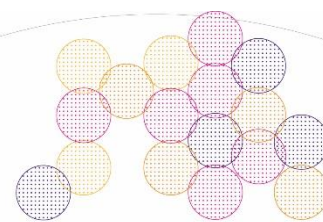


Online advertising: navigating the issues and the regulatory landscape

Yi Shen Chan



Online advertising is a key enabler of the digital economy and supports a wide range of digital services enjoyed by consumers today. However, as the industry has grown in size and sophistication, concerns over the harmful aspects of online advertising have put the spotlight on the way in which the sector operates. The fast-evolving nature of this industry and multifaceted issues that can arise mean that there are limitations in the current regulatory framework. Closer cooperation among regulatory agencies and industry bodies, and more transparency and oversight over digital platforms are needed. Increased consumer literacy and more streamlined mechanisms for the reporting of inappropriate advertising can also help mitigate harms and improve regulatory responses.

The evolution of advertising industry

Internet advertising accounts for more than half of total global ad expenditure today – over \$250 billion annually.¹ It was the newspaper industry that sparked the rise of modern advertising during the 17th Century and advertising grew in tandem with the evolution of mass media in the subsequent centuries. In the last two decades, the online advertising industry has experienced tremendous growth driven by increasing online media consumption, the rise of digital platforms and new forms of data analytics and tools for targeting consumers.

Advertising's role in the marketplace

From a theoretical perspective, advertising fulfils different roles in economic life:²

1. **Advertising as persuasion**, which holds that advertising alters consumers' tastes and creates spurious product differentiation and brand loyalty which increases demand for a product or renders it more inelastic, thus benefiting producers. Advertising by established firms could increase barriers to entry, which can be more severe when there are economies of scale in production and/or advertising.
2. **Advertising as information**, which posits that many markets are characterised by imperfect consumer information, with search costs impeding consumer awareness of a product's existence, price and quality. Thus, advertising is the endogenous response to market inefficiencies, providing consumers additional information (e.g. prices, location) at a low cost which enhances their decision-making. Advertising promotes competition among established firms, and facilitates entry by new market players by enabling them to publicise their existence, prices and products.³

The use of advertising to market a wide range of products has long generated concerns over potential practices and failures which negatively impact the market system's dependence on adequate information and effective competition, and which

impair the functioning of other institutions. Hence, advertising regulations have tended to focus on issues of producers' monopolistic power, consumer deception, fairness, and social responsibility.⁴

Categories of online advertising

The online advertising industry comprises a number of market segments with the main ones being search, display (social and open) and classifieds, though influencer marketing is fast-growing as well. The main categories of paid online advertising and marketing communications are summarised in Figure 1.⁵

Figure 1: Main categories of online advertising

Category	Examples of providers
Search – Paid-for listing in search results, such as sponsored or promoted listings.	Google, Bing
Social display – Range of paid-for advertising formats on social media platforms.	Facebook, Instagram, YouTube, Snapchat, Twitter, LinkedIn, TikTok
Open display – Banner, video and native ads and sponsored content on publisher services.	The Guardian, Reach, Mail Online, ITV, Channel 4, BuzzFeed
Classifieds – Paid listings, such as recruitment, property, cars and services.	Gumtree, Autotrader, Zoopla, Monster
Influencer marketing – Paid promotion on creators' social media posts.	Social media influencers

The online advertising value chain involves advertisers and their media agencies (the demand side) buying advertising space from publishers, and search and social media platforms (the supply side). Trading between these parties may be direct or involve one or more intermediaries which include:

- **Advertiser ad servers** – used by advertisers and media agencies to store the ads, deliver them to publishers and assess the impact of their campaigns.

