

Framework for commercial
communications within the *Digital
Single Market*

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- The proposal of the revised AVMS Directive (25 May 2016) states that the media environment is changing rapidly and aims at creating »a more level playing field between the different players in the audiovisual media market.«
- However as online video advertising becomes an increasingly important form of communication, an analysis of commercial communication in online environment shows there is a growing policy issue with this area, and the issue of providing a »more level playing field« here remains.

The growth of video (advertising)

- The online video advertising market is rapidly growing, with its value forecast to hit €7bn in 2016.
- Economic / advertising reasons:
- „It’s not primarily that customers are demanding more video. It’s that video ad rates continue to hold up far better than for ads placed alongside all (...) words. If the advertisers demand more video inventory, then the content side must produce more video.“ (Doctor, 2016)
- Video is „the future of online media.“ (Draper, 2016)
- „Post-writing web“ (Sargent, 2016)

You Tube

Users

1bn

Video uploads
(hours per min)

400

Revenues
(2014)

\$4bn

Right, Grumpy
Cat at VidCon



Users

1.5bn

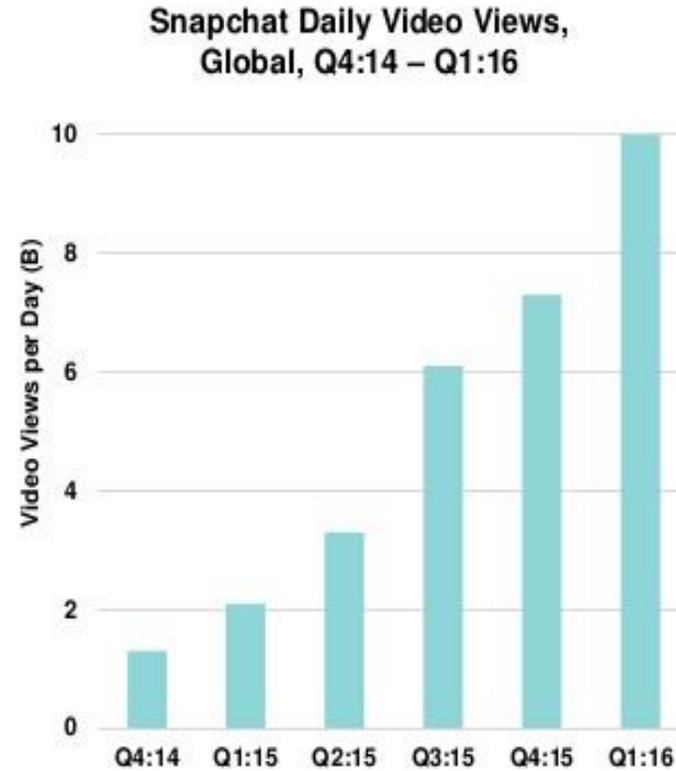
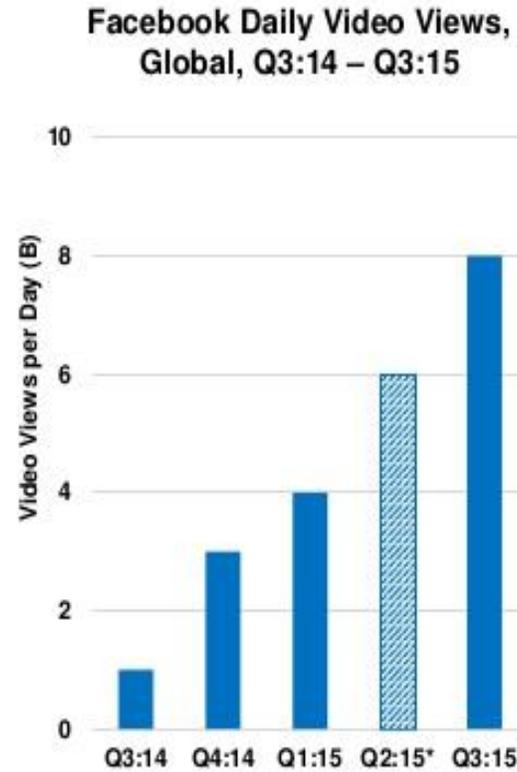
Video uploads
(hours per min)

