



## **How is the Digital Revolution Changing Advertising Self-Regulation?**

Good morning. It's a huge pleasure and an honour to be invited to speak to you today. I'd like to offer my sincere thanks to Vincenzo and Mr Barbuto for the very kind invitation.

I'd like to talk to you about how the digital revolution is changing advertising self-regulation.

My starting point is the digital revolution itself. Or more specifically, one specific bit of it that's topical at the moment: its effect on advertiser-funded online content.

Ten days ago, European Advertising Standards Alliance colleagues and I attended a meeting with DG Connect about its planned Code of Practice on Disinformation. The fake news issue gives us a window on the impact of the digital revolution. I'd like to quote a DG Connect paper<sup>1</sup>, called "The digital transformation of news media and the rise of disinformation and fake news", which was published last month:

"The internet is [a] formidable competitor to printed news. It triggered a drastic decline in news distribution costs by eliminating the need to print and physically distribute news on paper. Even more importantly, it introduced a sophisticated advertising channel that allowed direct matching between advertisers and consumers but also diminished the role of newspapers as conduits for advertising.... The algorithm determines the selection of articles that a reader sees. Furthermore, in social media readers add comments to articles and another layer of curation when they share it with others... A test by Reuters revealed that less than half of the respondents could recall the name of the news publisher when coming to an article from search engines and social media. It is often difficult to distinguish between genuine news items and paid-for content on news pages. That makes it difficult, even for discerning readers, to appreciate and distinguish the quality and credibility of all these channels."

So how is the revolution effecting advertising self-regulation?

Well let me tell you first about advertising regulation in the UK. I run the Advertising Standards Authority, the ASA.

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<sup>1</sup> JRC Digital Economy Working Paper 2018-02, "The digital transformation of news media and the rise of disinformation and fake news", Martens et al, April 2018

Established by the industry, we're the UK's independent advertising regulator. Now with around 100 employees, we've been administering and enforcing the UK Advertising Codes, written by industry body CAP, for 56 years on the non-broadcast side and for 14 years on the broadcast side, where we co-regulate with the UK Communications' regulator Ofcom.

We regulate advertising in all media, including online. And we do so with the support of businesses, the UK state and society more widely.

Despite being a mixture of self- and co-regulation, we're recognised by the government, the Courts and other regulators as being the 'established means' of protecting consumers and ensuring a level-playing field for businesses. We operate a comprehensive system. Advertisers cannot opt-out of our regulation. The Advertising Codes are compulsory.

Our purpose is to make ads responsible. To ensure they're legal, decent, honest and truthful. To take action against misleading, harmful or offensive ads.

Our work includes proactive regulatory projects to tackle the issues that matter most to people.

A project addressing concerns around the labelling of social influencer ads, more of which later.

Projects tackling issues in broadband advertising, ensuring that broadband providers don't hide mandatory costs in the small print or place emphasis on a broadband speed that 90% of customers can't get.

A project exploring harmful gender stereotyping in ads, which will crack down on ads that stress it's the woman's job to tidy the house, that girls should aspire only to be ballerinas or princesses and that mock boys and men for showing emotion.

And a project on clickbait ads appearing in recommendation widgets, where we're exploring establishing an immediate 'notice and take down' process with the content discovery networks and other platforms to stop some pretty appalling examples of misleading advertising.

But it's not just project work of course. We also act on complaints, resolving over 27,000 last year, 98% from members of the public.

We undertake own-initiative monitoring and compliance cases (nearly 21,000 last year). We make sure our Codes are up-to-date and responsive to the latest arguments and evidence: for example, last year CAP brought in new tougher standards banning

advertising of foods high in fat, salt and sugar to children in non-broadcast media. And, last but not least, we provide advice and training to businesses to help them get their ads right before they run them.

Last year, our action secured the amendment or withdrawal of a record 7,099 ads. That figures relates to separate ads; it would be many millions if it included repeats. And we delivered nearly 390,000 pieces of advice and training, most of it online, and again a record.

Now some of those numbers are big. The 27,000 complaints from the UK public to the ASA represent almost half of all complaints from European people to all advertising self-regulatory bodies who are members of the European Advertising Standards Alliance! But it's important to look at the numbers in the context of the millions of responsible ads that appear each year and the total ad spend in the UK, which was around £22b last year.

We are funded primarily by a levy on display advertising, mostly collected by media buying agencies. Paying the levy is the only part of our system that is voluntary. With the movement of advertising budgets to online, particularly to Google and Facebook, the challenge for our industry funding body is ensuring the funding of the ASA system is future-proof.

With a relatively high proportion of online display advertising bypassing media buying agencies, and with more and more advertising that needs regulating appearing in 'advertiser owned' space that cannot be levied, that is a challenge we have not yet cracked. We're making progress. Digital is now contributing serious money to the system, including through Facebook now contributing and Google encouraging its search advertisers to pay the levy. But it's not paying its way. And it needs to.

I'll come back to that challenge, and what I think we'll need to do to meet it, but first let me directly address the title of my speech: "How is the digital revolution changing advertising self-regulation?"

In February 2011, we at the ASA had a limited role regulating online advertising. Put simply, we applied our Advertising Codes to online display and paid search advertising. Essentially, we covered advertising appearing in paid-for space and nothing else.

In response to public demand and political pressure that we plug the 'remit gap', and after months of preparation, all of that changed from March 2011.

We extended the Codes to cover online 'advertiser owned' advertising, by which I mean businesses' own advertising claims on their own websites, in their own social media spaces and in their advergames. Don't forget, their advertising in paid-for space, whether on the Internet, in mobile, in apps or in games, was already covered.

