EPRA/2018/03

47th EPRA Meeting
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Working Group I
Commercial Communication 2.0: Mapping Changes
Background Document
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1. Introduction to the session

The evolution (and the regulation) of commercial communications in their various forms is a regular guest in EPRA's annual Work Programme.

In recent years, several plenary sessions or working groups dealt with specific issues relating to commercial communications such as:

- minors' advertising literacy in the digital age (Vienna 2017),
- the blurring boundaries between advertising and editorial content (Yerevan 2016),
- specific focus on advertising (Bern 2015) and product placement (Nuremberg 2015).

However, we have to go as far back as six years to find in the annual Work Programme a decision to address the issue of the future of commercial communications (Portorož 2012 - the second meeting of 2012 in Jerusalem having been cancelled).

This year, the Work Programme therefore proposes to adopt a broader perspective and against this background, the objectives of the two sessions of the biannual working group will be to address the issues of:

- the **continuous development of new advertising techniques**, which is fed by impressive technological innovations which were either unknown or at their infancy last time it was discussed among EPRA members in 2012 (such as programmatic advertising in the online environment or personalized advertising in the "broadcast" environment),
- the **consequences of these developments for the AVMS providers**, at the forefront of which is the challenge to maintain sustainable levels of funding of content while rapid changes of the dynamics of the market create the need to know (which raises the issue of data) and to reach (which raises the issue of platforms) niche groups and even individuals rather than massive audiences,
- the **consequences for the regulators**, which face growing and sometimes seemingly insurmountable difficulties fulfilling their mission to protect consumers when a large segment of the advertising market is captured by service providers which are out of their material and/or territorial scope;
- and the **pace at which consumers can continue to keep up** with all those in-depth changes and continue to have trust in the fact that an appropriate articulation between industry self-

regulation and statutory regulation provides them with a decent level of protection. A Plenary Session at the last EPRA meeting addressed the issue of the empowerment of children to cope with new forms of advertising,[1] but in numerous situations the question of advertising literacy could actually also be raised for adults.

Adopting a broader approach in terms of market and regulatory challenges appears particularly timely also for another reason, namely the adoption of the revised AVMS Directive, which is expected to happen between our spring and autumn sessions.

These broad issues will nevertheless be addressed, as always encouraged by EPRA, from a practical point of view, and this is why this biannual Working Group on "Commercial Communications 2.0" will allow for practically-oriented discussions meant to:

- better understand the variety of online advertising formats and the issues at stake (at the spring session in Luxembourg) and to
- exchange on recent experiences on the particular role played by media regulators, with a specific focus on the revised AVMS Directive (at the autumn session in Bratislava).

2. Elements of Context

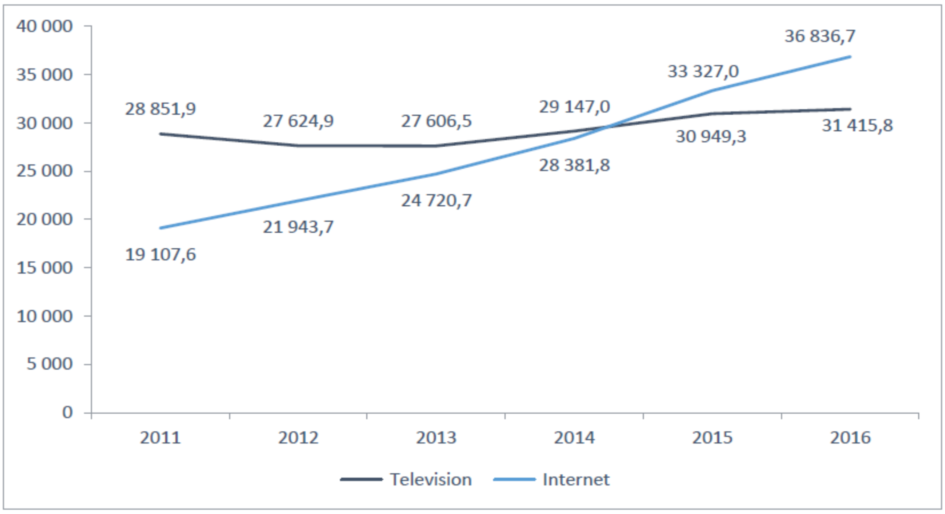
While in other sectors of the media industry (the best example being another two-sided market, that is to say the press) market players have the opportunity (or rather the obligation) to continuously (or rapidly) make their business model shift from revenues coming in a large part from advertisers towards revenues coming in a large part from users (with the advantage of being free from or less constrained by consumer protection against intrusive or misleading commercial communication), this is not true for AVMS providers, except for stand-alone VOD providers such as Netflix. Commercial communications in their various "traditional" or more or less "new" and "innovative" forms do remain the main source of funding for most of the players that EPRA members regulate, and therefore also the fuel for the "virtuous circle" which allows them to reinvest a vast majority of these funds in producing creative content or commissioning it to independent producers, thus contributing to a thriving audiovisual sector as a whole.

