

FOUNDATION CULTURE SPONSORSHIP CODE

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CULTURE SPONSORSHIP CODE

RULES OF CONDUCT
FOR THE SPONSORSHIP
OF CULTURAL ACTIVITIES
IN THE NETHERLANDS

THE CODE CONTAINS A NUMBER OF RULES OF CONDUCT FOR THE SPONSORING OF CULTURAL ACTIVITIES. THESE RULES APPLY TO SPONSORS AND RECIPIENTS.

THIS PUBLICATION INCLUDES THE CULTURAL SPONSORSHIP CODE AND THE EXPLANATORY NOTES RELATING TO THIS CODE. THE TEXT WAS PRODUCED IN CONSULTATION WITH THE VARIOUS PARTIES INVOLVED, EITHER DIRECTLY OR INDIRECTLY, IN CULTURE SPONSORSHIP: RECIPIENTS, SPONSORS, GRANT-ISSUING INSTITUTIONS AND CONSUMER ORGANISATIONS.

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FOR THE SPONSORSHIP
OF CULTURAL ACTIVITIES
IN THE NETHERLANDS**

First edition 1993

Second revised edition 1999

FOREWORD

The sponsorship of cultural events in the Netherlands has increased markedly since 1980. About 80 million guilders a year is now being spent on this category of sponsorship.

An alert approach to finding good sponsors to widen the sphere of action of a cultural organization is a healthy sign of cultural entrepreneurship in my opinion. I want to create the greatest possible scope for the acquisition of sponsorship. But I will also expect organizations to make use of the scope created. For my part, I give an undertaking that funds obtained through sponsorship will not be deducted from government grants.

This undertaking is in keeping with the different roles fulfilled by the government and business community in funding cultural events. The government guarantees basic funding. The business community provides something extra, usually on an incidental basis. It is the government's task in this setting to uphold the centrally formulated principles of its cultural policy as regards such matters as quality, diversity and accessibility.

In 1993, all parties involved in the sponsorship of cultural events – sponsors, organizers of sponsored events, subsidizers and consumer organizations – endorsed a code of practice drawn up on the initiative of the Minister of Welfare, Health and Cultural Affairs. The Cultural Sponsorship Code sets down rules that must be observed when sponsoring cultural activities. Experience in recent years shows that the code has an important preventive effect.

More and more parties have signed the code since its introduction, a development that has contributed to the desirability of amending the existing version here and there.

I warmly recommend this amended version of the Cultural Sponsorship Code to all those involved in the sponsorship of art and culture.

Dr. F. van der Ploeg
State Secretary for Education, Culture and Science



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P R E A M B L E

IN VIEW OF:

- the increasing importance of sponsorship to cultural activities generally;
- the interests of the parties involved in sponsorship;
- the value of self-regulation by these parties to both the arts world and society as a whole;
- the impact self-regulation may have on the use of standard or model contracts, it has been deemed desirable to establish the basic standards to be observed in sponsoring cultural activities in a Culture Sponsorship Code.

THE FOLLOWING CODE OF CONDUCT HAS BEEN ENDORSED BY:

- the Board of the Netherlands Museums Association;
- the Dutch Orchestras Liaison Committee;
- the Association of Dutch Music Ensembles;
- the Dance Companies' Consultative Board;
- the Dutch Theatrical Companies' Association;
- the Association of Theatre and Concert Hall Directors;
- the Association of Independent Theatre and Television Producers;
- the Sponsorship Section of the Dutch Advertising Association;
- the Sponsorship Department of the Dutch Association of Communications and Consultancy Bureaus,

WITH THE SUPPORT OF:

- the Prince Bernhard Fund;
- the Federation of Artists' Associations;
- the Mondriaan Foundation;
- the Kunsten '92 Association;
- the Consumers' Association;

THE CULTURE SPONSORSHIP CODE WAS DRAWN UP IN CONSULTATION WITH:

- the Ministry of Education, Culture and Science;
- the Association of Provincial Authorities;
- the Association of Netherlands Municipalities.

