

25 June 2019

Broadcasting Authority of Ireland
2 - 5 Warrington Place
Dublin D02 XP29

Dear Sir or Madam

Complaint: RTÉ and AA Roadwatch - Complaint Ref. C5094

I wish to respond to RTÉ's letter of 18 June regarding my complaint, which was made on five separate grounds:

1. AA Roadwatch meets the BAI's definition of a sponsored programme, and breaches a number of RTÉ's and the BAI's rules on sponsored programmes
2. By broadcasting AA Roadwatch, RTÉ is unfair to other insurers
3. By broadcasting AA Roadwatch, RTÉ is unfair to other campaign groups
4. RTÉ gives disproportionate prominence to traffic news bulletins; this skews public debate on transport and planning
5. It is unacceptable that RTÉ gives such a degree of editorial control to the AA on a topic core to the AA's political campaign.

1. Breach of sponsorship rules

RTÉ disputes that AA Roadwatch meets the definition of sponsorship, claiming that the AA is '*engaged in providing radio or television services or in the production of sound broadcasting or audiovisual works*', making the AA an independent radio production company, and therefore the sponsorship rules do not apply.

The AA is not an independent radio production company

The government requires RTÉ to spend a minimum amount on independent production annually to meet the policy goal of developing small businesses in the independent media sector. Companies in this sector are generally small, dedicated operations, whose sole focus is media production.

Independent productions are clearly labelled on-air, typically in the format '*The Business is produced for RTÉ by Old Yard Productions*' or '*Second Captains is an independent production for RTÉ*'. The AA has none of these characteristics; its staff of over 400 overwhelmingly have no involvement in media production.

The AA says that it is not an independent radio production company

In its 2016 submission to the Central Bank, the AA describes itself firstly as a motor industry lobby group, and secondly as an insurance intermediary. It makes no to claim be a media production company.¹

RTÉ says AA Roadwatch is not an independent producer

The RTÉ website² reports its commissioning activity for 2012 to 2018, listing all the independent producers and hours broadcast. Neither the AA nor AA Roadwatch are mentioned. The total hours of independent productions broadcast show that RTÉ does not regard AA Roadwatch as an independent production.

- tables on pages nine and 21 of the 2012 report show RTÉ carried 115 hours of independent production in the radio factual category that year
- page 33 of the 2018 report says RTÉ radio carried 167 hours of independent productions in all categories combined

As AA Roadwatch gets about 200 hours of airtime per year³, it is clear that RTÉ never included it their calculation of independent production hours.

RTÉ has a rigorous system for advertising and accepting proposals for independent productions. In correspondence, RTÉ acknowledged that the traffic news slot has never been advertised or put to tender. RTÉ’s arrangement with the AA is entirely outside their procurement process for independent productions.

RTÉ says the AA is not eligible to be an independent producer

I telephoned Colm O’Callaghan, RTÉ’s Commissioning Editor for Specialist Factual Programming, to ask in general terms about the rules for accepting programming from lobby groups. He was clear that it could not be accepted by RTÉ as an independent production. He said:

“There is absolutely no way that we would stand over content [of independent productions] that is paid for by lobbyists or advocacy groups.”

When I asked Mr O’Callaghan if, regardless of the funding, any independent production could be accepted from an advocacy group which centred on their area of interest, he said:

“That to me is a total no-no.”

Mr O’Callaghan referred me to Suzanne Young, the Commissions Administrator at RTÉ Independent Radio Productions. I asked Ms Young whether an organisation registered with the Standards in Public Office Commission as a political lobbyist could be an independent producer for RTÉ. Again, she was clear in her answer, saying it would be unacceptable

“if what you were producing was related to [your area of lobbying] because RTÉ can’t be seen to have a bias on either side ... if the topic was completely unrelated to the area of lobbying I could run it past legal, but if it was related it would be a flat no.”

Characteristics of independent productions - V - sponsored programmes

A number of characteristics distinguish an independent production from a sponsored programme.

| <i>Sponsored Programme</i> | <i>Independent Production</i> |
|---|---|
| Sponsorship credits are frequent and prominent, and establish the sponsor’s brand in the mind of the audience, to be recalled when they interact with the sponsor’s brand | Credits are few and subtle, and the audience will never interact with the producer in any other context |
| AA Roadwatch credits are broadcast more than 300 times a week - twice in each 90-second segment - and according to Dr Michael Foley, professor emeritus at the school of media at TU Dublin and member of the NUJ’s Ethics Council <i>“The AA has become an incredible brand because of AA Roadwatch.”</i> ⁴ | |
| May involve a call-to-action urging the audience towards a purchase. | Never involve a call-to-action |
| AA Roadwatch presenters invariably sign off by urging the audience to contact the AA to ‘report traffic’, directing the audience towards AA sales channels - a website which predominantly sells AA products, a Twitter account that links directly to that website, or a telephone number with options to buy AA products. | |
| Sponsor is credited at the start and end of the programme. | RTÉ rules explicitly prohibit a credit at the start of the programme <i>“No presentation credits for production companies or personnel ... will be permitted on programmes as part of the front credits...”</i> ⁵ |
| The AA is credited at the start and end of the 90-second broadcast; it would be difficult to squeeze in any more AA branding. | |

Where the characteristics of independent productions and sponsored programmes diverge, AA Roadwatch always follows the pattern of a sponsored programme.

