



IAB UK
Online Advertising Programme
Consultation Response
8th June 2022

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Executive summary

IAB UK and its members welcome the Online Advertising Programme consultation and share the Government’s commitment to a transparent and accountable online advertising ecosystem. Having assessed the case for intervention we do not find that the case has been made for any particular intervention. In particular, the bar for full statutory regulation (option 3) has not been met.

At this stage of the policy development, we would recommend that Government pursues an evidence-led approach based on option 1 and centred around identifying gaps that need addressing, and opportunities to bolster the existing mechanisms that enable industry to identify and disrupt harms where they occur. Alongside, there needs to be a separate focus on what solutions are needed to better enforce the law against illegal and criminal actors.

Where additional analysis identifies gaps in the existing regulatory framework – comprised of the ASA system and industry-led, digital-native codes and standards – we would support targeted responses that are evidence-led, meet a demonstrable need, are proportionate and above all, are tailored to individual harms. As work on the OAP progresses, IAB UK remains committed to supporting government to ensure that together, we develop an effective and flexible framework and that world-class consumer protections remain at the heart of UK digital advertising regulation.

IAB UK Consultation Response Introduction

About IAB UK

1. The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising, committed to building a sustainable future for digital advertising. We represent and bring together all elements of the digital advertising supply chain through our 1,200 members, including media owners, agencies and brands, and through our Board, which comprises 25 leading businesses in the sector.
2. Our recent IAB UK/PwC Adspend study shows that the digital advertising market experienced a period of huge growth in 2021, with the market increasing by 41% to a total of £23.5 billion. We share the Government's commitment, expressed in its Plan for Digital Regulation, to safeguarding the ability of industry to continue to innovate, grow and contribute to the UK's economy.
3. We are committed to achieving the optimal policy and regulatory environment to support a sustainable future for digital advertising. We actively engage with our members – drawn from across the whole digital advertising ecosystem – to develop and promote good practice, ensuring that the UK represents a gold standard in digital advertising for other countries to admire, follow and emulate while retaining its leading role in e-commerce and digital advertising. Our IAB Gold Standard¹ aims to address key industry challenges – increasing brand safety, reducing advertising fraud, improving the digital advertising experience for users, and addressing concerns about data processing and privacy – by bringing together existing cross-industry initiatives which successfully tackle them.
4. The IAB is uniquely placed to bring together all parts of the legitimate, mainstream digital advertising ecosystem and to provide information, knowledge and insights to support the Online Ad Programme as it reviews the regulatory framework.

The industry view of the OAP

5. Central to building a sustainable future for digital advertising is ensuring an optimal policy and regulatory environment. The OAP presents a major opportunity to design and develop a modern, digital-first regulatory framework that supplements the existing system of regulation and targets the bad actors that look to use advertising as a vector to commit crime and cause harm.
6. We welcome the consultation, and the open way in which it explores what future regulation may look like, without a specific preferred option that forecloses any particular approaches. This provides a good starting point for thinking about the kind of targeted interventions that might be needed to bolster the existing system.
7. Any framework will be comprised of different component parts, and there is no one solution to the range of potential harms set out in the consultation. An effective framework needs to be based on a range of different tools and

¹ <https://www.iabuk.com/goldstandard>

approaches suited to individual harms, which, while needing to work together coherently, do not need to be identical.

8. The IAB and its members have proposed some guiding principles for the OAP to ensure that the future regulatory framework is proportionate, targeted, and effective. The five key principles which we would ask government to use to guide its policy development are:
 1. Recognition of, and support for, the value of the ad-funded business model and its crucial role in the digital economy
 2. Recognition of the place of self-regulatory mechanisms and open standards in any new framework
 3. A clear vision that brings coherence and alignment to all relevant policy and regulatory workstreams, aligned with the Digital Regulation Plan
 4. An evidence-based approach with robustly justified proposals
 5. Emphasis on cooperation between industry, law enforcement and regulators to target criminal actors
9. We believe that these five standards provide a strong basis on which to continue to evolve the regulatory framework in a way that appropriately balances the public policy goals and a thriving and competitive digital advertising market in the UK.
10. We are pleased to see that the OAP also sets out 5 key principles that appear to be broadly consistent with those that industry has put forward. It is important that these principles are used to guide the OAP policy development and decision-making, and that emerging proposals are tested against these principles, to ensure that they align with the overall policy goals of the OAP and the Government's wider goals for digital regulation in the UK.

Setting the context: value of digital advertising as an industry

11. Digital advertising in the UK is of huge value to our businesses, the economy and society, and a world-leading success. The UK has the largest digital advertising market in Europe. It is the business model that underpins the ad-funded internet, supporting access to content and services, that drives e-commerce, and that helps fund technological innovation across the economy.
12. As well as its obvious economic value to the UK (the digital ad market was worth £23.5 billion in 2021) and its indirect economic contribution (every £1 spent on advertising generates £6 in GDP), digital advertising has a critical role in helping to fund digital content and services. This allows people to read the news, search for jobs, use an online map or talk to friends online for little or no cost.
13. Most people rely on digital services, and they are able to access many of these for free because of advertising. Alternative funding models for many digital services or products include paid-for subscriptions or requesting contributions. Some people can afford to pay for multiple subscriptions for news, products or services, but many cannot. Advertising has a democratising impact on the internet; it allows all

users access to a limitless breadth of information for free, as well as to products and services that are essential to their everyday lives.

14. UKOM data from April 2022² shows that, excluding publicly-funded services (BBC, NHS, UK Government), at least 70% of UK's top 20 online group media properties were ad-funded (wholly or partly).³ A high proportion of the remainder also generates some revenue from advertising.⁴
15. The vast majority (89%) of people say they would prefer to have free access to an internet with advertising than have to pay for online services, according to IAB UK research. And the same research shows people aren't just putting up with ads because they have to: one in two people say online ads are useful and one in four prefer online ads to those on TV or radio. Of the things that people find annoying online, slow connection speeds topped the list with only 4% people mentioning advertising.
16. With 91% of UK adults being recent internet users in 2019, there is obvious value in an ad-funded online model, allowing everyone to access information and services for free. IAB UK research suggests 84% of people agree they would be "furious" if they had to pay for online services every time they used them.
17. While some can afford subscription charges, many cannot and the societal effects of basing access to online services on financial means shouldn't be underestimated.
18. Targeted digital advertising has a wider socio-economic value. It provides vital support for SMEs as the backbone of Europe's economy, is intertwined with the promotion and protection of culture, delivers a growth engine for national champions to thrive on the global stage, and supports a pluralistic media landscape.⁵
19. IAB UK's 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. Targeted advertising is particularly important for Europe's SMEs, many of whom were forced to shift to digital-only marketing strategies by COVID-19

² Audience Reach (%) figures based on the UK Total Internet Population (15+ yrs), c.49,937,000 people in April 2022 using PC/laptop, smartphone or tablet device(s) in that month. Source: Ipsos iris Online Audience Measurement Service, April 2022. <https://ukom.uk.net/top-twentys.php>.

³ Alphabet, Meta (previously Facebook Sites), Amazon, Inc, Microsoft Corporation, Reach Plc, Mail Metro Media, News UK Sites, Sky, Twitter, The Independent and The Evening Standard, Future Plc, The Guardian. As noted, not all of these services are exclusively ad-funded.

⁴ Including eBay Inc, Apple Inc, J Sainsbury PLC (which has a retail media business).

⁵ See <https://iabeurope.eu/knowledge-hub/the-wider-socio-economic-and-cultural-value-of-targeted-advertising-in-europe/> (Note: this report covers continental Europe, not the EU)

restrictions, and who simply don't have the budgets to pay for ads geared to general audiences, rather than tailored to those who are most likely to be interested in their products and services.

20. Recognition of this value as the OAP is developed is vital, both in terms of continuing to drive responsible and sustainable growth, and in understanding why it is critical to ensure that regulation is well-designed and is proportionate to the harms it is seeking to address.
21. Above all, we must avoid unintended consequences for market participants and the thousands of businesses who rely on and thrive because of digital advertising and e-commerce, particularly UK SMEs who are heavily dependent on advertising or ad revenue to start and grow their businesses, as well as for consumers who benefit from it.
22. The OAP must also ensure that the innovative environment that digital advertising has created is supported and incentivised, not hindered, by any new regulatory framework. Specifically, it must encourage investment in initiatives that raise standards and serve to demonstrate the credentials of responsible players in the market, including by encouraging buyers to recognise these initiatives when they choose where to invest their advertising budgets.

The digital advertising ecosystem

23. The digital advertising ecosystem is complex. Often, its complexity is construed as a barrier to understanding, identifying and addressing issues. We do not subscribe to that view. However, the complexity of the ecosystem does mean that the sector requires a careful, considered and evidence-based approach to the design of standards and regulatory approaches to ensure that they are effective and take appropriate account of the dynamics of the market.
24. Over-simplified or 'one size fits all' solutions are rarely the most effective. In this ecosystem, compliance is often networked to reflect distributed and intermediated supply chains. Compliance is achieved through a chain of accountability and responsibility apportioned fairly between different actors in the supply chain and in most cases, supported by contractual arrangements. Importantly, the same outcomes can be delivered differently depending on the nature of the business model or supply chain. This is an important feature that needs to be central to the OAP policy development as it progresses.
25. The industry has extensive experience of designing and developing standards and initiatives for this complex industry and we would welcome the opportunity to contribute this expertise to the work of the OAP as it progresses.

