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APPS BLOG

Social TV apps: 'second screen is what you'd call a lawyer's paradise'

Legal headaches may lie ahead if Shazam, Zeebox and their rivals are used for ambush marketing, suggests Mipcom panel



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Second-screen TV apps like Zeebox are growing in popularity, but could they be controversial for broadcasters?

During the 2010 World Cup, a group of Dutch women were arrested on suspicion of ambush marketing, after they attended a match in bright dresses branded by a beer company that wasn't an official Fifa sponsor.

Now think forward, not to the 2014 tournament, but to 2018, when technology like

Google Glass could be the hot tool for these kinds of stunts. Far-fetched? The topic came up at the Mipcom conference in Cannes, during a session involving a panel of lawyers exploring the legal issues around second-screen apps and related technologies.

"I think Google Glass is something we will see a lot of young people wearing: they'll be walking around and maybe they'll see advertising," said Sean Hayes, senior partner at law firm IPG Legal. "Maybe you'll go to a Fifa game, and on that screen you'll see advertising for Pepsi, but the official sponsor for Fifa is Coca-Cola."

This may sound like lawyers thinking up worst-case scenarios whose solution will invariably involve paying lots of money to lawyers. But in the shorter term, they highlighted some realistic concerns for broadcasters about third-party apps curating conversation, content and ads around their shows.

"Second-screen is what you'd call a lawyer's paradise," said Christiaan Alberdingk Thijm from Dutch law firm Bureau Brandeis, who noted that there's little controversy around apps that simply provide a home for social chatter around a show.

"If you're not affiliated to the original producer, you can have a conversation about The Voice, for example, on the second screen, and we'd all agree that wouldn't be contradictory to copyright or trademark law," he said.

"But what happens if I'm using The Voice's trademarks on my second screen, or running my own election where I'm not choosing the candidates for their quality of singing, but on whoever looks best or tells the best jokes? You could put a gambling aspect into that, and on top of all that you could include your advertising."

Thijm suggested this is where broadcasters will want to do something about the second-screen app, but admitted that it's still unclear what kind of action they could take, and whether it would be successful.

He also drew the parallel to the "Bavaria babes" during the 2010 World Cup, noting that they were arrested under specific anti-ambush marketing legislation put in place for the tournament.

"If you want to organise the World Cup, you have to have inside your penal code anti-ambush legislation, because it's very hard to beat. The same applies to second-screen... It's very disruptive but it's very difficult to do something about it."

This doesn't just apply to second-screen TV apps like Shazam and Zeebox, or football-specific apps like The Football App. It can apply to the larger social networks too: if Facebook knows lots of football fans will be using its app during a World Cup match, it can sell ads to whatever brands it likes for that period of time.

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The panel also suggested that the growth of second-screen apps may have an impact on TV regulations, for example around product placement in shows.

"If I'm running a show and I'm not allowed to do product placement, but if somebody else is allowed to place products within the second screen, I would say that strict media regulation should no longer be in place," said Thijm.

"We really need to rethink our product placement and media regulation rules, because it doesn't work: why should I impose all these strict rules for broadcasters and [television](#), and not have them for my iPhone and iPad?"

Thijm predicted that the answer will not be to create more regulations for second-screen apps, but fellow panelist Dr. Ralph Oliver Graef from German firm GRAEF Rechtsanwälte, said that governments must take a clear decision.

"Either they have to down-regulate the broadcasting law, or up-regulate the other stuff," he said, while pointing out that there are plenty of other unresolved legal issues around the world of second-screen apps.

"A technology like Shazam that allows that third party to know what you are watching is the new, maybe scary, maybe interesting and challenging issue at hand," said Graef. "There are data protection issues, privacy issues, unfair competition issues and copyright issues with this topic."

Thijm pointed to shopping as one particularly-grey area for second-screen apps, although not necessarily a new one. He recounted the tale of working with a startup a decade ago whose technology involved helping people buy the products they saw on screen – for example the jumper being worn by Jennifer Aniston in a Friends episode.

"I said 'guys, you're okay, you're not using any trademarks, it's free speech and fair competition, etc'. But some of the broadcasters became very, very aggressive. They just said 'we're going to sue unless you negotiate with us and take our licence'," he said.

"The company said 'we don't need a licence', but they said 'yes you do, otherwise we're going to sue'. And they negotiated for a long time, and the company is now out of business."

Modern-day second-screen startups like Zeebox are exploring this kind of e-commerce,

but nobody has sued them for it. Not yet, at least. Graef suggested that lawsuits may not be the inevitable outcome of the current wave of second-screen activity.

"The copyright issues can be solved, and the biggest issue for the TV station is the advertising and the unfair competition issue. If you avoid that and they say you can do second-screen as long as you don't skip the advertising that we're using, the most important issue is solved," he said.

"Their programming is kept intact, and when you see Pizza Hut on the TV, you will see Pizza Hut on the second screen. This does not necessarily need to be controversial."

That's reflected in the current strategies of companies like Shazam and Zeebox, which are keen for partnerships with broadcasters and producers to produce second-screen content around their shows.