

IAB Europe's comments on the consultation on the Digital Services Act package – Executive Summary

This document contains an overview of IAB Europe's comments on the review of the legal framework for digital services, further to the European Commission stating in its 2020 work programme that it will propose a new Digital Services Act (DSA) to strengthen the single market and protect citizens and their rights, and Commission's consultation launched thereafter. IAB Europe (Transparency Register: 43167137250-27) is the European-level association for the digital advertising and marketing ecosystem.

- We recognise the importance of discussion to strengthen the single market and protect citizens and their rights. We find it critical for the European businesses to continue deriving value from their activity in the digital space, in particular, the European media for which advertising is the major revenue stream that consequently provides users with unpaid access to content and services.
- We call on the policymakers to be cognisant of the existing regulatory framework, in particular, the EU privacy and data protection framework applicable to any business activity underpinned by data. The General Data Protection Regulation unambiguously established the principles of data protection in the digital advertising context.
- Keeping users safe online is critical from the digital advertising industry perspective.
 - In doing so, one should acknowledge the difference between illegal and potentially harmful content. Existence of a well-established self-regulatory framework for advertising content allows consumers to lodge complaints about any type of advertising considered to be inappropriate.
 - The industry is committed to minimise the risk of advertising inadvertently funding websites hosting illegal or illicit content, as well as content considered to be disinformation with strong voluntary 'follow-the-money' measures. While eradicating such malpractice is challenging due to the boundless and pervasive nature of the internet, the industry has proven that technology standards and best practice and continuous investment in new methods and detection algorithms constitute the best possible approach. This allows for rapid reaction and significant improvement of the situation over time, further enabling innovation, to the advantage of the businesses and ultimately users benefiting from access to free ad-supported content that powers the 'open web'.
 - It is vital to keep in mind that from the user perspective, the EU privacy and data protection framework explicitly recognises a host of user rights from which consumers can benefit in relation to advertising powered by data.

- The industry is committed to maintaining transparency and quality across the digital advertising and marketing ecosystem, for all forms of trading. Industry-driven approaches and technical standards to generate said transparency should be recognised and supported by the policymaker. Given the ever-evolving technology, imposing prescriptive measures would stifle innovation and growth, besides the fact that any legal rules would very quickly become outdated.
- The existing liability regime reflects the reality of the market, whereby digital media is bought on behalf of the buyer. We do, however, welcome reflection on the ‘Good Samaritan’ provision, which could allow the digital advertising ecosystem players to continue voluntary monitoring without losing the benefit of the safe harbours.
- We are emphatically supportive of the so-called ‘open-web’ which relies on the interplay of a variety of market participants, from the buy- and sell-side, from technology and creativity. The ‘open web’ allows the market to remain sustainable and competitive, as it enables the all ecosystem players to continue deriving value from digital advertising and contributing to supporting the digital media.

IAB Europe's comments on the consultation on the Digital Services Act package

IAB Europe (Transparency Register: 43167137250-27) represents 25 European national associations who in turn associate over 5,000 companies from across the digital advertising and marketing ecosystem, from advertisers and advertising agencies on the buy side, news publishers and other ad-funded sites and online services on the sell side, and technology providers facilitating the delivery of ads. We have over 90 companies in direct membership, including agencies, technology companies, publishers and eCommerce companies.

In its 2020 work programme, the European Commission (Commission) stated that it will propose a new Digital Services Act (DSA) to strengthen the single market and protect citizens and their rights¹, further to which public consultation was launched². In addition to providing a direct response to said consultation, IAB Europe would like to take the opportunity to provide feedback on the themes discussed in connection with the DSA package, conveying the views of the digital advertising and marketing ecosystem.

We recognise the importance of discussion to strengthen the single market and protect citizens and their rights. We find it critical for the European businesses to continue deriving value from their activity in the digital space, in particular, the European media for which advertising is the major revenue stream that consequently provides users with unpaid access to content and services. Advertising accounts for over 81% of European newspaper and magazine digital revenues, and any decrease in these monetisation opportunities supporting the objective, good-quality journalism would have serious consequences for the social and political landscape in Europe.

To this end, we recommend the policymaker to ensure necessary flexibility in any rules and recognition of existing industry-driven approaches, in terms of keeping users safe online, maintaining transparency and quality across the digital advertising and marketing ecosystem, and allowing companies to undertake in good faith moderation or monitoring upon the wishes of the clients without losing the benefits of the safe harbours under the liability regime. The said flexibility is critical given the ever-evolving nature of technology – imposing any prescriptive measures would stifle innovation and growth, besides the fact that any legal rules would very quickly become outdated.