Existing regulation

26. It is apparent from discussions in various policy spheres in recent years that there is low awareness among policymakers of the diversity of schemes that fall within the bracket of 'self-regulation in digital advertising', and of the crucial role that self-regulation increasingly plays in digital advertising supply chains. As a term, 'self-

regulation' has been misrepresented in debates about digital advertising, which amplifies misunderstanding, and risks undervaluing this crucial component of the overall regulatory framework.

27. There are a range of self-regulatory mechanisms and open standards initiatives in place that are designed to directly protect consumers and to indirectly contribute to consumer trust in digital advertising. These mechanisms and initiatives provide a means for responsible businesses in the supply chain to identify trusted partners in order to minimise business-to-business harms that can also impact consumers. As we have set out in detail in our response to the consultation questions, existing industry-led regulation is comprehensive and subject in many cases to independent validation and/or third-party verification and audit.
28. Industry-led regulation is also proactive. It is in a state of constant development and evolution and can respond at pace to emerging issues and market needs, whether by iterating existing standards or developing new ones to address gaps.

29. Examples of this continuous improvement include:

- a) **The ASA Intermediary and Platform Principles (IPP)** are the output of joint working between the ASA and industry participants, facilitated by IAB UK as a CAP member. This project was initiated by the self-regulatory system and has delivered a concept which will now be tested with a group of market-significant companies. It encapsulates the innovative and forward-looking nature of the CAP/ASA system, which is both proactive and reactive, and which places a high importance on developing innovative solutions that ensure that advertising regulation remains up-to-date and fit for purpose.
- b) **IAB UK's Gold Standard**, launched in October 2017, is now on its third iteration (version 2.0) with the next iteration already in development. Since its inception, the Gold Standard has:
 1. widened the range of company types that can be Gold Standard certified, to ensure a broader adoption of standards across the industry
 2. raised the bar in terms of criteria that companies must be able to demonstrate they meet in order to be certified
 3. expanded to include initiatives addressing data and privacy concerns
 4. incorporated new/updated technical standards to address ad fraud

Additionally, IAB UK launched an advertiser supporter scheme for the Gold Standard, through which market-leading brands have publicly committed to only use Gold Standard certified digital ad suppliers wherever possible.⁶

We (IAB UK) have also submitted our Gold Standard certification process to independent, third-party audits by ABC, to ensure its robustness and transparency, and introduced a number of improvements as a result.

⁶ <https://www.iabuk.com/goldstandard-advertisers>

- c) **TAG has updated the requirements of its Brand Safety Certified Principles** (v 2.0 was released in July 2021, replacing the original global standard established in September 2020, following the TAG-JICWEBS merger. Brand safety certification was established in the UK market by JICWEBS, at the request of the digital advertising industry, in 2013). Companies are required to re-certify their TAG status annually.

The case for intervention

30. The rationale for the stated objective of the OAP is generally sound. We support the government's objective to review the regulatory framework and build on existing regulatory mechanisms to boost transparency and accountability across the supply chain.
31. Regulatory intervention is only justified where the market fails to address harm, or to promote outcomes that the market alone cannot achieve efficiently. This is explicitly recognised in the Digital Regulation Plan (DRP) and should be a foundational principle for the OAP as it progresses.
32. At this stage, the rationale for intervention (and what form that might take) is nascent and incomplete. Interventions cannot be considered in the abstract: they need to be targeted and specific, with a clear and measurable objective. We are concerned that option 3 is included as a potential option without an evidence-based case having been made that a full statutory approach is warranted or would provide benefits that cannot be achieved via other routes and that outweigh the likely costs.
33. In order to understand what regulatory interventions might be beneficial and proportionate, further analysis is needed to fully understand the prevalence and impact of harms that arise as a direct result of digital advertising, along with a gap analysis to understand where existing measures already address these harms, and where there are gaps that warrant further exploration.
34. IAB UK and its members would welcome the opportunity to support DCMS where we can in gathering the evidence that it needs throughout the course of this Programme. Where the necessary evidence does not exist, we are keen to work with DCMS to identify how it can be obtained. We caution against making assumptions about complex issues, in the absence of evidence, including that absence of evidence is itself evidence of a particular problem.
35. We are particularly concerned that many of the proposed 'measures' and aspects of the 'options' put forward in the consultation represent an ex-ante approach to regulation. Such an approach is only warranted where there is demonstrable and systemic market failure. That is not the case here.
36. Any future interventions must be developed in a way that is proportionate to the harm being addressed. Sweeping, ex-ante requirements will not be effective in disrupting specific harms. Increasing regulation of good actors will not solve the problem of illegal or criminal harms but would burden responsible businesses with

new costs and processes which may disrupt existing, business-led approaches to maintaining consumer safety in specific sections of the supply chain.

37. The OAP proposals should meet accepted principles of effective, better regulation, including the Government's 'principles for regulation' set out in 'The Benefits of Brexit'.⁷ As the OAP progresses, the Government should robustly justify any proposed regulatory interventions based on clear evidence of the harms they are seeking to address, and how they will deliver specific, measurable outcomes. The government should also be able to clearly demonstrate how any proposals will build on, improve or address a gap in the existing regulatory framework.
38. At the same time, government should recognise that a combination of regulatory tools and other solutions may be needed to address a single 'harm'. We fully support the description of 'digital regulation' set out in the Government's Plan for Digital Regulation⁸ which identifies the range of regulatory tools and options that are available to regulate in the digital space. These should be explored and considered as part of the OAP, looking first at non-regulatory options.
39. As the OAP progresses, we recommend that Government takes option 1 as its starting point and focusses its efforts on how existing self-regulation and non-regulatory tools can be further developed and optimised. If additional analysis of harms identifies gaps in the existing framework that require targeted action, government should work with industry to identify potential harm-specific solutions and their associated benefits and costs. We see no case for the continued inclusion of an option that is based on replacing existing regulation with the 'full statutory approach' envisaged in option 3, and this should be excluded from the policy options going forward, in order to focus collective efforts on more proportionate and targeted approaches.
40. To provide transparency and clarity to business, government should set out as part of the next phase of the OAP work:
 - I. 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
 - II. A commitment to consider non-regulatory tools first when developing policy and making decisions.
 - III. Minimum standards for the quality and quantity of 'robust evidence' that is necessary to make informed policy decisions, and how that evidence has or will be obtained, including where further original research is necessary to address

⁷ The Benefits of Brexit: How the UK is taking advantage of leaving the EU. HM Government, January 2022

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexite.pdf

⁸ 'What do we mean by 'digital regulation'?', Digital Regulation: Driving growth and unlocking innovation, DCMS, July 2021 <https://www.gov.uk/government/publications/digital-regulation-driving-growth-and-unlocking-innovation/digital-regulation-driving-growth-and-unlocking-innovation>

gaps in the evidence base

Where we think existing regulation could be improved

41. We share the Government's goal of protecting consumers and fostering innovation and we agree with the Government's goal that any future regulation must address the underlying drivers of harm, not its symptoms.
42. We also welcome the ambition of the OAP to look holistically at online advertising and the potential harms that can arise within it, and the recognition that the advertising industry is also exposed to forms of harm.
43. Where the evidence shows that a particular harm is perpetrated by bad actors, the Government should work with the relevant representatives of industry, law enforcement and regulators to co-design an effective approach. For instance, when looking at the issue of 'fraudulent' ads, the Government could usefully explore what appropriate action could be taken – such as by law enforcement bodies – that is beyond the limits of self-regulation, which by its nature is designed to ensure that 'good actors' are operating according to agreed rules or standards in order to differentiate themselves in the market. Interventions should be carefully designed to avoid compromising existing measures to ensure that the system as a whole becomes more, rather than less effective at dealing with malicious activity.

Evidence and impact assessment

44. As stated above we believe that regulatory change must be underpinned by a comprehensive understanding of harms and where they occur. However, while we recognise that the OAP is at an early stage, the evidence base provided in the impact assessment is largely incomplete or unreliable in its current form. Studies referenced either do not provide data specific to online ads or use sample sizes that are too small to accurately represent trends in consumer views. It does not therefore provide a robust basis either for understanding baseline levels of harm or of the costs and benefits of some of the proposals, even at an illustrative level.
45. For that reason, during the next stage of consultation it is imperative that Government gathers additional data to evidence the 'baseline' level of harm that currently occurs as a direct result of online advertising. The IAB and its members stand ready to support with this evidence gathering process where possible so that a detailed map of harm occurrence can be developed and used to identify priority areas for intervention.
46. Assessing the impact of the options/measures on businesses at this early stage of consultation is inevitably challenging and we welcome the acknowledgment in the impact assessment that further work is needed to refine cost/benefit analysis. Looking ahead to the next phase of consultation, we would ask that Government:
 - Brings all businesses in the online ad supply chain explicitly within scope for the purposes of costing – currently companies classed as 1A, 2A and 2B and that therefore fall in scope of the OSB are not included within cost

assessments in the OAP IA, despite the extremely high probability that regulatory changes through the OAP will result in discrete costs for these businesses.