THE CULTURE SPONSORSHIP CODE
RULES OF CONDUCT

1 DEFINITIONS

The following definitions will apply for the purpose of this code:

A. SPONSORSHIP

The agreement drawn up in connection with cultural activities to be undertaken by a cultural institution or organiser of a cultural event (the recipient) under the terms of which a company (the sponsor) provides money or a contribution in kind, in return for the provision, on the part of the recipient, of opportunities to communicate, tickets, and/or other facilities; sponsorship may not be deemed to mean advertising.

B. ADVERTISING

Any public recommendation of goods, services or ideas; requests for services also constitute advertising.

C. CULTURAL ACTIVITY

The cultural product supplied by an institution or ad hoc organisation in accordance with its tasks, objectives and scope; the services and products to which the cultural product directly and indirectly gives rise also constitute cultural activities.

D. ARTISTIC INDEPENDENCE/POLICY

The term 'artistic independence/policy' is used in its broadest sense, and extends to bodies such as museums and academic institutions.

2 APPLICABILITY OF THE CODE

- 2.1 Special standards, applicable to certain products, which are contained in statutory regulations, policy regulations or other Codes, have priority over the standards contained in this Code.
- 2.2 This Code does not apply to other forms of sponsorship, such as:
- sports sponsorship;
 - radio and television sponsorship
- and furthermore does not apply to the sponsoring of films.

3 ARTISTIC INDEPENDENCE

- 3.1 Both the recipient and the sponsor and any other party to a sponsorship agreement shall ensure that the artistic independence of the institution in question is preserved.
- 3.2 The sponsor may not require the recipient to make concessions with regard to policy.
- 3.3 The recipient shall provide prior information on the nature of the cultural product.

4 PUBLIC ACCESSIBILITY

- 4.1 Should the impression be created that the activity in question is to be accessible to the general public, an equitable measure of public accessibility must be ensured.
- 4.2 The sponsor and the recipient guarantee an equitable measure of public accessibility to performances, exhibitions, presentations etc. An equitable measure of public accessibility is determined by:
- a. the number of tickets made available to the sponsor in relation to the total number of tickets available, and the relation between the number of public and private performances and presentations;

- b. with regard to museums: the extent to which the museum is accessible only to the sponsor in relation to normal opening hours;
- c. policy on the distribution and sale of tickets.

- 4.3 In cases in which government directly or indirectly funds a performance or presentation, the amount in question will be a factor in determining what constitutes equitable public accessibility.

5 CONTRIBUTIONS AND QUID PRO QUO

- 5.1 An equitable relation shall be maintained between the sponsor's contribution and that of the recipient, to be determined by generally accepted standards of decency and good taste, as well as by the interests of the recipient, (with special emphasis on artistic independence) and those of the public, the sponsor and the subsidiser.
- 5.2 Depending on the circumstances, the price paid by the sponsor for a ticket should be a reasonable reflection of his contribution; the cost price and the price paid by the public for a ticket should also be taken into consideration.
- 5.3 If a cultural activity has been sponsored, this should be made clear to the public, unless there are good reasons not to do so.
- 5.4 The following are not permitted:
- subjecting the recipient to unauthorised publicity or other form of activity;
 - the excessive inclusion of messages from the sponsor.

6 MEDIATION

- 6.1 The recipient shall inform potential sponsors that he has employed the services of an agent before entering into negotiations.
- 6.2 In the event of mediation, fees may not be charged of both sponsor and recipient.
- 6.3 Mediation will be performed in return for a reasonable fee.

7 CONFLICTS OF INTEREST

- 7.1 A board member representing a sponsor or potential sponsor in the most general sense shall inform the other board members of any potential conflict of interest with the board of the recipient organisation which may reasonably be expected to lead to its making concessions in its artistic or business policy.
- 7.2 The board member representing the sponsor as referred to above, may be requested by the board to resign his office should the majority conclude that a conflict of interests as referred to at 7.1 has occurred.

