

Digital Media & Advertising Policy

Approaching regulatory challenges online

Digital Insight Report

The regulation of online media can be challenging because of the pace of change in the sector, the evolving models of communications, and the new jargon and processes to get to grips with. With most existing legal frameworks automatically extended to the internet, there is no shortage of regulation, but the internet's unique challenges of geography and identity can add an all-pervasive layer of complexity. Add the further stark reality that in this sector the consumer has not only incredible control of the minutiae of their media consumption, but also hitherto unseen transparency and comparability in the price and service offerings of advertisers, and it's clear the landscape and expectations of stakeholders – consumers, advertisers, agencies, media owners and governments – is radically different.

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This short insight report outlines some of the perspectives on the development of regulatory frameworks for online advertising. These perspectives are intended to give more insight into the debate and to help SROs consider their approach to digital more deeply.

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Introduction

Online advertising is suddenly at the heart of the media mix and online marketing formats have rapidly broadened in their volume and complexity. The arrival of convergence presents an immediate fusion with traditional television content, being delivered to anything but traditional devices, and yet just as the web finally embraces the features and formats of one traditional channel, a series of separate strands – often called 'Web 2.0' – are unlocking the power of social networks, communities and individuals. Broadcast mass media are sitting hand-in-hand with the most intimate of personal dialogues.

Against this background the challenges of regulatory debates are broad and deep, and although self-regulation would be the most effective model, its future lies in the hands of the SROs themselves and the industries they represent. Acting firmly and decisively now will shape the regulatory future of the whole sector.

1. The context of this debate

SROs across Europe are faced with an immediate challenge. Governments are looking to them to provide leadership and the frameworks for the management of online advertising from the perspectives of its legality, honesty and truthfulness.

The debate about self-regulating content of online advertising began more than ten years ago, but there is now immediate governmental pressure for the industry to provide a response.

The internet marketing industry is yet to mature, and a combination of its youthfulness, lack of structure and sustained pace of development provides additional challenges.

2. Approaching self-regulation

2.1 Challenges in approaching self-regulation

The regulation of online media can be challenging because of the pace of change in the sector, the evolving models of communication, and the new jargon and processes to get to grips with. Add to that the lack of experience of many, in what remains a young industry, and there are clearly significant process hurdles to overcome before efficient regulatory regimes can be put in place.

2.2 Understanding existing regulation

The existing online regulatory landscape is often misunderstood. Across Europe there is a notable mismatch in understanding, with many in the digital industry not appreciating the strength of existing statute law (in areas of contract, distance selling, consumer rights), as well as the role of self-regulation in media. This is not just a product of the newness of the industry, it also reflects the way many of its staff have entered without significant experience in traditional media.

2.3 Leadership and stakeholders

For regulatory frameworks to thrive, all stakeholders need to be deeply engaged. The online industry will need leaders from all sides - agencies, media owners, technologists, advertisers - to unite in support if they are to succeed in building frameworks comparable to those in traditional media.

2.4 Unique challenges in the digital networked society

With most existing legal frameworks automatically extended to the internet, there is no shortage of applicable law and regulation, but the internet's unique challenges of geography and identity can add an all-pervasive layer of complexity to the regulatory debate. Content and marketing usually spills across national boundaries without the frictions that can control

traditional communications. The location of viewer, publisher, consolidator and third parties is more fluid than in any other media, and those involved in the self-regulatory debate need to create frameworks for addressing these issues.

2.5 Consumers are in control

Every web publisher knows the stark realities of this new landscape. Fail to satisfy audience expectations in a landscape where every competitor is only a click away, and the backlash is as immediate as it is vast.

The consumer has not only incredible control of the minutiae of their media consumption, but also enjoys hitherto unseen transparency and comparability in the price and service offerings of advertisers. In the listings of Kelkoo, eBay and PriceRunner, advertised services are boiled down into the most clinical of elements. With that trend accelerating, and increasingly being allied to user-generated product ratings, it's clear the landscape and expectations of stakeholders - consumers, advertisers, agencies and media owners - is radically different from the culture of advertising in classic media.

3. The decision for self-regulatory organisations

3.1 The decision

As internet advertising continues its phenomenal growth, the self-regulatory organisations responsible for advertising content in other media need to decide whether they will position themselves to manage the unfolding digital networked spaces.

3.2 The advertising formats to consider

Classified and graphical web advertising may be the most mature of the digital platforms, but email, search and SMS are hot on its heels. Convergence with video brings with it a new generation of video formats which could simply be clips of video-style advertising embedded within classic online formats like the banner or MPU, or alternatively could be traditional television commercials locked into an IPTV stream as pre-rolls or mid-rolls; a model closely aligned to traditional television. Then there are the new emerging marketing models of social participation we often refer to as 'Web 2.0': user generated messaging, viral marketing, social networking and online communities. On the cutting edge of online marketing, the harnessing of messaging spaces inside the virtual worlds of communities like Second Life and Habbo Hotel, or mass multiplayer game platforms like World Of Warcraft fuse the models of product placement, ambient media and web advertising into genuinely new formats. Finally there are the data fusions themselves, the 'mashing-up' of one data set with another to create a new web service that could combine advertising feeds.