Yet, these funds are collected in a highly competitive environment in which, for the first time since the appearance of private broadcasting, the main driver is not television anymore, but online content. In 2016, for the first time in history, online ad spend surpassed TV ad spend:[2]

[1] See the documents produced for the Plenary 2 of the EPRA meeting in Vienna: https://www.epra.org/meetings/vienna-46th-epra-meeting

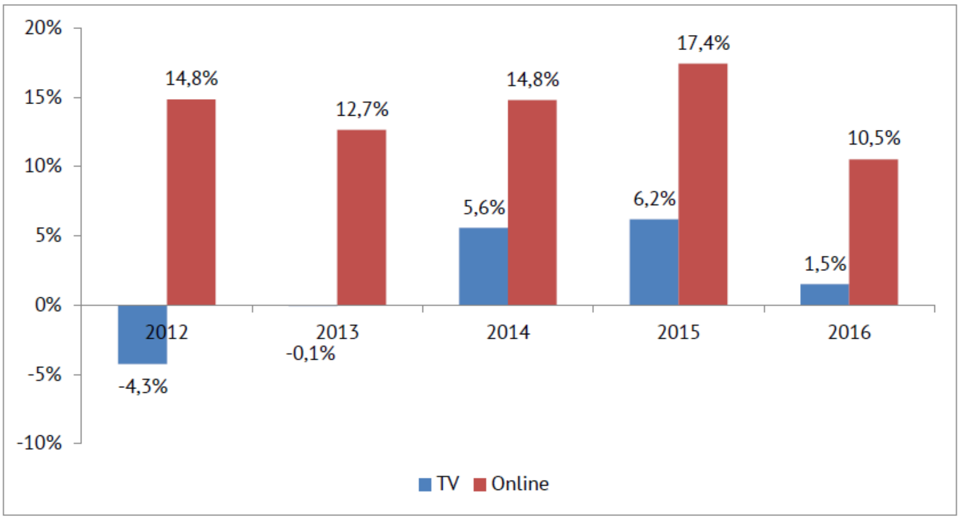
[2] *The EU online advertising market – Update 2017* European Audiovisual Observatory, Strasbourg, 2017.

