

ASA system submission to the House of Lords Communications and Digital Committee's inquiry into Large Language Models

1. Background and Introduction

- 1.1.** This submission is provided by the Advertising Standards Authority (ASA), and the Committees of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2.** The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 60 years and the broadcast Advertising Code (written and maintained by BCAP) for 18, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.3.** We are the UK's independent frontline regulator of ads by legitimate businesses and other organisations in all media, including online. Our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.4.** We work closely with a network of partner regulators including Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority. Our frontline ad regulation often complements their activities, or even frees them up entirely to concentrate on their other duties. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line.
- 1.5.** We also bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creating a level-playing field amongst them. There are multiple checks and balances in place to ensure the committees' development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert independent consumer panel; Ofcom signing off on BCAP rule changes; the ASA System's processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.
- 1.6.** We call our model of partnering with businesses and other regulators 'collective ad regulation.' Our independence and the buy-in and support we receive through collective ad regulation delivers faster, more flexible, more joined-up and proportionate regulation.
- 1.7.** The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm, or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.
- 1.8.** In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies, and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over a million pieces of advice and training in 2022.
- 1.9.** The ASA system is providing this written submission in response to the House of Lords Communications and Digital Committee's inquiry into Large Language Models.

2. How many staff do you employ specialising in AI-related governance (if any)?

2.1. The ASA employs around 110-120 members of staff. We have no roles solely dedicated to AI-related governance but do have staff members with relevant expertise embedded within other teams. Our Data Science team has five members who have hands-on technical expertise in the application of AI to ad regulation. An additional nine of our staff are designated “Digital Specialists” who have specific expertise in technology-related issues in advertising, including the impact of AI.

3. How many data scientists (or equivalent) do you employ (if any)?

3.1. Our Data Science team has five members, with a mix of data science and engineering skills.

4. Do you anticipate these figures changing significantly in the next three years?

4.1. We are investing significantly in expanding our data science capability with growth to a team of seven expected by the end of 2024 and further growth in subsequent years.

5. Do you expect any new regulatory issues of concern to arise within your remit in the next three years in relation to advances in large language models?

5.1. We anticipate that LLMs (and generative AI tools more generally) are likely to be incorporated into the creative workflow for the production of ads. It will be important to ensure advertisers and their partners take appropriate steps, such as incorporating human review, to make sure their ads remain compliant with the UK Advertising Codes. The ASA has already begun to communicate publicly that advertisers remain responsible for their content when using these tools¹.

5.2. In addition to issues around compliance with the UK Advertising Codes, generative AI tools are likely to reduce the cost of producing ads. This is likely to lead to more complex campaigns with more personalised creative copy, accelerating the scale challenges that have already come with online advertising. The ASA has a strategic focus on using technology to help us tackle these challenges, including our investment in data science.

5.3. Although the ASA’s primary role is regulating ads by legitimate businesses, we do play a supporting role in facilitating online ad supply businesses and law enforcement bodies to tackle online scam ads. LLMs (and generative AI more generally) give bad actors additional tools that will reduce the cost of producing content that can more effectively achieve their nefarious objectives. This will require a joined-up response involving law-enforcement bodies, online ad supply businesses and others involved in the online ad industry.

5.4. LLMs will enable new classes of product, for example we may see chat apps that offer advice on topics such as mental health, or legal issues. The ASA will likely have to consider issues of responsibility associated with the advertising of new LLM-based products that emerge.

5.5. Our assessment of the current challenges posed by AI, generally, in the context of our regulation of UK advertising (by legitimate businesses) is that any immediate issues or threats are low-level and that we’re equipped to tackle them. We have seen little evidence of AI-related harms through our proactive projects or complaints we receive. We are, however, keeping a watching brief on how AI is or may be adopted by advertisers and what, if any, ramifications that has for our role and the systems and processes we have in place in keeping UK ads legal, decent, honest, and truthful.

5.6. We openly acknowledge that technological developments like generative AI promise great opportunities for society, but also carry great risks, including risks around advertising.

¹ <https://www.asa.org.uk/news/generative-ai-advertising-decoding-ai-regulation.html#:~:text=However%2C%20there%20are%20instances%20where,ads%20using%20AI%20generated%20images.>

Accordingly, we aim to develop our capabilities and demonstrate authority and influence in online ad regulation presented by this technology.

