Association of Commercial Television in Europe

Challenges brought by Emerging Forms of Commercial Communication: Editorial Responsibility and Control

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Outline (1/2)

1. Why does this matter?
2. Not the first time this issue has been discussed. EC Interpretative Communication on New Forms of Advertising;
3. Comparison then and now…
4. Innovation in TV Advertising (and related areas)
5. What might come next?
   a. Data-driven advertising
   b. Connected TV

/…

Outline (2/2)

6. Wider debate around why we regulate, how we do so… and whom?

7. Editorial Responsibility: Technology now poses a profound and unprecedented challenge not just to aspects of our regulatory system.

8. Interpretative Communications of AVMS only a partial fix.
   - Issues go beyond AVMS. Content regulation at EU level under (medium term) review. As part of this exercise, which principles can be carried forward into a fully converged world?

9. Among principles identified by the ACT as vital are:
   - Maintain current standards of ethics in commercial communication;
   - Defend the principle of editorial responsibility;
   - Guarantee the signal integrity of broadcasters

10. But how to do it?

Commercial Communications and Television: Why does it matter?

- 40% of broadcaster revenues reinvested in content – and commercial comms (still) the largest of the three sources of finance
- Local content dominates ratings everywhere
- High-end drama €1.5m per hour;
- 300+ news channels;
- FTA sport
- Market regularly provides new sources: Nordic drama, Turkish series;

Therefore not an abstract legal or competition issue, or in the case of new techniques, a technological one…

Rather, key role of advertising in funding content most enjoyed/consumed by Europeans.

Not the first time this has been discussed: EC Interpretative Communication on New Forms of Advertising, 2004

- Issues:
  - Interactive advertising;
  - Virtual advertising
  - Split screen

- Solution:
  - EC Interpretative Communication (April 2004) - these techniques compatible with TVWF and urged NRAs to interpret these and other new techniques *in dubio pro libertate;*

- Revision of TVWF then dominated, to a disproportionate extent, by discussions around product placement.

- As predicted by industry and NRAs at the time, these techniques have made useful but modest contributions to broadcasters' revenues (and hence their ability to invest in content);

Innovation in TV advertising - Today

- Television, according to some, has been '*relatively slow to innovate*'

- In fact the commercial TV sector is in the process of reinventing every aspect of the business model:
  - Programme-making: shift from 100% broadcast funding;
  - Subscription TV: on multiple devices and on basis of new forms of contract (Now TV etc);
  - Distribution – across all platforms and at the time of the consumer's choosing;
  - Advertising – acknowledged need (as long ago as 2003…) to decrease dependence on 30". Strategies and targets differ but objective is the same, and new advertising techniques play a role in this

- Possible factors influencing this purported/relative lack of innovation in commercial comms:
  - Television not a burning platform and new techniques complementary;
  - Patchy consumer uptake;
  - Unpredictable regulatory outcomes

Innovation in TV advertising - Today

- Competitors also innovating – native advertising
- New iterations of techniques already reviewed in 2004,
- Innovation at the B2B level;
- Completely new techniques, such as online behavioural advertising – possibly demanding new (co) regulatory solutions? ;
- OBA, exactly like the “class of 2004” techniques, will constantly evolve and mutate

New iteration of a 2004 technique: Virtual product placement

B2B Innovation

- Constant innovation at the B2B level with sales houses seeking to combine the best of the established model (GRP/Station Average Price) with techniques from the online era such as addressable or data-driven advertising (Sky AdSmart – tailored advertising using existing consumer information);
- And there are innovations being brought across from online, e.g., – though the technology hasn't yet worked in broadcast – real-time auctions

First Generation OBA – which can be (co) regulated

Delivering transparency, choice and control for European citizens

The European Interactive Digital Advertising Alliance is the organisation responsible for enacting key aspects of the self-regulatory initiative for Online Behavioural Advertising (OBA) across Europe.

Learn more

Participating Associations

ACT Association of Commercial Television in Europe | AER ASSOCIATION EUROPÉENNE DES RADIOS | eaca | ALLIANCE | egta

View the complete list

edaa for Companies

The cross-industry self-regulatory initiative was developed by leading European bodies to introduce pan-European standards to enhance transparency and user control for online behavioural advertising. This type of advertising increasingly helps to support the content, services and applications that internet users can enjoy at little or no cost. The self-regulatory initiative is based upon IAB Europe's OBA Framework and EASA's BPR on OBA.

