

Don't make advertising the next sewage scandal:

accountability and oversight in UK online advertising regulation

February 2024



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**Branded Content
Governance Project**



Project Partners





Branded Content Governance Project

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Introduction

This report on the UK Online Advertising Programme consultation argues that the Government's proposed action is unduly narrow in scope. It also argues that it is inappropriate to ask the advertising industry - which the original consultation placed under scrutiny - to provide the solutions alone, without wider public involvement. This report follows from the *Online Advertising Regulation Policy Briefing* produced and published by the Branded Content Governance (BCG) Project in June 2023. This report is written by Professor Jonathan Hardy, Principal Investigator for the BCG Project. A shorter 'commentary' version is also available.

Imagine this; a government minister sets up an enquiry into the regulation of advertising. This enquiry asks whether stronger regulation is needed, with greater legal powers beyond the industry self-regulatory system in place. A majority of respondents agree this is needed, while those invested in the existing arrangements object.

Another minister takes over while the first is on maternity leave. The stand-in now proposes a new approach. The key players in the existing self-regulatory system will be invited to join the minister in a taskforce. Together they will meet and manage the next steps. The industry actors and arrangements that were placed under wider public scrutiny by one minister are now the ones invited to prepare the fix.

The public are offered summary minutes, then an action plan, but no wider role. Meanwhile, the Government does not even publish the responses made to the original consultation, breaching its own best practice rules. Imagine that.

The Minister of State, Julia Lopez MP, initiated the Online Advertising Programme in consultation March 2022 (DCMS

2022a). The consultation asked whether the current system of advertising self-regulation was sufficient or needed strengthening to deal with the massive expansion of advertising in the digital ecosystem, including by those who, to put it charitably, had limited 'buy in' to the claimed powers of advertising 'self-regulation'.

The government invited comments on three options: advertising self-regulation could continue largely as it was, overseen by the Advertising Standards Authority (ASA), but with new requirements for intermediaries, publishers and platforms; self-regulation could be underpinned by strengthened statutory regulation; or option 3, a statutory regulatory system could be established.

Option 3 was the most favoured option by those the Government identified as being 'concerned with illegal harms and protecting vulnerable groups', with Option 1, industry self-regulation, being the least supported, 'with the exception of advertisers (DCMS 2023a). A majority of those who selected an option favoured stronger statutory regulation (33% for option 3 – full statutory,

19% for option 2- backstop). Rebutting that powerful call for strengthened legal enforcement, the Government has instead promised narrow legal changes while creating a taskforce reflecting the Consultation's least-supported option: advertising industry self-regulation.

Online Advertising Programme Consultation

Three options:

1. Self-regulatory approach. Maintain Advertising Standards Authority (ASA) regulation; new requirements for intermediaries, publishers and platforms

2. Statutory regulator to backstop more fully the self-regulatory approach. ASA as the frontline regulator but 'backstopped more fully by a newly-appointed statutory regulator, to provide stronger powers of enforcement where needed'.

3. Full statutory approach 'appointing a statutory regulator to introduce measures designed to increase transparency and accountability across the ecosystem'.

The Online Advertising Programme Consultation

There were 115 responses to the 2022 OAP consultation. 34 were unspecified. However, out the identified types, the largest number represented civil society organisations (19) and consumer groups (10), indicating the level of concern to address the governance of digital advertising and social media marketing today.

For industry, the Government’s categories for respondents were marketers (12) and media agencies (2), together with platforms (7), broadcasters (4) publishers (4) and other media-marketing intermediaries (2).

A process of asking questions, ‘opening up’ was initiated. Vociferous supporters of the existing system demanded that the debate be closed down.

Option three, a statutory regulator, should be ruled out, removed from discussion altogether, argued the Internet Advertising Bureau, among other members of the self-regulatory system: ‘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’ (IAB 2022, cited in BCG Project 2023: 39).

This was a call for ‘regulatory space’ to be shrunk, placing the statutory option beyond the

sphere of ‘legitimate controversy’ (Hancher and Moran 1989; Hallin 1986).

Here was one of the many paradoxes encountered. The purported goal of the self-regulatory system is to serve the public, not the industry alone. Yet, the Internet Advertising Bureau and other members of CAP argued that a statutory system should not even be contemplated and discussed.

