

Response to the Draft Online Safety Bill (Joint Committee)

Pre-legislative scrutiny call for evidence on the Draft Online Safety Bill

September 2021

1. About ISBA

- 1.1. ISBA is the trade body representing UK brand advertisers. Our members include some of the country's best known and most respected brands from sectors including financial services, FMCG, retail, automotive, publishing, media, and utilities. All told, we represent more than 70% of the UK's top 100 advertisers.
- 1.2. ISBA is the only body in the UK that enables advertisers to understand their industry and shape its future, because we bring together a powerful network of marketers with common interests, empower decision-making with knowledge and insight, and give a single voice to advocacy for the improvement of the industry.
- 1.3. ISBA is a member of the Advertising Association and 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. We are able to use our leadership role in such bodies to set and promote high industry standards as well as a robust self-regulatory regime.

2. Consultation Response

- 2.1. We welcome the opportunity to make a short submission to this call for evidence. As an organisation, ISBA has long supported policymakers' and regulators' ambition to make the UK one of the safest places in the world to be online. ISBA has welcomed and encouraged the development of debate and legislation around online harms over the past several years. We have supported government in its desire to deliver a "world-leading package of online safety measures" – an ambition first set out in the Online Harms White Paper.
- 2.2. In this vein, we were pleased to see the Government's response to the consultation on the White Paper, and the publication of the Draft Online Safety Bill. We remain of the view that while there are huge opportunities inherent in the development of the digital economy, we also face serious challenges to individual and collective safety. Meeting them is a global task and one in which the advertising and marketing industry must play, and is playing, its full part.
- 2.3. We have long advocated for proportionate regulation of the major digital platforms, based on the principles of 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. This approach was 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.

- 2.4. We also recognise the imperative of protecting freedom of expression, including our members' freedom to advertise – not least so that advertising and marketing continues to be the engine of our successful, exporting creative industries.
- 2.5. Of course, hand-in-hand with that freedom of expression must come the responsibility to take action against unacceptable, illegal and harmful content. Advertisers, agencies, media companies, platforms and industry organisations have already come together in the Global Alliance for Responsible Media to take forward this work and improve digital safety. We are delivering concrete actions and processes to meet this goal, and look forward to working with government and Ofcom to take this further.
- 2.6. There is no place in a dynamic, competitive digital economy for content or activity that puts at risk children and the most vulnerable. Advertisers, platforms and trade bodies look forward to working in partnership with government to put in place workable rules which root out and prevent online harms.
- 2.7. Marketers need to have confidence in the content policies of platforms, and be assured that they offer consistent levels of protection (and that these are being adhered to) before they can decide whether to invest in those channels. The work which is going on with this legislation – and within industry, via international efforts of which ISBA is a key part (on which more below) – is key to developing this confidence.

Content in scope

- 2.8. The Draft Online Safety Bill would seem to give broad definitions of what might constitute harm, while leaving scope for Ofcom as the regulator to interpret the legislation and issue further guidance, ruling on individual cases and thereby setting precedent. This is ground-breaking legislation and among the first of its kind in the world. It will almost certainly therefore require fresh iterations and updates. With that in mind, it would seem prudent to design the legislation in as futureproof a way as possible, allowing for adaptability on the part of the regulator and government, and an ability to respond to a rapidly-changing online environment.
- 2.9. In considering the specifics of what constitutes an online harm, the advertising industry has been convening internationally in an effort that unites marketers, media agencies, media platforms, and industry associations. The Global Alliance for Responsible Media (GARM) was established by the World Federation of Advertisers in 2019 and aims to safeguard the potential of digital media by reducing the availability and monetisation of harmful content online. ISBA is a member of the GARM Steering Committee, and we see this work as essential to creating a safer digital media environment that enriches society through content, communications, and commerce.
- 2.10. One of the first steps in safeguarding the positive potential for digital is to provide platforms, agencies, and marketers with the framework with which to define safe and harmful content online. One cannot address the challenge of harmful online content if one is unable to describe it using consistent and understandable language.
- 2.11. GARM has developed and will adopt common definitions to ensure that the advertising industry – from brands and trade bodies to large platforms such as Facebook and Google – is categorising harmful content in the same way across the board. Eleven key categories have been identified in consultation with experts from GARM's NGO Consultative Group. Establishing these standards is the essential foundation needed to stop harmful content from being monetised through advertising. Individual GARM

members will adopt these shared principles in their operations, whether they are a marketer, agency, or media platform; and platforms including Facebook, YouTube and Twitter are among those who have committed to the framework for defining harmful content that is inappropriate for advertising. They have also agreed to collaborate with a view to monitoring industry efforts to improve in this area.

