

## 46th EPRA Meeting Vienna

12-13 October 2017

### Plenary Session 2: Promises & Challenges of Digital Disruption

#### Session focus: Minors' advertising literacy in the digital age

EPRA Background document<sup>1</sup>

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## 1. Introduction

At the 45th EPRA meeting in Edinburgh, Plenary Session 2 under the heading "**The promises and challenges of digital disruption and the impact on media regulation**" focused on algorithms - and more precisely on the impact that algorithms and filters can have on diversity.

The overall theme of digital disruption was integrated into the EPRA Work Programme for 2017<sup>2</sup> with the objective of considering how technology continues to "disrupt" established practices and to analyse the potential impact on market players, business models and regulation, following the keen interest expressed by EPRA members during the consultation process for discussing various matters pertaining to online media regulation.

The session presented a premiere for EPRA in that it included third parties in the preparation for the first time, taking up a decision by the Executive Board to involve carefully selected external experts from industry or academia from time to time as external Content Producers in order to provide additional insight on emerging issues. This is consistent with EPRA's approach to work collaboratively, not only amongst audiovisual regulators, but with academics, industry and other related stakeholders in the European policy and regulatory fields, and at the same time offers complementarity to ERGA's Work Programme for 2017 which lays an emphasis on training (ERGA Academia) and on preparing members for self- and co-regulation.

## 2. Lessons learnt at the Edinburgh Meeting

As discussed in Edinburgh, the term "disruption" is often associated with innovation and usually refers to a change of the market which is so powerful and different that it requires others in the field to follow suit or be left behind, thus having wide-reaching economic, legal and regulatory consequences on the existing landscape. Yet it has also been pointed out that disruption is not necessarily a bad thing, as it could also create opportunities for the benefits of industry and citizens.

One of the key features of the digital age has been the **shift from mass media to personalised media** along with the growing role played by information intermediaries. This development has given rise to

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<sup>1</sup> Disclaimer: This document has been produced by EPRA, an informal network of 52 regulatory authorities in the field of broadcasting. It is not a fully comprehensive overview of the issues, nor does it purport to represent the views or the official position of EPRA or of any member within the EPRA network.

<sup>2</sup> <https://www.epra.org/attachments/epra-work-programme-for-2017>

concerns about “filter bubbles” and “echo chambers” and their potential negative impact on democracy. The discussion in Edinburgh highlighted however that algorithms are versatile; while they can encourage confinement, they can also provide serendipity. Recent research shows that personalisation does not per se reduce diversity. It is thus vital to encourage the development of alternative, more objective, algorithmic recommendations that can be designed to break filter bubbles, and to rethink diversity against this backdrop. The development of personalised recommendation systems thus calls for a strengthening of international and European cooperation, not least among regulators. More generally, one of the conclusions was that regulators should ensure that core values are not negatively impacted by the changes brought about by digital disruption; this includes diversity but also the protection of consumers in general and of minors in particular, as well as human dignity.

In addition to news, a particular area of concern mentioned in the discussion in Edinburgh was the growing personalisation of **advertising** and its potential impact on pluralism and editorial responsibility. In parallel, discussions in the EPRA Working Group on Media Literacy<sup>3</sup> revealed that there is a considerable knowledge gap among the public between understanding how “traditional” and digital forms of media are funded. Advertising thus makes for a particularly interesting case study on the effects of digital disruption.

### 3. Advertising and the effects of digital disruption

On the one hand, digitisation has opened up new opportunities for the advertising industry as well as for broadcasters, for instance through the development of interactive techniques and personalisation. On the other hand, digitalisation has brought existential challenges in its wake to the broadcasting sector.

An issue faced by all broadcasters today is the multiplication of transmission infrastructures and consequent new offers that become available as this has profound consequences for the distribution of the advertising cake. Not only are there more competitors for a piece of it, but there is also a shift of this indispensable and - still - most important source of funding for most broadcasters away from them to new players and different outlets. In 2016 an important tipping point was reached in the global advertising industry, with revenue from Internet advertising exceeding that generated by TV advertising for the first time<sup>4</sup>. The internet allows for a far more targeted distribution, in many instances almost “tailor-made” to reach potential customers on the basis of data revealing their specific interests, customising commercial messages accordingly and cutting out wastage.

Another option opened up by digitisation is geographical targeting – regional markets all of a sudden can be provided with commercial messages relating to businesses round the corner also from afar, thereby drawing advertising spend away from local broadcasters.

Viewers not wanting to be exposed to advertising can use ad blockers to avoid commercial messages for the benefit of pure editorial content. However, this technical feature also comes with a downside: if audience reach is the currency for ad placements, broadcasters that can no longer guarantee a specific number of viewers may well lose out on advertising money.