RTÉ claim that because Hyundai sponsors AA Roadwatch, it is therefore not sponsored by the AA. There is nothing in RTÉ or BAI rules to say that two separate firms cannot sponsor the same programme.

Danger to BAI regulation system

It is clear that RTÉ never before contemplated the AA as an independent production company, and are only doing so now in an attempt to crowbar AA Roadwatch into a category that evades RTÉ's legal duties.

I contend that an independent production company is an entity whose *bona fide* principle activity is producing content centred on the interests of the audience. RTÉ take the position that any entity which provides it with content can be classified as an independent producer, even if that content is centred on the interests, and promoting the brand or opinion, of the producer.

If the BAI accept RTÉ's definition of an independent producer, it nullifies the BAI's role regulating commercial communications, because any broadcaster could simply classify sponsors who supply finished audio as independent producers and declare them exempt from rules about commercial communications.

Alternative Position

I contend that there are no grounds to consider the AA an independent production company, and that RTÉ's claim is perverse, and concocted solely for the purpose of defeating this appeal.

If the BAI take the view that AA Roadwatch *is* an independent production of the AA, and exempt from the rules on sponsored programmes, they must then enforce the rules relevant to independent productions. The AA is registered with the Standards in Public Office commission as a political lobbyist⁶ and, as confirmed by RTÉ's Suzanne Young, such an organisation is clearly ineligible to supply programming, particularly when the content of the programming is central to its lobbying activities.

It is also in breach of the rule prohibiting a front credit for the producer.

2. Unfair to other businesses

RTÉ has not addressed this ground for complaint, other than to say that they have not received any other similar complaints; this is no basis for judging the merit of the complaint.

3. Unfair to rival campaigners

In their response, RTÉ say

"AA Roadwatch ... provides factual information for listeners and commuters..."

And later

"traffic and travel news updates are just that - the latest factual traffic and travel information"

RTÉ claim that a broadcast is *necessarily* fair and impartial unless it contains opinion. I contend that the *selection of information* to broadcast is an important consideration in judging fairness and impartiality.

The AA, registered political lobbyists, get over 8,000 prime-time radio slots per year to highlight the facts of traffic congestion that support their case. This is plainly an unfair advantage over opposing political lobbyists who have no equivalent forum to raise public awareness of the difficulties of public transport users.

4. Skewing public debate

In their response, RTÉ say

"the arrangement with AA Roadwatch does not have, has never had, and for as long as it continues will never have any influence over any aspect of RTÉ editorial content."

This claim flies in the face of information in the public domain, confirmed to me by RTÉ in correspondence. AA Roadwatch *is* part of RTÉ editorial content; its content is selected and written by AA staff.

Further, RTÉ say

“...the complainant makes general, vague allegations without ever citing any specific broadcast”

In fact, I gave very specific examples, such as the AA’s campaign to transfer M50 toll charges from motorists to the taxpayer. In my complaint, I quoted the Dáil record of a TD who explicitly said that she supported the AA’s policy because of how often she heard M50 congestion mentioned on AA Roadwatch.

Opposing political lobbyists could well say that politicians would be more sympathetic to them, if the problems of public transport users were repeated on over 8,000 prime-time radio slots annually.

5. Potential for bias

In their response, RTÉ say

“the perception that the content of AA Roadwatch is crafted towards political goals is utterly false”

It is for the BAI to decide whether staff who are employed and paid by a firm registered with the Standards in Public Office Commission as a political lobbyist, who work at the registered office of that lobbyist, share that office with the best-known industry lobbyist in the country, and who select information for broadcast that directly impacts their employer’s lobbying, can be reasonably perceived to be fair and impartial in that job.

Due Process

RTÉ, in their response, claim that

“...our agreement with AA Roadwatch for the provision of traffic and travel news updates contains a provision that RTÉ is free to accept sponsorship for this segment...”

and

“RTÉ’s commercial arrangement with AA Roadwatch is an entirely legal, legitimate and appropriate arrangement and fully compliant with all the relevant regulatory and statutory provisions.”

These claims refer to the alleged contents of an agreement between RTÉ and the AA. I asked RTÉ informally and later via FoI for sight of this agreement, either in full or redacted. RTÉ refused.

I asked RTÉ for a summary of its contents; RTÉ regularly publicise sponsorship deals and collaborations with independent producers, but they refused to disclose any information whatsoever about the character of their agreement with the AA.

To maintain fair procedure the BAI, as a quasi-judicial body, must disregard hearsay claims about the alleged contents of a document which is unavailable to the complainant.

Yours sincerely



William Campbell

¹ <http://bit.ly/2WQZAxP>

² <http://bit.ly/31E4p0N>

³ 158 broadcasts per week * 52 weeks * 90 seconds typical broadcast = c205 hours

⁴ <http://bit.ly/2OR82KE>

⁵ <http://bit.ly/2WSSsR9>

⁶ <http://bit.ly/2TXJYXA>