

IAB Poland - Interactive Advertising Bureau Poland's answers to the consultation on the Digital Services Act package

Section I. Safety and responsibilities

I. How to effectively keep users safer online?

1. Main issues and experiences

A. Experiences and data on illegal activities online

19. What good practices can you point to in handling the dissemination of illegal content online since the outbreak of COVID-19? 3000 character(s) maximum

In April 2020, IAB Polska and its members became involved in an advertising campaign - React! You have an influence on advertising.

IAB Polska is aware of the importance of the quality and reliability of advertising messages in public space. This applies in particular to maintaining the ethical standards of advertising addressed to consumers in a situation of uncertainty and the threat of the COVID-19 pandemic.

Therefore, together with other associations and our members, we launched a media campaign aimed at drawing attention to unethical advertising messages during the pandemic, but not only. The main point was give the consumers opportunity to react on advertising messages that they believed violated ethical standards. This campaign was to increase the awareness of consumers and draw their attention to the importance of honest and ethical advertising.

Moreover, bearing in mind the problem of advertising on illegal websites today, since 2014 IAB Polska has been implementing the campaign "Advertise consciously. Fair Advertising Initiative". Its purpose is to promote among advertisers the placement of advertisements on websites with legal content that respect the provisions of applicable law and the rights of third parties, in particular copyrights and related rights. As an organization associating entities operating on the Internet, we want to make marketers aware that communication in portals promoting legal content is important both for the brand image and for the advertised product (<https://www.iab.org.pl/reklamujswiadomie/>).

Regardless of the above, IAB Polska is acting within IAB Europe - the European industry representation - and we jointly support WIPO's efforts in terms of effectively minimizing the risk of ads inadvertently funding any illegal content, through the WIPO ALERT initiative. IAB Europe also sit on the IP in the Digital World Working Group and liaise with the EUIPO's Observatory. These efforts sit well within the context of the broader industry's brand safety agenda.

20. What actions do online platforms take to minimise risks for consumers to be exposed to scams and other unfair practices (e.g. misleading advertising, exhortation to purchase made to children)? 3000 character(s) maximum

A good example of operating self-regulation of the advertising industry in Poland is a Code of Advertising Ethics and Child Protection Card in Advertising. Moreover IAB Polska encourages entrepreneurs to join the initiative - The Programmatic Advertising Code of Good Practice, which defines standards and good practices for all participants of the programmatic chain. Its purpose is to ensure quality, security, and transparency in the use of the programmatic model of buying advertising on the Polish market. Programmatic chain participants undertake to comply with certain criteria and rules applicable in the area for which they are responsible.

The Polish version of the Code published at the beginning of 2020 was licensed by the German industry organization BVDW, part of the global IAB network. The Code of Conduct Programmatic Advertising has been operating in Germany, Austria and Switzerland since 2016. The local version of the document, developed by representatives of the Programmatic IAB Polska Working Group, fully corresponds to its prototype.

IAB Polska supports IAB Europe's position as follows:

Irrespective of where advertising appears and how it is delivered, it must comply with all applicable laws, rules, ordinances, codes, and regulations (including, without limitation, any industry-specific ethical, professional, or self-regulatory requirements).

In the EU, this means at least the Unfair Commercial Practices and Misleading and Comparative Advertising Directives.

Building on the legal architecture, the industry enables a robust self-regulatory system for advertising content, which covers 97% of all ads seen by the EU population. Coordinated with the support of EASA – European Advertising Standards Alliance, it 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. In addition to company processes, the system features not only codes of conduct, independently enforced by the self-regulatory bodies, but also 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 industry.

21. Do you consider these measures appropriate?

- **Yes X**
- No
- I don't know

22. Please explain. 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

While completely eliminating the risk of advertising funding sites that host illegal or illicit content or disinformation is probably impossible due to the boundless and pervasive nature of the internet, our experiences shows that technology standards and best practice constitute a sound approach. In a recently published report, 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 acknowledge however, that the overall situation is still far from satisfactory and that constant efforts need to be made to further reduce ad funding of IPR-infringing sites.