- 2.12. Historically, definitions of harmful content varied by platform. GARM’s Brand Safety Floor and Suitability Framework offers common definitions to which participants have agreed to adhere. The Safety Floor (Fig. 1) lists content for which industry considers that it is not appropriate for there to be any advertising support. The Suitability Framework (Fig. 2.1 and Fig. 2.2) lists sensitive content which may be appropriate for advertising, when that advertising is supported by proper controls.
- 2.13. This initiative by industry builds on the self- and co-regulatory system and solutions which are the hallmark of the United Kingdom’s successful and world-leading regulation of advertising content. We hope that this framework is of use as a point of comparison and inspiration for the definition of what counts as relevant harmful and restricted content, and for the nuances which can take place when it comes to the interpretation of the impact of restricted content’s being consumed by a user.
- 2.14. The GARM-led international effort aims to standardise definitions and classifications of harmful content so that it can be more consistently identified by machines and humans. In this way, efforts to improve brand safety or suitability in a programmatic environment can be made more effective and predictable.

| CONTENT CATEGORY | BRAND SAFETY FLOOR – Content not appropriate for any advertising support |
|--|--|
| Adult & Explicit Sexual Content | <ul style="list-style-type: none"> • Illegal sale, distribution, and consumption of child pornography • Explicit or gratuitous depiction of sexual acts, and/or display of genitals, real or animated |
| Arms & Ammunition | <ul style="list-style-type: none"> • Promotion and advocacy of Sales of illegal arms, rifles, and handguns • Instructive content on how to obtain, make, distribute, or use illegal arms • Glamorization of illegal arms for the purpose of harm to others • Use of illegal arms in unregulated environments |
| Crime & Harmful acts to individuals and Society, Human Right Violations | <ul style="list-style-type: none"> • Graphic promotion, advocacy, and depiction of willful harm and actual unlawful criminal activity – Explicit violations/demeaning offenses of Human Rights (e.g. human trafficking, slavery, self-harm, animal cruelty etc.), • Harassment or bullying of individuals and groups |
| Death, Injury or Military Conflict | <ul style="list-style-type: none"> • Promotion, incitement or advocacy of violence, death or injury • Murder or Willful bodily harm to others • Graphic depictions of willful harm to others • Incendiary content provoking, enticing, or evoking military aggression • Live action footage/photos of military actions & genocide or other war crimes |
| Online piracy | <ul style="list-style-type: none"> • Pirating, Copyright infringement, & Counterfeiting |
| Hate speech & acts of aggression | <ul style="list-style-type: none"> • Behavior or content that incites hatred, promotes violence, vilifies, or dehumanizes groups or individuals based on race, ethnicity, gender, sexual orientation, gender identity, age, ability, nationality, religion, caste, victims and survivors of violent acts and their kin, immigration status, or serious disease sufferers. |
| Obscenity and Profanity, including language, gestures, and explicitly gory, graphic or repulsive content intended to shock and disgust | <ul style="list-style-type: none"> • Excessive use of profane language or gestures and other repulsive actions that shock, offend, or insult. |
| Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol | <ul style="list-style-type: none"> • Promotion or sale of illegal drug use – including abuse of prescription drugs. Federal jurisdiction applies, but allowable where legal local jurisdiction can be effectively managed • Promotion and advocacy of Tobacco and e-cigarette (Vaping) & Alcohol use to minors |
| Spam or Harmful Content | <ul style="list-style-type: none"> • Malware/Phishing |
| Terrorism | <ul style="list-style-type: none"> • Promotion and advocacy of graphic terrorist activity involving defamation, physical and/or emotional harm of individuals, communities, and society |
| Debated Sensitive Social Issue | <ul style="list-style-type: none"> • Insensitive, irresponsible and harmful treatment of debated social issues and related acts that demean a particular group or incite greater conflict; |

