attitudes toward guidelines and laws regarding advertising. Like all previous clearance studies, they found that newspapers rarely exercise their power to reject advertising. However, Southern newspapers tend to have stricter guidelines, rejecting products and services in nine categories. Even so, Southern managers generally hold more conservative attitudes about their absolute right to refuse advertising. And while smaller newspapers tend toward stricter policies, circulation has no impact on managers' attitudes toward regulation. Much of the research regarding media clearance practices has tended to cover the same ground. However, Pasternack and Utt add an interesting twist to standard media clearance research with the introduction of regional differences.

As these studies demonstrate, myriad factors impact the level of advertising code enforcement in the US. Most of these same variables are likely to exist in the European market and may even be compounded by international differences in media structures and regulation. Furthermore, the literature indicates that advertising self-regulation is motivated by self-interest. Advertisers want to control their own destinies rather than conceding that power to government regulators.

Trade Association Self-Regulation and Consumer Attitudes

A handful of researchers have studied codes of ethics and self-regulation among trade associations. Again, these studies have examined only American systems. A 1972 study by Krum and Greenhill looks at how trade associations have responded to the government's changing attitudes toward industry self-regulation. The researchers outline a model of trade association self-regulation in which organizations require that their members accept an ethical standard and establish procedures to enforce the codes. The researchers ask, "To what extent have trade associations followed this model of self-regulation? Has there been a recent trend toward adoption of industry standards or codes of ethics?" (p. 381).

To answer these questions, Krum and Greenhill review the legal environment surrounding self-regulatory actions and compared the results of manufacturing industry surveys conducted in 1959 and 1970. Their research indicates that as the FTC fluctuates in its stance on how industry codes violate antitrust rules so does the extent of trade association self-regulation. Furthermore, fear of antitrust violations appears to have increased over time resulting in fewer industry codes and less enforcement of codes. "Of the 19 responses, seven associations specifically listed fear of antitrust action in the 1970 survey. Given the same alternative reasons for not having a code in the earlier study, six of the seven had made no mention of a fear of antitrust action in 1959" (p. 391). Krum and Greenhill conclude that "many trade association executives continue to believe that it is illegal to promote ethical behavior. This belief results from long years of contradictory statements and actions by government officials and agencies" (p. 391).

LaBarbera (1983) surveyed over 2,000 trade associations to determine the extent of self-regulation and to see what factors may account for failure to adopt. She found that "compared to adopting associations, nonadopting organizations reported a lower level of [public] dissatisfaction with industry advertising, a less significant role of advertising in generating revenue and fewer trade association departments" (p. 64). In cases where the public has expressed dissatisfaction with advertising and advertising serves an important function in generating revenue, directors' negative perceptions of self-regulation appear to account for nonadoption.

It appears that, despite the assumption that advertising self-regulation is a ploy to keep the government at bay, the desire to keep consumers happy is the motivating force behind self-regulation. Of course consumers may simply be an intermediate step between advertisers and the government; only through public outcry are officials alerted to the need for more government intervention. This issue has not been addressed to government officials; however, consumer attitudes toward self-regulation have been investigated.

Another study by LaBarbera (1982) concludes that the existence of advertising guidelines as well as other factors increases the credibility of a firm with no reputation in a product category. Using an experimental design, LaBarbera asked subjects to evaluate a new product. Subjects were given test packets containing background information about a company, information on a new adhesive tape, and an advertisement of the product. A description of the company's regulation program was included in the background information and a statement of adherence to regulations appeared in the ads. Regulation was defined as no regulation or self-regulation – voluntary adherence to a code of ethics, or government enforced restrictions on advertising. "The findings demonstrate that in

comparison with a firm with a favorable reputation, the no-reputation firm has significantly less credibility and message influence. Documentation and advertising regulation are found to be valuable devices in compensating for the disadvantage faced by the no-reputation firm in communicating with consumers" (p. 227). This study indicates that, while advertising may be thought to raise competition and thus performance, consumers appreciate some regulation of advertising practices.

Antitrust and Self-Regulation

Not everyone, however, is convinced that self-regulation is the proper answer to society's problems with advertising. As several of these studies suggest, many feel that advertising self-regulation runs counter to antitrust laws by encouraging monopolization and limiting consumers' ability to receive information and make informed choices. To clarify the limits of antitrust laws on advertising self-regulation, LaBarbera (1981) interviewed representatives from the industry and government. She found that advertising self-regulation is indeed limited by antitrust laws and that the law can influence how programs and codes are developed. "Many of the trade association executives ...reported that enforcement of their codes was nonexistent, or at least much weaker than would be the case if it were not for the antitrust laws" (p. 67). So while self-regulation may be a means to avoid government regulation of advertising, it often is limited to offering recommendations rather than truly policing unsavory practices. The most trade associations can do is impose reasonable fines and expel offending members. Whereas most research extols the virtues of self-regulation, LaBarbera's study is particularly interesting and useful in that it points out the limits to self-regulation.

Several legal scholars also have dealt specifically with this issue. Levin (1967) explains that "the question is whether self-regulation improves the substance of performance without impairing competition or economic freedom or whether it actually operates to the contrary" (p. 605). Following a review of the casework, Levin settles on four guidelines to distinguish effective self-regulation from coercion:

1. The professed goals of self-regulation must be clear, socially meritorious, and furthered by implementing procedures that are not largely self-serving.
2. The goals must also require concerted rather than individual action for their effective promotion.
3. There must be readily available no other less restrictive technique, agencies, or procedures which could be utilized swiftly or without dangerous delays.
4. The standards effectively safeguarded must more than outweigh any unavoidable restraints inherent in self-regulatory enforcement procedures and practices. (p. 614)

How these guidelines apply to advertising is demonstrated in Levin's case study of cigarette manufacturers' efforts to restrict advertising and dictate labeling. Recognizing the threat of government intervention, nine of the leading cigarette manufacturers, in the mid-1960s, formed the Advertising Code. This voluntary Code prohibited marketing to the lucrative youth market and using health claims in advertising to differentiate brands. Levin concludes that:

> With price competition minimal in cigarettes, the main competitive sphere is product differentiation: differences in packaging, ingredients, and above all, in advertising claims and presentation. Without clear-cut advertising standards, competitive pressures will tend to produce exaggerated claims. (pp. 625-26)

Levin believes that cigarette advertising should certainly be regulated. The question then becomes whether self-regulation is appropriate.

Levin explains that while the Code was granted "limited clearance" by the Justice Department it still poses problems: members who choose to withdraw may suffer financial loss resulting from bad publicity; the Code Administrator has ultimate authority to decide if advertising is acceptable; and no formal appeals process exists. Despite all that, Levin concludes that the Code, in general, is meritorious and offers an efficient means of cigarette advertising regulation.

In an earlier study looking at how media clearance practices relate to antitrust laws, Baum (1961) asked, "May a medium in a monopolistic position reject advertising? May media combine with Better Business Bureaus to eliminate deceptive advertising? May a medium allow a Better Business Bureau to censor advertising" (p. 290)? Baum begins with a review of newspaper clearance practices and the involvement of Better Business Bureaus in determining whether claims were valid. He then addresses the legal precedent surrounding such practices. Based on the decisions in United States v. Colgate Co. and section 2 of the Sherman Act, Baum concludes that business owners have a right to refuse to do business with another as long as doing so does not establish or maintain a monopoly. This, of course, includes newspaper publishers. "Tested under either section 1 or 2 of the Sherman Act there can be no question of a medium's right to formulate standards for acceptability of advertising so long as they are reasonable and uniform" (pp. 296-97). It is not clear, however, that media groups can join with Better Business Bureaus to establish standards. Such group activity may allow for overt abuses of power and overzealous regulation. Baum warns that, "Self-regulation is subject to precise meaning, it is not a siren call. Its utterance should not lure either media or Better Business Bureaus down a path of reckless abandon" (p. 304).

When advertising self-regulators face antitrust charges it is most often because lawful price competition is unnecessarily impeded. Hummel (1968), writing on behalf of the Justice Department, discusses this very issue. "The antitrust laws take a very firm and a very dim view of cooperative action among competitors which affects the free movement of prices, and it should be obvious that if price advertising is restrained then price competition is restrained" (p. 609). Hummel quickly points out that not all advertising codes impact price competition and, in fact, a great deal of advertising self-regulation promotes competition. "[S]o long as producers are not restrained from making their own special appeals, it is consistent with antitrust purposes for competitors to agree that they will disclose certain basic information about the product which will help buyers make comparisons" (p.610).

This review of the legal research indicates that advertising self-regulation's effect on competition is uncertain and must be closely scrutinized so that antitrust laws are not violated. The public and governments often view advertising with suspicion and promote some regulation of advertising practices. At the same time, advertising is an integral function of current commercial trade. Regulators, therefore, face a conflict between free trade and well-monitored advertising. While European regulators need not worry about violation of the Sherman Act, but concern for the over-regulation of advertising and curtailment of competition remains.

Self-Regulation in Europe

Like the United States, most European advertising is self-regulated; yet the systems and their guidelines vary considerably. France's self-regulatory system, first organized in 1935 (Taylor, 1997), is one of the oldest in Europe. France's *Bureau de*

vérification de la publicité (*BVP*) functions in many regards like the American National Division of Council of Better Business Bureaus and National Advertising Review Board (NAD/NARB). The *BVP*, whose membership comprises advertisers, advertising agencies, media, and related organizations, regulates advertising in five ways:

1. issuing guidelines (much like the Better Business Bureau's *Do's and Don'ts in Advertising Copy*), which are based on interpretations of French law or industry codes (*déontologie*),
2. offering legal advice when requested by advertisers and agencies,
3. monitoring claims in newspapers, radio, movie theatre, and poster advertising (much like the monitoring function of the FTC and the NARB),
4. reviewing all television commercials before they are aired (much like the network television clearance process in the United States), and
5. receiving and investigating consumers' and competitors' complaints about specific advertising.

Unlike American advertising self-regulators, the *BVP* is empowered to enforce various industry codes such as car manufacturers' advertising codes. The *BVP* also serves, at the government's request, as the official clearance agency for all television advertising and *BVP* offers legal advice to its members (Taylor and Cunningham, 1997).

As a point of comparison, Denmark, like many of the Nordic countries, relies on a consumer advocate. In 1974, the Danish Parliament responded to the requests from consumerist organizations by legally placing advertising and marketing under the government control of a consumer ombudsman (Boddewyn, 1992, p. 49). The ombudsman is charged with enforcing the Danish Marketing Act of 1975. Either in

response to consumers' or competitors' complaints or acting on his/her own judgment, the ombudsman can "obtain an injunction against infringement of the law, and – when necessary – impose a temporary ban, pending the decision of the court" (p. 47).

In addition to systemic differences among European countries, the content of self-regulatory guidelines also varies, increasing the likelihood of international conflict. France, for example, enforces guidelines designed to protect the French economy and culture. Television advertising for books, cinema, and distributors are banned on French television for fear that foreign competitors could gain an advantage over French publishers, filmmakers, and retailers (Taylor, 1997). French advertisers also are discouraged from using children as spokespeople in commercials. Children under the age of three cannot be shown consuming advertised products not designed for them and children under the age of 16 cannot say the name of a product (Taylor and Cunningham, 1997).

The British Advertising Standards Authority (ASA), on the other hand, does allow the use of children as spokespeople in advertisements, but offers other guidelines not promoted in France. For example, British advertising rules state that advertisers:

> should not actively encourage [children] to make a nuisance of themselves to parents or others... [and] should not make a direct appeal to purchase unless the product is one that would be likely to interest children and that they could reasonably afford ...[and] should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods. (Committee of Advertising Practices [CAP], 1995, p. 36)

These examples demonstrate how France and England differ in the protections afforded children such that advertising that would be acceptable in one country might not be in the

other. This is true of self-regulation throughout Europe, where each country establishes its own standard for advertising practices.

Country-by-Country Case Studies

One of the earliest studies of the national differences in advertising self-regulation was conducted by Stridsberg (1974) in conjunction with the International Advertising Association (IAA). The result of Stridsberg's effort was a 180-page report, excluding appendices, that discusses the importance of advertising self-regulation and its development as a method of industry control, details various forms of self-regulation, comments on its likely future, and, finally, profiles each of the 29 countries' self-regulatory systems. Stridsberg (1974) summarizes the importance of this type of research by writing:

> The border-crossing of people, media, and ideas raises questions of conflict between what is acceptable in one country but not in another. Such conflicts only add coals to the fires of consumerism, and encourage governments to resolve these conflicts by legislation that might severely restrict the quality and amount of advertising permitted. There will be no quantum jumps in advertising self-regulation, no spectacular new discoveries. What is required is a steady effort to progress, to evolve new structures and strategies, and to exchange experience. (p. 38)

Though more than two decades have passed since these comments, this type of research is just as important today as then. If anything, the formation of the EU heightens the need for an understanding of cross-border differences and strategies for convergence. Stridsberg and the IAA hoped that their report would, "help us escape the boundaries of our own national environments, see matters through others' eyes, and hence understand our own position and possibilities better" (p. 38). IAA, with the help of various

researchers, has updated Stridsberg's study with subsequent examinations of national differences in advertising self-regulation, each resulting in a book. For example, an effort undertaken by Neelankavil and Stridsberg (1980) expanded the IAA report by looking at the extent and form of self-regulation in 49 countries. Once again, the researchers surveyed officials in each country and evaluated activity reports, annual reports, codes, and guidelines in order to:

1. provide information on the status of self-regulation throughout the world as seen by working professionals, the members of the IAA and others who are involved in transferring advertising across national frontiers;
2. indicate useful models to those advertising professionals who are interested in forming self-regulatory bodies in their countries where none exist at present;
3. facilitate the work of international advertising by establishing a basis for comparison from one country to another; and
4. enhance interest in the varied applications of self-regulation in advertising around the globe. (pp. x-xi)

Like the original IAA report, the hope was that this study would help erode international barriers to advertising by fostering shared understanding and that it may aid in the formation of more effective codes for everyone.

Continuing to pursue these lofty goals, Boddewyn (1992) published a book based in large part on surveys conducted with the IAA in 1986 and 1988-89. As he explains, "The International Advertising Association has defined its core mission as promoting, defending, and sustaining the freedom of commercial speech and consumer choice; and it sees the encouragement and development of advertising self-regulation as a prerequisite of this mission" (pp.17-18).

Boddewyn quickly pointed out the flaws in advertising self-regulation, yet he appears to share the IAA's belief that it is the most efficient and effective way to promote ethical advertising without limiting the free flow of information. The IAA research, therefore, is meant to refine the existing system not tear it down. Even research unassociated with the IAA appears to take this tack. Miracle and Nevett (1987a, 1987b) look for improvements through a more detailed investigation of the similarities and differences between American and British self-regulation. Among other questions, the researchers ask, "Are there any characteristics of one system that might suggest useful changes in the other system?" (1987b, p.xxiii). To answer this question and to develop a general understanding of why the two systems differ, Miracle and Nevett conduct an extensive review of existing scholarship, examined industry pamphlets, reports and other professional documents, and interviewed and corresponded with various people in the field.

Miracle and Nevett (1987b) offer several recommendations resulting from their comparison including expanding the role of self-regulation, further publicizing the NAD/NARB and CBBB's functions so that consumers and other advertisers will be made aware of possible redress for questionable practices, and increasing research into how to control the cost of self-regulation. Interestingly, the lion's share of their recommendations are aimed at the American system, possibly because it is younger and not as fully developed as the British system.

Outside Participation in Self-Regulation

Several studies by Boddewyn have looked at the international variations in even greater detail by focusing on outside participation in advertising self-regulation. Self-

regulation can vary from regulation solely through the advertising industry to government dictated self-regulation. Somewhere in the middle exists outside participation, in which stakeholders from outside the industry (consumers, trade organization representatives, etc.) are invited to help with the development, application and enforcement of the codes. Outside participation offers the advantages of adding additional expertise to the decision-making body, lending greater credibility and legitimacy to the regulatory effort, and publicizing self-regulation as an alternative to government intervention (Boddewyn, 1988, pp. 38-40). However, not all countries have opted to include outsiders. Boddewyn's studies have examined why some countries choose to incorporate outside participation while others do not and how outside participation has worked for some but posed problems for others.

Boddewyn's study of the UK (1983) found that the British system, founded in 1962, contains one of the largest percentages of outside participants of any self-regulatory system. Advertising is regulated through three interrelated bodies. The Advertising Standards Board of Finance (ASBOF) funds regulatory activities and appoints the Advertising Standards Authority (ASA) Chairman. The ASA is comprised of a Chairman and a Council of industry and non-industry members, who are charged with instituting codes and addressing consumer complaints. The Committee of Advertising Practice (CAP) is made up of 20 industry representatives from advertising agencies, the media, and advertisers. Its function is to consult with the ASA in devising and altering codes and to handle competitors' complaints. Boddewyn, using interviews and document analysis, looked specifically at how outside participants are chosen and how they impact the system. He concluded that, "The major contribution of independent outsiders is that

they grant a 'seal of quality' to the ASA by vouching for its independence and greater objectivity in code development and application. This, in turn, generates credibility and legitimacy for the U.K. self-regulatory system" (p. 90).

Boddewyn suggests that a system comprised entirely of industry outsiders would gain even greater respect. The industry, however, would be loath to give up its say in creating codes. Furthermore, such a system would lack the balance of the U.K.'s current form of self-regulation. In general, Boddewyn believes the British system functions quite well, leading him to wonder if the French system, which relies minimally on outsiders, is less effective. Following the same format of interviews and literature review, Boddewyn (1984) investigated France's *BVP*. He found that the *BVP* works effectively without outside participation due in part to the cooperative relationships it has developed with members of the French consumerist movement and with the government. "Thereby, its self-regulatory structure has been kept intact while some elements of outside participation have in fact been woven into its functioning" (p. 45).

At the other end of the spectrum is Sweden, where the advent of a Consumer Ombudsman led to the disbanding of the country's self-regulatory system. In a 1985 study, Boddewyn asks, "Why did the latter happen when other countries with equally developed consumer-protection laws have not witnessed a similar withdrawal on the part of business" (p. 140)? He also examined whether self-regulation does still exist in Sweden and, if so, in what form. Interviews and an extensive literature review indicate that a change in government policy toward more regulation and greater concern for consumer protection led to the 1970 disbanding of the Council on Business Practice. However, the advertising industry is still integral to regulation. The Swedish government

has worked with trade organizations to develop guidelines and has drawn heavily on already existing codes. "Hence, business has had opportunities to help shape the KOV/KO system's policies and actions ever since its beginning even though this power is shared and circumscribed in some ways" (p. 148). It is Boddewyn's contention that self-regulation still exists in Sweden despite the fact that there is no longer a self-regulatory body.

Boddewyn's earlier research in Britain, France and Sweden were just part of a larger study involving 11 countries. The findings of his comparative analysis were published as a book titled *Advertising Self-regulation and Outside Participation: A Multinational Comparison* (1988). Like other researchers in this area, Boddewyn concludes with a pitch for more self-regulation, regardless of the role played by outsiders:

> Firmly convinced by now of the social usefulness of advertising self-regulation, this researcher can only wish that the conditions, motivations and precipitators needed for its further development, with or without significant outside participation, will become operational in more countries, since it exists only in some forty countries and is well developed in fewer than twenty -- not enough by far for a natural contributor to social order. (p. 355).

Summary

Based on this review of the current literature, several things can be said about our understanding of advertising self-regulation.

- The advertising industry looks at self-regulation as a means of avoiding government interference in advertising practices. By and large, advertising scholars support the industry's contention that advertising benefits society and should therefore be allowed as much freedom as possible.

- The media clearance research indicates that self-regulatory codes and their application are motivated by fear that consumer complaints will damage the credibility and effectiveness of advertising and possibly spur government regulations. This fear is greater for some media providers than others, based on factors such as profitability.
- The government exerts pressure on the advertising industry both to protect consumers with regulation and to avoid anti-trust problems caused by over-restrictive regulation.
- More than 20 years ago, Stridsberg pointed out the importance of understanding the differences among countries and developing strategies for dealing with the variance. Since then several studies have cataloged self-regulatory codes and practices around the globe and some have advocated a more universally accepted standard such as the International Chamber of Commerce code. Today, however, Europe maintains 15 different self-regulatory systems in 15 Member States.

Left out of the literature is any pointed discussion of advertising self-regulation's relationship to national culture. That is not to say that researchers do not acknowledge such a relationship. In detailing the differences among self-regulatory codes, researchers implicitly acknowledge self-regulation's ability to reflect cultural differences; yet few scholars have taken a critical view of self-regulatory systems or examined the ideology they support. In fact, as advocates for self-regulation's effectiveness and efficiency in controlling advertising, researchers appear to support the view that advertising self-regulation is good for society and may even help maintain cultural diversity.

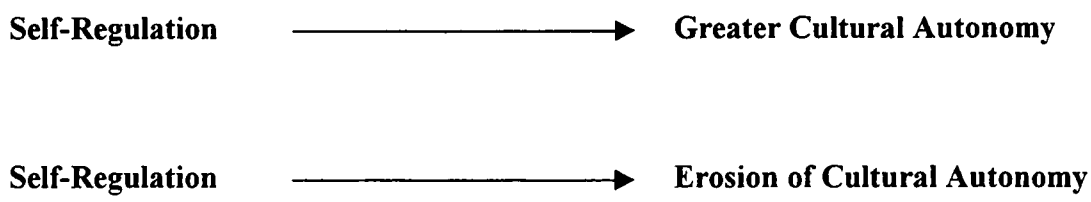

Figure 2.1: Two Views of Advertising Self-Regulation's Relationship to Cultural Autonomy

Researchers apparently agree with the advertising industry that uniform government regulations would eliminate self-regulatory idiosyncrasies that reflect cultural differences.

Critical researchers concerned with the media's impact on culture hold a very different perspective. Jhally (1998) views advertising as an agent for the cult of consumption, which works to displace diverse cultural values with a single market-centered ideology. Though he does not specifically address the role of advertising self-regulation, given that advertising self-regulation is a means of protecting and promoting the advertising industry, self-regulation might be viewed as another way of eroding cultural differences. Two divergent views of self-regulation's relationship to cultural autonomy, thus. exist side-by-side (Figure 2.1). This dissertation fills an important gap between our understanding of advertising's effects on society and the role played by self-regulators in promoting the advertising industry. It is important to understand how those most involved in shaping European advertising self-regulation make meaning of their roles, for these are the people setting the course for the European advertising industry.

CHAPTER THREE

THEORETICAL FRAMEWORK AND METHOD

A broad qualitative approach was used to develop a deeper understanding of how the officials most involved with World Federation of Advertisers (WFA), European Advertising Tripartite (EAT), European Association of Advertising Agencies (EAAA), and European Advertising Standards Alliance's (EASA) day-to-day operation (generally the Director General) understand and define advertising self-regulation. Marshall and Rossman (1995) explain that qualitative research is particularly applicable to research that seeks to answer the question, "what events, beliefs, attitudes, policies are shaping [a] phenomenon" (p. 41)? They stress the strength of qualitative methods for "research that seeks to explore where and why policy and local knowledge and practice are at odds" (p. 43).

Given the body of research detailing differences in advertising self-regulatory codes (Taylor, 1998; Taylor and Cunningham, 1997; Boddewyn, 1992, 1988; Miracle and Nevett, 1987a and b), there can be little doubt that conflicts do and will continue to arise in the international transmission of advertising; but these are only surface-level conflicts. Underlying such discrepancies in advertising self-regulatory codes, is a deeper discord in the values inherent in the codes. For example, France provides much stricter regulation on the use of children in advertising than does the United States (Taylor and Cunningham, 1997). Close examination of both countries' codes offers insight as to how each country defines and values children. Given the cultural differences in how children are defined, efforts to conform either country to the other's standard would cause a conflict in culturally-rooted ideologies. It is on this deeper level of conflict in ideology

that this study will focus, and through qualitative data gathering and analysis seek a better understanding of the role of self-regulatory organizations in shaping European culture.

Why These Four Organizations?

Previous research on advertising self-regulation has concentrated on the perspectives of the individual nations, often providing purely descriptive data. Research might also examine the role of organizations concerned with preserving cultural autonomy throughout Europe such as the European Cultural Foundation, or organizations particularly concerned with the media's role in cultural development such as the European Institute for the Media. Qualitative research assumes the existence of multiple realities or interpretations of a phenomenon so that each of these groups would offer a unique perspective on the standardization of advertising self-regulation. Given, however, that the European Commission has asked the advertising industry to find ways to regulate itself, it makes sense for the industry to be the focus of this research.

Based on preliminary research, EASA was identified as the best starting point and the primary organization to be investigated (Taylor, 1998). EASA was formed in 1991 for the sole purpose of overseeing international disputes regarding advertising self-regulation. As the EU has moved toward greater convergence, EASA has taken on the role of coordinating EU advertising self-regulators and advising those establishing systems of self-regulation. Because this organization's actions and policies are likely to have the greatest impact on the continued evolution of European advertising self-regulation, I chose EASA as the focus of this research.