Similarly, the existence of well-established company practices and a broader self-regulatory framework for advertising content allows industry players to take swift and expeditious actions against misleading or otherwise harmful advertising.

C. Activities which could cause harm but are not, in themselves, illegal

2. To what extent do you agree with the following statements related to online disinformation?

| | Fully agree | Somewhat agree | Neither agree nor disagree | Somewhat disagree | Fully disagree | I don't know / No reply |
|--|-------------|----------------|----------------------------|-------------------|----------------|-------------------------|
| <i>Online platforms can easily be manipulated by foreign governments or other coordinated groups to spread divisive messages</i> | | | | | | X |
| <i>To protect freedom of</i> | X | | | | | |

| | | | | | | |
|--|--|--|--|--|--|----------|
| <i>expression online, diverse voices should be heard</i> | | | | | | |
| <i>Disinformation is spread by manipulating algorithmic processes on online platforms</i> | | | | | | X |
| <i>Online platforms can be trusted that their internal practices sufficiently guarantee democratic integrity, pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.</i> | | | | | | X |

3. Please explain. 3000 character(s) maximum

IAB Polska supports IAB Europe’s position as follows:

IAB Europe is committed to reducing the incidence of online disinformation. The Association and a number of member companies are signatories to the EU Code of Practice on Disinformation, being committed to actionable commitments in their respective fields of activity. We recognise 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. 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.

That said, it is in our shared interest to ensure that the digital ecosystem continues to provide accurate information and views, and on terms that are accessible and affordable for all citizens.

In this context, IAB Europe 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. This includes addressing the need for harmonised pan-European brand safety and brand suitability approaches, and collaborating with other partners, for instance, in the framework of the Global Alliance for Responsible Media (GARM) that aims to proactively and collectively address harmful and misleading media environments. Also, IAB Polska regularly examines various aspects of the digital ecosystem. An important place in the conducted analyses is occupied by the social role of the Internet or the Internet as a source of information. This curiosity is reflected in such projects as "Privacy on the Web", "Internet Culture of Insults?" and "Disinformation on the Web", which was created at the time of the escalation of "fake news".

Both the research of IAB Polska and the documents of the European Commission show that blaming the entire ecosystem of online media or the advertising environment for misinformation on the web is a mistake. According to the report "Disinformation on the Web", the main source of false information spread online is social media - they were indicated by 58% of those asked about the Internet environments where they most often encountered false information. Information portals took second place (39%).

Market experts agree that the key to fighting fake news is the promotion of high-quality journalism and pluralistic news media, as well as education, the development of critical thinking skills, and digital competences, especially by young people.

4. In your personal experience, how has the spread of harmful (but not illegal) activities online changed since the outbreak of COVID-19? Please explain. 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

The Covid-19 crisis further demonstrated the need for quality news media, which at its core may be seen as a critical contributing factor to tackling disinformation. People have been looking for trusted, quality journalism, often financed primarily via ad revenues. This spur in heightened traffic should be delivering the financial results to reward trusted journalism. However, the market has seen buyers of ads extending the use of their avoidance technologies to prevent some or all Covid-19 ad adjacencies. The inclusion of the exact match words such as 'crisis', 'coronavirus' or 'Covid-19' in avoidance technologies has had the unintended consequence of blocking all advertising from appearing next to Covid-19 related content, thus limiting the availability of monetizable inventory to the publisher, and surely having an impact on technology providers working on their behalf.

IAB Europe therefore recommended that during Covid-19 a blanket brand safety approach of blocking all Coronavirus or Covid-19 content is not applied. Brands should instead work closely with their media agencies, verification companies, and trusted news partners to make an informed decision by looking at the facts about the value of news environment and implementing smart solutions to ensure that their advertising continues to reach the correct audiences during COVID-19.

5. What good practices can you point to in handling such harmful activities since the start of the COVID-19 outbreak? 3000 character(s) maximum

As mentioned above, In April 2020, IAB Polska and its members became involved in an advertising campaign - React! You have an influence on advertising. The main point of this project was to give the consumers opportunity to react on advertising messages that they believed violated ethical standards. This campaign was to increase the awareness of consumers and draw their attention to the importance of honest and ethical advertising.

