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THE APPLICATION OF ETHICAL STANDARDS REGARDING THE BAN ON HIDDEN ADVERTISING

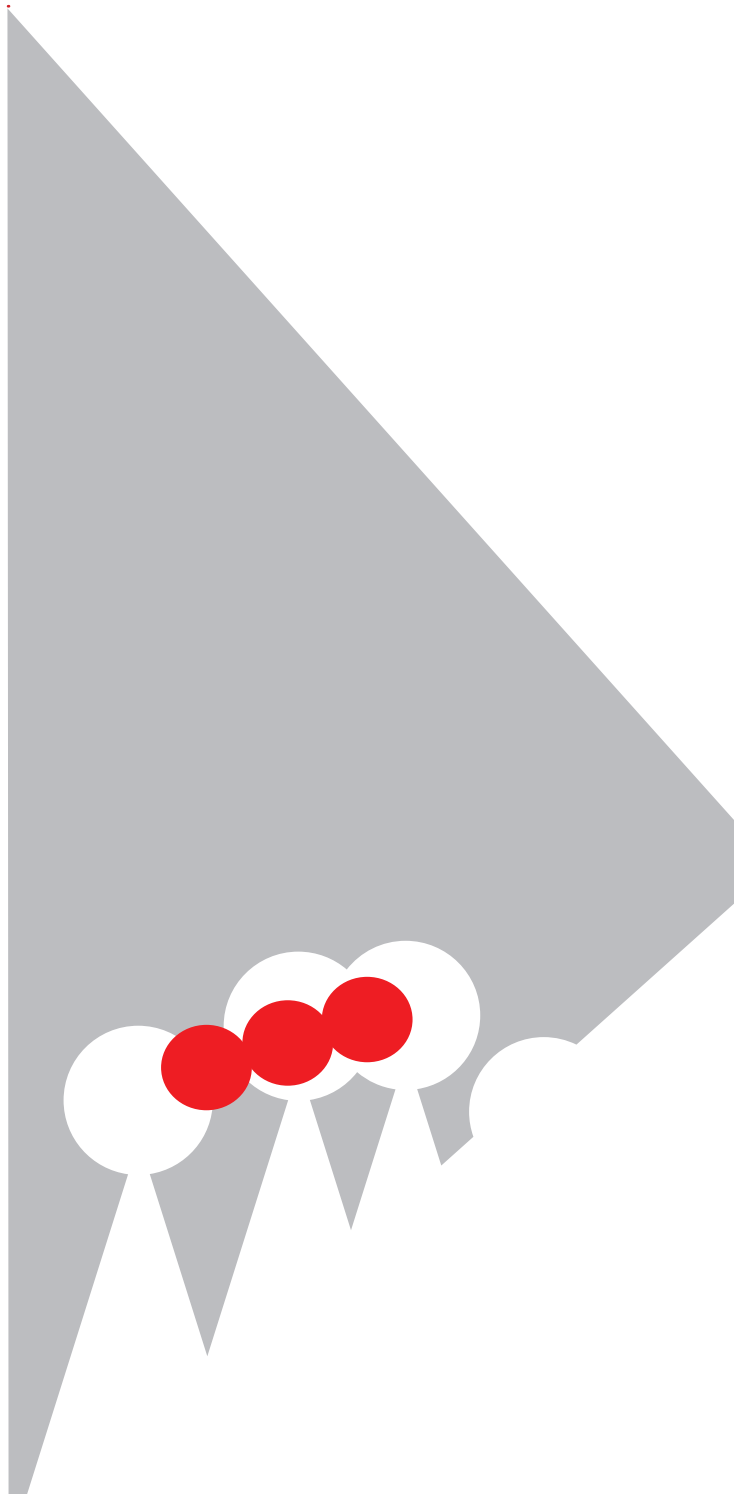


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THE APPLICATION OF ETHICAL STANDARDS REGARDING THE BAN ON HIDDEN ADVERTISING

Daniela Vukčević

INTRODUCTION

Montenegrin media are not sustainable, reads the conclusion of the annual analysis of the IREX index. The IREX index, which evaluates sustainability of the media, places the Montenegrin media in the category of “near sustainability”.¹ Apart from the income levels, other factors such as political influence and subpar application of professional standards were also taken into account in this classification. However, the fact that about 110 active media outlets (namely 37 print editions, 53 radio stations, and 17 TV stations) share a modest slice of the marketing “cake” which amounts to 10-11 million euros annually, speaks a lot about financial (in)convenience. At the end of 2018, three commercial TV broadcasters- *Prva*, *Nova*, and *Vijesti* – issued a warning about the recently established practice that cable channels can sell advertising space in Montenegro, even if they did not produce the program, stating that this could be the final nail in the coffin for the local production of television program. On the other hand, according to the research conducted by the NGO “Center for Civic Education”,² the state, i.e. public institutions annually spend up to 30 percent of a total marketing market spending on advertising- this amount varies, but it moves within range of about 2.5 million euros. All of this results in an extremely unfavorable, especially financial, position of journalists.³

These circumstances expose the media and the journalistic community to economic and political pressures, making them particularly vulnerable to corruption. Under such circumstances, there is a strong pressure that rules which prohibit hidden advertising are revised if these practices bring revenue. Hidden advertising is a practice that is banned by both the law and the self-regulatory acts. The Code of Journalists of Montenegro⁴ (in two guidelines, 10.4.⁵ and

1 *Media Sustainability Index* 2018. Available at: <https://bit.ly/2DyaDnm>. Accessed on December 18, 2018.