- Identifies specific, targeted interventions to focus efforts on, as a basis for evaluating and refining the costs and benefits of specific, defined options.
- Engages directly with businesses to gather data that enables accurate familiarisation/compliance cost projection. Currently estimates are based on generalisations that do not capture the varying sizes/ capacity rates/ business models of actors across the supply chain. Government should also consider the (potentially extensive) costs attached to system change/ service development that may be necessary for businesses to adapt to a new regulatory framework.

Our consultation response and next steps

47. The OAP represents an opportunity for the Government to work with industry, through the collaborative approach advocated in the Plan for Digital Regulation, to design and develop a modern, digital-first regulatory framework that supplements the existing system of regulation and targets the bad actors that look to use advertising as a vector to commit crime and cause harm.
48. Over the consultation window the IAB has engaged extensively with members to understand how actors across the supply chain view the existing regulatory framework and to explore where industry believes improvements can be made, including where Government could provide a lead or support industry-led initiatives. In parallel we have carried out some preliminary mapping work that provides an overview of the industry standards, initiatives and tools that already exist to identify and disrupt harmful activity where it occurs in the supply chain.
49. Through our response we have sought, as far as possible, to provide a clear position on each of the proposals and questions that reflects an industry consensus. However, given that there are significant gaps in the analysis, it is too early in the process to be able to give firm views on the specifics.
50. Both the IAB and our members view this consultation as the first step in a process. The OAP's aims are expansive and designing and developing a regulatory framework will take time, and a considerate and iterative process. We would therefore recommend that second phase to this initial stage of the process focused on further, more granular analysis. We have detailed our recommendations in our responses to the questions, but in summary, this subsequent should include:

Distinguishing harms

- Separating out harms into three distinct types:
 - **Consumer harms from legitimate online advertising.** These are already comprehensively addressed through existing regulation. There may be some areas where this could be strengthened.
 - **Illegal harms perpetrated through the exploitation of online advertising services.** These types of harms require a different approach

to the other categories. Criminal actors operate outside of and/or disregard regulatory systems, both self-regulatory and statutory. Additional regulation will not address the underlying driver, which is criminal/illegal activity, and needs specific, tailored action based on effective law enforcement.

- **Business harms.** These are already comprehensively addressed through industry-led initiatives, codes and standards, and should be out of scope.
- Identifying and prioritising the highest-risk consumer harms to focus on, starting with illegal harms
- Narrowing the OAP's scope to exclude business harms
- Targeting engagement beyond mainstream industry in order to better understand illegal harms

Understanding harms

- Considering individual (prioritised) harms discretely
- Building a clear and robust evidence base for individual harms that clearly describes: the precise nature of the harm, its causes and primary drivers, where and how it occurs (e.g. in which supply chains, business models, ad formats), its scale and prevalence (is it systematic, or isolated?), who is carrying out the activity, and the risks it poses to consumers

Identifying gaps for further exploration

- Drawing on the above, an evidence-led gap analysis that
 - develops a more comprehensive map of existing regulatory measures, including all relevant industry codes and standards
 - recognises where existing regulation is effective at addressing harms
 - identifies where weaknesses or gaps in protections exist that would benefit from further work to consider and identify potential responses. This should include looking at the effectiveness of existing law enforcement and where and how this could be improved.

51. This work is needed to shape and refine the policy options to ensure that they are targeted at areas of greatest risk, and as the basis for further consultation, as well as for a more accurate and complete assessment of the potential costs and benefits of any emerging proposals. The IAB and its members stand ready to support government with the next phase of this work.

52. We strongly believe a partnership approach is needed from this point forward between government and all actors in the digital advertising ecosystem, whose collective action is needed to deliver shared outcomes and evolve and maintain good practice within the industry. We fully support the Government's ambition for the 'best regulated economy in the world' and its vision for developing 'an improved regulatory system' which recognises the important interplay of regulation and economic success:

Poorly designed regulations can stifle economic growth and innovation, limit market competition and disproportionately harm small businesses. But when done well and in collaboration with business, regulation can catalyse economic growth and the co-creation of new markets. The steps we are taking, including through improved regulatory scrutiny and evaluation of impacts, will help ensure that where regulation is used it is a force for good for the UK economy.⁹

53. These tenets should guide the development of the OAP, and IAB UK and its members look forward to collaborating with DCMS to achieve a regulatory framework that protects both the huge economic benefits that our industry creates and the consumers that our industry serves.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexit.pdf

IAB UK Consultation Question Responses

Note: We have grouped our responses to questions where appropriate to do so.

Questions 1-3: Scope
<p>1) Do you agree with the categories of online advertising we have included in scope for the purposes of this consultation? Do you think scope should be expanded or reduced?</p> <p>2) Do you agree with the market categories of online advertising that we have identified in this consultation?</p>
<p>The categories of online advertising identified in the consultation are broadly accurate, but not comprehensive. For instance, the consultation does not reference the following:</p> <ol style="list-style-type: none">1. Affiliate/performance marketing2. Audio (mentioned only in passing)3. Retail media4. e-commerce <p>It is also important to bear in mind the different types of digital device, i.e. desktop, mobile web, mobile app, games console, connected TV, etc. which can be a relevant factor in how the advertising encountered via those devices is bought and sold.</p> <p>In conversation, DCMS officials have confirmed that all market categories will fall in scope of the OAP. This should be made explicit in the next phase of consultation.</p> <p>As a starting point, government needs to establish (and further consult on) some high-level principles for what constitutes 'online advertising'. This will enable future-proofing of the scope of any future regulatory framework as the market evolves.</p> <p>In terms of scope, the challenge of dealing with non-UK-based actors needs to be factored in to the policy design from the outset. Previous industry experience suggests that this will be particularly relevant in looking at how to ensure that existing law is effectively enforced against illegal or criminal actors.</p>
<p>3) Do you agree with the range of actors that we have included in the scope of this consultation?</p>
<p>The list of online advertising supply-chain actors identified in the consultation is incomplete. The consultation does not mention, for example, ad networks (which are used extensively for in-game and in-app advertising and have a small but significant market share) or third parties such as providers of ad verification tools and attribution tools. These providers are particularly relevant in the context the controls already available to advertisers to address and manage and 'industry harms'.</p> <p>There is also a lack of clarity around some of the actors and their function:</p> <ul style="list-style-type: none">• Media agencies are an important party of the supply chain, both as buyers and as trading desks (where relevant)

- There is some over-simplification: e.g. sellers can be direct (where they own and operate the inventory) or indirect (where they sell inventory they don't own or operate). Similarly, buyers can also be advertisers, agencies, or third parties that buy on their behalf.

Questions 4-5: The market

4) Do you agree that we have captured the main market dynamics and described the main supply chains to consider?

The consultation provides a good description of the broad types of supply chains and business models, although some nuance is missing. There are variations within supply chains and some types of digital advertising may tend more towards a particular model. Some parts of the ad-funded web operate within their own 'closed' ecosystems (adult content sites, for example).

As the OAP progresses, it should consider different supply chains in more detail. This will be an integral part of building a deeper understanding of the nature of individual harms as well as potential solutions.

It is also important to consider the differences between types of supply chains ('walled garden'/intermediated/direct models) and the relationships within them when looking at how responsibility and accountability is apportioned and managed. For example, the open demand supply chain is very complex and relies heavily on collaboration between multiple parties and wide adoption of open standards by all players (see annexes 1, 2 and 3 for further detail). Intermediaries also provide services to publishers and advertisers and do not have a direct relationship with consumers, and the nature of a publisher or advertiser's relationship with consumers can also vary.

The 'market dynamics' section should be revisited to fully assess the state of flux in the market caused by significant issues such as the legal challenges to the TCF, ongoing investigation work by the ICO, the upcoming Data Reform Bill, the future of third-party cookies in Chrome, and government's decision to delay the Competition Bill. These factors contribute to an uncertain landscape which will be changing as the OAP progresses and should guide government's decisions about policy options.

5) Do you agree that we have described the main recent technological developments in online advertising in this section?

The consultation identifies some of the changes that individual market-leading companies have made or are in the process of making. The OAP needs to also recognise the much wider changes that will or are being made as a consequence of those changes. For example, the deprecation of support for third party cookies in Chrome does not just affect how websites can serve ads. It is likely to affect, directly or indirectly, the majority of companies that rely on third-party cookies on the open web, due to the predominance of Chrome or Chromium-based browsers in the market, and Google's strong market position in display advertising and ad tech intermediation

markets.¹⁰ Google has made a series of binding commitments to the CMA about the Privacy Sandbox project to address concerns about its impact on the market. As the consultation notes, there are other technological changes in the market that also affect the future of third-party cookies.

