Comparison of requirements for location, maintenance and removal of road advertising between Polish and foreign regulations

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Abstract. The article gives an overview of Polish and international formal and legal requirements for roadside advertising and the relevant road safety impacts. The analysis focussed on outdoor advertising life cycle consisting of three stages: location, operation and removal of advertising. Experience of road authorities from Australia (Queensland), Republic of South Africa and the United Kingdom was collected. The article is part of a joint project "Development of Road Innovations" funded by the National Centre for Development and Innovation and the General Directorate For National Roads and Motorways.

1 Introduction

In times of free market economy we are inundated with information. Companies, organisations and stores use advertising to put their message across to as many future customers as possible. As well as using television, newspaper and radio ads, outdoor billboards are placed in generally accessible open space. With no legal regulations on where and how densely the ads can be located, the roadsides across the country, and in tourist destinations and major towns in particular, are brimming with all sorts of adverts. So much so that it interferes with the general signage such as street names, locations of government offices, landmarks or even road signs.

In legal terms, roadside advertising in Poland is already regulated. Using the roadside as a location for a billboard can only be done at the permission of the relevant road authority. What is not clear is the standards for placing advertising outside the road perimeter because the current legal regulations do not protect the interests of road users sufficiently to ensure road safety. The rulings of administrative courts suggest that road safety is important and should be considered when allowing roadside billboards [1].

Recently, public debate in Poland has voiced strong criticism towards the inundation of landscapes with advertising (along rural roads) and city aesthetics. Major cities have even set up departments to fight illegal and ugly advertising. As an example, Gdansk has its own City Aesthetics Department whilst Gdynia appointed the Municipal Arts Office to deal with advertising. Research and analyses on the relation between advertising visible from the road and road safety is scarce. With a dynamic increase in advertising presence, "visual noise" is created which is clearly bad for the aesthetics of the surroundings and causes chaos with understanding road and traffic signage. This may have an indirect effect on road risk. As we know from the literature visual noise is "constant background noise derived from a multitude

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of cues, interfering with or preventing the driver from processing the information from the cue significant to him" [2]. This means that a specific space is full of advertising making correct interpretation/understanding of road signs more difficult and distracting drivers. This phenomenon has been studied in other countries. A number of studies looked at how this problem affects driver behaviour. Countries that have significant achievements in studying the effects of advertising on driver behaviour include Australia, United States, Republic of South Africa and Canada. Extensive efforts were taken there to develop legal regulations and guidelines to help with a better control of outdoor advertising. There is a similar need in Poland.

2 Overview of international experience

Other countries have studied the phenomenon in extensive research on driver behaviour with Australia, United States, Republic of South Africa and Canada as the countries with the biggest achievements in studying the problem. They also started a major effort to create legal regulations and guidelines to help them control outdoor advertising in public space. This paper presents a synthesis of the analyses mostly from Australia (Queensland) [3], Republic of South Africa [4] and the United Kingdom [5]. The work relates to the so called life cycle of outdoor advertising (Fig. 1). It has three stages: advertising location, maintenance and removal. The paper describes the experience of road authorities regarding the application procedure, examples of application forms, areas where advertising is excluded and the permissible physical features of advertising.

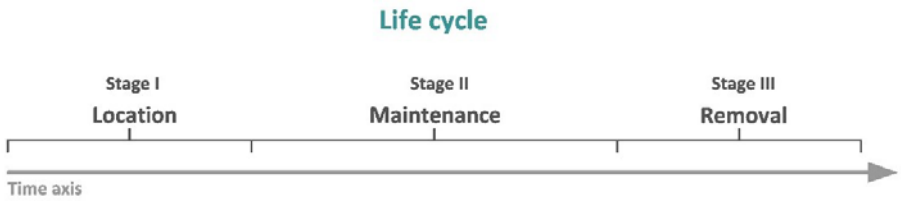

Fig. 1. Life cycle of advertising.

Requirements for advertising location. In Australia the state of Queensland requires applicants to receive a written permit from local authorities irrespective of whether the billboard is within the road perimeter or outside it. Local law sets out the requirements to be met by billboards. If they are to be situated within the road perimeter, the location must be authorised by the road authority. Its decision is binding. For a billboard to be placed within the road perimeter, the applicant must seek the permission of both the local authorities and road authorities. To give local authorities more powers in deciding the location on roads that are managed by national level road authorities, a guide was developed titled "Roadside advertising within and beyond the boundaries of state-controlled roads" which helps the local government to take on a greater role in managing roadside advertising on state-controlled roads [3].

