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European  
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Council



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## Response to the European Commission public consultation on Fake News and Online Disinformation

The signatories of this paper welcome the European Commission's initiative to organise a public discussion and to raise awareness of the phenomenon of fake news and online disinformation. Fake news can be considered as a global concern, creating numerous challenges for citizens, digital industries, media and policymakers.

Fake news represents a complex phenomenon driven by the desire to manipulate public opinion for political or economic gain, though its specific scope remains ill-defined. The factors driving fake news may vary between rising societal and financial inequalities giving fertile ground to clashing political and ideological agendas, and availability of self-publishing tools in the highly competitive changing media landscape, among others.

The signatories to this paper, representing the advertising industry, are aware of the problem and are highly concerned by the issue. The exploitation of online advertising on fake news websites causes reputational concerns for publishers, brands, advertisers and numerous players in the digital advertising value chain. Furthermore, since online advertising is the main source of revenue for the diverse media landscape in Europe<sup>1</sup>, we want to work towards ensuring that we support quality journalism and cutting off the financial incentives to fake news providers.

### Understanding the scope of fake news

Online misinformation is a highly delicate debate, especially due to the lack of a common definition and broad usage of the term "fake news" as a politicised buzzword.<sup>2</sup>

In trying to understand and address the issue, it is important that the European Commission clearly differentiates fake news from some legal advertising practices (including native advertising<sup>3</sup>, advertorials<sup>4</sup> or sponsored content more broadly), that fall outside the scope of the consultations.

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<sup>1</sup> IHS Markit, The Economic Contribution of Digital Advertising in Europe (2017), available at: [http://datadrivenadvertising.eu/wp-content/uploads/2017/09/DigitalAdvertisingEconomicContribution\\_FINAL-1.pdf](http://datadrivenadvertising.eu/wp-content/uploads/2017/09/DigitalAdvertisingEconomicContribution_FINAL-1.pdf). The latest research shows that this revenue source makes up more than 81% of the online revenues for publisher's journalistic content and more than 50% of mobile application revenues.

<sup>2</sup> The joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression with the OSCE, the OAS and the ACHPR, identifies the problem as "the growing prevalence of disinformation (sometimes referred to as "false" or "fake news") and propaganda in legacy and social media, fuelled by both States and non-State actors, and the various harms to which they may be a contributing factor or primary cause".

<sup>3</sup> Contextually targeted branded content, designed to fit in with the particular online environment to give consumers a visually consistent browsing experience and be less disruptive, while having prominent labelling to make clear that it's a marketing communication.

In cases where fake news content receives ad funding it is important to understand, that the advertising industry must be considered as collateral damage of intentional harmful behaviour and not as contributors to malpractice. The robust advertising self-regulatory system, which covers 97% of all advertisements seen by the EU population, builds on the Unfair Commercial Practices Directive legal framework and plays an essential role in preventing the spread of falsehoods and disinformation on all media, including online.

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. Illegal content, where there are clear breaches of an array of existing legislation, such as IP, counterfeiting or trademark legislation, is out of scope of the consultation. Ensuring that legitimate advertising does not contribute to the financing of fake news sites is technically challenging. However, it can be facilitated to some extent with the use of brand safety tools and sound business practices. Brand safety describes an entire area of practice where advertisers, agencies and ad tech companies try to prevent advertising from being misplaced. The advertising industry is deeply invested in brand safety, as our strong support for the European Commission's "follow-the-money approach" on misplacement of ads on websites that infringe intellectual property rights attests. The European approach builds on experiences from national markets where a number of successful industry initiatives emerged.<sup>5</sup> Learnings can be drawn from this approach when tackling the fake news and online disinformation phenomena.