4. Paying for self-regulation

4.1 Putting funding on the agenda

It would be naïve to suggest that the costs of delivery will not be significant. The fluidity of the space, the lack of understanding of consumers, and the reskilling challenge for SROs all accelerate the costs of extending regulatory remit. Funding needs to be on the agenda.

4.2 A mainstream medium with mainstream budgets

However, in many countries the sector is no longer the poor cousin of classic media. In the UK, internet ad spend has overtaken national press and is more than half the size of the TV market. Leaping more than 40% year-on-year, online has proved it can move from the level of mainstream medium to lead medium in what we see as Europe's indicator online economy. Our forecasts are that by Spring 2010 online ad spend will have comfortably exceeded TV in the UK, fuelling the argument that there will be funding to draw upon.

4.3 Growth spreads across the European markets

The national ad markets across Europe have been growing at rates from 20% to 200% year-on-year, and even in the largest European market growth still exceeds 40% year-on-year. The changes vary greatly over time and between countries, but change on this scale has never been seen before in media.

4.4 Ten years of continued growth

As online has blossomed, it's become clear that the marketing models behind online advertising can draw on every aspect of the marketing mix – from brand awareness, through purchase-intent, to purchase and into customer service. With online inextricably part of the sales channel for so many brands, the web is better characterised as not one media channel, but the sum of all media combined, providing a perfect mirror to anything that can be done in classic media and marketing. As more advertisers uncover this power, investment will massively swell.

5. Commitment

5.1 Matching funding with time

Cash funding will be important, but without a significant injection of energy and resource, it's clear the status quo will readily prevail. The challenges may be large, but most SROs must question their preparedness for the task. This shouldn't be read as a criticism of SROs themselves; after all, SROs are simply the delivery arm for what industry agrees to be its model for management. Any criticism would be around whether enough of this debate is happening, and whether serious engagement is taking place.

5.2 Leadership

If self-regulation of advertising content is materially going to extend to digital media across all European markets, then it requires massive sustained investment in both senior management time and cash. It requires the engagement of all sides, as well as strong leadership at the centre. New media is no longer new. These regulatory discussions have been underway for more than a decade and now has to be the time to make the decisions.

6. Unpacking the self-regulatory challenges

6.1 Approach

The roadmap may feel unclear to many just getting to grips with these issues, but Digital's team are keen to offer some constructive steps in unpacking the debate into areas that can be more effectively tackled. From our Digital Media Law Academy and three years of discussions across Europe, we've tried to distil patterns from the complexity of these markets, boiling them down into five separate sets of challenges stakeholders will need to consider.

6.2 Five groups of challenges

We've identified five separate groups of regulatory challenges SROs will need to navigate. For those experienced in digital media these will feel familiar, but a decade on from the start of the debate the issues are still significant and the ideas still only weakly understood by many outside the heart of the industry.

1. Philosophical challenges

- Rethinking the philosophical approach to protection and regulation in an environment in which consumers are now in control

2. Definitions and the risk of drawing increasingly untenable lines in shifting sands

- The definition of Geography and Place
- The definition of Advertising Content
- The definition of Formats
- The definition of Media Channels
- The definition of Editorial
- The definition of Content Creator

3. Untangling existing regulation

- Resolving conflicts of existing laws
- Resolving conflicts of regulation in a converged landscape
- Resolving the discomfort of shoehorning regulatory approaches and models from classic media into the digital networked society

4. Getting meaningful support

- Achieving meaningful corporate buy-in
- Brokering a US agreement: handling global marketing and US control
- Handling the China question: designing techniques that can handle the challenges to come, maybe by using China as a laboratory to test the extremes

5. Bridging the knowledge gap: do the people who need to know, know what they need to know?

- Bridging the knowledge gap among regulators, governments and courts
- Bridging the knowledge gap within firms
- Bridging the knowledge gap among many consumers

7. Simple steps for SROs

7.1 Getting the process right

It's clear that many SROs would benefit from additional support in the process for tackling the self regulation of online advertising. There is a clear gap between where many are today and where they need to get to in order to deliver effective services.

We've suggested some simple steps for how SROs unfamiliar with these issues can progress, both in terms of the process they undertake for decision-making, and the material immediate issues they should tackle.

“Media and advertising regulation is at its greatest juncture; having to fundamentally change its rationale, frameworks, and internal processes.

The digital networked society disregards geography, transcends language, puts the consumer in control, and blends all communication formats into one. Regulatory challenges just don't come bigger than this.”

Danny Meadows-Klue
Law Society lectures
London, 1998

7.2 Ten simple steps

We've outlined ten steps for SROs and their stakeholders who are new to digital media or the online regulation debate.

1. Scope the challenge
2. Learn the issues
3. Look for the models that could work
4. Find your friends and supporters
5. Bring stakeholders together in a collaborative environment
6. Manage expectations of government, consumer groups and external parties
7. Work hard with agencies, advertisers and media owners
8. Share best practice
9. Free up time and resource to invest
10. Periodically review your processes to test for progress and goal alignment

8. Topics and approaches to consider

Each SRO will have their own sense of the cultural and economic behaviour of their advertising industry, but there could be some quick-wins in these discussions. We discovered five areas that might help SROs new to digital regulations focus their efforts and their resources productively.