IAB Polska supports IAB Europe's position as follows:

When it comes to disinformation, we take the view that flexibility is required, in light of critical questions around freedom of speech and freedom of media. One should not monetise content amounting to disinformation, and in fact take active preventive measures to avoid such content and effectively avoid advertising next to it. It must not be overlooked that there is still uncertainty as to what in fact can be reasonably deemed as disinformation.

The principle of remaining vigilant had been valid pre-Covid-19, and should prevail in the current times, too. Technology companies continue to rely on proprietary and client's brand safety mechanisms for this purpose. Ultimately, in terms of ad buying, the level of brand safety must be at the discretion of the advertiser, or a buyer for that matter. Certain products or services may fare better from an advertising perspective in specific content environments, or when viewed by a particular audience. Same environments or audience could be however deemed inappropriate by another advertiser, which underscores the fact that brand safety is context specific, and there are no one-size-fits-all approaches. Conversely, suitable solutions must be discussed on a case-by-case basis.

SECTION II. Reviewing the liability regime of digital services acting as intermediaries?

1. How important is the harmonised liability exemption for users' illegal activities or information for the development of your company?

Please rate from 1 star (not important) to 5 stars (very important) X

2. The liability regime for online intermediaries is primarily established in the E-Commerce Directive, which distinguishes between different types of services: so called 'mere conduits', 'caching services', and 'hosting services'. In your understanding, are

these categories sufficiently clear and complete for characterising and regulating today's digital intermediary services? Please explain. 5000 character(s) maximum

Certainly, in common understanding, the so-called ISP (Internet Service Providers) are already covered by sectoral regulations, including the new European Electronic Communications Code. Similarly, extending regulatory burdens to certain groups of actors, including those key to digitization and modernization of the economy as a whole, such as cloud service providers, seems to be a potentially negative move. It should also be noted that in practice it was sometimes problematic to define the concept of online intermediaries and the categories of services falling within its scope, in particular services consisting of storing and sharing user content, as hosting within the meaning of Art. 14 of the e-commerce directive. The hosting typology is not always appropriate for modern web services and therefore needs updating.

IAB Polska supports IAB Europe's position as follows:

We support an exemption scheme as it had become a foundational principle of the internet architecture. Should a more graduated iteration of the liability regime be introduced, it ought to recognise intricacies of the digital advertising ecosystem. More specifically, the role of certain stakeholders in the supply chain, where the level of knowledge and control of advertisements or data used in the supply chain may be difficult to apply.

The ecosystem is highly interconnected and see parties collaborating to place advertisements. Most of these parties provide for a service that may be deemed an 'information society service'. In the supply chain, they can ultimately be considered subcontractors of one another. Most of them 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 paradigm reflects the reality of the market, whereby it is the advertiser that is fully 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.

4. Does the current legal framework dis-incentivize service providers to take proactive measures against illegal activities? If yes, please provide your view on how disincentives could be corrected. 5000 character(s) maximum

For many years, there have been both cases of abuse of invoking the "passive role" by some intermediaries in order to avoid liability for the stored / shared content, as well as to wrongly prosecuting and punishing some intermediaries for actions they have taken in good faith, with great effort organisational and financial in the fight against illegal or undesirable content on its platforms. It is necessary to maintain the principle of limited liability of Internet intermediaries for the content of third parties hosted by them, in the event that such intermediaries respond to violations in accordance with the established procedure. This increases legal certainty and online services remain living places for education, culture and freedom of expression. The current liability system is also particularly important for small and medium-sized enterprises that do not have the resources to regularly verify the content published on their servers.

Additionally, it is necessary to create a broader legal framework which, on the one hand, will sanction the so-called the principle of "good Samaritan", and on the other hand, they will make it difficult to interpret these exceptions too broadly and contrary to the intention of the EU legislator. The diversity of national regulations in individual EU countries and the inconsistency of the actions of regulators on the EU scale are certainly an additional problem in this matter.