Figure 5 – TV and online advertising in the EU 2011-2016, in EUR million



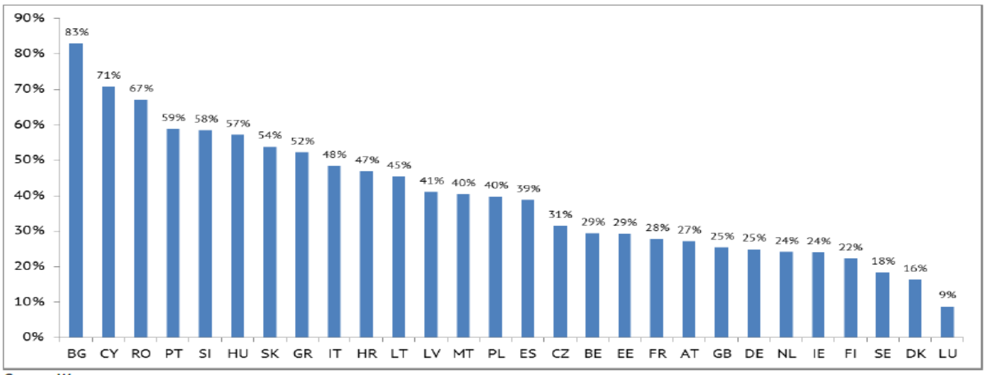
Source: Warc

Figure 6 – Online and TV advertising yearly growth rates, in %



Source: Warc

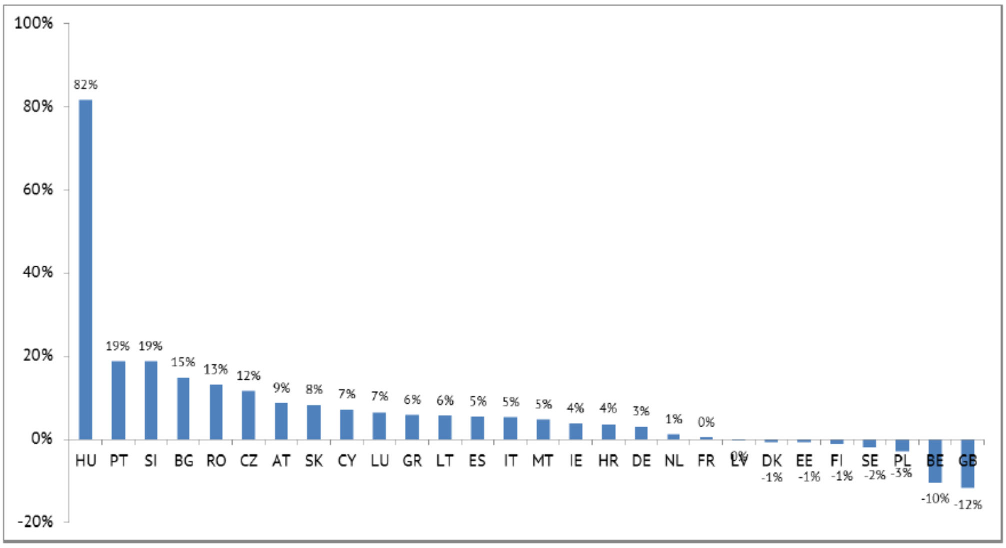
In large and mature markets such as the United Kingdom, Germany or France, TV ad spend today represents only around a quarter of the total ad spend:[3]



Source: Warc

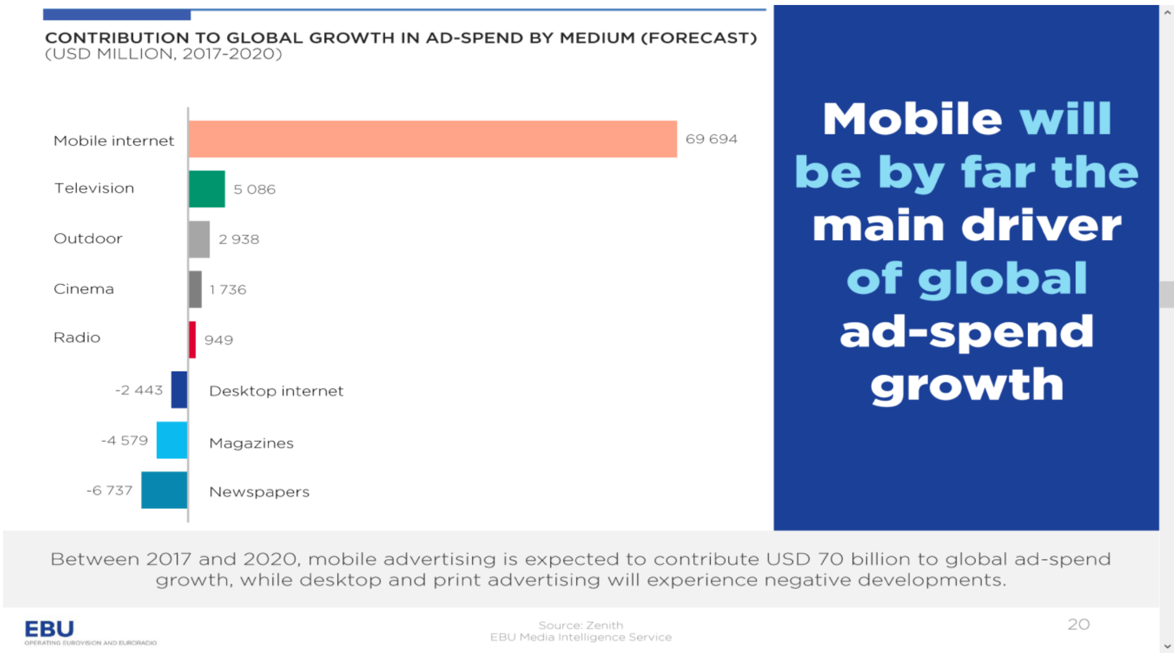
[3] *The EU online advertising market – Update 2017* European Audiovisual Observatory, Strasbourg, 2017.