Fig. 1. GARM Brand Safety Floor

| CONTENT CATEGORY | High Risk | Medium Risk | Low Risk |
|--|---|--|--|
| Adult & Explicit Sexual Content | <ul style="list-style-type: none"> Suggestive sexual situations requiring adult supervision/approval or warnings Full or liberal Nudity | <ul style="list-style-type: none"> Dramatic depiction of sexual acts or Sexuality issues presented in the context of entertainment Artistic Nudity | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of sexual subjects or sexual relationships or sexuality |
| Arms & Ammunition | <ul style="list-style-type: none"> Glamorization /Gratuitous depiction of illegal sale or possession of Arms Depictions of sale/use/distribution of illegal arms for inappropriate uses/harmful acts | <ul style="list-style-type: none"> Dramatic depiction of weapons use presented in the context of entertainment Breaking News or Op-Ed coverage of arms and ammunition | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of Arms use, possession or illegal sale News feature stories on the subject |
| Crime & Harmful acts to individuals and Society, Human Right Violations | <ul style="list-style-type: none"> Depictions of criminal/harmful acts or violation of human rights | <ul style="list-style-type: none"> Dramatic depiction of criminal activity or human rights violations presented in the context of entertainment Breaking News or Op-Ed coverage of criminal activity or human rights violations | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of crime or criminal acts or human rights violations News feature stories on the subject |
| Death, Injury or Military Conflict | <ul style="list-style-type: none"> Depiction of death or injury Insensitive and irresponsible treatment of military conflict, genocide, war crimes, or harm resulting in Death or Injury Depictions of military actions that glamorize harmful acts to others or society | <ul style="list-style-type: none"> Dramatic depiction of death, injury, or military conflict presented in the context of entertainment Breaking News or Op-Ed coverage of death, injury or military conflict | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of death or injury, or military conflict News feature stories on the subject |
| Online piracy | <ul style="list-style-type: none"> Glamorization /Gratuitous depiction of Online Piracy | <ul style="list-style-type: none"> Dramatic depiction of Online Piracy presented in the context of entertainment Breaking News or Op-Ed coverage of Online Piracy | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of Online Piracy News feature stories on the subject |
| Hate speech & acts of aggression | <ul style="list-style-type: none"> Depiction or portrayal of hateful, denigrating, or inciting content focused on race, ethnicity, gender, sexual orientation, gender identity, age, ability, nationality, religion, caste, victims and survivors of violent acts and their kin, immigration status or serious disease sufferers, in a non-educational, informational, or scientific context | <ul style="list-style-type: none"> Dramatic depiction of hate speech/acts presented in the context of entertainment Breaking News or Op-Ed coverage of hate speech/acts | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of Hate Speech News features on the subject |
| Obscenity and Profanity, including language, gestures, and explicitly porn, graphic or repulsive content intended to shock and disgust | <ul style="list-style-type: none"> Glamorization /Gratuitous depiction of profanity and obscenity | <ul style="list-style-type: none"> Dramatic depiction of profanity and obscenities presented in the context of entertainment by genre Breaking News or Op-Ed coverage of profanity and obscenities Genre based use of profanity, gestures, and other actions that may be strong, but might be expected as generally accepted language and behavior | <ul style="list-style-type: none"> Educational or Informative, treatment of Obscenity or Profanity News feature stories on the subject |
| Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol | <ul style="list-style-type: none"> Glamorization /Gratuitous depictions of illegal drugs/abuse of prescription drugs Insensitive and irresponsible content/treatment that encourages minors to use tobacco and vaping products & Alcohol | <ul style="list-style-type: none"> Dramatic depiction of illegal drug use/prescription abuse, tobacco, vaping or alcohol use presented in the context of entertainment Breaking News or Op-Ed coverage of illegal drug use/prescription abuse, tobacco, vaping or alcohol use | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of illegal drug use/prescription abuse, tobacco, vaping or alcohol News feature stories on the subject |
| Spam or Harmful Content | <ul style="list-style-type: none"> Glamorization /Gratuitous depiction of Online Piracy | <ul style="list-style-type: none"> Dramatic depiction of Spam or Malware presented in the context of entertainment Breaking News or Op-Ed coverage of Spam or Malware | <ul style="list-style-type: none"> Educational, Informative, Scientific treatment of Spam or Malware News feature stories on the subject |

Fig. 2.1. GARM Brand Sustainability Framework (part 1)

| CONTENT CATEGORY | High Risk | Medium Risk | Low Risk |
|--------------------------------|--|--|--|
| Terrorism | <ul style="list-style-type: none"> • Depiction of terrorist actions that are disturbing, agitating or promotes harmful acts to others or society • Terrorist content requiring a viewer advisory • Insensitive and irresponsible treatment of terrorism/ related crimes | <ul style="list-style-type: none"> • Dramatic depiction of terrorism presented in the context of entertainment • Breaking News or Op-Ed coverage of acts of terrorism | <ul style="list-style-type: none"> • Educational, Informative, Scientific treatment of terrorism • News feature stories on the subject |
| Debated Sensitive Social Issue | <ul style="list-style-type: none"> • Depiction or discussion of debated social issues and related acts in negative or partisan context | <ul style="list-style-type: none"> • Dramatic depiction of debated social issues presented in the context of entertainment • Breaking News or Op-Ed coverage of partisan advocacy of a position on debated sensitive social issues | <ul style="list-style-type: none"> • Educational, Informative, Scientific treatment of debated sensitive social issues and related acts including misinformation • News feature stories on the subject |

Fig. 2.2. GARM Brand Sustainability Framework (part 2)

- 2.15. We have noted the debate around the absence from the draft Bill measures to tackle online advertising fraud. This is a serious issue which puts consumers at risk of harm, undermines the credibility of industry, and poses a threat to the security of paid-for online advertising.
- 2.16. We are aware of the Government’s concern about this subject, and equally of their belief that this issue should be tackled in the round along with other considerations about paid-for advertising as part of the Department for Digital, Culture, Media and Sport’s Online Advertising Review. Consistent with our previous advocacy for holistic policymaking and for settling on the overall architecture of online advertising policy before dealing with individual policy issues, we believe that this is the right approach.
- 2.17. This is not to diminish the concerns raised by stakeholders, including for instance MoneySavingExpert, that scams being pushed through paid-for advertisements which appear in internet search results, promoted posts on social media, and online dating profiles represent a real danger. There are loopholes which can be exploited by online scammers and organised crime. ISBA fully supports efforts to tackle this ad fraud, in the context of ensuring that paid-for online advertising is trusted, transparent, and accountable to regulators and consumers.