Read more

Certification Process

1

Join the Programme

Learn more about the European Self-Regulatory Principles, and if applicable join the Self-Regulatory Intiative.

Read more

2

Apply for an OBA Icon licence

Provide consumers with transparency with regard to OBA, using the OBA Icon.

Read more

3

Integrate with Consumer Choice platform

Provide consumers with choice with regard to OBA, using youronlinechoices.eu

Read more

4

Self-Certify your compliance

Participating companies must self-certify their compliance within 6 months since joining the Programme.

Read more

5

Certification Providers & EDAA Trust Seal

Participating companies acting as Third-Parties must undergo a Certification Process.

Read more

Next Generation OBA?

Think TV 2020 vision: http://www.thinktv.com.au/content_common/pg-watch-2.seo

Connected TV : Overlays

Use case NOT compliant with French Regulation

Partial overlay on top of the video not controlled by the channel

Incentive to buy (link to amazon.com) not respecting children protection

Content used for promoting services (betting on Bwin) not controlled by the channel

Full overlay not controlled by the channel

Mixing video and other contents not controlled by the channel

So, do we need a wider discussion about what and whom we regulate and how and why?

- A third party, based outside the EU, superimposing advertising on European TV without the knowledge of a broadcaster, producer nor indeed of the brand is a profound and unprecedented challenge to our regulatory system;

- Architecture of European/national media regulation based on the operator accepting, in a broadcasting licence, responsibility for what appears on screen;

- If NRAs can't [reasonably] enforce that, then we and they have a serious problem.

An(other) interpretative communication of AVMS?

- Appears to be only a partial fix. Regulatory issues now also cover the UCP directive, data protection, E-commerce…
- A co-ordinated interpretation of the regulatory issues improbably complex (involves at least four DGs of the European Commission);
- Would probably be around scope rather than commercial comms per se, raising wider issues (NRA licensing, quota obligations, liability for content etc);
- Instead, the ACT has called for content regulation at EU level to "*to move away from micro-management and towards greater operational flexibility*" – an exercise which must begin with identification of which AVMS principles should be developed for the convergent era

Which principles are still relevant?

- "As part of this exercise, we believe it essential that the EC sets out a forward-looking vision to establish which principles from the old world of broadcast regulation should be carried forward into a fully converged world, in a regulatory framework which will endure until 2030?"

- Among principles identified by the ACT (others will have their own lists) as vital are:

  - **Maintain current standards of ethics in commercial communication**, including transparency/labelling, and rules around privacy (where these rules are dealt with elsewhere in EU legislation, there should be clearer signposting and cross-referencing);
  - **Defend the principle of editorial responsibility** (without which, actual compliance with any EU or national rules becomes very difficult);
  - **Guarantee the signal integrity of broadcasters** as a quid pro quo for editorial responsibility (this responsibility cannot be guaranteed if third parties interfere with the broadcast signal). Commercial overlays and other novel techniques should therefore not be possible without the prior consent of the owner of the content in question".

Editorial Responsibility – Moving into the Spotlight?

- Concept not mentioned in TVWF (and hence not in Interpretative Communication), nor in the Commission's proposal for AVMS;

- Rather, introduced via the European Parliament (Ruth Hieronymi MEP) … albeit for a different purpose (clarifying scope of Commission proposal so as to read "*service as defined by the EU Treaty provided under the* ***editorial responsibility of a media service provider*** *… the principal purpose of which is the* ***provision of programmes*** *… in order to inform, entertain or educate"*

- Exercise of effective control?

- Case-law to date has centred around resolving who has ER … not how to deal with an infringement of that ER

Easier to identify the problem than to propose a solution…

- But some elements might include:
  - Clearer signposting to operators and consumers as to who is responsible (NRA? AVMS provider? SRO?) for applying which rules (UCP, DPR, AVMS etc);
  - 'In dubio pro libertate' still a valid principle and good starting point for new techniques
  - Link to signal protection/integrity (could a WIPO Treaty give b'cers the right to pursue anyone who retransmitted an altered signal – at least in signatory countries?);
  - Above all, at a time when we are many years from the post-AVMS environment, political consensus on the importance of editorial responsibility

THANK YOU, ANY QUESTIONS?

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