

RESPONSE TO ONLINE ADVERTISING PROGRAMME CONSULTATION

June 2022

1. We welcome the consultation on the Online Advertising Programme and the opportunity to consider the Government's proposals alongside the Online Safety Bill (OSB) provisions for paid-for advertising. Our expertise at Carnegie UK lies in regulation for Online Harms: for the past four years, under the leadership of Professor Lorna Woods (Essex University) and William Perrin (Carnegie UK Trustee), we have developed and advocated for the approach of a statutory duty of care, enforced by a regulator to address and mitigate risks of harm online. All our work can be found on [our website](#).
2. We note that the proposals set out here are intended to "work in conjunction" with the OSB, as well as with competition and data protection measures. We limit this response to some of the issues that the consultation throws up in relation to these boundaries.

Online advertising and the OSB

3. We note, as the consultation document says, that "paid-for advertising is largely out of scope of the Online Safety Bill"; the reason given for this is that "it involves additional companies to those the government is regulating via the OSB" and the "OSB is not the right vehicle by which to regulate the many and varied services involved in the online advertising ecosystem."
4. While we agree that the OSB should not cover the entire advertising ecosystem, there were two significant areas of inconsistencies even within the narrow range of advertising that is covered by the OSB. The first – which the Government has recently addressed through an amendment to the Bill – is fraudulent ads. The inclusion of fraudulent paid-for advertising in the OSB as a standalone duty as welcome concession by the Government: it was an area [on which we had campaigned with a coalition](#) of other charities and financial sector bodies. Further to the call [set out in the evidence from Which?](#) to the Bill Committee, which we also supported, that the same level of duties with regard to fraudulent advertising need to apply to search as to social media platforms, we are pleased that the Government has put forward an amendment to the Bill to this effect. Given the cross-party support on this issue, we look forward to this being passed by the Bill Committee and the OSB amended accordingly.
5. As Professor Woods noted in her evidence to the Bill Committee on 26 May, there is a further gap within the Bill in relation to search: paid-for advertising is in scope only for user-to-user content, a change from the draft bill which brings it broadly into line with the currently in force video-sharing platforms provisions in the Communications Act. But search engines only have duties in relation to "search content", which excludes "paid-for advertising". This means that the wider set of duties which are linked to "search content" – for instance those relating to child safety – do not apply to paid-for adverts that are posted and shared via search engines, a potential loophole that could see children targeted with types of content, such as pornography or abuse, that would otherwise have to be acted upon by platforms. With the recent change to bring search engines in line with fraudulent paid-for advertising provisions for social media, the question now remains as to why advertising more generally is not brought into scope on search engines.

Future regulatory models

6. Chapter 5 puts forward three options for future regulation of online advertising. Professor Woods recently attended the DCMS-hosted roundtable to discuss these, and we make three observations here, based on that discussion and our further analysis of the options:
 - a. The first is that the regime, whichever option is chosen, needs to be agreed and implemented as soon as practicable. The risk of a two-speed process, with the OSB passing into law before the preferred OAP regulatory option is in place, means that perverse incentives are likely to arise as scammers and fraudsters move from a more regulated environment to one which has less stringent oversight, or indeed (if the self-regulatory option is chosen) will not have a statutory footing at all in the future (with implications for the level of enforcement possible).
 - b. Whichever option is chosen, it must align as closely as possible with the OSB regime, and the boundaries here will be important. Platforms covered by the OSB reflect a specific slice of the wider advertising ecosystem, and the regulatory model is designed to be systemic rather than (solely) content-based – though it does veer too much, in our opinion, into decisions on content, moderation and takedown. The existing advertising self-regulatory model is focused on content of adverts so, whatever new option is proposed, it must be able to work across those existing regulatory spheres as well as taking account of data protection, privacy and competition regulation. Fraud happens online at scale - driven by systemic drivers such as algorithms, the design of platforms and data-driven targeting. Vulnerable users/consumers are particularly at risk and many of the harms may be unseen. This makes prevention all the more important. Some platforms will operate across the OSB regime and the new OAP one, so the two must function together. Whether or not some content rules are imposed or carried across from the existing advertising standards regime, it should also impose OSB-style systemic obligations on the online advertising ecosystem which identify the impact of design choices and business model on the flow of information and align the regulatory approaches. It must not lower standards, whether in existing competition or consumer protection regulations or in the wider digital and data regulation landscape.
 - c. Whichever regulator has the lead for the new regime, there must be provisions for it to cooperate with other regulators in order to share information and evidence, horizon scan for new risks and harms, and effectively enforce sanctions. We have called this a system of regulatory interlock – but note that it is lacking from the OSB, with no powers or duties given to Ofcom to cooperate with (domestic) regulators; strangely there is a duty to cooperate with overseas regulators. The Digital Regulation Cooperation Forum is no substitute for putting a coordination or cooperation function on a statutory footing.
7. We would be happy to elaborate on these points further – either in writing or in discussion with the DCMS team – if helpful.

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June 2022

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