Submission Type	No.
Unspecified	34
Civil Society Organisations	19
Marketers (advertisers/ brands)	12
Consumer Groups	10
Regulators	8
Academia	8
Platforms	7
Individuals	5
Broadcasters	4
News Publishers	4
Media Agencies	2
Intermediaries	2
TOTAL	115

Publishing Consultation Responses

It is normal practice that consultation responses are published alongside the formal response made by the Government. This is in line with the Government's own guidance on the conduct and reporting of public consultations (Cabinet Office 2018). However, this was not done. So, there is currently only limited data in the public domain available for this consultation.

The Government's '**Response to the Online Advertising Programme consultation**', published in July 2023, provides a list of the named respondents (77) and identifies the type of organisation for 29 of the 38 anonymous responses, with the remaining 9 being identified as 'other'.

38 Anonymous respondents (DCMS 2023a):

- 4 academics
- 4 advertisers (including brands)
- 14 consumer and civil society groups
- 1 media agency
- 9 marked as 'other'
- 1 online platform
- 5 private individuals

The numbers provided cannot be independently verified and so matching the 38 'anonymous'

respondents (9 of which are 'other') with the 34 'unspecified' respondents cannot be completed accurately.

Some respondents self-published their responses (although some of these may be abridged or redacted versions of the actual submission made). However, in the absence of publication of the (non-confidential) submissions, we are dependent on the Government's own Response. This document does not provide the level of detail and disclosure that would enable a full and independent assessment of the contributions, as discussed below.

According to the Cabinet Office (2018: 2) document *Consultation principles*:

I. Consultation should facilitate scrutiny

Publish any response on the same page on gov.uk as the original consultation, and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.

The Government's Response to the Online Advertising Programme consultation

In May 2023, the Rt Hon Sir John Whittingdale MP, Minister of State for Media, Tourism and Creative Industries took over, providing maternity cover for Julia Lopez MP. Whittingdale oversaw the Government's response to the OAP consultation, published on 25 July 2023, which marked a radical departure from the approach set out in the original consultation. The 2022 consultation, and the impact review that supported it, was built around a case that the status quo was unsustainable, and that some strengthening of legal provision was necessary to deal with the growth of the online advertising ecosystem.

The Government's response to the consultation has so far taken three main forms. First, the Government has indicated that there will be future legislation. Second, the minister established a taskforce, 'bringing together industry and government to build the evidence base and drive forward non-legislative action' (DCMS 2023e). However, a third key move was to delimit the scope for action for both legislative and non-legislative paths. What is defined as 'in scope' are first, illegal online advertising, and second, protecting under-18s from adverts for products that are illegal to be sold to them.

The Government's OAP response announced (DCMS 2023a):

[a] new and targeted regulatory framework for online advertising, focused on illegal advertising and increasing the protection of under-18s online. The new framework will introduce statutory regulation of parties in the online advertising supply chain that are not currently regulated by statute for some types of illegal advertising (including fraud and scams) or for the protection of children and young people - namely platforms, intermediaries and publishers (PIPs).

This focus is justified in order to create a 'targeted package of measures [that] will hone in on illegal adverts as defined under existing criminal provisions, and most importantly, protect children and young people from exposure to this criminal behaviour' (DCMS 2023a).

The Government does outline the intention to legislate, but sets out the circumscribed areas this will cover. These are regulations to govern illegal advertising content, and to set out requirements for platforms, intermediaries and publishers (PIP) in tackling illegal advertising perpetrated by bad actors.

These activities are also presented as specific interventions that connect with broader policy and legislative work. In its Response (DCMS 2023a) the Government

said it would build on the stand-alone fraudulent advertising duties

set out in the Online Safety Bill (now Act) and the duties provided for under the Consumer Protection from Unfair Trading Regulations 2008 (discussed below).

The Taskforce Action Plan, published in November 2023, states: 'We are also working closely with the Department for Science Innovation and Technology (DSIT) and the Department for Business and Trade (DBT) to ensure joint action against harms within this space through the Online Safety Act 2023 and the Digital Markets, Consumers and Competition Bill' (DCMS 2023e).

The Taskforce

The Government's Response announced the creation of a taskforce 'to bring together industry and government to explore non-legislative action to address illegal harms arising from online advertising [fraud, scams, ads for illegal products] and increase the protection of children [from alcohol, gambling, vapes and other products/ services prohibited to be sold to them]'. DCMS 'will look to harness expertise from within the advertising industry and support industry solutions through our non-legislative package,...to take forward in tandem to our further consultation on the legislative package'.

