

DCMS Plan for Digital Regulation, July 2021 Comments from IAB UK

Introduction

IAB UK is the trade association for digital advertising, made up of over 1,200 of the UK's leading media owners, advertising technology providers, agencies and brands. Our Board¹ is comprised of 25 leading businesses in the sector. Our purpose is to build a sustainable future for digital advertising, a market that was worth £16.47bn in the UK in 2020.

The IAB is actively engaged in working towards the optimal policy and regulatory environment to support a sustainable future for digital advertising. We also develop and promote good practice to ensure a responsible medium.

Given the emphasis in the government's policy paper on driving growth and unlocking innovation, some context is important. Digital advertising is of huge value to UK businesses and the economy and is the business model that underpins the ad-funded internet and helps fund technological innovation. In addition to direct media revenue of £16.5 bn generated by digital advertising in the UK 2020, every £1 spent on advertising generates £6 in GDP and UK headquartered ad tech firms attracted over £1bn in investment to the UK between 2013-2019.

Our research with SMEs tells us that digital advertising is important to them given its accessibility and cost-effectiveness. 3 in 5 SMEs are currently using paid-for digital advertising, and 7 in 10 believe communicating with customers is more important than ever in times of crisis. SMEs also benefit disproportionately from using advertising; every £1 spent on advertising by an SME has eight times as much impact on sales as it would for larger firms, according to the Advertising Association.²

Summary

- We welcome this opportunity to be part of the conversation on how the government develops and shapes its approach to future regulation
- The Plan for Digital Regulation ('the Plan') provides welcome recognition of the issues that we and our members have been consistently vocal about in recent years, particularly by the commitment to a coherent, streamlined, consistent and

¹ https://www.iabuk.com/member-directory?title=&company_type=All&company_badges%5B%5D=board_member

² For more details and sources see <https://www.iabuk.com/policy/overview-uks-digital-advertising-industry>

joined-up approach to regulation that provides clarity and certainty for businesses

- We agree with the need for:
 - a single coherent vision that brings together work across government
 - a clear, proportionate environment for high-priority issues
 - a proportionate, agile and flexible regulatory approach that supports innovation and does not undermine the benefits of digital technologies – this includes digital advertising
 - considering the existing regulatory network and how new regulation connects into that ‘ecosystem’
 - an approach that avoids inconsistent and potentially conflicting policy goals
- We also agree that the policy-making process in government can be improved. Too often this is uncoordinated, developed behind closed doors, and untransparent to external stakeholders. Industry engagement is frequently too little, too late, typically after decisions have been taken in part or in full, and does not present a genuine opportunity for industry stakeholders to influence or participate in the design of solutions. We welcome the commitment in this Plan to draw more routinely on the expertise of the industry and urge that this is designed into the policy-making process with immediate effect, including applying it retroactively to existing policy workstreams.
- In thinking about its desired outcomes, and interpreting and applying the principles and approaches in this Plan in practice, the government should not treat the digital sector as a homogenous group. Digital advertising is part of the digital sector, and within that sub-sector there are many hundreds of companies operating, with a variety of different business models. What constitutes a pro-innovation, pro-competitive, proportionate approach to regulation will vary depending on the nature of the sector; how companies within it operate and the role they play; and the nature of the issue being considered and the drivers behind it. The government needs to ensure it has a clear understanding of these factors when it is developing regulatory policy for the ad industry at large.

1. Do you agree we have identified the three most impactful strategic objectives and relevant outcomes to deliver our vision? Are there any other outcomes we should consider?

- We welcome the government’s commitment, as part of its key objectives, to a pro-innovation approach to digital regulation.
- There is a clear and direct link between the UK’s successful digital advertising market, worth £16.5bn in revenue to media owners in 2020, and innovation in the digital sector. In many cases, revenue from digital advertising funds this

innovation and therefore consideration of the impact of different policy options needs to take this into account.

- There is also a direct link between the regulatory approaches that the government chooses to adopt (from the range of regulatory ‘tools’³ described in the Plan) and companies’ willingness and ability to invest resource in technological development, innovation, and proactive self-regulatory standards and initiatives – in which the UK market has a strong track record – that supports responsible digital advertising. The government should specifically aim to incentivise that investment in innovation in digital sectors, not just to ‘promote’ it.

2. Do you have views on the three guiding principles for better digital regulation to deliver our vision and objectives?

‘What do we mean by digital regulation?’

