

Response to UK Government Consultation:

Online Harms White Paper

July 2019

About ISBA

1. ISBA is the only body representing the UK's leading advertisers. Speaking with one voice on behalf of over 3,000 brands, we advocate a trusted advertising environment – transparent, accountable and effectively regulated. Working with our network of senior marketers, we help our members make better decisions both now and for the future.
2. ISBA is one of the tripartite stakeholders that make up The Advertising Association, which represents advertisers, agencies and media owners. We play a unique advocacy role, ensuring our members' interests are clearly understood and are reflected in the decision-making of media owners and platforms, media agencies, regulators and Government.
3. Our priorities fall into the following areas;

Accountability & Responsibility

Through both public and private advocacy we will:

- Drive faster progress within a defined timeframe for accountable, cross-platform, cross-channel audience measurement of commercial video.
- Hold technology companies to account for improved standards of brand safety and ad fraud.
- Shape future self-regulation of advertising to be fit for purpose.
- Play a leading role in delivering industry accountability for digital content.

Agency Alignment

To ensure transparency and competitiveness we will:

- Drive wider industry adoption of ISBA's contract frameworks.
- Ensure contract advice remains current and addresses marketers' needs.
- Define and drive take-up of best practices in media agency / client relationships.

Data Compliance and Equivalency

Through our advocacy and capability building we will:

- Ensure that implications of data protection authorities' GDPR enforcement actions are understood by advertisers.
- Continue to exert influence on the finalised drafting of European ePrivacy regulation.
- Ensure that government and advertisers are fully cognisant and prepared for the impact of Brexit on the sector.

4. ISBA represents advertisers on the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) - sister organisations of the Advertising Standards Authority - which are responsible for writing the Advertising Codes. We are also members of the World Federation of Advertisers (WFA) and use our leadership role in such bodies to set and promote high industry standards as well as a robust, independent co-regulatory regime.

Framing our response

5. ISBA support Government in its desire to deliver a “*world-leading package of online safety measures*”¹.
6. In doing so, it must be recognised that leading regulation in this area is hugely complex. The risk of significant unintended consequences arising from the drafting of legislative and non-legislative measures is clear. We are glad that this is recognised by the Secretary of State², when he said:

“I think it is so important, given we are breaking new ground here, given we can’t look around the world for a model to follow — we are inventing it almost from scratch — that we show some humility and accept we are not necessarily going to get everything right in our first iteration.”

7. ISBA has a long advocated the need for proportionate regulation of the digital platforms based on the following principles:
 - An effective, fairly-funded and collective regulatory environment;
 - A transparent and independent evidence base of clear, understandable information for advertisers and consumers; and
 - Redress through an independent arbitration process backed by co-regulation.
8. This is drawn from our perspective as the trade body for brand advertisers in the UK and the need for responsible advertisers to have responsible digital partners. In short, marketers need to have confidence in the content policy of a platform, that they offer consistent levels of protection and that they are being adhered to, before they can decide about whether it is the appropriate advertising channel for them.
9. Digital advertising is central to the debate around online harms. This came to the fore in February 2017, when the Times³ ran a story showing brands were unwittingly supporting terrorist content on video sharing platforms. Since then we have seen similar issues with misinformation, child sexual exploitation and self-harm and suicide across multiple platforms.
10. As the White Paper states, “*Online advertising plays a crucial role in the digital economy, with many free digital services, such as search engines or social networks, funded by advertising revenues*”⁴.

¹ <https://www.gov.uk/government/consultations/online-harms-white-paper>

² Politico London Playbook: Seconds out, round one — Race for sweet 16 — Boris' big day out, 13 June 2019

³ <https://www.thetimes.co.uk/article/big-brands-fund-terror-knnxfgb98>, The Times, Big Brands fund terror through online adverts, February 9 2017

⁴ [Online Harms White Paper](#)

11. A fact indelibly underlined by Facebook CEO Mark Zuckerberg in his testimony to Congress⁵. When asked how Facebook is funded, he responded with the obvious:

“Senator, we run ads”

12. The White Paper itself makes reference to online advertising⁶. Whilst we accept that the proposals put forward are it is not intended to impact on the existing cooperative advertising regulatory system, it is difficult to envisage this remaining the case. There is a real need to clarify who will have regulatory superiority in certain cases.