The Government established a taskforce of 14 people, whose non-governmental appointees are all members of the same self-regulatory system that was placed under scrutiny in the original Consultation, except for two members, both from industry-led organisations (TechUK and Stop Scams UK). The taskforce is chaired by the Minister (in 2023, John Whittingdale PM), while the deputy chair is a key member of the existing self-regulatory system placed under scrutiny, Mark Lund Chairman, of the Advertising Standards Board of Finance (ASBOF) the industry body which is responsible for collecting the levy that funds advertising self-regulation (Asbof n.d.)

There is no DCMS representation on the taskforce itself beyond the Minister. However, Robert

Specterman-Green, Director of Media and Creative Industries in DCMS, presented at the first taskforce meeting, together with Janis Makarewich-Hall, Deputy Director for Radio, Advertising and Press. DCMS civil servants also attend and take minutes. The first meeting, lasting one-hour, took place on 27 July 2023 and was followed by a further one-hour meeting on 25 October, after which the action plan was published on 30 November, with accompanying Ministerial statements made in the House of Commons and House of Lords (DCMS 2023c, 2023d, 2023e).

Minutes of both meetings were published. Those for the first meeting comprise 1.5 A4 pages (635 words) while the second was one A4 page (352 words). The taskforce terms of reference were also published (DCMS 2023b). As the word count indicates, these were summary minutes only, providing an indication of selected speakers and brief outline of topics. There is no recorded discussion of the support for stronger statutory regulation among a majority of respondents to the OAP consultation, to which the taskforce itself was the Government and advertising industry-supported response.

Domesticating Consumer Protection Regulations

The Digital Markets, Competition and Consumers Bill incorporates much of the current EU law governing consumer protection.

The DMCC Bill incorporates the provisions of the 2008 Unfair Commercial Practices Directive that address misleading advertising, with only minor differences. The Bill has not yet completed its passage, but the relevant clauses are expected to be unamended when it passes into law. This will retain these vital protections.

In its Response, the Government argued that the Consumer Protection Regulations (CPRs) remained the most appropriate vehicle for enforcement against misleading advertising at this stage, especially with the clarified position of their application to actors across the supply chain, including PIPs; 'We will continue to work with the Department of Business and Trade, Trading Standards and the CMA to ensure PIPs are held accountable for misleading advertising. We will also keep enforcement of misleading advertising under review...' (DCMS 2023a).

The CPRs prohibit unfair commercial practices by traders that are capable of distorting consumers' economic decision-making, including misleading advertising. These are currently enforced by Trading Standards and the Competition and Markets Authority. The DMCC Bill will enhance CMA enforcement powers, but there are currently gaps in investigation, complaints mechanisms and enforcement of the misleading advertising provisions.

Self-regulation under scrutiny

The self-regulatory system has the declared aim to serve the public, not the industry alone. Yet, to read the cries of horror from industry bodies that a strengthened statutory fix should even be contemplated reveals public-spirited masks slipping to reveal more naked self-interest. To make sense of this, we need a historical as well as contemporary perspective.

The UK self-regulatory system was established in the 1960s, building on earlier industry codes of practice from the late 19th century. Shortly after the Committee of Advertising Practice was formed in 1960, by the advertising and media industries, to draw up a code for non-broadcast advertising, the Advertising Standards Authority (ASA) was created to hold the industry to its own rules.

Allowing the industry to ‘mark its own homework’, under the original CAP proposal, was strongly opposed by the Labour Party and others at the time, and so the ASA was created to provide ‘independent’ oversight, with a council made up of a majority who were ‘unconnected’ with the advertising and media industries. Yet, this independence took, and continues to take, peculiar forms. The CAP and ASA are co-located, in the same building. All the staff I have met have shown a powerful commitment to serve the public and protect consumers, but the movement of staff across the industry body

(CAP) and its ‘regulator’ (ASA) weaves a complex tapestry. The extent to which CAP and ASA are conjoined prompts a set of fresh defences of self-regulation, as being more responsive and more effective because of the closeness of industry and regulator. But those defences are exposed and undermined wherever the system fails, and we are, arguably, at one such moment and critical juncture now.

The case for self-regulation, made to the public and politicians, has been that it creates a nimble, responsive, quick and effective system to protect consumers and keep advertising ‘legal, decent, honest and truthful’ (CAP 2014). To industry, another key offer was that effective self-regulation could ward off the risks of ‘stronger’ statutory regulation. It is certainly possible to accommodate and ‘balance’ serving public and self-interest, but these are tectonic plates that meet under great pressure, capable of erupting, as the OAP consultation has done, albeit far out at sea, beyond the shores of public attention.

