

# EASDP EU Affairs newsletter

## Highlights

### In this issue

- 1 Highlights
- 2 EU news

- [Advertising- Revision of the Misleading and Comparative Advertising Directive \(MCAD\): own-initiative report from MEP de Jong](#)
- [Public Sector Information - The European Council endorses a new PSI directive](#)
- [Media - The Commission Green paper on media convergence](#)
- [Advertising – EASA \( European Advertising Standards Alliance- self regulation\) meeting](#)
- [Electronic communications – EIDQ plenary meeting in Berlin](#)

The debate on data protection remains tough and very sensitive, and the EP LIBE Committee has decided to postpone the initial exchange of views on the amendments which was forecast for 24 April in order to let the shadows have more time to discuss compromise amendments.

The revision of the Misleading and Comparative Advertising Directive is one of the important issues of the time, with the Commission indicating its will to propose a formal legislative proposal by the end of 2013 and with an own-initiative report in the EP lead by MEP de Jong.

The Public Sector Information issue might finally come to an end at institutional level, because the Council has agreed on the consolidated version of the revision of the 2003 PSI directive. It is now for the European Parliament to officially adopt the text during its next plenary in June.

The issue of Online Behavioural Advertising also remains a very important one and the European Commission is waiting for the self-regulatory scheme of youronlinechoices.eu and the EDAA to deliver the expected results.

## EU News

### Advertising- Revision of the Misleading and Comparative Advertising Directive (MCAD): own-initiative report from MEP de Jong

On 11 April, the Internal Market Committee of the European Parliament discussed the own-initiative report from MEP De Jong on the revision of the MCAD, following-up the communication proposed by the European Commission on this subject at the end of 2012. The rapporteur stressed the importance of the problem and of the fraud for the Internal Market, reminding that in 2011 only MEPs have received more than 11000 complaints on misleading scams, and that in the Netherlands only the fraud is estimated at around 400 M €. The rapporteur is proposing to enlarge the scope for action initiated by the two EP resolutions from 2008 and 2011 and to insist on preventive measures, such as the establishment of a hotline or helpdesk to help people who have been abused and give them practical advice such as not to pay. He also would like to requalify the scams as criminal offences and thus to ensure that a better cross-border police cooperation and enforcement is possible. He also voiced the possibility to extend the UCP (Unfair Commercial Practices) directive to B2B transactions, as some Member States already did.

MEP Collin-Langen, replacing MEP Schwab, EPP shadow rapporteur on the issue, stated that the EPP welcomes the will of the European Commission to limit the disparity of the implementations in the Member States, and supports the full harmonisation approach. The introduction of a black list of deceptive and misleading practices, as done with the UCP directive, would also be welcomed. She also called to a clarification of existing cases in comparative advertising. MEP Bielan (ECR) welcomed this first exchange of views and stated the major problem still was false entries into registers and directories which lead to a loss of thousands of euros and big threat for SMEs. His groups will concentrate on three issues: the rise of the marketing fraud in cyberspace, enhancing a more robust cooperation between Member States and make more use of the IMI system. MEP Stihler (PSD) talked about the European City Guide scam and the related fraudulent aspects. MEP Manders (ALDE) said it would be helpful for the legal service to scrutinise the legal basis of the directive and would welcome to move to criminal and penal offences. MEP Harbour (ECR) also commented on the issue and the need to have other EP Committees taking part in the process, such as the Legal Affairs committee. He also talked about a better cooperation with Europol as regards enforcement, and therefore the need for the EP LIBE Committee to also explore the issue.

The representative from the European Commission stressed the importance of the dossier and the fact that today the MCAD is the only piece of EU legislation concerning B2B transactions. The Commission is keen to have clearer rules and a better convergence of the enforcement model. The Communication proposed by the European Commission at the end of 2012 insists on three major points:

- Enforcement, with a more structured framework and an extended legal basis
- Substantive rules which will be clearer and possibly a black list
- Penalties which are effective, proportionate and dissuasive

They also would like to insist on the preventive side with a preventive action taken by the business entities themselves such as helplines and international cooperation. The Commission is also talking with Europol about a better cooperation and finally will consider the alignment of the MCAD with the UCP (unfair commercial practices directive)

### Public Sector Information - The European Council endorses a new PSI directive

The European Council, comprising of representatives of the 27 Member States, have amended and endorsed the review of the PSI Directive. The European Parliament will have to formally adopt the paper later in June 2013. The amended directive obliges countries to make PSI open and available for reuse. When fully implemented, proposed new rules would:

- Create a genuine right to re-use public information, not present in the original 2003 Directive;
- Expand the reach of the Directive to include libraries, museums and archives;
- Establish that public sector bodies can charge at maximum the marginal cost for reproduction, provision and dissemination of the information. In exceptional cases, full cost recovery (plus a reasonable return on investment) will remain possible;
- Oblige public sector bodies to be more transparent about charging rules;
- Encourage the availability of data in open machine-readable formats
- Give the possibility of redress via a national authority (e.g. competition or a telecoms authority)

There are many positive aspects to this new Directive, but there is still an implementation process to go through. Being a directive rather than a regulation, there is scope for interpretation by the Member States and implementation is unlikely to be a smooth process – there were infringements of the previous Directive by Austria, Belgium, Portugal, Luxembourg, Poland, Sweden and Italy who were taken to court by the European Commission.

### Media - The Commission Green paper on media convergence

On 24 April, DG Connect of the European Commission published its awaited consultation Green paper on media convergence. While focussing on connected TV and tablet-media interaction, the Green Paper also raises several questions on advertising in a connected digital environment, on the virtues of the country of origin principle and on the possibilities offered by self-regulation schemes.

Comments are welcome until 31 August 2013, and you can access the Green Paper at [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/convergence\\_green\\_paper\\_en\\_0.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/convergence_green_paper_en_0.pdf)

To view the memo and frequently asked questions on the green paper, click on [http://europa.eu/rapid/press-release MEMO-13-371\\_en.htm#PR\\_metaPressRelease\\_bottom](http://europa.eu/rapid/press-release_MEMO-13-371_en.htm#PR_metaPressRelease_bottom)

### Advertising – EASA (European Advertising Standards Alliance- self regulation) meeting

This two day session opened with the meeting of the EASA self-regulation committee which groups together the relevant self-regulatory organisations (SROs) of the EU Member States regarding advertising and the industry representatives. The first item debated was a presentation made from WFA (World Federation of Advertisers) on the responsible marketing pact towards alcohol advertising. It has three core pillars: exposure, social media, appeal and all parts have a monitoring component. WFA is working to draft a common definition of “no primary appeal to minors”. Another aspect tackled was the advertising self-regulation aspect with regards to social media and the SRO remit. To this end, a very interesting presentation was made from the Australian SRO who has extended its remit to include social media and has therefore newly considered Facebook and user-generated content, SMS and apps (games). Their new definition of activity under the remit of the advertising SRO is about any activity on which the advertiser has a reasonable degree of control. Advertisers’ posts which features the product is advertising are included in the remit, whereas excluded are press releases or news reports, factual product information...

The meeting then tackled the update on the implementation of the Online Behavioural Advertising best practice and the way SROs are considering OBA. Notably the ICC also extended its code to include OBA in the remit. The UK, French and German SROs are already up and running, they have added OBA into their remit. The OBA icon licensed to companies, and EASA has made some commitments to the European Commission that self-regulation will deliver on OBA, to try and avoid a too stringent legislative approach. In France, the OBA Best Practice Recommendation has been implemented in the French digital code but so far there have been very few complaints (below 5). In Germany, the implementation started in November 2012 with a specialised organisation for OBA called DDOW. They have so far received only 50 complaints, but as consumer campaigns have not yet been launched, the number of complaints will presumably increase. In the UK, implementation of OBA in the remit has been done for 3 months, 44 complaints have been received and only 2 are still pending. The majority of complaints focus on problems of opting-out of receiving OBA.

### Electronic communications – EIDQ plenary meeting in Berlin

The overall theme of the meeting was “what can still be done with directory services?” and many of the presentations concentrated on the different business models and added-value services that directory assistance providers propose to their customers in order to better compete with global internet search providers. Daniel Lafrentz from Deutsche Telekom exposed the regulatory and market situation in Germany, with a drop in call volume to DA services from 600 million calls per year in 1996 to 50 million calls in 2013. The situation is very similar in Finland, with a drop in the number of calls from 53 million in 2000 to 26 million in 2012. The solutions developed by DA providers to counteract the call volume drop vary; some have increased the price per call or per minute, other develop value-added services such as the concierge service proposed by Deutsche Telekom or the webcare service proposed by 1850 in The Netherlands. In addition, other speakers talked about the additional usage of directory data and the differentiated targets, such as in Italy where a standard and a smart target are developed.

The meeting also saw presentations from outside Europe players, with a presentation from Batelco in Bahrain who has a monopoly over DA services in its country and another presentation from Ezana Rasowrk who is developing a 118 service in Africa with a pilot-test in Kenya. Markets are pretty much blurring the lines between directory, DA, web search and interestingly enough in Africa, mobile search is directly peaking up before internet search patterns.