- The Plan – quite rightly – applies a broad definition to ‘digital regulation’. We are pleased to see the government explicitly recognise that there is a range of regulatory mechanisms and tools that can operate, alone or in combination including forbearance and non-regulatory options. Where appropriate to the nature of the harm in question, and reflecting the prioritisation approach set out in this Plan, the government should ensure that all other options have been explored and exhausted before looking to primary legislation to regulate.
- Our experience in recent years, however, is that there is typically very little consideration of any other option than legislation in government policy-making in relation to digital advertising. We address this further under question 4.
- Our experience is also that there is a fundamental and troubling lack of understanding among government and policy-makers of the diversity of schemes that fall within the term ‘self-regulation’, and the crucial role self-regulation increasingly plays in digital advertising supply chains. This must be addressed for this Plan to succeed and achieve its objectives. We address this further under question 4.

‘Our digital regulation principles’

Actively promote innovation

- We fully support the entirety of this principle; in particular the commitments to:
 - reduce and minimise regulatory burdens
 - recommend government intervention only where ‘strictly necessary’
 - consider non-regulatory measures first
 - deliver outcomes-focused, evidence-led regulation
- In relation to non-regulatory measures, the intention here would benefit from further clarification. Technical standards can be part of norms and self-

³ ‘These include norms, self-regulation, statutory codes of conduct, and rules in primary legislation.’

regulation, both of which are identified in the Plan as potential regulatory ‘tools’. They are not mutually exclusive, as implied here (although the third principle does recognise their potential role in providing a complement or alternative to regulation, which we fully agree with)

- In relation to the digital advertising sector, our experience is that technical standards are little understood and are undervalued by government in its policy-making. That must be addressed in order for the approach set out in this plan to be effective.
- To provide transparency and clarity to business, the government should set out:
 - how it will judge when intervention is strictly necessary, including the factors that will influence that decision and the process it will follow to arrive at its decision
 - the process by which it will consider non-regulatory measures in the first instance and how this will be embedded in government policy-making across the board
 - minimum standards for the quality and quantity of ‘robust evidence’ that is necessary to make informed policy decisions, and how that evidence will be obtained, including commissioning original research where necessary to address gaps in the evidence base.
 - make clear its commitment to policy options that are both workable and within existing technical capabilities

Achieve forward-looking and coherent outcomes

- Again, we support this principle. To apply this principle in practice will require government to ensure that it builds sound knowledge of the sectors it seeks to regulate so that it can understand how they are evolving and what the future landscape will look like. (See question 4 for a relevant example).
- We specifically support:
 - the need for regulation to address underlying drivers of harm, not symptoms, and address issues at source. This is particularly pertinent to the digital advertising sector. Advertising can be a vector for malicious or criminal activity when criminal or bad actors exploit legitimate advertising services for their own gain. In these cases, it is essential that the underlying activity is addressed as well as the symptom (advertising), and that government recognises that a combination of regulatory tools and other solutions may be needed to address a single ‘harm’
 - the need to ensure that new regulation is designed from the outset with a clear understanding of how it intersects with the regulatory ecosystem, and achieves - or conflicts with - government’s core goals

Exploit opportunities and address challenges in the international arena

- We agree that the government should consider the international context, both in developing its approaches and understanding the challenges and burdens for businesses operating in the UK digital sector.

Additional comments

- The paper identifies that establishing these principles will allow government to make trade-offs between objectives more clearly and consistently. Transparency and consultation in how government evaluates such trade-offs is essential so that industry and other stakeholders can scrutinise why and how government recommends a particular policy decision.

3. What other practical steps can we take to improve coherence and coordination across the digital regulatory landscape? What else could meet these aims other than the recommendations of the Digital Regulation Cooperation Forum?

- Improved liaison and engagement between regulators and regulatory policy-makers is needed to achieve the objective of avoiding conflicting goals, incoherent policy-making, and burdens on industry and regulated businesses.
- This also applies in a very practical sense to the timing of regulatory workstreams led by government, regulators, Select Committees and other bodies such as the CDEI, including in terms of the demands being made of stakeholders through overlapping and duplicative consultations, calls for evidence, formal RFIs, responses to reports, etc.
- We have previously provided comments on the DRCF and its work plan⁴, and we support its intentions. We would welcome more detail on how regulators will be involved in government's development and assessment of policy options to avoid the incoherence and conflict our sector has experience over recent years.

4. What challenges have you experienced in the current approach to digital regulation?

1. Policy and regulatory workstreams that are not coherent or coordinated, both within individual government departments and between departments and regulators, as mentioned under question 3. For example, over the last 2 ½ years, our industry has needed to engage with and respond to at least 23 consultations, calls for evidence and formal reports (along with individual companies being required to respond to formal RFIs), plus the Gambling White Paper and another likely broad and wide-ranging consultation on the OAP proposals are both due in Q4 2021. This results in a transfer of coordination effort from government to industry which feels disproportionate and is in addition to developing and

⁴ <https://www.iabuk.com/policy/iab-uk-submission-digital-regulation-cooperation-forum>

responding to industry consultations on self-regulatory standards and initiatives. It appears that the burden that the sheer volume, frequency and intensity of these demands places on industry stakeholders who wish to provide meaningful and considered contributions to these workstreams is not considered.