8 TERMINATION AND EXTENSION OF SPONSORSHIP AGREEMENTS

The following will apply to sponsorship agreements, which, by preference, should be entered upon in writing:

- 8.1 should an agreement be entered upon for an unspecified length of time, reasonable notice should be given of its termination;
- 8.2 should an agreement be extended, the sponsor shall, within reason, be held to enjoy preference over other potential sponsors, unless the parties have expressly declared otherwise.

CONTRAVENTIONS

9 NON-OBSERVANCE

- 9.1 Complaints concerning non-observance of the Code will be registered by the Foundation 'Culture Sponsorship Code'
- 9.2 Complaints concerning non-observance of the Code as referred to at 9.1 may be lodged with the Foundation 'Culture Sponsorship Code'.
- 9.3 The Foundation 'Culture Sponsorship Code' shall inform the party against whom the complaint has been lodged of the complaint.
- 9.4 The Board may put forward a private recommendation for the settlement of a complaint.
- 9.5 The Board shall receive notice of the settlement of a complaint.

10 ASSESSMENT

This code shall be reviewed periodically by the Foundation 'Culture Sponsorship Code'.

11 NAME

This Code may be referred to as the Culture Sponsorship Code.

12 ENTRY INTO FORCE

This Code shall enter into force on the day following its publication in the Government Gazette.

**FURTHER
INFORMATION** **CULTURE SPONSORSHIP CODE**
GENERAL

The sponsorship of cultural events has become common practice in contemporary society. When compared with the total amount allocated in grants, the sum involved – approximately NLG 80 million per year – may be regarded as modest, but the commercial sector's additional contributions towards the funding of cultural institutions and individual events are frequently substantial.

Sponsorship enables institutions to maintain or extend their programming, to the benefit of the general public.

What matters to the sponsor is the direct or indirect effect of sponsorship on the corporate image of the company in question.

Activities of this type therefore form part of companies' marketing, communications and/or public relations strategies.

The agreement between sponsor and recipient must therefore be regarded as a business agreement, with economic reasons or objectives forming the basis on which it is reached.

One of the main characteristics of sponsorship is that it is a reciprocal agreement whereby the parties undertake to provide certain elements or services, to carry out certain activities and to refrain from certain activities. Both the sponsor and the recipient aim to benefit from such an agreement.

The government has taken a positive stance on sponsorship.

It is part of the policy of the Ministry of Education, Culture and Science to encourage cultural institutions receiving public funds to attract income from private sources. In its budget allocations, the Ministry no longer deducts extra income from these grants.

In other words, institutions that receive sponsorship will not have their government grants cut. Sponsoring represents an additional source of income and should be regarded as such.

The incidental activities of these institutions are, however, a different matter. Such events lend themselves to being funded wholly by sponsors. Yet, as these are extra activities which would not take place without sponsorship, once again grants are not affected.

Private support for art and culture, artists and cultural institutions has always been with us and has been responsible for the creation and conservation of many art treasures. Such support has generally taken the form of financing. In some instances, a favour of some kind was expected in return while in other instances such support was free of any such obligation. This difference is reflected in the present day distinction between sponsoring on one hand and donations and gifts on the other. Generally speaking, the sponsorship of cultural activities has now been accepted. The need of cultural institutions for greater financial scope is widely recognised. The common interest is also served if, by means of sponsoring projects and/or objects, a broader range of cultural activities may be presented. Art and culture represent a common interest. The combined reality of the government resources available and the cost of cultural activities not only leaves room for sponsoring but also creates an independent flow of funds desired by the parties concerned.