As a result, multiple types of alternative solutions have been or are being developed as the market considers how to adapt to fundamentally different ways of targeting and measuring advertising online.¹¹ Post-third party cookies, the web will look different in terms of addressable advertising. It will, broadly, result in an ecosystem of both authenticated 'logged in' users with consumer-consented data available for advertising purposes, and anonymous users with very limited or no data. and this will in turn drive changes in and how advertisers reach their target audiences.

Questions 6-9: Harms

Harms: An overview

Understanding harms

Understanding harms is key to designing a targeted and effective regulatory framework. Different harms warrant different approaches. What is suitable for one will not be suitable for another.

Harms need to be considered and prioritised according to their type, in recognition of the fact that different drivers of harm necessitate different solutions. In some cases, especially in the case of illegal or criminal activity, advertising is not the primary driver of the harm but a symptom of it, or a vector for criminal activity. The driver is not to do with transparency or accountability, but criminal intent, and responses need to be designed accordingly: this activity cannot be 'solved' by regulatory interventions focused on advertising service-providers.

Like the ASA, we think that the best way to approach harms is to divide them into 3 broad categories:

- I. **Category A: Consumer harms from legal ads** – detriment arising from paid-for ads online by bona fide companies and other bona fide organisations that raise the potential to mislead, harm or offend their audience.
- II. **Category B: illegal harms** – detriment arising from paid-for ads online by criminally-motivated actors that typically seek to abuse ad services and defraud consumers, including via bogus investment schemes and identity theft, or who otherwise unlawfully and adversely affect consumers and businesses
- III. **Category C: Business harms** – detriment to advertisers and the industry including brand safety¹² concerns driven by the placement of ads next to

¹⁰ As set out by the CMA in Chapter 4 of its: 'Notice of intention to accept commitments offered by Google in relation to its Privacy Sandbox Proposals'

https://assets.publishing.service.gov.uk/media/60c21e54d3bf7f4bcc0652cd/Notice_of_intention_to_accept_binding_commitments_offered_by_Google_publication.pdf

¹¹ For examples, see <https://www.iabuk.com/user-identity/member-solutions>

¹² See Annex 8 for our commentary on 'brand safety', noting that it is a subjective term

inappropriate or harmful content, as well as the potential for ads to fund sites that cause harm, such as those hosting misinformation or disinformation

Using these categories as a framework, the next step is to understand the causal link between advertising and harm, and then to identify where and how in each different supply chain the harm might arise or be contributed to. Only when that analysis has been completed will it be possible to understand the underlying drivers and causes of harm, and therefore to identify effective solutions to address them, focusing first on non-regulatory approaches, in line with the approach set out in the Digital Regulation Plan.

When undertaking this analysis, we would encourage government to consider harms and problematic activity on a scale of risk or severity, according to these factors:

- I. The nature of the harm, i.e. illegal or legal
- II. The intent of the responsible actor, i.e. is the problematic behaviour inadvertent or deliberate

In this way, harms can start to be prioritised according to severity of impact. This will ensure that efforts can be focussed on tackling harms that cause the greatest consumer harm (likely to be deliberate, illegal category B activity), in line with the Government's stated aim that the OAP should have 'a specific focus on addressing the highest risk consumer harms.'

In parallel, in relation to Category B (illegal) harms, a clear map needs to be developed of the existing framework for tackling the illegal activity. Where advertising is a symptom, as opposed to a driver of an already-regulated harm, focusing on the effectiveness of existing approaches – both industry-led initiatives and law enforcement responses – is an essential starting point before moving to statutory intervention. For example, there are a number of Category B harms identified in the consultation about which advertising industry groups have no information or knowledge. Responsibility for dealing with these harms (for example ads that facilitate human trafficking) does not lie with mainstream industry. In these cases, Government should target engagement with the relevant industry representatives to identify policy options.

Tackling harms

Industry is committed to preventing, detecting and disrupting the problematic activities that result in consumer harm. Indeed, responsible companies have a strong interest in ensuring that bad actors who perpetrate these behaviours are kept out of their systems. There are powerful commercial incentives for businesses to act proactively, particularly among challenger firms who see investment in industry codes and standards as an important differentiator. In addition, businesses themselves can be victims of harm, so it is in the interest of the supply chain as a whole to create a trusted ecosystem.

Annexes 1 and 2 demonstrate the breadth of industry-initiated standards already in place, that have been designed specifically to address potential harms.

However, we would stress that industry cannot, and should not, be held responsible for tackling the underlying illegal behaviours that cause harm. These are very complex harms which need specific and multi-stakeholder solutions.

Criminal actors, by their nature, operate outside of and/or disregard regulatory systems, both self-regulatory and statutory. Where illegal paid-for ads exist, they are likely to be hosted on 'closed ecosystems' and bought directly (e.g. adult services websites), or enter the ad ecosystem through 'self-serve' systems with online sign-up and credit card payment with few prior checks (and this hypothesis should be tested through research and evidence-gathering). Managed services with many financial and security checks create 'friction' that makes it harder for criminals to pass undetected. For this reason, criminal activity is not something that legitimate players/trade bodies can resolve alone. Equally, additional regulatory interventions focused on good actors are not the solution to tackling this type of harmful behaviour.

We recognise that there are areas where responses can be improved or strengthened, including through more coordination between industry, regulators and law enforcement. We have addressed this further in our opening narrative, and in response to question 19.

6) Do you agree that our taxonomy of harms covers the main types of harm found in online advertising, both in terms of the categories of harm as well as the main actors impacted by those harms?

The taxonomy captures a set of practices or actions that could occur in digital advertising and provides a useful starting point for looking at the activities that can contribute or give rise to harm. However, not all harms occur everywhere, or in all supply chains, and it is important to undertake the analysis set out above, so that responses can be targeted.

In that context, and as a high-level overview, the taxonomy appears to be comprehensive. However, as we have highlighted elsewhere, the taxonomy needs to be developed further, with more detail needed to evidence where and to what extent harmful activities are occurring, what existing action is effective, and where there are gaps that merit intervention.

This is particularly the case for those harms that are a result of deliberate and/or illegal activity, where much greater detail is needed beyond a theoretical description of a harm for stakeholders to be able to understand where, how and to what extent the activity is occurring (for example, in relation to 'discriminatory targeting' or 'targeting vulnerable people'). The consultation repeats claims by respondents to the call for evidence that 'targeting can hone in on vulnerable individuals' but this does not constitute evidence that such activity is systematically occurring in practice.

7) Do you agree that our description of the harms faced by consumers or society cover the main harms that can be caused or exacerbated by the content of online advertising?

8) Do you agree that the above description of the harms faced by consumers or society cover the main harms that are caused or exacerbated by the placement or targeting of online advertising?

When considering the content of online ads, it is important to distinguish between illegal ad content (that has already been determined to be inherently harmful in some way) and other content, which is not inherently harmful. Illegal advertising content is, by nature, prohibited by law and is covered by various statutory frameworks. These should be mapped out as part of the next phase of the OAP.

Content and placement or targeting should be considered together, rather than in isolation. It is helpful that this is recognised in section 3.1 of the consultation, but that point is not carried through in the subsequent discussion of harms in the consultation document.

Content that is not illegal could nonetheless cause or exacerbate harms in certain circumstances. While targeting in itself is not a harmful practice, misuse or uncontrolled use of targeting, in conjunction with certain types of ad content, can create a risk to users. However, the risk will vary depending on the circumstances, supporting the need for a harms-led analysis to underpin the OAP policy development.

The risks that can arise as a result of the content and/or placement of ads are well-understood by industry, and are at the core of the CAP Code. The Code contains clear rules to ensure that advertisers create and target content in an appropriate way to protect children, vulnerable groups and wider society. In addition, UK GDPR contains rules that limit how personal data can be used, including for advertising/targeting. This is supplemented by ICO guidance and codes approved under UK GDPR. Enforcement action can be taken where data is used for targeting in a manner that breaches these rules.

It is also important to understand that context can be a determiner of harm. Legitimate content that has been targeted in a responsible way could potentially exacerbate harm as a result of the subjective perception of the consumer at a given time. For example, a consumer may find certain content distressing if they have just suffered a bereavement. The same is true for any other form of content or advertising that people encounter in any media (radio/print etc.). However, in these cases, advertising content or placement is not the primary driver of the harm.

We note that the consultation states, in the context of targeting:

The discrepancies between broadcast and online advertising regulation including the lack of a 9pm watershed equivalent for online advertising were noted by respondents. Although the 9pm watershed was viewed as imperfect, respondents did feel it was effective in providing a degree of insulation from adult TV content and advertising which was lacking in an online sphere.

We would counsel against perpetuating such mischaracterisations of digital advertising through the OAP. Respondents are entitled to their views, but these should not be construed as objective representations of the facts.