The problems of the CAP-ASA do not derive from a lack of commitment to serving the public amongst staff. Rather, they derive from its institutional structure and history. Advertising self-regulation was established to protect the advertising industry. Such protection can certainly be aligned with protecting consumers and the public interest, and for its strongest supporters such goals

are indivisible. Yet, the CAP-ASA arrangements are complexly conjoined and so there are important questions as to whether this can provide suitably strong, effective and ‘independent’ regulation. For instance, the ASA makes much of the fact that its Council has a two-thirds majority of members who are independent of the advertising and media industries regulated, with the interests of the latter served by the Committee of Advertising Practice but also represented in the ASA Council. However, some of the nominally ‘independent’ members have media and marketing backgrounds and connections that weaken the claims made for independent oversight.

According to the ASA (n.d): ‘Two-thirds of [ASA Council members] are independent of industry and the remaining members have a recent or current knowledge of the advertiser, agency or media sectors’. The phrasing is ambiguous. If ‘industry’ means ‘advertising’ then the claim has greater merit, but if the claim is for independence from ‘the advertiser, agency or media sectors’, which the non-independent members represent, then it is considerably weaker.

Currently, two of the eight ‘independent’ members have media backgrounds. One, worked for the BBC and Channel Four and runs a television and digital media production company, the other was a former newspaper

editor and former member of the press self-regulator, the Press Complaints Commission, that was replaced by IPSO following the Leveson Enquiry. If those two are included, the Council is balanced six to six.

The reaction of supporters of self-regulation has been the same as over previous decades: to defend its benefits and suitability. But conditions have changed, as the OAP consultation set out in clear terms. The Impact Assessment produced by the DCMS (2022b) summarises the problems requiring government action as follows:

The online advertising industry has experienced rapid growth as online media consumption has increased. However, the size and growth of the sector has led to concerns about potential harms to consumers, firms and wider society. Evidence indicates user experiences of harm driven by an absence of transparency and accountability in the supply chain.

Existing measures are limited and market incentives drive easy access to online audiences, including from those intent to cause harm such as fraud. Anecdotal feedback suggests that the current self-regulatory framework is not sufficiently equipped to tackle this and a range of other harms.

The old world of advertising self-regulation involved a triad of marketers, marketing agencies and media who were largely professionally and institutionally organised. This triad remains, in expanded form, but is now part of a sextet involving platforms, the adtech system and the expansion of content

creators and other conveyers of marketing communications along a professional-non-professional axis that increases the likelihood and opportunities for these to fall outside regulatory and industry compliance (Hardy 2023).

The new system also includes a human-virtual axis that creates further challenges for transparency and accountability in marketing communications. Today's media-marketing ecosystem involves a much greater range of actors and processes, many automated, and crucially many have less 'buy in' to existing rules, whether or not those are sufficient.

The acting Minister, John Whittingdale, and supporters of the existing self-regulation place emphasis on tackling 'rogue' players, but the evidence shows non-compliance extends across the legitimate industry to include major brands, agencies and media publishers (BCG Project 2023).

In February 2024, the European Commission together with the national consumer protection authorities of 22 Member States, Norway and Iceland released the results of an analysis ("sweep") of social media posts by influencers. 576 influencer posts were checked. 97% of published posts carried commercial content, but only 20% were systematically disclosed as advertising. Some of the influencers were self-marketing; 40% of influencers endorsed their own products, services, or brands. However, the failure to disclose marketing communications involved 'legitimate' brands, and the various marketing and talent agencies involved.

The problems highlighted by the Commission are by no means limited to 'rogue' marketers or the promotion of 'illegal' products. As the European Commission (2024) states: 'Problematic marketing practices illustrate the importance of having modern robust legislation that is adequate to ensure digital fairness for consumers online'.

Scope and Limitations of OAP Proposals

The taskforce process and any ensuing consultation is formally and explicitly limited to the two issues set out in the Government response only, what it calls ‘two broad categories of in-scope harms’.

These are –

1. illegal advertising
2. protections for under-18s from adverts for products that are illegal to be sold to them (‘the inappropriate exposure of children to adverts for products and services illegal to be sold to them (‘in-scope harms’).