The industry remains committed to working collectively to continuously improving the existing tools, standards and market-wide approaches. Only joined up and focused efforts can deliver desired results. Effectively, they also help in garnering support from across the ecosystem which is necessary to minimise the risk of illicit actors gaming the system to disadvantage of all concerned – consumers, market participants and the sector as such. It is important to appreciate that in such cases it is indeed the whole industry – advertisers and advertising agencies on the buy side, news publishers and other ad-funded sites and online services on the sell side, and technology providers

¹ European Commission, [Commission Work Programme 2020](#), 29 January 2020.

² European Commission, [Commission launches consultation to seek views on Digital Services Act package](#), 2 June 2020.

serving both sides – must be considered as collateral damage of intentional misbehaviour and not as contributors to malpractice.

Above all, while developing any new regulatory instruments, we call on the policymakers to be cognisant of the existing regulatory framework, in particular, the EU privacy and data protection framework applicable to any business activity underpinned by data. The General Data Protection Regulation (GDPR)³ unambiguously established the principles of data protection in the digital advertising context.

This paper has been framed in the following way:

- **Part 1 – Introductory remarks on the industry and its value**
 - *Digital advertising and the European economy*
 - *Digital advertising – practical considerations and binding regulatory framework*
- **Part 2 – Keeping users safe online from the digital advertising perspective**
 - *Self-regulatory framework for advertising content*
 - *Follow-the-money approach to minimise ad misplacement*
 - *The challenge of disinformation*
 - *Digital political advertising*
 - *Relevance of the GDPR for user rights*
- **Part 3 – Transparency in digital advertising supply chain**
 - *Technical standards to generate transparency*
 - *Market-wide approaches to increase transparency and trust*
- **Part 4 – Liability regime of digital services**
- **Part 5 – Sustainability and competitiveness of the digital advertising ecosystem**

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016.

Part 1 – Introductory remarks on the industry and its value

Digital advertising and the European economy

Digital advertising is an umbrella term for a large range of activities. It stretches from paid-for search, over online banners, social media, video advertising, to digital audio and other emerging formats like out of home and connected TV, increasingly blending with traditional media.

In Europe, digital ad spend amounts to 65bn⁴. But digital advertising’s estimated contribution to the wider EU economy exceeds €118 bn, while the industry powers over 1 mln jobs directly and over 6 mln indirectly. Critically, Europe’s content economy depends on digital advertising, with advertising accounting for over 80% of European newspaper and magazine digital revenues⁵. Digital advertising ensures consumers can choose what they pay for, thus democratising access to information and other online services. In fact, European online users are happy for their data to be used for targeted advertising in order to get access to free content supported by advertising, and 83% would prefer free sites with ads to paying for ad-free content⁶.

Digital advertising – practical considerations and binding regulatory framework

In practice, the mechanics of the digital advertising ecosystem⁷ are underpinned by the ability to process data for advertising-related purposes, including but not limited to delivery and measurement of digital advertising. The data processed for the purpose of this type of activities may include IP addresses, online advertising identifiers, URLs of sites that users spend time on, information about user behaviour on those sites, and indications about the users’ physical whereabouts (“geolocation” data). Most or all of these data points are considered to be personal data under the GDPR. From this perspective, the EU privacy and data protection legal framework is the prime legal regime that the ecosystem players consider to be relevant. Currently, that regime is the conjunction of the GDPR and the ePrivacy Directive (2002/58/EC), with the former regulating the processing of personal data and the latter storage and access of information on a user’s device.

Digital advertising has pioneered the better addressability of right audiences. Instead of relying just on broad demographics segments, digital advertising can use information about users’ online behaviour to assign them to large segments – or “audiences” – that all share common interests, and because of those common interests, may be interested in a specific good or service. The identity of a specific individual consumer is not of interest to an advertiser. Rather, the aim is to create narrower

⁴ [AdEx Benchmark 2019 study](#), IAB Europe, 2020. Please note that while digital advertising grew 12.3% in 2019 to €64.8bn, driven by strong growth in out-stream video, mobile and social spend, and on average, €4bn has been added to the digital advertising market every year since 2006, 2020 will not follow the same trend due to the Covid-19 pandemic affecting all industries, businesses and lives.

⁵ [The Economic Contribution of Digital Advertising in Europe](#), IHS Markit, 2017.

⁶ [Europe Online: An Experience Driven by Advertising](#), GfK, 2017.

