



ONLINE ADVERTISING IN NIGERIA:

APCON; POWER TO REGULATE
ONLINE ADVERTISING IN NIGERIA

WHAT IS ONLINE ADVERTISING?

Online advertising involves the delivery of advertorial contents to Internet/online users via web, e-mail, ad-supported software and Internet-enabled smartphones. This mode of advertising differs majorly from terrestrial or offline advertising in that its reach is not limited by space or time – everyone across the world with access to the internet could be a recipient. Apart from its expansive reach, online advertising has become increasingly important to business owners and service providers across the world because in comparison to offline advertising; it is cheaper and more cost-efficient, it offers measurability (the advertisers ability to keep empirical data of the reach and impact of the campaigns) and delivers an unmatched speed of dissemination



HOW DOES CONSUMER EXPERIENCE DIFFER WITH ONLINE ADVERTISING?

The disruption in the digital advertising landscape has lowered the barrier for participation - taking advertising out of the exclusive reserve of licensed advertising

agencies and creating a levelled field for anyone who has an internet-enabled device to disseminate advertising content to the public. This has resulted in an aggressive market where consumers are bombarded with false, suspicious, embellished, offensive and many times unsolicited content.

CAN ONLINE ADVERTISING BE REGULATED LOCALLY?

Given that the reach of digital advertising transcends jurisdictional boundaries, it becomes increasingly difficult to define the extent to which the local laws and regulations of any specific country can regulate it. For this reason, the landscape is majorly self-regulatory; where creators and marketers aggregate themselves into Self-Regulatory Organizations (SROs) who alongside advertising regulatory agencies, develop codes and standards that would be adopted by their members. More often than not, leaving out a critical mass of non-members who cannot be bound (except by conviction or persuasion) by these rules and standards.

In the United States, for instance, most responsible institutions strive to comply with the **Self-Regulatory Principles for Online Behavioural Advertising, 2009** which was established by the Digital Advertising Alliance (DAA) an umbrella body for advertising and marketing trade associations within the US, in line with the recommendations of the Federal Trade Commission (FTC). Its core principles bother on education; transparency; consumer control; data security; consumer

consent to material changes; authorized procedure for sensitive data handling and accountability. In Europe, the European Union Advertising Standards Alliance (EASA), another Self-Regulatory Organization together with the European Internet Advertising Bureau (IAB) in April of 2011 enacted the **European Online Behavioural Advertising Industry Self-Regulatory Framework (OBA)**. This framework also remains majorly binding on member/signatory companies with no real power of enforcement or penalty.

In most Countries, these self - regulatory efforts are backed up by local laws and regulations (which are principally driven from a market protection approach) with the sole aim of preserving consumer trust. Both the US and Europe have complementary laws and regulation that afford enforcement of penalties on matters that relate to the violation of third party rights which are typically in the form of breach of data security; privacy violation; violation of consent for collection and use of certain sensitive data and protection against child tracking (e.g. **Children's Online Privacy Protection Act of 1998 (COPPA)**). It is therefore clear that whilst the policies and regulations of the SROs focus on persuasive advertising content regulation; the Government backed regulators focus on enforcement laws which protect the rights of consumers. Legislation and self-regulation in the online advertising space are mutually reinforcing as government regulators have quickly recognised their limitations.

Global technology companies such as Google, Facebook, YouTube and LinkedIn who provide platforms for digital/online advertising, all have in-built (automated) vetting system for advertisements in line with the self - regulatory guidelines applicable in their home country. The most important consideration for the Regulators is for marketers/creators ensure that advertorial contents created or marketed by these Companies comply with the basic tenets of advertising and where they fail to ensure that justice is served against the creator or the marketer. Very recently, Google-owned YouTube was fined US\$170,000,000 by the United States' Federal Trade Commission for violating COPPA. It also required that Google make new changes to its business practices, by requiring creators to label content intended for younger audiences and halting collection of data on contents clearly targeting minors..

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WHAT IS THE GENERAL FRAMEWORK FOR ADVERTISING REGULATION IN NIGERIA?

In comparison to the USA and Europe, Nigeria still attempts to run a principally legislation driven system where the market is governed by codified rules. The principal law governing advertising in Nigeria is the **Advertising Practitioner's (Registration, Etc.) Act No. 55 of 1988, CAP A7 Laws of the Federation of Nigeria 2004** (the “Act”). The Act, which was promulgated about 31 years ago, provides the statutory framework for the regulation of advertisements and advertising practitioners. The Act further established the **Advertising Practitioners Council of Nigeria (APCON)** as the apex regulatory body for advertising in Nigeria with powers to monitor and ensure ethical advertising practices in the country. **Section 23** empowered APCON to establish the **Advertising Standards Panel (ASP)** charged with the duty of ensuring that advertorial contents conform with the prevailing Laws of the Federation, as well as the codes of ethics of the advertising profession.

CAN APCON TRULY REGULATE ONLINE ADVERTISING?

The governing council of APCON approved and issued the **5th Nigerian Code of Advertising Practice & Sales Promotion** (the “Code”) in January 2013. The Code requires all advertising contents be vetted by the ASP prior to being exposed to the public. This rule made no distinction between online or offline advertising contents. In furtherance of its extensive regulatory powers, APCON, in a recent memo to registered advertising



practitioners, reinforced the need for advertising practitioners to submit exposure drafts of all advertisements required to be published online and on other social media platforms for prior approval by the ASP in compliance with **Article 21 and 80(a) of the Nigerian Code of Advertising upon the payment of the sum of NGN25,000 (approximately USD70) per application**. As if to reinforce its resolve, some businesses who post advertisements on their social media pages have begun to receive default notices from APCON.

It is bemoaning that while other countries are embracing a collaborative, self-enforcing approach to online advertising; APCON is seeking to control contents in a free, multi-jurisdictional digital media space.

It must also be noted that the APCON vetting

process, is only open and applicable to advertising practitioners (**Article 6.2 and 7.1, APCON Vetting Guidelines**, effective 1st March 2017); suggesting that non-practitioners (who make up a critical mass of online advertisers) are exempt from this regulation. Furthermore, even where APCON has the power to vet all online advertisements, it is doubtful whether it has the capacity and personnel strength to do so. APCON's Advertising Standards Panel is comprised of just 24 members who meet twice each month. Where applications require urgent attention, same will have to be accelerated at an additional cost to the applicant. This is not to mention the impracticality of establishing a geographical jurisdiction for APCON as relates to online advertisements. When will an advertorial content be said to be under APCON's jurisdiction? Is it when the content originates from a licensed advertising practitioner? Or when it originates from the creation of a Nigerian citizen? Or when the advertorial content is created within Nigeria or when the advertorial content has been viewed by Nigerian audience?

CONCLUSION

In an industry which is experiencing technological disruption, the approach to regulation must be practical, innovative, adaptive and suited to the current market trends.

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APCON must acknowledge that online advertising opens up the Nigerian business ecosystem to the global market, facilitating trade, transfer of technology and most importantly inflow of foreign capital which contributes in no small way, to the overall economy. APCON must, therefore, embrace a regulatory approach which is progressive, and which will facilitate and not stifle economic development. APCON's focus must constantly be the protection of consumers and evidently the core of its approach ought to be guaranteeing the transparency of data collection and use, and the preservation of consumers and users' privacy which will not be achieved by merely vetting advertorial contents.



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