The research design was somewhat emergent in that the participants helped to frame the study. I originally planned to include the International Chamber of Commerce

(ICC) and International Advertising Association (IAA) in the investigation, rather than WFA, EAT, and EAAA. Following discussions of the project with the Director General of EASA, IAA and ICC appeared tangential to the research, whereas the four organizations included will more directly affect the evolution of European advertising self-regulation. As will be discussed further in Chapter Four, EASA identifies WFA, EAT, and EAAA as its sister organizations, representing all aspects of the creation and regulation of European advertising: advertisers, agencies, media, and the self-regulatory bodies in each country. EASA, WFA, EAT and EAAA. Media organizations were not included because they also are more tangential and their representation is more dispersed. Because the media are represented through EAT, it is possible that some insight into their perspective will appear in the data.

Through analysis of how officials at EASA, WFA, EAT, and EAAA interpret their roles as promoters and enforcers of advertising self-regulation, this research investigates the conflict between globalized consumerism and national values. As these organizations' mission statements as well as much of the scholarly research in this area demonstrate, the values of consumer culture tend to be promoted and disseminated without scrutiny. I hope to examine how efforts to standardize self-regulatory codes – regardless of whether the values they reflect are appropriate for all European nations – may erode cultural autonomy among European nations by promoting the culture of consumption. This question may be answered through four research questions:

1. How do the organizations' leaders define and conceive advertising self-regulation in Europe?

2. Do the participants see a conflict between cultural preservation and standardization of advertising self-regulation?
3. From the perspective of those overseeing the daily operation of these organizations, do WFA, EAT, EAAA, and EASA have a responsibility to protect cultural autonomy among EU countries?
4. What ideology, if any, do WFA, EAT, EAAA, and EASA promote?

Data Collection

Qualitative research encompasses a variety of approaches. Barzun (1972) offers the term "cultural history" to describe the analysis of an idea's evolution and development. He explains that "the very point of tracing an idea to its source is that we then see it at work, meeting a problem or paradox, misunderstood, struggling for life like a newborn infant – not as we shall see it later, washed and dressed up for the photographer" (p. 398). Like qualitative research in general, cultural history thus seeks to build contextualized understanding of cultural ideas and values.

Drawing on contacts established by the dissertation chair (Taylor, 1998), arrangements were made to visit EASA's office in Brussels, Belgium in November 1999. Two methods were used to gather data: long, flexible interviews with the leaders of EASA, WFA, EAT, and EAAA, and analysis of the organizations' literature. As Yin (1994) points out, the use of multiple data sources strengthens the research by allowing for converging lines of evidence. Furthermore, I have demonstrated a firm command of these methods in doing my Masters' thesis and in subsequent doctoral research projects (Cunningham, 1996; Taylor and Cunningham, 1997; Cunningham and Haley, 1998).

In keeping with the tenets of qualitative inquiry, the research was conducted in the participants' natural setting. During a one-week period in late November, I visited the EASA, WFA, EAT, and EAAA's offices, all headquartered in Brussels, Belgium to conduct interviews. I interviewed the person in each organization who is most involved in issues related to European advertising self-regulation. Generally, this is the Director General. It is important to note that it was not the goal of this study to draw a large, random sample. Rather, interviews were conducted until a point of redundancy was reached; that is, until additional interviews produce no new insights into the phenomenon (Taylor, 1994). McCracken (1988) suggests that as few as eight interviews may be needed to reach this point; however, given the size (generally only two to four people) of these organizations' administrative and executive staffs, only four interviews were necessary.

All interview participants were offered, but chose to waive, confidentiality, signing a release form allowing them to be identified in the written dissertation. The release form clearly stated that they might be quoted, with quotes being attributed to them. All other quotes presented in the following chapters were drawn from documents available in EASA's extensive library. Most quotes came from widely published documents or transcripts of public speeches. Given that this is not a particularly sensitive subject and that the organizations are all somewhat political in nature, the participants and other officials in the organizations are accustomed to speaking on the record about their organizations' roles in European advertising self-regulation.

Interviews were aided by an interview guide (Appendix B) but remained open-ended and flexible so that the participants could frame the issues as they perceive them.

"The participant's perspective on the phenomenon should unfold as the participant views it, not as the researcher views it" (Marshall and Rossman, 1995, p. 80). The longest interview with Oliver Gray at EASA lasted approximately one and a half hours, while the shortest interview with Florence Ranson at EAT lasted only 35 minutes. The length of the interviews appears to correspond to the participants' length of time with their organizations and/or with their level of involvement with European advertising self-regulation. Adding to the emergent nature of this study, I took notes during and after each interview and, based on those notes, modified subsequent interviews.

While in Brussels, I also examined documents housed in EASA's extensive library, which includes papers produced by all four organizations. EASA, WFA, and EAT have web sites, which I examined upon returning from Brussels. Document analysis included but was not limited to: the first 12 EASA newsletters, called the *Alliance Update*, produced from May 1994 to July 1998; two EAT newsletters, titled *EAT's Weekly*; several press releases, transcribed speeches, and position papers often in response to Commission events and actions; published mission statements; internal and external memos; meeting minutes; and the program for the Corsendonk II conference. I looked for any discussion of the organizations' role in shaping European advertising self-regulation and, particularly, its influence on European culture. "The review of documents is an unobtrusive method, one rich in portraying the values and beliefs of participants in the setting" (Marshall and Rossman, 1995, p. 85).

Following data gathering, I transcribed all interviews. Transcripts were then compared to the tape-recorded interviews to determine the accuracy of transcription. To ensure that they captured the participants' perceptions, the transcripts were given to two

of the participants – Gray and Ranson – for additional verification. They were each given their own transcript, which they were asked to review and provide any changes, corrections, or additions they felt necessary. This process resulted in no new data. Neither Carlson nor Loerke could be reached following transcription.

Data Analysis

Data analysis entailed the use of analytic induction and comparative analysis to look for recurring themes and to build grounded theory (Strauss and Corbin, 1990). "At the heart of analytic induction is the thesis that there are regularities to be found in the physical and social worlds. The theories or constructs that we derive express these regularities as precisely as possible" (Huberman and Miles, 1994, p. 431). Throughout this process I acted as the instrument, first in open coding, during which "data are broken down into discrete parts, closely examined, compared for similarities and differences, and questions are asked about the phenomenon as reflected in the data" (Strauss and Corbin, 1990, p.62).

First all data that could be dated were organized chronologically. This allowed me to look for evolution of ideas and concepts. Open coding of the data involved repeated readings of the transcripts and printed materials, looking for recurring themes. Four core topics, each containing several themes, emerged. Topics and themes were then checked against the existing data and further support was sought. Where contradictions occurred, themes were expanded, collapsed into other themes, or discarded. Data, thereby, were reduced to four core concepts and ten themes, each of which was assigned an alpha-numeric code (Table 3.1). Finally, I coded lines and paragraphs of the data based on this scheme. At this final stage of data coding an understanding of the relationship among

Table 3.1: Coding Scheme

Code	Definition
A1	**Advertising** as *support of the economy.*
A2	**Advertising** as *free expression.*
S1	**Self-regulation** as *best practices.*
S2	**Self-regulation** as *protection from government regulation*
S3	**Self-regulation** as *protection of free speech*
H1	**Harmonization** of *codes or practices*
H2	**Harmonization** as *highest or lowest common denominator.*
H2	**Harmonization** of *sectoral codes*
C1	**Cultural autonomy** as the right to *adapt codes to national standards*
C2	**Cultural autonomy** as a *buffer between industry and additional government regulation*

themes began to emerge. This process of continuous comparison produced an understanding of European advertising self-regulation and its possible influence on European culture that is firmly rooted in the perspective of those charged with setting the standards and coordinating efforts. Each theme will be discussed in detail in Chapter Five. Chapter Five also provides a diagram representing the interaction among themes.

CHAPTER FOUR

THE EUROPEAN UNION AND REGULATORY ENVIRONMENT

In order to understand properly WFA, EAAA, EAT, and EASA's roles in European self-regulation, the organizations must be placed in the larger context of the European Union and its regulatory environment. As Figure 4.1 illustrates, advertising self-regulation exists within the confines of both European and national laws and must adhere to the dicta of the European Commission, its various Directorate Generals (DGs), and the Member States' standards. Policy documents are shaded grey, while policy-forming organizations are in white. Figure 4.1 shows the foundation, laid by the Maastricht Treaty and the White Paper on the Completion of the Internal Market, upon which the more specific communications Directives and Green paper are based. The solid, two-way arrows show the interaction between the European Commission, which proposes all policies to the European Council for ratification, and the DGs, which act as advisory groups and often draw up Green Papers and Directives. As represented by the dotted arrows, these Directives flow upwards, providing the scaffolding that supports national legislation. Laws enacted in accordance with EU Directives by each of the 15 Member States cap this structure. To provide a better understanding of how this system works, this chapter briefly outlines the development of the EU and discusses the delicate balance between national and Europe-wide legislation. It is also important to understand the history of the four studied organizations, the extent of their involvement in European advertising self-regulation, and how they relate to one another. This chapter, thus, provides the necessary background for interpreting the research findings.

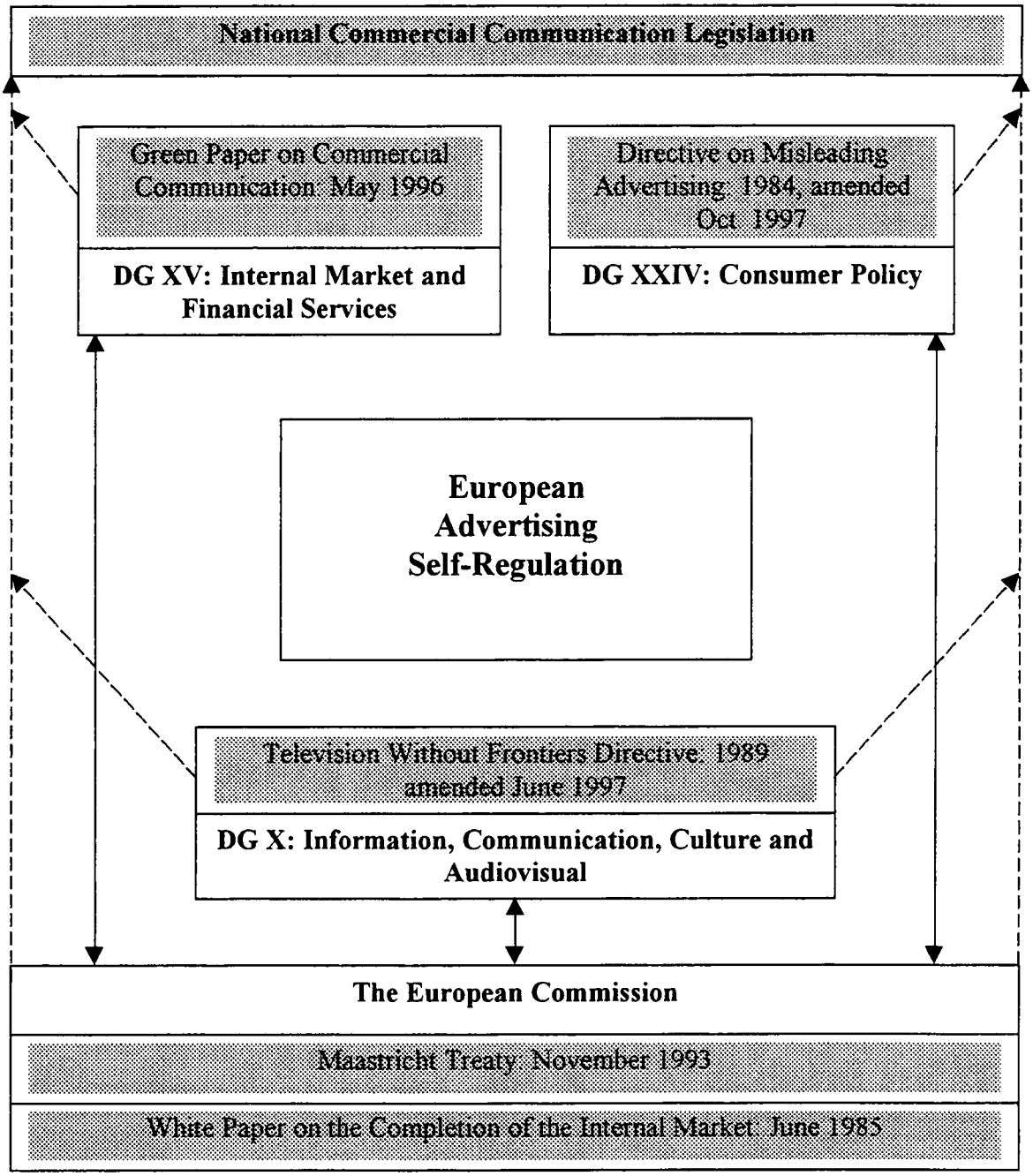

Figure 4.1: European Advertising Self-Regulation in Broader Context of European Legislation

Figure 4.2: Map of European Union

A Brief History of the European Union

The European Union (EU), formerly called the European Community (EC), is a coalition of 15 European countries working together to promote economic and social progress throughout Europe (Figure 4.2). Many researchers trace the history of the EU back to the mid-1940s when Europe faced rebuilding itself after two world wars (Henig, 1997; McAllister, 1997; Dedman, 1996). As Henig (1997) explains:

> The initial, or first, period starts immediately post-war, runs through the 1950s and peters out in the 1960s. The outstanding features are the emergence of the world super-powers and the impact of the Cold War in its active phase; economic devastation wrought by the Second World War; and the political weakness of nation states – particularly those that had undergone military defeats, occupation

> and/or internal fascist governments. Above all, Europeans had to grapple with one major, specific problem – namely, Germany's future role in the continent. (p. 10)

These forces coalesced to create a situation favorable for, if not requiring, cooperation among the European countries.

The question then arose as to the form and extent of the cooperation among countries. Dedman (1996) draws a distinction between interdependence and integration. Interdependence, as seen in the working of the North Atlantic Treaty Organization (NATO) and the General Agreement on Tariffs and Trade (GATT), now the World Trade Organization (WTO), exists when governments work together on certain policy issues. "Such organizations do not interfere with the policy-making of their member states, their decisions do not overrule national policies and there is little if any power or sanction to impose policies on member states" (p. 7). The earliest form of European union, the European Coal and Steel Community (ECSC), however, represented a greater degree of government integration. "Here the member states transfer some policy decisions to a body of all member states, the decisions of which are binding on all members and have to be followed" (p. 7).

Henig (1997) similarly differentiates two forms of unification: inter-governmentalism and supra-nationalism. Inter-governmentalism, rather than merging governments, brings countries together in a cooperative effort to achieve common objectives. Supra-nationalism, on the other hand, "implies a gradual merger of governmental structures and processes as well as the adoption of a series of common goals" (p. 11). Whereas Dedman sees the foundation of the EU in integration under a supranational body, Henig contends that "what is now described as the 'European Union'

is a judicious blend of the two" (p. 12). The distinction is important for the purposes of this study because it sheds light on the extent to which the European countries accept merging, as opposed to coordination, of regulations. From the outset, the EU has tended, at least in part, toward integration.

The foundational events following World War II culminated with the formation of the European Coal and Steel Community in 1951.

> Six countries, Germany, France, Belgium, Luxembourg, Italy and the Netherlands agreed to place the control of those industries under a central authority. The success of that arrangement led to the creation of the European Economic Community (EEC) and European Atomic Energy Community (EURATOM) in 1958. (European Union, n.d.)

Although the EEC did not fully come into existence until 1958, "The Six" actually took this step toward integration in 1957 with the ratification of the Treaty of Rome, which established the EEC as a common market for agricultural and manufactured goods (Dedman, 1996, p. 93). The EEC hoped to "progressively approximate the economic policies of Member States" (Henig, 1997, p. 28) without actual merger of interests. In 1967 the Six made another move toward merging of national interests with the Merger Treaty, unifying the EEC, ECSC and EURATOM.

In 1990 Germany was reunited. This set the stage for a more empowered union of European nations. While unification had progressed in stops and false starts from 1945 to 1990, unification became a reality in 1992 when Ireland, France, Greece, Luxembourg, Belgium, Netherlands, and Germany ratified the Treaty of European Union, generally referred to as the Maastricht Treaty (EU Committee, 1999, p. 13). In November 1993, the

Maastricht Treaty took effect and the European Union was officially born (McAllister, 1997, p. 225).

As represented in Figure 4.1, the Maastricht Treaty laid the foundation for a unified Europe, including efforts to coordinate advertising self-regulation. Article A of the document explains that the Maastricht Treaty:

> marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizens ... Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples. (de Giustino, 1996, p. 265)

To accomplish this unification, the treaty establishes three governmental branches, called pillars. Pillar One creates European citizenship, covers ongoing economic integration, and details plans for Economic and Monetary Union. Pillar Two places statutory authority in the hands of the Common Foreign and Security Policy and establishes policies for joint foreign and security affairs. The third Pillar deals with customs, asylum, immigration and the coordination of crime fighting (European Union, n.d.). Issues relating to European advertising tend to fall under the first governmental pillar.

Regulation of the European Union

With the Maastricht Treaty, Europe has been united under a complex web of interrelated supra-national organizations, which working together have the authority to enact and enforce Europe-wide laws (Figure 4.3). The European Council is the chief ruling body but central to the process of creating legislation is the European Commission, comprised of 20 members: two representatives from the five largest nations (France,

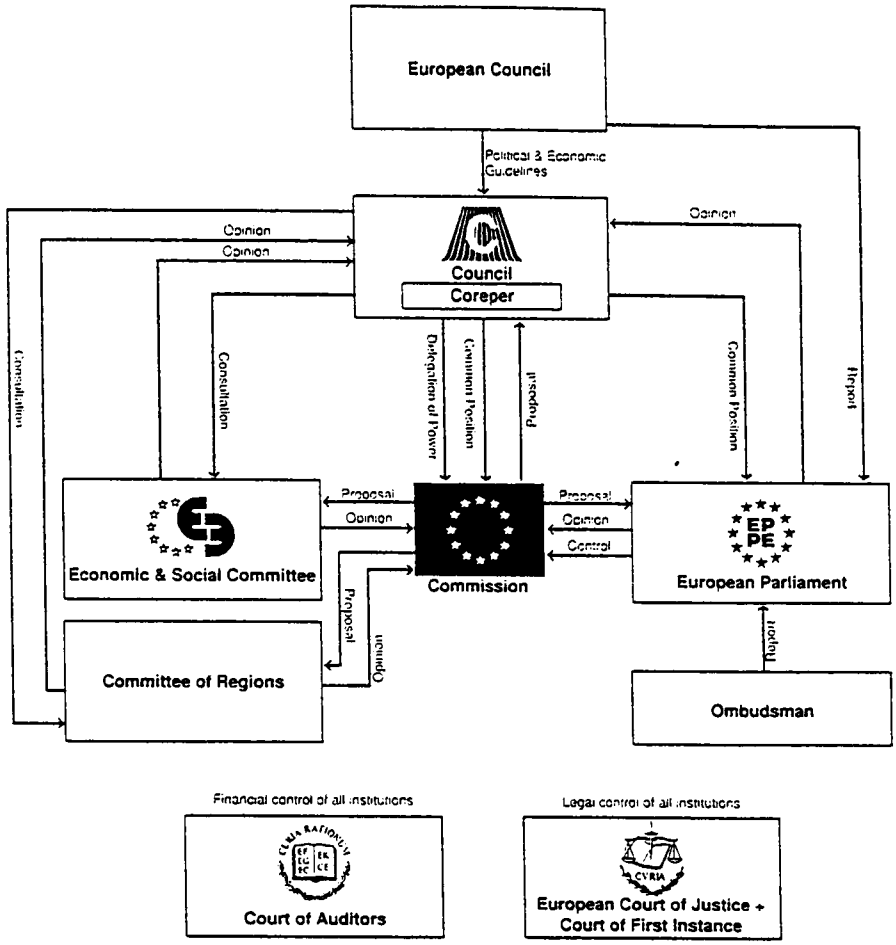

Figure 4.3: The Interrelationship of Community Institutions (from EU Committee of the American Chamber of Commerce in Belgium. (1999). *EU Information Handbook*. Brussels, Belgium: EU Committee.)

Germany, England, Italy, and Spain) and one from each of the remaining 10 member states. The Maastricht Treaty imparts to the Commission several roles within the EU.

> ... according to article 155, its main powers are those of supervision, initiative, and implementation. Of these three roles, the Commission's power to initiate legislation is considered to be its most important and influential. (EU Committee, 1999, p. 19)

The Commission can do this in several ways ranging from proposing actual regulations to ordering studies or issuing reports (see Appendix C for a more complete outline of legislative acts).

Regulation, the strictest form of control proposed by the Commission and imposed by the European Council, "creates binding legislation which automatically enters into force in all Member States" (EU Committee, 1999, p. 10). All regulations must be approved by the European Parliament and adopted by the Council of Ministers (Figure 4.4). Much like the US, there is currently very little Europe-wide regulation of advertising and marketing. There are, of course, restrictions placed on international trading of goods and services, which can impact commercial communications. By and large, however, advertisers must contend only with nationally based advertising laws in the individual EU Member States (Figure 4.1, p. 51).

While the Council enacts regulations at the European level, Directives simply define the end result to be achieved. It is then up to each nation to enact laws that will achieve these goals. Even before the Maastricht Treaty formally unified Europe, the White Paper on "Completing the Internal Market," issued in June 1985, laid out 282 Directives needed for Europe to achieve unity (Figure 4.1), the majority of which have been put into national laws (EU Committee, 1999). White Papers cover broad issues such as completion of the Single Market, offering suggestions and often outlining Directives. Green Papers serve a similar function but focus on a particular issue such as the Green Paper on "Commercial Communications in the Internal Market." "Primarily a Green Paper is designed to be a consultative document, addressed to interested parties,

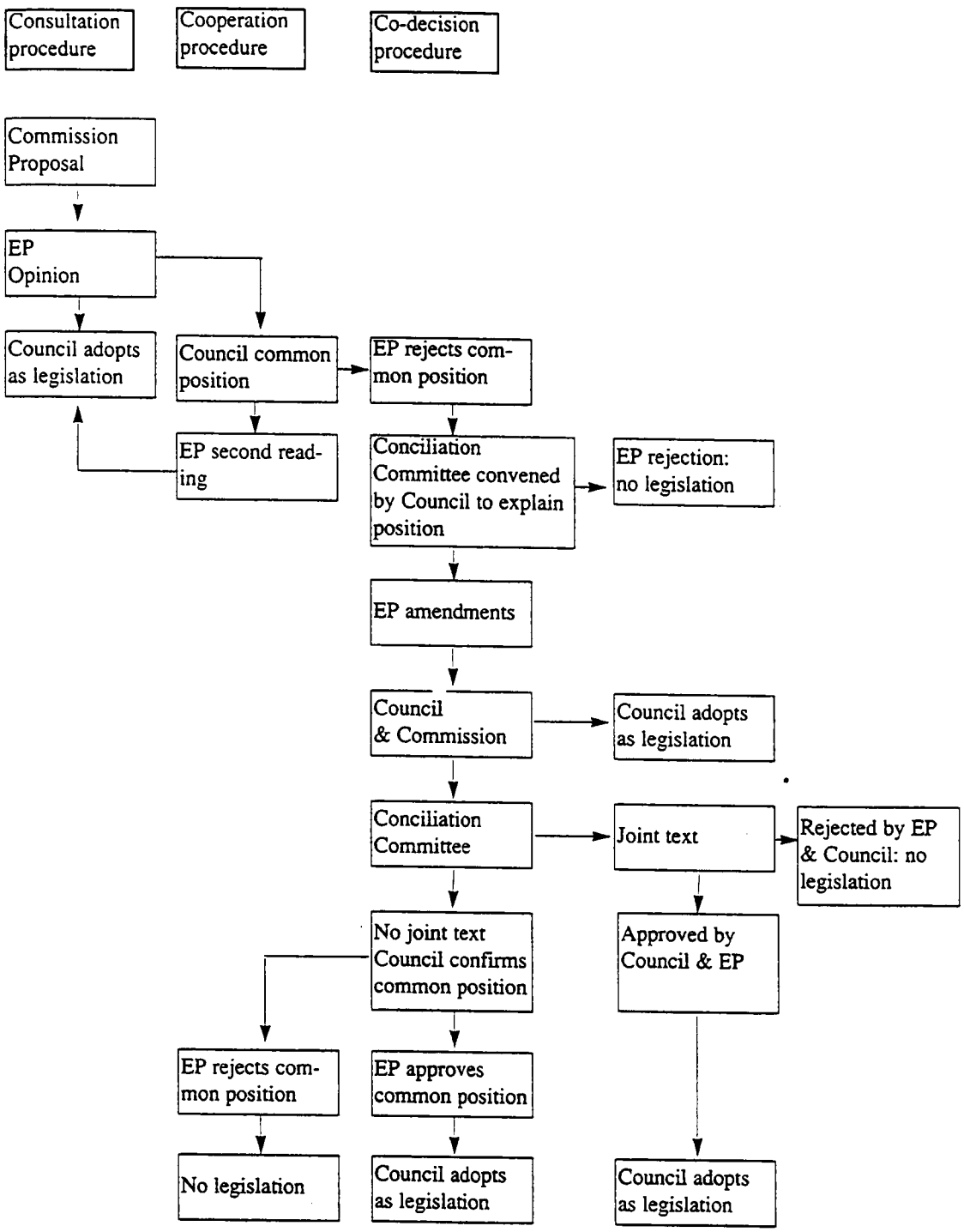

Figure 4.4: Decision-Making Process for Community Legislation. (from EU Committee of the American Chamber of Commerce in Belgium. (1999). *EU Information Handbook*. Brussels, Belgium: EU Committee.)