⁷ There are many different digital advertising models, including but not limited to: ad servers, ad exchanges, SSPs, DSPs, DMPs, ad networks, attribution vendors, market research companies, data companies, affiliate marketing companies and cross device vendors. Each digital advertising company has its own unique characteristics. That said, in all instances the ecosystem as such relies on the interplay of a variety of market participants, from the buy and sell side, from technology and creativity.

segments. For instance, brand advertisers do not want or need to know who individuals are to reach customers that might enjoy their products or services.

When done correctly, profiling and targeting also serves the interest of consumers. It ensures the provision of quality advertising that is likely to be relevant to them and reduces the chance of consumers being exposed to ads too frequently.

Part 2 – Keeping users safe online from the digital advertising perspective

In trying to ensure that users are kept safe online, from the digital advertising perspective it is imperative to understand and address the issues at hand, which also envisages clearly differentiating between illegal and potentially harmful content.

Self-regulatory framework for advertising content

To start with, one should not confuse any malpractice with legal advertising practices, including native advertising⁸, advertorials⁹ or sponsored content more broadly. Moreover, one should acknowledge the existence of a robust advertising self-regulatory system¹⁰, which covers 97% of all advertisements seen by the EU population, builds on the legal framework established by the Unfair Commercial Practices Directive and plays an essential role in preventing the spread of misleading or otherwise harmful advertising on all media, including online. The self-regulatory framework plays an important role in achieving a high level of consumer protection and trust, by striving to ensure that all covered advertising practices are legal, decent, honest and truthful. It features independently enforced codes of conduct and provides monitoring, training and compliance advice to the industry. The European bodies deal with on average 60,000 complaints per year and deliver an additional 90,000 pieces of tailored advice to the industry¹¹.

Follow-the-money approach to minimise ad misplacement

Regrettably, legitimate advertising may appear on websites which host illegal or illicit content and revenues derived from advertising can partially or wholly fund such websites.

It is important to appreciate that in such cases the whole industry – advertisers and advertising agencies on the buy side, news publishers and other ad-funded sites and online services on the sell side, and technology providers serving both sides – must be considered as collateral damage of intentional misbehaviour and not as contributors to malpractice.

Minimising the risk of advertising inadvertently appearing on such sites can be facilitated with the use of brand safety tools and sound business practices. Brand safety describes an entire area of practice where advertisers, agencies and technology companies try to prevent advertising from being misplaced. The digital advertising industry is deeply invested in brand safety, as proven by our strong support for the European Commission’s “follow-the-money” approach, embodied in the Memorandum of Understanding (MoU) on misplacement of ads on websites that infringe intellectual

⁸ Contextually targeted branded content, designed to fit in with the particular online environment to give consumers a visually consistent browsing experience and be less disruptive, while having prominent labelling to make clear that it’s a marketing communication.

⁹ Advertising, which provide advertising information in the style of an editorial or an objective journalistic article.

¹⁰ [European Advertising Standards Alliance \(EASA\)](http://European Advertising Standards Alliance (EASA)) represents and coordinates the advertising self-regulatory systems across Europe.

¹¹ Estimates are based on average number of complaints and copy advice requests respectively, provided in the five-year period between 2014 and 2018. For more information please refer to EASA's European annual statistics reports.

property rights¹². The European approach builds on experiences from national markets where a number of successful industry initiatives – beyond commercial offerings of independent providers – have emerged. Under the leadership of National IABs, European local markets are spearheading national-level initiatives to combat the phenomenon, for instance, DTSG Brand Safety (UK); Advertise Consciously (PL); AdKodex (DK). We believe that one of the ways in which the MoU on Online Advertising and IPR is helpful from the market perspective is that it facilitates convergence of similar initiatives, while also enabling new markets or players to develop their own, more nuanced approaches.

In a recently published report on the functioning of the MoU¹³, the Commission acknowledged that industry cooperation has led to progress in tackling online piracy. The MoU has not only created more awareness among brands that their ads may end up on IPR-infringing websites, but more concretely, according to evidence gathered, the share of ads for European businesses on IPR-infringing websites has dropped by 12% since the introduction of the MoU, while gambling ads collected from major brands has decreased from 62% to 50% on these websites. We remain committed to honing the MoU and its approach, to address the challenge of ad misplacement in a yet more pointed way, further reducing instances where advertising funds any IPR-infringing digital properties.