13. The potential for a new regulatory body to impact on the existing advertising regulatory system through the use of influencers or age-restricted advertisements for example is worth flagging at this stage. Advertisements are comprehensively covered by the existing collective regulatory system and are further focused on in the new ASA five-year strategy, More Impact Online, which makes commitments to explore the use of machine learning and AI to improve regulation.

14. The strategy prioritises:

- Working more closely with the large online platforms and more prioritisation and partnership working, in particular in our regulation of online ‘advertiser-owned’ advertising
- The protection of vulnerable people and the appropriate limitation of children and young people’s exposure to age-restricted ads
- Exploring new technological solutions and listening in new ways, including through research, data-driven intelligence gathering and machine learning.

15. In tackling these issues, the White Paper notes⁷, work is already underway to address some of the issues that online advertising has been associated with. For example;

- ISBA sits as part of the Home Office-led working group on CSEA and terrorist content linked to advertising in order to develop actions that help ensure advertising is not supporting this kind of illegal activity.
- ISBA has responded to the Childhood Obesity Plan consultation on the 9pm watershed to highlight some of the potential negative consequences of pushing ahead with a watershed in isolation of the Online Harms White Paper.
- The Centre for Data Ethics
- DCMS has signalled its intent to conduct a review of online advertising regulation.
- The ICO has also commenced a broader examination of the use of personal data in AdTech.

⁵ Mark Zuckerberg, CEO Facebook, Testimony to Senate’s Commerce and Judiciary Committees, April 10 2018

⁶ [Online Harms White Paper](#)

⁷ [Online Harms White Paper](#)

Collective Regulation

- The ASA is the UK’s independent advertising regulator. The ASA operates a form of “collective regulation” – neither statutory nor purely self-regulatory. They co-regulate broadcast and video-on-demand ads with Ofcom and, in relation to non-broadcast advertising; we work with a range of legal backstops, from Trading Standards and the Gambling Commission, to the Information Commissioner’s Office.
- The ASA has regulated paid-for online ads since the emergence of the internet. In 2011, the ASA’s online remit was extended to include companies’ and other organisations’ own advertising claims on their own websites, social media spaces and advergames.
- In 2018, the ASA resolved 14,257 cases from 16,059 complaints about online advertising. 78% of the 14,257 online cases were in online advertiser-owned spaces, and 22% were in other online media.
- The 16,059 complaints amounted to 47.6% of the total number of complaints we resolved last year. Of those online advertising complaints, the vast majority (over 13,000) concerned potentially misleading advertising. Under 1,000 of the online complaints were categorised under potential ‘harm or irresponsibility’.
- In 2018, the ASA secured the amendment or removal of 10,850 ads or campaigns. 90% of these appeared online, either in whole or in part.
- Age-restricted ad online – including on social media – need to follow the same strict content rules as those in traditional media. They must be prepared in a way that is socially responsible and do not appeal inappropriately to children or other vulnerable people. Crucially, age-restricted ads mustn’t be directed at under 18s and/or children. This includes adverts for gambling, alcohol and food and drinks high in fat, salt or sugar (HFSS). They proactively monitor advertising and undertake compliance sweeps to make sure ads are responsible.
- They continually review our rules to ensure they are in the right place and introduce new standards where necessary to keep up with technology and to protect children. In 2017, following a call for evidence and a full public consultation, the ASA introduced tough new rules banning ads for HFSS food and drinks in children’s non-broadcast media.

16. Aside from this, ISBA has been highly active in working directly with the digital platforms to improve levels of accountability, transparency and trust on behalf of our members. In doing so, pushing for measures to tighten up advertising adjacencies while upholding the need for social responsibility to be exercised.

17. In response, we have welcomed the necessary steps taken by both Facebook and Google to reassure advertisers around issues of brand safety – including the hiring of additional content reviewers. But we remain concerned about the pace of self-imposed measures and the adequacy of these measures versus the scale of the issue.
18. Whilst the major platforms have introduced a range of initiatives aimed at protecting their users from harmful content, the ability to compare the consistency and effectiveness of these measures is questionable. In the various workstreams alongside government to tackle child sexual exploitation and terrorism content, it is clear that issues are prevalent across smaller and emerging platforms, supported by advertising from irresponsible actors and companies. Setting a regulatory bar and reach that addresses this issue is critical.
19. It is clear and obvious, that the regulatory environment covering online content is fragmented; multi-territorial; lacks expertise and understanding in many areas; is reactive and driven by public pressure rather than proactive engagement; and lacks robust data.
20. We therefore fully support the need for new regulation, enforced by a new independent regulator in the context of an effective, fairly funded and collective regulatory environment. This must be backed by an independent arbitration process.