Also, the growth in TV ad spend is probably definitely something now belonging to the past, considering the growth rate which is close to zero and even negative in some countries:[4]



Source: Warc

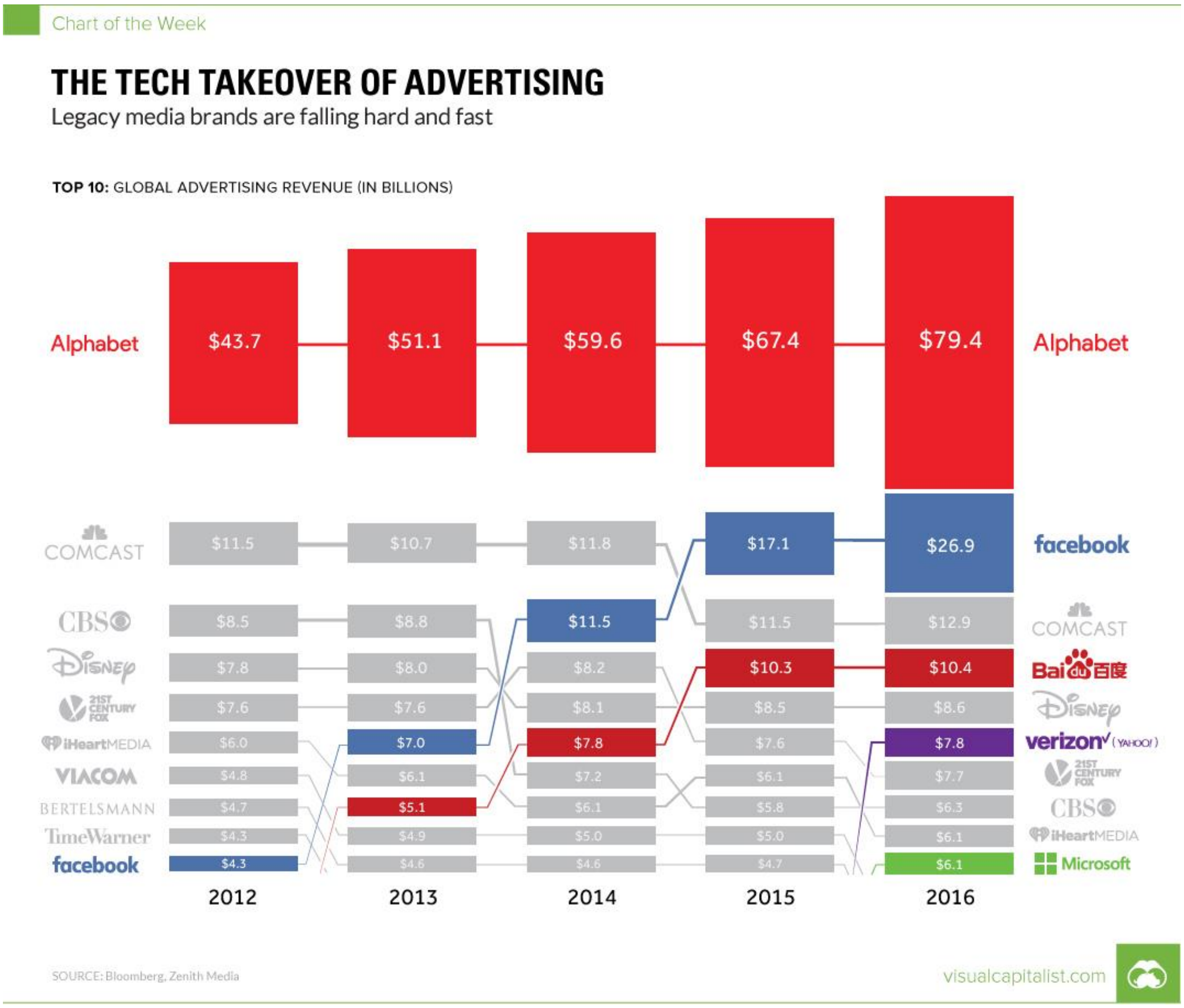
In fact, the expected growth in ad spend will be almost exclusively captured by mobile internet, a category in which AVMS providers can hardly compete and which is characterized by powerful network effects and even sometimes winner-take-all effects:[5]



[4] *The EU online advertising market – Update 2017*, European Audiovisual Observatory, Strasbourg, 2017.