The challenge of disinformation

Similarly, the digital advertising industry is committed to tackling the challenge of disinformation online. IAB Europe endorsed the EU Code of Practice on Disinformation¹⁴, recognising that legitimate online infrastructure can be misused by bad actors to deceive and confuse citizens, making it more difficult for them to make fact-based judgments, and ultimately undermining our democracies. Conversely, it is in our communal interest to ensure that the digital ecosystem primarily remains a powerful platform for the democratic dissemination of information and views. Though all manifestations of online disinformation do not leverage, or relate to, advertising, digital advertising may facilitate the creation and propagation of disinformation, for example, by inadvertently enabling the placing of legitimate advertising on websites enabling disinformation. Investment in brand safety tools can significantly contribute to reducing such ad misplacement. In this context, it is worthwhile noting the industry efforts to address the need for harmonised pan-European brand

¹² [The Memorandum of Understanding \(MoU\) on Online Advertising and IPR](#) is a voluntary agreement facilitated by the European Commission to limit advertising on websites and mobile applications that infringe copyright or disseminate counterfeit goods. In addition to the MoU efforts, IAB Europe has been supportive of the initiative embracing a similar approach spearheaded by the World Intellectual Property Organisation (WIPO), [WIPO ALERT](#). WIPO ALERT is a secure, online platform to which authorized bodies in WIPO member states can upload details of websites or apps which have been determined to infringe copyright according to national rules. Access to the platform is given to any genuine digital advertising industry player which is willing to undertake to use the information solely for preventing the appearance of advertising on pirate websites.

¹³ <https://ec.europa.eu/docsroom/documents/42702>.

¹⁴ [The Code of Practice on Disinformation](#), unveiled in September 2018, addresses the spread of online disinformation. This is the first time worldwide that industry has committed, on a voluntary basis, to self-regulatory standards to fight disinformation. It aims at achieving the objectives set out by the [Commission's Communication presented in April 2018](#) by setting a wide range of commitments, from transparency in political advertising to the closure of fake accounts and demonetization of purveyors of disinformation. The Code includes an annex identifying best practices that signatories will apply to implement the Code's commitments.

safety and brand suitability approaches¹⁵, and collaboration with other partners, for instance, in the framework of the Global Alliance for Responsible Media (GARM)¹⁶ that aims to proactively and collectively address harmful and misleading media environments.

Fact-checking organisations, or other specialised third-party providers can be leveraged as a best practice in terms of preventing ad misplacement in the context of tackling disinformation. The decision about possible collaboration with such providers by an ad intermediary should remain at the discretion of a buyer, such as an advertiser, or an agency working on their behalf. Any lists of websites arguably carrying disinformation must be curated by an independent third-party organisation, further to instructions of a buyer. Such a third-party organisation must be in a position to take full responsibility for a claim regarding the alleged disinformational nature of a particular property.

Looking to the future, IAB Europe fully supports the self-regulatory regime in the field of disinformation, given major concerns regarding the impact of any legislative influence on fundamental rights, including the freedom of speech and media. The agility and flexibility of voluntary commitments are critical, especially given the nature of an ever-changing online landscape.

The above should not preclude other actions given the fact that disinformation is a multifaceted problem, requiring a comprehensive policy approach. We are also most supportive of continued EU-level investment in research to better understand the scope and nature of online disinformation, and in consumer education, notably in the area of media literacy, to increase people's ability to critically assess information they receive.

Digital political advertising

While IAB Europe's constituency remains primarily invested in brand advertising, we fully recognise that advertising may take different forms and shapes, and we are therefore strong advocates for any digital advertising – including non-commercial such as political advertising – meeting relevant legal and self-regulatory requirements.

Political advertising can be characterised by the fact that it will be political actors themselves, such as politicians, political parties, etc., that assume a role of the advertiser. As with any advertising, the onus for the delivered campaign is ultimately on the advertiser. It must remain the same in case of political advertising. There should however be an agreement by political actors across the EU

¹⁵ In July 2020, IAB Europe [published](#) its Guide to Brand Safety and Suitability, to share background context on brand safety in Europe, pan-European definitions for brand safety and brand suitability with accompanying key considerations, best practices and case studies to help educate all stakeholders on ensuring brand safe environments. The guide was developed by experts from IAB Europe's Quality & Transparency Taskforce (a part of the Brand Advertising Committee). Formed in January 2020, the taskforce's aim is to combat stakeholder quality and transparency concerns and address the challenges that the industry is facing in order to fuel consumer trust and brand investment in the digital advertising and marketing ecosystem. Following on from IAB Europe's industry poll brand safety which demonstrated the need for more education and guidance, the taskforce agreed that their first priority was to address the need for harmonised pan-European brand safety and brand suitability definitions.

