

What's in store for 2016?

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2 December 2015



1. Ad blocking

Background:

- Nearly 1 in 5 British adults online use ad blocking software
- 56% of British adults online unaware that most websites are free because they're funded by advertising

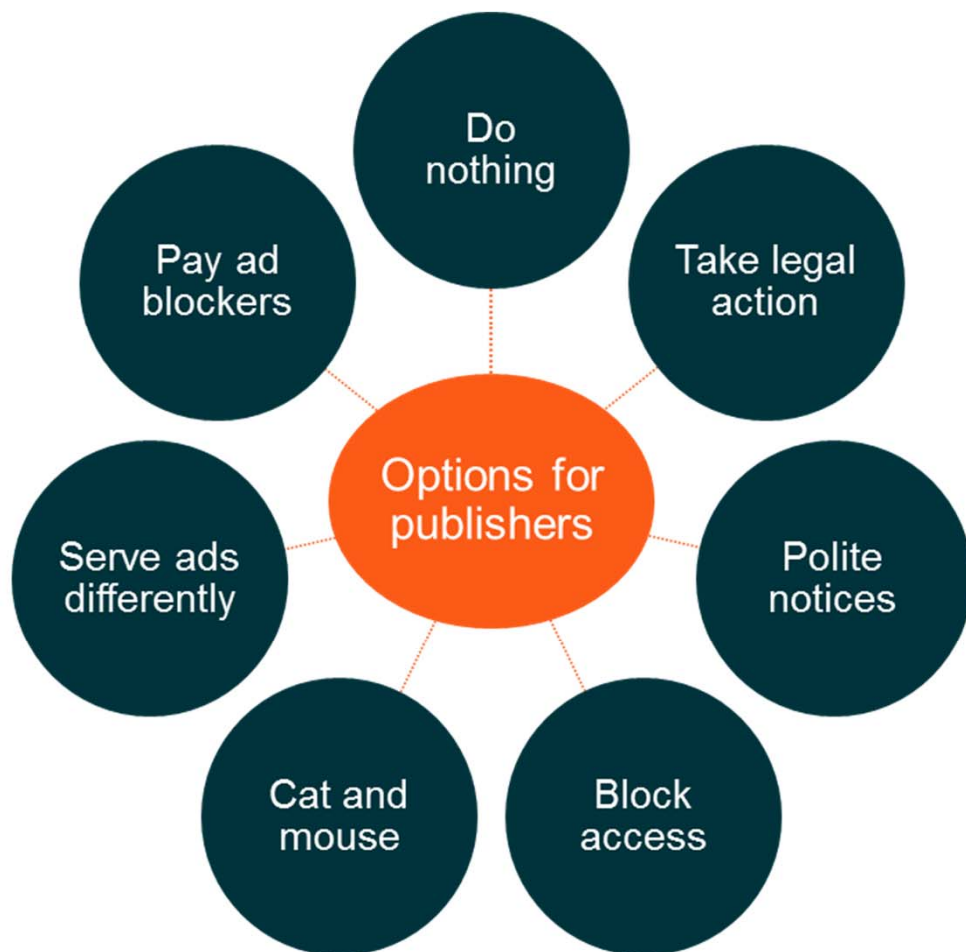
What are the key issues?

- 41% growth in ad blocker use in the past year – iOS released in September
- Predicted \$22 billion in lost advertising revenue in 2015
- Affects publishers, advertisers, online businesses reliant on ad revenue to fund their business



1. Ad blocking

What can we expect in 2016?



We notice you've got an ad-blocker switched on. Perhaps you'd like to support the Guardian another way?

[Become a supporter today →](#)

Ad blocker detected!

We have detected an ad blocking plugin in your browser. Disable it

2. CAP Code Online Behavioural Advertising provisions extended

Background:

- CAP rules for OBA introduced in February 2013 – did not cover use of OBA on mobile devices
- US reform by the Digital Advertising Alliance
- IAB UK and the European Digital Advertising Alliance

What are the key issues?

- Lack of coverage for mobile environment
- Increased ad spend on mobile platforms
- Increased use of cookies



What can we expect in 2016?

- Extension of the rules by June 2016

3. ASA review: in-app and in-game purchases aimed at children

Background:

- CAP rules and guidance
- OFT's Principles (now adopted by CMA)
- Recent ASA adjudications: Moshi Monsters and Bin Weevils
- CMA's work so far:
 - June 2015: CMA referral of three online games

What are the key issues?

- CAP Code does not specifically cover in-app/in-game purchases
 - Finding balance between offering and directly exhorting
 - Language: "JOIN NOW" or "Become a member"
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3. ASA review: in-app and in-game purchases aimed at children

What can we expect in 2016?

- Updated guidance from CAP
- New rules by October 2016



What steps should marketers be taking now?

1. If app/game appeals to children, take caution with paid-for elements of the game
2. Clear information for parents/carers when app is downloaded
3. Don't present paid-for elements as being essential
4. Consider language

4. ASA review of non-broadcast advertising of food and soft drinks to children

Background:

- Current rules – broadcast versus non-broadcast
- ASA commissioned review – Family Kids & Youth consultancy
- New guidance
- September 2015: ASA announced it will launch a public consultation

What are the key issues?