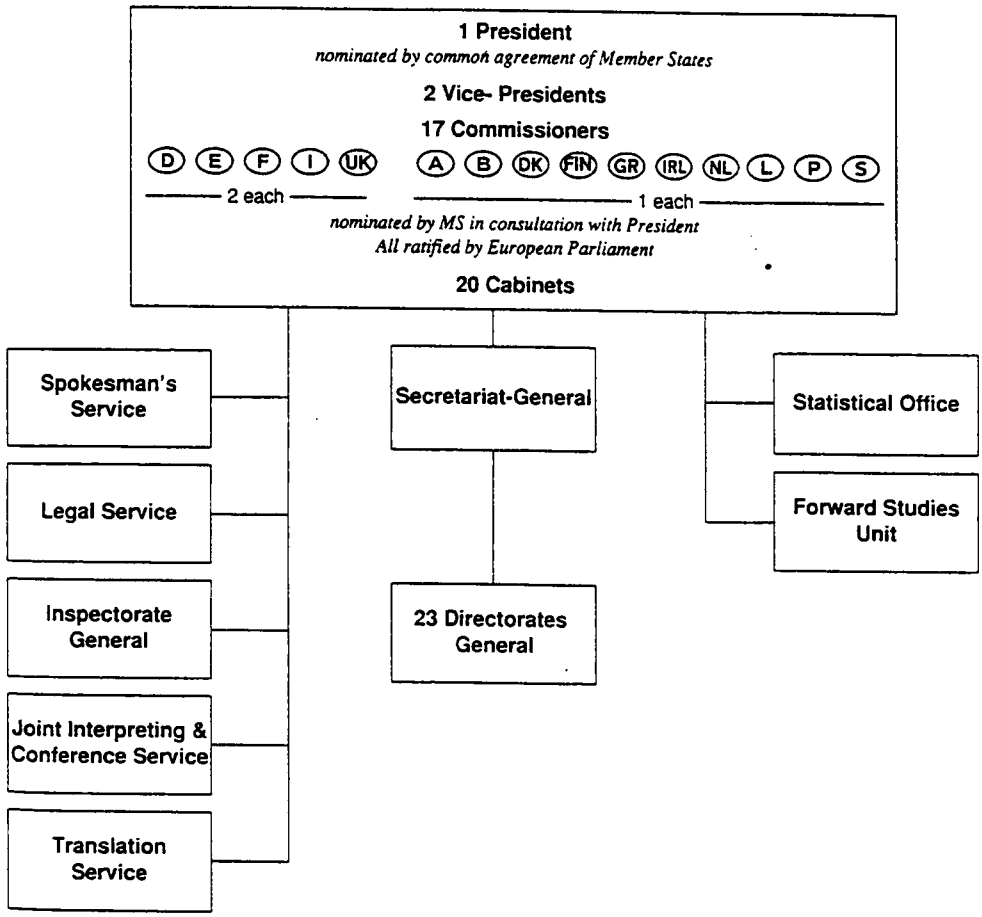

Figure 4.5: Structure of the European Commission (from EU Committee of the American Chamber of Commerce in Belgium. (1999). *EU Information Handbook.* Brussels, Belgium: EU Committee.)

individuals, companies, and organizations all of which are then invited to give their input to any possible future legislation" (EU Committee, 1999, p. 10).

While the Commission is responsible for presenting Directives to the European Council, it does not act alone. A cabinet staff, several specialized service offices such as legal services, and 23 Directorate Generals (DGs) support the 20 commissioners (Figure 4.5). The Directorate Generals act as expert advisory groups on various subject areas and often are the driving force behind Green Papers and Directives. As seen in Figure 4.1,

DG XV, Internal Market and Financial Services, and DG XXIV, Consumer Policies, play key roles in the development of advertising and more broadly commercial communications policies, while DG X's initiatives have and will continue to impact international broadcast advertising.

DG X least directly affects commercial communications in Europe. Its goals reach far beyond the operation of the advertising industry to cover the preservation of cultural diversity and the promotion of greater understanding among Member States. Information exchange and communications, particularly the audiovisual media, play a key role in the exchange of culture; therefore DG X addresses these areas in detail. As Director General Pappas explains:

> ... it has been our constant aim to ensure a strong and competitive European programme-making industry, taking adequate account of our cultural diversities. This improves our ability to learn and to understand each other better in Europe.... Information, communication, culture and audiovisual media are part of a common process. (Pappas, n.d.)

While for the most part its influence on advertising is indirect, DG X's "Television Without Frontiers" Directive is likely to have important implications for European advertisers.

DG XXIV's mission reads, "to develop a consumer policy and contribute to consumer health protection and food safety at the level of the European Union" (Europa, n.d.c). DG XXIV identifies two key components of consumer protection as the improvement of consumer confidence through education and information sharing and the reinforcement of "transparency," the principle that citizens must be aware of and know how to use regulatory systems to protect their rights and safety. Both components impact

advertising self-regulation insofar as advertising plays an important role in educating and self-regulatory systems must be transparent.

DG XV deals most directly with advertising. This group's mission statement explains that, "the role of DG XV is to coordinate the European Commission's overall policy to ensure that the European Single Market functions effectively and to formulate and execute Commission policy in key areas of the Single Market" (Europa, n.d.b). One of these areas includes, "coordination of rules concerning ... commercial communications and electronic commerce [the Internet] with a view to ensuring the free movement of goods and services and freedom of establishment within the Single Market" (Europa. n.d.b). DG XV thus provides a context and lays a foundation for coordinating advertising self-regulatory rules and guidelines. This group, however, has not detailed how coordination should be accomplished; it simply encourages the EU to adopt measures ensuring a Single Market and, when necessary, drafts legislative proposals to do so.

As the distinction between regulations and directives demonstrates, the EU has addressed and legislated some areas while others remain under the control of the individual Member States. The Maastricht Treaty "endorsed the principle of subsidiarity, which requires that decisions be taken as closely as possible to the citizens, with the EU taking action only where it is more competent than national or local authorities" (EU Committee, 1999, p. 5). Through the efforts of DGs X, XV, and XXIV and their various Directives, the European Commission has provided some direction for the European advertising industry; yet advertising remains one of those areas left mainly to the

individual nations to regulate. Most Member States rely on self-regulation rather than detailed laws.

Policies and Proposals Impacting European Advertising Regulation

Thus far, this chapter has focused on how European regulations are formed and who is responsible for their enforcement. It is now time to turn to the actual restrictions placed on cross-border advertising. The White Paper on the "Completion of the Internal Market" identified three barriers to the unification of Europe, one of which relates to technical differences in Member States' legislation. As explained in a mid-point evaluation of the White Paper, "the Community has been aiming at the abolition of all trade distortions resulting from differences in legislation between Member States ever since its establishment" (Steenbergen, 1989). These differences include laws related to marketing activities across Europe. Steenbergen explains:

> There are conceptually only two ways of dealing with trade barriers which result from differences in technical regulations: either you do away with the differences by harmonizing legislation, or you make sure they no longer constitute a barrier to trade by considering the different regulations to be equivalent.

The White Paper proposes a combination of harmonization and mutual recognition whereby "...the new directives would only set minimum standards" (Steenbergen, 1989). This foundational document thus provides a context for understanding many of the challenges facing advertising self-regulators throughout Europe

The Green Paper on "Commercial Communications in the Internal Market," adopted on May 8, 1996, deals more specifically with the challenges faced by advertisers and advertising self-regulators. It "seeks to analyse [sic] single market problems in the

area of commercial communication (which comprises all forms of advertising, direct marketing, sponsorship, sales promotion and public relations) and put forward a possible future policy on this subject" (Europa, 1996a). More than any other Commission policy or effort, this one document has raised the question of advertising's role in supporting the Single Market and the need to coordinate any restrictions on commercial communication. Prior to issuing the Green Paper, the Commission conducted a survey of legislation in each of the Member States, concluding that:

> At present, differing national regulations could create obstacles for companies wanting to offer [commercial communication] services across national borders and also create problems for consumers seeking redress against unlawful cross-border commercial communication services. (Europa, 1996b)

Based on this understanding, the Green Paper stresses the need for "mutual recognition" among Member States. This means that, to avoid over-regulation, each Member State must accept that the laws of other nations may take precedence over its own in cases of cross-border disputes. The Commission apparently hopes that mutual recognition will lead to the coordinating and perhaps converging of European advertising regulations. As Steenbergen's (1989) discussion of the White Paper suggests, this coordination is likely to take place at the minimum level of regulation.

In a statement found on DG XV's web site, the Commission stresses that this is a delicate balancing act "between the need to ensure a Single Market for commercial communications services and public interest objectives validly pursued by Member States" (Europa, 1998). Single Market Commissioner Mario Monti explains:

> In particular, we have taken account of the different social and cultural situations in the various Member States. At the

> same time, we have prepared the ground for a vibrant commercial communications sector in the EU, which is vitally important for creating sustainable jobs and ensuring the EU's competitiveness. (Europa, 1998)

The commissioner expresses concerns similar to those of American self-regulators struggling to reconcile anti-trust laws with regulation of advertising. The question is whether the economic benefits of advertising outweigh the social dangers.

The Green Paper on "Commercial Communications in the Internal Market" provides an argument for coordinated advertising regulation. Furthermore, the rhetoric surrounding it shows the Commission's sensitivity toward preserving national cultures. For this very reason, regulations are driven as close to the citizens as possible, rather than enforced at the European level. One must remember that Green Papers as well as the Commission's other activities relate to and often result in actual laws; however, advertising remains largely unlegislated, leaving self-regulators to grapple with the same issues facing the Commission. Like the Commission, European advertising self-regulators tend to embrace the need for coordination as they struggle to maintain subsidiarity in self-regulatory guidelines. Self-regulators must also consider the impact of harmonization on national cultures and need to consider whether such harmonization would take place at the highest or lowest level of regulation.

All of this must be done within the confines of national law. Therefore, before examining the role of the key advertising industry organizations, it is necessary to touch on the legal frameworks already in place that constrain self-regulators' efforts. The "Misleading Advertising" Directive, issued in 1989 and amended in 1997, establishes a minimum standard for acceptable advertising in Europe. The Directive defines

misleading advertising as "advertising which in any way, including its presentation, deceives or is likely to deceive and, by reason of its deceptive nature, is likely to affect the economic behaviour of consumers, or which, for these reasons, injures or is likely to injure a competitor" (European Advertising Standards Alliance [EASA], 1997a, p. 13). The Directive prohibits advertising that contains deceptive claims about a product's or service's features, price, or manufacturer. Still it is often left to national governments to determine if a claim is deceptive. Only in cases of cross-border advertising does the European Court of Justice become involved.

The "Television Without Frontiers" Directive, proposed by DG X – Information, Communication, Culture and Audiovisual, creates a basis for a European broadcasting industry. Adopted in October 1989 and revised in 1997, this Directive:

> provides for a minimum set of common rules concerning advertising, protection of minors, events of major importance to the public (particularly sports), right of reply and promotion of European works. Member States shall ensure broadcasters under their jurisdiction respect these rules and **must refrain from any restrictions on reception of broadcasts coming from other Member States**. [emphasis added] (Europa, n.d.a)

In keeping with the Commission's concern for protecting the cultural differences of individual Member States, this Directive allows Member States to enforce more stringent laws on broadcasts that will not traverse national boundaries. It is possible, therefore, for a country to have a two-tiered system of broadcast regulation such that national broadcasters enjoy fewer freedoms than international broadcasters.

A 1996 case appearing before the European Court of Justice illustrates this point. The court considered whether the Swedish ban on all television advertising directed to

children under the age of 12 violated EU law. The case arose from a commercial for a dinosaur magazine, published by Italy-based De Agostini Forlag AB, that aired in Sweden on Swedish-based TV4 and British-based TV3. "The crucial issue is whether a Member State is allowed to uphold its consumer protection laws regarding TV advertising even if they are more stringent than the European norm" ("De Agostini case," 1996, pp. 3-4). The court found that Sweden's censorship of the television broadcast did violate the "Television Without Frontiers" Directive, which says nothing about banning advertising to children. "While the ruling against Sweden could prevent it from restricting commercials broadcast from other EU countries, it was unclear what would happen with the ban on local broadcasts" ("De Agostini case," 1996, p. 4).

The De Agostini case raises an important point. Whereas much of the EU rhetoric supports national cultural differences, in practice the lowest common European denominator stands. Sweden faced an unenviable choice. It could restrict advertising revenue for its national broadcaster while the British company continued to sell advertising space and the magazine publisher continued to reach Swedish children; or Sweden could lift its ban, which undoubtedly rests on cultural values that stress the need to protect children. This is the type of question self-regulators must also face.

Summary of European Union

Much of this chapter, so far, has been devoted to explaining the formation and functioning of the EU. It is important to understand the context in which international advertising self-regulation must function (Figure 4.1, p. 51). As this discussion illustrates, any system of cross-border self-regulation will be constrained by EU Directives that are translated into national advertising legislation and by additional Member State laws not

related to EU Directives. DGs XV and XXIV, particularly the Green Paper on Commercial Communication, also provide a framework and suggestions for developing an international system, emphasizing such concepts as mutual recognition and country of origin.

The Organizations Behind European Advertising Self-regulation

In an effort to forestall conflicts between and among countries, several organizations have tried to coordinate European self-regulation. The earliest attempt can be traced to the Truth in Advertising Resolution, proposed in 1911 by the Associated Advertising Clubs of the World (Neelankavil & Stridsberg, 1980, p. 7). The International Chamber of Commerce (ICC) spearheaded later efforts. ICC, founded in 1919, was one of the first organizations to promote a single world market. Its International Code of Advertising Practices, first issued in 1937 and revised in 1986, states, "The globalization of the world's economies, and the intense competition which ensues therefrom, require the international business community to adopt a standard rule" (International Chamber of Commerce [ICC], 1997). In keeping with this directive, the ICC works with countries to establish codes in accordance with the International Code of Advertising Practices. ICC guidelines cover such diverse topics as advertising decency and truthfulness, protection of children, product categories such as savings and investments, and marketing means such as franchise schemes. While the ICC does not dictate the structure of individual countries' self-regulatory systems, it does recommend voluntary regulations that allow for cooperation between business, consumers, and government regulators.

Similarly, the International Advertising Association (IAA) has spent several decades trying to foster a greater understanding of the national differences in advertising

self-regulation in order to promote the "internationalization of advertising regulation" (Stridsberg, 1974, p.38). IAA gives as its mission "to promote the critical role and benefits of advertising as the vital force behind all healthy economies and the foundation of diverse, independent media and an open society, and through advocacy to protect and advance freedom of commercial speech and consumer choice" (International Advertising Association [IAA], 1998). Through numerous surveys, IAA has detailed international differences in advertising self-regulatory guidelines. It has also been instrumental in establishing advertising guidelines in advancing nations.

While ICC and IAA historically have taken leadership roles in promoting advertising self-regulation worldwide and, at times, stressing the need to coordinate national efforts, according to EASA Director-General Oliver Gray, others are more directly involved in the formation of self-regulatory policy in the EU today. These other organizations – WFA, EAAA, EAT and EASA – represent the views of European advertisers, agencies, media, and self-regulatory systems; lobby the Commission and Parliament for the freedom of commercial communications; and support self-regulation over government legislation. In so doing, they are more likely to shape the evolving system of European advertising self-regulation than ICC or IAA.

Sir Leon Brittan, then EU Competition Commissioner and Vice President of the Commission set the current unfolding drama of European advertising self-regulation in motion in June 1991. In a speech delivered to the Forum Europe Conference in Brussels, Sir Brittan challenged the advertising industry to take matters into its own hands or possibly face intervention by the Commission. He explained:

> Self-regulation on a purely national basis cannot cope with the distortions that arise with trans-frontier TV advertising if the two codes of practice (or legislations) are different in substance. That is a real problem.... If the advertising of particular products is to be governed by self-regulation on a national basis – as at first sight seems reasonable – then different brands of the same product could end up being advertised in a particular territory according to different sets of rules.... The point I want to make, therefore, is that not only should we be looking at the scope for self-regulation at the national level, but also at the European level. That is a challenge I, personally, would like to see picked up by the industry. No doubt it would take some time to put the necessary structures into place, but their existence would open up the possibility for the Commission to deal with some of the real problems thrown up by the Single Market by means of cooperation with the industry rather than legislation. (Brittan, June 20, 1991)

The industry heeded Sir Brittan's warning and in November 1991 the European Advertising Tripartite (EAT) convened the International Seminar on Advertising Regulation at Priorij Corsendonk, Belgium. The Corsendonk Conference signaled the beginning of a new era in European advertising self-regulation, an era marked by cooperation among Member States' self-regulatory bodies (SROs), and the various industry organizations that support self-regulation. Providing a forum for the industry as it moved in this new direction was EAT.

As its name implies, EAT serves as an umbrella group that includes members from all branches of the European advertising industry. Advertisers are represented by WFA. EAAA represents advertising agencies. The media members include the Federation of Direct Marketing, European Publisher's Council, and Association of Commercial Television. EAT tries to bring these organizations together and works to

support their common interests. As Secretary General Florence Ranson (personal communication, Nov. 26, 1998) explained:

> each of [EAT's member organizations] is in itself a lobby organization. They already do their own lobbying on their specific topics. A lot of the topics that they work on, a lot of the issues they defend, are already in common between them. But we work on the ones that are specifically common to the three and that represent a danger to the whole advertising industry.

According to Ranson, because EAT is an "association of associations," it rarely takes a leadership role; rather it supports its members' initiatives so long as they do not conflict with any other members' interests. Where no conflicts arise, EAT may lobby Parliament or the Commission on issues important to the preservation of advertising freedoms. Generally, however, EAT acts as a "forum where everyone can participate in debates on the future of advertising, on self-regulation, on the big key issues. And in order to do that [EAT] also invites non-members to participate in certain task forces that [it] organizes" (F. Ranson, personal communication, Nov. 26, 1998).

EAT has a very small office headquartered in Brussels. Its daily activities are overseen by the Secretary General Florence Ranson and her assistant. At the time this research was conducted in November 1998, Ranson had been with EAT only one and a half years. In the two years before Ranson joined EAT, the organization was inactive. Still today, Ranson works to redefine EAT's role in European advertising self-regulation. Prior to the Corsendonk conference and as a result of Sir Brittan's challenge, EAT established the European Advertising Standards Alliance (EASA) specifically to oversee the coordination of advertising self-regulation throughout the European Single Market

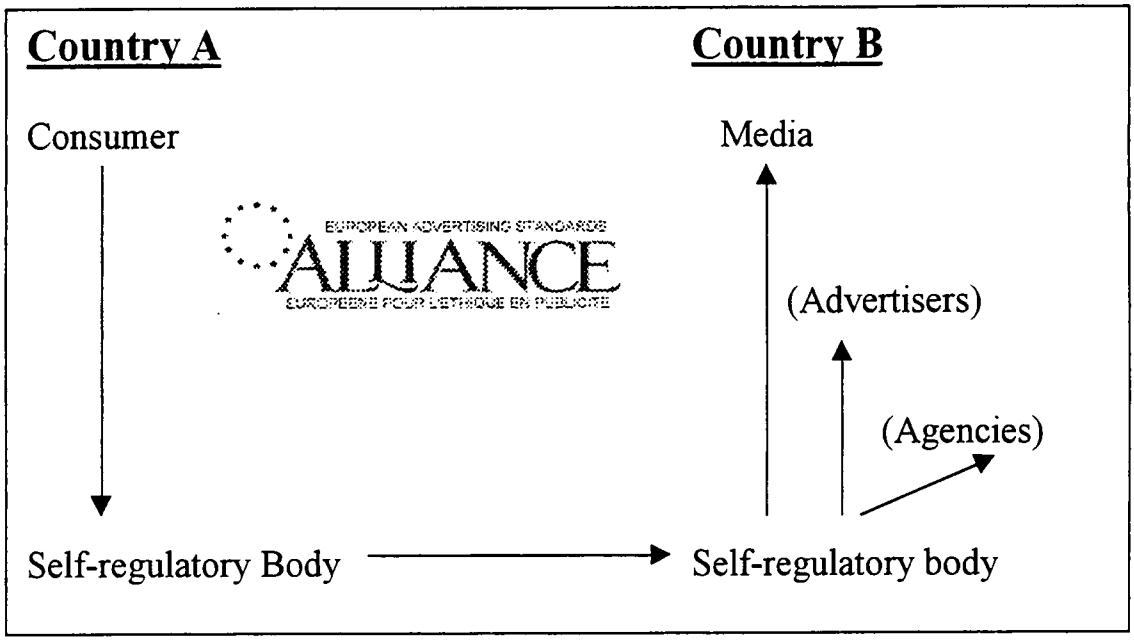

Figure 4.6: Cross-border Complaints Process (from EASA. (1996a). *EASA Guide*, 13. Brussels, Belgium: EASA.)

(European Advertising Standards Alliance [EASA], 1996a, p. 5). EASA officially came into existence in 1992. Following the lead of its fellow organizations that advocate for international advertising, EASA seeks to "promote and support the development of effective self-regulation, co-ordinate the handling of cross-border complaints and provide information and support on advertising self-regulation in Europe" (EASA, 1998).

To deal with cross-border disputes, EASA established a system based on "mutual recognition" and "country of origin." As outlined in Figure 4.6, a consumer in Country A who finds an advertisement offensive or misleading can complain to her own self-regulatory board. That SRO then passes the complaint on to EASA where the complaint is recorded in a database and then forwarded to the SRO in the country of origin for the media vehicle. Country B's SRO then evaluates the complaint based on its self-regulatory guidelines. EASA follows up to make sure that the complaint was ruled on and that the

consumer was notified of an outcome. It is interesting to note that the SRO in the advertiser's country of origin plays no role in this process.

While the Alliance's primary function is to act as a liaison in cross-border disputes, it also publishes "The EASA Guide to Self-Regulation," a handbook designed to help countries establish self-regulatory organizations based on the model of already established systems (EASA, 1997b). EASA also has been instrumental in establishing SROs in several European countries and houses a library of materials relating to advertising self-regulation.

Headquartered in Brussels, Belgium, EASA is comprised of 25 full, corresponding, and associate members representing the self-regulatory bodies of 22 countries, including all EU Member States. Dr. Oliver Gray has acted as the Director-General since EASA's formation. In Brussels, a full-time staff of two, the Director-General and his assistant, as well as one to two interns (called *stagiaire*) monitor cross-border disputes, issue reports on European advertising self-regulation, and handle the everyday operation of the Alliance. In addition to this staff, a Board of Directors with representatives from each of EASA's full members meets every two to three months to monitor Alliance activities and establish objectives and policies. "In between meetings, the Officer's Group consisting of the Chairman, the two Vice-Chairmen, the Treasurer, the Director of Special Issues and the Director-General, oversees the immediate financial, personnel or administrative requirements of the Alliance" (EASA, 1996a, pp. 5-6). Financial support for the Alliance comes from the self-regulatory bodies in member countries.

The World Federation of Advertisers (WFA) was established in 1953 as the International Union of Advertiser Associations. Today WFA's membership spans 40 countries and includes both national advertising associations, corporate and corresponding members. "WFA's primary objective is to safeguard an advertiser's inherent right to unimpeded marketing and commercial communications throughout the world" (World Federation of Advertisers [WFA], n.d.a). More specifically, WFA seeks to:

- achieve recognition by governments and the business world of the fundamental importance of marketing communications to the economy and consumer choice;
- encourage a constructive and workable legislative practice among members;
- promote excellence of marketing communications' practice among its members;
- stimulate maximum effectiveness and commercial transparency with communication agencies and consultancies. (WFA, n.d.a)

An Executive Committee, headed by the President, establishes long-term policies and objectives. National advertising association members make up The Director's Forum, which exchanges news and ideas relevant to international advertising and advises the Executive Committee. A second "pillar," called the International Working Group, is composed of senior executives from corporate members. WFA's Vice-President and Deputy President head these two groups, respectively, while the day-to-day implementation of WFA policies is handled by the Director General, from the office in Brussels. Stefan Loerke, the Deputy Director General, oversees the WFA's interests specifically in the EU. Like the other organizations headquartered in Brussels, WFA is administered by a small, permanent staff of less than half a dozen.

The European Association of Advertising Agencies (EAAA) was founded in 1959 as a coordinating body for the leading national agency associations. With the rise of large multinational advertisers in the 1960s and 70s, EAAA's membership expanded to include such corporations. Concerned that the inclusion of clients might create conflicts of interest for EAAA, Director General Stig Carlson redefined the organization's role such that agencies belong to it and advertisers belong to its parent organization, WFA. Currently, EAAA has 27 national associations, 21 of the biggest international agencies, and, starting in 1998, also the stand-alone media agencies. As Carlson explained, "Today we are a three-legged organization" (personal communication, November 26, 1998).

Like the other organizations, EAAA is headquartered in Brussels and run by a very small staff. The organization's mission is to "optimize the operating environment of advertising agencies in Europe" (S. Carlson, personal communication, November 26, 1998). This involves three basic areas: lobbying for minimal advertising legislation; educating and training advertising professional; and protecting basic agency rights.