¹⁶ <https://wfanet.org/garm>.

Member States, on what constitutes a political advertisement and how any rules pertaining to political advertising can be applied without prejudice to binding national-level electoral laws.

In terms of digital political advertising, it should be noted that personal data revealing political beliefs is within the GDPR's scope. Processing of such data is generally prohibited, albeit lawful processing can be allowed under certain conditions. Moreover, any restrictions on political advertising should be carefully assessed in light of fundamental rights, such as the right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights¹⁷.

We sympathise with and encourage increased transparency into political advertising. The standard ad disclosure and transparency rules should be rigorously observed in case of political advertising. That enables citizens to immediately recognise when a paid-for communication is an ad. Moreover, the identity of the advertiser should be easily ascertainable. Finally, disclosures should be prominent and understandable to consumers. There exist industry-wide approaches to enhance transparency from non-EU jurisdiction that could be considered relevant in the EU¹⁸.

On a related note, we appreciate the challenge with defining the so-called 'issue-based' advertising whereby certain 'issues' discussed in the context of elections can be regarded as a reminder of the fact that many of our public discussions can be viewed as politicized. Given our expertise in the field of brand advertising, we would respectfully advise that any future definition of 'issue-based' advertising must clearly exclude commercial advertising and business-oriented activity of brands that engage with their prospective clientele, and even take views on certain societal issues¹⁹.

Finally, on the topic of databases of digital political advertising, we applaud efforts to devise approaches that allow for better understanding of political advertising targeting European citizens. Notwithstanding, as the industry body that promotes industry collaboration to deliver frameworks, standards and industry programmes, we would like to respectfully point out that the added value of open standards and joined up approaches manifests itself by the fact that they enable participation of all market players. In the specific example of a political ad library, creation of databases covering all EU media appears to be mostly problematic given the fragmented and unclear election legal framework.

¹⁷ Against this background, in ECHR, *Bowman v UK*, Application No. 24839/94, Merits and Just Satisfaction, 19 February 1988, the Court held that 'publishing information with a view to influencing' voters is an exercise of freedom of expression' (para. 47). On this basis, it could be reasonably claimed that microtargeted digital political advertising is in scope of the definition of freedom of expression.

¹⁸ To enhance transparency, the [US](#) and [Canadian](#) markets saw introduction of a self-regulatory 'Political Ad Icon' initiative which serves as an immediate, simple, and intuitive tool for people to get information about the political ads covered by the Self-Regulatory Principles of Transparency & Accountability to Political Advertising. Under the Digital Advertising Alliances in the US and Canada Political Ads Programs, the Political Ad icon and/or wording should be used to provide clear, meaningful, and prominent notice that an ad is an express advocacy political advertisement for the election or defeat of a candidate for federal or certain state-wide elected office. Such approaches could be considered as relevant in the EU.

¹⁹ Engagement with expert stakeholders should inform developing optimal approaches, in full respect to the aforementioned as well as fundamental rights. An example of a good practice is [IAB Canada's partnership with the Canadian Press](#) to create a database that helps to track election-related issues in real time. The initiative is rooted in the amended Elections Canada Act which requires advertisers to register any campaign-related issue message in addition to the standard political advertising one is used to seeing.

Relevance of the GDPR for user rights

The GDPR unambiguously establishes the principles of data protection in the digital advertising context. What is important from the user perspective is the fact that the legal framework explicitly recognises a host of user rights from which consumers can benefit in relation to advertising powered by data, which is essentially all advertising online. Any new regulatory framework should acknowledge the existence of such user rights in the GDPR and not duplicate them, or create legal uncertainty by introducing ambiguous related provisions.

For background on relevance of the law for the industry, the scope of the law is comprehensive and guarantees the protection of personal data both in the context of electronic communication services and information society services. Pseudonymous identifiers (Rec. 26), online identifiers, such as cookies, and device identifiers, are examples of personal data under the GDPR (Art. 4(1), Rec. 30). In addition, the GDPR contains rules on profiling and provides enhanced rights to users where profiling takes place (Art. 4(4), Art. 22, Rec. 72), including where user behaviour is tracked online (Rec. 24). The GDPR also explicitly calls out online advertising (Rec. 58).

