

**44th EPRA meeting**  
**Yerevan – 19 – 21 October 2016**  
**Working Group 2**  
**Case study on editorial vs. Advertising Content**  
**Focus on native advertising, advertorials, branded content, surreptitious advertising & Co.**

**Summary of Discussion**

Johanna E. Fell, BLM (DE), WG2 Chairperson and Content Producer

The Working group concentrated the main part of its session on discussing practical examples of where the boundaries between editorial content and commercial communications are to be found these days. First, **Agnieszka Wasowska** from the Polish KRRiT presented a number of examples that made evident the way in which editorial content is tailor-made to suit specific marketing strategies for a company, a product or a concept. In some instances, well-known artists were used to act as "testimonials" or an emotionally charged storyline brought across the properties of a specific product. A couple of examples showed up the approach a content provider (HBO) used to cross-promote new series, for instance by producing short stories that end with the invitation to watch another programme. The examples showed that there appears to be a clear strategy to at least "match" content and advertising, if not content is built around some commercial communication – the chicken-and-egg question again.

The examples presented by **Joanna Spiteri** from the Maltese regulator also resulted in more questions than answers: Does content attract advertising or is advertising looking for content? The examples she presented raised issues about undue prominence of placed products, props placed in games shows to be won at the end, or – quite a striking example - a mix of editorial content and commercial content in a news bulletin broadcast by a public service broadcaster which was then followed by a commercial taking up the commercial message embedded in the news. For outsourced productions, the issue of the editorial independence also came up. For Malta, more than for Poland, it was stated that there appeared to be a need for better criteria for the regulator to work with and for court decisions to develop case law. It was felt that regulators are caught between the implementation of regulatory requirements and the requirements of the market, resulting in the uncomfortable position that applying regulation might jeopardize original local content production – a situation all the more critical in markets such as Malta in which more than 90 per cent of material consumed is non-domestic.

**Ross Biggam** (Discovery) made participants aware of the challenges facing audiovisual mass media companies and felt that with the introduction of commercial communications in the 2005 AVMS Directive, the market for sponsorship changed completely. Despite the detailed provisions for commercial communications of the Directive, new ideas are still being developed to obtain funding. He drew the attention of the working group to the challenges broadcasters face in the competition against the "Big" players such as Google or Apple who make cross-promotion the heart of their

business, and gave some examples where Discovery did not air content because it might mislead audiences as to the true nature of what they see.

In the second part, **Anke-Sigrid Hahn** and **Michael Wagner** (DLM) presented the [FAQ paper](#) developed by the German regulators in an attempt to make the "legalese" of advertising regulation more palatable for content providers in social media. This initiative which might also be called an attempt at fostering advertising literacy for YouTubers, was set in motion by the YouTube community asking the regulators to tell them how to deal with commercial messages. The paper translates the legal provisions in an easy-to understand language, explains what to look out for with practical examples ("what if I do this or that?") and emphasises the importance of transparency, credibility and trustworthiness which for many "stars" in social media with a large following are their most important currency. After a year's practical experience, the paper has just been revised to clarify some points and to extend the scope to Instagram and Twitter. In November 2016, the DLM will conduct a social media summit to spread the word, and will now start monitoring for a stricter enforcement of the paper.

In the debate it was found that the number of regulators in charge of internet regulation is limited. How to differentiate between audiovisual content and user-generated content was a question to which no quick and easy answer is possible. In general, the FAQ paper was felt to provide a useful approach to deal with new media outlets, and Ross Biggam suggested a similar toolkit be developed for product placement.

Part 3 of the session which would have been an exchange of views on the revision of the provisions for commercial communication in the AVMS Directive had to be dropped for reasons of time. As the debate on this topic will still be ongoing for a while, the working group felt that it might be earmarked for a session at the next EPRA meeting in Edinburgh.