There is a comprehensive set of data, tools and controls available, along with specialist expertise, to ensure that digital advertising can be effectively targeted towards or away from particular groups, including to ensure compliance with advertising regulation. These include industry standard tools such as Comscore and Nielsen, as well as proprietary technologies or use of advertisers' first party data, and are more effective than blunt, time-based restrictions applied to broadcast media. It is misleading to suggest that a 9pm watershed is more effective at protecting children than are digital advertising targeting tools and technologies. This misconception must be corrected as the OAP moves forward. We would refer DCMS to the detailed exploration of precision targeting in digital advertising in the expert opinion that was commissioned to support the advertising industry trade bodies' joint response to the HFSS consultation, and it remains relevant.¹³ Annex 4 of our response also illustrates how accountability for ad placement is managed effectively in practice.

We note that 'mistargeting' is identified under the list of consumer harms. The description includes the placement of ads next inappropriate or harmful content. We consider the latter to be a business harm, not a consumer harm. It is a type of ad misplacement and should be considered as part of 'brand safety including mistargeting'. While non-advertising content itself can be harmful, the presence of ads on such sites does not constitute a consumer harm in itself.

9) Do you agree with our description of the range of industry harms that can be caused by online advertising?

While it is right to recognise that legitimate industry participants create harmful impacts for other participants, it is equally important to recognise that companies are also victims of harm when their services are exploited by bad actors or those with criminal intent.

In the next stage of consultation it would be beneficial for the OAP to use well-established industry terms and definitions for the industry harms identified to provide clarity and ensure commonality of understanding across the supply chain. These definitions, alongside a detailed commentary on the industry harms identified in the consultation, are set out in annex 8.

There are already extensive industry initiatives and tools available to businesses to address business-to-business harms (see annex 2 for list). In addition, businesses are able to build protection from business-to-business harms into contracts with other supply chain actors, and can take appropriate contractually-agreed action in cases where suppliers/providers breach agreed terms. We and our members firmly believe that existing supply chain practices operate extremely effectively to identify and address these harms. For that reason, we would recommend removing 'industry harms' from the scope of the OAP, consistent with the government's aim of focusing the OAP on the highest risk consumer harms. Where these 'harms' touch on data protection and competition law, they should in any case be out of scope, in line with the government's intention (as set out in section 1.2.4 of the consultation).

Questions 10-14: Existing regulation

¹³ https://www.iabuk.com/sites/default/files/public_files/APPENDIX-B-Professor-Andrew-Stephen-Expert-Opinion.pdf

10) Do you agree that we have accurately captured the main industry initiatives, consumer tools and campaigns designed to improve transparency and accountability in online advertising?

The section in the consultation that covers industry initiatives is brief and very limited and as a result does not accurately reflect the number and breadth of standards and initiatives that are in place, or their objectives and outcomes. Additionally, most of them exist outside the ASA/CAP framework which is the main focus of the analysis of self-regulatory efforts in this section. This risks creating a misleading impression that there are wide-reaching gaps in regulatory coverage, which simply is not the case.

Industry initiatives and standards work in concert to continue to improve practices and tackle a wide range of issues to protect both businesses and consumers. The majority of these standards deliver greater transparency and/or accountability in terms of business relationships.

The breadth and strength of these standards supports our position that ‘industry harms’ should be out of scope of the OAP. These harms are demonstrably addressed and managed by industry standards that are continually evolving and developing (see, for example, the recent announcement from May 2022 on further work to address ad fraud).¹⁴ Industry is best-placed to consider how to address such issues and to design and implement the solutions.

It is important that all existing initiatives are accurately documented in the next stage of the policy development to ensure that all stakeholders have a clear, shared understanding of the landscape. This should include capturing all relevant industry initiatives, their purpose, how they work, and their efficacy in addressing the identified harms.

To assist with developing this evidence base we have provided some further information at annex 2, which builds on detail already provided in response to the 2020 call for evidence, and are very happy to continue to support DCMS in the next phase of the OAP to ensure that it has the necessary information and knowledge to inform its policy development.

See also our response to question 14 for further details.

11) Should advertising for VoD closer align to broadcasting standards or follow the same standards as those that apply to online?

Advertising in VoD and connected TVs is increasingly traded programmatically alongside other ad formats such that the differences which led to defining separate regimes for broadcast and non-broadcast advertising are eroding. Government should consider modernising the VoD rules to mirror the non-broadcast regime with advertiser responsibility for ad content and placement.

¹⁴ <https://iabtechlab.com/blog/using-disclosures-to-combat-fraud-collaboratively/>

Most broadcast advertising regulation originates in the regulatory framework for broadcasters and broadcast media, which was designed for a relatively small and easily-defined market that was relatively static, compared to the variety and universality of digital media. This is not a suitable basis for developing regulation for digital markets, which needs to look ahead rather than attempting to replicate approaches developed for analogue ad-funded media. Reflecting this, it is helpful that the consultation recognises, for example, that it would be 'unrealistic' to create an expectation that all online ads should be pre-vetted. As a matter of principle, and in the interests of future-proofing, an open-minded approach should be adopted to future regulation of 'digital' advertising, based on consistent and agreed criteria. This would provide the basis for considering where the boundaries of regulatory frameworks should be drawn.

12) To what extent do you agree with our rationale for intervention, in particular that a lack of transparency and accountability in online advertising are the main drivers of harm found in online advertising content, placement, targeting, and industry harm?

While we of course support principles of transparency and accountability, we do not recognise that view that there is an 'evident' lack of transparency and accountability that is the primary driver of harms. As outlined above, harms have a diverse range of drivers, which need to be understood in detail in order to tailor interventions.

We do not believe that a generalised approach - i.e. setting out two very high-level 'drivers' for all types of harms - is the most useful way to consider what the most effective approach would be in respect of any individual harm. In addition, 'transparency' and 'accountability' are nebulous terms that mean different things in different contexts, and to different parts of the supply chain.

We do not agree that there is a widespread lack of transparency and accountability in digital advertising. In annex 4 we have set out details and examples how accountability is standardised in the ecosystem.

We note that the consultation states: *'The majority of stakeholders (59%) called for significant regulatory reform, with many saying the current regulatory system was insufficient. In particular they highlighted a lack of compliance to regulations due to inadequacy of funding and effective enforcement powers.'* The views of a small sample of self-selected respondents is not a sound basis from which to draw conclusions about the need for intervention. The consultation does not put forward evidence that substantiates these statements, including that there is a lack of compliance – which we do not believe there is – or that funding or enforcement powers are ineffective within industry-led self-regulation, codes and standards. It is critical, as we have emphasised elsewhere, that a clear distinction is drawn between criminal and illegal activity and other activity that may cause harm but is not deliberately malicious.

We are concerned that, beyond the stated objective of improving transparency and accountability, there is no particular rationale put forward for any specific intervention suggested in the consultation. The rationale and the options are very high level and general, and not tied to any evidence-led work to identify gaps in the current self-regulatory and industry standards landscape, or how intervention would improve

consumer outcomes. As-written, the consultation proposals would capture a very broad range of players without clarity as to the specific objective of each recommended action and how it would address a particular harm or set of harms, or what value these proposals would add to what is already in place.

The next stage of policy development needs to explore each harm in turn (prioritised according to those most likely to pose a high risk to consumers), and entail more analysis (of scale, nature, prevalence, how and where it manifests, the risk to consumers). Only then will we be able to understand whether there are harms that are not sufficiently addressed, or not at all - and therefore where intervention may be warranted.

As a result, at this stage, we do not agree that the rationale for intervention presented in the consultation is sufficiently developed to support regulatory change.

13) To what extent do you agree that the current industry-led self-regulatory regime for online advertising, administered by the ASA, to be effective at addressing the range of harms identified here?

The ASA regulates the content, placement and targeting of ads and holds advertisers primarily accountable for meeting the requirements set out in the CAP Code. Its effectiveness needs to be considered in the context of its purpose and remit. The ASA is constituted to address category A (consumer harms), not to address the entire range of harms listed in the consultation document 'taxonomy of harms'. DCMS should ensure that, in considering this question and evaluating respondents' views, that it limits its assessment of the effectiveness of the ASA system to how the system addresses harms arising from paid online ads by bona-fide organisations, which mislead, harm or offend their audience (category A harms) and not other harms that are specifically outside its remit.

With that caveat, we fully agree that **the current industry-led self-regulatory regime for online advertising, administered by the ASA, is effective at addressing the harms that are within its regulatory remit.**

The ASA's independent and self-regulatory status allows it the flexibility to be at the forefront of worldwide regulation, looking at how best to regulate new advertising technologies and mediums (e.g. influencer, native and affiliate advertising) early, as well as how ads are targeted online. This flexibility also allows CAP and the ASA to update its rules and guidance on a rolling basis - far quicker and with more specificity than it would be possible to do under statutory regulation.

Annex 5 outlines the main regulatory approaches delivered by the ASA, their purpose and outcomes.

The ASA has a proven track-record of acting on emerging advertising regulatory issues, very often through proactive initiatives. At any given point in time the system is engaged in reviewing its rules and guidance to ensure that they remain effective, comprehensive and fit for purpose. For instance, it is currently (as of May 2022) engaged in work to address a number of issues that CAP/the ASA have identified as a priority, some of which have also emerged in the OAP consultation document. This

includes: reviewing the existing regulation of ads that give rise to body image concerns; a targeted workstream focusing on non-disclosed influencer ads; and a comprehensive review of CAP's Age-restricted Ads Online guidance to strengthen advertiser accountability and improve compliance.

