Trade and Investment Knowledge Hub
Commission on Marketing and Advertising

Summary Record
Meeting on Tuesday, 1 December 2020 | 15.00 – 17.00
VIRTUAL MEETING

1. **Welcome and Opening of the Meeting**
    The Commission Chair, Brent Sanders (Microsoft), welcomed participants to the virtual meeting, noting broad representation from 21 countries.

2. **ICC Knowledge Solutions Department – vision and strategy 2020**
    Emily O'Connor, Director, Trade and Investment provided an update on the strategic vision for the ICC Knowledge Solutions Department and its 2020 work programme and external engagement plan in the light of the COVID-19 pandemic.

    - ICC has been very active in trying to address various policy and operational challenges regarding COVID-19. ICC started early on to develop policy papers (e.g., guide on business continuity, force majeure clause, relevant toolkits, etc.). The marketing webinar held in June also addressed some relevant issues in relation to COVID-related marketing claims.
    - As the pandemic progressed, ICC focused attention on various steps along the way with advocacy efforts to the G20 related to debt relief and access to trade finance for SMEs.
    - ICC is the voice of the real economy and has developed a focus on SMEs that are especially affected by the pandemic through the Save Our SMEs campaign.
    - Most recently the creation of the SME climate hub to help small companies understand what they can do to take action to reduce their carbon footprint
    - ICC has been engaged all the way through, advocacy has focused more particularly on financial problems as well as health; two major initiatives:
        - ICC AOK Pass (digital health certificate passport) to allow for secure and verifiable distributed technology-based solution to resume international travel; pilots currently ongoing with other airlines and routes to kick start travel.
        - Also involved with ACT accelerator to ensure equitable distribution and access to vaccines and other treatments, to try to tackle the threats of nationalism. Approach CEOs of companies to meet the 7 billion fundraising target.
    - Members' contributions to ICC's work is recognised and appreciated.

COMMISSION WORK PROJECTS/ TRANSVERSAL PROJECTS

3. **Review of Environmental Marketing Framework**
    Commission Vice-Chair, Sheila Millar, provided an update regarding review of the ICC Framework for Responsible Environmental Marketing Communications to address new concepts and claims.

    - WG has broad representation from the Commission on Marketing & Advertising and the Commission on Environment & Energy.
    - ICC Code was updated in 2018 with a high-level refresh of the Environmental Framework to align with changes in the main Code.

- It was considered that it is timely for a broader refresh as new claims have entered the marketplace, such as climate positive/neutral, micro-plastic free, natural, ocean-safe, circular, etc.
- The WG has had at least four calls with robust discussions. The introduction needs to be rewritten as it is outdated, some changes related to product-based claims, recycled content, renewal as well as provide additional guidance around chemical recycling
- The goal of the WG is transparency and clarity to consumers, not to set environmental policy or to align on one standard. Standards differ around the world, it is a complex environment. ICC's role is to make sure that there is free and open competition. What is important to consumers may differ in different markets, however product integrity and safety remains central to the consumer experience.
- The WG is mindful of the developing initiatives in the EU, that are promoting the concept of life-cycle analysis (LCA) as a basis for environmental claims, however this is not going to be an ICC position. There has also been discussion about looking at ISO14000 series as a guide. Some work is also being conducted in the US by the sustainable packaging coalition on recycled content claims.
- WG found that there is no consumer perception research related to climate/carbon claims.

Actions: WG to revise product related claims (e.g., recyclable, compostable) and move on to climate related claims. Try to invite the Sustainable Packaging Coalition to present for the next meeting. WG will be taking on the drafting segment in the next phase and plans to finish its work by next spring.

4. **WIPO Alert**
   Thomas Dillon, Legal Counsellor, and Maria Teresa Sapiente-Beyeler, Legal Officer, WIPO, presented on the WIPO ALERT initiative in an effort to minimise the risks of ads inadvertently funding illegal content. Members will discuss this work in the context of the ICC policy statement: Safeguarding against the misplacement of digital advertising, as well as developments related to the EU instrument of the Memorandum of Understanding on Online Advertising & IPR

   - WIPO's responsibility and focus is on intellectual property rights
   - WIPO ALERT: Project is directed to the advertising sector, to help member states and legitimate market players avoid placing advertising on copyright infringing sites
   - Pirate business model: Funds criminality, damages brand reputation, putting brands at risk by putting them in an illegal context, risk of brand fraud, larger risk to consumers because they might download malware, be exposed to adult content, might be misled
   - Countries have developed initiatives on a voluntary basis to share information with the advertising sector to help inform decisions regarding placements of ads
   - In recent years, few countries have developed systems where lists of infringing websites are compiled to be shared with advertisers to help avoid serving ads on illegal websites
   - WIPO Alert is an international effort to bring together, in a secured manner, all national initiatives so that there is one effective source across the world for the advertising industry
   - In 2014, ICC issued Policy statement: Safeguarding against the misplacement of digital advertising, although it did not specifically reference copyright infringing websites.
   - In 2015, EU countries begin to adopt Infringing Website Lists
   - In 2018, the European Commission announced the MoA on online advertising and IPR
   - In 2019, WIPO Alert launched. This platform brings together in a secure way the effort of the different countries
   - WIPO Alert database:
     - Objective is to help advertisers prevent paid advertising from appearing on infringing web sites