Separately, government can be unaware of the additional burdens that regulator RFIs place on companies, particularly when they are concurrent with government consultations.

2. Too little time allowed for consultation. For example, ICO consultations typically only run for 6 weeks, irrespective of the scale or significance of the consultation subject. The government's 2020 HFSS consultation only ran for 6 weeks (despite the policy proposals being substantially different to those that were the subject of the previous 2019 consultation). This is not sufficient, nor in line with consultation good practice, particularly where the government is seeking evidence to inform its policy-making. Where stakeholders are asked to provide evidence, it can take a significant amount of time to internally coordinate the response to these requests, such as gathering input on technical questions, cost estimates, etc., particularly when those with expertise on these matters are typically removed from the day-to-day of policy engagement. Where consultation timescales are short, this limits quality input from experts working at the heart of industry. Similarly, consultations are often published, or close, just before public holiday periods (e.g. Christmas and summer holidays) which effectively reduces the consultation period and limits the amount of working time available in practice to respond to them.
3. Insufficient evidence-gathering and evaluation of impacts as part of regulatory policy development. Too often the policy development process has not focused on gathering or commissioning appropriate evidence to understand the problem and identify appropriate solutions, particularly with regard to digital advertising. As a relatively young sector, there is less historical research or evidence available than may be the case for longer-established sectors, yet there appears to be little effort made to commission original evidence to fill those gaps, particularly in terms of quantifying the nature and scale of policy issues. Where consultations and calls for evidence are used to inform the evidence base, and industry has no window of opportunity prior to a consultation to fill those evidence gaps – including because of time constraints due to too-short consultation periods (see point 2 above) – those gaps are themselves misrepresented as evidence of a problem, or as proving the government's case and government can be easily swayed by interest groups that are powerful but provide weak evidence. Impact assessments are similarly not informed by a full and proper understanding of the industries affected by regulatory proposals and suffer from inaccuracies and flawed methodologies. This means that they risk being box-ticking exercises rather than fulfilling a genuine and valuable role in the evidence-based policy-making process and having credibility with industry stakeholders.

4. Poor coordination between government departments and teams on policy that affects digital advertising. For example:
 - it is unclear to us the relationship between the Digital Regulation, Competition and Digital Advertising Teams in DCMS and how they are sharing information and coordinating stakeholder engagement
 - the data reform consultation appears to reflect no detailed understanding of the implications for digital advertising⁵ (we expand on this point in later comments)
 - policy goals do not appear to be shared, understood or aligned between departments which means potential or actual conflicts between them do not get identified or recognised
5. A low level of general knowledge and accumulated expertise within government departments (including within DCMS, outside of a very small number of officials) of the digital advertising market, how it works, and how it regulates itself. Digital advertising on the open internet is disintermediated, and relies on 'networked compliance' whereby the 'baton' of responsibility is passed through participants in the value chain. Given this, the market has developed a range of self-regulatory standards and initiatives which responsible companies have invested time and resource in developing and implementing in order to distinguish themselves as good actors. Very different approaches are required to tackle bad actors, and meaningful enforcement action is needed to target and prosecute criminal behaviour manifested through digital advertising and to act as a powerful deterrent. This appears to be poorly understood by policy-makers who conclude that self-regulation has 'failed' because it does not - and was not designed to - address criminal activity.
6. We have experienced similarly limited understanding or acknowledgement of the wider role of the sector in supporting innovation, the ad-funded internet, and media plurality as well as UK business and the UK economy as a whole.⁶ There is also low understanding of the consequences of regulation that makes the UK a challenging and costly market in which to do business, and disproportionately limits the ability of media owners and others to generate revenue from legitimate digital advertising.
7. A lack of understanding of how policy in other areas impacts digital advertising. For example, the data reform consultation appears to take no account of digital advertising and how it uses data, nor future changes being made to deprecate third party cookies which will have a significant effect on how data is used in the future. That is despite data being so central to the sector, data use being a core element of the OAP, and the use of data in digital advertising being under scrutiny from the ICO.