The recent launch of the IPP initiative formalises the relationship between the ASA and platforms and intermediaries and the ways in which they help the ASA promote and enforce the CAP Code. While the IPP will ensure a more effective cross-supply chain approach to tackling harm, it is important that its nature is fully understood and accurately represented as the OAP moves forward. The IPP pilot does not extend the remit of the ASA (which regulates advertisers and their advertising) and has been carefully designed in order not to cut across policies and processes covered by other industry codes and standards. See Annex 5 for full details of the IPP.

We would counsel Government against recommending overlaps or extending the ASA's remit into very technical areas in ways that could compromise its core remit. The ASA/CAP is one component of a wider regulatory framework comprising complementary digital-native codes and standards.

The ASA is not set up to deal with criminal activity. As we have stated in our previous answers, criminal actors, by their nature, operate outside of and/or disregard regulatory systems, both self-regulatory and statutory. Industry regulation will not stop these actors, who are highly-motivated and will seek to re-enter the system with a different name/different form. To effectively address the root cause of category B harms (i.e. deliberate, illegal activity) requires law enforcement to take a proactive role in ensuring that bad actors, once identified, are permanently prohibited from re-entering the market.

In summary, we believe that the ASA's vast experience of regulating UK ads, including its 20 years of regulating ads online, coupled with its responsiveness and its ability to secure buy-in from industry to drive up standards, makes it best-placed to continue as the UK's frontline ad regulator. The ASA is developing a new 3-year financial plan to ensure that it has the necessary funding to reflect the increasingly digital nature of the ad market and the contribution levied on online advertising has risen from 35% of the total levy in 2018, to 50% projected in 2022. We see no case for, or value in, proposing that the ASA system is constrained by or replaced with new, statutory regulation. Any changes eventually proposed through the OAP should strengthen, not undermine, the consumer protections afforded by the ASA, both online and offline.

14) Do you consider that the range of industry initiatives described in section 4.3 are effective in helping to address the range of harms set out in section 3.3?

As already noted, the online ad industry has a long history of working collaboratively to design comprehensive and effective initiatives, standards and technical tools to address and tackle harms. These are catalogued in annexes 2 and 4 which explain in detail how these initiatives are effective at addressing a combination of Category A and C harms set out in the consultation taxonomy. As with our response to question 13, we must stress the importance of DCMS limiting its assessment of the efficacy of any given standard, etc. to how well it achieves its stated purpose. It is legitimate to identify

gaps where no protections exist, but a standard should not be considered wanting if it does not achieving something that it is not intended or designed to achieve.

Building on our response to question 10, there appears to be general under-appreciation of the role and value of industry-led initiatives, both in the OAP and more generally in the policy sphere. Industry-led initiatives, and the bodies and industry groups that oversee them, are able to understand problems, set objectives, agree standards and principles, and identify how they should work in practice, in a way that prescriptive, rules-based statutory approaches would not be able to achieve. They are also able to adapt and evolve quickly as the market changes, and as standards/business needs change. The Digital Regulation Plan explicitly recognises the role of industry-led and technical standards, and the OAP itself sets out the Government's desire to support and build on existing standards. We encourage DCMS to use the next phase of the OAP to explore these options more fully and acknowledge how they complement the ASA's work.

Questions 15-19: Oversight options and measures

15)

- (A) Which level of regulatory oversight do you think is appropriate for advertisers?
- (B) Which of the following levels of regulatory oversight do you think is appropriate for platforms? Option 1, 2, 3 or other.
- (C) Which level of regulatory oversight do you think is appropriate for intermediaries? Option 1, 2, 3 or other.
- (D) Which level of regulatory oversight do you think is appropriate for publishers? Option 1, 2, 3 or other.

[Options: An overview](#)

Introduction

While we welcome the efforts in the consultation to describe and understand the various actors and their respective roles in the ecosystem, and in different supply chains, we do not agree that an actor-led approach is the right way to think about tackling harms. There is no obvious link between the analysis in previous sections and options 1, 2 and 3.

We do not support the underlying premise of question 15, which suggests that levels of oversight should be determined by the nature of the actors' role/place in the supply chain. The 3 options for regulatory oversight identified in the consultation cannot be considered in the abstract. Instead, we reiterate our strong view that regulatory change should be driven by a focus on addressing harms in a targeted way. By considering the nature of each individual harm, we can develop specific solutions, with appropriate apportionment of responsibility and the level of oversight required determined on a harm-by-harm basis.

The three options considered are also too limiting. In line with the principles set out in the digital regulation plan, the OAP should consider the full range of tools that can be used to manage any individual 'harm', starting with non-regulatory tools.

We should also be clear that the consultation identifies some harms/activities that we aren't persuaded are occurring in practice, or if they are, are not occurring systematically – for instance, discriminatory targeting. Subject to these activities being explored further in the next phase, and getting to a better, shared understanding of the issue, industry could explore whether awareness-raising or guidance may be needed to ensure that marketers and others are aware of the rules and how to comply with them (e.g. in respect of targeting and protected characteristics)

As it stands, the case for intervention put forward in the consultation falls short of the bar that government set in the Digital Regulation Plan.

Options – an initial view

Option 1

Consideration of future options for a regulatory framework needs to acknowledge that the 'status quo' of regulation and self-regulation comprises both the ASA system **and** the comprehensive set of industry codes and standards that operate alongside it, addressing those areas that the ASA does not. The consultation states that *'the government wants to move away from a model which focuses on holding advertisers accountable, to deliver a holistic, cross-sector approach which looks at the roles of each actor in the ecosystem and how they can facilitate the minimisation of harm'*. In practice, both of these approaches already exist and are complementary to one another, and need to be maintained. We have demonstrated how this is the case in the detailed information provided in the annexes to our response.

We are confident that this existing regulatory framework provides appropriate coverage of the harms identified in the consultation. We strongly support the ASA continuing to deliver its existing functions in line with its existing remit, and other industry groups and bodies continuing to develop and promulgate technical and digital-native regulation according to their own remit.

A statutory approach/regulator would not be able to effectively replicate these functions and no evidence has been forward in the context of existing standards and initiatives to demonstrate that a applying a statutory approach to the same challenges would add value or deliver something that the market cannot. Therefore, the bar for regulatory intervention has not been met.

However, we recognise that there are ways that we could improve and strengthen industry standards to further bolster coverage. We therefore welcome the statement in the consultation that *'The government supports and encourages the adoption of these standards and looks to support further development of standards that aim to address how supply chain opacity can contribute to consumer harms.'* The industry is keen to continue discussions with government as part of the OAP process about how it can support and encourage uptake of standards. This could include industry action and/ or support for/endorsement by different stakeholder groups of standards schemes. For example:

- Advertisers and bodies such as the Advertising Association have championed wider adoption of the IAB UK Gold Standard in order to continue to drive implementation of and its component initiatives, including as it evolves to encompass new standards and emerging areas of the market;
- The ASA plans to implement new accountability standards for advertisers in relation to advertising of age- restricted products and services (and this work is already in train);
- The evaluation of the IPP pilot will consider the value of extending principles to other types of intermediaries

Responsible companies have invested significant amounts of time and resource in developing and implementing industry standards to minimise risk and harm. It is important for a sustainable, trusted digital advertising market that such investment is incentivised and rewarded, including in terms of ad spend. We note that the consultation suggests that one possible ‘measure’ to build on industry standards and best practice could be *‘for platforms and publishers only to accept advertisers which have these memberships, in order for these to become an industry standard.’* In practice, the system works in the opposite way: advertisers choose where to invest their budgets, and therefore should be choosing to work with those companies that are participating in or certified under relevant schemes (where appropriate, noting that not all standards are universally applicable).

As part of the next phase of the OAP, government could support industry to convene on a cross-sector basis to:

- (i) Identify how take-up of standards could be improved and;
- (ii) Identify what more could be done collectively, including by existing statutory regulators and law enforcement, to target action against bad actors. IAB UK and its members stand ready to support DCMS in taking forward these proposals.

Option 2

At this stage we cannot give a final view on option 2 for two reasons:

- Without clear analysis of where harms occur in the supply chain, there is no way to assess where a statutory backstop could be most effective. A non-targeted approach (e.g. a statutory backstop for all the functions of the ASA) would not tackle the most damaging category B harms at source, and would ultimately create unnecessary and unjustified costs for good actors who are already compliant.
- All three permutations of option 2 are based on a misunderstanding of OPNS/ the IPP. As outlined in response to question 13, the IPP does not regulate the systems and processes participating companies use to tackle harms. Instead, the IPP formalises how intermediaries and platforms help the ASA promote and enforce the CAP Code across the supply chain. All permutations of Option 2 focus on intermediaries and do not recognise that intermediaries in the open demand supply chain cannot act alone and the fight against harms requires action by all.