The principle of fairness enshrined in the GDPR requires that users be informed of the fact that the supplier of an online service (or its partners) intends to process their personal data or is already doing so (Rec. 39). It also requires that they understand the purposes of the processing (Rec. 60), as well as whether they are obliged to provide the data in order to avail themselves of the service, and what would happen if they elected not to. Users should also not be subject to any decision based on automated processing without human intervention that produces legal or similarly grave effects on them (Rec. 71). The whole gamut of user rights is expressly recognized in the GDPR, and consequently applicable to instances where personal data is processed in relation to digital advertising. These include: right to know whether one's personal data are being processed, right to know why one's personal data are being processed, right to know the categories of personal data that are being processed, right to access the personal data that are being processed, right to information about whom the personal data have been, or will be, shared with (Art. 15), right to know how long personal data will be kept (Art. 15), right to rectification (Art. 16), right to erasure (Art. 17), right not to be the object of automated decision-making with legal or similar effects (Art. 22), right to data portability (Art. 20), right to object to having personal data processed (Art. 21), right to information as to where personal data in the possession of the data controller were originally obtained (Art. 15), right to be able to lodge a complaint with an appropriate authority (Art. 15), right to an effective judicial remedy against a controller or processor in case of a breach of the law (Art. 79), right to compensation for damage suffered as a consequence of an infringement of the Regulation (Art. 82).

Given the fact that the GDPR requires that individual users have full transparency about, and control over, any processing of their personal data, which consequently obliges data controllers to leverage a relevant legal ground for processing personal data and providing users with certain specific pieces of information in order for the processing to be legal, the industry has invested considerable resources in developing legal compliance solutions.

IAB Europe and its members created an open-source, cross-industry standard, the IAB Europe's Transparency & Consent Framework²⁰ (TCF). It is to ensure that where personal data is processed in connection with the delivery and measurement of advertisements or the personalisation of editorial content, consumers as well as industry stakeholders benefit from transparency and control. The TCF standardises how websites make the information disclosures required by the GDPR, how the sites collect and log users' choices, how they communicate those choices to their third-party technology partners, and what those partners may and may not do as a consequence. It delivers this functionality using a combination of software and a digital signal that is transmitted from each website to a defined set of technology partners with whom the website works. The signal captures which data processing purposes and data controllers the user has authorised, if any, and requires those receiving the signal to honour it in accordance with clearly defined rules.

²⁰ <https://iab europe.eu/tcf>.

Part 3 – Transparency in digital advertising supply chain

Digital advertising trading can happen in a variety of ways. The industry is committed to maintaining transparency and quality across the digital advertising and marketing ecosystem, for all forms of trading.

Technical standards to generate transparency

Both the buy- and sell-side require optimal level of transparency and ad placement controls, to ensure that digital media buying, and ad placement processes occur in an orderly fashion. Only this approach allows the ecosystem to flourish. Advertisers ought to be provided with the ability to reach their desired audience in line with their brand commercial goals, and further evaluate ad performance and measure its effectiveness. On the other side of the supply chain, publishers require necessary controls to be in a position to oversee the types of ads that appear on their properties.

As the ecosystem is ever-evolving, and new and more players join the open market, it is important to hone the approaches to generate transparency developed by the industry. Resources and technical tools, such as IAB Europe Supply Chain Transparency Guide²¹, IAB Tech Lab's ads.txt²², sellers.json and OpenRTB Supply Chain object²³ allow for analysis of the supply chain²⁴ and are foundational for efforts to optimise it. These are not mere information material, but actual tools supplied to the industry. In addition, national standards have been developed in Europe, such as market-wide Programmatic Codes of Conduct²⁵.

These instruments help buyers and sellers of digital media to navigate through pertinent questions concerning data, cost and inventory source, or verify entities to ensure that only authorized players participate in ad transactioning. Despite the fact that the open market may on the surface come across as complex, due to the abundance of participants and offerings, it remains critically important to reach audiences at scale and to monetise inventory. In particular, given the fact that smaller players and publishers specifically rely on support from their technical providers.

Overall, the issue is not with inaccessibility of information, but rather with managing complexity and having the right analytical and data science skills. On that note, one should not confuse alleged

²¹ <https://iab europe.eu/research-thought-leadership/iab-europe-transparency-guide/>.

²² <https://iabtechlab.com/ads-txt/>.

²³ <https://iabtechlab.com/sellers-json/>.

²⁴ The initiatives and standards continue to evolve, to keep apace with technology and industry developments. For instance, more recently, the industry has been working together to standardise log level data fields and definitions. In February 2020, IAB Europe created a working group within the Programmatic Trading Committee tasked to look at Supply-Side Platforms (SSP) Data best practices. The group includes SSPs, publishers and agencies, to understand the differences across these data fields and to harmonise the reporting fields.