75-100

Revenues
(2014)

\$12.5bn

User-Shared Video Views on Snapchat & Facebook = Growing Fast



Lack of transparency

- The proposal of the revised AVMS Directive states that commercial communications should be clearly marked, identified and separated from other content. It also addresses sponsorship requiring that programmes „continue to clearly inform the viewers of the existence of a sponsorship agreement”.
- Analysis of several cases of high audience online video channels and the reactions of some regulators within EU shows there is a lack of clarity regarding commercial communication, its identification and demarcation in online video.
- Online video advertising and product placement on blogs, vlogs and similar content is commonly unmarked and the potential editorial influence on the content is difficult to assess.

- Among the examples of vlogs in which commercial communication was not clearly marked are some of the most popular vlogs in the EU, including Zoella (Zoe Elisabeth Slug) and Pointless Blog (Alfie Deyes). Each has audience and income greater than many television channels across the EU.
- An analysis of their video production in the last four months, distributed through their vlogs on YouTube, shows that they almost never identify sponsorship or product placement.
- While media report that Zoella accepts £20,000 to feature a product in her videos, the word “ad” never appears on the screen, nor is sponsorship or product placement acknowledged in the description box.

- The description box merely lists the items that are mentioned in the vlog, not defining whether they were chosen independently or they are part of product placement arrangement or native advertising.
- New videos (28th and 29th May 2016) from Zoella sometimes publish a disclaimer that the items shown are not sponsored (<https://www.youtube.com/watch?v=pgVdMvuJ6IE>).
- However in other cases with similarly featured items (<https://www.youtube.com/watch?v=CR9g5BKeivk>) there is no such disclaimer or, on the other hand, sign of sponsorship. Sponsorship is thus still not mentioned in the description box.

COMEDY

SMOSH



Smosh is Ian Hecox and Anthony Padilla, who have been putting short skits and animations on YouTube since 2005. They have **21m** subscribers to their main channel