To the extent that the ASA/CAP system is being considered, the case has not been made that any additional or different regulatory oversight is warranted. As the evidence shows, the ASA has never had the need to refer a case concerning paid-for advertising to one of its existing regulatory backstops. Compliance with the rules is high, and the ASA is able to secure compliance when breaches are identified, working with other regulators, such as the CMA, where necessary.

While we are strongly of the view that the current system is highly effective at addressing harm where it occurs, it is clear that more needs to be done to tackle illegal harms that fall within category B. As discussed under questions 6-9, category B harms tend to impact mainly on intermediaries and platforms and are therefore largely unsuitable for ASA-led interventions. As these actors sit outside the remit of the ASA, a statutory backstop to the ASA is not the optimal approach to addressing harms experienced in this part of the supply chain.

In considering the effectiveness of existing activity and initiatives, the next phase of the OAP should include mapping relevant work under way to address underlying illegal and criminal activity by existing regulators (other than the ASA) and through other sector-specific workstreams. This will help ensure that there is a complete picture of what is already in place and help identify where there are gaps, or where and how improvements could be made.

Fraudulent ads are a key area of concern for industry. In the next phase of the OAP, we suggest that government focuses efforts on continuing work that is already in train to address fraudulent/scam ads. Illegal and criminal harms such as these are complex matters and successful action requires collaboration across the supply chain involving functions of the state including law enforcement and the Home Office.

The consultation states that *'...the supply chain has limited incentive to refer [harmful] activity to authorities due to the costs, and the lack of an existing mechanism by which to do so.'* We do not agree that responsible companies lack an incentive to refer behaviour that is damaging to them and to the wider ecosystem to official authorities and no evidence has been put forward to show that that is the case. As the consultation recognises, solutions need to be targeted and proportionate. However, with that context, a mechanism to bolster links between industry (particularly initiatives like TAG, which enable industry to pool intel on bad actors) and law enforcement would go a long way towards tackling issues at source and ensuring that the supply chain becomes a hostile environment for bad actors.

A similar approach is in place to tackle CSAM, where good actors take steps to detect and disrupt criminal activity, law enforcement undertakes targeted investigations and prosecutions and other solutions are pursued for market participants who do not adopt good practice or are absent from industry schemes. CSAM and fraud are very different in nature, and manifest differently. Fraud, by its nature, is deceptive and fraudulent activity often presents as legitimate which makes it difficult to identify. However, the broad principles behind this model could usefully be considered within the Home Office-led Fraud Action Plan (FAP). The OAP could endorse this existing avenue of work (i.e. the FAP), which is already convening stakeholders, reviewing evidence, options, and looking at fraud holistically, and allow it to evolve. This would be preferable and more

efficient than to initiate a separate workstream or siloed discussions about how to address the advertising aspects of online fraud.

In this, and other similar areas, government could usefully use the OAP to focus efforts on creating or improving information-sharing mechanisms between industry and law enforcement agencies to ensure that, once industry has identified primary actors responsible for criminal behaviours, these actors are held to account and prevented from repeatedly attempting to re-enter the market.

We have included some initial, exploratory thinking on what a coordinated approach could look like at annex 6.

Option 3

Option 3 envisages a single statutory regulator that would write, regulate, and enforce a 'Code'.

While we acknowledge that a strengthened mechanism for dealing with category B illegal activity is needed (particularly in the case of scam/fraudulent ads), we do not agree that that this should dictate how we approach all other types of harm. In our view, option 3 is disproportionate – not only would it burden code and standard-compliant businesses across the supply chain with new costs relating to compliance and system change, it also presents an 'existential' threat to the industry-funded ASA, and risks displacing the wealth of expertise and industry knowledge constituted in the ASA and CAP.

The consultation states in several places that certain 'measures' or 'standards', or existing regulation, would necessitate or could only be effective via '*a full statutory approach that would make available statutory powers of enforcement for all codes introduced/signed off*'. These statements are not substantiated with evidence, and it is too soon in the policy development process to draw firm conclusions. Further work is needed to ensure that the next stage of the policy development focuses on building the evidence base and on in-depth, structured industry engagement to develop a stronger foundation from which to consider potential solutions.

We reiterate our view that option 3 should be ruled out at the next stage of the OAP policy development. Such an extreme statutory intervention is not justified by the evidence and is not a proportionate response to the challenges the OAP is looking to address.

The Government has explicitly recognised the need for businesses to have regulatory certainty, including in the Digital Regulation Plan:

Well-designed regulation can have a powerful effect on driving growth and shaping a thriving digital economy and society, whereas poorly-designed or restrictive regulation can dampen innovation. Nowhere is this more important than digital technologies, where it is crucial for the government to deploy regulation in ways that enable the potential benefits of new innovations, and provide certainty to businesses and investors alike.

Focusing on other, more suitable options (not only those currently identified in the consultation) would remove the high degree of regulatory uncertainty that the inclusion of option 3 creates, by threatening existing regulation and investment in it. This would be damaging to the UK market in general, and to consumers and businesses.

16) Following on from your answer to Q14), do you think a mix of different levels of regulatory oversight may be warranted for different actors and/or different types of harm?

In principle, we support the openness to different types and levels of regulatory approach and we also agree with the principle that there can be different approaches to address harms in different advertising business models that deliver the same benefit for consumers. This will ensure that policy options are proportionate in their respective contexts.

However, oversight should be determined following a harms-based approach as opposed to an actors-based approach, which, if followed through, will arrive at the right conclusions about what oversight is needed for any particular harm, in different supply chains and for different types of actors. For example, the role and responsibilities of intermediaries and platforms should be examined separately to identify what is the right approach in each case rather than assuming that approaches should be identical.

The government sets out its intention through the OAP to *'...consider how we can build on the existing self-regulatory framework, by strengthening the mechanisms currently in place and those being developed, to equip our regulators to meet the challenges of the online sphere, whilst maintaining this government's pro-innovation and proportionate approach to digital regulation.'* As we have made clear in our response, we support this starting-point and there should not be an assumption that new or different regulators or regulatory oversight is necessary. It is also important that the future regulatory framework is sufficiently flexible to accommodate a wide range of types of tools and approaches, including in relation to oversight. Any proposals for new or different regulatory oversight must take into account what is already in place, be targeted and outcome-led, and not unfairly burden good actors.

17) What is your preferred option out of the 3 permutations described under option 2?

As noted in our introduction to this section, we do not currently support any of the three permutations for option 2. The principal reasons for this are:

- The permutations put forward in the consultation relate solely to the ASA/CAP Code. Whereas existing regulation (both industry regulation, and statutory regulation) comprises much more than this.
- The permutations all focus disproportionately on regulating intermediaries and platforms, and do not consider what action should be taken by others in the ecosystem. This does not reflect a coherent, system-wide view which is essential to considering how best to tackle harms in intermediated supply chains, which cannot be done by intermediaries alone.
- There are already statutory backstops in place to support the CAP Code/ASA enforcement and we agree that these should remain in place.

- Given that the IPP is currently being piloted, it is not the appropriate time to make decisions regarding its future. As explained in annex 5, the IPP is not a Code.
- We do not agree with the assertion that '*the key evidence of the need for a backstop regulator is the current self-regulatory frameworks' challenges in dealing with illegal harms and actors*'. This statement misunderstands and misrepresents the role of self-regulation. The fact that illegal actors are exploiting digital advertising does not mean that a single, advertising-specific, statutory regulator is needed to backstop the CAP Code or IPP.
- Nor do we believe that the need for a coherent framework that gives consumers clear routes for complaints means that this can only be delivered through a single regulatory body. A combination of organisations, bodies and regulators can work effectively in concert with clearly-defined roles and remits, as is the case in many other sectors and industries.
- Separate work is needed to explore the existing initiatives to address unlawful or illegal activity where it manifests in the digital advertising space, and how these could be strengthened with targeted law enforcement investigation and prosecution of primary offenders. Regulatory approaches are not suitable to tackle these harms.

Questions 18 -19: Measures

Measures: An overview

Introduction

We are concerned that the measures set out in section 6.1.3 constitute an ex-ante approach to regulation. Ex-ante regulation is only justified in instances of systemic market failure, and consequently the bar for ex-ante regulation in all other sectors is extremely high. This bar should not be set lower for digital markets.

By its very nature, an ex-ante approach would be incompatible with the objectives set out by the Government in its Digital Regulation Plan, which make clear that the digital economy must remain adaptive and internationally competitive and that regulatory intervention must be justified. Nor is it consistent with the Government's 'principles for regulation'¹⁵, particularly 'proportionality' and 'recognising what works'. Adopting an ex-ante approach for the online ad industry risks hampering the development of one of the fastest growing sectors of the UK economy, driving businesses and investment to other markets that have more proportionate regulation and favouring bad actors.

It is also unclear how the measures proposed are connected, if at all, with Options 1, 2 and 3 that are presented earlier in the consultation paper. It is welcome that the consultation recognises that there should be differentiated actions by each player and that there can be different approaches for each. However, the proposals are presented

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexite.pdf

as discrete actions and lack a persuasive analysis as to how they would individually, or in combination, be effective against any particular harm identified in the consultation.

