

EACA comment on European Commission proposal for a regulation on a single market for digital services (digital services act) (COM (2020) 825 final)

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The European Association of Communications Agencies (EACA) represents more than 2,500 communications agencies and agency associations from nearly 30 European countries that directly employ more than 120,000 people. EACA members include advertising, media, digital, branding and PR agencies.

We welcome the European Commission's intention to maintain the core principles of the e-commerce Directive, including its conditional intermediary liability regime, the absence of a general monitoring obligations, and the country-of-origin principle. These principles enabled the growth of the digital economy in Europe and expanded access to information. Maintaining the principles and improving them by adding protections for voluntary efforts to moderate content, will further foster innovation, allow also SMEs to thrive and protect fundamental rights.

We welcome and support the Commission's objective to improve the safety of users online and to make sure that they have access to a wide choice of safe products and services.

The key twin-objective of our members is to keep both users and brands safe. This means that agencies do not want to inadvertently fund illegal content through advertisement. Instead, they wish to keep working with all parties to prevent its monetisation. In addition, they want to make sure that the brands that they advertise for are not associated with and do not show next to or inadvertently fund illegal content.

Our members make considerable investments in brand safety practices to prevent advertising from funding illegal and harmful content. This includes specific brand safety policies, the use of technologies capable of identifying and blocking said content, the diligent vetting of media supply, as well as cross-industry cooperation on the definitions of illegal and harmful content. They also inform and alert clients of potential risks associated with the placement of ads in certain contexts.

Also, our members have long been contributing to and applying industry-wide transparency mechanisms and initiatives, informing consumers about the provenance of an ad, why they are seeing certain ads and how they can control what types of ads they see.

At this stage, we would like to share the following comments with the Commission:

- We welcome the choice of legal instrument (regulation), which will make sure that the same rules apply to each market, thereby giving business users of platforms legal and procedural certainty across Europe.
- We welcome that the proposal focuses on illegal content, "as this is a delicate area with severe implications for the protection of freedom of expression". This will allow expeditious action against such content.
- We also welcome the harmonisation of procedures when it comes to removing illegal content, including illegal advertisements. Some of the issues our members are concerned with are the circulation of illegal ads (falsely claiming to represent a brand) or ads that promote dangerous products (e.g. a

cure to Covid-19), infringements of intellectual property as well as hate speech content. Therefore, removal of such content is key to making sure that it cannot cause harm.

- We strongly support the “know your business customer” principle, as this will further prevent rogue traders from selling and/or advertising counterfeit or dangerous products.
- Transparency is an important mechanism to hold platforms accountable towards and responsible for activities and behaviours on their owned and operated properties. It is also important to increase consumers’ trust in online advertising that they engage with on online platforms.
- However, as businesses users of platforms, we also believe that transparency requirements should be proportionate to the purpose of that transparency. Transparency should not be confused with public and general access to information or data. For example, not everyone will need access to data generated by running an advertising campaign on a platform. However, access to that data is crucial, e.g. for advertisers or agencies acting on their behalf, to assess and verify the success of their campaigns.
- We are surprised that the Commission saw a need to provide a specific definition of “advertisement” given that the definition of “commercial communication” is an integral and well-established part of the e-Commerce Directive. We regret that by defining “advertising” as achieving “both commercial and non-commercial purposes”, and no longer clearly distinguishing “commercial communications”, this could foster a negative perception of advertising as something inherently “bad” (Art. 2, (n)). Also, it could lead to legal uncertainty given existing legislation on advertising in the purely commercial context. In addition, it could weaken and dilute any attempt at harmonising political advertisement across the EU, which seems to be the intention given the Commission’s recent initiatives around greater transparency in political advertising.
- Last but not least, we are supportive of the proposal to subject very large platforms to independent audits to ensure compliance. Such audits are good industry practice and a good way to demonstrate and verify compliance.

We remain at your disposal for any further question related to the above and/or to the interaction between communications agencies and platforms.

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