[5] *Market insights – Advertising Trends*, EBU-MIS, Geneva, 2018.

The following chart sums up well how powerful the changes are in the long run and how the "traditional" media (some of which almost 100 years old) are being marginalized in the global advertising market by players some of whom were making zero dollars in this market less than 10 years ago:[6]



At the same time, as shown by research conducted for Ofcom in the UK, consumer expectations in terms of protection remain high when audiovisual content is consumed in an environment which is or feels like TV:[7]

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[6] http://www.visualcapitalist.com/the-tech-takeover-of-advertising-in-one-chart/

[7] Kantar media, *Protecting audiences in an online world, Deliberative research report prepared for Ofcom*. https://www.ofcom.org.uk/__data/assets/pdf_file/0027/79371/protecting_audiences_report.pdf

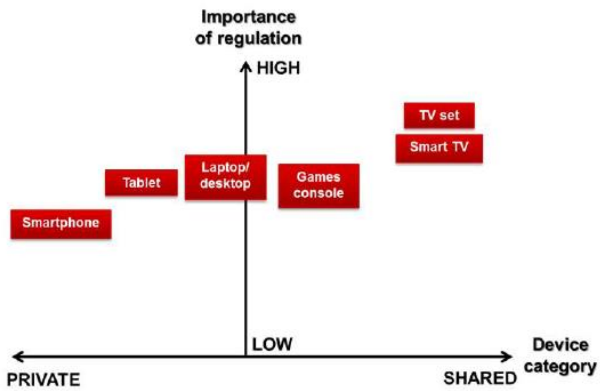
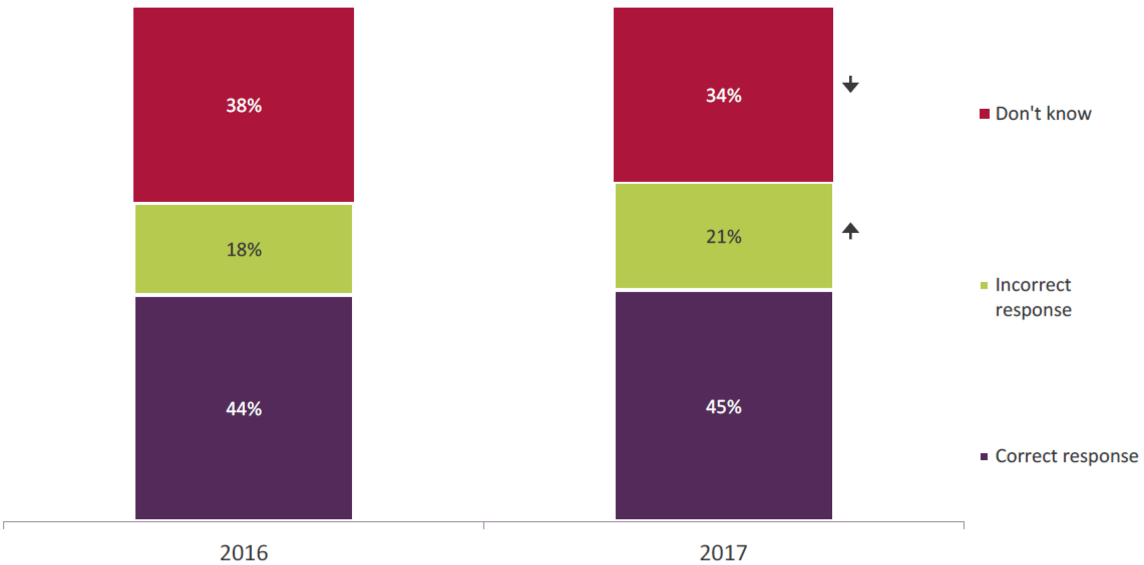


Figure 6: Devices mapped against importance of regulation and device category (private or shared)

And at the same time, the level of advertising literacy remains critically low: users may believe that they are advertising literate, but when asked about simple issues about advertising online it appears that most of them are not. 85% of internet users say they are either very or fairly confident that they know what is and is not advertising online, but only half of search engine users are able correctly to identify advertising on Google (despite it being identified by a box with the word 'Ad' in it) and less than half of internet users are aware that YouTube is mainly funded through advertising:[8]