Requirements for advertising maintenance. In the Republic of South Africa advertising that is permitted in a location should meet the following criteria for the purposes of maintenance [4]:
- be located at a height that discourages vandalism;
- be serviced on a regular basis – visual aspect;
- be maintained in good repair and in a safe condition.

Those responsible for maintaining the advertising in a safe and proper condition include both the owner of the advertising and the permitting body. To ensure that the criteria are met, it is recommended that the advertising be checked once a year. The land owner should have

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complete documentation of the location permit and, where the land owner does not own the advertising, he should receive a copy of the documents from the applicant. This is required when the Agency conducts checks later on. The Agency may annul the permit if the advertising does not meet or no longer meets the requirements set out in the permit.

Requirements for advertising removal. In the state of Queensland an advertising device may be removed if it poses a risk to road safety, hampers roadworks, if permit terms and conditions are violated or if the advertising is not licensed. The owner of the advertising is notified in writing about the order to remove the advertising. If the advertising is of low value (it is made of cardboard, paper, etc.), the relevant control body may remove the advertising immediately without notifying the owner. If the owner does not respond, the advertising is removed at the owner's cost by the Department or local authorities and penalties will apply. In the case of advertising placed on vehicles and trailers, if the vehicle is parked within the boundaries controlled by local government or the Department, and if the vehicle is there for displaying the advertising only, the vehicle should be removed immediately. In the case of advertising visible from the road, the procedure to remove it is similar.

3 Review of Polish experience

Poland's national laws do not address the location of advertising understood as expositional contents in too much detail. While there are regulations on structures in the Construction Law [6] and the Public Roads Acts [7] they only apply to structures that will be used to display advertising contents. If the advertising is not displayed on a structure within the meaning of Construction Law [6], this is not regulated. The historic buildings act is an exception [8]. There is nothing to regulate the shape, contents and ways to display advertising. Some mention can be found in the Landscape Act regarding the management of advertising display. This is a nation-wide regulation [9]. While the act helps to manage advertising, the risk is that advertising visible from the road will not be covered by local authorities from the perspective of road safety. Because the act allows municipalities to make their own decisions, the regulation may be enforced differently by the different municipalities which is not good for drivers. Road authorities work to standardise the parameters of a class or road category. In Poland a road authority may decide on what happens within the road perimeter but has hardly any say on what happens outside it.

Requirements for advertising location. Road safety is to be ensured in particular within the road perimeter. Roadside advertising must meet stringent regulations under the public roads act whose purpose is to create the conditions for an optimally safe road traffic and minimise the emergence of factors that could put safety at risk. Owners and road authorities are required to look after the road and the road perimeter to ensure that they can be used safely by road users. To fulfil this obligation, the authorities have powers to regulate road perimeter occupancy permits using their discretion. While discretion does not mean arbitrary decisions, authorities can choose between different solutions and weigh the goal of the law against public interest. This means that if the applicant meets the conditions of the road perimeter occupancy permit, the application is not necessarily approved automatically (c.f. verdict of the Supreme Administrative Court of 12 December 2008, II GSK 565/08). Road authorities are not allowed to permit an action, i.e. the siting of advertising, that is against the law. This conflict, however, cannot be based on subjective assessment. It must refer to the facts and the law. Road authorities have a duty to monitor the roads they manage and commission opinions and analyses and use materials developed by other organisations.

Requirements for advertising maintenance. Pursuant to Article 38.1 of the Public Roads Act [7] building structures and devices that have no relation to the road or traffic and are found within the road perimeter and do not pose risk to road traffic or hamper it and do not interfere with road authorities work, may remain unchanged. This regulation applies to

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building objects and devices that were found within the road perimeter on the effective date of the law or came to be there later because the road perimeter itself has been changed. The regulation includes a statutory permit of sorts with no time limits to occupy the road perimeter and no fees. It needs to be stressed that Article 38.1 of the Public Roads Act [7] applies to existing objects only in the road perimeter and it does not apply to objects that were placed there within the meaning of Article 40.1 and 2 of the Public Roads Act [7], such as advertising. The permitting body may take steps to eliminate the devices from the road perimeter by not renewing the permit to occupy the road perimeter. A previous road perimeter occupancy permit does not come with an automatic renewal, because the public road authorities have the right to decide about the road. Permits are for a limited time which is stated in the permitting decision. Once the validity expires, the road perimeter occupancy permit must be renewed to ensure the legality of the outdoor advertising. Just because an advertising device has been in a location for a long time and has had multiple consecutive permits does not mean that the permit will be renewed again.