The Culture Sponsorship Code came into being in 1993, after a Committee of Experts deemed it desirable that a code of conduct for the sponsoring of culture be formulated by the parties involved. The introduction of the Culture Sponsorship Code in November 1993 also provided a framework within which the government's conditions for culture sponsorship, as announced by the then Minister of Welfare, Health and Cultural Affairs, could be established and clarified.¹

¹ Memorandum from the Minister of Welfare, Health and Cultural Affairs to the Lower House of Parliament, "Sponsorship in the area of culture", Lower House of Parliament, 1990-1991 session, 21800 XVI, nr. 33.

These conditions, which still apply today, were:

- *sponsorship may have no impact on policy relating to artistic content, organisation and funding*
- *sponsorship must be in line with the policy of the recipient organisation*
- *sponsorship must meet a number of conditions, relating to artistic independence, public accessibility and an equitable balance between the sponsor's contribution and the quid pro quo.*
- *lastly, the sponsor's contribution must be considered in the light of the grants provided by government.*

At that time, self-regulation was regarded as the most appropriate form of regulation. This was decided on the basis of the needs of the parties concerned, both sponsor and recipient, and on the gravity of the subject, which was not regarded as sufficient to necessitate legislation.

The Code owes its origins to the need for clear, generally acceptable rules of conduct in relation to sponsorship. The Code in fact voices the unwritten standards of decency which ensure the quality, diversity and accessibility of culture. Its primary objective is to establish these principles and the boundaries within which sponsorship agreements may be entered upon and developed as decided by the parties involved. Those responsible for drawing up the Code strongly recommend the use of standard contracts or the Model Sponsorship Contract of the Dutch Advertising Association. The Code itself should not be seen as a package of regulations, tailor-made to the needs of the individual sponsor and recipient. These needs should be met by the sponsorship agreement.

The Code establishes a general framework within which sponsorship activities should take place. It provides all the parties involved – cultural institutions, sponsors and also other parties concerned, not least the general public – with the opportunity to gain greater insight into the role of sponsorship and the conditions it should meet. Sponsors and recipients are, in principle, free to act as before, provided they observe the Code. Broad support for the standards contained in the Code will lend them regulatory effect. Since its inception, the Code has gained a firm footing in the day-to-day practice in the cultural sector. Accordingly, this allows the Code to act as a hallmark of both acceptable and responsible sponsorship practice.

1 DEFINITIONS

It is important that sponsorship be recognised as a business transaction, as this is what distinguishes it from other forms of funding – donations and charity, collections and patronage – which do not invoice a quid pro quo and to which the Code does not apply.

Gifts and charity do not fall within the definition of sponsorship. By gift is meant the agreement, whereby the donor, in his lifetime, makes an irrevocable gift of a good to a beneficiary, from whom no quid pro quo is required. A donation is a gift in the sense of financial support, whereby no notarial deed is required for the transfer of the contribution to the beneficiary.

A. SPONSORSHIP

Further information on this definition:

- a company may be either a natural or legal person; the following may constitute a company or cooperative venture: a business owned by one person, a public company (N.V.), a private company (B.V.), a general partnership, a limited partnership, a foundation, an association, a cooperative, a mutual insurance association, a European Economic Cooperative Venture, and a civil partnership.
- the following constitute contributions and quid pro quo:
 - a. a company supplies money and/or contribution in kind, which may comprise services or goods;
 - b. the recipient provides a quid pro quo in the form of opportunities to communicate, tickets or ticket rights, and other facilities (receptions, catalogues etc.);

- the addition of 'in connection with the cultural activities to be undertaken by the.... recipient' indicates the distinction with advertising; sponsoring does not constitute advertising, even though activities in both fields are frequently funded from the same budget; the definitions under a and b should exclude any overlap; in addition, the general public must be aware that a cultural activity is being sponsored, but the sponsor must exercise a measure of restraint. Programmes, for example, should include the name of the sponsor under 'Sponsored by ...' or 'The sponsor is...'; the blatant publication of the sponsor's name during or in connection with the cultural activity must be avoided;
- though sponsorship agreements may be entered upon for both limited and unlimited lengths of time, in the interests of legal certainty, agreements stipulating a time limit are to be preferred.