2 NGO „Centar za građansko obrazovanje“. *Jednake šanse za sve medije u Crnoj Gori*. Godišnji izvještaj 2016. CGO. Available at: <https://bit.ly/2Dil4Vw>. Accessed on February 11, 2019.

3 Svaki peti novinar nije slobodan da se učlani u sindikat, svaki treći ne prima ni 400 eura. Available at: <https://bit.ly/2Gpztgd>. Accessed on February 11, 2019.

4 *Kodeks novinara Crne Gore*. Available at: <https://bit.ly/2GrjfAl>. Accessed on December 18, 2018.

5 Such content must be created and presented in a way that leaves no ambiguity for the readers/listeners/viewers to recognize them as such. Journalists must not engage in advertising and propagandist activities.



10.5.⁶⁾ stipulates that all advertising content must be clearly labeled as such and that journalists are prohibited from engaging in advertising and propagandist activities. The Law on Electronic Media ⁷ also prohibits hidden advertising, in this act defined as the “representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in radio and/or television programs when such representation is intended to serve as advertising and might mislead the public as to its nature”.⁸

The practice of advertising promotional content in journalistic forms is virtually as old as journalism itself. However, with the new age come new technologies and new formats which resemble the media platform where they are presented to such extent, that, although the content is labeled as “sponsored by”, “supported by” or “promotional”, this labeling remains ‘invisible’ or unclear to the majority of consumers.

The focus of this paper is the identification of such formats and content in Montenegrin media which, based on their characteristics, could be considered questionable from the standpoint of ethical principles concerned with the differentiation of journalistic and marketing messages. Such practices are being brought to both the experts’ and the general public’s attention, referencing the expert discussions on this matter in other countries, with the aim of encouraging a similar debate in Montenegro. This research is part of the project “Respect- Raising Ethical Standards in Media and Citizens’ Trust in Ethical Media” conducted by the Montenegrin Media Institute with the financial support of the European Union and in partnership with the Peace Institute from Ljubljana and the Ethical Journalism Network based in London.

1. OLD AND NEW PRACTICES OF HIDDEN ADVERTISING

The practice of presenting advertisements in the form of journalistic texts is not the invention of the so-called new age or a product of modern technologies. On the contrary, in the article “Breaking down the Wall”⁹ published by the Center for Journalistic Ethics at the University of Wisconsin, author Ira Basen explains that such examples date back to the early days of jour-

6 Credibility of the media, as a source of information, requires special attention when it comes to public relations and advertising content. Texts, photographs, footage and radio program or programs relating to businesses and their products, services or events must not cross the line of hidden advertising. The risk of doing so is particularly large if the story exceeds the justified interest of the public to be informed about it. This also applies to advertising texts, photographs, recordings, radio program and illustrations that have not undergone editorial processing.

7 *Zakon o elektronskim medijima*. Available at: <https://bit.ly/2SONkUL>. Accessed on February 8, 2019.

8 *Zakon o elektronskim medijima*; član 8 Značenje izraza

9 Basen, Ira. *Breaking down the wall*. Centre for Journalism Ethics. 2012. Available at: <https://bit.ly/2GqFAOr>. Accessed on February 13, 2019

nalism, but the distinction in today's events in this area brings us back to the period before the journalistic codes were introduced. According to Basen, the reason for this is the race for revenue on the one hand and the growing demands of advertisers who are no longer satisfied with the half-page or one-page ad, on the other. "They want something different, something that will help them break through the advertising clutter. Together (with the journalists) they are moving into uncharted territory",¹⁰ Basen concludes.

The paper "Manipulating the readers - hidden advertising in Croatian newspapers"¹¹ by a group of authors offers a table with key similarities and differences between ads and hidden ads. The point where the Montenegrin practice, and even legal provisions or the provisions of the Code stop corresponding with is the premise that hidden ads are paid for.

Table 1: Differences and similarities between ads and hidden ads

Ads	Hidden Ads
Similarities	
Ads are paid.	Hidden ads are paid.
Skepticism towards ads adversely affects the acceptance of the ads.	Skepticism towards hidden ads adversely affects the acceptance of the hidden ads.
The ad conveys affirmative message in relation to the subject of the ad	The ad conveys affirmative message in relation to the subject of the ad
Differences	
The message is controlled, thus, it differs from the editorial content.	The message is incorporated into the text, thus, it doesn't differ from the editorial content.
Ads invoke positive attitude towards the subject of the ads	Hidden ads provide better emotional engagement than the ads.
Ads vary from informational to transformational.	Hidden ads are more transformational than informational.
Ads vary from argument-based to dramatized	Hidden ads are closer to dramatics than to arguments.
Informative/argument-based ads are critically evaluated	Hidden ads are more likely to invoke empathy (compassion, identification).
Ads are characterized by a low level of covertness and prying.	Hidden ads are characterized by a high level of covertness and prying.
Ads designate the sponsor.	Ads do not designate the sponsor.
There is ad regulation.	There is no regulation of hidden ads.