- Evolving advertising techniques and children's media habits:
 - Children's critical understanding of advertising
 - Ads seen by children must be obviously identifiable as such
- Wider societal concerns about childhood obesity

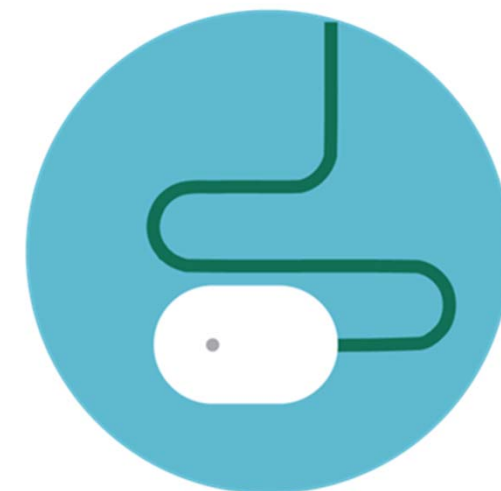
4. ASA review of non-broadcast advertising of food and soft drinks to children

What can we expect in 2016?

- Public consultation to be launched
- Further guidance and interim advice
- Eventually, new rules by the end of 2016

What steps should marketers be taking now:

1. Make clear that online content is marketing material
2. Labelling of marketing material must be timely
3. Make a note of your HFSS products and highlight:
 - ads targeted at pre-school or primary school children
 - ads featuring licensed characters and celebrities popular with children
 - any nutrition or health claims made



5. EC collective redress mechanisms

Background:

- EU drive to introduce mechanisms to assist groups of consumers bringing group damage claims
- European Commission 2013 Recommendation and Communication

What are the key issues?

- Balance between access to justice and abusive litigation
- Consumer Rights Act: competition law automatic inclusion in class

What can we expect in 2016?

- Greater use of collective redress and increased consumer awareness
- Commission publication of annual statistics and further measures

6. The growth of digital video advertising

Background:

- Easier than ever to create and share video (Vine)
- Google incorporating video ads into search results
- The rise of uncontrolled environments (Periscope and Meerkat)

What are the key issues?

- Use of live streaming for sporting events
- Concern over protection of intellectual property rights
- Regulation of broadcast material

What can we expect in 2016?

- Ofcom consultation surrounding broadcast-like material



Vine

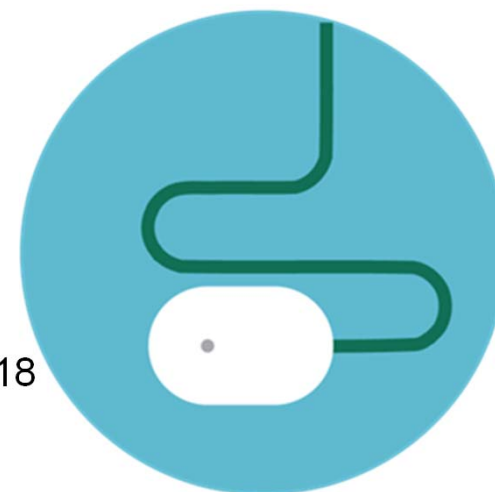


Periscope

7. General Data Protection Regulation

Background:

- Current DP regime different among member states
- New GDPR first proposed in January 2012
- Measure set to be finalised by early 2016
- Formalities e.g. setting all EU language versions to take months
- Two year lead-in period means the new law will likely be fully in force late 2018



What are the main issues for marketers?

- Explicit or unambiguous informed consent from individuals
 - Debate as to whether 'opt out' will no longer be a viable option
 - Profiling at risk
 - Use of third party data – additional due diligence required
 - Individuals must have option to request deletion of their data
 - Data processors to be directly liable for breaches
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8. Fundraising clampdown



May 2019
Standard and Policy

PFRA Rule Book

Doorstep face-to-face fundraising

Background

- Furore after Bristol suicide in May 2015 of elderly donor Olive Cooke, who complained of **thousands of calls from charities**
- Government commissions a **review by Sir Stuart Etherington** after 17 of the biggest fundraisers admit voluntary sector had **failed to meet the high standards** expected of it
- **ICO** has already **demanded changes** to the IoF Fundraising Code of Practice

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What are the key issues?

- Reigning in **nuisance calls** was already high on the Government's list of **consumer protection priorities**
- Continuing **confusion** over the **role and nature of consent** in the context of unsolicited direct marketing calls
- Self-regulatory system administered by the **Fundraising Standards Board** over-complex, under-resourced and **ineffectual**



Public Fundraising Regulatory Association



8. Fundraising clampdown #2



Predictions for 2016

- **October '16:** as proposed by the Etherington report, the FRSB is replaced by the "Fundraising Regulator"
 - funded by levy on charities with annual fundraising spend £100K<
 - who enforces an updated version of Institute of Fundraising Code of Practice
- **June '16:** new Fundraising Preference Service operational
 - administered by the Direct Marketing Association
- **December '16:** FPS shut down due to lack of take-up caused by preference service confusion

9. New Pricing Practices Guide



Background

- Existing **BIS Pricing Practices Guide** ("PPG") now over 5 years old
- This contains "recommendations" as to how to make **price claims and indications** in such a way as to avoid, for example, **criminal offences** under the Consumer Protection from Unfair Trading Regulations 2003
- The BIS and the Consumer Protection Partnership asked the Chartered Trading Standards Institute to **review the PPG** and **produce new guidance**
- A **draft new PPG** was published for consultation in October 2015, response deadline **5/1/16**

What are the key issues?