BEAUTY & STYLE

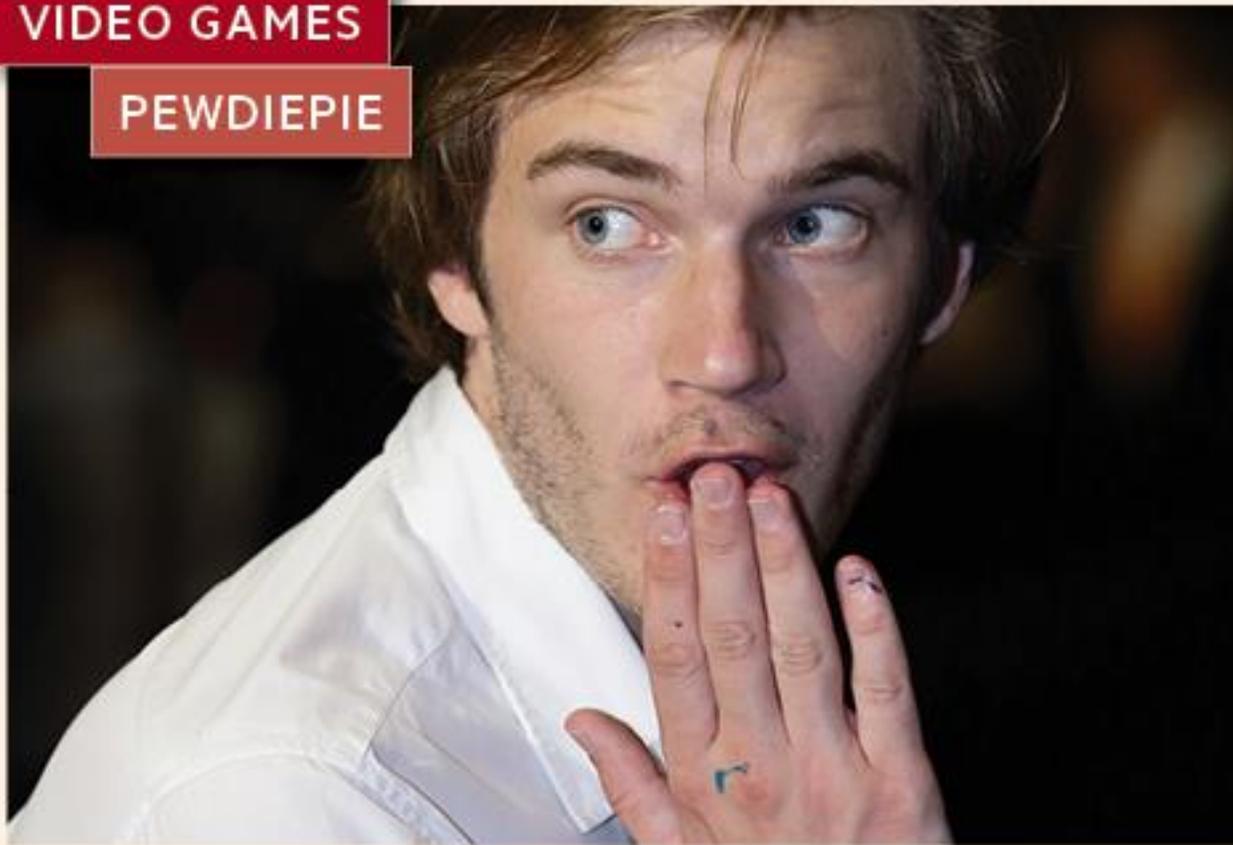
BETHANY MOTA



The 19-year-old Californian has **9.3m** followers for her mixture of 'haul videos' – a guide to a shopping spree – tutorials and beauty advice

VIDEO GAMES

PEWDIEPIE



PewDiePie is the alias of the Swedish comedian Felix Kjellberg. He has gained **38.8m** subscribers for his video game commentaries

EDUCATION

VLOGBROTHERS



The Green brothers, John (left) and Hank, have **2.6m** subscribers to their main channel and more than **3m** subscribers to their educational channel Crash Course

Weak definitions

- The UK's Advertising Standards Authority (UK) in a recent case stated that commercial intent should be clear before viewers click on the content ruling that vloggers had to be explicit about “when a video was an advert for a brand”.
- However, according to the ASA in order to be considered an “ad” the content has to be paid for and controlled by the brand.
- What can be observed in these vloggers content appears more akin to sponsorship, though the extent of sponsor influence over content is unclear.
- However the items in many vlogs are paid-for (not just free gifts) and thus belong to the paid content and not independent editorial content.

Consumer protection

- The UK's Competition and Markets authority, which regulates sponsorship, is only beginning to investigate vloggers, It warns, "opinions in blogs and other online articles can influence people's shopping decisions. Failing to identify advertising and other marketing, so that it appears to be the opinion of a journalist or blogger, is unlawful and unacceptable".
- In many smaller EU countries there is much less capacity and interest in resolving this issue. For example the Slovene Media Inspector recently issued a statement that unmarked advertising in general is not an area of a priority.

Protecting minors

- The lack of clarity regarding sponsorship placements, product placements and other forms of commercial communication (Recital 14) within the video-sharing platforms is particularly problematic
- because vlogs and other such channels on video-sharing platforms are particularly popular with minors (Recital 26)
- while minors also have most difficulty with identifying/recognising the commercial content and communication (Recital 16)

- The proposal of the revised AVMS Directive states in recital 3 “channels or any other audiovisual services under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered in the framework of a video-sharing platform ... In such cases, it will be up to the providers with editorial responsibility to abide by the provisions of this Directive.”
- This may be a way to apply AVMSD provision also to specific channels on video-sharing platforms, potentially including high audience, high turnover vloggers.

- In addition, the revised AVMSD could add unmarked commercial communication to the types of content that can be harmful to the development of minors. (Article 6a, Article 11, Article 28a)
- The principle acknowledging convergence: »The framework should continue to adhere to the principle of technological neutrality.«
- The aim: to achieve a really »more level playing field« between the different players in the audiovisual media market.



SCHWARTZ