- Demand Side Platforms (DSPs) – allows advertisers and media agencies to buy advertising inventory from many sources. DSPs bid on impressions based on the buyer's objectives and on data about the final user.
- Supply Side Platforms (SSPs) – technology providers who facilitate the sale of digital ad inventory through real-time auctions involving multiple DSPs, and more direct deals between publishers and advertisers.
- Publisher ad servers – manage publishers' inventory and are responsible for the decision logic underlying the final choice of which ad to serve, based on the bids received from different SSPs and the direct deals agreed between the publisher and advertisers.⁶

Issues and potential harms from online advertising

Many of the concerns and issues with online advertising are similar to advertising in print, television, radio and other media: for example, misleading claims and offensive ad content. However, there are also some cases specific to online advertising. For example, ads in which bad actors insert JavaScript code into the ad creative file for malicious purposes, such as to force users to view and interact with content, enticing them to take part in scams. Other areas of concern include discriminatory targeting in circumstances where the product or service should be accessible to all (for example, job ads) or targeting based on protected or sensitive attributes such as race or religion.

The issues that could arise from online advertising affects both consumers and advertisers. Figure 2 lists the categories of harmful online advertising which are not mutually exclusive.

Figure 2: Segmentation of harmful online advertising

Consumer harms	
Harmful ad content	Harmful ad targeting
<ul style="list-style-type: none"> • Malicious/scam ads • Ads for illegal, counterfeit, fraudulent goods and services • Offensive ads • Misleading ads • Fake endorsements • Non-identified ads • Other harmful ads 	<ul style="list-style-type: none"> • Mistargeting • Discriminatory targeting • Targeting vulnerable people or groups
Advertiser harms	
Ad fraud	Brand safety risks
<ul style="list-style-type: none"> • Fake traffic, audience data, context or actions to siphon revenue from the display advertising ecosystem 	<ul style="list-style-type: none"> • Ad placement next to inappropriate or harmful content (e.g. hate speech or pirated content) which damages brand image

Compared to other forms of advertising, there are several features of online advertising that enable certain of these issues to be exacerbated, or for other issues to occur, namely

- High volume of ads – there are large numbers of online advertising campaigns, including dynamic creative campaigns in which an individual sees a tailored variant of an ad. In these cases, there is very limited shared audience for each ad, and inappropriate advertising can occur and go unnoticed.
- Personalised targeting – in some cases, online advertising is targeted based on personal data, with potential for misuse of this data to target vulnerable people, or to discriminate against certain groups.
- Computer code in ad creative – the online ads that are served to websites or apps includes not only images, animations or videos, but also computer code which can be misused to spread malware or for other malicious activity.
- Intangible nature – there is often no record of an ad being served to a consumer, other than a data trail, which makes it more susceptible to misrepresentation or fraud in some cases.
- Complex supply chain – online display advertising is traded programmatically, involving a complex and relatively opaque supply chain, with potential for bad actors to perpetrate fraud or malicious advertising attacks.
- Market structure – the online advertising industry is dominated by digital platforms such as Google and Facebook which have market power in certain key parts of the value chain.⁷ The lack of competition could lead to potential harmful outcomes to consumers, businesses (advertisers and publishers) and society in general.

The extent of online advertising harms

Although anecdotal evidence such as press reports and consumer complaints suggests that these issues are relatively widespread, there is limited data about the extent of consumer exposure to harmful online advertising. The main reasons are:

- limited detection and measurement of inappropriate ads or fraud in the online advertising ecosystem (estimates of ad fraud rates in the UK open display market range from 0.53% to 11%)⁸;
- limited data sharing by industry participants;
- consumers might not notice inappropriate ads, especially in cases where the ad is subtly problematic, is inappropriately targeted (consumers have limited visibility of how ads are targeted) or has hidden malware; and

- consumers might not wish to report ads that they know are inappropriate or might not know how to.

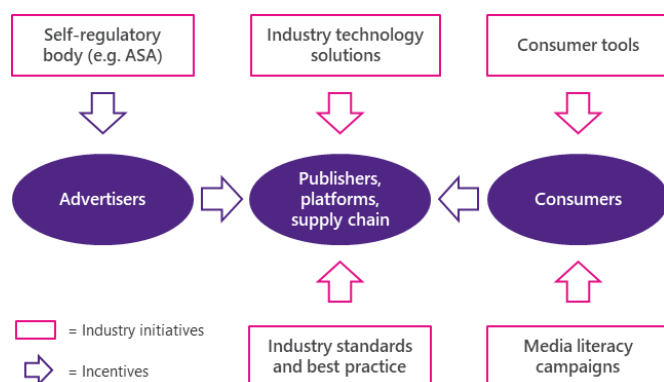
The current regulatory framework

The regulatory framework for advertising is complex with instruments and initiatives across a wide range of activities. Unlike broadcast advertising which is typically subject to co-regulation by a statutory authority and pre-clearance of TV and radio ads is usually required, the regulation of online advertising operates largely on a self-regulatory basis and on a complaints-based system as illustrated in Figure 3.