B. ADVERTISING

The Code operates in accordance with the Advertising Board's definition, as laid down in Article 1 of the Dutch Advertising Code. Advertising in which ideas are propagated (also known as idea-based advertising) will be subject to less extensive scrutiny than other forms of advertising. Such scrutiny will only cover the criteria: lawfulness, truthfulness, misleading and plagiarism (see Article 16 of the Dutch Advertising Code).

Under the terms of the Culture Sponsorship Code, all forms of misleading sponsorship are prohibited, and in particular:

- product placement;
- in-script sponsoring.

In-script sponsoring refers to forms of sponsorship whereby the quid pro quo consists of such activities as implicit or explicit references to the sponsor woven into the presentation,

performance or activity for advertising or sales promotion purposes.

C. CULTURAL ACTIVITY

- The term cultural product refers to performances in the case of the performing arts and exhibitions in the case of museums, and to all other cultural events and activities, regardless of the party responsible for their organisation, the producer or owner of the premises in which they are held; both subsidised and non-subsidised institutions and activities moreover fall within the scope of this Code;
- educational institutes (such as schools of music and art schools) and art lending libraries do not fall within the scope of this Code;
- the services and products to which the cultural product gives rise fall within the scope of this Code insofar as they are regarded by the recipient as a quid pro quo.

D. ARTISTIC INDEPENDENCE/POLICY

Given that the terms 'artistic', 'museum' and 'academic' do not necessarily apply to the full range of activities performed by all institutions, it has been decided to employ the word 'artistic' in its broadest sense as a catchall term.

2 APPLICABILITY OF THE CODE

- 2.2 Separate regulations apply to sports sponsorship and radio and television sponsorship. It should be noted that while the sponsorship of radio and television products will be subject to the Culture Sponsorship Code, the broadcasting of these productions falls under the provision of the Media Act. The sponsorship of feature films has been excluded from the Code for the following reasons. The Code is mainly geared to the sponsorship of museums and the performing arts.

The sponsorship of feature films is a different matter as their accessibility to the general public is not affected. It is applied and organised differently and has a different tradition. Moreover, there have been no developments in this field which might indicate the need for regulation.

The Code does however apply to, say, documentaries or informative films made by the recipient for the sponsor.

3 ARTISTIC INDEPENDENCE

Artistic independence is regarded by those drawing up and signing this Code as a safeguard for cultural renewal and continuity. It is a valuable commodity, which, left intact, should benefit all parties involved.

In the long term, it is the pursuit of independent policies by cultural institutions which will put life into sponsorship. Sponsors will be attracted by precisely those institutions that set themselves apart from the rest. The policy of an institution is its visiting card.

However, situations may arise in which sponsors, through their very involvement and expertise, risk interfering with policy. This is something that both the sponsor and the institution must take every precaution to avoid. Good relations can only be maintained if each party respects the freedom of the other in his own field. Yet this does not mean that both parties are totally independent, only that sponsor and recipient must seek to harmonise their respective interests and their interdependence in such a way that the latter need not make unreasonable concessions.

By 'any other party to the sponsorship agreement' (3.1) is meant those subsidisers and parties, such as the Prince Bernhard Fund and the Anjerfonds, that fall under the third stream of funds.

4 PUBLIC ACCESSIBILITY

4.1 Although this Code has been drawn up largely to regulate the sponsoring of subsidised institutions, it is also applicable to that part of the cultural sector which is not eligible for grants. After all, it is of no interest to persons attending performances whether financial backing has been provided by the government or by a private organisation. However, grants are allocated on the implicit condition that the institution or performance will be accessible to the general public.

The question of accessibility is probably the most important aspect of sponsoring from the general public's point of view. The general rule is clear: whatever the performance, event, or exhibition etc. public accessibility should be ensured, if, at least, the impression has been created that the general public can gain access. For the sake of clarity, the question of public accessibility does not arise in cases in which a company (the sponsor) has contracted an exhibition or performance for private purposes only (for its staff or customers), to be held at time not included in the normal schedule.