In addition, it should be noted that the issue of real actions that can be taken by a party suffering from illegal sharing of content (e.g. in the case of copyrighted content) is not uniformly regulated in individual Member States, which is not conducive to the creation of a digital single market and distorts competition rules in some countries. Unfortunately, Poland is an example of a country where the provisions of, among others, e-commerce directives have not been fully and correctly transposed into national law (e-commerce), despite the fact that business and creative circles have been submitting specific demands in this regard to the Ministry of Digitization for several years. Therefore, it is also necessary to analyse to what extent the current problems could be addressed thanks to the existing, and not used, legal possibilities.

When addressing the responsibility of intermediaries for content and the actions required from them, a clear distinction should be made between the expected actions against illegal content and harmful content. Storing / sharing illegal content should be subject to much stricter rules, while with regard to harmful content, it would be worth considering the role of co-regulatory mechanisms (e.g. codes of conduct approved by the regulator) and the involvement of so-called "Trusted flaggers".

We welcome the Commission's announcements regarding the implementation of a transparent "notice and action" procedure, in which the term "action" is understood broadly, i.e. .:

- *"take down" - content removal taking into account the "notice and counternotice" process;*
- *restoration of the deleted content in justified cases;*
- *notification of the relevant law enforcement authorities of the infringement;*
- *"stay down", in relation to illegal content, in strictly defined cases, as nowadays it is common for content removed by intermediaries under the "notice and take down" procedure to reappear on their sites quickly. However, such a solution requires a careful and balanced approach to avoid overburdening intermediaries and reducing the fundamental rights of users in breach of fundamental rights.*

The system should be significantly strengthened with clear notification requirements. They should be understandable by those submitting notifications; assist teams hired by online intermediaries in verifying notifications, as well as create incentives against fraud as a result of false notifications or actions in the so-called bad faith. Regulatory transparency and stability are essential for businesses to deliver online services, many of which create space for education, culture and freedom of speech. It is necessary to strengthen the system of counteracting the appearance of illegal and harmful content on the Internet by developing mechanisms for notifying or reporting content by users (flagging buttons) and creating a

systemic framework for cooperation with reporting entities to verify mixed content in a more efficient and responsible manner and to discourage misuse of false notices or notices based on bad faith. Such notifications should not be made anonymously, as is standard practice in many worldwide application procedures. Identifying the author of the information is critical to the redress and anti-fraud mechanisms.

Moreover, in our opinion, the law should encourage companies to innovate in harm reduction without increasing the risk of legal liability. One of the demands is that the law should reward companies for proper conduct and timely removal of problematic content. Currently, companies take such measures at their own risk, as by taking such steps, companies may be liable for failure to act on illegal content identified by them (even if they determine in good faith that it does not need to be removed). The risk of liability creates a perverse incentive for companies to refrain from adopting sound, proactive moderation or from excessively removing legal content. The Commission itself notes that platforms currently have "insufficient incentives to counter the appearance of harmful content on the internet and properly protect legal content". Legal protection of the "Good Samaritan" mechanism would solve this problem. It would protect platforms when searching for and removing harmful content, without risking losing responsibility for the occasional failure of the process.

IAB Polska supports IAB Europe's position as follows:

One of the challenges of the current regime that can be seen as dis-incentivising service providers to act in a pro-active manner 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. As a general rule, it is worthwhile recalling that while technical capacity and functions of specific players in the supply chain will differ, they 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 also for commercial reasons further to wishes of their clients, for instance, to improve the quality and transparency of digital trading, minimize associated risk, or ensure measurement of advertising itself or services provided.

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 welcome reflection on the 'Good Samaritan' provision, as it could incentivize players interested in performing additional monitoring activities.

5. Do you think that the concept characterising intermediary service providers as playing a role of a 'mere technical, automatic and passive nature' in the transmission of information (recital 42 of the E-Commerce Directive) is sufficiently clear and still valid? Please explain. 5000 character(s) maximum

All intermediaries, regardless of their size and type of content stored/shared by them, should operate in a friendly and transparent legal system. The concept of distinguishing between the

passive and active roles of intermediaries adopted in the 2000 e-commerce directive is no longer sufficient to address the realities and complexities (including technical and economic) of information society services and, more broadly, digital services that have emerged over the last 20 years. In the meantime, new services and business models have emerged that blur the line between the passive and active role of the intermediary.