Source: „Manipulacija čitateljima – prikriveno oglašavanje u hrvatskim novinama“, 2007, p. 124.

¹⁰ Ibid.

¹¹ Jurišić, Jelena et al. *Manipulacija čitateljima – prikriveno oglašavanje u hrvatskim novinama*. Politička misao: časopis za politologiju, Vol. 44 No. 1; 2007. page 124. Available at: <https://hrcak.srce.hr/20150>. Accessed on February 11, 2019.



There are several reasons why advertisers opt for this type of advertising. Silvana Đurašević, the dean of the Faculty of Tourism at the Mediterranean University, distinguishes two main reasons: “The fact that viewers and readers are more enthusiastic about the content presented within the program or a newspaper text than a classic advertisement is certainly one of the key reasons for this choice. Furthermore, advertisements in the prime time slot in electronic media or on the cover page of a magazine or newspaper cost much more than a PR text or program which are often overlooked by the media house itself and not recognized as a PR activity.”¹²

One of the most popular types of (*hidden*) advertising is product placement which implies displaying products in movies, TV series, music videos, TV shows and similar. Thus, in the United States, the value of a product placement contract has increased by 250 times over a period of 30 years (1974- 2004), namely, from 14 million to 3.5 billion pounds.¹³ However, with the growing popularity of this type of advertising, comes a growing number of allegations about deceptive advertising. “Lobbies in the United States argue that one of the problems with the product displaying is that consumers cannot control it by changing the channel like they can do with regular commercial blocks and they demand that such advertising is prohibited.”¹⁴ This form of advertising in the EU countries has been regulated since 2010 by the EU Directive on audiovisual services.¹⁵ This act stipulates that the viewers of the program that contains product placement must be informed about it at the beginning and at the end of the program, as well as after each commercial block.

Placement or displaying of a product represents only one means of advertising which, depending on how it is being implemented, may be more or less obvious to media consumers. In a research paper¹⁶ on hidden advertising and its consequences, Croatian journalist Saša Leković states that a reader, a viewer, or a listener will recognize the advertisement which is not labeled as such with ease and dismiss it as fraudulent practice. “Instead, content is tailored to the needs of business partners- advertisers or others who can in any way affect the financial well-being of the media owner, and consequently for the benefit of the editor who conducted the assignment. All the while the journalist who worked on the story is not necessarily knowingly participating in the scam. It is enough to be inexperienced, uninterested or unaware of the topic. His / her name serves only as an alibi, and to verify that the presentation in question is a product of a journalist’s work” explains Leković.¹⁷

12 Interview with Silvana Đurašević, dean of the Montenegro Tourism School in the Mediterranean University in Podgorica. Interview conducted by e-mail, on February 3, 2019.

13 Džober, Dejvid. *Osnovi marketinga*. Data status. 2006.

14 Ibid; page 257.

15 *European Commission: AVMS Directive*. Available at: <https://bit.ly/2DUsrJy>. Accessed on February 21, 2019.

16 Leković, Saša. *Skriveno oglašavanje u medijima – varanje publike*. Available at: <https://bit.ly/2V43WAX>. Accessed on February 13, 2019.

17 Ibid.

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In his book "Ethics in the Media", US professor Luis Alvin Day states that the moral idealist would easily discern the need to subordinate commercial interests to some of the more honorable ones - so that if, for example, a big advertiser threatens a small newspaper with terminating the contract if the editor kept insisting on publishing a story which criticized the advertiser, it is easy to advocate that the story is to be published regardless of fear from financial retaliation. "However, if the cancellation of the contract creates financial difficulties, then the newspaper will no longer be able to provide quality service to the public. The New York Times may have the financial backing to withstand such pressures, but no small local newspaper does,"¹⁸ says Day. The author adds that economic pressures in capitalist society can come from different sides, but that there are usually three sources: (1) financial aides, including investors, advertisers, subscribers, and customers, (2) competition and (3) wider public. The pressure from advertisers does not necessarily have to be linked to the publication of controversial content on them. "For example, in the spring of 2000, Procter & Gamble decided not to sponsor a controversial doctor and radio host, Laura Schlessinger, known for the unseemly statements about gays and lesbians," Day writes.¹⁹

Adapting to new circumstances in the media increasingly results in the establishment of separate 'departments' where journalists are producing advertisements masking them in journalistic forms for the needs of advertisers. Moreover, in a comparative analysis "We no longer live in a time of separation," about how the integration of editorial and marketing departments became norms, a group of authors from Oxford University state: "The relationship between editorial and business departments is described by our interviewees as a collaboration, rather than in terms of separation; it is almost always framed in positive ways and often characterized as the result of an ongoing process of change that has been intentionally pursued to adapt to a changing media environment".²⁰

The product of such co-operation is the so-called *native advertising* - in which the form of the advertisement completely adapts to the platform where it is marketed at, in order to minimize the contrast from the rest of the media content. In the article "Legalized press" on advertising practices in Croatia, journalist Hrvoje Šimičević explains that native ads can also be found on internet browsers as recommendations for other content as well as promotional offers on social networks. "One research has shown that native ads increase users affinity to the advertised product or service by nine percent, as well as their purchasing opportunities by as much

18 Luis Alvin Day „Etika u medijima“, Medija Centar, 2004; page 284, available at: <https://bit.ly/2X52jo3>. Accessed on February 13, 2019.