Consultation Response

Questions in scope of this response:

Question 1: This government has committed to annual transparency reporting. Beyond the measures set out in this White Paper, should the government do more to build a culture of transparency, trust and accountability across industry and, if so, what?

Question 5: Are proposals for the online platforms and services in scope of the regulatory framework a suitable basis for an effective and proportionate approach?

Question 8: What further steps could be taken to ensure the regulator will act in a targeted and proportionate manner?

Question 10: Should an online harms regulator be: (i) a new public body, or (ii) an existing public body?

Question 10a: If your answer to question 10 is (ii), which body or bodies should it be?

Question 11: A new or existing regulator is intended to be cost neutral: on what basis should any funding contributions from industry be determined?

Question 18: What, if any, role should the regulator have in relation to education and awareness activity?

21. The consultation document states⁸:

“The regulator will have the power to require annual transparency reports from companies in scope, outlining the prevalence of harmful content on their platforms and what countermeasures they are taking to address these. These reports will be published online by the regulator, so that users and parents can make informed decisions about internet use. The regulator will also have powers to require additional information, including about the impact of algorithms in selecting content for users.”

22. Whilst the major platforms have introduced a range of initiatives aimed at protecting their users from harmful content, the ability to compare the consistency and effectiveness of these measures is questionable.

23. We would therefore seek as a priority the new regulator to:

- Codify standardised terms and conditions to include the duty of care across platforms.
- Standardised descriptions of harms.

⁸ [Online Harms White Paper](#)

- Establish a transparency, trust and accountability framework to support consistent and comparable reporting.
- Codified safety standards and mandate open source sharing of safety solutions.
- Establish independent redress mechanisms.
- Establish and mandate the development and adoption of safety technologies to tackle online harms, available to all platforms.

24. In the longer term, the new regulator should focus on the creation and establishment of:

- Research projects and principles to improve our understanding of online harms and their impacts on individuals and society as new technologies and platforms emerge
- Education and awareness-raising programmes about online safety to empower users to stay safe online.

A new regulatory body

25. ISBA would advocate the creation of a new independent regulator ultimately but would support Ofcom being appointed on an interim basis. Ofcom has a strong reputation and experience of regulating content on broadcast and video-on-demand as well as an established co-regulatory relationship with the ASA.

26. But a bold agenda requires a new approach and regulator to deal with the complexities of regulating online in the long term. As set out, this will be complex, but issues can be avoided by the clear definition of regulatory superiority in areas of potential overlap.

27. Funding should be delivered fairly from the platforms within regulatory scope. Larger players should pay a greater amount, operating under a fair, proportionate and transparent basis. It may be that Government provides initial funding up and until the regulator is self-funding.

28. The necessity of an interim regulator comes into focus when considering the importance of setting up the appropriate structures, allocating sufficient resources and employing the right individuals to staff the body.

29. There should be a cautious expectation of any regulator in recruiting expertise directly from the existing platforms. It is unlikely many individuals would work in the sector to then become a regulator.

30. We would advocate a co-regulatory model, backed by statute. We accept that this would need to be developed with support across the industry. This model works successfully for the advertising sector. Delivering one of the strictest regulatory structures in the world and allowing the expertise to be accessed for an evidence based, legal, truthful and honest regulator to codify and implement.

Focus on the issues

31. Government is clear that the new regulatory body will have the ability to triage its interventions and focus in on where harms are more likely to occur. As it states:

“This will mean that the regulator’s initial focus will be on those companies that pose the biggest and clearest risk of harm to users, either because of the scale of the platforms or because of known issues with serious harms.”

32. It should also be considered that in our work with government and associated bodies, that issues are increasingly found on smaller and emerging platforms, often supported by advertising from irresponsible actors and companies.

