

## **EPRA Dedicated Working Group on Product Placement Session during the 33rd EPRA meeting in Ohrid, 26 May 2011**

*Summary of the discussion by Johanna Fell (BLM, DE), group coordinator*

The dedicated EPRA working group on product placement held its second session during the 33<sup>rd</sup> EPRA meeting in Ohrid on 26 May 2011. The meeting was attended by approx. 45 participants and was chaired by Johanna Fell (DE, coordinator of the working group). In the session, the working group followed up on topics it had been discussing via e-mail since the last meeting in October 2010 and decided on the topics it intends to deal with over the next few months.

### **1. Update on the status of transposition**

The representatives of Ireland, Turkey, Poland, Slovakia, Bosnia and Italy reported on the status of transposition of AVMS-D and the regulation developed for product placement in their countries. Their interventions confirmed the impression already won by the working group regarding the diversity of approaches to the regulation of product placement which range from specific rules to each aspect of product placement to a self-regulatory approach in line with the wording of the Directive, as well as differentiations concerning the admissibility of product placement for public-service broadcasters vis-à-vis commercial broadcasters.

Self and co-regulation: In Italy, primary law is identical to the AVMS Directive. The rest is self-regulation by the broadcasters. AGCOM is encouraging the broadcasters to adopt the same or similar codes. AGCOM will review the Codes and can require changes.

PSB: The Netherlands prohibits PP on PSBs. In Germany, public broadcasters volunteered to only use prop placement, which is reflected in the inter-state treaty. Denmark allows PSBs to include PP in fewer genres than commercial broadcasters. Ireland decided that as the Directive does not distinguish between private or public broadcasters, it was not appropriate for the NRA to add additional restrictions.

Israel drew attention to the fact that product placement is prohibited in Israel while sponsorship is acceptable. Despite the ban, product placement is known to take place. The working group discussed the issues raised by Israel, e.g. the identification of product placement on websites of broadcasters or other platforms.

Other issues discussed concerned the ban of product placement in children's programmes and acquired programming. Norway is still negotiating with the Commission on certain adaptations to the AVMS Directive, before adoption. This includes a prohibition on directing PP towards children in any programming. Slovakia commented on the difficulty of distinguishing between PP and prop placement in children's programmes, especially for acquired programming.

The Netherlands has not been applying PP provisions to acquired programming, on the grounds that it is difficult to identify PP. They are reconsidering this in light of the Commission's enquiries on AVMS implementation. Denmark is also in dialogue with the Commission about the difficulty of identifying PP in this case. At the meeting, the Commission confirmed that the exemption only relates to signalling; all other AVMS restrictions apply.

### **2. Update on identification / signaling**

The working group discussed the updated data collection on identification and decided that the overview should also include a contact for each entry to permit easier communication between members.

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Ireland explained that it decided to leave the design of the logo for the identification of product placement to broadcasters for the time being. The BAI will review this position should the logo(s) chosen by broadcasters not provide the required transparency of identification for consumers. Product placement is now regulated in the revised commercial communications codes which entered into force on 02 May 2011.

The CvdM explained the different logos chosen by SBS for the identification of product placement: the industry has designed a revolving logo showing a symbol and some typical PP products (car, bottle...)

The consultation on the regulation of product placement in the Netherlands is shortly to close.

In this context, the question of the identification of product placement and prop placement in acquired programming was also raised; attention was drawn to the opt-out option in Art. 11 (3) d, second sentence, of the Directive. The Belgian CSA received a complaint concerning the US series "Mad Men" in which – in line with the habits of the 1960s in which the series on an advertising agency is situated – there are constant references to the cigarette brand "Lucky Strike". The complaint was dismissed by the CSA. The complainant appealed against this decision following which the CSA issued a formal decision confirming that the dismissal of the complaint was justified. The CSA considered this was not PP: the 'Lucky Strike' brand was mentioned because it is one of the ad agency's clients, and smoking was part of daily life at the time the piece is set. The working group did not come to a conclusive view in this respect; it will take the issue up again in the next session in its debate on undue prominence.

The VRM (BE) raised the question of differentiating the identification of product placement in linear and non-linear services respectively.

### **3. Concrete decisions and cases**

France presented the CSA's decision of 10 March 2011<sup>1</sup> regarding the inclusion of virtual or real billboards or advertising posters in the background of TV films and TV series which should be considered on a case by case basis, to assess if they are acceptable PP or surreptitious advertising. If the audience can see the brand name or product only, it is PP. If they can see more details, like the price, it is surreptitious advertising. The explanation and the video example raised considerable interest. No other member has as yet been approached by a broadcaster or observed similar examples of advertising or product placement being included in content in the form shown.

### **4. Thematic placement**

In the debate of thematic placement, Israel raised the question of programmes funded by authorities and non-profit organizations and queried if there were any guidelines to follow. Members of the working group pointed to the option of social advertising and drew attention to the fact that political advertising is prohibited in many countries; in this context it might be interesting to explore the question of product placement financed by political parties.

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<sup>1</sup> <http://merlin.obs.coe.int/iris/2011/5/article23.en.html>

The DLM reported on a case of thematic placement in the ARD early-evening soap opera "Marienhof" some years ago. It will forward an overview of it to the working group.

Israel reported on the repeated reference to an existing insurance company in a soap which was immediately followed by an advertising spot for that company after the end of the programme. The working group decided to deal with thematic placement soon.

#### **5. Operation of the working group so far**

The working group confirmed its position that the reports of its debates are intended for internal use only.

The coordinator will continue the collection of data on the various aspects of product placement and will concentrate on gathering video examples which should be accessible via the clearing house. Another data collection will be focusing on explanatory papers which the members have provided (translations of laws and bye-laws, explanatory papers etc.). The mailing list will be updated.

#### **6. Next issues to be dealt with**

The working group will now deal with the question of undue prominence; this will also form one of the focal points of its session at the next EPRA meeting. The coordinator will prepare a systematic overview of the data already available on undue prominence following the enquiry of the Greek colleagues, and will circulate a questionnaire on undue prominence to all members.

The working group will also explore the categories of content for which product placement is admissible and in particular look at the definition of light entertainment programmes.

#### **7. Other issues raised**

Attention was drawn to the fact that in some countries, product placement is seen as a form of sponsorship, e.g. in Switzerland. The working group will explore the implications of this at a later stage. Croatia raised the issue of virtual PP in live sports events, where control may lie with the broadcaster, the event organisers or the stadium.

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