



41st EPRA meeting
Berne, 14-15 May 2015

Working Group 2:

Audiovisual Commercial Communications: Trends and Challenges: Focus on Advertising

Summary of the discussion

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Chair: *Helena Mandic*, EPRA Chairperson (BiH)

WG Coordinator: *Kerstin Lange*, DLM (DE)

Speakers:

Anthony Szykaruk, Head of commercial policy and enforcement, OFCOM (GB)

Marcel Betzel, Policy Adviser, CvdM (NL)

Geneviève de Bueger, Head of new platforms, CSA (BE)

Rapporteur: *Johanna Fell*, BLM (DE)

Under the [EPRA annual Work Programme for 2015](#), commercial communications was determined for one of the working groups, and the meeting of Working Group 2 on 14 May 2015 put the focus on advertising. It was well attended with around 45 delegates. The secretariat had circulated a questionnaire to EPRA members and you can find the [summary](#) together with [a compilation of all answers to the questionnaire](#) on the website for further reference. *Kerstin Lange* took the WG through the questionnaire; this drew 31 responses, a very satisfying figure which reflects the importance the topic has among us and confirms that all forms of advertising play a role in the audiovisual market and are regulated. Alongside the “classical forms” there are more specific types that are regulated in just one or two States. The challenges for the regulation of advertising named by respondents are familiar as well, e.g. separation of advertising from editorial content, surreptitious advertising, breaches of the quantitative advertising rules etc. No surprise there, but some surprise at the response that most participants of the questionnaire received relatively few complaints from the audience. The question regarding the need for further legal regulation at the national and/or EU level resulted in a very different picture with views ranging from the wish for more guidance from the EU level to the suggestion of high-level principles at EU level, ideally developed together with Member States as the basis for the work of regulators at home.

The second part of the questionnaire covered commercial communications on VOD platforms. Responses showed that the majority of countries have transposed the rules of AVMSD literally; this means that qualitative rules apply to all types of service while quantitative rules are restricted to linear services. A rather contrasting picture emerged with regard to the role played by commercial content on VOD platforms; it is relevant in most Northern and Western European countries, but not very noticeable yet in Southern and Eastern Europe. Respondents did not name major challenges for applying advertising rules to VOD platforms, and few complaints have been received by viewers so far. Concerning future trends and challenges, most regulators held that the second screen may play a role in the future, as could profiling techniques or data collection and analysis by content providers. To conclude, key issues were gathered with the questionnaire that might merit regulatory attention in the next 10 years.

The summary was followed by three presentations, starting with [Anthony Szynkaruk](#) (Ofcom) who took the working group through the **rationale and practice of advertising regulation** on the basis of the relevant provisions of the AVMS Directive (namely to ensure that the interests of consumers as television viewers are fully and properly protected, that the insertion of advertising should not unduly impair the integrity of programmes, and that detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is not justified). Alongside the Why, the What and the How of advertising regulation, Anthony elaborated on the strategic objectives of quantitative ad rules, viewers' responses to ads and gave examples of Ofcom's approach to applying the principles embedded in the Directive. The research conducted by Ofcom into viewing habits in the UK where daily viewing is around 4 hours with 84 % of that live showed that while advertising is well recognized as a relevant source of funding content (around 70 per cent), 50 % of those questioned think there is too much of it; at the same time, however, viewing of channels carrying advertising is going up. Anthony made it clear that for its research, Ofcom selects participants from very different age groups and environments to get a reasonable cross-section, but does not claim that it is representative. The viewing patterns appear to change as different tools for media consumption are available, also in relation to different age groups. Anthony then detailed options developed by Ofcom for calculating the duration of a programme which is relevant to when advertising can be inserted, and finally reflected on the way in which the concept of the "clock hour" can be interpreted.

[Marcel Betzel](#) covered the issue of **self-promotion and cross-promotion**, starting with the definitions embedded in the AVMS Directive and referring to some recitals in the 1997 Directive, and pointed out the impact of self- and cross-promotion on the calculation of the permitted advertising duration per hour. He presented a wide range of examples from the Netherlands which were assessed quite differently by participants in the working group. As Marcel put it, this reflects the need for a more common understanding of the concept of self- and cross-promotion as the legal uncertainty does not really help ensuring the level playing field that should ideally be available for all parties in this respect. Marcel then outlined the work which the CvdM has done for the regulation of services under its remit, described the different categories of self- and cross-promotion which the CvdM has identified and which reflect the diverse forms of self- and/or cross-promotion that providers have already come up with. This was followed by a lively debate of the working group on the question how far the concept of self- and cross-promotion should be extended, and where the promotion turns into an advertising spot.

[Geneviève de Bueger](#) familiarized the working group with the **trends and challenges which new platforms present for regulating commercial communications** and explained the research which the Belgian CSA is conducting in the framework of a [public consultation](#) which is still ongoing and which addresses the scope of the regulatory framework regarding "new" or "other" forms of commercial communications, the 20% rule on non-linear services, the identification of commercial communications, the question of what editorial responsibility really remains for AVMS providers in a connected environment and what revenues can be expected from commercial communications on new platforms. Like Anthony and Marcel, she also presented some examples which illustrate issues

that we as regulators will have to face up to in the online environment, e.g., the mix of editorial and advertising content on new platforms and what this means with regard to the principles of identification and separation, or the “mutation” of advertising content into audiovisual content and vice versa. As regards the findings of the consultation available so far, respondents from the industry put the competence of the CSA into doubt; one player argued that self-regulation would meet the expectations of viewers regarding the regulation of commercial communications and that there is no problem regarding the identification of advertising or its separation from editorial content. Other comments suggest that platforms should be excluded from the scope of regulation and commercial communications could be managed by the platforms themselves while a TV manufacturer denied any knowledge of the possibility to superimpose adverts on connected TV without the knowledge of a broadcaster, producer, nor indeed the brand in question. The CSA has not received any contribution from consumer associations which would add the view of “the other side” to the findings of the consultation. For the CSA, it is clear that everyone defends their own interests in the ever more competitive environment. What is not clear for the CSA at this stage is how to ensure identification and separation and how to quantify new forms of commercial communications outside of videos such as displays in the online environment. Considering the fact that the rules dating from the analogue world may be difficult to apply in today’s digital environment, there is a need to adopt a technology-neutral approach in the view of the CSA.

In the discussion of the group the question was then raised whether the quantitative advertising rules could still be considered a really relevant aspect of regulation in the online environment, and an impromptu show of hands brought a clear split of views with half the delegates in favour of keeping the quantitative rules while the other half felt they could be given up. *Marcel Boulogne* pointed to that the EU Commission would very much like also to integrate the view of consumers as it needs to think about the consumer interest as well, and to what degree there is a need for consumers to be protected from excessive advertising.

The amount – not to call it excess – of advertising was then debated in relation to content available on VOD platforms such as YouTube where a development can be noticed that content attracting a large number of followers includes more and more advertisements in the clips and an turn-around by some of the more successful “YouTubers” calling for regulation. Another issue is the difference between product placement and surreptitious advertising; the debate will pick up speed with YouTube gaining even more importance and more advertising coming from all sorts of sources. The Directive in this respect does not appear to be up-to-date with reality any more.

At the October meeting of EPRA [on 28-30 October in Bucharest](#), the focus of the working group will be on product placement.