- The 2010 PPG was seen as **over-prescriptive** and **out of date** with modern price claim practices
- Specific rules such as the **28 day minimum period** for establishing a **genuine price** seen to be giving the **appearance of "safe harbours"** which the law **did not in fact provide**
- OFT and CMA research had indicated that **consumers** can be **misled** by **reference pricing**

9. New Pricing Practices Guide #2

Predictions for 2016

- **October 2016:** new Pricing Practices Guide published
- Delay because many consultation responses complained of the Guide being in many respects too principles-based and lacking in specifics
- Retained from the draft:
 - "Quick Guide to Pricing Practices" checklist
 - "Illustrative examples" spreadsheet listing types of promotions and showing approaches to them that are more and less likely to comply
 - "Actual examples" section citing "court cases" and ASA Rulings
- Dropped from the "Another trader's price" section of the draft:
 - "It is particularly difficult for complete guidance to be given on this type of promotion."



10. EC reviews

Background

- Three EU measures of particular relevance to advertisers are well overdue for review
- These are the:
 - **Privacy and Electronic Communications Directive 2002/58/EC ("PECD")**
 - **Misleading and Comparative Advertising Directive 2006/114/EC ("MCAD")**
 - **Audio Visual Media Services Directive 2010/13/EU ("AVMSD")**



What are the key issues?

- A **November 2012** EC assessment of the MCAD highlighted **a number of problem areas** including a need for clarification of aspects of **comparative advertising** in light of recent CJEU cases
- A **June 2015** EC assessment of the transposition and effectiveness of the PECD found **deficiencies in six areas** including doubts as to its applicability to unsolicited communications within **social media** platforms
- A **July-September 2015** EC consultation sought views on how to update the AVMSD so as to "make Europe's audio-visual media landscape **fit for purpose for the digital age.**"

10. EC Reviews #2

Predictions for 2016

- **June 2016: EC publishes draft measure amending the MCAD**
 - to clarify the position regarding the use of competitors' trade marks in advertising
 - to require effective, proportionate and persuasive penalties for infringement
 - **October 2016: EC publishes draft measure amending the AVMSD**
 - to tighten rules on advertising of gambling and products high in fat, salt and sugars
 - to extend the Directive's scope to AVMS providers established outside the EU that are targeting EU audiences and require registration in main target EU state
 - **December 2016: EC publishes draft measure updating the PECD**
 - to limit the ambit of the cookie consent rule to cases where there is an interference with users' privacy
 - to extend consent rules for marketing emails to messages exchanged via information society services such as social media platforms
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11. And two more EC developments

Background

- The EC's **Digital Single Market initiative** ("DSMI") was launched in May 2015 to "**bring down barriers to unlock online opportunities**". It includes a set of targeted actions to be delivered by the end of 2016 and is built on **three pillars**:
 - Pillar 1: **better access** for consumers and businesses to **digital goods and services** across Europe
 - Pillar 2 : creating the right conditions and a **level playing field** for **digital networks**
 - Pillar 3: **maximising** the **growth** potential of the **digital economy**
- The "**Safe harbor**" derogation that for fifteen years facilitated compliant EU-US personal data transfers has been declared "**invalid**".

What are the key issues?

- **DSMI**: today only **15% of consumers** shop **online** from a **different EU country**. Harmonising consumer and contract rules will both encourage more businesses to sell online and give consumers more confidence. Geo blocking is also a growing problem.
 - **Safe harbor**: the unavailability of safe harbor **significantly reduces** the options for businesses looking to compliantly **transfer personal data** from the **EU to the US**.
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11. And two more EC developments #2

Predictions for 2016

- **DSMI.**
 - **By end of 2016:** a Euro-blizzard of proposals on tackling geo-blocking, simplifying VAT rules, harmonising consumer contract laws, making parcel deliveries more efficient and affordable, modernising copyright law, more rapid and consistent enforcement of consumer rules, a "European cloud" initiative etc.
- **Safe Harbor**
 - **March 2016:** for the first time, the Information Commissioner's Office issues a Monetary Penalty Notice for non-compliant UK-US transfers of personal data erroneously based on Safe Harbor.
 - **October 2016:** the FTC and the EC announce "Safe Harbor 2.0"
 - this recognises progress made by way of the US Judicial Redress Act and other US steps taken to satisfy the EU concerns that brought down Safe Harbor 1.0

12. The next big things

Predictions for 2016

- Dramatic downsizing of adtech lumascape
- Mobile location analytics in a retail environment
- Virtual reality advertising
- Programmatic native advertising
- Personalised consumables/3D printing
- Addressable radio ads
- Fashion leasing

Any questions?



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