These are vitally important areas, but the Government has ignored the responses from a wealth of children’s, health and other civil society voices to focus entirely on the illegal actions of ‘rogue’ advertisers and not on the need to create better rules and enforcement that encompass problems across the ‘legitimate’ industry that the original consultation considered.

The Gov announced that the DCMS will carry out further consultation, beyond the industry taskforce group it established. This will provide the opportunity for public input and so those involved in the taskforce may argue that the process of creating an industry expert group, responsible for developing an action plan, that is then submitted to wider public consultation, meets the tests for transparent, accountable and effective policy design. However, strong

counterarguments may also be made. Further consultation will be limited to the two issues set out in the Government’s Response only. One can make an argument about the priorities for action, but there is a much weaker case to delimit both the scope of the original consultation, as formulated by the Government itself, and the scope recommended by a significant proportion of responses to the Consultation.

One is entitled to ask a number of questions. Is that an appropriate and proportionate response to the arguments made by a wide range of stakeholders in their Consultation responses? How does this carry forward the range of issues and potential areas of harm outlined in the original consultation?

Why does this matter?

- Governance is currently a patchwork of different regulators, with gaps and anomalies in regulatory responsibility and oversight.
- Enforcement of existing rules is patchy and warrants scrutiny and review
- The problems that need to be addressed go beyond the carefully self-limited framework of illegal advertisements and the promotion of illegal products to those under 18.
- A range of problems of advertising to children have been left unaddressed. For instance, neither the Online Safety Act,

nor the current scope of action under the OAP, address the problems of identification, labelling and separation of advertising from non-advertising content across a range of media forms and formats.

- The growing concern about disinformation includes the problems of hidden or disguised advertising and of the identification of the source of content subject to payment or other economic consideration.

Assessment

It is vital for government and industry to work closely together. Yet the Government’s response to the Online Advertising Programme, has been to propose that the very institutions placed under scrutiny and under question, should alone provide the remedy. The taskforce review has reversed the effort made in the original consultation to ensure policy reflected the broadest public interest and concern about advertising. A process of supposedly opening up important policy issues to wider public scrutiny has, in fact, been restricted to the very parties placed under review.

There have certainly been positive and welcome aspects. The pressure arising from demands for stronger regulation, for more effective enforcement and oversight, has already had beneficial impact, again part of a longstanding pattern. Advertising self-regulation has

tended to resist measures, that industry leadership opposes, until a build-up of pressure from influential stakeholders requires accommodating action. The ASA has invested in AI monitoring that will lead to significant benefits in enforcement capability. Industry bodies have made further steps to address highlighted deficiencies and seek to show that a robust and effective self-regulatory system can prevail.

The work of the Incorporated Society of British Advertisers (ISBA) and Internet Marketing Trade Body (IMTB) to improve guidelines on influencer marketing is one example of best practice. Likewise, the Branded Content Marketing Association (BCMA), project partners for the BCG Project, produces important best practice and legal compliance guidance on influencer marketing, contracting and other issues.

As the BCG Project (2023) has argued, the goal of effective governance occurring through all layers of industry self-regulation, from collective standard-setting to the decisions of teams and the actions and reflections of individuals, is common foundation for agreement.

There is no lack of sincerity in the commitments made to specific goals of good governance. Rather, the key issue, as the industry and SRO (self-regulatory organisation) responses to the Consultation highlight, is that there is opposition to a comprehensive,

coherent, legally enforceable and fully publicly accountable system of governance that can only come from a statutory underpinning across the whole self-regulatory system.

Case for statutory regulation

The historical arguments made against more comprehensive statutory regulation across media, have been based on claims for the reach and effectiveness of self-regulation, and by concerns to protect ‘press freedom’ from the kind of statutory control successfully applied to commercial television from 1955. In the 21st century, with the efforts to ensure nimble, responsive, technology-neutral governance of communications, the positive case for such anomalies is diminished.

A statutory regulatory framework provides the best mechanism for clarity and guidance on legal requirements, to work alongside various forms of industry self-regulation (advertising and other self-regulatory organisations, plus professional trade associations and networks) providing the more detailed guidance on adherence and best practice.

This is discussed in more detail in the BCG Project *Online Advertising Regulation Policy Briefing*. The following is an extract from that report:

The governance of marketing and communications becomes

ever more complex as the range of actors, platforms, forms and formats proliferate and change rapidly. There are strong grounds for governance arrangements to be multiple, multi-layered and adaptable, corresponding to the dynamic and adaptive techno-market systems they seek to regulate. There will always be a strong case for self-regulation and positive, ‘best practice’ recommendations to remain a frontier for effective governance arrangements. However, there is also a strong need for a statutory regulatory ‘backstop’ for all. [...]