IAB Polska supports IAB Europe's position as follows:

As a rule of thumb, it does seem accurate to claim that the role of an ISP is limited and as stipulated in Rec. 41.

However, as explained in an answer to the preceding Question 4, many technology partners are under pressure to undertake various monitoring activities, in order to comply with the law but also for commercial reasons further to wishes of their clients, for instance, to improve the quality and transparency of digital trading, minimize associated risk, or ensure measurement of advertising itself or services provided.

These wishes of actors contracting players providing for various technological solutions must be taken into account while making an assessment of the role of an ISP.

6. The E-commerce Directive also prohibits Member States from imposing on intermediary service providers general monitoring obligations or obligations to seek facts or circumstances of illegal activities conducted on their service by their users. In your view, is this approach, balancing risks to different rights and policy objectives, still appropriate today? Is there further clarity needed as to the parameters for 'general monitoring obligations'? Please explain. 5000 character(s) maximum

We support the upholding of the ban on the general obligation on internet intermediaries to monitor content, which does not exclude the possibility of filtering for specific illegal content. It is necessary to search for optimal solutions in this area in cooperation with the market. The issue of using algorithms or other technologies of automatic identification and filtering of content certainly requires an in-depth analysis and reliable dialogue with various stakeholders, as a result of which it will be possible to address the problem of illegal content in a transparent and proportionate manner - taking into account, on the one hand, the obligations imposed on suppliers (also depending on their size), and on the other hand, social interest and guaranteed freedoms.

It should also be borne in mind that the existing technical solutions are still not fully effective in identifying many categories of content as illegal content. Automatic content removal - deprived of human control, may in some cases result in the elimination of legal content, violating the fundamental rights of citizens. The draft legislation should take into account the issue of detecting and eliminating illegal content through effective cooperation of intermediaries with third parties, such as rightholders, NGOs and bodies with expert knowledge of specific categories of content.

IAB Polska supports IAB Europe's position as follows:

We support the existing paradigm, whereby further to Art. 15(1) of the e-Commerce Directive an obligation exists that requires Member States not to impose a general obligation on intermediary service providers to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity. Digital advertising industry does primarily focus on commercial activity and as such collaborates with business partners keeping in mind that generally, the various ecosystem players that IAB Europe associates have no knowledge or control over the content, or data stored or transmitted.

SECTION IV. Other emerging issues and opportunities, including online advertising and smart contracts

1. When you see an online ad, is it clear to you who has placed it online?

- Yes, always
- **Sometimes: but I can find the information when this is not immediately clear X**
- Sometimes: but I cannot always find this information
- I don't know
- No

14. Based on your experience, what actions and good practices can tackle the placement of ads next to illegal content or goods, and/or on websites that disseminate such illegal content or goods, and to remove such illegal content or goods when detected? 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

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 property rights. 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. It 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.

The European approach builds on experiences from national markets where a number of successful industry initiatives emerged. The “IAB Europe Navigator: Quality Initiatives” white paper demonstrates the vast amount of work being undertaken in Europe and beyond to build and ensure a sustainable future for digital advertising and marketing, in particular the national-level quality initiatives. There already exist several market-wide programmes, driven by European National IABs, that are designed to increase transparency & trust in how digital advertising is bought and sold, built on more specific pillars such as brand safety, fraud prevention, viewability, user experience.

15. From your perspective, what measures would lead to meaningful transparency in the ad placement process? 3000 character(s) maximum

IAB Polska supports IAB Europe’s position as follows:

As a general point, we would like to challenge the characterisation of existing state of transparency in the ad placement process. The question appears to imply a lack of meaningful transparency, which is incorrect and may lead to skewed responses.

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.

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’s Supply Chain Transparency Guide, IAB Tech Lab’s ads.txt, sellers.json and OpenRTB Supply Chain object allow for analysis of the broad supply chain. Initially prime focus of most of technical standards in the programmatic chain had been on the supply side, yet, dedicated buy-side approaches are being expeditiously reflected upon, too. Moreover, existing market-wide Programmatic Codes of Conduct (European markets of DACH and PL) are applicable across the board to all industry players.