²⁵ The [DACH](#) (German speaking markets: Germany (D), Austria (A), and Switzerland (CH)), and [Polish](#) markets put in place Programmatic Codes of Conduct, which include commitments with precise rules for all market participants. The objective is to ensure quality in programmatic advertising as well as to achieve the highest possible transparency and sustainable professionalism in view of modes of operation and methods of the market participants. The signing parties obligate themselves at the very least to comply with the defined criteria and conditions and to make sure that their contractual partners are also in compliance. Complaints are handled in a standardised process that is binding for all parties, and the board of complaint will process all matters as well as review processes and violations against the commitment. As IAB Europe, we are working with members exploring the scalability of the instrument.

opacity in the ecosystem with the *complexity* of the industry, which has evolved considerably over the period of the last decade, notably as of 2010 with the inception of the Real-Time Bidding. IAB Europe is actively promoting education and relevant skills to get more people with those skills into digital advertising and help companies connect with such talent.

Market-wide approaches to increase transparency and trust

In this context, IAB Europe also continues to engage with its members to combat stakeholder quality and transparency concerns and address the challenges that the industry is facing in order to fuel consumer trust and brand investment in the digital advertising and marketing ecosystem. One can observe emergence of several market-wide programmes, driven by European National IABs²⁶, that are designed to increase transparency and trust in how digital advertising is bought and sold, built on more specific pillars such as brand safety, fraud prevention, viewability, user experience, and most recently, addressing the privacy concerns within the digital supply chain²⁷. These initiatives include fully-fledged schemes with existing or to-be-developed monitoring and certification mechanisms. IAB Europe is working with members to share these best practices and help in harmonising relevant business standards across the continent. Giving brands, and other market participants alike, confidence that they are working with legitimate businesses, that the inventory traded is authentic, and finally, that ads are being placed in a safe environment helps to safeguard the sustainability of the digital advertising business model.

Against this background, it should also be appreciated that the IAB Europe's Transparency & Consent Framework – originally established as a framework for legal compliance with the EU privacy and data protection regime – does, too, provide transparency and due diligence record keeping, hence contributing to accountability of parties collaborating in the ad placement process.

We would encourage the EU policymakers to acknowledge the industry's commitment to maintaining transparency and quality across the digital advertising and marketing ecosystem, for all forms of trading. Industry-driven approaches and technical standards to generate said transparency and increase trust should be recognised. Given the ever-evolving technology, imposing prescriptive measures would stifle innovation and growth, besides the fact that any legal rules would very quickly become outdated. It is also worthwhile remembering that policymaker recognition of such efforts would be most helpful in driving the market participation, and ensuring their continued uptake.

²⁶ [IAB Europe Navigator: Quality Initiatives](#) (July 2020) demonstrates the vast amount of work being undertaken in Europe and beyond to build and ensure a sustainable future for digital advertising and marketing. There are both similarities and differences across all of these initiatives. It includes a summary of the work being undertaken in national markets such as quality certification schemes, guidelines and best practice guides.

²⁷ <https://iab europe.eu/blog/iab-uks-gold-standard-2-0-will-require-companies-to-adopt-iab-europes-tcf-v2-0/>.

Part 4 – Liability regime of digital services

The existing eCommerce Directive²⁸ governs ‘information society services’ (ISS) (Art. 1(b)(ii), Art. 1(b)(iii) of the Information Society Services Directive²⁹, and Art. 2(d), Rec. 18, Rec. 20 of the eCommerce Directive). It can be reasonably assumed that most of the players in the digital advertising ecosystem provide a service that may be deemed an ‘information society service’.

The regime also governs ‘commercial communications’ which are part of, or constitute, an information society service (Art. 2(f), Art. 6). Commercial communications must be clearly identifiable as such, along with the natural or legal person on whose behalf the commercial communication is made and various other details such as the conditions for any promotional offers like discounts (Art. 6). They therefore impose a burden on those on behalf of whom they are made.

This is relevant in a highly interconnected digital advertising ecosystem where parties collaborate to place advertisements and can be ultimately considered as subcontractors of one another. Most advertisements will constitute commercial communications if sent as part of an information society service and they will almost always be sent on behalf of a buyer. Most of the partners in the supply chain will not usually be involved in transmitting commercial communications, as it is the buyer’s ad server that normally transmits advertisements to the publisher. The advertiser is therefore generally the party on whose behalf an advertisement is made. The paradigm reflects the reality of the market, whereby it is the advertiser that is knowledgeable about the product or service advertised for, thus being in a position to take decisions about contents of advertising and its purpose, as well as other determinations regarding the media buying, for instance, the method of trading and desired target audience.