- 5.7. In terms of how we're already using AI to bolster our regulation, as part of our five-year strategy *More Impact Online* (2018 – 2023), the ASA has invested in, established, and is expanding our in-house data science team and AI capability. And the role of data science/AI plays a fundamental role in our new five-year strategy helping us to take on the specific challenges of regulating online advertising.
- 5.8. In harnessing AI, the initial projects we have undertaken have significantly enhanced our intelligence gathering, helping to deliver more efficient and effective investigations and enforcement activity. Our own-built '**Active Ad Monitoring**' system enables us to act at pace and scale, identifying potential problem content automatically and filtering priority ads for expert review.
- 5.9. In summary, our Active Ad Monitoring system is a three-stage process:
- **Capturing ads at scale**
The system captures ads across online – social media, search, and display – using a mix of public and non-public data as well as our own monitoring tools.
 - **AI-based filtering**
Machine learning helps us spot ads relating to issues we're monitoring and highlight where there are potential problems.
 - **Expert review**
Our experts are able to focus their attention on ads identified by the monitoring system as more likely to break the rules and where we need to take action.
- 5.10. This approach streamlines our processes, freeing staff from the manually intensive process of monitoring individual ads (which is unsustainable in the online environment) and puts the ads most likely to break the rules in front of human experts leading to quicker and more effective action.
- 5.11. Developing the capabilities of our AI system is an ongoing project. At the moment it covers important subsets of the issues we're working on. But it is already making an impact in high-priority areas. For 2023, it is estimated that we will have **processed three million ads**.
- 5.12. Key areas of focus so far have been:
- Identifying **influencer posts** that should be, but aren't, clearly labelled as ads, prioritising those influencer accounts which are most likely to be producing non-compliant content and carrying out enforcement work, threatening and deploying sanctions.
 - Capturing ads on social media and using facial image detection software to identify potential breaches of a new rule that prohibits **gambling ads** from being of strong appeal to under-18s which includes prohibiting the use of topflight footballers.
 - Capturing and analysing **cryptocurrency ads** across multiple online platforms, supporting monitoring and enforcement against non-compliant advertisers following the issuing of an [Enforcement Notice](#) to 60 cryptocurrency firms. The Notice requires ads to include risk warnings and to be responsible by not taking advantage of consumers' inexperience or by trivialising investment in cryptocurrencies.
 - Using our monitoring technology to identify ads on Instagram for **prescription-only medicines such as Botox** which are prohibited from being advertised to the general public. This has led to over **56,000 takedowns** on Instagram in the past three years.

- Analysing ads in the eVehicle and airline sectors for potential **misleading environmental claims** as part of our Climate Change and Environment project, with data science intelligence leading to ASA investigations

6. Do you anticipate a requirement to conduct an audit of algorithmic processes used in large language models in the next three years?

6.1. The ASA's current remit does not include any requirement on regulated parties to audit their algorithmic systems or processes for LLMs or for other purposes, nor does it provide for the ASA to independently do so. Our Codes hold advertisers to account for the content, targeting and placement of ads they produce, and does not contain rules that reference or directly address algorithms, whether for LLMs or other purposes.

7. Notwithstanding your answer to the above, do you believe your organisation is well positioned to conduct audits of large language models at the (a) development and (b) deployment stage, to ensure compliance with your existing duties and the expectations in the Government's white paper?

7.1. If our remit were to change, we're confident that (allowing for the due process and length of time involved in remit change of this nature) we could move swiftly to put in place the processes to conduct audits.

8. In your view, what are your main powers and duties most applicable to delivering on the five principles set out in the white paper?

8.1. The goal of the ASA is to ensure all ads in the UK are responsible. We take an evidence-based proportionate approach, taking action only where we believe there is a good reason to do so. This aligns with the pro-innovation stance of the AI whitepaper, and the ASA does not prescribe where AI may or may not be used, only that the resulting ads must be responsible.

8.2. In many areas the principles of the Code we enforce broadly align with those of the white paper. For example, rule 4.5 of the Code states that "marketing communications, especially those addressed to or depicting a child, must not condone or encourage an unsafe practice."

8.3. However, as described above regulation of AI-based systems themselves is not within our remit so in many cases the principles do not apply or would be enforced by other bodies.

9. How confident are you that there are sufficient co-ordination structures, independent of Government, between regulators outside the Digital Regulation Cooperation Forum in relation to regulating large language models?

9.1. As an active member of its regulators' roundtable, we work closely with the Digital Regulators Cooperation Forum (DRCF) and other regulatory partners. Participation in this forum includes information sharing with partner organisations, such as ICO, Ofcom, CMA, and keeping tabs on developments in AI technology including discussions around current issues and horizon scanning for future regulatory challenges.

9.2. We are also a member of and contribute to the Regulators and AI Working Group chaired by the ICO. It's a useful forum for discussing AI related issues with partner regulators and, as the ICO outlines, provides a forum for the development of a collaborative and multilateral approach to AI regulation.

9.3. However, we believe that regulatory co-ordination on LLMs still has scope to improve. The 2021 National AI Strategy made no mention of LLMs, with the technology only become a focus of regulatory discussion more recently.

9.4. In particular, we believe it will be valuable to ensure that technical expertise in LLMs, which is currently in short supply, especially in the public sector, is shared between regulators.

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