Together, EASA, WFA, EAAA, and EAT have laid the foundation for self-regulation of the advertising industry throughout Europe. Figure 4.7 represents how these organizations work together to support European advertising self-regulation. Advertisers, agencies, and media come together under the umbrella of EAT, from which the Industry Policy Group (IPG) is formed. Ranson (personal communication, November 26, 1998) explained that IPG is not an organization but "an informal group where industry representatives at large meet." IPG was established at a time that EAT was in flux and nonfunctioning as a means of bringing together as many industry representatives from all sectors as possible. For this reason, IPG members include some representatives outside

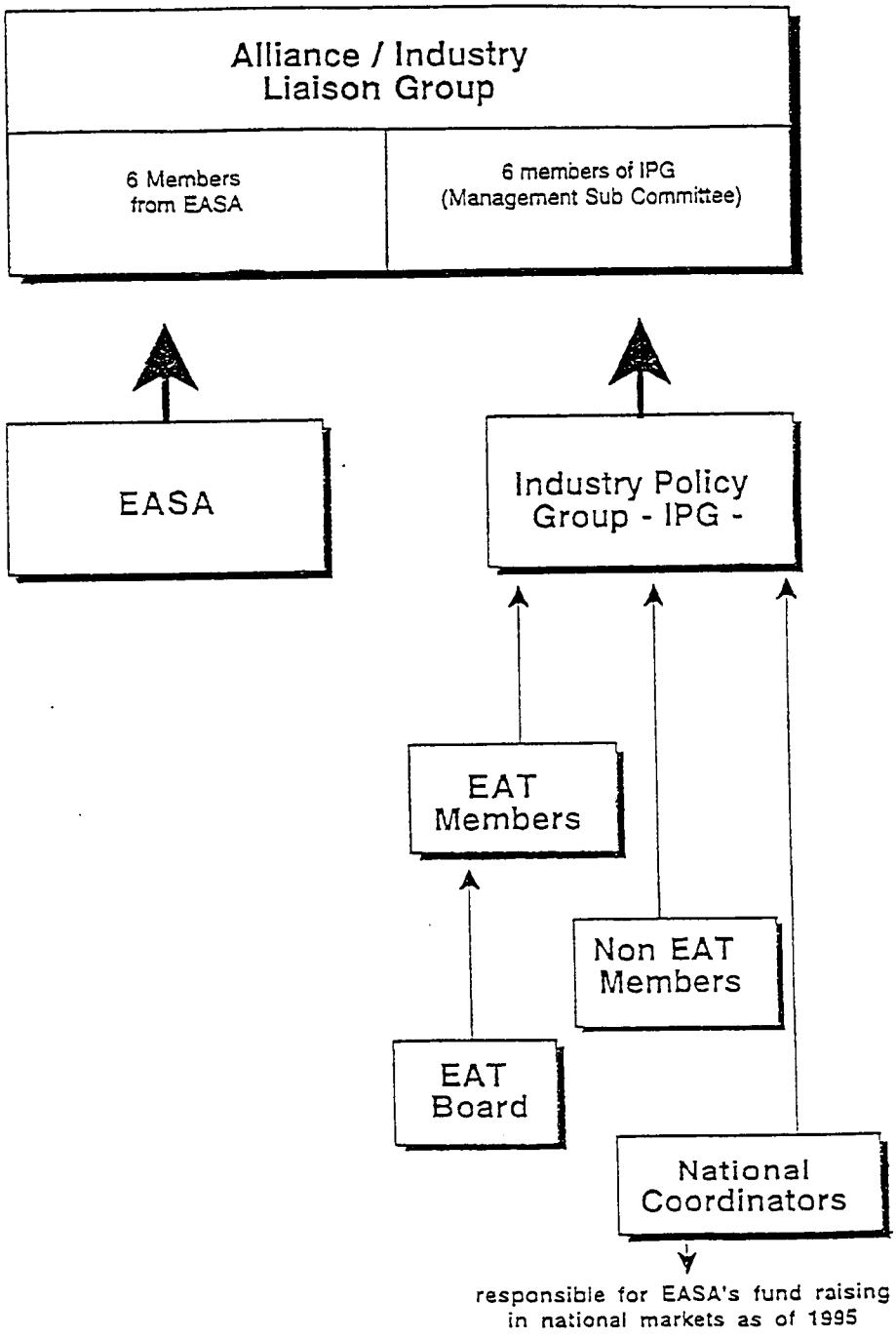

Figure 4.7: Relationship Among Industry Organizations (from EASA. (1996a). *EASA Guide*, 21. Brussels, Belgium: EASA.)

EAT. The exact function of IPG is still undecided as EAT works to redefine its own role in this process. One likely change is that participation in IPG may be limited to EAT members such that IPG truly will become a sub-committee of EAT. Currently, EAT manages IPG by providing a space for its meetings, setting the agenda, and keeping the meeting minutes.

> The way in principle that things work is that during the IPG, the industry decides on the guidelines it should give to the self-regulatory bodies, decides what orientations that self-regulation should take, and passes these decisions on to the Liaison Group during their meetings that normally follow a month or so from the IPG. (F. Ranson, personal communication, Nov. 26, 1998)

Under the auspice of the European Advertising Standards Liaison Group (EASLG), industry representatives come together with representatives of national SROs. "The routine dialogue [required] between EASA and IPG cannot realistically be conducted by regular full meetings of both bodies. Therefore a Liaison Group has been set up between IPG and EASA to make this partnership work, with membership from each body; six each from EASA and IPG" (EASA, 1996a, p.19). This group discusses key issues regarding self-regulation, determines strategy, and each year establishes an action plan.

Summary

As this overview demonstrates, the advertising industry faces many of the same challenges that the Commission currently struggles to resolve: how to balance opening the European market and eliminating barriers to free trade without overriding national differences. As Sir Brittan warned, the advertising industry faces the threat of Europe-

wide regulation if it cannot find a suitable solution on its own. The organizations represented in this study obviously hope to avoid strict regulation of the advertising industry. As excerpts from their mission statements illustrate, WFA, EAT, EASA, and EAAA's efforts are driven by the Lockeian belief in the marketplace's power to correct itself. These organizations do more than promote advertising self-regulation; they also foster a belief in consumer culture – a consumer culture that may run counter to the cultural values of individual European nations. This becomes more evident when examining the themes emergent in the data.

CHAPTER FIVE

ADVERTISING SELF-REGULATION AND CULTURAL AUTONOMY

As discussed earlier, inductive analysis of the data resulted in four core topics and ten themes related to European advertising self-regulation and cultural autonomy (Table 3.1, p. 49). This chapter provides explanation and support for each of these and answers to research questions one through three. In keeping with the standard for qualitative research, I relied heavily on the actual words of the participants and direct quotes from printed materials to reflect, as accurately as possible, their perceptions. Often the source of the quote and his/her organizational membership is identified; however, it may be useful to refer to Appendix D for a complete list of persons referenced and their affiliations.

As will be apparent in reading the comments by industry representatives, these people tend to think about and discuss advertising self-regulation in broad conceptual terms, particularly as it relates to national and European culture. They offer very few concrete examples of their theories at work, perhaps because European advertising self-regulation has yet to mature, therefore few examples exist. As will be demonstrated in Chapter Six, however, their perceptions and understandings of the phenomenon of advertising self-regulation do not always correlate with the decisions, by both self-regulators and the European Court of Justice, made in cross-border dispute cases.

In addition to merely uncovering the four topics and ten themes, I also looked for relationships among topics and themes. Figure 5.1 illustrates how the participants' two distinct but related understandings of advertising lead to two meanings of self-regulation. The key concept that emerged from the data is that advertising self-regulation protects the

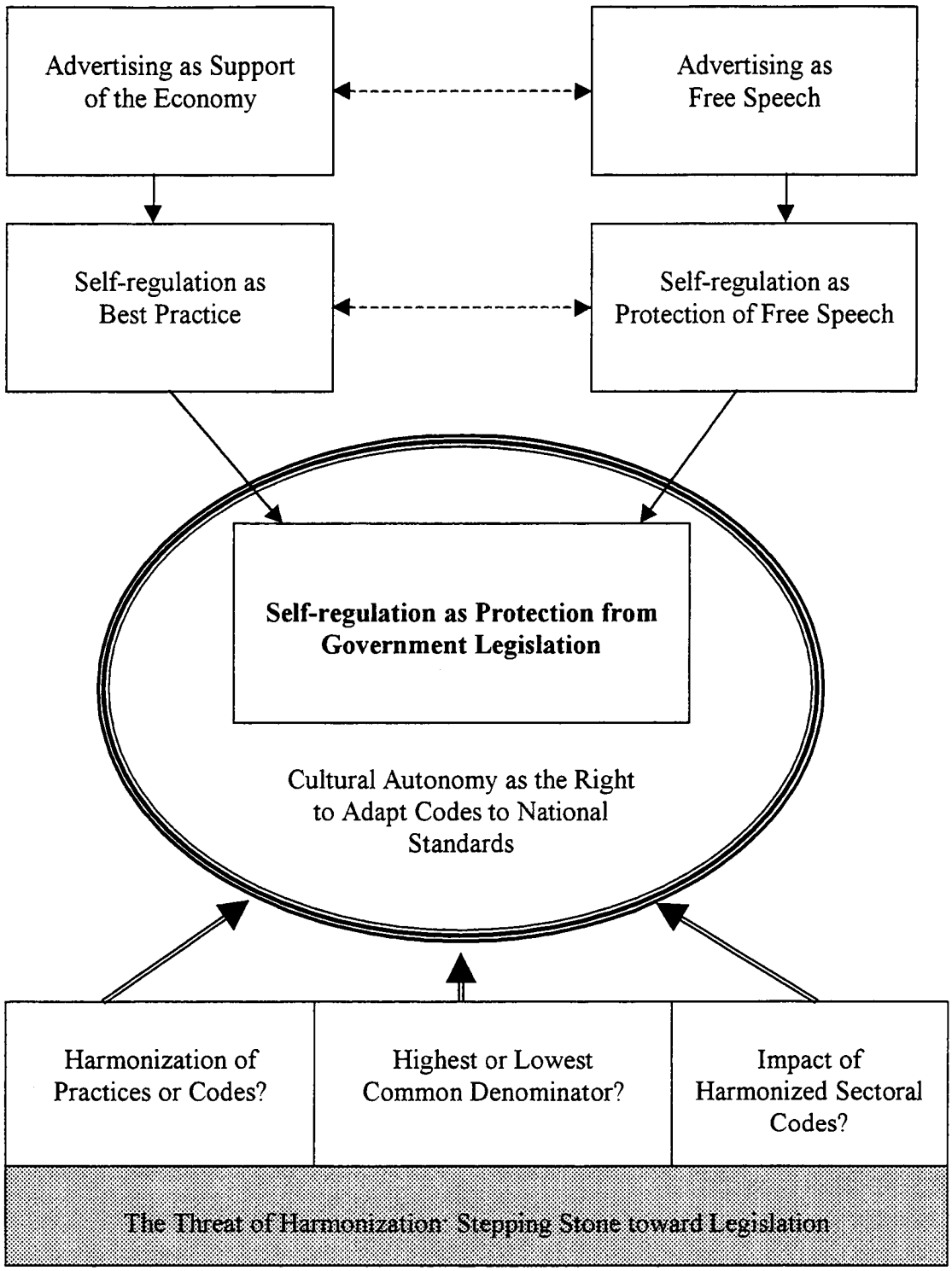

Figure: 5.1: European Advertising Self-regulation's Relationship to Cultural Autonomy

industry from Europe-wide legislation. All ways of understanding advertising and self-regulation support this one major theme. Figure 5.1 also shows in grey the major force threatening self-regulation – European harmonization. Harmonization is viewed by the industry as a step toward additional legislation that would replace self-regulation. Related to harmonization are the questions of what to harmonize, the level of harmonization, and whether sectoral advertising codes can or should be harmonized. Cultural autonomy emerged as a buffer used by the industry to protect itself from the possibility of European legislation. Each theme will be discussed individually but it may be useful to refer to this diagram to understand where each exists in the larger scheme of European advertising self-regulation.

Topic 1: Advertising

To really understand how the participants' interpret the role of advertising self-regulation, one must first know how they define advertising. It is interesting to note that many of the statements in advertising's defense appeared in the earliest days of the EU's formation. One might surmise that representatives of the advertising industry felt a greater need to defend the industry as a whole in order to ward off regulation. Within this topic, two themes emerged: advertising is essential to a thriving economy; and advertising is an advertiser's right to communicate and consumer's right to receive information.

Support for the European Economy. Supporters of advertising self-regulation truly believe that advertising is a vital element of any healthy economy. As Europe strives to complete the Single Market, advertising is seen as the mouthpiece of a free economy, allowing manufacturers to promote their products across national boundaries

and, thereby, widen their market. As an excerpt from Sir Brittan's (June 20, 1991) address to the Forum Europe Conference shows, this view dominated even the earliest discussions of cross-border advertising self-regulation.

> The economic stimulus provided by the Single Market ... should in principle be good for the advertising industry. Not only will it benefit from the resultant general growth but the nature of the Single Market itself, promoting the flow of goods and services into "parts of the Community that other goods and services could not reach," will give it a disproportionate extra stimulus. But advertising should also be good for the Single Market. The more effective [sic] advertising attracts customers to new goods and services, the sooner we shall all reap the full benefits arising from the Single Market, and so there is synergy between <u>your</u> interests, as the advertising industry, and <u>our</u> interests in the Commission in wanting to ensure the success of the Single Market.

Past EAT Chairman Armand de Malherbe (1991) echoed this view even more emphatically in a paper titled "Advertising in Europe: Freedom to Choose, Freedom to Trade," which he presented at the same conference.

> Competition is the driving force of the Treaty of Rome and the Single Market and advertising is a major dynamic of that competition. The Single Market will not be achieved without effective advertising. There is little point in branded goods and services being able to cross borders freely if consumers do not know they are available.

De Malherbe, talking about the detrimental effects of Europe-wide regulation, stressed that advertising is particularly important to small businesses. He asked the Commission to consider, "What would be the economic and social effects of any such legislation, not only on 'big business' but also on smaller firms for whom advertising may be their only access to a market and whom restrictions could profoundly damage?"

In de Malherbe's opinion, "Advertising is one of the anchor points of free market economy." As the following quotes illustrate, this is a widely shared belief.

In a memo written on behalf of EAT Chairman Herman Flotzinger, UK Advertising Association Director General Richard Wade, stated, "There was a clearly stated view that advertising in Europe was of a high standard of practice and probity, ...that advertising was a vital element in the Single Market" (R. Wade, personal communication, n.d.). In a later speech delivered at EASA's launch, Flotzinger (1992) commented:

> The success of the Single European Market will depend to a significant extent on the ability of companies to communicate the benefits of their products and services to potential customers throughout the community.... Advertising also stimulates a healthy market by encouraging competition and innovation which in their turn create both personal and corporate prosperity.

With the Corsendonk convention, the industry took a key step in showing the Commission its willingness to police itself and strive for best practices throughout the EU. As a result the focus was turned toward self-regulation with less effort given to defending the industry's place in the Single Market. Still, the topic resurfaced at the second Corsendonk meeting in 1997. As reported by EAT (n.d.a), Georg Wronka of Germany's SRO summarized discussion at Corsendonk by stating, "The promotion of competition in the marketplace and the protection of consumers' interests are equally vital elements of a properly functioning Single Market, in which advertising plays its proper part" (p. 5).

This first theme also appeared often in WFA's brochures and printed materials aimed at a broad external audience. It appears that the industry organizations, particularly

WFA, feel it is important to explain to the public the beneficial role of advertising. WFA devotes four pages of its "Introducing the World Federation of Advertisers" brochure to presenting a case for advertising's economic role. WFA contends that advertising:

- is an economic necessity;
- helps the consumer and encourages competition;
- assists economic development;
- holds down prices; and
- funds the future....

> Advertisers directly create millions of jobs around the world...and indirectly support millions of other jobs.... Companies that engage in the business of advertising are crucial to a nation's economy. Manufacturers, distributors, retailers and service industries are vital components of a country's economy.... Restrictions to advertising can lead to a serious distortion in competition. Advertising trade barriers constitute a heavy financial burden to business and, as experience in the EU shows, severely hamper a company's ability to maximise the freedom of movement of goods and services otherwise expected from the Single Market. (WFA, n.d.a)

Stefan Loerke (personal communication, November 26, 1998), WFA Deputy Director General, in discussing WFA's mission, explained advertising's role in funding media.

> And it's also linked to defending advertisers' interests in terms of media measurement. And that may sound technical but it's an issue that can have huge economic implications. Our total global advertising expenditure is estimated at $422 billion, US, 1997 figure. We have corporate members like Proctor that spend $3 billion a year.

It's no surprise that WFA appears as the most zealous supporter of advertising as an industry. The organization's membership is comprised of national associations of advertisers and some of the world's largest multinational corporations, and WFA's *raison d'etre* is to promote and support companies' right to advertise. But it does not limit its defense of advertising to economic arguments.

Free Expression/Information. Participants also view advertising as a vital form of communication. Much like the First Amendment argument in the US, this two-pronged defense suggests that advertisers have a right to promote their products in a truthful, honest, and decent manner, and consumers have a right to receive product information that will facilitate smarter buying decisions. Advertising, thereby, is an individual's, and by extension a company's, right rather than merely a privilege.

Again, WFA is one of the more vehement proponents of this position. A WFA (n.d.b) press release titled "The delicate balance between freedom of commercial speech and self-regulation versus restricted commercial communication and prohibitive legislation," quoted Article X of the European Convention of Human Rights, which states, "'everyone has the right to freedom of expression ...this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'" (p. 1). De Malherbe of EAT used this same quote in the address he delivered to the Forum Europe Conference in June 1991.

As the press release explained, "WFA is a firm advocate of the principle of **freedom of commercial expression** [emphasis in the original] – in other words, it sincerely believes that any product or service that is manufactured or sold legally is entitled to this freedom – the linchpin of any free democratic society" (n.d.b, p. 1). Echoing familiar First Amendment rhetoric, past WFA President Malcolm Earnshaw was quoted saying:

> There are those who would fight to the death for the right to publish anything, fact or fiction, violent or pornographic, but will deny the right to advertise. They support freedom

> of information legislation, but deny the freedom of advertisers to inform. They defend free political or artistic speech but deny free commercial speech. They cry 'censorship' when broadcasters are criticised for bad language, explicit sex of violent scenes, but would censor all broadcast advertising. (WFA, n.d.b, p. 1)

During a press conference held at EASA's launch, then EAT Chairman Herman Flotzinger (1992) discussed the link between the economic and free speech arguments, represented as a dotted line between these themes in Figure 5.1. "None of this would be possible without the existence of the basic right to free speech. Freedom of expression is fundamental to a free press, which could not survive without advertising revenue. Freedom, however, carries with it responsibility."

Also necessary for a well-functioning marketplace is free-flowing product information; thus the other side of the two-pronged free speech argument stresses the consumer's right to receive product information. An excerpt from a WFA press release shows how the two elements fit together.

> If we truly believe in democracy and free market economy then we must accept the consequences. We should not let idealistic fundamentalism or anti-free-market forces undermine freedom of expression – which covers not only freedom of speech from a human rights point of view, but also the freedom to utilise [sic] commercial channels and an individual's right to freedom of choice. (WFA, n.d.b, p. 8)

This argument centers on the free choice of consumers. In order to make choices, they need information. This aspect of the "advertising as a right" theme, as illustrated by the following quotes, ran throughout the data.

> Today consumers have an enormous choice among products and services. The qualities of products and services are high and the consumer can choose the best

> according to his of her criteria. Product innovations and uniqueness are short lived as competitors and distributors copy these fast. Therefore the consumers have never had it so good; the consumer is king.
>
> Advertising is only successful when a strong, long term relationship is being built between the consumer and a Brand (a trust in the Brand). The brand is his or her reference, depending on his or her experience and expectations in a situation of choice. Advertising aims to create brand preferences and to help the consumers find their preferences. (Reinarz, 1996)

"Advertising is the quickest and cheapest way to tell consumers about [products], to differentiate one brand from another, to encourage consumers' choice between competing products and to enter the market" (de Malherbe, 1991).

> Advertising contributes to competition by enabling the consumer to make choices based on a product's value in terms of price/quality...If there was no advertising, consumers would lose the means to compare products, standards and prices between retail outlets, and a great catalyst for competition would disappear. (WFA, n.d.a)

"Advertising helps consumers become aware of ideas as well as the choices of products and services available to them" (Flotzinger, 1992)

"However, this basic fundamental business right is not necessarily understood, appreciated or welcomed to the same extent throughout the world nor is it necessarily protected under constitutional law" (WFA, n.d.b, p. 1). As this quote demonstrates, while the advertising industry believes firmly that advertising restrictions would trample the rights of both advertisers and consumers, its supporters fear that the rest of the EU may not appreciate its benefits. In fact, Sir Brittan said as much in his 1991 speech.

> It is a mistake to believe that all regulation is avoidable – that's not the case at the national level. It is tempting to suggest that if a product is legally put on the market, then there should be no restrictions on advertising for it. That

> high ground is unsustainable, however, for a number of reasons.... A ban on a product itself may be unenforceable and therefore self-defeating, while a ban on its promotion may be feasible. (Brittan, 1991)

The fear within the advertising industry is that rather than controlling questionable products, the Commission will choose merely to limit commercial speech. In a memo to Richard Wade, Director General of Britain's Advertising Association, Lionel Stanbrook (personal communication, 1991) of the same organization explained, "European legislators have not accepted the 'freedom of speech' argument and may not do so until the consumer protection interest turns its own attention away from advertising as the promotional tool for the product of which it disapproves."

The industry worries that once the floodgate of advertising regulation has opened it may be difficult to control. The following excerpt from a WFA press release relates to an example of bans placed on advertising in Central and Latin American countries, but reflects the fears felt by many in Europe.

> Here as indeed in other regions advertising of certain products is blamed for a whole list of societal ills such as obesity, drunkedness, promiscuity, licentiousness, violence...or used to camouflage a deeper social malaise caused by unemployment, break-down in family values, morals and religious faith. But as Mr. Gonzales-Llorente [President of the Interamerican Society for the Freedom of Commercial Speech] rightly concludes, "...ultimately, the true reason lies in the ignorance about the real role of advertising in a free market, the absolute disdain the government feels for advertising and the state's excessive paternalism that assumes the consumer is weak and malleable, incapable of discernment and absolutely vulnerable to advertising claims. Given this 'myth,' then, it is necessary to control messages, censor them, especially when it comes to public health and safety." (WFA, n.d.b, pp. 1-2)

The comments of European advertising representatives undoubtedly sound quite familiar, as they are so much like the American discussion of advertising's role in society. Throughout the world, advertising critics blame the industry for many of society's woes, while supporters contend it is an integral part of a free market as well as the right of each individual. Although government interference with advertising is believed to burden the economy, create inefficiencies, and, in the end, harm consumers' freedom of choice, few advertising supporters would say there should be absolutely no restrictions on advertising. Many link freedom with responsibility but seem to assume advertising is a necessary freedom. Michel Reinarz (1996), Chairman of the EASLG, explained in an EASA press conference that "Advertisers have the responsibility to use their freedom to market products and to advertise them by providing responsible commercial communications." As reported in the *Alliance Update*, Chairman of the Irish SRO and member of EASA, Pat Rabbitte, explained, "Advertising knows no boundaries, particularly with the growth of new media, satellite TV, etc. It is important, therefore, that cross-border advertising should be properly regulated" ("The Alliance in Ireland," 1995, p. 5). Again, just as we have seen in the US and at the national level throughout Europe, members of the industry would rather police themselves. The same is certainly true of Europe-wide regulation of advertising. This leads to the second core topic found in the data.

Topic 2: Self-regulation

As mentioned above, earlier discussions of advertising self-regulation often began with a defense of advertising itself. While some emphasis remains on promoting the industry, discussions quickly turned to self-regulation's role in restricting bad

behavior and promoting the good. Participants are careful to explain that, in an effort to ensure the best practices in advertising and to ward off government intervention, the advertising industry has tried to establish guidelines for itself. Lucien Bouis (1995), Director of France's *BVP* and former EASA Chairman, stated:

> Specifically, advertising is required to be easily identifiable and to adhere scrupulously to the rules of fair and honest competition, without ever being misleading. In addition, advertising must demonstrate a sense of social responsibility by avoiding offence to either individual or collective sensibilities. (p. 2)

The data indicate that the European advertising industry believes strongly in self-regulation as the best way to ensure that advertising serves the EU and consumers. Comments like the following appeared regularly in the data.

"It is in the interests of advertisers, agencies, and media to police their own activities effectively and equitably, and to be seen to take swift action against those who ignore the principles of fair trading and advertising self-regulatory machinery" (Flotzinger, 1992).

"Basically, we are strong supporters of the idea of self-regulation because we think, first of all, it is the best and probably the only way of enforcing, officially, high standards in advertising" (S. Loerke, personal communication, November 26, 1998).

"Always remember – 'We believe self-regulation is best, and works best'" (EAT, n.d.a, p. 25).

Clearly, the industry places a great deal of confidence in self-regulation, but it is often expressed in the vague terms seen above. How is it that self-regulation is the "best?" What, more precisely, does self-regulation mean to representatives of the

advertising industry? Three related yet distinct themes emerged from the data. The industry promotes and defends self-regulation because it: protects free speech; stresses the economic benefits of best advertising practices; and wards off government regulation. While all three themes appeared in the data, one – avoidance of government regulation – proved most important to the industry and, in many respects, all other themes derive their meaning from this central concept.