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<sup>3</sup> See for instance Alison Preston’s presentation of Ofcom’s recent findings: <https://www.epra.org/attachments/edinburgh-wg-i-media-literacy-presentation-alison-preston-ofcom-uk>

<sup>4</sup> <https://www.pwc.com/gx/en/industries/entertainment-media/outlook/global-data-insights.html>

In its slower pace, European regulation has attempted to adapt to digital developments and shrinking financing resources. One might call the 2007 adoption of the Audiovisual Media Services Directive<sup>5</sup> the starting point of this process as it changed the old term "advertising" into "commercial communications". This first step signalled the advent of a different form of promotional message. Another step was the legalisation of product placement in 2007, and there can be little doubt that the erosion of the separation principle which it implied has greatly added to the commercialisation of other types of content. The rationale of the Commission was that it would provide additional financial resources to a struggling European industry. Yet, for regulators, product placement has often proven challenging to handle in practice, especially with regard to the interpretation of "undue prominence"<sup>6</sup>.

The most topical issues and dilemmas, however, revolve around the regulation of advertising in the online environment. Recent years have seen the development of many online advertising formats such as video blogs, advergames, mobile apps, YouTube channels and pre-rolls. In comparison to broadcast advertising, commercial messages on such formats are often integrated in the media content, blurring the lines between content and advertising and challenging the separation and identification principle. Such formats can also be highly entertaining in comparison to traditional advertising. This is for instance the case of advergames where children are encouraged to actively engage with commercial content. Through the emergence of social media, a lot of personal information is also shared in this context and the information is then used to tailor advertising to an individual's characteristics or interests.

Social media also allow more or less everyone to become their own programme-director cum presenter. The popularity of YouTube et al especially among younger audiences for which social media present a major aspect of their media consumption has resulted in the rise of YouTube stars. Thanks to their popularity, they represent perfect product ambassadors for advertisers wanting to reach audiences younger than 40 who tend to spend less time in front of the traditional television set. "Influencer marketing" is the new catchphrase in this context.

And where does advertising regulation stand in such a context? In 2007, the AVMS Directive has widened the scope of advertising regulation to a certain extent: qualitative rules, such as the ones relating to the recognition and content of audiovisual commercial communications also apply to on-demand audiovisual media services, while quantitative rules, e.g. on scheduling and duration apply to broadcasting services only. With regard to the on-going revision of the AVMSD, the [General Approach](#) adopted by the Council of the European Union on 24 May 2017 proposes to extend the applicability of the qualitative provisions on audiovisual commercial communications stated in Article 9(1) to video sharing platforms.

In any event, the refinement of commercial communication would appear to necessitate a review of some rules that worked well in the linear environment (signalling, identification) but cannot be automatically translated into the non-linear world. "Advertising literacy" therefore may have to be learnt afresh.

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<sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN>

<sup>6</sup> The Commission's revised AVMS proposal which recommended that all qualifications concerning product placement be dropped might have been intended to offer regulators a way out of this issue; however, the [General approach](#) retains the 2007 ban on undue prominence.

#### 4. The Vienna session focus: advertising literacy of minors in the digital age (AdLit project)

As outlined above, digital disruption is all-pervasive with effects reaching everywhere, not least in the area of advertising. The industry benefits from the new options available for commercial communications in the online world with new forms of advertising generating new sources of revenue for producers, presenters and marketers of products reaching audiences in a more targeted way and various novel forms of presentation of packaging than ever before. The players forming the delivery side of this relationship are adapting very rapidly to the new opportunities – but what about consumers at the receiving end of it, and in particular minors as the most inexperienced, and hence most vulnerable section of the audience? How do they face advertising and commercial communications in the online world?

A major project focusing on advertising literacy ("[AdLit](#)")<sup>7</sup> which identifies and assesses the risks connected to advertising formats in the digital media environment can provide insights and positions regarding a large number of issues arising in this context. Defining advertising literacy as "*the personal knowledge people have about advertising, its persuasive intent, and the advertising techniques that are used to target them*", this interdisciplinary Flemish research project brings together lawyers, communication scientists, marketing and pedagogical experts from four Belgian universities (Ghent University, the University of Antwerp, KU Leuven and the Free University of Brussels) and various stakeholders across different domains. They **investigate how to empower children and youth to cope with advertising, so that they can grow up to be critical, informed consumers who make their own conscious choices in today's new media environment**. The focus of the project which centres on minors aged between 7 years and 18 years of age is put on online advertising formats such as video blogs, advergames, mobile apps, YouTube channels or pre-rolls. The project started in September 2014 and is scheduled to finish in August 2018.

