

Playing hide-and-seeK?

A legal perspective on the complex distinction between commercial and editorial content in hybrid digital advertising formats

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EUROCPK Conference, 24 March 2015, Brussels



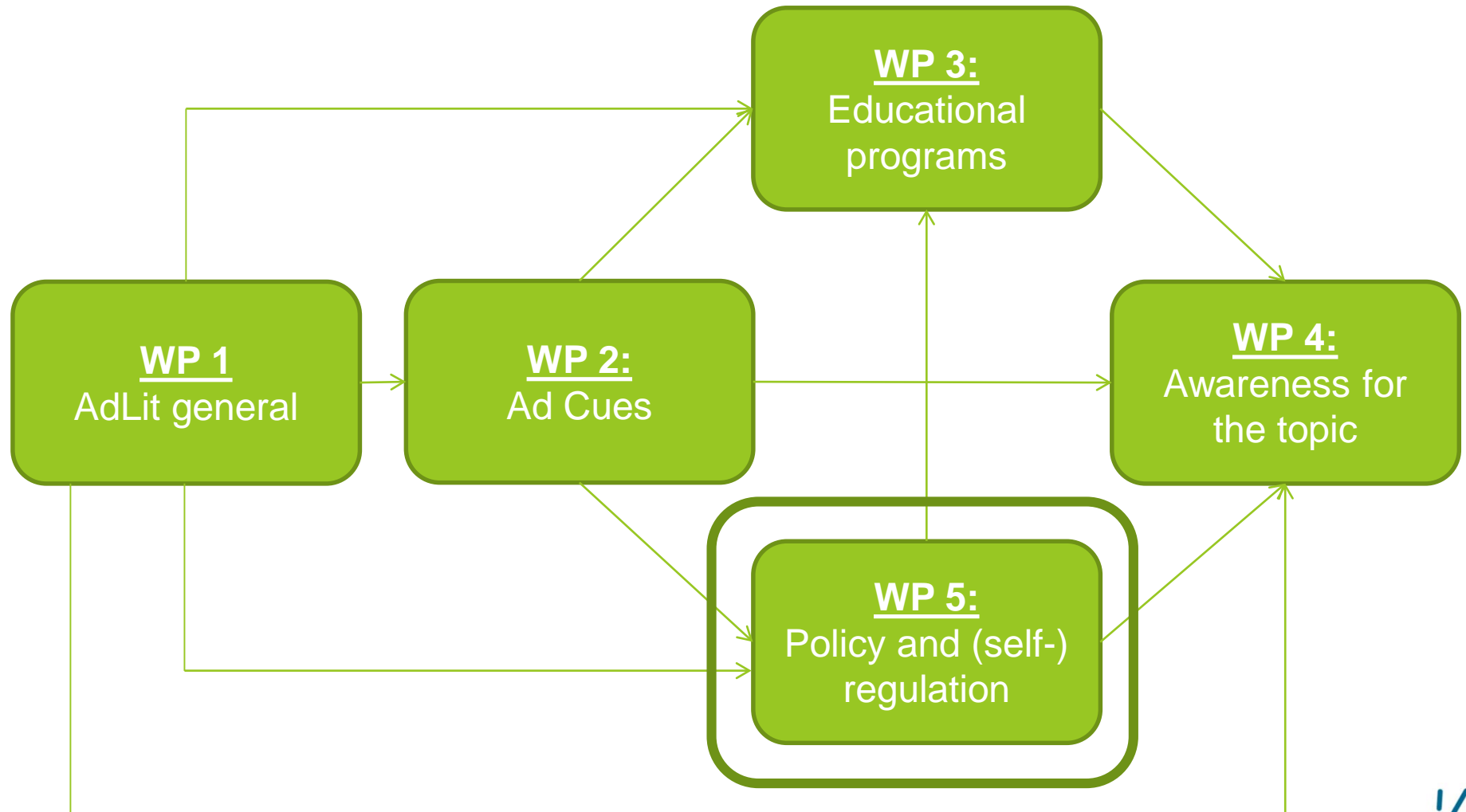
Introducing the AdLit project

Advertising Literacy in a
New Media Environment
Investigating Minors'
Persuasion Knowledge in
Relation to New
Advertising Formats

2014-2018



Project overview



Hybrid advertising formats

Infomercial



Commercial overlays

Hybrid advertising formats

Connected TV



Hybrid advertising formats: specific feature

- Advertising content **embedded** in the non-promotional content
 - increasing blurring between advertising, information and media content
 - significant societal impact
 - contrary to specific legal requirements ?

Articles 9 & 19 AVMSD

Article 9 (commercial communication)

‘Audiovisual commercial communications shall be *readily recognisable as such*’.