33. With the larger platforms engaged through forum such as the Global Forum to Counter Terrorism, a common challenge is setting the bar at a level which simultaneously lifts standards for all whilst making them achievable at the tail. This is equally applicable to SMEs whom may fall within scope.

34. Even taking this as read, we would urge caution in the application of the duty of care when it comes to SMEs. Government must be clear what it expects and from whom it expects it, otherwise it risks shutting down sites from companies and handing competitive advantage to established players.

35. The lines between traditional and digital companies are becoming increasingly blurred. The Government will need to consider carefully the interplay between the digital transformation of industries and regulation, to ensure that the current proposals for an online harms regulator does not simply evolve into a broader internet regulator and impinge on the work of other government departments.

Political Disinformation

36. Political advertising online and in other media is not regulated in the same way as commercial advertising and therefore not subject to the same standards in the CAP Code. The reasons why are set out on the CAP website⁹.

37. However, there is public discussion and industry concern about the spread of both misinformation and disinformation. Advertising can sometimes by appear inadvertently adjacent to such content. This is of concern to advertisers and action is being taken through ISBA, which is supporting both a new movement called the Conscious Advertising Network¹⁰ and the Campaign for Reform in Political Advertising¹¹. We would urge government to engage further on these initiatives and the role being played by brands.

38. As the White Paper sets out, there will prove difficulties in adjudicating what is true and not. We would urge the maintenance of the freedom of speech.

⁹ <https://www.asa.org.uk/news/political-ads-and-the-cap-code.html>

¹⁰ <https://www.isba.org.uk/news/the-conscious-advertising-network/>

¹¹ <https://reformpoliticaladvertising.org/>

Education and Digital Literacy

39. ISBA believe that digital literacy should be a core Government policy objective. Not only does it protect young and vulnerable groups, it equips the UK for the challenges of the future.

40. We support the conclusion of the House of Lords Select Committee on Communications, in their report, Growing up with the internet¹², that

“digital literacy should be the fourth pillar of a child's education alongside reading, writing and mathematics, and be resourced and taught accordingly”

41. We would also highlight Media Smart¹³ to Government. This is the advertising industry's education programme, whose mission is to ensure young people in the UK can confidently navigate the media they consume including being able to identify, interpret and critically evaluate all forms of advertising. It creates free media and digital literacy resources for teachers, parents and youth organisations working with 7-16-year olds.

42. Recent education resources have focussed on social media, digital advertising, influencer marketing and teaching materials on data and piracy are planned over the next 12 months.

¹² <https://publications.parliament.uk/pa/ld201617/ldselect/ldcomuni/130/130.pdf> para 317

¹³ <http://mediasmart.uk.com>

Conclusion

43. ISBA support Government in its desire to deliver a “*world-leading package of online safety measures*”¹⁴.
44. ISBA has a long advocated the need for proportionate regulation of the digital platforms. This is drawn from our perspective as the trade body for brand advertisers in the UK and the need for responsible advertisers to have responsible digital partners. In short, marketers need to have confidence in the content policy of a platform, that they offer consistent levels of protection and that they are being adhered to, before they can decide about whether it is the appropriate advertising channel for them.
45. ISBA would advocate the creation of a new regulator ultimately but would support Ofcom being appointed on an interim basis. Ofcom has a strong reputation and experience of regulating content on broadcast and video-on-demand as well as an established co-regulatory relationship with the ASA.
46. We would therefore seek the new regulator as a priority to:
- Codify standardised terms and conditions to include the duty of care across platforms.
 - Standardised descriptions of harms.
 - Establish a transparency, trust and accountability framework to support consistent and comparable reporting.
 - Codified safety standards and mandate open source sharing of safety solutions.
 - Establish independent redress mechanisms.
 - Establish and mandate the development and adoption of safety technologies to tackle online harms, available to all platforms.
47. Funding should be delivered fairly from the platforms within regulatory scope. Larger players should pay a greater amount, operating under a fair, proportionate and transparent basis. It may be that Government provides initial funding up and until the regulator is self-funding.
48. In the interim, ISBA look forward to working to develop codes of practice with regard to counter terrorism and CSE as part of the Home Office Working Group.

¹⁴ <https://www.gov.uk/government/consultations/online-harms-white-paper>