**While the development of brand safety tools should be encouraged, such tools technically cannot detect fake news. Thus, those tools do not have the capacity to assess and decide which content qualifies as fake news and which does not.**

### **The impact of hard law on fundamental rights**

The signatories of this paper believe that hard law which aims to address content specifically is not the appropriate tool to tackle the issue of fake news, as this could perversely have direct impact on the freedom of expression and the freedom of the media which is protected under Article 11 of the EU Charter of Fundamental Rights. These rights are equally at the core of Article 19 of the UN Declaration of Human Rights. Furthermore, rules adopted at EU level to deal with fake news could tempt national governments to exercise control over media through the back door, greatly jeopardising the freedom of the press and its independence. **Adopting legislation in this field would be incompatible with the safe and diverse media environment in the European Union.**

### **Supporting civil society initiatives**

Numerous measures by all stakeholders – civil society, digital players, media and academia – have been taken to tackle misinformation online. There is an **extensive and constantly growing list of fact-checking projects developed by the civil society and media on the global, the EU and the national level.** Some examples from the EU Member States include: AP Verify in the United Kingdom, DELFI in Lithuania, Wirtualna Polska in Poland, Independent Journalism Foundation in Hungary, VIS in Italy, Fact Scan in Romania, Blockchain als Factchecker in

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<sup>4</sup> Advertising, which provide advertising information in the style of an editorial or an objective journalistic article.

<sup>5</sup> For instance, in Denmark (ADKODEX), Poland (Reklamuj Świadomie. Inicjatywa na rzecz uczciwej reklamy) and the UK (Digital Trading Standards Group).

the Netherlands, DOSSIER Sources in Austria, The Buzzard in Germany and many others.<sup>6</sup> These projects are focused on the development of various innovative solutions to tackle fake news, such as a cloud-based newsroom tool that will combine machine learning and video recognition technologies with editorial expertise or an anti-fake news system with elements of big data and artificial intelligence. **Such initiatives should be further encouraged.**

## **Restoring trust and promoting media literacy**

Fighting against disinformation is only part of the challenge to restore people's trust in legitimate media and quality journalism. The Eurobarometer on Media pluralism and democracy showed in 2016 that only slightly more than half of the respondents believe in the trustworthiness of their national media, the majority regarding neither their national nor their public service media as free or independent.<sup>7</sup> According to the Reuters Institute for the Study of Journalism survey (2017) on audience perspectives on fake news, "fake news is only in part about fabricated news reports narrowly defined, and much more about a wider discontent with the information landscape", including poor journalism and hyper-partisan content.<sup>8</sup>

Some EU Member States and national media associations are developing media literacy initiatives which can be useful tools to tackle fake news by educating internet users, especially children and younger people about how to spot fake news and to think about checking sources. For instance, the Flemish Vlaamse Nieuwsmedia is running its 15th edition of the programme "News in the classroom" (Nieuws in de klas) which is an established training in the media field. A number of regions in Germany have similar initiatives at state level. In 2010, the government of North Rhine-Westphalia launched a framework "Medienpass NRW" with an aim to make media literacy a significant part of the school day as well as to improve the connection between schools and non-school activities in this field. Similar initiatives of regional states also exist in Baden-Württemberg ("Basiskurs Medienbildung"), Bavaria ("Medienführerschein Bayern") and Hamburg ("Medienpass"). In the UK, Media Smart is a not-for-profit company that creates free educational materials for schools and youth organisations, for teachers, parents and guardians, to help young people being critical about the advertising they come across in their daily lives.<sup>9</sup>

More efforts should be made to develop similar programmes in other Member States, and to be inspired by the existing ones. As recently as October 2017, the European Commission launched a Call for Proposals for a pilot project on "Media Literacy for All" with an objective to create innovative actions to increase citizens' ability to critically access information both originated by traditional media and received through social networks as well as to promote the responsible use of the Internet. **We believe the European Commission should play an important role in encouraging widespread media literacy programmes in all the Member States.**

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<sup>6</sup> The Reporters' Lab, for instance, maintains a database of global fact-checking sites, available at <https://reporterslab.org/fact-checking>. Another, continuously updated, register is available at <https://medium.com/@ferg/heres-a-list-of-initiatives-that-hope-to-fix-trust-in-journalism-and-tackle-fake-news-30689feb402>

<sup>7</sup> European Commission, Public Opinion, Media pluralism and democracy (2016), available at: <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2119>

<sup>8</sup> Rasmus Klein Nielsen & Lucas Graves, "News you don't believe" Audience perspectives on fake news' (2017), available at: [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-10/Nielsen%26Graves\\_factsheet\\_1710v3\\_FINAL\\_download.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-10/Nielsen%26Graves_factsheet_1710v3_FINAL_download.pdf)

<sup>9</sup> Media Smart, <http://mediasmart.uk.com/>

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