Typically, a national self-regulatory organisation is responsible for ensuring compliance by advertisers to an industry code of practice.⁹ Enforcement is typically through reputational sanctions and escalation to relevant bodies with statutory powers over some advertising segments or in specific service or product areas.

Alongside this, the industry has also developed practices and initiatives to counter harmful advertising, including industry standards, platform policies, technology solutions, consumer tools and awareness campaigns. Many are focused on advertiser issues of fraud and brand safety.¹⁰ Coordination around consumer issues, such as best practices in screening ads, is less well developed.

Figure 3: Online advertising self-regulatory system



The mechanism of this self-regulatory system depends on:

1. Advertisers being incentivised to comply with advertising codes for reputational reasons and to avoid sanctions if deemed to be in breach of advertising codes;
2. The participants in the supply chain, including agencies, social media platforms, open display market intermediaries and publishers, being incentivised by advertisers and consumers to adhere to advertising codes and industry practices; and
3. Consumers who are aware of the different types of harms relating to online advertising, and have the appropriate

channels and incentives through which to report such activities.

For the system to be effective, a strong feedback loop between consumers, regulators and advertisers is necessary. The current system of incentives has some limitations:

First, the reputational incentive for advertiser compliance is less likely to be effective in the case of:

- advertisers who are bad actors with the intention to engage in harmful activity;
- small-scale ad campaigns which are less likely to generate complaints given the lower reach and smaller audience size;
- lack of awareness of advertising rules, particularly in emerging segments such as influencer marketing;¹¹ or
- overseas advertisers who may fall outside the ambit of national regulatory and legislative frameworks.

Second, advertiser pressure on the supply chain actors relates mainly to brand safety and ad fraud and has a more limited influence on consumer issues such as inappropriate advertising.

Third, consumer and advertiser pressure may have limited impact on the open display advertising supply chain given the complexity of this market and the participants involved at different levels of the supply chain. For example, a publisher has an incentive to provide a good user experience but must rely on its suppliers such as SSPs to deliver quality, malware-free advertising.

Fourth, consumer and advertiser pressure may have more limited effect on platforms with market power,¹² such as Facebook in social display advertising, although many online platforms have advertising policies governing advertising content and practices and these are regularly updated to deal with new trends and issues that emerge.¹³

Finally, unclear and fragmented mechanisms for reporting inappropriate advertising may weaken these incentives.

- Some aspects of harm may have a low impact at an individual level (e.g. misleading ads) or are not obvious to consumers (e.g. inappropriate or discriminatory targeting) which makes it difficult for consumers to play an active role in providing feedback or complaints.
- A lack of clarity in how complaints are dealt with by different agencies and platforms could also deter consumers from raising complaints.

Strengthening the regulatory framework

The potential harms relating to online advertising are multi-faceted and the fast-evolving nature of this industry means that new issues can emerge rapidly and in different sectors.¹⁴ In some cases they are also associated with general online content, for

example organic social media posts which are outside the scope of advertising regulations.

Responding to these issues effectively and in a timely manner necessitates more clarity in the regulatory landscape – in terms of objectives and understanding of responsibilities – as online advertising cuts across a range of issues including user privacy, market power and the sustainability of public interest journalism.¹⁵ A good starting point is closer cooperation among regulatory agencies and industry bodies to pool their expertise, information and enforcement powers.

Given their central role in the online advertising ecosystem, more oversight of digital platforms is required. Advertising codes apply to advertisers but not digital platforms and other intermediaries in the supply chain. While many platforms have detailed policies and guidelines on advertising, as well as online content, which are generally aligned with advertising regulations and industry agreed practices, there should be more visibility and transparency on how these are being enforced and the impacts on the issues they are meant to address.