19 Dej; 2004; page 293.

20 Cornia, Alessio et al. "We no longer live in a time of separation": A comparative analysis of how editorial and commercial integration became a norm. Page 8. Available at: <https://bit.ly/2le95Vv>. Accessed on February 13, 2019.



as eighteen percent. It is estimated that over the next few years more than a billion dollars will be invested in native ads globally”, said Šimičević.²¹

2. THE CONCEPT AND OBJECTIVES OF THE RESEARCH

The aim of this research is to inspect the frequency and type of publications in Montenegrin media that could be considered as promotional content and as such are not clearly distinguished from other journalistic content. In addition, we sought to gain a better understanding of the origins of such practices. In order to achieve these objectives, we used media monitoring, surveys with their long-time editors, interviews with experts from relevant fields,²² as well as the analysis of experts’ articles in this area for comparison with regional and global situation.

Media monitoring included four daily newspapers (“*Vijesti*”, “*Dan*”, “*Pobjeda*” and “*Dnevne novine*”), the primetime news programs from four stations with national coverage (TVCG 1 - “*Dnevnik 2*” at 19:30, *TV Vijesti* - “*Vijesti u pola 7*” at 18:30, *TV Nova M* - “*Centralni dnevnik*” at 18:00, *TV Prva* - “*Žurnal*” at 19:00), and one portal (*vijesti.me*). Monitoring was conducted from 14th to 20th January 2019. The purpose of the monitoring was to identify, group and estimate the number of media announcements that could be deemed as advertising content and not clearly marked as such. News programs were selected because they were entirely locally produced, it was the only content being broadcasted on all stations, and lastly, news program is particularly sensitive to the possible engagement of marketing content. Online news media were selected as the most influential media and because the primary focus was to identify forms and content that might be questionable, and not the overall situation in the individual media outlets.

Six out of ten media editors reached by the monitoring team participated in the survey, while eight interviews with journalists and marketing experts were conducted.

21 Šimičević, Hrvoje. *Legalizirana presstitucija*.

Available at: <https://www.portalnovosti.com/legalizirana-presstitucija>. Accessed on February 13, 2019.

22 The list of interviews is at the end of this report.

3. MEDIA MONITORING FINDINGS AND EDITOR SURVEYS

In the week when media monitoring was conducted, approximately three news items daily were deemed problematic from the Journalists' Code of Conduct standpoint, and in relation to the ban on hidden advertising.

Most of these news items were found in the daily press, a total of 16, followed by four from online media outlets and two news items from TV stations. Texts or announcements registered in printed media have most often appeared in 'economy' sections as well as the sections featuring local news from cities or regions (the names of these columns differ depending on a newspaper), and rarely in the 'politics' section. This content does not stand out either in length or the format except for one case when the information about the award ceremony in one of the sports betting shops was published marked with a thin red line. However, as this tool is used to highlight other content as well, it is not necessarily related to this specific type of content. This information was interesting from another point of view as well - the same news was released on the same day in an online media outlet. However, it was labeled with "promo" tag in place of author's name. The same approach was repeated in one case when the new telecommunications company's offer was presented - online media labeled it as promotional material, while the press did not utilize such label. During the monitoring week, only one news item from the 'politics' section (it appeared in three of the four daily newspapers) was questionable from the aspect of hidden advertising because in addition to the news that a local official left the ruling party for the opposing one, it contained an absurdly detailed rationale behind such a decision from the perspective of the official in question, and praising the party which he had newly joined. Also, the fact that in the primetime newscast, i.e. monitored primetime news programs, only two news items were identified, which emphasized positive characteristics of the companies or individuals - businessmen and producers, without a clear indication to the public's right to know.

All documented announcements can be divided into two categories. The first category, significantly larger one, includes 19 media announcements and it cannot be established with certainty whether they were paid, although they promote or speak positively of companies or individuals without clearly stated reasons to why it would be in the public's best interest to be informed about it. The second, smaller category includes a total of three announcements promoted by companies or individuals and they were clearly labeled as promotional content. In terms of compliance with the provisions of the Code, as well as the definition of the hidden advertising specified in the Law on Electronic Media, the issue of whether the publication of such information is paid for or not is not fundamental. However, for the second category, where the promotional material was identified or marked as such, the problem lies in the



manner in which the information was presented- along with other news, on the front page, and in the format undistinguishable from any other news items in the same publication.

Graph 1: The number and structure of the analyzed announcements



The fact that only two news items were recorded in TV newscasts during the monitoring week is further clarified and complemented by the findings obtained in the survey in which the editors of all newscasts confirmed that they had published information which, in their opinion, was essentially advertisement. Furthermore, the reason for a relatively small number of announcements that appear in the TV newscasts compared to the print media can be attributed to the fact that the TV media are better regulated in this sense, and our respondents from the television media outlets had received warnings and reactions from the Agency for Electronic Media.

