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Embedded Analysts, Major Pain **Private arrangements, generally speaking?**

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For those of you who successfully passed Payola 101: Pay for Play (back in the 1950s), and then had occasion a year or two ago to take the refresher course (Payola 102: VNRs – Threat or Menace?), get set for the next level: Payola 103: Embedded Analysts – the Hidden Persuaders. Recent disclosures by the *New York Times* describe an extensive, and apparently successful, years-long effort by the Pentagon to obtain favorable news coverage from “analysts” to whom the Pentagon has provided special access. While this may just be a temporary political tempest in a teapot, it does not bode well for broadcasters in a number of ways in view of the resurgence in official hand-wringing about perceived “payola” practices.

According to the *Times*, in an effort to get its side of the Iraq war out to the public, the Pentagon has been giving special access, information and non-pecuniary favors to retired military officers. Those former officers serve as “analysts” for broadcast and cable news services, providing expertise and gravitas for news stories and talk shows. These “analysts” are typically identified as independent experts with high-level military experience, the implication being that they are obviously capable of offering an expert’s angle on the important but highly complicated developments in the prosecution of the war. Since those developments are often nigh on incomprehensible to the lay public, providing this kind of seemingly objective “expert” analysis has become a routine element of war coverage.

It turns out, though, that those analysts may not have been all that objective. According to the *Times*, the Pentagon fostered a cadre of military pundits who it deemed to be friendly to the Pentagon’s cause. Those pundits were then given special access to Pentagon officials (up to and including the Secretary of Defense), along with exclusive trips and tours and briefings, all designed to highlight the stories the Pentagon wanted to highlight – as opposed to substantially more negative stories that journalists were reporting on their own. The result tended to be more upbeat – or at least more Administration-favorable – depictions of the war and related matters. The Administration’s goal was to cultivate what modern spin-masters call “key influentials”

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who could, through the delivery of talking points, help win a “psyops” battle for domestic public opinion.

Further muddying the water here is the fact, noted by the *Times*, that many of the “analysts” also happen to be affiliated in one way or another with various defense contractors who have a pecuniary interest in the war effort. By giving the “analysts” extensive access to DoD officials, the Administration was arguably providing them (a) valuable information that their affiliated companies could use in negotiating deals with the government and (b) considerable personal cachet that would enhance the analysts’ own perceived value as useful contacts with the government.

So the government was providing these “analysts” with entrée, which presumably has some value, both for them personally and for their non-media employers. The “analysts” were in turn going on-air and saying things that the administration wanted to hear. Not surprisingly, even though no one has alleged that any money actually changed hands in any of this, some leading Congressional Democrats are calling for an FCC investigation, claiming that this is all very redolent of payola and sponsorship non-identification.

In a letter to FCC Chairman Kevin Martin, House Commerce Committee Chair John Dingell complained (among other things) of possible culpability on the part of broadcasters for the airing of such pundits’ views without appropriate sponsorship identification. With potentially dramatic political change on the post-November horizon, a Democratic-controlled FCC may be more amenable to the kind of stern investigations now being sought by such Democratic influential as Dingell.

As we all know, the Communications Act and the FCC’s rules require appropriate disclosure when something of value is given in exchange for a broadcast message. Many newsrooms found out how far this regulatory lever could extend when they received official FCC inquiry letters about the use of Video News Releases (VNRs). (*See, e.g.*, the April, 2006 *Memo to Clients* for earlier coverage of VNR issues.) VNRs are materials created by third parties and provided to stations. In the FCC’s view, because the third parties (or their clients) control the content of the VNR, and the station arguably derives benefit from using the VNR (through savings of time, effort and materials), some sponsorship ID must accompany broadcast use of any VNR. There are many who disagree with the FCC’s apparent analysis on this front. But those who have suffered through the VNR inquiry process can attest that it is painful – costly and time-consuming. Such inquiries can also lead to “enforcement holds,” which may tie up assignments, transfers and renewals.

So if the *Times*-induced flap gains traction at the FCC, we could be in for another round of regulatory hassle.

The problem, though, is that the nature of any misconduct here is a bit hard to identify. The media are seeking to provide their audiences with reliable information from knowledgeable sources. The “analysts” accurately claimed expert backgrounds and access to inside sources. Were the analysts’ outside interests and potential conflicts screened as carefully as a full-time reporter’s would have been? Probably not. But even if they had been, would the unsurprising disclosure that these “analysts” had day-jobs relating to the military-industrial complex have automatically set off alarms about possible under-the-table consideration (a/k/a payola) in connection with the content of their reports? Again, probably not.

Indeed, even if media executives had interrogated their “analysts” about the content of their reports, it seems likely that little if any concern about sponsorship identification would have hit anybody’s radar screen. The DoD did not, after all, hand these folks a script and insist that it be read verbatim. To the contrary, DoD merely exposed the “analysts” to alternate views of the war effort. The analysts then picked and chose what and how to report. It seems a stretch – well beyond even the tenuous VNR approach which the FCC has invoked in recent years – to suggest that broadcasters might be faulted for failing to air sponsorship identifications under these circumstances.

One difficulty, though, is that today’s diffuse media landscape tends to blur distinctions which were historically bright-line. What, after all, is “news” in this day and age? Today’s audiences seem to shy-away from the old school, “we are oh-so-serious” news and public affairs of yesteryear. Infotainment sells. But the increasingly blurred line between the info’ and the ’tainment also complicates the process for broadcasters.

As a practical matter, stations may want to develop and enforce clear policies requiring “experts” who appear on news, public affairs or talk shows to disclose their outside interests – and also any special access or privileges that they may have enjoyed beyond the courtesy of returned phone calls. The punditocracy needs air time to stay relevant – and thus should have no objection to filling out a quick questionnaire if necessary to get that air time.

Again, the Dingell letter and related expressions of concern may just be a passing phenomenon which will be drowned out by the next flap-*du-jour*. But it might also signal a serious shift in the interpretation of “sponsorship identification” – particularly if this issue is still on the front burner when the administration changes next January. While it can be difficult to completely inoculate against unpredictable political developments, broadcasters can at least create a record of good faith and good practices. Due diligence can make the difference between being (a) merely embarrassed for having

been snookered by a paid shill dressed in expert's clothing and (b) whacked with undesirable legal consequences for illegal complicity.

Congressman Dingell's letter to Chairman Martin may well demonstrate a need for broadcast newsrooms to evaluate standards and practices. Credibility is at stake, for sure. That's a market issue. But regulatory pain is a consequence that Arbitron can't measure – and its potential here should not to be underestimated.