We argue that a broader approach to identifying, supporting and measuring governance effectiveness can show how a combination of rule-shaping processes, including ‘statutory’ and ‘self-regulatory’ can work together. [...]

As one important element in governance overall, a statutory regulatory framework provides the best mechanism for clarity and guidance on legal requirements, which can work alongside industry self-regulation (CAP/ ASA, plus trade associations and networks) providing the more detailed guidance on adherence and best practice to those working within and across specialist sub-sectors of marketing communications and media.

Digital advertising is the next sewage scandal

The dumping of raw sewage in Britain's rivers and seas exposed a rank regulatory failure. A weak system of regulatory oversight of private businesses, further weakened by funding cuts to monitoring and enforcement, created a permissive culture for massive environmental damage and sustained law breaking.

The *Guardian* newspaper's revelations about dinners in a private members club between industry and regulator in 2023, which the latter argued was evidence of it robustly holding the industry to account, divulge an unpleasant seepage of rotteness (Horton 2024).

Yet, for advertising, even the legal framework is less defined than the weakened system of water oversight. There is a patchwork of regulators, rules and arrangements. But the main parallel with the water industry, is that advertising risks being exposed as a similar, systemic failure of regulation.

Advertising governance is not a well-maintained system of effective oversight but one that allows leaks, 'overspills' and evasion of rules. Brand funded content is routinely not adequately labelled to identify it as advertising, whether by social media influencers or news publishers.

These are not just the actions of 'rogue' marketers but involve major players represented by

taskforce members: brands, social media platforms, media companies and agencies (BCG Project 2023).

There is mounting public concern, combined with evidence of poor awareness and low confidence in the existing system (Jefferson 2021). This all makes the 'solution' put forward by the Minister of dubious long-term benefit for the industry as well as for consumers and citizens.

The taskforce takes forward the issues of the original consultation but without the input from interests beyond the advertising industry.

A process of opening up important policy issues to wider public scrutiny has been closed down to a managed one, involving the very parties placed under review.

The DCMS should publish the responses to the original consultation, and subject the taskforce action plan, published in November 2023, to the wider public consultation and engagement that this vital policy area needs.

Recommendations

- We ask that the responses made to the Online Advertising Programme consultation be made publicly available in line with best practice standards.
- The DCMS should re-open a public consultation so that the action plan published in November 2023 and related proposals can be made subject to the wider public engagement that this vital policy area needs.

About the Branded Content Governance Project

The **Branded Content Governance Project**, is a three-year international research project funded by two UK Research Councils (ESRC and AHRC; ES/W007991/1).

The Branded Content Research Project examines the regulation and broader governance of content that is funded or produced by advertisers. We will produce a comparative mapping encompassing North America, the UK, all EU countries and Australia, and examine practices, policy networks and trade/general media discussions in more detail in the UK and Spain.

The project is led by three Universities (the University of the Arts London (UAL), University of Stirling and Complutense University, Madrid) supported by a 80+ international academic network, industry partners (including the Branded Content Marketing Association and Content Marketing Association) and industry, legal, policy and civil society participants.

In summary, our project is oriented to consider ‘problems’ and challenges (e.g. how are evolving forms of branded content addressed in relation to identification and disclosure? What values guide governance and are these suitable? How should the effectiveness of governance structures and processes be measured and assessed?) but offer recommendations arising from research, practice and guided by cross-stakeholder dialogue.



Project Partners



Media-marketing integration

The relationships between media and advertising are changing profoundly as they converge. Brands are increasingly involved in the production of publisher-hosted content.

Such non-traditional advertising, which blends brand messages with entertainment or information, has grown worldwide at twice the rate of advertising overall, with double-digit growth forecast from 2021.

Branded content is content that is funded or produced by marketers. This includes brands’ own media content but also forms of paid advertising that are ‘native’, blending into the non-advertising communications environment in which they appear, such as editorial-like ‘sponsored content’, and ‘influencer marketing’: paid promotions by social media communicators.

Project need

Branded content has been the focus of business and creative strategies, and of deepening controversy. Marketing that is disguised or ‘native’ to its editorial environment has generated most concerns, ranging from deception and reader awareness to the impact on editorial integrity, media quality and trust.

