

**WG I: Product Placement
Implementation of the new Rules
Information paper: EPRA/2007/10
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This paper is aimed at introducing the issues at stake and providing basic guidelines for discussion for Working group I.

The issue of product placement figured prominently in the review process of the AVMS Directive. The heated debates raised by this question and the various twists and turns as to the appropriate legal formulation to adopt were given widespread coverage in the media, at the risk of sometimes overshadowing other equally important issues of the Directive.

The Common Position of the Council agreed on 24 May 2007 establishes "*the principle that product placement be prohibited for all programmes produced after the transposition deadline for the Directive. However, exemptions to this principle are provided for certain types of programme (films, series, sports and light entertainment) subject to certain conditions. These exemptions will apply automatically unless a Member State opts out of them. The requirement to identify product placement at the moment that a programme resumes after an advertising break has also been added, and the specific case of 'thematic placement' has been addressed in Recital 63¹*".

Product placement was discussed on several occasions at EPRA meetings, at first indirectly through debates on the separation between editorial and advertising content and the prohibition of surreptitious advertising. However, on the occasion of the 22nd EPRA meeting in Budapest in October 2005, one working group focused on *Sponsorship and Product Placement*². On the basis of three presentations from *The Council for Cable TV and Satellite Broadcasting from Israel*³, the British *Ofcom* and the *Radio and Television Commission of Lithuania*, the group debated as to whether it was necessary to recognise an already existing practice and seek to regulate it; whether a relaxation of the rules was desirable in order to promote the European industry and whether indeed a move towards de-regulation would in this way

¹ Draft Statement of the Council's Reasons; Common Position adopted by the Council (...), 9 September 2007, 10076/07.

² See EPRA background paper EPRA/2005/10 by Deirdre Kevin, http://www.epra.org/content/english/members/working_papers/Budapest/WG1_product_placement_update.doc

³ See also the comparative study on product placement in Israel, Canada, the US, Hong-Kong and Australia carried out by the CCSB, available under: http://www.epra.org/content/english/members/working_papers/Budapest/product%20placement_epra_Israel_update.pdf

dramatically impact upon the nature of media and encourage an even greater commercialisation of output.

This time however, the focus of the working group will be somewhat different as it was suggested to specifically explore issues that may arise by the *practical implementation of the provisions dealing with product placement in the new Directive rather than debating on the pros and cons of allowing this new practice.*

With a view of illustrating the above-mentioned issues, we will hear two presentations from EPRA members during this group.

The session will start with an introduction, by Sebastiano Sortino from the Italian AGCOM, of the current legal regime for product placement (in TVWF and the interpretative Communication), followed by an overview of the outcome in AVMS. After replacing the topic in its European context, he will report on the current situation in Italy where the Parliament has already adopted an amendment on product placement. The amendment (which still has to complete Parliamentary process) aims at a partial implementation, allowing it only for independent producers and in a selection of works picked up from the list allowed for by the directive, in order to “crack” the tight link with broadcasters.

Then, Joan Barata will present as a case study the experience of the Catalan Regulator CAC, both a recently adopted law that anticipated AVMS as well as the guidelines that they have prepared for the practical implementation of product placement.

The presentations will be followed by a debate with the participants moderated by Group Chair Tim Suter.

Questions which will be raised during the group may include the following:

- What is the **current position** of EPRA members and, more generally, of European countries towards product placement?
- How many regulators have already gone as far as developing **guidelines** for the practical implementation of product placement?
- The group will also touch upon '**prop placement**', which is now also covered in the AVMS as a type of product placement but which currently enjoys a very different type of regulatory regime in countries such as the UK.

- What about the question of '**acquired programming**', (i.e. programmes acquired from third countries, like the US, which contains product placement) and the possibility given to Member States to waive the signalling requirements, since at times it can be difficult to trace back production deals?

- Will **virtual/dynamic product placement** (e.g. the possibility of targeting of customers with different products that can be dynamically switched based upon, e.g. demographics, psychographics or behavioural information about the consumer) be allowed?

- In her speech at the Audiovisual conference in Liverpool in 2005, Commissioner Viviane Reding stated that "having clear rules for product placement would secure new revenues for Europe's audiovisual industry, contribute to boost our creative economy and thus to reinforce cultural diversity". But what will be the **real economic impact** of product placement? And, more specifically, what about the economic impact of product placement on **independent production**? Will product placement become an additional source of income for broadcasters or it will most of all benefit independent production?

- Taking into account the potential risk of undermining viewers trust in the reliability and the credibility of TV and other audiovisual content services, which was put forward by opponents of the liberalization of product placement, do the current AVMS provisions adequately guarantee against the **danger of interference with editorial independence**?

- Issue of **level-playing field/downward spiral in regulatory standards**
Last but not least, given the combined effects of the international circulation of audiovisual works and the application of the country of origin principle, will it be possible for those countries wishing to keep the ban on product placement, to do so, without seriously harming the level-playing field between broadcasters and jeopardizing their independent producers?