These instruments help buyers and sellers of digital media to navigate through pertinent real-life operational questions concerning data, cost and inventory source as in the case of IAB Europe’s Supply Chain Transparency Guide, or verify entities to ensure that only authorized players participate in ad transactioning. For instance, further to the adoption of ads.txt a public record of Authorized Digital Sellers is created, which makes it harder for bad actors to profit from selling counterfeit inventory across the ecosystem. By proxy, buyers are able to more easily identify the Authorized Digital Sellers for a participating publisher, allowing brands to have confidence they are buying authentic publisher inventory.

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 to support quality journalism. It is important to note that smaller players and publishers specifically rely on support from their technology partners in order to do this.

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.

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 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 educational initiative to get more people with relevant skills into digital advertising and help companies connect with such talent.

16. What information about online ads should be made publicly available? 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

Virtually all digital advertising is data-driven. The GDPR's definition of personal data is very broad, if not all-encompassing, thus all types of advertising involves processing of personal data, including contextual ads. For ad business to be valuable commercially, ad performance needs to be at the very least rigorously measured, and there may be other use cases that require personal data processing (e.g. generating audience insight, technical delivery of ads, prevention of fraud).

From a privacy and data protection perspective, the GDPR regulates the processing of personal data, whereas the ePrivacy Directive storage and accessing of information on user devices. Under the GDPR, as was the case under the old Data Protection Directive, users must be provided with certain specific pieces of information for the processing to be legal. The GDPR requires the following items to be disclosed in a clear and understandable manner, when personal data is first collected, with accurate and full information of all relevant issues provided: what kind of data is being collected and for what purpose(s); who the data controllers are (both the website owner and their technology partners can assume this role); how the user consents to or refuses the data processing; how the user can withdraw his or hers consent; the duration of the data retention (i.e. cookie expiry date). In case of lack of compliance with the information disclosure and consent requirements, the user consent will be deemed invalid. IAB Europe's Transparency & Consent Framework (TCF) standardises how websites make the various information disclosures required by the GDPR, how they elicit and log users' choices, and how they communicate those choices to their technology partners.

Separately, all advertising must be clearly identified 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. The rules in fact apply to all commercial communications, further to legal provisions of the eCommerce, Information Society Services, and Unfair Commercial Practices Directives. Moreover, the existing self-regulatory rules build on the aforementioned, with the International Chamber of Commerce (ICC) Advertising and Marketing Communications Code prescribing detailed rules on

transparency and disclosure of marketing communication. The European advertising self-regulatory system, which covers 97% of all advertisements seen by the EU population, comprises European bodies that deal with complaints about advertising content being assessed against the provisions of local codes of conduct inspired by the aforementioned ICC rules.

17. Based on your expertise, which effective and proportionate auditing systems could bring meaningful accountability in the ad placement system? 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

As a general point, we would like to challenge the characterisation of existing state of accountability in the ad placement system. The question appears to imply a lack of meaningful accountability, which is incorrect and may lead to skewed responses.

Meaningful accountability is informed by assurances about integrity of the rules and procedures driving the ad placement systems. Open standards and industry initiatives guarantee a level of independence and market-wide oversight. Indeed, part of IAB Europe's mission is to promote industry collaboration to deliver frameworks, standards and industry programmes that enable business to thrive in the European market.

There exist technical standards, such as IAB Tech Lab's ads.txt, sellers.json and OpenRTB Supply Chain object, as well as IAB Europe's Transparency & Consent Framework, accessible to every legitimate player that in turn becomes a subject to other players' scrutiny due to the very open nature of said standards. Some national markets introduced Programmatic Codes of Conduct binding all active ecosystem players to a set of agreed and openly available criteria.

There also exist several market-wide programmes, driven by European National IABs, that are designed to deliver accountability and increase transparency & trust in how digital advertising is bought and sold, built on more specific pillars such as brand safety, fraud prevention, viewability, user experience. These initiatives include fully-fledged schemes with existing or to-be-developed monitoring and certification mechanisms. A key part of some of these schemes, and indeed well-regarded and recommended market practice, is third-party verification whereby a company will undergo an audit to ensure their systems meet a set of agreed and openly available standards.