4.2 The main principle is that sponsorship should increase rather than limit both capacity and the number of cultural activities. If the activities of the sponsor lead to an increase in the number of people attending an event, public accessibility may not suffer. Article 4.2 will be of the greatest relevance to cases in which the quid pro quo largely consists of tickets for the use of the sponsor. Equity is the guiding principle and each case will need to be examined separately.

The following guidelines may be of assistance:

- a. the recipient must ensure that the number of tickets allocated to the sponsor is in reasonable relation to the total number of seats and the average number occupied at performances or presentations, account being taken of the total number of performances or days on which the presentation is to be held, and the sponsor's financial contribution; of relevance in this regard is whether the performance or presentation is to be held once only, or whether it is one of a series or a repeat; the relation between the number of public and private performances/presentations should not result in a reduction of the tickets available to the general public; at issue here are private performances/presentations programmed within the normal schedule, i.e. they are not extra performances/presentations, and would, under present policy, be open to the public;
N.B. For the sake of clarity, subsidised institutions that also hold non-cultural activities (e.g. fashion shows) or activities which are, by definition, private (e.g. a parents' evening at a ballet school), may continue to do so. Here too, the relation between public, private and sponsored activities should be established on the basis of equity;
- b. with regard to exclusive accessibility to museums:
sponsors may only be granted exclusive access to museums on condition that this occurs outside normal opening hours. Permanent collections must, in any event, be accessible to the general public at all times;
- c. with regard to the distribution and sale of tickets:
the distribution and sale of tickets may not be selective, i.e. all tickets must be available to the general public, apart from those allocated to the sponsor. Prior reservation through 'Friends of..' societies is nonetheless permissible.

- 4.3 Indirect funding refers in particular to government funding of the building in which a performance, presentation or event takes place.

5 CONTRIBUTION AND QUID PRO QUO

- 5.1 There is no simple answer to the question of what constitutes an equitable relation between contribution and quid pro quo, as non-material values also play an important role. It is basically a matter of the values reasonable people accept as reasonable. The interests of four parties are involved: those of the recipient (maintaining artistic independence), the sponsor, the public and the subsidiser. Decency, fair play and good taste are the values underpinning an equitable consideration of these interests.

In contrast to the sponsor's contribution the quid pro quo on the part of the recipient is frequently difficult to define in money terms. In drawing up the agreement, however, the parties should attempt to examine the activities to be performed by the recipient as objectively as possible and to define them in financial terms. It must be emphasised that the criterion concerning an equitable relation between contribution and quid pro quo does not constitute an attempt to interfere in the price mechanism of the sponsorship market. The sponsor and the recipient are totally free in establishing their economic ties, the market mechanism determining supply and demand. The stipulation that the relation between contribution and quid pro quo must be equitable is intended to provide inexperienced parties – both sponsors and recipients, as the examples below show – with a measure of protection. In addition, this stipulation must also be viewed in the light of the need to safeguard public accessibility. It is for this reason that government authorities provide grants and that

public funds are used to create and maintain an infrastructure within which cultural activities may be conducted.

The sponsor should not be out for bargains, concluding deals in which he knows that he will gain far more than his contribution warrants. Similarly, an institution may not demand disproportionately high contributions. Generally speaking, it is a good idea if institutions gain a better insight into their position on the sponsorship market and into the money involved. Regarding income from sponsoring as a means of marking ends meet is not a good basis on which to establish an equitable relationship.

The provisions contained in 5.1 define the role played by parties other than those directly involved, i.e. the sponsor and the recipient. Regarding the general public as an interested party to a sponsorship agreement may be regarded as the decisive factor in determining what is, and what is not, acceptable in the general public's opinion - yet the general public has no de facto means of expressing its collective opinion.

