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Update on the Advertising Regulatory Landscape in Ukraine

December 2023

Amendments to Law of Ukraine “On Advertising” No. 270/96-BP of 3 July 1996 (the “**Advertising Law**”) have recently come into force. The amendments update obsolete regulations on advertising in Ukraine, thus ensuring advertising standards correspond to current technological developments.

The main novelties of the updated advertising regulatory landscape in Ukraine are as follows:



Extension of the concept of "advertising"

Advertising now covers information on person, goods or idea, disseminated either for monetary or other compensation, or for the purpose of self-promotion where intended to directly or indirectly raise consumer awareness of an advertisement and promote interest in such a person, idea, and/or product.



Applicability of Ukrainian advertising laws

The amendments to the Advertising Law introduce the system of criteria for determining whether or not particular advertising falls under the jurisdiction of Ukrainian advertising law requirements.



Implementation of technological neutrality principle

Several forms of distribution of advertising were moved out of the so-called regulatory "grey zone" and are now specifically regulated under Ukrainian advertising laws. Namely, advertising on information sharing platforms (e.g. social media), video sharing platforms (e.g. video streaming services), as well as advertising distributed by means of electronic communications, are now subject to the same regulatory framework as "traditional" advertising (for example audiovisual media such as television, and printed media).



Product placement regulation

In keeping with the evolving advertising landscape, the enacted amendments to the Advertising Law extend its coverage to encompass product placement. Specifically, the Advertising Law prohibits product placement of the following goods/activities in audiovisual media, video sharing platforms and information sharing platforms:

- i. tobacco products, devices for the consumption of tobacco products without combustion and items related to their use, herbal smoking products, electronic cigarettes, refill containers, liquids used in electronic cigarettes, and tobacco-containing products for electronic heating via electronic management, as well as placement of goods of persons whose main activity is the production and/or sale of such goods,
- ii. medicines available only by prescription and/or prohibited from being advertised, as well as medical equipment, prevention, diagnosis, treatment, and rehabilitation methods that require specialized knowledge and training for use,
- iii. goods, the advertising, production, or distribution of which is prohibited by law.

The above restrictions apply exclusively to audiovisual media programs and user-generated videos created after 1 January 2024, while penalties for violations of applicable advertising laws are deferred until 1 January 2025. The Advertising Law also now prohibits product placement of advertising.



Development of legal framework for combating IP rights infringements by websites

To enforce efforts to combat piracy, the Advertising Law now provides for the details of inclusion of websites into a national list of websites deemed to be raising concerns with respect to intellectual property rights compliance.

In particular, a website is included in this list following the approval of a request submitted by the respective copyright or related rights holder, and provided that there is adequate evidence that the website owner has committed either of the following within the past 365 days:

- I. three or more infringements of IP rights that have not been rectified by the website owner as of the date of the request, or
- II. two or more infringements of IP rights documented by the applicant before the date of the request, whereby the website owner has failed to comply with the requirements to make available in the WHOIS database information on the respective website owner and hosting service provider.

The Advertising Law now provides for liability against those placing advertising on the websites included in the list.

The procedure for the inclusion into the list and its maintenance is not yet in place and is to be adopted by the Ministry of Economy of Ukraine.



Prohibition on advertising by residents of the “aggressor state”

The Advertising Law also now prohibits any advertising by residents in Ukraine from the “aggressor state,” namely the Russian Federation. This novelty is expected to contribute to the battle against Russian disinformation.



Conclusion

The amended Advertising Law reflects a concerted effort to create a more transparent, responsible and updated with industry trends advertising environment in Ukraine.



In case of any questions or concerns regarding the changes introduced to the Advertising Law, please do not hesitate to reach out to our team for guidance and support.



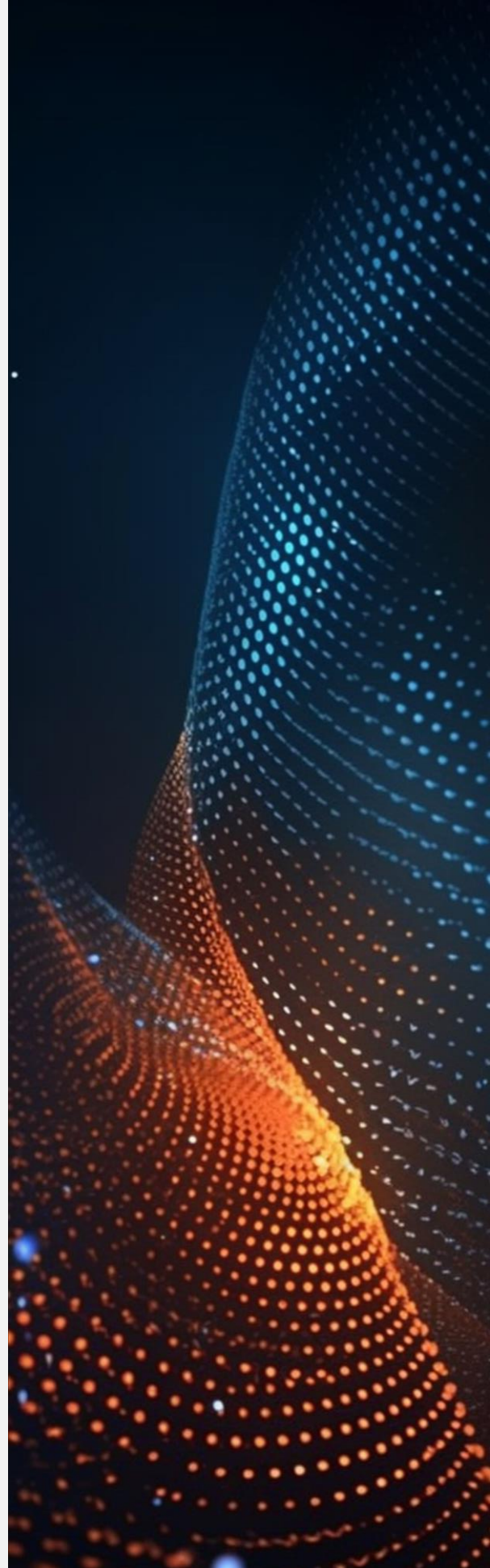
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