Protecting Free Speech. As already discussed, one of the understandings held by representatives from the advertising industry is that advertising is a form of free speech. It comes as no surprise then that self-regulation is understood as a means of protecting advertisers' right to communicate. Ranson (personal communication, Nov. 26, 1998) listed freedom of commercial speech among the underpinnings of advertising self-regulation.

> Well freedom of commercial speech of course, country of origin, mutual recognition – these would be the very basics. And anything that's legal to sell should be legal to advertise. Of course, that was the big motto for tobacco. It's for tobacco. It's bound to be very useful for alcohol in the coming few years, and then toys and the rest, because you have a few things in the pipeline that are rather disturbing to say the least.

Also mentioned above in the discussion of advertising as a freedom, the advertising industry accepts that with freedom comes responsibility. Self-regulation allows the industry to show that it acts responsibly and, thereby protects its freedom to communicate. In summarizing EASA's activity in 1994, the *Alliance Update* reported, "The message from the 1994 activities remains that through self-regulation the advertising industry continues to demonstrate its concerns for the freedom of commercial

speech" ("Review of Alliance," 1995, p. 7). EAT Chairman Jacque Bille was quoted in the *Alliance Update* explaining, "'The advertising profession, while invoking the freedom of expression, is demonstrating its responsibility. For many years it has established the necessary self-regulatory mechanisms at both the national and European levels'" ("European Advertising Tripartite backs," 1995, p. 10).

The following quotes further demonstrate that in the minds of industry representatives, freedom entails responsibility, which equals self-regulation, which then ensures continued freedom. Self-regulation emerges as the best, really the only, natural corollary to advertising freedom.

> Advertisers have the responsibility to use their freedom to market products and to advertise them by providing responsible commercial communication. This is not only done by accepting a minimum legislative framework (as it now exists in the Broadcasting Directive and the Misleading Advertising Directive), but by reinforcing the advertiser's self-regulation principles and systems. (Reinarz, 1996)

"The underlying premise of all the codes is a basic right to the freedom of commercial speech exercised responsibly" (EASA, 1996b, p. 1).

"[Self-regulation] stems from the idea of freedom in society and moral values of the advertising industry, and the desire for freedom to advertise responsibly" (EAT, n.d.a, p 5).

Of course not all advertisers act responsibly and many may not see the eminent threat to their freedom that industry representatives see. Self-regulation, therefore, also offers one way of demonstrating to rogue companies that it's better to police themselves

than be restricted by others. As Florence Ranson (personal communication, Nov. 26, 1998), Secretary General of EAT, explained:

> You've always got the sort of, what we call the cowboys or free-riders who are obviously going to look for that kind of solution. But that's also the role of self-regulation. If you can guarantee that some of these companies subscribe to self-regulation ... if they agree and say they support the principles that have been agreed upon then that's a guarantee for the consumer and these people are not the ones who are going to go shopping around for a more lenient country or anything of that kind.

Self-regulation protects the basic rights of advertisers and, at the same time, benefits the public by promoting better advertising. As seen in the next theme, consumers are not the only ones to prosper from better advertising.

Best Practices. Beyond the free speech argument, the industry also believes that self-regulation is the best way to encourage responsible advertising without stifling its ability to contribute to a thriving economy. Participants believe in the power of self-regulation, in large part, because it involves all aspects of the advertising industry. Self-regulation is understood to be the only way to encourage best practices and ensure compliance from advertisers, agencies, and media. As a result, self-regulation improves consumer confidence in the advertising industry. In a speech given to the WFA World Congress, EASA Director General Gray explained how protection of free speech via self-regulation serves advertisers' interests by improving customer relations.

> The effectiveness and hence value of advertising as an economic tool are directly related to its standing in the eyes of the consumer. In order to fulfill its persuasive and informative task, advertising must enjoy a high level of consumer trust and confidence. If consumers are misled by advertising, they will not buy again; if offended, they are unlikely to buy in the first place. It is in the long-term

> interests of all those in the advertising industry, whether they be advertisers, advertising agencies, or the media, to ensure the protection of the freedom of commercial speech by upholding its probity. (Gray, 1997b)

As Gray's comments, and the ones to follow, demonstrate, the industry has a real economic stake in behaving responsibly. Consumer confidence in the industry contributes to a thriving economy, which then contributes to a greater volume of advertised products. Thus, advertisers have an economic incentive to restrict potentially harmful advertising.

"Properly applied, [self-regulation] provides a flexible and cost-effective means of ensuring that consumers are neither misled nor offended, while the industry benefits from high standards and thus the enhanced credibility of its advertising" (EASA, 1996a, p. 11).

> In a system of self-regulation the industry must prove to consumers and legislators that it is setting and meeting high standards. In such a climate there are fewer transgressions of the rules and every complaint, however minor, will be treated seriously. Participants are motivated by enlightened self-interest and rules that are read in the spirit as well as the letter result in a wider and deeper commitment to the highest standard. (Flotzinger, 1992)

"As well as these legions of contented consumers there is an industry which, through self imposed restraint, has seen the credibility of its advertising enhanced and media, in all its forms, continuing to flourish because it can sell space for advertising that will not jeopardize its own standing" (Ogden, 1996, p. 2).

"...the industry benefits from high standards and thus the enhanced credibility of its advertising" (EASA, 1996a, p. 11).

> We all must assume responsibility for best practice in commercial communications, to ensure that advertising really is responsible, i.e. legal, decent, honest, and truthful,

> respecting of the culture of each country, and to prevent opportunism by individuals from provoking national governments into legislation beyond a framework level. In this way we can ensure the confidence of consumers and governments alike in responsible commercial communications. (EASA, 1996b, p. 5)

The data also suggest that the industry is more likely to follow self-regulatory rules than standards established by a third party. "Self-regulation is self-imposed and is therefore participatory. It is designed by people knowledgeable about the business of publishing and advertising. Practitioners in advertising therefore respect the procedures and comply with the judgments of their peers" (Flotzinger, 1992). The WFA Managing-Director Bernhard Adriaensens (1997) wrote in the *Alliance Update*:

> These codes have one thing in common that is missing in law – they are elaborated by the very people who have to put them into practice, respect and apply them. In other words, by those who know the real constraints of their business activity. The fact that they are "voluntary" means they have a greater likelihood of being accepted and respected, in addition to being continually fine-tuned in a consensus-driven manner. (p. 2)

The industry recognizes that digressions in any EU country may undermine consumers' faith in self-regulation throughout Europe. In an effort to ensure that self-regulation continues to promote the best practice and bolster consumer confidence across the EU, EASA was formed. An article appearing in the April 1995 issue of *Alliance Update* explained, "A key issue was the need for the same level of commitment to the national self-regulatory system by the advertising industry in each country, as the smallest defect could call systems in other countries into question" ("First Alliance workshop," 1995, p. 1).

Gray, in an address to the WFA World Congress, further explained how a few "cowboys" could taint the entire industry:

> Self-regulatory bodies find themselves very much on the front line concerning consumer reaction to advertising.... We will judge self-regulation by its results.... However, there are still marketing personnel or creatives that are ready to risk the reputation of the industry in regulating itself in the interest of short term benefits. This is sometimes compounded by a less than close scrutiny by media representatives of ads, particularly where advertising space has been booked in advance. The result can be extremely costly to the rest of the industry in terms of attracting negative media and consumer reactions and eventually legislative proposals. (Gray, 1997b)

Gray also pointed to several particular problem areas, stating:

> There are still several European Union countries where major advertisers, agencies and media do not belong such as Spain, Portugal, and Greece. These tend to be also the countries which are generally criticised in terms of the profile and success of self-regulation. What does this mean for the self-regulatory systems involved? It means loss in credibility.... It leaves the system open to further criticism by consumers and government, i.e. threat of legislation. It opens the door to detailed legislation. (Gray, 1997b)

Director of Special Issues at EASA Geoffrey Draughn had this to add in a 1995 *Alliance Update*:

> Media which carry advertisements which clearly breach self-regulatory codes, like the small budget advertiser who succumbs to the publicity value of advertising calculated to shock and offend, as well as agency creatives who are concerned only with impressing their own peer group, all contribute to undermining the credibility of the industry's commitment to keeping its own house in order. The ultimate victims may be the vast majority of the advertising industry who do play by the rules, for if self-regulation should fail, there is little doubt that the whole advertising industry would be faced with an alternative which it would find most unattractive. (p. 2)

Beyond the purely financial repercussions, the advertising industry's freedom may depend on self-regulation's ability to establish the best practices. The European advertising industry, under the auspice of EAT, created EASA with the understanding that advertising's future depended on a well functioning self-regulatory system throughout Europe. EASA was created specifically to promote the ideals of self-regulation to other countries, the Commission, Parliament, and often the public. An important aspect of EASA's role is internal to the advertising industry, bringing together self-regulators and other representatives of the advertising business and educating them on the value of best practices. "The object of the Alliance shall be to study and promote best practice in advertising self-regulation" (EASA, 1996a, p. 23).

"The very fact that the Alliance exists and brings together on a regular basis national self-regulators, is evidence of the willingness of Alliance members to pursue a common goal.... They are thus bonded together in a common purpose to promote best practice ..." (EASA, 1996b, p. 2).

> We [EASA] find ourselves in the middle because self-regulation, by its very nature, to be efficient, it has to respond to the consumers' concerns. Of course we start getting 10,000 complaints about a particular problem, that's fed back into the system and you might see a rule appear on that because we say to the industry, "You seem to have a problem in this particular area." If you can't respond to the consumer, you actually lose the credibility of the self-regulatory system because the consumer will say it's got no teeth. It doesn't work. And they'll go back to the European Commission, the DG XXIV, and say, "Right, this system, we don't have any confidence in it. Therefore, we will legislate." (O. Gray, personal communication, Nov. 27, 1998)

If EASA and the rest of the industry fail, advertising will face highly restrictive laws. Industry representative appear to work in fear of additional advertising legislation supplanting self-regulation. This leads into the final and most important theme under the topic of adverting self-regulation.

Avoiding Legislation. All roads lead to Rome. As represented in Figure 5.1 (p. 70), for representatives of the European advertising industry, all roads potentially lead to government intervention. Thus their various understandings of self-regulation all lead to one major theme – advertising self-regulation is the preferred alternative to more European advertising laws. EAT's earliest statement of EASA's objectives explained that "the Alliance shall ... demonstrate that national self-regulation mechanisms are preferable to detailed European legislation" (EAT, 1991, p. 1). This was translated into Article 4.4 of the "EASA Articles of Association," which reads, "The objective of the Alliance shall be to demonstrate that self-regulation is more efficacious than detailed legislation as a means of regulating advertising" (EASA, 1996a, p. 23). The same view holds today. Loerke, in his interview (personal communication, November 26, 1998), stated, "... in the industry's view it sort of avoids regulation, which is the worst, which we don't want to see. And having a convincing track record in self-regulation would ideally protect us from having more restriction."

It comes as no surprise that the industry lives in fear of government regulation. After all, efforts to establish a system of international self-regulation were sparked by a threat from the Commission, telling the advertising industry to get its house in order or the Commission would step in and do so. In a memo following the first Corsendonk

meeting, Lionel Stanbrook (personal communication, October 29, 1991) of Britain's Advertising Association wrote:

> The Commission has challenged the advertising industry to elaborate a workable system of EC self-regulation, and the Corsendonk meeting is seen in many quarters as the forum which will generate the industry response. However, the Commission is not holding its breath.
>
> Recent Commission activity indicates that European legislation for advertising is increasingly being considered, both in terms of the completion of the internal market and of the mandate for measures to reinforce consumer protection and public health....
>
> On a salutary note, it is quite possible that what may appear to be effective self-regulation to industry will not necessarily appear so to the Commission. This is partly why so much importance should be attached to the nature of the industry's relationship with the EC institutions. (pp. 1-2).

The industry clearly disagrees with the Commission as to when regulation is appropriate. At the Forum Europe Conference, de Malherbe (1991) stated:

> With an imminent deadline of 1993, much time and unnecessary energy is being spent by busy Commission officials on minor legislation over matters which are best dealt with at a national, not a European, level. And dealt with generally by national self-regulation and not by law.... New legislation is only appropriate, if it can be clearly shown that there is a harm to alleviate or avoid.... Only if actual barriers to trade or to fair competition exist would any legislation be appropriate. We would ask the Commission to prove their case and consult industry before proposing what may well be unnecessary action.

Despite the progress made since 1991in handling cross-border disputes and establishing SROs throughout Europe, the industry still worries that the Commission will impose additional European laws on advertising practices and content. In a speech delivered to the Council of Europe meeting, Gray (1998) stated, "We are facing some of

the biggest challenges with regard to detailed legislative intervention at EU level and in some sectors, outright bans." A press release issued by WFA following its 44th World Congress stated, "One of the underlying themes of the...Congress (as indeed one of the Federation's major objectives) is the need to establish a sound, global self-regulatory system to stem the current wave of anti-advertising legislation in both the industrialized and developing nations of the world" (WFA, n.d.b, p. 1).

The industry sees itself as an easy target and often the scapegoat for bigger problems. Loerke gave the following example of the threat advertisers feel.

> Our mission globally is to defend the rights of advertisers, which is quite an ambitious mission. That is to say, to fight against restrictions and, as you know, advertising is an easy target, especially in our western world. It's an easy way for politicians to claim that they're doing things and to claim that they're protecting their voters or voters' children. And it doesn't ask a lot of imagination or a lot of work for passing advertising restrictions. A good example is Belgium where they haven't been able to reform police injustice for the last 30 or 40 years. And you had these terrible scandals 3 years ago [referring to child pornography scandals]. And now you have these organizations and politicians who pass restrictive laws on advertising to children to show that they are acting and doing things. It's very much this kind of problem we have in many countries. (S. Loerke, personal communication, November 26, 1998)

The industry's concerns that legislation looms on the horizon is not merely paranoia. As the EU moves ever closer to the completion of a Single Market, the need to destroy any barriers to trade becomes more pressing. EASA and the others have made great strides toward forming a cross-border dispute system, but members of the EU Commission wonder if the industry has done enough. As long as discrepancies in national

self-regulation exist, the potential for trade conflicts exist. At the Corsendonk II Conference, Heinz Zourek, deputy Director General of DG XV, again warned that:

> The EASA should ... show the Member States' regulatory authorities that self-regulation truly can be run according to the principles of the Internal Market. My message to you is therefore get self-regulation to be based on the principles of mutual recognition and let it set the example for other regulators of how a European regulatory framework for commercial communications should be. That is the challenge that the Green Paper set out for you.
>
> I know that some of you will be thinking that this is not enough and that you believe that self-regulation should be substituted for law. All I can say to you is that I do not believe you stand a chance in meeting your objective! Frankly, I feel that you are missing the point since for this to happen you would need to prove that all interested parties, including the general population at large, wanted this. (Zourek, 1997)

While Zourek believes the industry would like to eliminate advertising law, the data suggest that the industry recognizes how self-regulation works within the context of legislation. In a presentation given to the Council of Europe, Gray explained:

> It is widely accepted that self-regulation works best within a framework legislation. Self-regulation complements the law rather like the strings on a tennis racket. Neither of which can work effectively without the other. Some objectives are better achieved by legislation: laying down the basic principles, for example like the prohibition of misleading advertising. (Gray, 1998)

Still the industry continues to struggle to maintain self-regulation's place among European law and to convince others of its supremacy. As discussed under the theme of best practices, industry representatives truly believe in the power of advertising self-regulation. Their task now is to convince the European Commission, Council, and public

that self-regulation is more flexible and efficient than legislation. Comments like the following were common.

"Experience at the national level suggests that self-regulation is a more sensitive and effective instrument than detailed legislative controls" (EASA, 1996b, p. 3).

> Self-regulation in economic terms holds huge advantages for advertisers as it not only guarantees more certainty in the business by providing a code of practice which is determined by the business itself but also provides a means to tackle government and consumer concerns which otherwise would manifest themselves in law. Detailed law is inflexible and is interpreted to the letter....Self-regulation by being easily adaptable and flexible can be modified to take into account new trends or sudden events in society. (Gray, 1997b)

"In areas of detail, where legislation is often slow and unwieldy, self-regulatory systems are faster, flexible and readily adaptable to individual circumstance" (Gray, 1998).

> Basically we are strong supporters of the idea of self-regulation because we think, first of all, it is the best and probably the only way of enforcing, officially, high standards in advertising. And we have lots of cases where we can show that self-regulation is certainly by far the best way of enforcing these standards. Subjects and aspects like taste, decency, etc, are very difficult to put into law and to be judged by any judge. Secondly, things are moving so fast in our industry that the legislative process is certainly not the most appropriate way of fixing standards. It will always be 2, 3, 4 years late compared to the thing when they happen.... You can imagine how difficult it is to have coherence in the European approach on self-regulation. But basically, the industry, the advertisers, are very conscious that self-regulation is the way forward for us. (S. Loerke, personal communication, November 26, 1998)

"The fact that advertising campaigns last a very short time, often only a few days or weeks, means that in certain circumstances a fast track for handling complaints is needed" ("Responding rapidly," 1997, p. 8).

"Statutory control tends to be slow and difficult to alter, and is often ponderous in reacting to new developments and changing public attitudes. In contrast, a self-regulatory system can act swiftly to modify Codes or can respond by adjusting their interpretation" (Flotzinger, 1992).

Who benefits from a faster more efficient redress system? Consumers. Representatives point out that self-regulation better protects consumers by offering a quick, inexpensive alternative to lengthy court cases for advertising violations. The following quotes illustrate this point.

"Consumers often find legal processes to be daunting, expensive and inaccessible. An open and well-publicised self-regulatory system is much more approachable and therefore more successful; and it is almost always free of charge to the complainant" (Flotzinger, 1992).

"...it provides the consumer with a cost-free way to voice a complaint and have it taken up. This means less social cost for the state in supporting small claims and damages legal cases" (Gray, 1998).

"The system launched in late 1992 is based on the principle of a single jurisdiction – that of the self-regulatory body in the media's country of origin. It offers consumers equality of access and is cheaper, quicker, and more flexible than any comparable legal system could be" (McMahon, 1994, p. 4).

> There was wide agreement that Self Regulation was a more effective mechanism for informing and protecting the consumer than the Law. It was fast, flexible, inexpensive, and broad in its scope and was designed to be honoured in the spirit, as well as the letter.... It was felt strongly that individual consumers should have free and open access to Self Regulatory Complaints bodies... (EAT, 1991, p. 3)

"And finally, also for citizens which might feel hurt in certain cases, self-regulation provides free access to redress, whereas going through courts is a very expensive procedure and de facto excludes citizens' rights to redress in a way" (S. Loerke, personal communication, November 26, 1998).

Not only does the industry see self-regulation as faster, more efficient, and more flexible than legislation, self-regulation's superiority also rests in its ability to move the EU toward a Single Market and protect consumers from misleading and/or offensive advertising. The following quotes illustrate how the first two self-regulatory themes support the industry's primary understanding of self-regulation. Following the first Corsendonk meeting, Stanbrook (personal communication, October 29, 1991) noted, "Corsendonk must show that European self-regulation is necessary because it assists materially in the creation and maintenance of an area without frontiers and because it provides the consumer not only with wider choices but also with practical and efficient safeguards." Former EASA Chairman Lucien Bouis (1996) also explained how everyone wins with self-regulation, stating, "Self-regulation means the commitment of an entire economic chain to observe a number of 'do's and don'ts' based on respect for others, i.e. competitors, consumers, and clients" (p. 2).

The following quotes deal specifically with self-regulation's ability to facilitate and support the formation of a Single Market.

> Discussions with representatives of the European Parliament and European Commission endorsed the vital role of advertising and communication in the development of the Single Market, and the need for increased flexibility in all forms of commercial communication. Self-regulation can play a valuable part in increasing this flexibility" (EAT, n.d.b, p. 1)

"One cannot be half pregnant and preach free market economy while introducing state control which will take the freedom away again. Does not history serve as a lesson" (Reinarz, 1996, p. 7)?

"Bans and restrictions at European level can cause legalised restrictions on competition and the legalised stagnation or protection of markets. That is surely not desirable. Nor is the likelihood of widespread damage to the income and viability of the media caused by such legislation" (de Malherbe, 1991).

So if advertising self-regulation is better in almost every way than advertising law, why does the industry fear that the Commission may enact more legislation? First, it is important to remember that these data cover only the industry's understanding of advertising self-regulation within the EU. The Commission probably has a somewhat different understanding. In fact, some of the quotes presented thus far show that members of the Commission have concerns about advertising's ability to regulate itself and move the EU forward in its journey toward unification. The Commission's primary concern seems to be the need for a uniform standard, whether legally or voluntarily enforced. The industry continually struggles to inform others, even some advertisers, of self-regulations benefits. Ranson explained:

> What we need really is more companies aware of the importance of self-regulation. The role of EASA in promoting self-regulation, the way I see it in any case, is

> more to act at the national level with its national organizations where the national organizations make national consumers and national governments aware of self-regulation and the redress possibilities and so on. (F. Ranson, personal communication, Nov. 26, 1998)

While Ranson suggests that advertising self-regulation must be promoted at the national level, one of its greatest threats currently exists at the European level. In order for advertising to effectively do all that the industry believes it can, self-regulation must place limits on undesirable activities without setting up barriers to free trade. Currently, each country establishes its own self-regulatory codes – a system that EASA, EAT, and the others generally support. The difficulty then arises in striking a balance between national standards and an open European system of advertising self-regulation. The advertising industry has come to see finding this equilibrium as a threat to its freedom to take care of itself. At work is a discrepancy between the industry's and the Commission's view of self-regulation's role in Europe. The Commission's aim with self-regulation is to open trade by eliminating regulatory differences; the industry's goal is to insulate itself.

Topic 3: Harmonization

The participants' understandings of advertising and advertising self-regulation presented thus far have remained fairly consistent throughout the data; that is, there has been no apparent evolution in the meanings ascribed to the above themes. The data, however, suggest that the meaning of harmonization has changed from the earliest days of European advertising self-regulation to the present. In the beginning, industry representatives considered standardization of national advertising self-regulatory codes as a viable option. Upon the formation of EASA, EAT stated "that consideration should be swiftly given to the possibility of a Set of European Advertising Guidelines, which would

contain Principles of Good Conduct for Advertisers, Media and Agencies ..." (EAT, 1991, p. 4). In fact, Article 4.3 of the "EASA Articles of Association" states "The objective of the Alliance shall be to consider the possibility and desirability of convergence of the present systems" (EASA, 1996a, p. 23).

Today the industry feels particularly threatened by the Commission's push to harmonize advertising standards, and the Commission has given the industry reason to worry. In recent years, it has raised questions about EASA's ability to ensure that self-regulators accept the principles of mutual recognition and country of origin. In fact, the Commission worries that nationally-based self-regulation may reinforce barriers to trade rather than erode them.

> At Corsendonk in February 1997, representatives of EC Directorate-General XV informed the advertising industry that national advertising self-regulatory systems, however efficient they might be (indeed, by implication, *the more efficient they were*), could constitute a barrier to the free movement of goods and services in the Single Market. (Gray, 1997a, p. 1).

DG XV Deputy Director General Zourek reportedly, "pointed out that an effective self-regulatory code which is not applied in conformity with the principles of the Internal Market and does not account for mutual recognition will act as a trade barrier – indeed 'it is part of the problem'" (EAT, n.d.a, p. 2).

EASA Director General Gray (1997a) explained that, "This represented a substantial shift of position from that of 1991-2, when the Alliance was set up, in response to Sir Leon Brittan's challenge and with the full support of DG XV, with the specific brief of *establishing and strengthening national self-regulatory systems* throughout the EU, as an alternative to detailed legislation" (p. 1). While the Commission

may have changed its position somewhat, it does not completely oppose advertising self-regulation; rather it simply wants to see a single standard that can be applied throughout Europe. Zourek stated in his Corsendonk II speech:

> The EASA should start this process immediately and show [illegible] States' regulatory authorities that self-[illegible]n be run according to the principles of [illegible]et. My message to you is therefore get [illegible] be based on the principles of mutual [illegible]et it set the example for other regulators of [illegible] regulatory framework for commercial [illegible] should be. That is the challenge that the [illegible]out for you. (Zourek, 1997)

[illegible]EASA did. In stating EASA's position on the question of [illegible]mmunication, EASA Director-General Gray (1997a)

> [illegible]hat convergence and harmonization of [illegible]s and rules have to be considered, in order [illegible]e extent to which they can be reconciled, in [illegible]he Single Market, with the need to preserve [illegible]advertising self-regulation and to maintain [illegible]lexibility: precisely those aspects which [illegible]ssential strength and advantage over detailed [illegible]1)

[illegible]lation with harmonization may appear at first glance to be a [illegible]EASA and its members can ward off legislative [illegible]n a set of self-regulatory codes that could apply to all [illegible]h has already shown that differences in self-regulatory codes [illegible]ior (EASA, 1997a). As represented in Figure 5.1, however, [illegible]ition and the questions it raises as a major threat to the [illegible]eedom to regulate itself. As reported in the *EASA Guide*:

> The European market offers real opportunities to the advertising industry, but increasing pressure for harmonization brings dangers too: notably the danger of restrictions on the freedom to advertise. Proposals for detailed legislation of the kind we have seen in the recent past could have a drastic effect on the everyday activities of people in all sectors of advertising. (EASA, 1996a, p. 11)

The industry worries that a single European self-regulatory code may pave the way for stricter Europe-wide laws on advertising. As reported by EAT following the 1997 Corsendonk conference:

> Patricia Mann, [from J. Walter Thompson in the UK], felt strongly that any "European Code" produced by the industry would soon be rubber-stamped by the Commission and become "soft law" over which we would have little control. Industry action must be "living and moving." This argument was accepted by the meeting. (EAT, n.d.a, p. 4)

In giving EASA's reaction to the Green Paper on Commercial Communication, Gray (1997a) also expressed concern that self-regulation could be replaced. He wrote:

> It seems much more likely that the undermining of national self-regulation would result in its replacement by precisely the kind of detailed Euro-legislation which the Alliance was created to prevent. Nor does the danger stop there: there is no reason to suppose that any legislative regime which might replace self-regulation would be content with re-establishing the *status quo*. There is every likelihood that it would go further – particularly since at that stage self-regulation would have been discredited and the industry would have little or no say in the matter – and the prospect of bans in such areas as advertising to children and alcohol advertising would be very real. (p. 6).