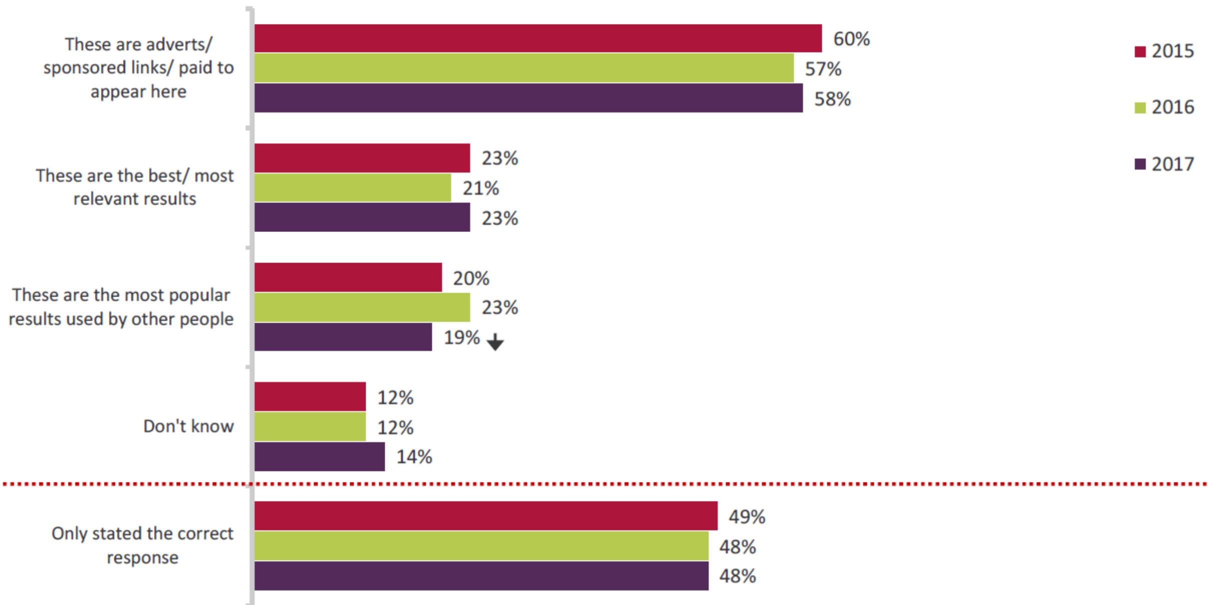
Figure 99: Awareness of how YouTube is mainly funded: 2016-2017



Source: Ofcom Adults' Media Literacy Tracker 2017
IN34. How do you think YouTube is mainly funded? (unprompted responses, single coded)
Base: All adults aged 16+ (1846 in 2016, 1875 in 2017)
Arrows show significant changes (95% level) between 2016 and 2017

[8] Ofcom, Adults' media uses and attitudes report 2018. https://www.ofcom.org.uk/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes

Figure 124: Understanding of paid-for results returned by Google searches, among adults who use search engine websites or apps: 2015-2017



Source: Ofcom Adults' Media Literacy Tracker 2017
IN47. Here's an image (showcard of image) from a Google search for 'walking boots'. Do any of these apply to the first two results shown under the pictures? (prompted responses, multi-coded). NB – question amended in 2017 to be asked of those who have used search engines in the last year, rather than those who than ever used a search engine.
Base: Adults aged 16+ who go online and have ever used search engine websites or apps/ have used websites or apps in the last year (1516 in 2016, 1508 in 2017)
Arrows show significant changes (95% level) between 2016 and 2017

This new context clearly puts European AVMS providers under pressure in terms of business models and consumer expectations. It also puts them in an uncomfortable regulatory position: they cannot avoid falling under the material/territorial scope dealt with by a media regulatory authority, they have to compete against less regulated or unregulated players and they know that regulators will continue to take viewers' expectations into account (and even sometimes make soft regulatory incursions in territories which do not necessarily, at least until now, fall under the material scope of media regulation such as social media).[9]

3. Organisation of the Session

According to EPRA's Work Programme for 2018, *"The session will focus on presentation of case studies on new forms of commercial communication, such as programmatic and targeted advertising to EPRA members. This group will also offer an opportunity to hear the point of view of a range of selected stakeholders, on the impact of the changes brought about by new technologies and changing patterns of consumption, and on the expectations they have of regulators. How are advertisers re-*

[9] See for example the German example discussed during the WG2 at the EPRA meeting in Yerevan: https://www.epra.org/meetings/yerevan-44th-epra-meeting

thinking audiences and using advanced segmentation to replace traditional mass marketing? What is the perspective of broadcasters and consumer associations?"

