

Response to the Department for Digital, Culture, Media & Sport: *Audiovisual Media Services Directive Consultation*

August 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:

- 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 the future of advertising co-regulation to be fit for purpose
- play a leading role in delivering industry accountability for digital content

Agency Alignment

To ensure transparency and competitiveness, we:

- 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:

- ensure that implications of data protection authorities' GDPR enforcement actions are understood by advertisers
- continue to exert influence on the finalised drafting of European e-privacy 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.

Context

5. We are providing a focused response to the issues of concern to our members. This response should be read alongside our responses to the Online Harms White Paper, the HFSS consultation on the introduction of a watershed and the CMA Market Study of digital advertising.
6. As we have noted in recent consultations, ISBA continues to welcome government's recognition of the advertising co-regulatory framework already in place. In this context, with specific regard to linear broadcast and VoD in the UK.
7. With the Directive obliging government to consider what changes to the current regulatory framework may be necessary to reflect the place of VSPs within ADMSD regulation, we urge Government to take account of the ASA system's commitment to continuing their co-regulatory and designated responsibilities in regard to TV and VOD as that expands to include responsibility for advertising provisions in AVMSD for VSPs.

Commercial communications/advertising provisions

8. Linear TV has always been very attractive to advertisers, because the very large audiences that it has been able to reach mean that audiences can be built very efficiently.
9. However, the current linear TV landscape is under challenge. Over the last 5 years we have seen streamed video on demand (SVOD) penetration grow three-fold and viewers moving in large numbers (particularly the younger demographics) to VSPs. Over that period, we have seen a large drop in impacts, with young adult viewing decreasing by 33% and households with children down 21%¹.
10. For young adults, a majority of their video consumption is spent away from linear TV and catch-up TV combined. In short, broadcasters have more competition than ever and advertisers have more choice than ever.
11. Whilst an increase in minutage would theoretically allow more inventory, in turn bringing the price of TV down, we believe more research is needed to examine this.
12. The issue of consumer trust needs should be central to this. In 2018, the advertising industry agreed that action needed to be taken to address the decline in public trust in advertising. Industry research² shows that the public sees advertising as "a good thing with some downsides", with the advertising industry ranking below other industry sectors such as banking and energy. When compared to other industries, it is the lowest-ranked on the Advertising Association's (AA) long-term tracking survey.
13. Bombardment by advertising is the biggest of the public's concerns. This factor has four components – volume, repetition, obtrusiveness and irrelevance. This is generally caused by the lack of good practice standards (often as simple as, for example, frequency capping) by the adtech industry. Related is the issue of intrusiveness, which refers to advertising which is felt to infringe upon people's privacy. The research identified two key ways in which advertising can do this – appearing in places people consider to be private or using personal data in a way which makes people feel uncomfortable.

¹ [BARB](#) 2013-2018

² Advertising Association, [Arresting the Decline of Public Trust in Advertising](#)

14. The AA Trust Paper sets out the actions being taken by industry to tackle these and other challenges³.

Video Sharing Platforms

15. As set out in our response to the Online Harms White Paper (White Paper), ISBA support Government in its desire to deliver a “world-leading package of online safety measures”⁴.

16. 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 State⁵, 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.”

17. 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.

18. 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.

19. Digital advertising is central to the debate around online harms. This came to the fore in February 2017, when the Times⁶ 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.

20. 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”⁷.

³ Ibid

⁴ <https://www.gov.uk/government/consultations/online-harms-white-paper>

⁵ Politico London Playbook: Seconds out, round one — Race for sweet 16 — Boris' big day out, 13 June 2019

⁶ <https://www.thetimes.co.uk/article/big-brands-fund-terror-knnxfgb98>, The Times, Big Brands fund terror through online adverts, February 9 2017

⁷ [Online Harms White Paper](#)

21. The White Paper itself makes reference to online advertising⁸. 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.
22. 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.
23. 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.
24. In tackling these issues, the White Paper notes⁹, 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.
25. 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.
26. 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.
27. 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

⁸ [Online Harms White Paper](#)

⁹ [Online Harms White Paper](#)

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.

28. 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.

29. 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.

30. The consultation document states¹⁰:

“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.”

31. 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.

32. 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.
- 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.

33. 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

¹⁰ [Online Harms White Paper](#)

34. 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.
35. 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.
36. 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.
37. 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.
38. 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 them become a regulator.
39. 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.