The Directive also sets out various provisions governing the liability of ‘intermediary service providers’ (ISP). Where certain conditions are met, the providers are not liable for information transmitted or stored, as appropriate. Member States are also obliged not to monitor the information which they transmit or store, or a general obligation actively to seek facts or circumstances indicating illegal activity. A provider of an ISS is not automatically entitled to the safe harbours offered to ISPs under the Directive (Rec. 42).

As a general rule, it is worthwhile recalling that while technical capacity and functions of specific players in the supply chain will differ, these players remain entities working on behalf of other parties, notably advertisers and publishers. Generally, the various players have no knowledge or control over the content, or data stored or transmitted. That said, it should be noted that many players may undertake various monitoring activities, in order to comply with the law but not limited to, for instance, to improve the quality and transparency of digital trading, minimize associated risk,

²⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’), OJ L 178, 17.7.2000.

²⁹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services.

or ensure measurement of the advertising itself or services provided – all further to wishes of their clients.

One of the challenges of the current regime for ISS providers is that, if they undertake moderation or monitoring and obtain too high degree of knowledge or control of content or data, then they can lose the benefit of the safe harbours under the Directive. It would be unfortunate if by virtue of complying with the law or performing due diligence digital advertising players were losing the protection from liability that they enjoy due to additional knowledge or control that they may exercise over the content or data that they monitor. We, therefore, generally welcome reflection on the ‘Good Samaritan’ provision.

Part 5 – Sustainability and competitiveness of the digital advertising ecosystem

IAB Europe is emphatically supportive of the so-called ‘open web’ which enables the broader ecosystem – comprising advertisers and advertising agencies on the buy side, news publishers and other ad-funded sites and online services on the sell side, and technology providers serving both sides – to continue deriving value from digital advertising and contributing to supporting the digital media.

Against this background, it is worthwhile highlighting the role of the browsers in the online ecosystem, as well as existence of the vertically-integrated players and large publishers alike with rich first-party data sets.

On the former, we have been consistently voicing our serious concerns about encouraging browsers and other software enabling access to the internet to provide the option to prevent the use of processing and storage capabilities of terminal equipment and the collection of information from end-user’s terminal equipment. Notably, the matter in question has surfaced in the context of Article 10 of the proposed ePrivacy Regulation³⁰. IAB Europe believes that legislation should remain technologically neutral and not dictate which technologies must be used.

On the latter, one should appreciate the volume of data that users willingly provide to the platforms and the greater traffic that larger publishers attract. The aforementioned enables such players to offer advertisers larger audiences who will likely be receptive to advertising about particular products and services. Smaller publishers and generalist sites such as news media are not well positioned to compete with that scale, yet to improve their situation these properties can rely on cross-site profiling that eventually helps them to attain asymmetrical leverage.

We encourage EU policymakers to appreciate the fact that law-making does not take place in a vacuum, and there are real-life business considerations that ought to be taken into account while prescribing any new rules affecting the digital advertising and media supply chain. A case in point is the current industry-wide reflection on re-architecting the industry amid the demise of 3rd party cookies that in the abstract enable smaller players to compete in the market³¹.

³⁰ Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) (ePrivacy Regulation) (COM(2017) 10 final / 2017/0003 (COD)), 10 January 2017.

³¹ Impending changes to the technology landscape for user tracking and identifiers are expected, including deprecation of 3rd party cookies. The existing technology is expected to be phased out expeditiously, in recognition of changing consumer expectations regarding privacy and personalisation. The industry has initiated conversations across the digital advertising and media supply chain to work together to re-architect the underlying infrastructure. The superseding technology must not only address consumers’ needs, but also ensure continued support of advertising-funded media and services available today. In June 2020, IAB Europe in partnership with IAB France [inaugurated](#) the work of a new joint initiative ‘The Post Third-Party Cookie Taskforce’. This follows on from IAB Europe’s earlier release of [‘The Post Third-Party Cookie Era Guide’](#), to prepare brands, agencies, publishers and tech intermediaries for the much-anticipated post-third-party cookie advertising ecosystem. The Taskforce will help to ensure strong European input into reflections being conducted on the evolution of digital advertising and potential new paradigms, within the World Wide Web Consortium’s (W3C) Improving Web Advertising Business Group, and relevant industry fora such as IAB Tech Lab’s “Project Rearc”.