IAB Europe is working with members to share these best practices and help in harmonising relevant business standards across the continent.

Broad uptake of such measures, whether these are interoperable technical standards, or market-wide programmes demonstrates that there is an incentive for legitimate industry players to follow suit and become part of a circle of trusted parties with whom one can conformably do business.

18. What is, from your perspective, a functional definition of ‘political advertising’? Are you aware of any specific obligations attached to 'political advertising' at national level? 3000 character(s) maximum

IAB Polska supports IAB Europe’s position as follows:

Intuitively, political advertising comprises a paid-for communications that unmistakably advocates for or against the election of a clearly identified candidate during a designated election period in a given jurisdiction.

Political advertising appears to be well but diversely covered by regulated by national legislation in a number of EU Members States by electoral laws. It would seem that some of the existing rules, for instance, on disclosures or election periods, applied across the board, irrespective of the media where an advertisement appears.

In terms of digital political advertising, it should also 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.

Taking into account the aforementioned, we would welcome the European Commission providing for a comprehensive legal overview of the digital political advertising across the EU.

Given its very specific nature, commitment to any further regulation of political advertising, or self-regulation for that matter, has to come from the actual advertisers who in the case are political actors (politicians, political parties, etc.), and not only, commercially-driven, advertising industry as such. There should be an agreement by political actors across the EU 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.

19. What information disclosure would meaningfully inform consumers in relation to political advertising? Are there other transparency standards and actions needed, in your opinion, for an accountable use of political advertising and political messaging? 3000 character(s) maximum

IAB Polska supports IAB Europe’s position as follows:

The standard ad disclosure and transparency rules should by no means also be observed in case of political advertising. Therefore, consumers should be immediately able to 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.

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 statewide elected office.

20. What impact would have, in your view, enhanced transparency and accountability in the online advertising value chain, on the gatekeeper power of major online platforms and other potential consequences such as media pluralism? 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

As a general point, we would like to challenge the characterisation of existing state of transparency and accountability in the online advertising value chain. The question appears to imply transparency and accountability are at a rudimentary level, which is incorrect and may lead to skewed responses.

Ensuring transparency and trust in how digital advertising is bought and sold has been a long-standing and unquestioned priority of the broader digital advertising ecosystem. Constant development and iteration of technical standards, industry-wide programmes, and wide-ranging market education are a testament to industry's righteous conduct in this regard. It is simply not a question of 'if' transparency and accountability should be continuously evolved; instead, it is 'how' to do in the most impactful manner.

The existence of the rich third-party digital advertising infrastructure at the disposal of publishers of all sizes does enable the smaller players to compete with the vertically-integrated platforms and large publishers themselves. This is owing to a sustained competitive landscape, and even more importance, the ability to profile users at scale. The sheer volume of data that users willingly provide to the platforms and the greater traffic that larger publishers attract, enable them to offer advertisers larger audiences who will likely be receptive to advertising about particular products and services. Small publishers cannot hope to achieve such scale on their own. But cross-site profiling in full view and under the control of individual users can give those small publishers asymmetrical leverage, helping them compete successfully.

The more players adhere to relevant transparency and accountability standards and practices, the better. It will only benefit the whole sector, as long as the smaller actors can rightfully compete with other players, which is yet dependent on other factors, as outlined above.

21. Are there other emerging issues in the space of online advertising you would like to flag? 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

We believe that diverging implementations of the existing privacy and data protection framework, and associated regulatory uncertainty put the digital advertising business model in peril and create little predictability over the future.

As the leading European trade association representing the entire ecosystem, we have invested considerable resources in interpreting the EU privacy and data protection legal framework, further devising a novel approach to legal compliance which amounts to the IAB Europe's Transparency & Consent Framework (TCF). Yet, having rolled out a framework which has become a de facto industry standard, we are deeply concerned about the fact that while on paper digital advertising is a lawful business model supporting the media ecosystem, and arguably the GDPR provides for a harmonized approach, the real-life experience shows that the opposite is happening.