We need to examine what is happening, to ask searching questions on behalf of consumers and wider society, and to put

forward well-informed proposals for how rules and practices can be improved.

Activities

This research project builds on collaboration and dialogue between the industries involved, regulators and those affected, and draws on an international network of academics.

Our research project will provide a detailed, cross-national mapping of the emerging rules and practices for branded content across North America, Australia and all EU countries with more detailed analysis of the UK and Spain. It includes comparative study of legal and regulatory measures, industry self-regulation, and public discussion within professional and general media.

The central aim is to provide important insights and recommendations for managing and regulating branded content and communications in the digital age.

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Reference list

- ASA [Advertising Standards Authority] (n.d.) 'ASA Council'. <https://www.asa.org.uk/about-asa-and-cap/people/asa-council.html>
- Asbof (n.d.) 'Who are we?'. <https://advertisinglevy.co.uk/asbof/who-we-are/>
- BCG Project [Branded Content Governance Project] (2023) *Online Advertising Regulation: Policy Briefing*, London: BCG Project. <https://www.arts.ac.uk/colleges/london-college-of-communication/research-at-icc/branded-content-research-hub/branded-content-governance-project>
- Cabinet Office (2018) *Consultation principles: guidance*. <https://assets.publishing.service.gov.uk/>
- CAP (2014) *The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing*, Edition 12, London: CAP. <https://www.asa.org.uk/static/47eb51e7-028d-4509>
- DCMS (2022a) *Online Advertising Programme Consultation*. London: Department for Digital, Culture, Media & Sport. <https://www.gov.uk/government/consultations/online-advertising-programme-consultation/online-advertising-programme-consultation>
- DCMS (2022b) *Impact Assessment. Consultation on reviewing the regulatory framework for online advertising in the UK: The Online Advertising Programme*. RPC-DCMS-5165(1). <https://assets.publishing.service.gov.uk/>
- DCMS (2023a) 'Government response to Online Advertising Programme consultation', (25 July). <https://www.gov.uk/government/consultations/online-advertising-programme-consultation/outcome/government-response-to-online-advertising-programme-consultation>
- DCMS (2023b) 'Online Advertising Taskforce - Terms of Reference'. <https://www.gov.uk/government/groups/online-advertising-taskforce>
- DCMS (2023c) 'Online Advertising Taskforce: 27 July 2023 minutes'. <https://www.gov.uk/government/groups/online-advertising-taskforce>
- DCMS (2023d) 'Online Advertising Taskforce: 25 October 2023 minutes'. <https://www.gov.uk/government/groups/online-advertising-taskforce>
- DCMS (2023e) Online Advertising Taskforce action plan, (30 November). <https://www.gov.uk/government/publications/online-advertising-taskforce-action-plan>
- European Commission (2024) 'Investigation of the Commission and consumer authorities finds that online influencers rarely disclose commercial content', Press Release (14 February). https://ec.europa.eu/commission/presscorner/detail/en/ip_24_708
- Hallin, D. (1986) *The Uncensored War: the Media and Vietnam*, Berkeley and Los Angeles: Univ. of California Press.
- Hancher, L., and Moran, M. (1989) 'Organising Regulatory Space' in L. Hancher and M. Moran (eds) *Capitalism, Culture and Economic Regulation*, Oxford: Clarendon. pp271-299.
- Hardy, J. (2023) 'Promotional Convergence and Political Economic Critique: Assessing Integrations Across Media and Advertising Industries' in E. West and M. McAllister (eds) *The Routledge Companion to Advertising and Promotional Culture*, (2nd ed) Routledge. pp74-87.
- Horton, H. (2024) 'Revealed: watchdogs and water bosses had dinner at private London club to discuss future', *The Guardian* (1 February). <https://www.theguardian.com/environment/2024/feb/01/watchdogs-and-water-bosses-had-dinner-at-private-london-club-to-discuss-future>
- IAB UK [The Internet Advertising Bureau] (2022) 'IAB UK Online Advertising Programme Consultation Response', London: IAB UK. https://www.iabuk.com/sites/default/files/public_files/IAB%20UK%20OAP%20Consultation%20Response.pdf
- Jefferson, M. (2021) 'Why the ASA believes growing its own brand will help restore trust in ads', *Marketing Week* (6 October). <https://www.marketingweek.com/asa-brand-trust-in-ads/>

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