Better data, aside from complaints, is required for monitoring purposes and measuring the performance of online advertising sector. More sharing of information, ideally in a standardised format, by players in the online advertising value chain with the relevant agencies will help promote accountability and transparency. The retention of ads to allow analysis of past activities and trends may be a possible option to consider.

Lastly, the role of consumers can be enhanced by streamlining the mechanisms for the reporting of inappropriate advertising. Alongside this, the scope and reach of consumer awareness and public education initiatives should be expanded to help the general public understand the available options and process for redress.

This paper draws on Plum's research study (co-authored with Stephen Adshead) for the UK Government (Department for Digital, Culture, Media and Sport) which examined the nature, scale and causes of harms arising from online advertising, and assessed the current initiatives available to deal with these issues and to identify areas for improvement.

The study was commissioned to inform the Government's review into the way online advertising market is regulated in the UK, and falls within its broader work on online harms.

The full study report has been published, and can be accessed via: <https://plumconsulting.co.uk/mapping-online-advertising-issues-and-industry-and-regulatory-initiatives/>

For more information contact Plum at:

www.plumconsulting.co.uk

yishen.chan@plumconsulting.co.uk

¹ <https://magnaglobal.com/magna-advertising-forecasts-december-2020/>

² Bagwell, K. (2007) The economic analysis of advertising. In Handbook of Industrial Organization, Vol. 3, pp 1701-1844.

³ A third perspective is that advertising is a product complement and it neither changes consumers' preferences, nor does it provide information. In this view consumers possess a stable set of preferences and advertising is complementary to the advertised product. For example, consumers may value 'social prestige', and advertising by a producer represents an input that contributes to the prestige enjoyed when the product is consumed.

⁴ Boddewyn, J (2001). Advertising. Control of. In International Encyclopedia of the Social & Behavioral Sciences, 178-183.

⁵ Other forms of online advertising include organic social display, email marketing, and advertiser marketing on websites and apps.

⁶ For more details on the structure of the online advertising market, see <https://plumconsulting.co.uk/online-advertising-in-the-uk/>

⁷ The market power of these digital platforms is entrenched by features such as economies of scale and scope, vertical integration across the advertising value chain, network effects, and access to user data. This has led to concerns that platforms have the incentive and ability to increase prices, or to overstate the quality and effectiveness of their advertising inventory, and that a lack of transparency undermines the ability of market participants to make the informed decisions necessary to drive competition. See CMA (July 2020). *Online platforms and digital advertising*. <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>

⁸ Plum Consulting (May 2020). *Mapping online advertising issues, and the industry and regulatory initiatives aimed at addressing them*.

<https://plumconsulting.co.uk/mapping-online-advertising-issues-and-industry-and-regulatory-initiatives/>

⁹ In the UK, this body is the Advertising Standards Authority (ASA) and the ASA ensures that advertisers comply with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code).

¹⁰ For example, the Internet Advertising Bureau (IAB) Gold Standard and Trustworthy Accountability Group (TAG) Certified Against Malware and Certified Against Fraud programmes.

¹¹ In the UK, the ASA and the CMA have sought to address this through the publication of guidelines for brands and social media influencers on the applicable advertising rules and consumer protection law.

¹² The issue of the market power of online platforms in the digital advertising market has been the subject of scrutiny by regulators in a number of countries including Australia, France, Germany, Japan, Netherlands, Spain and UK and the US.

¹³ Some platform advertiser policies go beyond the advertising codes in prohibiting or restricting certain advertising, such as spyware, malware and hacking content.

¹⁴ For example, recent trends online ads relating to Covid-19 scams and fake pension investments. <https://digiday.com/media/publishers-see-a-surge-of-coronavirus-scam-ads/>; <https://www.standard.co.uk/business/online-pension-scams-surge-in-covid-lockdowns-google-facebook-b722837.html>

¹⁵ For example, the UK Government is introducing a new legislative framework to address online harms with Ofcom as the designated online harms regulator, and establishing a Digital Markets Unit (DMU) which will be responsible for promoting competition in digital markets including those which are funded by online advertising.