

IAB UK response to Cabinet Office consultation on digital imprints

3 November 2020

Background

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. We have a [Board](#) comprised of 25 leading businesses in the sector. Our purpose is to build a sustainable future for digital advertising, a market that was worth £15.69bn in the UK in 2019.

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.

Section 8: Enforcement

Question 41: Do you have any further comments on this section?

'Promoter' terminology

1. *IAB UK would suggest defining the party with whom ultimate liability for compliance lies, 'the promoter', more clearly and specifically, to achieve consistency with the established industry CAP Code regulations and clarity for both regulator and industry.*
2. The consultation document states that ultimate liability for any enforcement action taken or penalties awarded for failing to comply with the new requirement to display a digital imprint sits with 'the promoter of the material', which is further defined as, 'the person causing it to be published'.
3. This is a broad and potentially ambiguous definition, given that there are a significant number of companies operating as part of the digital advertising ecosystem which could be said to aid in the process of 'causing an advert to be published', ranging from publishers themselves to supply chain intermediaries providing the technology that allows the advert to be served to users. Providing clarity around the definition of 'the promoter' to make clear it means whoever is responsible for or owns the content of the ad would be beneficial to both the regulator and industry.
4. By way of providing an existing model as an example, the Committee of Advertising Practice (CAP) is responsible for writing the Code which, enforced by the Advertising Standards Authority, regulates non-broadcast commercial advertising in the UK. These CAP Code places ultimate liability for compliance with the Code with 'the marketer' (defined as including 'an

advertiser, promoter or direct marketer’ in the CAP Code¹). Note that ‘promoter’ here relates to, for example, promotions with prizes, such as competitions, prize draws, etc.

5. The CAP Code also sets out the following details on what responsibilities different players in the digital advertising supply chain have²:

Marketers bear principal responsibility for the marketing communications they produce and must be able to prove the truth of their claims to the ASA; they have a duty to make their claims fair and honest and to avoid causing serious or widespread offence. Agencies have an obligation to create marketing communications that are accurate, ethical and neither mislead nor cause serious or widespread offence. Publishers and media owners recognise that they should disseminate only those marketing communications that comply with the Code. That responsibility extends to any other agent involved in producing, placing or publishing marketing communications.

6. This makes clear that while agencies, publishers and other intermediaries do have obligations around the marketing communications they are involved in publishing, the ultimate liability for compliance with regulations around the content or placement of advertising sits with the party that produces the advert, which the CAP Code describes as ‘marketers’.
7. IAB UK believes the intention of the proposals in the consultation document is to, in effect, mirror the principles of the CAP Code; namely that ultimate liability for compliance will sit with the promoter of the material. This is something the IAB would support and welcome, as it would provide important consistency with the regulations that organisations operating within the UK’s digital advertising industry are already familiar and accustomed to complying with.
8. IAB UK would therefore suggest changing the definition of the ‘promoter’ with whom ultimate liability for compliance sits, for the purposes of the new regulation, to make it more specific and less ambiguous for the digital advertising market and ensure that publishers, intermediaries and others involved in the technical process of delivering an ad are not potentially caught by its scope. This change would both achieve consistency with the CAP Code, and also provide necessary clarity for both regulator and industry.

Programmatic advertising

9. The consultation document understandably focuses much of its attention in regard to the need for an imprint on social media platforms. However, it is worth emphasising that a significant portion of the digital advertising market in the UK is operated via automated (‘programmatic’) advertising, much of which takes place on the open web, which has a vastly more complex digital advertising ecosystem than in the closed, ‘walled garden’ environments that the largest social media platforms operate in. Programmatic advertising comprises a huge

¹ ‘Scope of the Code’, CAP Code, https://www.asa.org.uk/type/non_broadcast/code_folder/scope-of-the-code.html

² ‘How the system works’, CAP Code, https://www.asa.org.uk/type/non_broadcast/code_section/how-the-system-works.html

number of co-dependent ad tech and intermediary companies offering specific services, which together allow digital advertising to happen on the open web.

10. While the focus of the consultation document is primarily on advertising that appears on social media, the IAB would encourage Government to ensure all measures are designed with full consideration for also being compatible with how the programmatic ecosystem operates.

Imprints

11. The consultation states: 'In considering where the imprint will appear, we want the law to focus on platform-neutral solutions to ensure that it is future-proofed for rapid changes in technology. This means that the imprint will apply to any kind of digital election material on any platform.'³ We support this approach.
12. However, the supplementary notes on compliance in the consultation document indicate that 'platforms' will be encouraged to facilitate compliance by establishing their own platform-specific solutions for including an imprint. The document contains different descriptions of what constitutes a 'platform'⁴, which include a very wide range of types of media that can host advertising. We think this approach has risks, and does not represent a platform-neutral approach.
13. Due to the large range of companies operating in the programmatic advertising supply chain (as referenced above), the large number of publishers or media owners that could potentially host any one ad, and the large range of environments in which any one ad could appear – which may not be known before the ad is served – such an approach would likely result in huge uncertainty.
14. We do not believe that individual publishers and media owners should bear the responsibility for, or be expected to design individual 'solutions' for including an imprint. Nor should companies in the programmatic advertising supply chain be expected to validate whether the imprint requirement applies, or has been met. Such an approach risks creating widespread duplication and confusion around where responsibility lies for ensuring that an ad bears an imprint. It also risks disparity, whereas there should be consistency of approach across all relevant materials, regardless of where they are published.
15. More fundamentally, the suggestion of platform-specific solutions runs counter to the objective of digital imprints becoming a standard and permanent part of the election material, as described under Proposal 5. That proposal makes clear that the obligation for compliance is intended to sit with promoter, and we agree with this approach. Promoters should therefore be ultimately responsible for meeting all requirements relating to imprints, including ensuring that the source material itself - in this case, the advertising copy/creative – bears an imprint, and the retention of any past campaign material deemed necessary. This would ensure that the ad bears an imprint wherever it appears, irrespective of how the

³ Page 21: 'Proposal 4 - Location of the imprint'

⁴ For example, page 10: 'website, blog, social media'; page 17: 'social media platforms; video sharing platforms; content of websites or equivalent apps; website advertising; search engines; some forms of email; digital streaming services; and podcasts'

advertising is placed, or in what type of digital media – in the same way that legally-required terms and conditions are contained with ads themselves – and would remove any uncertainty as to where responsibility for compliance lies. This would in turn provide consistency and clarity for all parts of the advertising industry, those participating in elections, and electors themselves.