The change immediately led to a 50% increase in Complaint cases and an equivalent increase in demand for our other services.

Seven years on, online 'advertiser owned' advertising is now responsible for half our regulation: 42% of the Complaint cases we resolve, but around 56% of our investigations. Those of course involve the biggest companies in the country and, indeed, the world. But often, the businesses are small and our role is an educational one.

The UK public regard online 'advertiser owned' content as advertising in exactly the same way as they regard TV ads as advertising. Or print or outdoor ads. Sensibly, they aim off for the fact that people are pulling the content to them, rather than having it pushed at them. For that reason, they're slow to be shocked or offended. But they expect businesses to tell them the truth wherever they are.

So the issues are overwhelmingly about misleading claims. 90% of online 'advertiser owned' cases involve misleadingness, compared to around 75% for all media.

Most of it is the bread-and-butter of our advertising regulation everywhere: unclear pricing; missing or hidden terms and conditions; and exaggerated performance claims for products and services.

But the digital revolution has undoubtedly brought new challenges: are ads always clearly identified as ads? They have to be, and we're finding that brands and others using emerging advertising formats like social influencer advertising, native advertising and affiliate advertising are too often not labelling ads or affiliate links as ads, when they should be.

I'm afraid that's particularly true of reality TV celebrities using Instagram and Snapchat.

In the UK, our perspective is straight-forward: people shouldn't have to play the detective to deduce the status of a piece of content. And the solution is usually simple: add #Ad to the post, tweet, snap, video or hyperlink. Reading IAP's Digital Charter, I think there are similarly simple solutions in Italy.

But everyone can be an advertiser these days. The economic barriers to entry are almost zero, which is of course a good thing. But it does present challenges to those of us tasked with regulating online. And getting the message out to the countless actors about the importance of playing by the rules is ongoing work.

The digital revolution is driving a revolution in pricing, with dynamic pricing becoming far more common. Businesses often compare current prices with previously established prices, to communicate value to the customer. But what if there's no such thing as a

previously established price, because the price has fluctuated so often? Package holidays are made of many moving parts and the overall price changes accordingly – surely far better for holiday companies to offer a discount code than to compare with a notional previous price.

What of the prevalence of drip and partition pricing practices online? Businesses, for example those offering a secondary market in event tickets, are much in the news in the UK. Try to buy some tickets to see a band you like, and you'll find that the price you first see is very definitely not the price you end up paying, despite it typically being inflated; the booking fees, added late in the customer journey, can be enormous, sometimes adding another 40% to the total cost.

We've recently cracked down on these practices and expect the four main websites active in the UK to change by the end of May so it's much clearer to customers how much they're paying upfront.

It's not right that some businesses are taking advantage of human biases to get sales at inflated prices. And some of the high-pressure techniques – count down clocks, “five other people are looking at this flight right now”, and the like – are clearly unfair and misleading if they don't accurately reflect what's really happening.

And, of course, what of data and privacy, such a hot topic with Russian interference in the US election, the Facebook/Cambridge Analytica issue and the imminent introduction of the General Data Protection Regulation.

It remains to be seen just how much the programmatic ecosystem will change after 25 May – just ten days away. But what is clear is it cannot stay the same as it is now, with the majority of online display ads served to us based on the processing of our personal data without our GDPR-compliant consent.

We in the UK have a role in regulating the use of data for direct marketing and online behavioural advertising purposes, but it will of course be for the Data Protection Authorities and the Courts who will decide, for example, exactly how “specific” and how “freely given” consent needs to be.

Will GDPR be a curse that holds back European businesses, undermining the European Commission's Digital Strategy? Or will it be the knight in shining armour that saves the digital advertising ecosystem from itself?

I've touched on a number of key issues that confront the ASA and, I'm sure, IAP in responding to the challenge of the digital revolution, but there are many more, including concerns around brand safety, agency-client relations, online measurement, ad fraud and intrusive ad formats encouraging ad blocking, where advertising self-regulatory bodies like ours are interested parties but perhaps not so much in the front line.

I'd like to finish by looking ahead. I think the ASA and other advertising self-regulatory bodies in Europe and beyond have responded well to the digital revolution. But there is so much more to do.

We need to continue to educate businesses, particularly the huge number of small businesses, about our rules.

We need to do more to bring the big digital players, particularly Google, Facebook and Amazon, into our systems.

That doesn't just mean asking them to pay their fair share – although that's important – it means convincing them of the benefits of advertising self-regulation.

Explaining why – for all the good that their own ad policies do – they aren't enough to protect their users and their reputations. Google removed 3.2 billion bad ads last year, but its reputation for effectively policing its platform is still under attack. Mark Zuckerberg's appearance before the Senate committee is testament to the trust challenge confronting Facebook.

Of course we don't have all the answers to the challenges they face. But we do have expertise in ad regulation. We have the support of advertisers, agencies and other media in our countries. And we have our independence, and the credibility we enjoy because of that.

And finally, we need to be open to reasonable challenges that we ourselves must change to respond to the digital revolution. We can't afford to be analogue regulators with digital bolted on. We have to be digital first. We have to explore new ways of tackling irresponsible ads, collaborating with the big digital players. We have to embrace machine learning, where it can help us serve our customers more efficiently and better. And we have to keep evolving our services to our stakeholders.

In this age of fake news, promoting and delivering responsible advertising has never been more important.

Thank you for your time.

Guy Parker  
Chief Executive ASA