All six surveyed editors of the Montenegrin media stated that they had faced requests or orders to publish contents that were essentially advertisements. Moreover, they all confirmed that these demands were fulfilled. Such demands came from both the management in their respective companies and the advertisers, i.e. representatives of the companies in need of advertising services. The reasons for such decisions include, among other things, the socially responsible character of the campaigns in question, and what is particularly worrying, the fact

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that “it was explained to them that such activities are part of contract signed with the company”. Half of the respondents believe that the frequency of such content on a monthly basis is “up to three”; while the other half claims that there are “three to five” such announcements monthly. One half of the surveyed editors claims that they did not received any complaints neither from management nor self-regulatory bodies, while three of them said that they had received warnings from the Agency for Electronic Media. None of the respondents support such practice, believing that it undermines the credibility of the media. However, their outlook for the future is not optimistic either. “Unfortunately, the media are forced to publish hidden commercial content in order to generate revenue. Their management and editorial staff generally do not perceive this as a problem, and this practice will only continue and is likely to intensify in the imminent future,” one of the respondents said.

4. THE (NON)EXISTING PROBLEM

During 2018, the Agency for Electronic Media (AEM) recorded 13 violations of the provisions on audiovisual commercial communications and consequently issued the same number of warnings. AEM oversees the application of the Electronic Media Act and its respective regulatory acts, i.e. the Rulebook on Audiovisual Commercial Communications and the Rulebook on Programming Standards in Electronic Media. Of total number of issued warnings, four concerned hidden advertising and three were related to the broadcasting of audiovisual commercial communications that were not clearly marked as such, while the rest were concerned with exceeding the maximum permitted duration of commercial blocks, scheduling, and labeling of radio advertising, and broadcasting of trailers for reality programming outside the designated period. Six complaints were filed to AEM in 2018 relating to broadcasters’ violations of the provisions for audiovisual commercial communications. In the initial evaluation, all six complaints were accepted and six warnings issued. Warnings were issued on account of broadcasting of audiovisual commercial communications that were not clearly marked as such (four warnings) and hidden commercial audiovisual communications (two warnings).

One of the feature stories which the Agency issued a warning for in November 2018 involved a gastric bypass procedure in a private hospital in Podgorica. In response to the warning, the media outlet that had published the information claimed that the immediate reason for publishing the story was the World Obesity Day, and that although the hospital in question operates under a private healthcare system, it is nevertheless part of the health institutions network which provides services for those citizens who only have the State Health Fund insurance. The Agency, however, confirmed their previous opinion that this was indeed a case of



hidden advertising. “The feature story in question is a case of hidden advertising, because it contains information about only one health institution, and emphasizes one method for treating obesity as the most effective (“one of the most effective methods for treating obesity is a surgical procedure of gastric bypass... the operation was completed in a specialized hospital XY²³) and states the price of surgical intervention in the aforementioned hospital (“the operation cost him 5,000 euros”). In consideration thereof, the analyzed programming content may mislead the viewers and disguise its true intent, i.e. it is in capacity to persuade the audience that the content in question is not of commercial nature” it is stated in the Agency’s ruling.²⁴ The same statement stipulates the obligation to publish AEM’s warning for the program in question in one sentence. The second warning/ruling²⁵ where it was determined that the broadcaster had been in violation of the ban of hidden advertising concerns the feature story about the book which would come as a gift with the issue of daily newspaper which is owned by the same media house as the television station in breach of the ban. Namely, even though the broadcaster argued that the book in question was not selling but instead given away for free, AEM confirmed their ruling of hidden advertising.

On the other hand, when it comes to self-regulatory bodies and monitoring of the application of the Code of Conduct, which should be in the focus of their work, the situation is significantly different. In its work, the Media Council for Self-Regulation did not encounter complaints regarding the application of guidelines relating to advertising, i.e. the prohibition of hidden advertising.²⁶ In the interview for the purposes of this research, a member of the Council of Radio-Television of Montenegro, Milan Radović,²⁷ confirms that the majority of complaints which their department for appeals dealt with was related to unbalanced and biased reporting, while those related to hidden advertising were scarce. This situation is not limited to Montenegro alone. In an interview for the purposes of this research, the President of the Journalists’ Court of Honor of Slovenia, Gojko Bervar²⁸ explains that in Slovenia as well, one article of the code prohibits the interpolation and association of journalistic texts with advertising and propagandist (including political propaganda) content, stating that they must be clearly identified and separated from journalistic content. However, complaints on breaching this particular article of the Code are practically nonexistent. The reason for the absence of complaints in Montenegro or Slovenia is not the lack of such violations, claims the media ex-

23 The name of the hospital was left out as it is not relevant to our analysis.

24 Agency for Electronic Media. Available at: <https://bit.ly/2Nd7cY1>. Accessed on February 13, 2019.

25 Agency for Electronic Media. Available at: <https://bit.ly/2E9WFtD>. Accessed on February 13, 2019.

26 Interview with Ranko Vujović, executive secretary of the Media Council for Self-Regulation.

Interview conducted by e-mail, on February 3, 2019.

27 Interview with Milan Radović, member of the Council of RTCG.

Interview conducted by e-mail on January 28, 2019.

28 Interview with Gojko Bervar, president of the Slovenian Journalists’ Court of Honor.

Interview conducted by e-mail, on February 6, 2019.

pert and president of the NGO “Media Center” Council in Podgorica, Dragoljub Duško Vuković. He argues that the examples of hidden advertising in the media are numerous and are often hardly recognizable, even for journalists and especially for the public.