We note that many of the proposed measures refer to 'high risk' advertising. This term needs to be more tightly-defined, so that the scope and purpose of any future proposals that emerge from the OAP is clear.

The OAP envisages a framework that represents proportionate responsibilities for platforms, intermediaries and publishers (we note that, for completeness, this should also include advertisers and media agencies), which is the basis of existing industry-led codes and standards. As we have described elsewhere (see annexes 2, 3 and 4), in intermediated supply chains, intermediaries cannot resolve issues alone, and complementary action by other supply chain actors is needed. This should be acknowledged as the policy development moves forward.

We are concerned with repeated references in the consultation to a lack of incentive for businesses to implement or adhere to rules and standards. The UK digital advertising market is characterised by companies that are fiercely competing for market share, and often operating on low margins. It is firmly in the interests of responsible companies to ensure that bad actors are kept out of their systems and there are powerful commercial incentives for them to act, particularly among challenger firms who see investment in industry codes and standards as an important differentiator. There are significant commercial, business and reputational risks to companies who fail to act or do not adhere to standards. These market forces should not be underestimated.

Market forces are also a very powerful lever in driving adoption of standards, and this feature should be a core part of the policy development of the OAP – advertisers wield the most power in the market, and their choice about where to invest their advertising budgets is one of the most powerful drivers of change. Publishers also exercise power in their choice about which companies to work with, which is similarly influential.

18). For each of the actors, which measures do you support and why?

Considering specific measures for different actors is premature at this stage. A detailed exploration of possible measures needs to be preceded by further exploration of harms, only after which can potential options be identified. It is just not possible to understand which actors may need to be part of a solution without first understanding which actors have a role in or contribute to harmful activity, or can influence it. The OAP's aims are centred around a holistic review and a coherent approach that looks across the ecosystem. A siloed approach to identifying 'measures' for different sets of actors is not consistent with those aims.

As set out elsewhere in our response, the IAB strongly supports the OAP taking a harms-based approach to regulatory policy development. In line with that, in phase 2 we would recommend that government undertakes a thorough gap analysis to understand where, if at all, there is a demonstrable need for change or improvement. Any emerging proposals should be supported by a clear and evidenced harms-based rationale and be more tightly-defined.

For the proposed measures, in almost all cases, the potential impacts, so far as we are able to assess them from the limited descriptions available, are significantly underestimated (and the same applies to the published Impact Assessment). There is currently little to no detailed assessment of any compliance/ implementation costs associated with the measures. Where costings are provided, they are often inaccurate. Disparate and costly measures without a clear purpose are not the route to achieving the positive outcome sought.

Business impact can only be properly understood once detailed proposals are available and therefore it is currently not possible for the IAB or its members to fully evaluate either the benefits or the costs of any of the measures put forward in the consultation. We have not, therefore, provided a detailed commentary on each measure. However, as an example:

Case study: Record keeping

- *Data storage is one of the biggest costs that businesses engaged in digital advertising face, and yet this is not reflected in the identified impacts.*
- *Standardised record-keeping by publishers, platforms and intermediaries would be duplicative and resource-intensive without an obvious beneficial outcome for consumers.*
- *Data needs to serve a specified purpose and does not equate to insight in and of itself. For example, data to illustrate the number of ads blocked does not illustrate the scale of the problem, or associated harm.*
- *As-written the consultation does not acknowledge the interplay between a possible data-collection requirement and GDPR restrictions.*
- *It is the strong view of our members that it is sufficient for necessary data to be produced in response to proportionate and targeted information gathering powers of existing regulators and via investigatory powers for enforcement agencies. It is not justified to suggest prospectively collecting and storing data on every ad that is served, 'just in case'.*
- *If government lacks sufficient data to inform policy-making, it should fund a study, or invite industry to share research.*

We also have a number of other concerns about the proposed measures:

- The measures set out in the consultation are largely focused on display ad trading/display ads on social media. There is no evident reasons for this, but it supports the need to ensure that responses to harms are considered coherently, and are targeted at where and how those harms are occurring. This needs to be considered at a granular level, including for example which supply chains, which types or formats, which buying models, etc. Without this, it is not possible to understand whether any particular measure is proportionate, or will be effective.
- Some of the underlying assumptions are inaccurate, i.e.:
 - That repeat offenders are currently tolerated in the ecosystem. In reality, repeat offenders are costly to a business and many IAB members would delete such accounts as soon as they became aware of the recurrent problematic behaviour.

- That companies do not already have robust and effective onboarding processes and ad policies – this is established standard practice across the board.

Recommended next steps: starting with evidence

We believe that all interventions must be designed as part of a harms-based, proportionate approach that is led by evidence both in terms of harms and potential solutions.

Where necessary this should include commissioning original research in relation to priority harms. As we note in our response to the Impact Assessment, even the evidence base for fraud (as it relates to online advertising), which is a high priority area for the Government, is not well-developed.

Through phase 2, government should thoroughly explore through the evidence if and where there are gaps left by existing approaches, and provide a detailed evidence base to support the need for and objective of any interventions, including any new regulation.

Our introductory narrative sets out what we envisage the next phase of the OAP could entail, to build out and substantiate the evidence base and inform the next stage of the policy development.

19. Are there any measures that would help achieve the aims we set out, that we have not outlined in the consultation?

As our response to the previous questions has made clear, the existing regulatory framework already goes a long way to addressing a range of harms and to providing transparency and accountability in relation to specific market needs.

We have also made clear our view that there are a number of stages in the policy development process that must be completed before specific measures to address any particular harms can be properly considered.

We do believe that there are options and avenues that government can and should explore in the next phase of the OAP that would help achieve its aims of developing a robust, coherent and agile regulatory framework that protects and builds on what is working, and focuses on how to address the malicious, illegal and criminal behaviour that gives rise or contributes to serious consumer harms and cannot be addressed through regulatory measures.

The OAP could usefully initiate or accelerate work in the following areas:

- Help/support industry efforts by recognising and endorsing existing standards. This needs to include ensuring that the buy side plays its role, where appropriate, in adopting or driving adoption of standards that benefit the whole ecosystem. Responsibility and accountability needs to be considered end-to-end.
- Focus on fraud as a high priority area. where work is already under way. We have set out our initial proposals in this area in annex 7.

- Through the Government using its convening power to bring together the right stakeholders to focus on category B harms, particularly in terms of ensuring that regulators and law enforcement are both engaged in relevant issues and are resourced to tackle criminals.
- Relatedly, there is the potential for this work to also include looking at how to address the criminal behaviour behind B2B ad fraud e.g. through better information-sharing to prevent criminal actors defrauding legitimate advertising market participants.¹⁶

Case study: Effective partnership working between industry, regulators and law enforcement to tackle piracy

- The Infringing Website List was developed as a disruption tactic in the fight against intellectual property crime. It was created through a partnership of the City of London Police Intellectual Property Crime Unit, supported and funded by the Intellectual Property Office, the rights holder community and the ad industry.
- The IWL is an online portal providing the digital advertising sector with an up-to-date list of copyright infringing sites, identified by the creative industries, evidenced and verified by PIPCU, so that advertisers, agencies and other intermediaries can avoid and/or cease advert placement on these illegal websites.
- Research has proven that the IWL has significantly minimised the occurrence of mainstream brand advertising on pirate sites. As a result, PIPCU was able to identify residual sectors of advertising and carry out targeted intervention with the gambling industry and its regulator, the Gambling Commission, in response to evidence that showed that they were placing ads on IWL sites
- Relatedly, TAG's Brand Safety Certified Principles now include anti-piracy measures and TAG has expanded its remit to additionally focus on tackling online ad-funded piracy.¹⁷

The IWL was effective because it was developed through a robust process, involving:

- A multi-stakeholder approach
- A recognition of the need for initial research to establish an evidence base of the nature of issue, where it was occurring and who was involved in it
- A process to identify what steps good actors could take, i.e. to disrupt the ad revenue flowing to pirate sites
- Providing appropriate protections for legal liability for advertising companies so as not to put them at risk of legal repercussions for implementing the IWL
- A recognition that the ad industry was only one part of the solution, and that a range of other tactics were also needed to address the problem, such as payment service and internet hosting disruption

¹⁶ There are [existing models](https://www.isao.org/information-sharing-group/sector/trustworthy-accountability-group-tag/) for industry information-sharing via TAG with law enforcement in the US that could provide a useful basis for exploring closer partnership working in the UK. See e. <https://www.isao.org/information-sharing-group/sector/trustworthy-accountability-group-tag/>

¹⁷ https://www.tagtoday.net/winning_fight_against_ad-supported_piracy

- Critically, prevention tactics were implemented **alongside** effective law enforcement to address bad actors, which was prioritised and resourced by the IPO
- Regular review and monitoring to evaluate the efficacy of the solutions, and to keep up with changes in the locus of the illegal activity (copyright infringement)
- Targeted, evidence-led interventions with particular sectors, e.g. the gambling industry