Gray made a similar point in his interview, stating, "And the Commission might at any point turn around and say, 'Right, you had your six years. You haven't done it. We're going to harmonize. And we're going to put this all into law'" (O. Gray, personal communication, Nov. 27, 1998).

The industry therefore must harmonize enough to convince the Commission that self-regulation does not erect barriers to trade, but not so much as to suggest that Europe-wide laws are feasible or desirable. Figure 5.1 shows that the industry's struggle to walk this precarious line emerged as three recurring themes. Representatives must find answers to the questions: 1) should harmonization occur among the actual advertising codes or merely the process of evaluating claims among European countries; 2) will harmonization result in the highest or lowest common denominator; and, 3) what effects might harmonized sectoral advertising codes have on the industry? Failure to address these issues may lead the Commission to harmonize with laws, thus undoing all of EASA, EAT, EAAA and WFA's work to date. As will be discussed under the final topic, cultural autonomy is often used as a first line of defense against complete harmonization.

Convergence of Principles and Practices v. Harmonized Codes. Perhaps the most difficult, yet most pressing, question facing the European advertising industry is to what extent it can expect to standardize European advertising. As quotes from the first few years of EASA's existence show, initially the industry considered the possibility of a single European code. That prospect may still be an option but, as discussed above, industry representatives tend to shy away from it now. Instead they, like the Commission, stress the need for, at the very least, mutual recognition among Member States. But how should the idea of mutual recognition translate into practice? As reported by EAT (n.d.a), following Corsendonk II:

> Noel MacMahon [representing ASA of Ireland] pointed out that a call for European guidelines was included in Corsendonk I, but never addressed because of the difficulties. He questioned whether the Commission is really calling for absolute mutual recognition, and asked

> whether a harmonised European Code, with convergence on principles and systems, would be better. (p. 12)

EASA seems to support the latter option. As Gray explained in his interview, the industry is pushing for a shift toward mutual recognition of each others' codes, which would mean that the codes themselves remain distinct, and a convergence on basic principles of operation. To emphasize this change in position, EASA has also tried to change the language of the discussion away from "harmonization" to "convergence."

> And we moved away from the word harmonization to the word convergence because, when the Alliance was set up, of course one of the things that people were worried about, my own members, was is the Alliance going to come along and dictate to everybody about how they should run their systems? And everybody runs their own individual systems. What we've seen over time is what we're trying to do is get them working together and understanding each others' systems. Then getting them to accept what we would call a convergence of basic principles of how they operate. Things like having an appeals process, the publication of decisions, looking at scientific evidence.
>
> I think after three or four years, I think people are now ready to discuss [convergence] because they know enough about each others' systems to have that common interest, to understand that they're not being told what to do but it's in their own interests to be similar, to have similar processes that there are in other countries....
>
> It's a slow task because you're getting everybody to work together and that's why, I think, convergence is a much nicer word....We're seeing the word harmonization come back in the last 3 or 4 months as the Commission finally met with a number of the Member States [that were] saying they're not too keen on the mutual recognition principle. And the Commission is getting worried and saying, "Right if you're not keen on that, we'll harmonize." And this is all politicking that's going on because harmonization is always used as a threat rather than as a useful goal. That's why it's sort of being bandied about now, as sort of threatening language, whereas convergence is not seen as a threat. Convergence is seen as a process that moves over several years that has a certain amount of

> negotiation and people are not locked into the convergence process. And ultimately it is to achieve some sort of form of uniformity. (O. Gray, personal communication, Nov. 27, 1998)

By convergence on key principles, the industry means that all countries' self-regulatory systems should be well-publicized, free of charge and easy for consumers to use, and results should be reported to the public. This idea of convergence on principles is also captured in "The Terms of Reference of EASA" printed in the *EASA Guide*, which states that EASA's role in coordinating European self-regulation is to, "work towards greater convergence of the key principles of existing systems, notably the consumer's right to make a complaint, have it investigated without charge and to be told the outcome" (EASA, 1996a, p. 17).

Gray also suggested that, in addition to common appeals and consumer complaint procedures, Europe might need a standard testing center. As he explained, the current system, by which each country has its own system for evaluating the validity of advertising claims, raises problems in cross-border advertising cases.

> Then we come to the point that you just raised at the beginning, which is between the operation and the codes....We did two or three different analyses. We actually took an analysis of food claims, of product claims and looked at what were the different rules in place and what were the different procedures for looking at scientific evidence. And we found that the procedures were very different in different countries.
>
> We found, for instance – in another pan-European case that dealt with anti-wrinkle cream – in France they will examine a claim in terms of can someone make a claim like this? Can someone actually say something is natural or can they say that this product will reduce the signs, will it actually make you look younger? But they won't actually go off and test it and look at the results. But what they will do instantly is say has this product been passed by the

> French government or the French national committee for medicines? If it's been passed then that's more or less the end of the story....
>
> Whereas, if you go to the UK, they have an independent scientific procedure and if they suspect that this cream – it said that it actually reduced aging – and what they requested was that the claim [say it] reduced or disguised the signs of aging, because if this was true everybody would be out there buying it to become younger. So the UK actually, initially refused the claim, or gave advice on how the claim could be changed. And they independently tested this thing.
>
> When the company went to Holland, ... they said, "The basis of what you're saying, we can't accept this claim." The company turned around and said, "Right, you can't accept it. We're taking you to court because we've run it in France." The Dutch actually won the case because the Brits also had refused the claim. And the Dutch could say, "It's right for us to say for public health reasons that we don't think the claim has been substantiated."
>
> However, you're coming back to the advertiser's argument. If it's alright in France, it should be alright in any other country. So that brings you to what is the new level of protection or scientific proof that you should have there. We don't have an FDA in Europe. So I think on claims things, one of the biggest problems we've got is we don't have a central testing center. Because I think if we did we could say everybody send it there and if it's passed by this one, if it's substantiated there then it is alright. (O. Gray, personal communication, Nov. 27, 1998)

The following quotes further demonstrate the push toward convergence on practices and principles but not actual codes.

> I know that today we don't want ... we are thinking about this European Gold Standard Code which would be *de facto* harmonizing but I think there are many arguments against it. And before we go that far we would think twice. And I don't think we would do it. And there is this harmonizing of the approaches of the self-regulatory bodies which is a good thing. I don't think we would have, I don't think we would want anything merged and run on a pan-European basis. That would make us much too vulnerable

> to European regulators. (S. Loerke, personal communication, November 26, 1998)
>
> But that was one of the things that were discussed, having a worldwide system of complaints. And we're going to have to get to that level at some point because if we haven't had to for the moment with simple advertising complaints we're going to have to do it with Internet.... Yeah, yeah. If there is going to be any standardization it probably is going to be on that rather than on the codes, as far as I can see. I would agree with them [Gray and Carlson] on that. I think....Sort of a *modus operendi* that people would adopt between SROs, particularly if they're coordinated at a European level or worldwide level, which would be even still a bit of a dream at the moment. (F. Ranson, personal communication, Nov. 26. 1998)
>
> The control by self-regulation obviously draws on national customs and the traditions of a society. Some countries have a much more established tradition of self-regulation than others. We cannot therefore expect a convergence of the way in which self-regulation works to occur over-night, but in some cases, where new issues arise, for example environmental claims, a set of general guidelines could be developed at the European level through meetings of the national self-regulatory bodies in the industry. (de Malherbe, 1991)
>
> Despite differences in national self-regulatory systems, the Alliance is encouraging its members to consider the common principles and practices which are shared by self-regulatory systems in every country. A statement of these principles is not intended to be a "European Code" or a basis for regulation, which would be inappropriate, as the rules which Alliance members apply are drawn up by the advertising industry. It is, rather, a means of demonstrating the common ground between Alliance members. (EASA, 1996b, p. 2)

The data suggest that the industry accepts that the current system may not be sufficient and that greater convergence may be inevitable. Still several participants in the Corsendonk II seminar stressed the need to move slowly and avoid making any promises.

"Matti Alderson [of Britain's ASA] said that producing 'guidelines' is relatively easy, but the mechanism for applying them is the real test. She favoured moving one step at a time, not jumping to a European code" (EAT, n.d.a, p. 13).

At Corsendonk II it was decided that EAT needed an action plan.

> It was agreed that a 3 stage approach was necessary.
> 1. A task force will examine national codes, looking for commonalities and discrepancies, producing definitions and ideas for improvements in the "architecture."
> 2. They will report back to EAT/EASA with their recommendations – and any proposed new rules must be examines for proportionality.
> 3. Following discussion in EAT/EASA, we **may** move to convergence for a few rules, but this is not certain and we must take one step at a time, and not announce that we **are** moving to convergence. (EAT, n.d.a, p. 13)

As reported by EAT, Chairman Bille concluded at the end of the meeting that "The direction in which European self-regulation is moving will be 'convergence' but we cannot yet predict how far and how fast we shall move" (EAT, n.d.a, p. 18).

While these industry representatives stressed the need for caution, others pointed out that, given the widespread acceptance of the ICC codes as the starting point for all Member States' codes, the industry already has come a long way toward agreeing on a basic set of principles. When asked to discuss harmonization of self-regulation, Ranson replied:

> That's a delicate question because, because, [long pause] the thing that I've been hearing since I've been here, be it from advertisers or agencies is that we don't want harmonized codes. And it's true that in a lot of cases, what's decent in one country is not decent in another and so on. I mean, you have such cultural differences between countries which sometimes are neighbors that there are things that you just can't do in one country that you can get

> away with next door. So there's a big stress on non-harmonization of the codes.
>
> This being said, if you look in detail at what exists – and we did it in a few cases that we had, like last winter we worked on car advertising, I'm sure Oliver [Gray] explained that to you too – it's true that the basis of the codes is in any case harmonized because it's the ICC code and everybody obeys the ICC codes. Everybody follows those as the basic rule. And then you have the countries where they have a few more rules and the countries where they simply stick to the ICC rules. But when you go into details of those extra rules that some countries have there are very few differences. (F. Ranson, personal communication, Nov. 26, 1998)

The following excerpts also stress the importance of the ICC codes.

> How much more natural and effective is the process of gradual harmonisation of the principles of self-regulation which is already under way, thanks to the European Advertising Standards Alliance?... A new process of convergence has begun, along similar lines to the one 50 years ago, when contributions from many countries enabled the International Chamber of Commerce to formulate the code whose principles have subsequently inspired all self-regulatory systems. Perhaps this could be a good omen. (Cortopassi, 1995, p. 2)

> You could imagine taking the ICC code and calling it the European Advertising and Children – I don't know what – charter, signaling that this is the founding idea of the different codes that are in place in the different Member States. And so it would be a kind of directive which then has to be implemented in the different Member States but at least to have this text and call it European to raise much more of a profile. It's really a discussion that we have today.... (S. Loerke, personal communication, November 26, 1998)

EASA Chairman Ogden went so far as to say that the harmonized principles already exist. The industry need only publicize the effectiveness of the existing system.

> If a genuine Single Market is to be achieved there will inevitably have to be levelling up or a levelling down,

> legislation of de-regulation, to achieve an equality of trading opportunity. Already, Alliance members have common principles which apply to advertising standards and it is up to us to prove these, to demonstrate that they work and to stand up for what, over many years, we have collectively achieved. (Ogden, 1996, p. 2)

As the data illustrate, the question of what to harmonize remains open for debate, however, the industry clearly does not want a single pan-European code, which it fears could easily become law. Instead, the industry struggles to refine the current system of cross-border disputes whereby each country retains the freedom to adapt its codes as long as they function based on a standard set of principles such as the ICC code. In the existing system, the standards of the country of origin for the media are applied and EASA acts as the liaison between SROs. This appears to work well now but, as globalized media continue to flourish and Internet advertising increases, new problems are likely to arise. With new media, the country of origin will become more difficult to pinpoint. And as cross-border advertising increases, the likelihood of offending consumers in other countries also increases. This leads to the second theme under the topic of harmonization.

Highest v. Lowest Common Denominator. Will countries always be willing to accept the standards of their neighbors? For mutual recognition to work properly, all EU countries would have to, otherwise the industry is back to looking at harmonization. And even if it does harmonize the codes, whose standards would apply? Following Corsendonk I, Stanbrook (personal communication, October 29, 1991) explained:

> The alternative structure for European self-regulation lies in the adoption of a common code or set of codes for all advertising throughout the EC. Once a matrix is established of all the codes and laws in the Member States, a decision

> will have to be taken in principle as to whether the harmonised codes would be based on minimum or maximum requirements.

Whether the industry opts to standardize the codes or merely the practices, the problem of the level of harmonization must be addressed. Gray explained:

> But here you have the problem of are you going to accept a minimum, you know, a lower level of monitoring and control in one country in the interest of a Single Market? And therein lies the crux of this whole problem is you've got the current communications industry saying, "Yes, we want a single market for economic interests." DG XV is driving this. Therein they're talking about harmonization. Then they talked about convergence because we said that convergence was the word to use.
>
> Then you've also got DG XXIV looking out for the interest of the consumer, giving people equal redress. They're looking for equal redress for consumers in their own countries, and equal redress in the countries that they're getting the advertisements from.... And they want harmonization for redress systems. And to me these are two different types of, when you talk about harmonization you're talking at different levels. And we find ourselves in the middle because self-regulation, by its very nature, to be efficient, it has to respond to consumer concerns, the complaints we get. (O. Gray, personal communication, Nov. 27, 1998)

Zourek (1997) asked the same question of EASA at the second Corsendonk meeting.

> Would a UK self-regulatory authority be prepared to allow advertising compatible with the laws and codes of another Member State, say France, to be undertaken in the UK through cross-border service contracts, without that advertising being subjected to the British code? Note first of all that I am not implying that the British self-regulatory authority would be stripped of all involvement with cross-border advertisements. If such cross-border advertising led to complaints, these would be routed to the relevant British self-regulatory body. However, rather than applying its codes it would pass the complaint, presumably through the

> EASA, to the *BVP* in France who would decide on whether or not the complaint should be upheld according to the French codes As I understand it, the EASA has already established this system but the question I pose to you is that as cross-border communications services increase will there be areas where the British self-regulatory body would judge that the level of French protection was insufficient, and would refuse to apply this procedure or vice versa? (p. 38)

As Gray explained, the industry and European Commission are currently considering two options for harmonization and mutual recognition. The industry can maintain the system as it currently exists, which he argues would likely lead to harmonization at the highest level.

> When considering harmonisation, it is worth remembering that in countries where there is a high level of consumer protection regulation, it may safely be assumed to exist in response to popular demand. Public – and consequently political – opinion is unlikely to accept any significant diminution of such regulation. It must follow that any harmonisation that may occur is likely to be *upwards*, i.e. to the *highest* existing level, rather than downwards to the lowest. (Gray, 1997a, p. 3)

Or the industry could go to what is called a one-stop-shop approach, whereby the standards of the country of first publication would be applied throughout Europe. Gray argued that the second option would lead to the lowest common denominator in consumer protection.

> Firstly, it effectively enables the advertiser – *any* advertiser – to select the regulatory regime with which his advertising should comply. While responsible advertisers might choose to comply with the highest regulatory requirement, thus observing the spirit as well as the letter of self-regulation, less scrupulous advertisers would be likely to seek out countries with the lowest standard of regulation, or countries where certain rules or practices did not exist; having first published his advertisement in such a country, the less scrupulous advertiser would then be at liberty to

> use it in other countries, where it might offend or mislead consumers, make unjustifiable claims or otherwise unfairly disadvantage competitors who *were* obliged to comply with more rigorous national rules.
>
> This would not be the end of the problem. Even responsible advertisers would not tolerate for long a situation where less scrupulous competitors were obtaining an unfair advantage by means of the advertising equivalent of the maritime "flag of convenience:" they would have no option but to follow suit and consequently the worst practice, rather than the best, would be promoted throughout the EU. (Gray, 1997a, p. 4)

The same point appeared in EASA's response to the Green Paper.

> A situation where national regulation found itself powerless to act against an advertisement, even in the face of evidence of widespread misleadingness or grave offence, simply because the advertisement in question had previously been used in another Member State, where it was neither misleading nor offensive, would ignore the requirements of consumer protection and, ultimately, could lead to a "lowest common denominator" system, promoting not the best practice, but the worst. (EASA, 1996b, p. 3)

According to Ranson, Gray is overly optimistic about the effectiveness of the current system in raising standards. She argues that any harmonization is likely to bring about the lowest common advertising standards.

> I can't imagine that because anything that has been harmonized particularly at the level of European law and legislation has, most of the time, been harmonized at the lowest common denominator. And it's logical. You can't force people, you can't force countries that are, let's say, discovering self-regulation or that haven't been applying it for very long, you can't expect them to be all of sudden adopting the kind of regulation that exists in other countries where it is much tougher. I mean you can't expect say Portugal to go to the level of consumer protection of Sweden overnight so I really can't imagine that it would be like that. (F. Ranson, personal communication, Nov. 26, 1998)

At the same time, she finds it hard to imagine that some countries would be willing to accept lower standards.

> But at the same time I really think that they would probably keep, okay if they harmonized, they would harmonize at the lowest common denominator which more or less is what exists anyway. And then maybe they would add one or two measures to make it slightly stricter. But really I can't imagine that they would make, that they would be very diminutive, you know. And then that would be it. And at the same time they would have to allow for stricter measures to be taken within certain countries, which is the system that exists, you know. I mean if you want full harmonization because they're not going to go for the toughest of them all so if they go for the lowest common denominator that means, as you said, that the countries where consumer protection is higher would have to drop to what exists. That just wouldn't happen. (F. Ranson, personal communication, Nov. 26, 1998)

Determining the level at which to harmonize appears to be a lose-lose situation. If the industry accepts the lowest common denominator, countries like Britain and France that have very high standards are likely to revolt. A system that tries to enforce the highest standards, however, seems equally unlikely. As already seen in the De Agostini case, laws enacted to protect children in some countries are seen as barriers to trade by other Member States. The same is likely to be true of self-regulatory codes. The industry fears that its inability to resolve this dilemma may encourage the Commission to step in and devise additional European advertising laws, thus doing away with industry self-regulation.

Fearing that SROs have failed to deal with the difficulty of harmonization, some industries are taking matters into their own hands. Many sector groups have tried to establish self-regulatory codes for their products' advertising (similar to the American

Distilled Spirits Council's voluntary ban on television advertising of liquor). Rather than relying on each country to set standards, these sectors would determine what advertising practices are acceptable for their products throughout the EU. The impact of sectoral self-regulation represents the third recurring theme within the topic of harmonization.

Sectoral Codes. Much like the US, the EU struggles with the regulation of tobacco advertising. As reported in a December 1995 issue of the *Alliance Update*:

> The EU Health Council discussed the Commission's proposal to impose a complete ban on **tobacco advertising**. The Spanish Presidency of the Council drafted a compromise proposal including a ban on radio advertising and cross-border advertising. No agreement was reached, with four countries opposing the ban. The Commission is now counting on the Italian Presidency in 1996 to find a solution. ("EU regulatory brief," 1995a, p. 15)

A final decision, reached in 1998, was to ban tobacco advertising as of 2006. Similarly, the Commission continues to consider limits to be placed on alcohol advertising and labeling. Loerke counted issues relating to tobacco and alcohol advertising as important questions facing WFA.

> In terms of restrictions, you've heard this decision on tobacco with the final ban which will take place in 2006. You have restrictions on alcohol and children. And there were discussions on an automotive voluntary code. So there are many sectoral aspects of advertising that are discussed also. There are plenty of things to do. (S. Loerke, personal communication, November 26, 1998)

A briefing issued in June 1991 by EAT detailed the goals for the newly formed EASA. One of these aims was "to examine the need for, the development of, and where necessary encourage, sectoral codes throughout Europe" (EAT, 1991, p. 1). No further explanation is given but it appears that EAT believed sectoral codes might contribute to a

Europe-wide self-regulatory scheme. In fact, the briefing states "The Alliance may invite, on an ad hoc basis, representatives of sectoral self-regulation ... to attend meetings and participate in its work" (p. 2).

Despite its willingness to accept, and possibly encourage, sectoral self-regulation, the advertising industry, even at the earliest stages, feared that sectoral efforts might reflect poorly on the entire system. In a memo discussing the first Corsendonk conference, Stanbrook (personal communication, October 29, 1991) wrote:

> Corsendonk has to take an important strategic decision which will affect the whole character of the representation of the advertising interest with regard to the EC. At present, the industry largely reacts to legislative developments. Sectoral battles are fought and grand principles are declaimed, but there has been little to show in terms of proactive initiative. (p. 1)

A post-Corsendonk memo issued by Richard Wade on behalf of EAT Chairman Flotzinger explained, that while voluntary sectoral codes may be acceptable, the industry strictly opposes sectoral laws.

> There was a clearly stated view that advertising in Europe was of a high standard of practice and probity; served consumers well, and was readily responsive to criticism of the misdemeanours of a small minority; that advertising was a vital element in the Single Market and that detailed sectoral legislation was, in general, unnecessary and unwelcome. (R. Wade, personal communication, n.d.)

As already discussed, the advertising industry fears additional Europe-wide laws on advertising content. The data suggest that the advertising industry's understanding of sectoral codes has evolved. Whereas the industry was receptive to codes in the early 1990s, it currently are sees them as a first step that may lead to stricter advertising legislation. Like all harmonization of codes, the industry fears that the Commission might

decide to put sectoral self-regulation into law. If that works, the next logical step would be to regulate all advertising. For this reason, the data indicate a shift away from supporting sectoral codes on advertising. Ranson gave the example of current discussions about codes for car advertising.

> Among some of our members, or some members of members [probably WFA members], there is a tendency to wish to harmonize codes by sector more than as a general rule. Some would like to have sectoral codes. For instance, you'd have codes on car advertising that would be similar.... Say the car industry would like to have throughout Europe a certain number of points in a code that would be the European code on car advertising. The car manufacturers would not necessarily be against that.
>
> That was the Commission's wish, or at least the transport department in the Commission, and that was what they were hoping for which the [advertising] industry said "definitely a big no-no. We're not doing that because it would create a precedent." But the alcohol industry is looking into the same thing. And several sectors are. So I'm wondering – but that's a personal question, I haven't discussed it with anybody yet – but I'm wondering if we're not going to have, eventually, to come to terms with some sort of harmonization of codes in order to avoid having 100 sectoral codes. I don't know. It's a possibility. I really don't know.... It's not in the pipeline for the moment because it doesn't correspond to the big principles that all of us have been defending but it is a possibility. (F. Ranson, personal communication, Nov. 26, 1998)

When asked who supports the idea of coordinating advertising codes, Ranson (personal communication, Nov. 26, 1998) explained, "As I said, it wouldn't really be an organization. It would be more industry sectors, but not the advertising industry but sort of alcohol producers, or car manufacturers. It would be coming, probably, from them rather than anyone in the advertising industry."

Gray, in discussing recent efforts to coordinate alcohol self-regulation, also expressed concerns for what such measures might mean for all of advertising self-regulation.

> When it comes to European rules, again, I'll quote to you an example. Recently, I was asked by the alcohol industry to attend a number of meetings in which the European alcohol industry has gotten together. There was a group called the Amsterdam Group, which are the main alcohol manufacturers, people like Heineken, Guinness, so on. And they had established a set of guidelines on commercial communications a while back. But it's mainly to do with the brewing part of the alcohol industry. And the alcohol industry is very divided. You have the spirit manufacturers. You have the cider people. You have the champagne people. You have the wine. They all have different rules and different approaches.
>
> Well they've had another second go because of the threat of – tobacco went down – they see the threat coming. So they actually got together and decided that they wanted maybe a set of pan-European guidelines. And as I mentioned the last time, it suddenly appears in front of us and somebody says, "Right the Alliance, you can apply these. And we want to set up a special department in the Alliance." and so on and so on. And there we were brought in because we were experts in the way that the codes were applied. I was asked to be there because I know – there are probably one or two people at the same level who would know – about the different regulations or self-regulation across.
>
> At that point I could advise them, "Hang on. What you're doing here, it's important for your sector. Yes, you want to do it quickly." But I actually had to say to them the ramifications for industry policy on advertising, commercial communications is considerably large from just this very simple action that they were thinking about doing. Because if you say that you can put in a pan-European code for alcohol which is supervised by some sort of European body, then it undermines all the arguments being used over the many years not to have pan-European codes in other sectors. And as soon as you do this for alcohol, then the Commission will turn around and ask for it in all the other

> sectors. And we would have a radical change of approach and policy.
>
> So my role there was, I actually alerted the rest of the advertising industry to this development. And I advised, off the record, very strongly to the alcohol people, that they should work through the national groups. Because they were trying to devise new self-regulatory structures and I didn't really see the necessity for it. (O. Gray, personal communication, Nov. 27. 1998)

Gray was careful to point out that advertising self-regulation is meant to protect the consumer's best interest. As the following quote explains, he fears that sectoral codes might be a way for sectors to set more lenient standards for themselves.