He explains that there are numerous examples that fall under this category, for example, in the winter season, it’s reporting about ski centers where it is assumed that all the slopes are managed by private companies, while the public good is merely secondary and insignificant in relation to the media attention given to these stories. Despite the publications coming in the form of journalistic texts that speak primarily about the (economic) benefits of the winter tourist season, these stories are easily (and often) linked with positive perceptions of the successes of local governments, which can be considered as stepping into the area of political propaganda. The correlation between the media and politics through financial and power elites is difficult to prove, especially in such formats. However, in his paper, Saša Leković points to a few models used in Croatia in such “co-operation” between the media and politics. “Namely, although the Croatian media are largely privatized, local and regional political elites can allocate budget funds for the monitoring of media activities in local communities. This process usually happens as follows: local political moguls give budget money to the media, and in return, the media uncritically advertise the moguls and their activities. If they refuse to do it, they do not get the money, and if they accept at first, but then stop returning the favor for any reason, there are being cut off from budget funding,” Leković says.²⁹ This scenario once again underlines the power, the influence, and the importance of transparency in the process of allocating funds from public resources into marketing activities.

Executive Secretary of the Media Self-Regulatory Council in Montenegro, Ranko Vujović, agrees that hidden advertising is difficult to recognize because it often comes in subtle forms. “The Montenegrin media had difficulties in the past with the provisions of the Code which were related to advertising. Now that it is well-blended into other texts, we can hardly distinguish it from the rest of the content.”³⁰ Bervar says that in Slovenia, after an almost comical scenario, the former labeling system which unambiguously indicated a sponsored content got reduced over time only to eventually disappear completely and appear exclusively when it is difficult to pass off certain content as non-commercial. “An increasing number of publications is being camouflaged by various journalistic genres, most often interviews. Sometimes it takes a seasoned professional to unmask the seemingly journalistic product (with the signed author; even appearing in serious journalistic context) for what it really is: a commercial.”³¹

29 Leković, Saša. *Skriveno oglašavanje u medijima – varanje publike*. Available at: <https://bit.ly/2V43WAX>. Accessed on February 13, 2019.

30 Interview with Ranko Vujović, executive secretary of the Media Council for Self-Regulation. Interview conducted by e-mail, on February 3, 2019.

31 Interview with Gojko Bervar, president of the Slovenian Journalists’ Court of Honor. Interview conducted by e-mail, on February 6, 2019.



However, although it is difficult to recognize such content, ignorance cannot be an excuse for publishing it, and it is essentially insignificant whether it is the ignorance or the money that lie behind these decisions; such content comes with serious consequences: on the one hand, it can tarnish the reputation of the media, and on the other cause a decline in income from advertising, which is often overlooked. “It is expected for someone who is not a professional journalist to promote advertisements as journalistic content, but they should not be the last instance in the media outlet to decide whether something should be published or not; it’s the editors’ job. They should be educated enough to recognize the advertisement,” says Duško Vuković.³²

4.1. Self-regulation of the advertisers

“Unlike several professional associations of journalists, there are no such organizations of advertisers in Montenegro,” states Dragan Markešić from *Direct Media Podgorica* in an interview for the needs of this research. “One of the main reasons for this is probably the specific nature of our market when it comes to advertising, as this is a small market even in a regional context and we are much more affected by the developments outside of Montenegro,” says Markešić.³³ In Slovenia, for example, they have a Slovenian Advertising Chamber within which the associations of media, advertisers and advertising agencies operate, having a collective body of the Advertising Ethics Board (*oglaševalsko razsodišče*). The Slovenian Advertising Code in Article 6 “Recognition”³⁴ regulates the obligation to clearly distinguish advertisements from journalistic content. The International Chamber of Commerce also promotes the new Code of Communication in advertising and marketing.³⁵

One of the reasons for the tenth revision of the document is precisely the need for clearer and more transparent labeling and separation of commercial content from the journalistic and the content produced by media users. Article 7, which refers to identification and transparency, states: “Marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement, including so-called “native advertising”, appears in a medium containing news or editorial matter, it should be so presented that it is readily recognizable as an advertisement and where appropriate, labeled as such.”³⁶

32 Interview with Dragoljub Vuković, president of the NGO Media Centar’s Assembly. Interview conducted in Podgorica on February 4, 2019.

33 Interview with Dragan Markešić, managing director of the agency „Direct Media” Montenegro. Interview conducted by e-mail, on February 21, 2019.

34 *Slovenski oglaševalski kodeks*. Available at: <https://bit.ly/2GDkzQJ>. Accessed on: February 21, 2019.

35 *ICC Advertising and marketing communications code*. Available at: <https://bit.ly/2BNRkq6>. Accessed on February 21, 2019.