There exists an issue of the so-called 'conditionality of access to content', discussed in the context of the proposed ePrivacy Regulation, is intimately linked with defining certain GDPR's concepts, such as 'consent', and the notion of 'freely given' in particular. Coherence in this regard can be maintained by strong, unambiguous legal presumptions, as laid out currently in Recital 25 of the ePrivacy Directive, and further clarification of the concept of GDPR's 'consent'.

Article 7(4) of the GDPR is being interpreted by the Data Protection Authorities (DPAs) as if there were an outright prohibition of online services making access to their ad-funded content conditional on consent to storing and/or accessing information on users' devices for advertising purposes. This is in spite of the fact that it is well-evidenced that data remains critical for the European businesses to continue deriving value from their activity in the digital space, and, in particular, for the European media for which advertising is the major revenue stream that consequently provides users with unpaid access to content and services.

The European Data Protection Board (EDPB) – composed of representatives of the DPAs and set up precisely to ensure consistent application of GDPR – states in its Opinion on consent that “[...] consent cannot be considered as freely given if a controller argues that a choice exists between its service that includes consenting to the use of personal data for additional purposes on the one hand, and an equivalent service offered by a different controller on the other hand,” even though the GDPR merely lays out some practices to consider when determining whether consent is freely given without generally prohibiting them. Some DPAs, for instance the Dutch, indeed embraced that view issuing warnings to Dutch publishers stating that so-called cookie walls are prohibited under GDPR.

SECTION VI. What governance for reinforcing the Single Market for digital services?

11. What has been the impact of COVID-19 outbreak and crisis management measures on your business' turnover

- Significant reduction of turnover
- Limited reduction of turnover
- No significant change
- Modest increase in turnover
- Significant increase of turnover
- **Other X**

12. Please explain 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

The initial macroeconomic forecast, such as by the International Monetary Fund, predicted that Covid-19 and the global lockdown would effectively spark the worst economic recession since the Great Depression of the 1930s. While the situation is fluid, the economic downturn is likely a reality.

Over the past 20 years, one could observe three advertising recessions in Europe: the so-called dot com crash and 9/11 in 2011; the financial crisis in 2008/2009; and the Eurozone crisis in 2012. Previous recessions are not a reliable model to quantify the impact of the Covid-19 pandemic on the market. But macroeconomic indicators, paired with industry data, are the best modelling ingredients we have. Continual review and reforecasting are critical.

The initial marketing response to the pandemic to date was rooted in the lockdown and the inability of businesses to operate, paired with risk mitigation (supply side problem). However, rising unemployment and squeezed personal expenditure can turn the ad downturn into a crisis of consumer demand, where advertisers and brands are withdrawing their ad investment. This remains a concern, in particular, as one is observing possibility of further lockdowns and depriving businesses from being fully operational for an extended period of time.

In the abstract, major brands can return to market relatively quickly with debt financing or cash reserves (though recovery of some is going to be severely affected, e.g. travel, hospitality, automotive sectors), but SMEs do not have the same resources. Whereas SMEs are crucial for ad market recovery in the digital space. For those companies, a lot may depend on, for instance, government support schemes – should they work as intended, these companies will be some of the earliest to return, which is because marketing sits high on their balance sheet as a cost of sales and is imperative for doing business in the first place.

Current market forecasts for 2020 show that digital advertising could decline by -5,5%, whereas all other media are expected to experience -21,3% decline in 2020.

13. Do you consider that deepening of the Single Market for digital services could help the economic recovery of your business?

- **Yes X**
- No
- I don't know

14. Please explain 3000 character(s) maximum

IAB Polska supports IAB Europe's position as follows:

As a rule of thumb, harmonized legal approaches aid business across the board, in particular, if its scope is global. Indeed, major brand investing in digital advertising are multinationals interested in unified rules. Likewise, many technology companies have international operations, and synergies across jurisdictions should normally help them to thrive. One should not however underestimate cost associated with implementation and compliance efforts.

That said, we would 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. Taking that into account, introduction of any superfluous rules will only lead to confusion and create legal uncertainty. For some sectors, such as digital advertising, it might well mean nothing else than falling into decay, eventually putting the EU ad-supported media at the risk of perishing.