A [risk analysis](#) report includes new studies on minors' advertising literacy providing findings on children's advertising literacy towards various traditional and new advertising formats, the cognitive and moral advertising literacy of children towards new advertising tactics, their cognitive and attitudinal reactions towards television commercials and advergames as well as their attitude and knowledge of this newish advertising format and their literacy towards brand placements. The research conducted with teenagers (12-18 years) measured the digital activities of this target group, how teenagers process retargeted Facebook advertisements, and their advertising literacy towards social advertising.

Further AdLit reports deal with the **approach of advertising professionals and parents** regarding new advertising formats and their views on the reception by minors. A study of the Flemish **educational system** shows to what extent attention in Flanders is devoted to advertising literacy in both primary and secondary education. The legal research has mapped **regulation of commercial communication** aimed at minors at the EU level (AVMS Directive, e-Commerce Directive) and the national level as well as other regulatory instruments such as co- and self-regulatory tools and codes (e.g. ICC Code) and guidance. It was found that whereas many regulatory provisions are potentially applicable to digital advertising formats, the practical implementation thereof is still scarce and guidance is

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<sup>7</sup> AdLit: Advertising Literacy in a New Media Environment: Investigating Minor's Persuasion Knowledge in Relation to New Advertising Formats. Funding for the project is provided by the [Research Fund Flanders](#).

limited. Existing requirements, such as the identification principle, remain crucial but are challenged because of the characteristics of digital advertising techniques. After the mapping of the existing rules, currently a study is being carried out in order to identify gaps and provide recommendations for amending provisions to make them fit for purpose in the online environment.

The final report, a White Paper, will lead to suggestions for the different stakeholders (parents, schools, advertising professionals, policy makers & regulators) and will present policy guidelines regarding the need to develop advertising disclosures or cues, to increase general knowledge about advertising among minors and to train them to how to cope with advertising, to increase advertising literacy among parents, to raise awareness with advertising professionals and increase citizen awareness of complaints mechanisms and to improve regulatory coordination.

## 5. Structure and Aims of the Vienna session

The session in Vienna first featured a keynote presentation by **Prof. Eva Lievens** of Ghent University, one of the AdLit promoters, who presented the recent findings of the on-going project **on advertising literacy**<sup>8</sup>.

Following the presentation of the research findings a panel of three representatives of regulatory authorities from Austria, Germany and Norway reported on their own experiences and activities with regard to online advertising and minors and share their views with the audience on the shape of future regulation. Regulators analysing these issues in the panel debate included:

- Dr. **Susanne Lackner**, Deputy Chairperson of the Austrian regulator KommAustria
- Dr. **Tobias Schmid**, European Representative of the German regulators (DLM) and Director of the Northrhine-Westphalia regulator (LfM)
- **Mari Velsand**, newly elected Director General of the Norwegian media authority, Medietilsynet.

## 6. Possible questions for debate:

Towards an evidence-based approach: *Are regulators currently conducting or commissioning research on the attitude and the perception of children and teenagers towards online advertising? Are regulators currently conducting or commissioning research on specific online advertising formats and advertising on video-sharing platforms and social media? What are the key findings?*

Complaints: *Does your authority receive many complaints with regard to online advertising in general? Does your authority receive complaints specifically related to the protection of minors with regard to online advertising?*

Monitoring: *Does your authority monitor the compliance of advertising provisions on on-demand services, video-sharing platforms or social media? If so, what are the main findings?*

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<sup>8</sup> For an overview of some relevant findings, see: Minors' advertising literacy in relation to new advertising formats: Identification and assessment of the risks; A research report in the framework of the AdLit SBO project: <http://www.adlit.be/adlit-risicoanalyse.pdf>.

Determining scope of regulation: *Did your authority ever experience practical difficulties to determine the scope of its jurisdiction as a regulator in the field of on-demand commercial audiovisual media services? Can you report specific examples?*

Applicability of existing tools: *Are the tools that have been used by regulators in a linear environment appropriate to be used in a non-linear context?*

Identification, separation and labelling: *How to achieve an effective implementation of these key principles in a context of embedded and complex hybrid formats? Would a harmonised approach be of added value? What solutions work for children and teenagers?*

Self-and co-regulation: *Does your authority actively encourage self and co-regulation in the field of online advertising? Do you have any best practices to report in that context?*

Cooperation between existing bodies: *How to encourage a greater cooperation between the different bodies (regulators, self-regulators) active in the field? Do you have any best practices to report in that context?*

Advertising vs. media literacy: *Does your authority conduct or promote any activity to support the development of advertising literacy for new formats, in particular for young people?*

Potential extension of future scope of AVMSD to video-sharing platforms/social media: *Do you envisage any particular problems of application with the extension of qualitative provisions on audiovisual commercial communications stated in Article 9(1) to video sharing platforms?*

Need for new tools for dealing with future scope: *Could or should there be additional competences or measures at the national (or even EU) level for implementing the provisions of the future AVMSD regarding audiovisual commercial communications?*