36 *Ibid*, page 10

5. ONLINE MEDIA – (UN)LABELED PROMOTION

The online media are not immune to any of the above-mentioned trends and tendencies. What's more, some of them are more prominent in online media than in electronic and print outlets. The President of Slovenia's Journalists' Court of Honor, Gojko Bervar, states that online media represent the 'unregulated hunters'. "One can often find it hard to get information about who the author of a journalistic (or non-journalistic) material is, or whether the material is a compilation of contributions from other media or an original. Discovering the sources which the text refers to is often an irrational detective-like endeavor, as they often do not exist, but instead, they are a product of compiling hearsay and partial-truth."³⁷

By the beginning of December 2018, 40 "electronic publications" or "portals"³⁸ were registered in accordance with the applicable regulations in Montenegro. The extent to which the online media are widespread is also indicated by the fact that, after radio stations, they are the most numerous media. At the end of 2018, the Media Union of Montenegro presented the report "New Media- Old Problems", stating that the financial position of journalists employed in "electronic publications" is significantly worse in comparison to both the rest of the industry and even the country's median income, making them even more vulnerable to financial pressures.³⁹

In the course of our brief research, *native advertising* stood out in a distinctive manner, and particularly in online media. Unlike all other news items registered during the media monitoring carried out for the purposes of this research, these were the only ones that were labeled "promo" in the online media". Three posts were published in online media on their home pages, identical in format with other journalistic forms with the difference of having the "promo" tag in place of author's name. Duško Vuković points out that it is utterly groundless to require "more attention" from the audience in order to determine whether the content is a sponsored one or not. "If you have a media product that essentially contains advertising, it must be clearly labeled as such – and leave no space for ambiguity in this sense. A fair practice should imply this, but it is perfectly clear that this is not the case. I should not be compelled to read the text, find it to be somewhat ambiguous, then go back to re-read it from the beginning in order to comprehend what the text is really about," says Vuković.⁴⁰

37 Interview with Gojko Bervar, president of the Slovenian Journalists' Court of Honor. Interview conducted by e-mail, on February 6, 2019.

38 Lakovic-Konatar, Bojana. *Novi mediji-stari problemi*. Trade Union of Media of Montenegro. Available at: <https://bit.ly/2lr5tzB>. Accessed: February 11, 2019.

39 Laković – Konatar; 2018; page 10.

40 Interview with Dragoljub Vuković, president of the NGO Media Centar's Assembly. Interview conducted in Podgorica on February 4, 2019



In *Columbia Journalism Review*'s issue from January 2019,⁴¹ journalist Joshua Carroll questions the (un)labeling of paid content in a manner that is clear and unambiguous for the 'average' media user. As an example, he uses the text published on the *Reuters Plus* platform, which operates independently from the *Reuters* editorial office. "The piece is marked "sponsored" at the top, followed by a line identifying the content as "provided by" Thailand's foreign ministry. A line at the end in smaller, fainter font states that the article was not produced by *Reuters* journalists." In the case of *Reuters*, on their cover page, there is a section dedicated to sponsored stories. However, Carroll explains, such stories appear in Google searches along with journalistic texts on the same topics, while research has confirmed that most 'average' readers do not notice or understand these notifications. Only 10 to 25 percent of the audience realizes that what they actually read is advertising content. For example, the British *Guardian* employs a threefold labeling system:⁴² 1. The category "sponsored by", which relates to the independent editorial content, but one funded by a particular brand; 2. The "presented by" category which relates to the content that is being created by a particular brand or a separate *Guardian* department; and 3. The category "supported by" refers to content sponsored by charities or foundations.

5.1. Political marketing practice in Montenegrin online media

The practice of publishing various advertising content in the online media in Montenegro, in the form identical to the journalistic content that surrounds it, with the label "promo" instead of the author's name, was introduced by the political party Democratic Montenegro. This type of promotion is part of the party's crisis communication strategy, as the spokesperson of this political party, Anđela Peković, said in an interview conducted for the needs of this research. She confirms that they are familiar with the negative response from the audience, but that this response is not substantial enough for the party to revise its practice. "Every type of commercial, especially when it comes to political marketing, has groups that support or challenge it. Our press team estimates whether such comments are justified or not and take appropriate measures accordingly. In this particular case, there were not so many negative comments that would result in the change of our strategy."⁴³ In addition, this type of promotion of planned or realized projects, labeled as "promo" content, was also used by three municipalities whose leaders are members of Democratic Montenegro. These cases were not recorded during our

41 Carroll, Joshua. *Reuters article highlights ethical issues with native advertising*. *Columbia Journalism Review*. 2019. Available at: <https://bit.ly/2SBz7qQ>. Accessed on February 11, 2019.

42 World Association of Newspapers and News Publishers BLOG. *How ethical is native advertising?* Available at: <https://bit.ly/2BDBqP0>. Accessed on February 13, 2019.

43 Interview with Anđela Peković, spokeswoman of Democratic Montenegro. Interview conducted by e-mail, on January 29, 2019.

media monitoring, but they were confirmed by the party. However, as they told us, these activities fall under the media strategies of the mentioned municipalities and they are not directly connected to them.

6. CONCLUSIONS

The current situation in the media regarding the application of provisions of the Code of Montenegrin Journalists related to the restriction of hidden advertising is a result of several factors. One of the factors that have a decisive influence is the difficult financial position the media are faced with, which puts them in a vulnerable position- not just with the advertisers, but also with state-owned enterprises, which allocate great funds for promotional content. Considering the fact that marketing agencies often sell the program and buy advertising space at the same time, the program with already included advertising blocks is often purchased as a package, which puts the media into a dependable position because of the large budgets, and in turn results in an increased pressure on the production of news program.