⁵ Apart from a single reference to RTB

⁶ As set out in the introduction to these comments

8. High staff turnover among personnel working on digital advertising policy, which means there is little consistency for stakeholders, and a lack of institutional knowledge within DCMS, which hampers policy-making and makes it difficult to build relationships and transfer knowledge. Efforts that industry bodies and businesses put in to educating and engaging with officials needs to be repeated frequently and has little long-term return, which is not an efficient use of limited time and resource but is necessary to counter the knowledge gaps that persist.
9. Very limited consideration of alternatives to statutory regulation and a failure to understand and engage with industry self-regulation, standards and initiatives. Therefore, although public statements assert support for self-regulation there is little proper consideration given in practice to the role that these or similar tools could play in addressing harms.
10. Industry engagement that is not sufficiently broad, or meaningful. Government does not sufficiently recognise or draw on digital advertising industry expertise to inform regulatory policy and does not appear to properly design this into its processes from the outset. Where engagement does occur, it can feel cursory and rushed and insufficient time is allowed for consideration of findings from it. It often feels like a 'box-ticking' exercise, undertaken when decisions have already been taken, in full or in part, and without an openness to allowing evidence to genuinely influence policy outcomes. For example, the team responsible for the consultation on data reforms had (to our knowledge) no engagement with the digital advertising industry prior to publishing the consultation. Overall, this undermines industry trust and confidence in the policy-making process.

5. How can government better utilise expertise from industry and civil society to design and implement pro-innovation regulation for digital technologies?

- The intentions set out in the Plan to ensure the principles apply to digital regulation from the outset and are embedded across government will, if realised, support better use of industry expertise in the design of regulatory solutions. However, systems and processes – such as stakeholder management structures and planning - need to be implemented to ensure that this happens effectively in practice.
- Input needs to be sought early on in order to inform thinking, building in clear and predictable stages to policy development that clearly identify the points at which input is needed and will be acted on to inform the next stage.
- To facilitate constructive conversations and ensure that policy is truly evidence-based, evidence gathering needs to be the starting point – including commissioning original research where needed – in order to identify the nature, scale and drivers of any given issue, and share that information with industry experts in order to scrutinise the evidence base, and to co-create and co-design appropriate and proportionate solutions that address the underlying drivers.

- More of a ‘partnership’ approach to working with experts and collaborating with and valuing industry will help with this, and if government implements this Plan in practice, that should help to build trust and confidence in digital policy going forward.
- Officials need to improve their understanding of each particular industry, its market participants, and build relationships with stakeholders both directly and through trade bodies such as the IAB.
- Engagement needs to be incentivised and valuable to both sides, based on a 2-way dialogue and undertaken with a possibility of a meaningful outcome.
- Appropriate and fair weight needs to be given to industry promoters and detractors when considering views and evidence gathered through industry and civil society consultation and engagement.
- The Plan identifies that government will explore innovative engagement approaches and evidence-gathering. This sounds positive, and we would welcome more detail about that as the government’s thinking develops.
- To take the example of the OAP: we agree that the outcomes of this work should incentivise compliance and companies proactively reducing harm. However, it is unclear to us what is being done to fully and comprehensively understand what is already done to address the harms being considered. We understand there will be a Q4 consultation and potentially pre-consultation on legislative options. However, it is already late September and as yet, no thinking has been shared with industry on the policy options. If the government does want to utilise industry expertise, then time and process must allow for proper discussion and design and development of options.
- Related to this, there is a risk that in the OAP consultation, industry will be presented with proposals on a list of different harms where the government is looking for industry solutions, all at once. This project in itself needs a coordinated, sequenced and – as the plan notes – systematic approach to industry engagement that allows proper time for consideration and development of options.
- Finally, engagement needs to be effective and streamlined – multiple workstreams, consultations, groups to engage with is burdensome and duplicative, particularly where those participating gain little in return.

Additional comments on the plan

‘Putting our principles into practice’

- The aims set out in this part of the Plan to embed these principles across government are good, but more detail is needed on how this will be achieved in practice, for example by improving cross Whitehall coordination and structured project management of policy processes.

- We are also keen to understand how this approach be incorporated into existing workstreams that are developing policy that will have a long-term effect on regulation of digital advertising and data, specifically the OAP and the data protection reform as well as initiatives led by other departments, such as the Fraud Action Plan. It is critical that policies being developed now are aligned with the objectives that the Government has set out for a proportionate and agile regulatory approach that supports innovation.
- How will government be accountable to stakeholders for adherence to this plan? Will its effectiveness be reviewed and evaluated and what process will be in place to enable industry stakeholder to contribute views and evidence on that? For example, policy proposals (e.g. Green Papers, White Papers, consultations) and impact assessments related to digital regulation policy should explicitly refer to the objectives and principles set out in this plan.

IAB UK
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