How, therefore, do we know of the existence of certain standards, and just what constitutes 'good taste'? The media play a role in this respect; art critics and journalists may indicate public opinion on certain standards. In this sense, media acceptance can be seen as a reflection of public acceptance.

Politicians and other policy-makers can also play a role in this regard as they, in their turn, are influenced by the opinions expressed by the public and the press.

- 5.2 - The regulation contained in article 5.2 does not imply that there should be a strictly consistent relation between the price paid by the sponsor, his contribution, the price paid by the public and the cost price, but that disproportionate

discrepancies should be avoided. It is up to the sponsor and the recipient to decide what constitutes an equitable relation in any given situation; further regulation is thus unnecessary. The cost price of a ticket should be taken into consideration as it relates directly to the institution's fixed costs for the infrastructural facilities without which it could not conduct its activities.

- It may occur - in, for example, long-established sponsorship relationships - that a company provides the recipient with money or services without demanding an immediate return. In such cases, the sponsor's contribution may be regarded as good will, which is also of value and which will be taken into consideration when, at a later date, the company and the recipient enter into a sponsorship agreement.
- The ambience is also of value, for which an adequate fee just be charged.

5.3 The provisions of this article are intended to curb hidden, misleading forms of sponsorship. Exceptions may be permitted, if, for example:

- the sponsor invites only his own staff members;
- for reasons other than those arising from the artistic merit of the activity in question, i.e. for reasons which have more to do with his image, the sponsor does not wish his relationship with the recipient to receive too much emphasis, an example being the sponsorship of a cultural festival in aid of AIDS research.

5.4 - Communication being one of the reasons that sponsors enter into sponsorship agreements, all activities in the field of communication, publicity and the like - including receptions - must be specified. Failure to do so could lead to parties misunderstanding each other's intentions and to unsatisfactory performance of 'rights and obligations'.

The main rule is therefore that only those activities that have

been agreed upon should be permitted. Any activities falling outside the scope of the agreement should be prohibited, unless permission is given. This Code does not contain separate provisions on non permissible communications and activities, such as the wrongful use by the sponsor of the recipient's words or expressions and 'ambush marketing', where an attempt is made to profit from an institution's name by a company that does not sponsor it. It is, however, permissible for companies that sponsor institutions to make use of their names, provided the institution in question agrees.

- The rule relating to the excessive inclusion of messages from the sponsor speaks for itself. Anything that interferes with normal procedures and draws too much attention to the sponsor must be avoided.
- For the record, the parties referred to in the regulations contained in 5.4 are the sponsor and the recipient.

6 MEDIATION

- 6.1 The provisions have been included for the benefit of those – generally smaller – institutions that have little or no experience of sponsorship. The regulations are not intended to have any influence whatever on the sponsorship agreement. The party employing the services of an agent pays the costs if a sponsor is found. If the party in question is the recipient, these costs will generally be deducted from the sponsor's contribution. The sponsor is, therefore, entitled to prior information in the matter.
- 6.2 Agents that receive instructions from both a potential sponsor and a potential recipient and subsequently bring the two parties together may charge fees of one of these parties only.

- 6.3 To ensure an equitable relation between the sponsor's contribution and the quid pro quo the fees paid by institutions to third parties (agents) for finding a sponsor must be reasonable. The same applies to the fees paid by sponsors to agents. In practice, fees may be charged as follows: on an hourly basis, as commission, or on the basis of both. If fees are charged on the basis of commission, the rates must be in reasonable relation to the number of hours worked and the costs incurred. Rates must thus correspond to the services provided.

7 CONFLICTS OF INTEREST

The provisions of Article 7 relate to the principle of fair play that is already observed within many boards. By making a specific reference to the conflicts of interest that may arise within a board, this Code attempts to draw closer attention to the matter.