The consequences of such circumstances were obvious in the media monitoring done for this research as well. On a small sample of influential media, there were around three releases a day which were deemed problematic with regard to the application of provisions related to the prohibition of hidden advertising. The editors who participated in the survey unanimously confirmed that they had received demands to publish content which they perceived as advertising. However, the reactions of self-regulatory bodies and the audience were practically nonexistent. The Agency for Electronic Media, within its competence, reacted to a number of such announcements over the last year. Also, along with its ruling in these cases, the AEM also prescribes the obligation to the media to publish the findings of the Agency in one sentence. These warnings are also available on their website. However, this type of reaction, with the exception of a small group of concerned individuals, is essentially perplexing to the general public and to a large part of the media audience. Therefore, such decisions and measures remain at a bilateral level between the media and the regulators and do not contribute significantly to raising awareness about this issue among citizens. The fact that, apart from the reaction of the regulator, the reaction of the self-regulator was virtually nonexistent indicates two aspects of the problem. On the one hand, there is the insufficient engagement of the self-regulators, partly influenced by the perception of the citizens and the media community about the relevance of these bodies, and on the other hand, a subpar level of media literacy amongst the audience which did not express complaints about such content.



Furthermore, like the Agency for Electronic Media also confirms, although the legislation in this area is largely compliant with international standards, hidden advertising is still a challenge, especially regarding the blending of editorial and advertising content, in various formats which combine news and entertainment content. More attention should be paid to improving the practice of labeling the sponsored content, and introducing clear mechanisms for monitoring and sanctioning of deviation from compliance with the rules that apply to such content. The hitherto practice of labeling promotional content has proved to be ineffective.

7. RECOMMENDATIONS

a) The media community in Montenegro needs to be more actively engaged with the ethical challenges of exploring and experimenting with new sources of funding in the circumstances of the unsustainability of the hitherto business model in the media. Individual media outlets, as well as the wider media community, need to respond in an organized and resolute manner to the trends of ever closer cooperation between marketing and journalistic segments of the media, which lead to the increasing production of advertisements in newsrooms or in combined, hybrid departments, which often involve journalists.

b) In the internal organizational structure of the media and their legal and/or self-regulatory acts (statutes, codes, and similar), there should be a 'standardization' or regulation of the position and operation of the departments that introduce hybrid forms. Their work in the production of hybrid formats of advertising content should be strictly regulated in relation to the work of editorial boards and journalistic content, with the protection of editorial independence and compliance with the principles of journalistic ethics.

Special attention should be paid to standardization, clarity, and consistency in the labeling of all, and especially new, hybrid advertising formats. In this process, advertisers should also be involved as the other interested party, because the descent in the credibility of the media due to unacceptable practices does not benefit anyone.

c) When reforming media legislation, the state institutions in charge of media policies should consider the situation with regard to hidden advertising in the media, especially in online media, and, if necessary, introduce stronger mechanisms of regulation or co-regulation in this area.

d) State institutions in charge of education and media policies should decisively approach the general increase in the level of media literacy. They should encourage campaigns, teaching

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curriculums in schools and universities, as well as the activities of regulators, self-regulatory bodies and civil society collectives in the organization of non-formal education, workshops, festivals, publications and other activities through which the citizens can learn about differences between marketing and editorial content and improve their ability to recognize foul practices.

e) Political parties and local governments should restrain from the use of promotional forms that can mislead citizens and impair the credibility of the media.

f) It is essential to work on the improvement of self-regulatory mechanisms on all levels of the media community. It is necessary to set this in motion regardless of the opposing views within the community itself, in order to preserve the credibility and sustainability of the profession. Mechanisms accessible to all citizens and the media community should be established, whether by reforming and supplementing the old or by forming new self-regulatory bodies on all levels of the media community.

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LIST OF INTERVIEWS:

Interview with **Anđela Peković**, spokeswoman of Democratic Montenegro.
Interview conducted by e-mail, on January 29, 2019.

Intervju with **Milan Radović**, member of the Council of RTCG.
Interview conducted by e-mail, on January 28, 2019.

Interview with **Ranko Vujović**, executive secretary of the Media Council for Self-Regulation.
Interview conducted by e-mail, on February 3, 2019.

Interview with **Silvana Đurašević**, dean of the Montenegro Tourism School in the Mediterranean University in Podgorica.
Interview conducted by e-mail, on February 3, 2019.

Interview with **Dragoljub Vuković**, president of the NGO Media Centar's assembly.
Interview conducted in Podgorica on February 4, 2019.

Interview with **Jadranka Vojvodić**, deputy director at the Agency for Electronic Media.
Interview conducted by e-mail, on February 4, 2019.

Interview with **Gojko Bervar**, president of the Slovene Journalists' Court of Honor.
Interview conducted by e-mail, on February 6, 2019.

Interview with **Dragan Markešić**, managing director of the agency „Direct Media“ Montenegro.
Interview conducted by e-mail, on February 21, 2019.

ABOUT THE AUTHOR

Daniela Vukčević holds a degree in Journalism with active experience in various media and media monitoring. The author has published multiple research papers on Montenegrin media.

Colophon:

AUTHOR: Daniela Vukčević

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