Article 19 (television advertising)

‘Television advertising and teleshopping shall be *readily recognisable and distinguishable* from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall *be kept quite distinct* from other parts of the programme by optical and/or acoustic and/or spatial means’.

Key elements ?

2 components

1. '*readily recognisable*' → identification principle
2. '*distinguishable*' / '*quite distinct*' → separation principle

National implementation: overview

Country	Legal Basis	Enforcement
Belgium	Flemish Decree on radio and television (articles 53 and 79)	Vlaamse Regulator voor de Media (VRM)
The Netherlands	Media law (various articles)	Commissariaat voor de Media
United Kingdom	Ofcom Broadcasting Code	Ofcom
	UK Code of Broadcast Advertising (BCAP code)	Advertising Standards Authority (ASA)
	UK Code of Non-broadcast Advertising (CAP code)	Advertising Standards Authority (ASA)

Also self-regulation, e.g. ICC Code

Analysis of decisions



National implementation: key learnings

- the “distinction” between editorial and commercial content is key
- aim of the “distinction”: protect the viewer from being
 - (1) confused or misled about the nature of the broadcasted message and
 - (2) subconsciously influenced by commercial messages.

National implementation: key learnings

- broadcast commercial message within ‘regular’ advertising blocks
- a variety of circumstantial elements may influence compliance with the identification principle:
 - duration (an ad of 3,4 or even 5 minutes)
 - scheduling (start at fixed time with repetitions)
 - broadcasting as a series (varied topics per episode)
 - format (title, ‘thank you notice’)
 - presenter (identical in advertising & programme)
 - active involvement of the viewer
 - content of the ad
- enforced by a variety of sanctions (warning, financial penalty, broadcast prohibition, statutory sanction)

	VRM	Commissariaat voor de Media	ASA	Ofcom
Status		Core principle		
Purpose of principles		avoid confusion/ subconscious commercial influencing		avoid confusion and misleading the viewer avoid circumventing restrictions advertising minutage avoid control advertisers
Separation				
Scheduling message	within regular advertising blocks	within regular advertising blocks	within regular advertising blocks	within regular advertising blocks not necessarily sufficient
Notice	yes	yes	yes	Yes
Format notice	visual/acoustic/spatial means	optical/acoustic means	'notice of 3-5 seconds seems sufficient	
Wording notice	' <i>publireportage</i> ' or 'infomercial' not always sufficient	'advertising' or 'infomercial' not always sufficient (minors)	'advertisement' or 'this is an advertisement'	
Timing notice			opening intermittently throughout the ad	
Identification				
Circumstantial Elements		duration scheduling broadcasting as series format presenter active participation of the viewer	style presenter content format	presenter
Rulings	warning financial penalty	financial penalty	broadcast prohibition	statutory sanction warning

Newsflash

- 23 March 2015:
 - publication by the Flemish Media Regulator of Guidelines concerning the *separation* between commercial and editorial content (re television advertising)
 - (more) detailed requirements with which ‘bumpers’ need to comply (e.g. number of seconds, not ‘*integrate*’ end bumper in commercial nor editorial content)

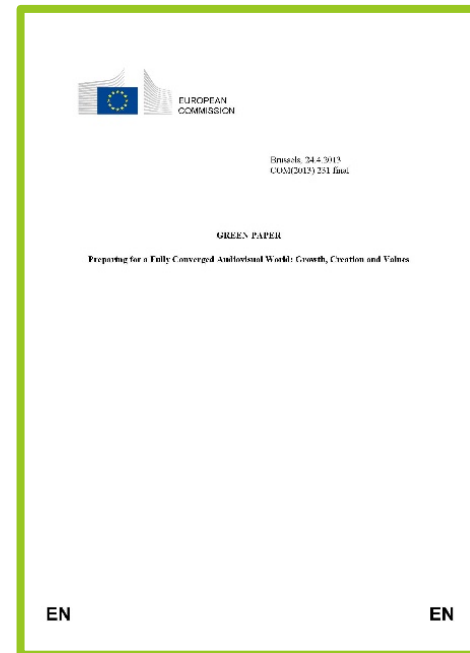
Challenges for hybrid advertising formats

2 key challenges

- broadcast within the regularly announced advertising blocks ?
 - scheduling outside regular advertising blocks; bumpers?
 - against 'nature' of hybrid techniques?
- clear notice at start and intermittently broadcasted?
 - certain wording not sufficient (i.e. infomercials)
 - quid with convergent devices?

Aim of regulation?

facilitate an average consumer to as such recognise and distinguish between editorial and commercial, persuasive content



Potential solutions ?

- a responsible & coherent implementation of the **identification** principle
- with different emphasis according to target audience
- supported by the creation of cues or labels
- framed within a (self- or) co-regulatory framework (?)
- building upon the active involvement of all players
- while guaranteeing public interest goals

THANK YOU

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