

Playing hide-and-seek? A legal perspective on the complex distinction between commercial and editorial content in hybrid advertising formats

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Abstract

Purpose – This paper aims to examine the challenges raised by hybrid advertising strategies for principles of identification and separation, included in various regulatory instruments, and the Audiovisual Media Services Directive (AVMSD) in particular.

Design/methodology/approach – First, this paper describes two examples of hybrid (television) advertising formats, with a potential interconnection between editorial and commercial content, such as advertorials and commercial overlays. This section is followed by an analysis of the origins and key elements of the identification and separation principle. Next, the implementation in legislation of Belgium (Flanders region), The Netherlands and the UK, and decisions of media regulators in those countries are explored to assess how the principles are interpreted in practice. Finally, the authors identify the concrete challenges that these formats raise and frame those against the background of European policy developments.

Findings – The analysis shows that the current interpretation of the identification and separation principles conflicts with the inherently integrated features of hybrid advertising formats, especially commercial overlays. To remedy this, the authors propose strengthening the identification principle, for instance, by developing cross-media labels and framing this within a co-regulatory framework where advertisers and media service providers take up their responsibility to respect fundamental principles and protect less cognitively skilled consumers, such as children.

Originality/value – This paper aims to contribute to the current re-thinking of the legal framework with regard to new commercial communication techniques, convergence and public interest goals. This can be framed against the background of the revision of the AVMSD and the Digital Single Market Strategy.

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