The role of Ofcom

- 2.18. Although we had argued for a new and dedicated regulator, we support the designation of Ofcom to these duties, albeit that we hope it will be equipped with the necessary funds and expertise to support it to carry out the role effectively. In this response, and as the debates on the Bill proceed, we hope that we will see Ofcom provided with the framework for overseeing an effective, fairly-funded, and collaborative effort to prevent online harms – with commonly held principles and codes of conduct supporting systemic transparency and accountability.
- 2.19. We welcome the increased role and responsibility which Ofcom will receive through Part 4 of the Bill to improve the media literacy of the public as the end-users of online services – including the need to counter misinformation and disinformation, and to commission or encourage initiatives which improve media literacy rates; as well as encouraging regulated service providers to develop tools which can improve such literacy; and develop products which can help the public identify the types of material they are seeing and interrogate it.
- 2.20. Our industry continues to play its part in developing media literacy, especially among young people. We would draw the committee’s attention to the work of Media Smart,

the advertising industry’s education programme, the mission of which is to ensure that 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.

- 2.21. Media Smart creates free media and digital literacy resources for teachers, parents, and youth organisations working with 7-16-year-olds. Past education resources have focused on social media, digital advertising, influencer marketing, data, and piracy.¹
- 2.22. We will continue to support this week as an industry, and work with Ofcom as it undertakes its expanded responsibilities. We would note that the shift in emphasis in the Bill away from online ‘harms’ to online ‘safety’ should not result in a lack of recognition from platforms of their continued responsibility to actively prevent harm on their networks by creating the right structures, checks, and balances. Nor should it mean that individuals absolve themselves of their own responsibilities both not to commit harm themselves, or indeed to become more media literate.
- 2.23. We hope that Ofcom will be supported with the resources it needs in order to be able to fulfil this role, and promote media literacy to users of online services of all ages and backgrounds.

Algorithms and user agency

- 2.24. The platforms being legislated for in this Bill are automated, so algorithms influence the content being posted or prioritised on a user’s feed. A platform’s algorithms will control the dissemination of content to maximise attention and engagement. This is beneficial for both advertisers and consumers/platform users, to ensure that the content and advertising they are served is useful, relevant, and personalised to them.
- 2.25. It has been well-documented, and ISBA is concerned, that “bad actors” seek and remain able to manipulate and leverage these algorithms for commercial gain or propaganda purposes. Anti-vaccine misinformation, and propaganda during the storming of the US Capitol building, are two of the latest examples of this.
- 2.26. We are seeing an increasing use of algorithms to check and govern the removal of potentially harmful content or material that breaks a platform’s community guidelines.
- 2.27. GARM has created a reporting framework in its Aggregated Measurement Report to assist advertisers as they make high-level investment decisions. The Report aims to create unprecedented transparency across the industry, and a new benchmark for charting progress on removing harmful content from ad-supported media. The GARM-led effort to standardise definitions and classifications of harmful content is in part so that it can be more consistently identified programmatically by machines. ISBA expects this work to develop and grow to further develop tools for accountability and transparency. We welcome the provisions in the Bill on transparency and reporting.
- 2.28. While the design and use of algorithms is still being developed, there are concerns around their impact and efficacy. There is the potential for false positives, where posts are incorrectly caught within checks against a platform’s community guidelines. While online safety must be a priority, the potential impact on free speech is obviously a concern.

¹ Resources and information are available at <https://mediasmart.uk.com/>

- 2.29. Accountability is a further issue. ISBA welcomes the Community Standards Enforcement Report carried out by Facebook. However, we believe that this should be taken further with all transparency reporting, across all platforms, being audited independently using a specification that is standardised across the whole industry. We see this as a possible future area of focus for ISBA, and potentially GARM.
- 2.30. Global transparency reporting is a good start, but more incident-specific reporting is required at the local level to assess improvements in platform effectiveness as new issues emerge regionally and to compare internationally.
- 2.31. The ongoing debate on user age and identity verification is an important one. Arguments for individual accountability need to be balanced with those for freedom of speech and privacy. This issue is something ISBA is keen to explore further with thought leaders, policy experts and our members, to explore solutions that strike the right policy balance.