> There are a number of particular sectors as well that have been going to the Commission and asking for a single set of rules. That would be the toy industry. They say that they want the same rules across Europe and they don't care how it happens. Now this is where, a bit like the alcohol people, when we put self-regulatory rules in place at the national level, we always say that the process must be independent of any particular interest or sector. Because as soon as you have a particular sector or interest taking an overriding control of the process you will then start to get strange things happening with the rules.
>
> ... Because, as I mentioned just a few minutes ago, at the end of the day, what is it that we're trying to achieve? Are we trying to achieve better practice and good advertising self-regulation or is it, as we dare to sort of contemplate, is it that certain advertisers just don't want any rules at all? And they basically want either a chaotic marketplace or one in which they just exploit the loopholes. The real reason why they want to talk about harmonization and having a single set of rules is actually to give them great advantages in getting around particular rules which for them are restrictive because they actually do protect the consumer in the market. (O. Gray, personal communication, Nov. 27, 1998)

Of course, like the actions of other "cowboy" advertisers, more lenient codes set by the sectors could undermine consumer confidence in the entire self-regulatory system and

possibly lead to government intervention. This is just one more reason that the industry now discourages efforts to set sectoral codes for all of Europe.

The three themes presented above represent a common threat to advertising self-regulation, the potential that self-regulation could be replaced by legislation. While the industry understands the need for coordination and cooperation among Member States, it is defensive of how far it should go in solving problems that exist in all areas of the EU. As industry representatives are quick to point out any restrictions placed on trade practices potentially result in trade barriers. In fact, they argue, the greatest obstacles to a Single Market come from laws not self-regulation. One participant in Corsendonk II reportedly "asked [Zourek] to understand that, while the industry may be able to harmonize self-regulation, it is statutory and regulatory barriers that pose the real problem, and prevent single campaigns across Europe" (EAT, n.d.a, p. 2). In a letter to European Commission President Jacques Santer, Gray wrote, "In its various submissions on the Green Paper, the Alliance has always emphasized its belief that the most serious and intractable barriers to the Single Market stem from legal rather than self-regulatory differences between the Member States and, in particular, from national bans on the advertising of product categories" (O. Gray, personal communication, June 13, 1997). The advertising industry, thus, feels pressured by the Commission to solve problems that the Commission has been unable to remedy. And if the industry fails, it will be punished with stricter legislation on all European advertising.

Topic 4: Cultural Autonomy

As a defense, the industry often argues that harmonization would erode cultural differences among Member States. Beginning with Corsendonk I, the industry has

stressed the importance of recognizing cultural differences. In the "Terms of Reference for the European Advertising Standards Alliance," EAT wrote, "The promotion of advertising self-regulation shall be carried out mindful of the differences of national cultures and commercial practice" (1991, p. 1). Representatives of the advertising industry understand cultural autonomy as each country's freedom to adapt its self-regulatory system to serve cultural values and traditions. While members of the industry may truly believe in the importance of such diversity, it is also a convenient shield.

Cultural Autonomy as Freedom to Adapt Codes. This first theme under the topic of cultural autonomy could be recast as a fourth understanding of self-regulation – self-regulation means protecting cultural diversity. The data suggest that many industry representatives think of cultural autonomy, as it relates to self-regulation, almost the same way they think of free speech. However, in placing cultural autonomy under the heading of self-regulation, the second cultural theme would lose much of its meaning as a defense mechanism. Over the years, cultural autonomy has come to mean the ability of Member States to adapt their self-regulatory codes to meet individual tastes and customs.

As previously discussed, the industry believes that harmonizing advertising codes would be too difficult and dangerous. Long-standing and well-guarded cultural diversity among Member States is one of the toughest obstacles to harmonization. Gray explained:

> There I'm talking just about claims but if you're talking about taste and decency, it's considerably different because what can offend a UK consumer may not at all offend a Greek consumer. And therein I think the European Commission and any other people who think you can make a European rule for that, what people think is religiously acceptable and not acceptable, it's very nuanced....

> But if you're talking about taste and decency, there are general principles that you have. You mustn't discriminate and so on. But I think it's very difficult to tell a country that you cannot portray an image of a naked man or a naked woman, if in that country it's found to be perfectly acceptable in their national culture, or, for instance, that every religious community has the right to advertise. Well in France, no religious or philosophical group is allowed to advertise and it's as a result of an affair concerning racism rather than religion....
>
> My advice, if I were in the European Commission, I would be very hesitant to start messing with that type of thing, especially when you saw what happened with the Maastricht Treaty. It's one thing to go for things like a single currency. It's another thing when you start to go for things like people's actual beliefs. And so on. Apart from anything that's so generic. Then it wouldn't be worthwhile going through that whole debate. (O. Gray, personal communication, Nov. 27, 1998)

The same point was made in EASA's response to the Green Paper on Commercial Communication.

> Advertising remains heavily influenced by the cultural, economic, and social conditions of each country. This is because consumers themselves value these differences in their habits, tastes and customs. While some pan-European campaigns exist, there is no single "Euro-consumer" and the vast majority of advertising campaigns are carefully targeted to take account for national differences in consumer tastes. For these reasons, advertising self-regulation takes a different form in each country. (EASA, 1996b, p. 1)

While it may be difficult to harmonize codes, the industry, at the behest of the Commission, is struggling to set some level of standardization that is adaptable to national preferences.

> ...although we are facing a globalisation in information technology and marketing communications, each country and even communities within that country have their own particular tastes, likes and mindset based on cultural,

> historical, religious and other considerations. These cannot and should not be overlooked when it comes to advertising.... And the only way to regulate decent marketing practice is through a common set of self-regulatory codes that can be easily adapted to suit the various communities. (WFA, n.d.b, p. 3)

Again, the industry looks to the ICC codes to provide the basic principles as a harmonized foundation. As Ranson and Loerke stressed, there is sufficient evidence that the ICC codes can be adapted to meet the specific cultural needs of each country.

> Then the cultural differences are really obvious in the national codes that are added to the ICC codes, whether they're done by sectors or whether they're more general. And then the balancing has to be done at the country level. It cannot be done at the European level. I mean, who are we to say that the Greeks should do it like that or the Finns should do it like that. So that really is something that the whole industry has been asking for is a certain margin of, or a certain room for personal or national initiatives. And so far it's worked. Things like that really have to be done at the national level. (F. Ranson, personal communication, Nov. 26, 1998)

> ... the common source of inspiration is the ICC codes but you have very different texts. As even the source of inspiration is the same, the way they were drafted and linked to cultural traditions, history, whatever ... But we don't want to change the fact that self-regulation is managed at the national level because you have differing cultures in the way you implement these things. (S. Loerke, personal communication, November 26, 1998)

Gray also stressed that convergence on self-regulatory practices may solve a lot of advertising's problems without trampling on cultural diversity.

> Again, I think that ... you can't divorce discussions like this. It's a microcosm of the European Union discussions. I mean the European Union hasn't really gone beyond the economic side. Those are problems there. Once you start digging, you're then digging into issues that there have been 100s to 1000s of years of wars over, particular

> religious beliefs and so on. And it's not over night that you're going to solve that.
>
> Neither do you have ... establishing a rule that says people have to be tolerant of each other's beliefs is fine but establishing a rule that says that you can't use religious beliefs or you can runs you into problems. And that's where you've got to be very careful. And that's why we think, we say to ourselves, "Is it necessary to harmonize on that level?" It may be for the aspects of public health; you may need to say that the proof or the process that you need to go through has to stand this test, this test, and this test, which is sort of the bean picker process. But you may not want to say have a European directive on the portrayal of women.
>
> I mean I was alarmed at the events going on in European Parliament. We drew up a report and the assistant, who was very much behind this report said, "Alright we must tell people what they need to know." And if they'd gone ahead in the way they originally planned to do it, they would have banned all women from appearing in advertising, which I then reminded them would allow women to lose employment possibilities. And then you realize the stupidity of some of the measures that they were doing. And this is why it's so difficult to get into... should you be getting into some of these areas? Or should you just be saying advertising needs to be legal, decent, honest and truthful and make sure that it fits into a certain framework that they have in legislation? (O. Gray, personal communication, Nov. 27, 1998)

In the industry's view, the most important point related to cultural autonomy, and the one that appeared again and again in the data, is that self-regulation, through a nation-based system of mutual recognition, can work with differences rather than negate them. To maintain diversity, countries must have the freedom to modify advertising standards.

> Attitudes to advertising are highly subjective. What is offensive to one person may be perfectly acceptable to another. A system of self-regulation can be vigilant in safeguarding the views and needs of a minority while exercising a degree of common sense in the broad application of agreed guidelines. (Flotzinger, 1992)

"The control of self-regulation obviously draws on national customs and the traditions of a society.... Self-regulation can and does work and can be readily adapted to national cultures and traditions" (de Malherbe, 1991).

Speaking to an EASA board meeting, Richard Owen of Guinness Plc provided an advertiser's perspective. As reported in the *Alliance Update*, "Owen pointed out that advertising tended to be mainly at a local level and therefore self-regulation is more relevant to local culture" ("Alliance in Portugal," 1995, p. 3).

"[Its] inbuilt flexibility enables self-regulation to adapt closely, not only to developments in advertising, but also to changes in society; to the expectations, attitudes, and opinions of our fellow citizens" (Bouis, 1996, p. 2).

"The self-regulatory system, as seen by the advertising industry, respects European cultural differences..." (Reinarz, 1996, p. 7).

> The self-regulatory regimes vary according to consumer tastes and the requirements of the national advertising industry. In this respect we reflect currently subsidiarity and the rich diversity of culture in Europe. Consumers themselves seem to also hold this view, for example, the UK National Consumer Council submission to the Commission states that "industry self-regulation at a national level seems a good example of subsidiarity in action enabling appropriate and proportionate regulation which reflects cultural differences at both national and regional levels..." (Gray, 1997b, p. 9)

"Self-regulation in Europe has been shown to be a means by which the culture of each country is respected and safeguarded. It ensures together with the law that there is due respect to the different ethnic, language, customs, and religions which you may find in a country" (Gray, 1998, p. 5).

The volume of data on this theme, spanning from the earliest days of European advertising self-regulation to the present, shows that cultural diversity is and has been an important concern. For as much as the EU wants to develop a Single Market, individual Member States value and want to protect their individuality. The advertising industry has used the Commission's sensitivity to this issue to its advantage.

Cultural Autonomy as a Defense. Cultural autonomy provides a buffer between self-regulators and the Commission's threats of harmonization. As such it has become the first line of defense against additional European legislation. The following excerpts from the data demonstrate that industry representatives are quick to argue that self-regulation, more than legislation, protects diversity.

"We are proud of our cultural differences – languages, moral perceptions, habits and attitudes. European advertising over-regulation would deny those differences. Self-regulation, however, can better achieve the balance between European framework legislation and cultural differences on the national or even regional level" (Reinarz, 1996, p. 7).

> The great thing about Europe is its differences: this certainly distinguishes us from the USA. It is vital for Europe not to lose sight of this and to use its diversities in a positive way, to make Europe a strong economic, political, social and cultural power house in the next century. This means that we have to draw strength from our differences, not eliminate them. Detailed legislation on commercial communication would not only eliminate these differences but would necessarily reduce them to the most limiting common denominator. (EASA, 1997a, p. 7)

> There is wide cultural diversity in Europe and widely differing attitudes on such sensitive issues as taste and decency, the portrayal of women, depiction of minorities or what is considered appropriate for vulnerable

> groups. Deeply held attitudes on such matters are not easily changed and efforts to achieve uniformity across the European Union by legal measures are unlikely to be successful. It is important that account be taken of such considerations in any proposals for Community harmonisation in the area of commercial communications.... While endorsing the principle of mutual recognition, we must again point out that a homogenised "European consumer" does not yet exist. Until such a time as one does, rules relating to advertising content must continue to take cognizance of this fact. Even where several countries share a common rule, e.g. that advertisements should not mislead or cause offence, interpretations must, if the rules are to retain any real meaning, reflect national realities. (EASA, 1996b, p.2-3)

> ... the principle of subsidiarity can be seen as highly relevant to Europe, as it demonstrates that regulatory intervention at Community level, especially where it involves not just broad principles but detailed provisions, is not only less effective than national self-regulatory systems, but also creates problems by attempting to enforce conformity on nations with deeply-rooted differences of culture, tradition, and customs. (Cortopassi, 1995, p. 2)

"The sheer diversity of cultures and markets in the EC makes it virtually impossible to meet those criteria effectively by legislation on a Community-wide basis" (de Malherbe, 1991).

> We propose that in any case where the Commission considers harmonisation of regulation to be unavoidable, they should consider issuing not Directives, which require subsequent national legal statutes, but Recommendations, which Member States should follow in a manner appropriate to their national and cultural needs and which can thus be reviewed periodically and can be converted to legislation if necessary. (de Malherbe, 1991)

The industry apparently views legislation and cultural autonomy as mutually exclusive, whereas it believes self-regulation can work with and enhance diversity. But is

the advertising industry really concerned about the issue? One participant spoke candidly about the industry's real motivation in raising the red flag.

> I think there are cultural differences but I think they are overemphasized often. Perhaps this is a subjective view. I'm French and German and I've lived a lot abroad so I'm not perhaps the best person to ask. But my opinion is that these cultural differences will continue to exist but that they will be rather limited. In my experience – I spent 10 years in business in a company – my experience is that for major companies doing business within the European Union, in many cases it is just not an issue. There are companies for whom it is an issue but these companies are more of minority. These are companies selling products that have a strong cultural content, for example, food, financial services in certain aspects. I think that they will move closer, much closer.
>
> But I would never advocate today to abandon the national self-regulatory system. It has proved to work and so we should keep it and, by the way, even if the cultural diversity is diminishing or if there is kind of – the term harmonization is too strong – but if the cultural differences are diminishing, I'm not sure that even if there were no cultural differences I don't think that it would necessarily be a good idea to have one sort of supreme body somewhere in Brussels in charge of 300 million people....
>
> I think the traditional argument for keeping them, the cultural differences, is the easiest actually with European regulators because they are immediately listening when you say that.... Yeah, it's a hot thing and they had some strong messages at that last European elections and even from member states. It has been made very clear that there are limits to what the European Commission should deal with and what it should not. So normally when you tell them that there are cultural differences, etc. and you cannot harmonize and you give two or three examples of campaigns – like the Swedish are okay with naked women but if you show it to a Greek, there would be a major fuss, and there are some typical things – so you're argument is being made and understood.
>
> So it's, I have no problem using those arguments.... It is certainly in our interest, I think, to not change basically the way that self-regulation is organized at the national level because of subsidiarity and where it works why

> change?... It's very much the politically correct argument.... So it's a very useful argument for us. (S. Loerke, personal communication, November 26, 1998)

Though not as expressive on this point as Loerke, Gray made similar comments.

> It's so funny. If I were a Frenchman I might give you a different answer. I personally have a lot of opinions on that and I think formally we would say self-regulation isn't a means necessarily to protect cultural autonomy. We're responding, as I told you, to the economic interests and also to the views expressed by consumers....That's where self-regulation will use that argument. (O. Gray, personal communication, Nov. 27, 1998)

Advertising autonomy not cultural autonomy drives the industry's efforts to minimize harmonization. As will be discussed in the final chapter, both court decisions and cross-border self-regulatory judgements often are based on economic factors. Culture may be considered but when in conflict with advertising and market freedom, culture tends to lose.

Summary

In 1991 the European Commission issued a call to action for the European advertising industry and almost immediately the industry began work on a cross-border complaints system. Since then EASA has worked diligently to iron out issues resulting from international advertising disputes. At the end of the first seven years of operation, it and the other advertising organizations still struggle with the basic question, raised in the early years, of how much convergence can be expected across Europe. With government forces pushing for greater uniformity across Europe and individual countries working to maintain their cultural identities, advertising representatives must determine how much

uniformity is acceptable and when diversity stops being beneficial and simply becomes a trade barrier.

This study asked four research questions (pp. 43-44) in an effort to understand how advertising self-regulation might affect the Member States' cultural diversity. The literature suggests two very divergent views; self-regulation either supports or erodes cultural autonomy (Figure 2.1, p. 39). In answer to the first research question – how do participants define and conceive advertising self-regulation in Europe? – the findings presented in this chapter suggest that the advertising industry believes that self-regulation has the potential to do both. While harmonization of advertising codes runs counter to attempts to preserve cultural diversity, convergence on basic principles such as mutual recognition and media country-of-origin may enhance diversity by providing a uniform foundation that still allows countries the freedom to adapt their codes to serve individual cultural values. If the establishment of codes remains at the national level, advertising self-regulation can actually support and maintain cultural autonomy – more effectively, in fact, than legislation, which does not allow for such flexibility. In the view of industry representatives, over-regulation, whether through detailed legislation or over-harmonized self-regulation, will contribute to the destruction of cultural differences, while reasonable self-regulation based on convergence of basic principles will promote and ensure continued diversity. Self-regulation, therefore, can both protect and destroy cultural autonomy.

So in answer to the second research question – do the participants see a conflict between cultural preservation and standardization of advertising self-regulation? – the results indicate that industry representatives recognize the power of advertising and self-

regulation to impact culture, and they acknowledge the need to preserve diversity throughout the EU. Whereas convergence on basic principles and practices poses no threat to cultural autonomy, standardization of advertising codes stands at odds with Member States' efforts to maintain their unique cultures.

The data, however, also suggest that this is more an argument of convenience than conviction, thereby offering an answer to the third research question, does the industry feel that it has a responsibility to protect cultural autonomy? As Gray clearly stated in the final quote (p. 127), the industry is more concerned with economic factors and consumers' support of self-regulation than with preserving cultural values. Placing cultural autonomy in the larger framework of the industry's efforts to make meaning of harmonized self-regulation may give some indication of which way the struggle between culture and economic progress may go in the future. There can be little doubt, though, that the industry feels it has a responsibility to protect self-regulation above and beyond any responsibility to diversity of cultural values.

The participants believe that self-regulation has very definite advantages over European legislation, therefore all meanings center on the key concept that the advertising industry must be protected from legislation. The industry holds several interpretations of self-regulation, but undoubtedly the most important meaning is as a talisman against more legislation. From its perspective, good advertising is free advertising. Self-regulation allows the industry to showcase its ethicism and responsibility and thereby avoid additional legislation. Based on the existing literature (Boddewyn, 1992; Neelankavil and Stridsberg, 1980; Zanot, 1979; Stridsberg, 1974), it should come as no surprise that the industry looks to self-regulation to show government

and consumers that it can act responsibly and need not be regulated by laws. Because harmonization may lead to regulation, self-regulation must not be harmonized.

Unfortunately, the industry finds itself juggling the demands of government to regulate unwanted practices, but do so without restricting trade. Gray (personal communication, Nov. 27, 1998) explained, "... you then start getting into conflicts with competition law.... If it's just like the French saying, 'Right, all Internet advertising is wrong because it's not in the French language,' I think there's a difference there. You couldn't really use that justification and the French would love to." Again, the anti-trust literature outlining the American concern with anti-trust violations foreshadows the problem the European industry's current struggle to self-regulate without impeding competition or free trade (LaBarbera, 1981; Levin, 1967). If Europe follows the US's footsteps, it likely will end up with a limited system whereby self-regulators can offer suggestions but not truly regulate behavior (LaBarbera, 1981). The industry fears that, rather than a limited system, it will end up with no self-regulatory system, if the European Commission steps in with additional demands for European advertising laws.

The data suggest that cultural autonomy is the familiar and useful argument for protecting advertising's autonomy (see Figure 5.1). So, while some representatives may truly believe in the importance of cultural diversity, this study suggests that the culture argument is used more as a shield against advertising legislation than as a force shaping the evolution of European advertising self-regulation. The need to be sensitive to cultural diversity is written into EASA's "Articles of Association," but really only appears in the data where useful to counter the threat of harmonization. As previously discussed, harmonization, to the industry, means legislation. Thus cultural autonomy acts as a safe

zone around self-regulation. While the industry's rhetoric on the need for cultural sensitivity echoes Hamelink, Jhally and others' arguments, the extent to which the advertising industry actually will stand up for cultural autonomy in the future will be determined by its continued usefulness as a defense against Europe-wide regulation. As the following chapter demonstrates, the decisions made in cross-border advertising disputes to date, often show little concern for the preservation of culture.

CHAPTER SIX

ACTIONS NOT WORDS:

A LOOK AT CROSS-BORDER ADVERTISING CASES

In Chapter One, I argue that cultural synchronization can be doubly dangerous. The satellite country's culture may be displaced by harmful and inappropriate values, as seen in the Nestle baby formula example. Furthermore, the process of cultural synchronization favors capitalist values, which Jhally (1998) argues distort notions of self-fulfillment and happiness, leading to a society of disconnected individuals. These outcomes of cultural convergence give reason to be concerned about the EU Member States' maintenance of their cultural autonomy and to examine how the industry might influence that freedom. This study posited four questions (pp. 43-44), the answers of which might provide a better understanding of advertising self-regulation's relationship to cultural autonomy.

The previous chapter, in detailing the participants' understanding of advertising self-regulation, offers answers to some of these questions, but as discussed in the introduction to Chapter Five, the participants tend to think and talk about self-regulation in vague, conceptual terms. As will be explained in this chapter, the industry's understanding of how self-regulation functions and may impact culture does not always translate into its application of codes and handling of cross-border disputes. The answer to the fourth research question – what ideology, if any, do WFA, EASA, EAAA, and EAT promote? – requires a look beyond just the industry representatives' interpretations of advertising self-regulation to an examination of how European institutions currently resolves conflicts among cultures and whose cultural values tend to prevail. This

chapter's analysis goes deeper into the data and beyond just the industry's perspective to look at the European Court of Justice's judgments and individual SROs' decisions, thus, providing answers to the final research question based on a more contextualized understanding of advertising self-regulation as it relates to culture. This chapter will show how the application of advertising self-regulatory codes and European regulations: 1) often favors monetary concerns over cultural values; and 2) varies widely, such that some countries receive preferential treatment.

It also is important to consider how the use of cultural autonomy as a shield against additional European legislation may impact European culture. In lobbying for advertising self-regulation, the industry also pushes a particular ideology of consumption and free competition. In addition, EASA has led the way in forming new SROs in European, and Eastern European, countries previously without self-regulation. In doing so, EASA provides a model for how self-regulation should work and even a template for the kinds of things self-regulation should address. EASA and the other European advertising organizations, thus, act as promoters of one set of ideals, perhaps at the expense of others. Often this deeper analysis offers a counterpoint to how the industry representatives interpret advertising self-regulation.

Handling Cross-Border Complaints: What's Protected?

While the European self-regulatory system, in its brief history, has had relatively little experience with mediating international disputes, a look at legal cases dealing with similar issues suggests that economic factors override cultural concerns. As previously discussed, the European Court of Justice found in favor of the advertiser in the DeAgostini case, in which Sweden tried to enforce its ban on children's advertising. In

apparent contrast, the Court upheld a Dutch ban on unsolicited phone calls by financial service companies. While the Court determined that the Swedish ban did violate the "Television Without Frontiers" rule requiring unrestricted commercial broadcasting across national boundaries, it saw no problem with restricting commercial telephone communications. The decision stated that such telemarketing might undermine consumer confidence in national financial markets and that, while the ban did enact a barrier to free trade, "the protection of the reputation of national markets constituted an imperative reason of public interest" ("EU regulatory brief," 1995b, p. 11).

In the summary of Chapter Five, I suggest that the data show an advertising industry more concerned with economic factors than with maintaining cultural diversity. The contrast between these two court decisions suggest that the European Court of Justice shares that bias. It appears that the drive to complete a Single Market and to ensure open trade trumps any efforts by Member States to protect their cultural values such as protection of children and privacy in the home.

Self-regulatory examples, though not as clear as the legal cases, do present themselves. For instance, in 1995 a French trade organization complained to Britain's ASA about a British Nuclear Test Ban Coalition advertisement that encouraged consumers to boycott French wine in retaliation for France's resumption of nuclear testing. According to the complaint, which ASA upheld, the ad was offensive and therefore should be banned from release to cinemas ("Cross-border complaints," 1995a, p. 13). One must wonder if an advertisement simply speaking out against nuclear testing would have been banned. More likely, the element of a product boycott contributed to ASA's ruling.

In extremely egregious cases, EASA may issue a "Euro Ad-Alert" detailing the problem and warning other Member States to be on the look out for the offending advertisements. Such an alert was issued against the British Nuclear Test Ban Coalition. It is interesting to note that from EASA's inception to July 1998 this was the only Ad-Alert issued for an offensive advertisement. The other nine Ad-Alerts dealt with misleading, and in one case, illegal advertising ("Euro Ad-Alerts," 1998, p. 9). This further suggests the importance of curtailing actions that may diminish consumers' faith in the advertising industry. Where there is concern for the economic repercussions, EASA gives the case greater weight than it does those dealing simply with offensive advertising.