- 7.1 As institutions must be free to appoint the board members of their choice, the Code does not include a system of prohibitions. Indeed, it might be conceivable that a sponsor should be prohibited from occupying a seat on the board of an institution. But we consider it to be up to boards to ensure that candidates are selected for their quality, since this is in the interest of the institution. Experience has shown that it is those people whose social position and/or position in the commercial sector or government provides them with the right contacts, knowledge and experience etc. who are asked to sit on boards.

Similarly, board appointments could be subject to the approval of the subsidiser. However, this instrument has not been chosen as it might lead to too much government involvement.

The standard has purposefully been formulated as loosely as possible. The interests of the sponsor may at times touch on those of the board. Yet what constitutes a conflict of interests will need to be assessed from case to case. The word 'concessions' is used here in the pejorative sense. If we assume that decency and honour are the principles underpinning the actions of the boards of institutions, it is nonetheless expedient to include a regulation for those cases in which the financial element is the overriding consideration. Although it need not occur, a board should be aware of the risk of a conflict of interests, if such is foreseeable. It may then decide to continue as before, if the risk is an acceptable one, taking, where necessary, preventive measures. Every board should seek to set in motion this process of consideration and choice. They should, in any event, obtain the information needed to ensure that the risks involved may be assessed. It is of course possible – indeed desirable – that the responsibilities and powers vested in boards and directors with regard to sponsorship be set down in the statutes of the organisations and institutions concerned.

7.2 Conflicts of interest may arise from the position of the current sponsor, but may also occur in connection with future sponsors. Decisions on the position of a sponsor within a board are taken by the other board members. Where conflicts of interest such as those referred to in this article occur, prompt action may be called for and the question of competence may not present an obstacle.

We would recommend that a regulation should be included in the statutes of the institutions and organisations concerned.

8 TERMINATION AND EXTENSION OF SPONSORSHIP AGREEMENTS

8.1 The regulation relating to adequate notice of intent to terminate an agreement is of a general nature and has been drawn up to safeguard the parties involved – in particular the recipient – from disaster. Sponsorship agreements are generally concluded for a certain length of time, so that this regulation is not applicable. The regulation relating to the sponsor's right of priority has been included for said party's benefit. In general, we would recommend that model contracts be used, such as the Model Sponsorship Contract of the Sponsorship Section of the Dutch Advertising Association, in cases where neither sponsor nor recipient work with their own standard contracts.

Subjects which should ideally be included in a sponsoring contract are:

- a clear description of the obligations of the sponsor and the recipient,
- the commencement date, duration and termination of the sponsorship agreement and the method of termination,
- a procedure for premature termination,
- a clause relating to the exclusivity of the agreement and any points requiring consent,
- a clause regarding non-fulfilment of the conditions of the agreement,
- a clause regarding methods of arbitration in disputes.

9 NON-OBSERVANCE

The success of self-regulation depends on the extent to which the parties involved observe the rules. The very absence of a strict monitoring system often leads to effective regulation. However, should, in retrospect, such a system prove necessary, it may usually be concluded that stricter measures are called for.

The intention with regard to culture sponsorship is clear: no strict regulation with prohibitions laid down in law, but a system of regulations drawn up with practice in mind and designed to prevent problems. When the Code came into force it was decided that a review would take place after two years to determine whether the system of enforcement decided upon (i.e. 'without sanctions') has turned out to be appropriate in practice. Evaluation of compliance behaviour has revealed that this light enforcement structure is sufficient and that a more oppressive system would be neither necessary nor efficient. The evaluation concluded that the primary effect of the Cultural Sponsorship Code is preventive. As long as the letter and the spirit of the rules of conduct are complied with, there is no need for further regulations.

9.3 The Foundation 'Culture Sponsorship Code' may act as mediator at the request of both parties.

9.4 If the party against whom a complaint has been lodged so desires and requests, the Board may advise privately on the settlement of the complaint.

This procedure is wholly optional and the party in question may resolve the dispute as it sees fit. Sponsors and recipients are thus wholly responsible for the settlement of complaints.