For an updated and practical view on new forms of commercial communication and news challenges for regulators, an introductory address will be delivered by the content producer, who will provide a market-oriented view on the challenges that they imply for media regulators, especially regarding the implementation of the new AVMS Directive, the extension of its scope to video sharing platforms and the widely debated issue of the level-playing field between the players who fall under the AVMSD and those who do not (while they compete for the same advertisers and eyeballs).

The content producer will then join an interactive dialogue with representatives of different stakeholders:

- a representative of an advertising/communication agency (tbc);
- a representative of advertising sales house: **Mr. Conor Murray, Director of Regulatory and Public Affairs at the European platform of advertising sales house EGTA;**
- a representative of a service provider which keeps a solid position in the broadcasting environment while having heavily invested in diversification in various digital platforms: **Mr. Heiko Zysk, Vice President Governmental Relations and Head of European Affairs at ProSiebenSat.1 Media SE;**
- a representative of a national consumer association: **Bruno Martins, lawyer at the Union luxembourgeoise des consommateurs (ULC)**.

4. Questions for Debate

The following set of questions will be addressed by all the panelists and should hopefully also be a source of inspiration for the interaction with the audience:

- Protection of consumers via the regulation of commercial communications has always been one of the main objectives of audiovisual policy. But with the extension of the scope of media regulation to non-linear services and soon to video-sharing platforms, this objective has become more difficult to reach. Answers are welcomed to the following points :
  - Which kind of regulation of commercial communications remains relevant and which one is no more relevant?
  - From what is known about it at this stage, has/will the new AVMSD make this objective easier to reach?
  - Has/will the new AVMSD help to solve the lack of level-playing field on the advertising market, which has been widely criticized?
- How can/will policy makers and regulators strike the balance between self-regulation and statutory regulation? Commercial communication is a sector featuring wide-spread self-regulation in Europe (compared, for example, to protection of minors or journalism ethics), yet is there progress to make in this regard (for example in terms of the adaptation of self-regulation to new advertising techniques and market realities)?
- Is there a need for guidance from regulators regarding certain commercial practices?

- What do you expect from regulators in terms of mindset and priorities when implementing the (new) regulatory framework?
- Commercial communication remains regulated by an impressive amount of directives: AVMSD, e-commerce, unfair commercial practices, misleading and comparative advertising, tobacco advertising, medicinal products, data protection…). This inevitably makes any regulation complex and fragmented. Yet, should regulators take initiatives to have some kind of "convergent public policy approach", even if it is just informal (for example via cooperation agreements between the competent regulatory and public bodies)? Ifso, what kind of initiatives do you expect?
- What is the impact of the context described earlier on smaller broadcasters or broadcasters within small markets? Is the advertising money shifting in such a way as to jeopardize media plurality?

5. Towards Bratislava

According to EPRA's Work Programme for 2018, *"Based on the output of the first session, the second sitting will assess the current range of tools and approaches that NRAs have and whether (and how) the role of regulators should change. The session will, in particular, focus on the proposed changes in light of the revised AVMS Directive and on the way NRAs plan to approach the changes, particularly from the perspective of the potential inclusion of video sharing platforms. It will also explore opportunities for reinforced cooperation with other regulatory bodies (including self and co-regulatory authorities) active in the field of commercial communications, consumer and data protection."*

After the agreement reached by the trilogue on 26 April 2018[10], the new AVMSD will most likely be adopted ahead of or around the meeting in Bratislava. The autumn session could therefore usefully start with a presentation of the new rules regarding commercial communications on the revised AVMSD. If deemed necessary, recent trends in the advertising market which are relevant for NRA's could also be highlighted.

Representatives of self-regulatory bodies and of EPRA members who would volunteer to do so would also join the panel, which will focus on the (self-)regulatory challenges posed by the new AVMSD and the new market trends and on the cooperation between NRAs and SROs (and possibly other bodies).

[10] http://europa.eu/rapid/press-release_IP-18-3567_en.htm
http://www.europarl.europa.eu/news/en/press-room/20180423IPR02332/audiovisual-media-agreement-reached-on-new-media-services-directive