In terms of the nature of the complaints themselves, the data show that complaints dealing with offensive advertising as a percentage of total complaints has decreased from 61% in 1992 to merely 5% in1996, while the percentage of misleading complaints has remained around 27% ("The Alliance three year," 1995, p. 9; "1996 Cross-border case," 1997, p. 7). The rest of the advertising complaints have tended to deal with non-fulfillment of an advertised offer. Though the data do not provide information about the number of complaints about offensive advertising that were upheld, versus those for misleading ads, they offer example after example of complaints based on offense that were dismissed.

For example, EASA forwarded to ASA a complaint from an Irish consumer regarding a Calvin Klein ad that appeared in the British media. The ad featured waifish Kate Moss posing naked to sell Obsession for Men. The consumer objected to the "'frightening and extremely provocative nature of the ad'" ("Alliance cross-border

complaints," 1995, p. 13). ASA dismissed the complaint – despite the fact that several other consumers expressed concerns – saying it was "unlikely to cause serious or widespread offence" ("Alliance cross-border complaints," 1995, p. 13). In a similar case, ASA received several complaints about a Liberty clothes ad, in which a woman appeared naked except for shoes and a necklace. While consumers contended that the ad was pornographic, ASA again dismissed the complaint ("Cross-border complaints," 1995b, p. 11). By way of contrast, ASA upheld a complaint from a UK consumer about an ad for Logitech. The ad again featured a naked woman, this time holding a computer mouse over her left breast. Thinking that this ad was likely to cause considerable offence, ASA asked the advertiser to pull the campaign and modify future ads ("Cross-border complaints," 1995b, p. 11).

These examples illustrate the point often made by industry representatives that what is offensive in one country may not be offensive in another. Representatives contend that self-regulation deals more effectively with these discrepancies than does regulation. According to Gray, converging self-regulation on a common set of basic principles will even result in the highest common standard for acceptable advertising. Inherent in this contention is the belief that France and Britain currently set the highest standards for self-regulation and that they could pull others up to their level. Loerke (personal communication, November 26, 1998), for example, commented that, "The UK, in a way, is a good model as they are certainly the strongest self-regulatory organization in Europe." Yet, the cases presented above indicate Britain's disregard for nudity that many Irish consumers find offensive. So rather than setting the highest standard, ASA is actually lowering the bar on this particular cultural norm.

More importantly, these cases show the inconsistency, not only in the handling of cross-border complaints, but in the decisions of a single SRO. When it comes to applying codes related to misleading advertising, it seems easier to predict how the SRO or Court of Justice will decide; if the advertising is likely to damage the credibility of the advertising industry, it must be censored. But in the application of codes about taste and decency, there is no way to guess the outcome. As Calvin Klein and Bennetton have shown us, sometimes "bad" advertising sells; therefore, the need to control for taste and decency is less. So while the industry preaches consumer and cultural protection, its actions more consistently pander to protection of the marketplace.

Handling Cross-Border Complaints: Who Wins?

The fourth research question posed in Chapter 3 asks what ideology, if any, EASA, EAAA, EAT, and WFA promote; but it may be equally important to consider whose ideology is supported by the current system of advertising self-regulation. Again, a review of the cases decided since 1992, the first year for which EASA reports on cross-border cases, offers some indication. From July 1992 to June 1995, 74% of all cross-border advertising complaints originated in Ireland, France, or the UK. In 1996, that figure decreased only slightly to 64%. Gray (personal communication, Nov. 27, 1998) explained in his interview that in these countries, where self-regulation has existed for decades, consumers are more willing and knowledgeable about how to make a complaint. In Gray's opinion, consumers in these countries expect and will demand a higher standard of advertising practice than will consumers in other countries.

One might expect that media managers in these countries, knowing that their consumers are more critical, would carefully scrutinize ads and permit only the least

questionable ones to run. On the contrary, between July 1992 and June 1995, British media carried 55% of the questionable advertising. French and Irish media accounted for another 10% of complaints during this period. In 1996 France and the UK carried 45% of the problematic ads. A report in the *Alliance Update* explained that, "There remains a strong correlation between the language of the advertisement and the native language of the consumer. Thus it is not so incidental that the highest number of cross-border complaints involved Irish consumers reacting to UK media" ("1996 cross-border case," 1997, p. 8). It may also be that more complaints against British and French media arise because these countries distribute their media more broadly than other European countries. Regardless of the reason for the volume of complaints, as the dominant countries of media origin, these countries, particularly Britain and France, have more opportunities than others to express their values through the application of self-regulatory codes.

Britain, Ireland, and France exert influence over all of European advertising self-regulation in other ways as well. From the beginning, members of ASA, ASAI, and *BVP* have played important roles in the evolution of EASA. EASA's first Chairman, Noel McMahon of ASAI, was succeeded by Lucien Bouis from *BVP*. The former 1st Vice-Chairman Christopher Ogden of ASA then replaced Bouis. Thus, these three countries have directed European advertising self-regulation since Sir Brittan first issued his warning to the industry. Appendix D shows that nearly half of the European self-regulatory representatives quoted in this study have ties to the French, British, or Irish SROs, further demonstrating the leadership position held by these countries. They have and continue to direct industry discourse on the role of self-regulation.

Britain's ASA has been particularly influential in the establishment of new SROs throughout Europe. As reported in several *Alliance Update*s, just as the ICC codes offer a template for the content of guidelines, ASA has provided a model for several countries of how an SRO should be structured. For example, in an interview published in the *Alliance Update*, Executive-Director Juraj Podkonicky of the Czech Republic's SRO stated, "The UK Advertising Standards Authority has been particularly helpful in providing advice on setting ourselves up. A delegation representing the EASA and ASA visited us in Prague, and I have also been able to spend a week in London studying the ASA system" ("Focus on the Czech," 1995, p. 13). Where ASA is not directly involved, EASA generally is and promotes ASA as a good example of self-regulation at work. In holding leadership positions in EASA and coaching other countries, representatives from Britain, Ireland, and France are able to shape Europe-wide self-regulation to fit their own ideals of advertising's place in Europe. Thus the values held by these countries are more likely to be institutionalized in advertising self-regulation than are the values of less involved countries such as Italy and Greece.

One might also wonder, because of the power they seem to wield, if these countries receive preferential treatment in cross-border disputes. The data on self-regulatory cases show only that these countries settle more cross-border complaints than others. European Commission and Court of Justice judgments, however, suggest that some countries do get their way more than others – despite the legislative common ground supposedly established by the "Television Without Frontiers" Directive, Green Paper on Commercial Communications, and "Misleading Advertising" Directive. For example, the European Court of Justice ruled that French television need not accept

advertising for retail outlets. The Court decided that the national bans on "advertising in the distribution sector were outside the scope of treaty rules for the free movement of goods" ("Briefing on EU regulation," 1995, p. 15). This decision stands in direct contrast to the Court's ruling in the De Agostini case. In addition to the De Agostini ruling, the Court struck down Greece's ban on television advertising for children's toys ("EU regulatory brief," 1997b, p. 15) and a similar complaint by Norwegian consumers about toy advertising on television ("EU regulatory brief," 1995b, p. 11).

Perhaps the Court's decision in favor of France's ban on retail advertising is simply an anomaly; but the European Commission's position on the country's prohibition of alcohol and tobacco advertising suggests otherwise. France's *Loi Evin* "bans all cigarette and alcohol brand advertising and prohibits the broadcasting of sporting events sponsored by cigarette and alcohol companies" (European News Digest, 1997). In 1995 French television station TF1 was prosecuted for broadcasting a Dutch football game where billboard advertising for alcohol was visible. As a result, TF1 later cancelled its broadcast of a British match "where French pastis and wine producers had bought billboard advertising" ("EU regulatory brief," 1995b, p. 11).

Because these broadcasts originated in France, their censorship did not violate the "Television Without Frontiers" directive. Still this law came under attack from alcohol producers and the advertising industry when France decided to ban the broadcast of the 1998 World Cup finals sponsored by Anheuser-Busch. As reported in the March 1997 *Alliance Update*, the Commission finally decided to "consider action against the *Loi Evin*" ("EU regulatory brief," 1997b, p. 15), but only after firmly rejecting a similar Belgian law. A law enacted by the French speaking community in Belgium banned all

advertising for alcoholic beverages with a strength greater than 10%. The Commission ruled that the limit must be raised to cover only advertising for beverages with more than 20% alcohol strength ("EU regulatory brief," 1997b, p. 15). In June 1997, well after its ruling on the Belgian advertising ban, the Commission decided to allow the hearing of a case brought against *Loi Evin* by the Amsterdam Group, a coalition of alcohol producers ("EU regulatory brief," 1997a, p. 15). At the time this research was conducted, no final ruling on *Loi Evin* had been published.

The contradiction in how the European Court and Commission have handled alcohol prohibitions in Belgium versus those in France, indicate that France is given far more leeway to enforce laws than are other countries. The Commission has asked the advertising industry to consider harmonizing its advertising codes in order to eliminate unfair trade restrictions across Europe; yet, even at the level of European law, standards are inconsistently applied and some countries continue to enforce more stringent regulations on cross-border advertising. France maintains several other advertising bans that have not yet been challenged such as bans on cinema and book advertising. One must wonder why such French restrictions are not seen as barriers to trade.

Certainly the advertising industry sees a contradiction in the European government's position, but could it really do any better? In a letter to Jacques Santer, President of the European Commission, Gray wrote:

> ... the Alliance has always emphasized its belief that the most serious and intractable barriers to the Single Market stem from legal rather than self-regulatory differences between the Member States and, in particular, from nationally-imposed bans on the advertising of product categories. In this context, the Commission's decision on the French *Loi Evin* is of crucial importance to the future

> development of work on the Green Paper [on Commercial Communications] and the eventual creation of a Single Market for advertising. (O. Gray, personal communication, June 13, 1997)

As seen in Chapter Five, industry representatives place greater faith in the flexibility of self-regulation to deal with differences among Member States than they do regulation; but let us imagine that France were to write this same restriction into its self-regulatory codes. Whether enforced by law or self-regulation, the ban on alcohol advertising would create the same barrier to cross-border communication and trade. The industry's position, therefore, appears tenuous at best. In fact, just as the European Court and Commission's unequal application of standards seems to favor France, the current European self-regulatory system affords Britain, France, and Ireland greater advantages since these countries, as the most common countries of media origin, rule on the majority of cross-border advertising complaints and dominate leadership positions in European advertising and government organizations.

Conclusions

This chapter has examined the application of advertising standards, both self-regulatory and legislative, in an effort to better understand the ideology inherent in the system as it works today. Looking at advertising self-regulation as a microcosm of the greater European unification process, the data suggest that Europe truly is moving toward a free-market system and that, in many cases, economic convergence requires the elimination of cultural differences as reflected in advertising restrictions. The cases discussed above, for example, show that very little room exists for different approaches to advertising aimed at children, the advertising of questionable products, or even the

acceptability of nudity in advertising. While the advertising industry may contend that its system of self-regulation will preserve these differences, the Commission sees any divergence, whether self-regulatory or statutory, as a barrier to trade. Therefore, the Commission has asked the advertising industry to harmonize self-regulation and thereby eliminate such barriers.

At the same time, the Commission and European Court of Justice continue to reinforce barriers at the legal level, but apparently only for those countries with the most influence within the EU. While the Commission itself wavers, it expects the advertising industry to properly harmonize. As Gray explained in his interview:

> The Commission itself has not solved the problem. If you're talking about uniform measures, why can't the Commission take action on the *Loi Evin*, the French language requirements, or so on? But these are things that you say to yourself, "Hold on. If it was so easy as the Commission is saying, why can't they solve the legal issues." And the very reason is that this thing is wrapped very tightly in with culture. (O. Gray, personal communication, Nov. 27, 1998)

What is all of this likely to mean for cultural autonomy throughout Europe? Obviously, harmonization requires the elimination of institutionalized cultural differences. Advertising industry representatives can say that self-regulation based on mutual recognition would maintain Europe's diversity, but really they use this argument as a ploy to divert advertising legislation. Given the inherent contradiction between a unified marketplace and diversity of cultures and the advertising industry's belief in and support for the Single Market, there can be little doubt that advertising standards and practices must converge. Even if the industry manages to maintain the current nationally-based self-regulatory framework, as long as some countries continue to direct European

self-regulation and account for the majority of the cross-border disputes, their values will be enforced while others are over-ridden.

This research indicates that France and Britain call the shots in European advertising self-regulation. Even at the legislative level, the Commission and Court tend to uphold their unique culturally-based restrictions. Given France and Britain's influence within the European self-regulatory system, their values are likely to dominate there as well. Europe's rich tradition of cultural diversity, therefore, is likely to be replaced by powerful capitalist values. European unification was begun to help Member States compete on the world level with such economic forces as the US and Japan. This careful examination of unification's impact on the advertising industry, the voice of the marketplace, indicates that unification necessarily places market values above traditional cultural values. So despite the advertising industry's discourse on the value of diversity, its actions and the motivation behind this rhetoric suggest that culture cannot stand in the way of progress, which, as Jhally (1998) warns is too often defined in monetary terms. Europe, welcome to the cult of consumption.

Limitations and Suggestions For Future Research

This study traces the ideas of cultural autonomy and self-regulation since the formation of the European Advertising Standards Alliance. The fact that interviews were conducted only with those currently involved with European advertising self-regulation may have limited the scope and depth of the research. An historical perspective is captured by the review of newsletters, memos, speeches and other materials dating back to 1991 as well as the interview with Oliver Gray, who has been EASA Director General since the beginning. Still, additional interviews with those involved with EASA in its

earliest days, particularly Lucien Bouis and Herman Flotzinger, might add to our understanding of how the relationship between advertising self-regulation and cultural autonomy has evolved. Along the same lines, additional time spent with each of these organizations may have produced deeper, richer insights into their operation and the relationships between organizations.

This study also is limited somewhat in that it focuses solely on the perspectives of the advertising industry. As discussed in Chapter Three, other organizations are likely to have different understandings of how advertising self-regulation relates to culture. Future research might examine this phenomenon from the perspective of the organizations concerned with preserving cultural autonomy throughout Europe such as the European Cultural Foundation, or organizations particularly concerned with the media's role in cultural development such as the European Institute for the Media. While the outlook for the EU's cultural diversity is likely to remain the same, it would be interesting to examine these groups' efforts to preserve culture.

Future research might also focus on the perspective of the European Commission. As this study demonstrates, preservation of culture must start with the Commission and the Council. As long as the Commission continues to push the advertising industry to eliminate barriers to trade, even those that are culturally-based, Member States cannot expect their rules and regulations to reflect their unique identities. It might be interesting to examine the extent to which the Commission recognizes the conflicts inherent in its demand for unification and its hope for diversity. As discussed above, the advertising industry feels it has been left to solve the Commission's problem. The Commission, on the other hand, seems willing to step in and harmonize if the industry cannot or will not.

Additional research might examine the Commission's level of commitment to preserving diversity. Does it, like the advertising industry, view cultural diversity as a useful argument more than a fundament ideal to be protected?

Another way to answer this question may be to look at how other industries have tried to resolve the conflict between a Single Market and many cultures. Advertising has been presented as a microcosm of the issues facing the whole EU. Other industries' struggles and the Commission's approach toward them might offer additional, valuable insight into the future of European diversity. Correlations may be somewhat difficult to draw insofar as advertising remains largely unregulated, unlike many manufacturing sectors. But what about other forms of communication? The Commission has unified the broadcast industry under the "Television Without Frontiers" Directive, but differences in direct mail and print remain. Will it be necessary to expand the TWF Directive to cover other media, in order for Europe to truly achieve a free flowing market for product information? Advances in new technology like the Internet will compound this question. It will be interesting to see how the European advertising industry handles marketing on the Internet. Self-regulators may have to harmonize Internet codes, given the difficulty in establishing country of origin on the Internet, thus opening the door for complete harmonization.

The findings also may be restricted by the fact that I approached the project from a perspective admittedly influenced by the critical research related to advertising and media's effects on culture. While this may have colored my interpretation of the data, particularly as presented in Chapter Six, I was surprised by and open to the findings as presented in Chapter Five, which show that advertising self-regulation can in fact support

cultural autonomy. Someone coming into the project with a less critical perspective would likely come to the same conclusions as to the industry's perceptions but might not look to the cross-border cases for refutation. On a theoretical level, Europe's formation of a Single Market offers a unique opportunity to test the basic assumption presented in Chapter One of this dissertation. My findings rest largely on Jhally's (1998) work, which suggests that rampant consumption and commercialization produce a less connected, more selfish society. Studies conducted over time might test the salience of such cultural values as vanity, materialism, and individuality versus communality throughout Europe to determine if capitalism really can displace tradition.

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APPENDICES

APPENDIX A

LIST OF ABBREVIATIONS

AAF – American Advertising Federation (US)

ASA –Advertising Standards Authority (Britain)

ASBOF – Advertising Standards Board of Finance (Britain)

BVP – *Bureau de vérification de la publicité* (France)

CARU – Children's Advertising Review Unit (US)

CBBB – Council of Better Business Bureaus (US)

DG – Directorate General (Europe)

DG XV – Directorate General for Internal Market & Finance (Europe)

DG XXIV – Directorate General for Consumer Policy (Europe)

EAAA – European Association of Advertising Agencies (Europe)

EASA – European Advertising Standards Alliance (Europe)

EAT – European Advertising Tripartite (Europe)

EMU – Economic and Monetary Union (Europe)

EU – European Union (Europe)

FCC – Federal Communication Commission (US)

FTC – Federal Trade Commission (US)

IAA – International Advertising Association (Worldwide)

ICC – International Chamber of Commerce (Worldwide)

KOV/KO – Swedish SRO

NAB – National Association of Broadcasters (US)

NAD – National Advertising Division of the CBBB (US)

NARB – National Advertising Review Board (US)

WFA – World Federation of Advertisers (Worldwide/Europe)

APPENDIX B

INTERVIEW GUIDE

1. Tell me about the WFA/EAAA/EAT/EASA.

2. Tell me about your job here.

3. What role does the WFA/EAAA/EAT/EASA play in supporting advertising self-regulation?

4. Can you tell me how that role has evolved over the years?

5. Can you tell me about efforts to standardize advertising self-regulating throughout the EU?

6. What was the genesis of standardization efforts?

7. Do you feel that standardizing advertising self-regulation throughout the EU is important?

   Why is standardization important to the EU?

8. Do you see any conflict between standardizing self-regulation and preserving the autonomy of the individual nations?

   Tell me about that.

9. Do you see a need to protect the autonomy of the individual countries?

   If yes, how does the WFA/EAAA/EAT/EASA do that?

   If no, can you explain?

APPENDIX C

OUTLINE OF LEGISLATIVE ACTS

Below follows an outline of the Community's legal and non-binding instruments.

Regulation

Origin	Proposed by the Commission.
Scope	Specifically addressed to the governments of Member States: a Regulation creates binding legislation which automatically enters into force in all Member States on a given date, usually several days after official publication.
Published	First as a COM document, then as a proposal in the Official Journal C series, then, when adopted, in Official Journal L series.

Directive

Origin	Proposed by the Commission.
Scope	Defines the results to be achieved in a particular area while leaving it to national authorities to decide the form and means for achieving the desired aim. Implementation of Directives requires 'national transposition,' (i.e., national laws must be introduced in order to implement the Directive, normally within two to three years after final adoption). Each of the 282 proposals of the White Paper on Completing the Internal Market were in the form of Directives.
Published	First as a COM document, then as a proposal in the Official Journal C series, then, when adopted, in Official Journal L series.

Decision

Origin	Issued by the Council or the Commission.
Scope	Decisions have a specific range of application and can be directed at individual or several Member States, companies, or private individuals. Decisions are binding upon those to whom they are addressed. Generally, they are used as instruments for the administrative implementation of EU law.
Published	In the Official Journal C or L series.

Recommendations & Opinions

Origin	Issued by Commission, Council, Parliament, and Economic & Social Committee.
Scope	They give non-binding Community views on a number of topics, normally to encourage desirable, but perhaps unenforceable, good practices throughout the EU. Addressed to Member States and economic operators.
Published	First as a COM document, then in the Official Journal C series.

Resolution

Origin	Issued by the Council and/or the Parliament.
Scope	Resolutions are intended to establish the fundamental principles on which Community action shall be based and to determine the period within which this action shall be taken. Resolutions are only declarations of intention which express mainly the 'political wish' of the Council.
Published	As a COM document.

Green & White Papers

Origin	Prepared and issued solely by the Commission.
Scope	Green Papers focus on a particular area of interest for which the Community has not yet produced legislation, for example the Green Paper on *Postal Services.* Primarily, a Green Paper is designed to be a consultative document, addressed to interested parties, individuals, companies, and organizations all of which are then invited to give their input to any possible future legislation. A time-limit is given, by when the interested parties are required to submit their comments to the Commission. Usually, although not always, a Green Paper will lead to a Communication, which may lead to an actual proposal for legislation. Similar to Green Papers, White Papers are used as vehicles for the development of policy in areas that have not yet come under existing legislation. The major difference between the two papers is that White Papers focus on broader areas that cover more than one industry, such as the Delors White Paper on *Growth, Competitiveness and Employment.* These are drawn up as a consequence of analysis of important policy to the Union as a whole. Specific proposals for legislation may follow in the framework of a White Paper.
Published	As a COM document

Communication

Origin	Prepared by the Commission.
Scope	Communications are usually produced as a result of comments received after the release of a Green Paper. A Communication is thus the logical next step after a Green Paper and may even go so far as to give the outline of a Commission proposal for legislation on the issue. Although not the rule, Communications are generally followed-up by an actual proposal or set of proposals in the area in question. The Commission has also issued Communications on the interpretation of Court cases and on several other subjects.
Published	As a COM document, then in Official Journal C series.

Notices

Origin	Issued solely by the Commission.
Scope	Notices are published to indicate and interpret Community policy. There is no legal obligation on the Commission to publish Notices, as their purpose is purely informational. While they provide guidelines as to how the Commission may interpret relevant legislation, they are of persuasive authority only before national courts. In particular they are used in the area of competition law.
Published	In Official Journal C series.

Studies

Origin	Studies are usually prepared by a third party at the request of the Commission.
Scope	They are designed to be an overview of a particular area of activity within the EU Although not specifically intended to be another form of preparation for future legislation at the European level, an actual Commission proposal may well be the outcome. The study aims to present a Community-wide picture of the issue in question. For example, a Commission study on the gambling industry presented the state of the industry in the context of each Member State and how the advent of the internal market would affect it. On this occasion the Commission did not deem it necessary to issue a proposal for legislation in this area.
Published	No formal publication required.

Reprinted from EU Committee of the American Chamber of Commerce in Belgium. (1999). *EU Information Handbook.* Brussels, Belgium: EU Committee.

APPENDIX D

LIST OF "PARTICIPANTS" QUOTED

Name	Affiliation
Adriaensens, Bernhard	WFA Managing Director
Alderson, Matti	ASA Director-General
Bille, Jacque	EAT Chairman
	Association des agences conseils en communication Vice
	Président Délégué Général (France)
Bouis, Lucien	Former *BVP* Director
	Former EASA Chairman
Brittan, Leon (Sir)	Former EU Competition Commissioner
Carlson, Stig	EAAA Director General
Cortopassi	Former EASA 2nd Vice-Chairman
	Istituto Dell'Autodisciplina Pubblicitarria President (Italy)
De Malherbe, Armand	Former EAT Chairman
Draughn, Geoffrey	British Broadcast Advertising Clearance Centre Deputy Head
	EASA Director of Special Issues
Earnshaw, Malcolm	Former WFA President
Flotzinger, Herman	Former EAT Chairman
Gray, Oliver	EASA Director General
Loerke, Stefan	WFA Deputy Director General

McMahon, Noel	ASAI Representative
	Former EASA Chairman
Ogden, Christopher	EASA Chairman
	Former EASA 1st Vice Chairman
	Former ASA Deputy Director General
Owen, Richard	Guinness Plc. Representative
Rabbitte, Pat	ASAI Chairperson
Ranson, Florence	EAT Secretary General
Reinarz, Michel	EASLG Chairman
	Nestlé Director of Communications
Stanbrook, Lionel	British Advertising Association
Wade, Richard	British Advertising Association Director General
Wronka, Georg	Representative of Germany's SRO
	Former EASA Chairman
Zourek, Heinz	DGXV Deputy Director General

VITA

A native of Pennsylvania, Anne-Lauren Cunningham earned her Bachelor's degree in Communications from Penn State University in 1991. After a brief time spent bartending in England, she moved to Rochester, NY where she worked as an inside sales representative at Adams, Colway & Associates. Pursuant of a Ph.D., she relocated to Knoxville, TN in 1993. Anne entered the Master's program in advertising at UT in the Fall of 1994, graduating in December the following year. While working on her Master's, Anne worked as a Marketing Assistant for McGraw-Hill Publishers' textbook division. She began work on her doctorate in August 1996. While at UT, she taught courses in Advertising Principles, Media Planning, and Advertising Campaigns.

Anne has accepted a position as Assistant Professor at Louisiana State University in Baton Rouge.