8.1 Focus on information provision to all your stakeholders

The media literacy that exists in Western Europe has been the product of a very long term programme of cultural evolution and specific development initiatives from industry. The sudden arrival of online within a decade brings with it an inescapable gap between the leading edge of web practices and the cultural frameworks people have to process web information. This gap can give rise to tensions, and can only be bridged with information and training.

8.2 Explore notice-and-takedown

The reactive models of policing media can be massively efficient in harnessing the energies of

the online community. Let consumers know the rules, create efficient mechanisms for complaint delivery, and build a machine to handle the process.

8.3 Seek out the points of control

Look for the places that will represent solid points of contact, responsibility and control. By understanding the different ecology of the digital landscape, and where the gatekeepers are, the practicalities of self-regulation can be unpacked.

8.4 Set the definitions for your remit

Tackle the definitional questions head on. Clear definitions are essential to describe remits and scope the problem you're intending to address. In the online world these definitions may prove thornier to grasp, but precision will give clarity to the debate. Use our checklist of five groups of regulatory challenges as a starting point.

8.5 Develop automated feedback to media owners and control points

From the outset, aim to really harness the digital tools to help you. Managing issues, complaints, notifications and judgements can be massively enhanced by embracing digital technologies. At a time when extra needs placed on the SRO may not be matched by extra resource, working smarter will be key.

And review the models and structures of your existing codes; strive for extension and consistency.

9. Viewpoint and reflections

9.1 The decision

The way these decisions are made will rest in part with industry. If advertisers, media owners, technologists and agencies act quickly and effectively, then there is a reasonable likelihood in the preservation of self-regulation for online advertising.

9.2 Achieving a good result

Self-regulation is a powerful model for achieving an efficient market solution in a fast moving sector. We've long believed that self-regulation is not only preferable, but the only viable mechanism for handling advertising content in a sector unfolding so fast. It delivers an efficient result not only for media owner, agency and advertiser, but for the consumer because it can respond to their needs in a way that is flexible and evolutionary.

10. Wider implications

Unquestionably, big challenges lie ahead, probably some of the biggest we've seen in media regulation, but that doesn't mean industry should shy away from tackling them. And if industry doesn't lead on this, then the alternatives look bleak. If this feels like a debate just about online, then think again: consider how the self regulation of non-broadcast media stacks up when the online versions of those same media properties have no framework while classic media remains tightly managed. What lies in the balance is not the web, but the very nature of self-regulation.

“This is a world of conversations;
marketing monologue is replaced by dialogue, and
marketers need to appreciate what this means.”

Danny Meadows-Klue
US Regional Newspaper Congress
San Francisco, 2000

Analyst's profile: Danny Meadows-Klue

Danny has been an international commentator on the digital networked industries since the mid nineties and is recognised as being a leading authority on digital marketing. He managed the UK's first online newspaper (telegraph.co.uk) where he stewarded it to win Newspaper of the Year repeatedly. He has helped run web businesses ranging from mass market portals and consumer magazines, to online stores and search and email services. He has been recognised by the DTI as being one of the 100 founders of the UK internet industry, and acknowledged by trade magazines for many years as being one of the most influential figures in his industry. He is the co-founder and former chairman of the UK and European Internet and Interactive Advertising Bureau trade associations, and has helped launch twenty further digital trade associations and initiatives around the world. He has acted as a government advisor in the DTI and Home Office, and retains roles on advisory boards for digital investment funds and digital firms. He has been lecturing on digital marketing and publishing for more than a decade and was recently awarded fellowships of the Institute of Direct Marketing, and the Royal Society of Arts. He set up Digital Strategy Consulting in 2000 to help firms make sense of the rapid changes brought about by the digital world, and show them how to harness the potential of the digital networked economy. He is an enthusiastic educationalist and continues to teach university Masters courses and management courses



He is the inaugural chair of the examination board for the first Diploma in digital marketing, and a longstanding board member of the journal of Digital Marketing. Danny is a geography graduate of the University of Bristol and lives in London. Details of his current speaking engagements along with a full biography and recent articles are available on DigitalStrategyConsulting.com

About the Digital Insight Report series

In times of huge economic and technical change, knowledge becomes a critical success factor. We created the Digital Insight Reports to bring you insights from a particular part of this fast changing industry. They are independent perspectives on key issues around business or marketing in the digital networked



economy. We also publish similar Digital Thought Leadership interviews and Digital Book Club reviews to share the ideas and thinking of some of the people and companies shaping the digital networked world. These often accompany our keynote talks and training workshops. Making sense of the digital world can be tough, but knowledge and training can unlock the potential of your team.

If your firm wants to harness new marketing and publishing approaches, then why not talk to the team here at Digital? Our senior associates can deliver the hands-on expertise you need to change the way your team behaves, enabling them to understand and implement new publishing strategies. We can work with



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Making sense of a digital world

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