Requirements for advertising removal. If the advertising device is placed within the road perimeter without the permit of the road authorities or if its temporary permit has expired and the applicant has not asked for a renewal or if the advertising is not built as designed, it will have to be removed and the owner of the advertising will pay a fine. The fine is a multiple of ten fees for a legal advertising device. In exceptional cases if the advertising complies with land use and building regulations, it may be legalised. A legalisation fee must be paid specified in Article 49.2 and Article 59f.1 of construction law [6]. It is often difficult to identify the owner of illegal advertising within a road perimeter. Orders to remove and disassemble advertising are issued by building supervision. Removal is done at the owner's cost. Areas outside the road perimeter are not regulated as regards the siting of advertising and its possible negative impact on road safety. Consequently, road authorities have no means to act. While they may report problematic advertising to building supervision, experience shows that responses to such instances differ from county to county. Some authorities will work to have the advertising removed, others will not see this is as road traffic hazard. With an abundance of roadside advertising in Poland, building supervision bodies cannot handle the majority of cases due to their capacity. In addition, the steps are taken under the code of administrative procedure which is lengthy and the penalties are low compared to the benefits gained from displaying the advertising. Some advertising owners are known to pay fines and continue to display the advertising or take it down when requested by the authorities only to put it up again because they know that a new administrative procedure will have to be launched and before any fines are paid, they will have benefited from the gains of the advertising.

4 Conclusions

Visual information in Poland is displayed irrespective of ownership boundaries or the boundaries of road perimeter. In the case of advertising facing the road (so that it is visible for road users) located outside the road perimeter, there is nothing road authorities can do to remove the advertising if it poses a road safety hazard. As a result, advertising visible from the road is not regulated as regards the location and operation and many organisations and institutions, both central and local have asked for specific rules to regulate this.

If the demands of local authorities, road authorities, building supervision, etc. are to be met, tools must be developed to help with planning, assessing, permitting and refusing to permit locations and forms of advertising visible from the road. Nation-wide rules and forms of how advertising contents visible from the road can be located and displayed must be made part of the legislation. This means having to:

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- revise and complement the acts: road traffic law, public roads, building law and code of offences,
- develop and adopt an ordinance of the minister for transport on the technical conditions and siting rules for advertising visible from the road,
- enable local authorities to enact local laws to limit advertising in their area.

Before these documents are developed, driver behaviour must be studied as well as in-depth analyses must be conducted into the effects of driver distraction on road safety where advertising is displayed. An overview of international legal practice shows that the decisions to locate, control and remove advertising are mostly within the remit of local authorities. In the case of advertising visible from the road, road authorities are usually consulted. If advertising is to be placed within the road perimeter, the opinion of the road authorities is decisive. Advertising should meet the conditions set out in local law, acts, ordinances and guidelines on outdoor advertising. Administrative procedures are described in legal acts, while guidelines are prepared in the form of guides for advertisers and local authorities. Guidelines give a detailed description of the physical features of advertising and where it can be located. It is clear in international regulations that the shape and appearance of advertising devices cannot resemble that of official signs and road signs. The majority of cases ban the use of dynamic lighting and visual effects in advertising. Siting criteria are more rigorous where driver concentration must be ensured to take a decision such as before a pedestrian crossing, when joining traffic and approaching junctions. In Australia [10] special emphasis is put on advertising location with very detailed descriptions of methods for designating excluded areas. The Republic of South Africa [4] analyses advertising contents very carefully. Advertising should not have an effect on road safety and should be maintained as set out in the permit. In other countries unauthorised advertising is removed at the owner's cost. Permits are granted for a limited time and advertising may be removed if the permit is breached. The owner of the advertising device must ensure that the device is maintained in good technical condition and that it complies with the permit.

Studies of the literature have also shown that:

- many countries in Europe and worldwide regulate the location of advertising visible from the road and the forms of displaying advertising contents,
- while research on how advertising affects road safety is very complicated, all existing studies show that advertising attracts drivers' attention,
- studies have shown that variable and dynamic advertising attracts drivers' attention more often and for longer than conventional advertising,
- attracting attention and distracting is largely dependent on the contents and form.

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