- o Secure online platform hosted by WIPO
- o Aggregates national lists of websites found to be infringing copyright
- o Makes lists available to the advertising industry
- o Facilitates public sector involvement
- o Share good practices – transparency and due process
  - ▪ Contributors: national entities, authorities which are empowered to order site blocking/ compile list of pirate URLs. Contributors upload pirate URLs to WIPO Alert database: no reference to names or personification. Once uploaded in the database, the authorized user (advertising industry) will be provided with access. Users will use the list in order to prevent their own ads from being served on the flagged websites. Trade associations enhance recommended practice and strengthen collaboration between organisations
  - ▪ Three different ways to access:
    - o Access is granted once the LoU or User Agreement is signed by the Contributor or User.
    - o A focal point is designated by the Party
    - o Credentials for the creation of an account are provided by WIPO moderator
  - ▪ WIPO Alert has a high level of security
  - ▪ API for both Contributors and Users
  - ▪ Platform in English, French, Spanish, Russian, Portuguese
  - ▪ On the platform, it is possible to search by query, by domain, by country
  - ▪ 9 contributors: Italy, Korea (Rep.), Brazil, Spain, Russia, Japan, Ukraine, Peru, Ecuador
  - ▪ 5500 domains listed
  - ▪ Offer membership to users in private sector

5. **World Federation of Advertisers**
   Rob Rakowitz, Initiative Lead, World Federation of Advertisers (WFA) provided an update on the WFA Global Alliance for Responsible Media.

   - ▪ GARM was launched at the Festival of Creativity in Cannes in 2019
   - ▪ The initiative focuses on consumers and how they use digital media, and to make sure that advertising supported consumer experiences on these platforms are fundamentally good for society and safe for consumers
   - ▪ GARM is driving standards in self-regulation that would have a complementary relationship in terms of regulation and activism
   - ▪ Issues around brand responsibility are a C-suite/board room issue (visible initiatives addressed by CFOs and corporate affairs) and an engine room issue (highly technical, media plans)
   - ▪ Critical shift in thinking: many monopolies and duopolies with no regulatory framework, however a need to protect consumers and brands in the media industry. The sustainability and longevity of the industry is important.
   - ▪ Objectives:
     - o Scale up efforts and face into issues where marketers and agencies need to develop clout
     - o Restore transparency and control for advertisers on where their ads are placed and how revenue is shared
     - o Drive focus and prioritization for industry collaboration in the interest of consumer and advertiser safety
     - o Protecting consumers from harassment and harm
   - ▪ Look to solving underlying issues *vs* treating symptoms, focused on two fundamental rights that are restored and safeguarded – an online experience that is free from harm; brands need control on where their ads appear online
   - ▪ External pressures have driven the focus and prioritization of work:
     - o Layering effects of sensitive societal topics: COVID, racial justice and equality,

upcoming politicals
- o GARM provocations: policy clarity and enforcement, independent oversight, consistent measurement, adjacency controls
- o Requests echoed by NGO activists
- Provocations used to accelerate work with the objective to create a safer media ecosystem aimed to deliver on marketer's needs: consistency, transparency, comparability and control; where brands will be given control and there will be accountability (close loop system driving better behaviour around content moderation). Make the business of harmful content less profitable and more difficult.
- July acceleration agenda:
  - o Go from working groups to accelerated agenda, making sure to have an agreement on what is harmful content and that those definitions are applied throughout the industry
  - o Agreement to advance first-party measurement of harmful content
  - o Agreements on independent, third party measurement, audits and oversight
  - o Enhance adjacency controls to provide advertisers with options to ensure ads are not on or near harmful content
- Progress: Since the GARM launch in June 2019, launched the GARM Working Charter that was recognised by the World Economic Forum in January 2020, published definitions in September 2020 for how platforms will start to categorise their content
- Example of the work: identify 11 topics areas which are problematic for advertisers (e.g., adult and explicit sexual content, arms and ammunition, terrorism…); create a Safety Floor, which is a limit that is not suitable for advertising support and then establish a Suitability Framework, which are graded definitions of topic treatments for advertising support (based on high, medium and low risks)
- Timeline: release best in class framework for first party reporting around brand safety in January 2021; go from common definitions to harmonised reporting
- With definitions now adopted, there is opportunity to drive transparency which will help marketers make more informed and suitable choices and platforms drive new tools, resources and collaboration in safety
- Communicate more with the industry on the positive steps that the GARM is taking

6. **European Interactive Digital Advertising Alliance**
   Update from Robin de Wouters, CIPP/E, Communication Coordinator, European Interactive Digital Advertising Alliance (EDAA) regarding a new digital literacy campaign with Media Smart.

- EDAA work in online behavioural advertising and advocate that healthy digital advertising fuels a strong digital economy that benefits both consumers and companies.
- EDAA manages the Ad Choices Icon: The icon is globally recognised and has been delivered 182 billion times in 2019.Through the icon consumers can find out more about why ads are tailored to them. With various regulations across the world (GDPR in Europe, CCPA in the US), the icon provides consistency throughout the ecosystem. EDAA focuses on improving transparency through the AdChoices icon, raising awareness and educating consumers.
- SROs are a necessity to go beyond legal compliance
- The icon takes users to a platform youronlinechoices.eu that allows users to turn OBA ads off, or hand pick them. The page was viewed 18 million times in 2019.
- Over 100 companies take part in the programme.
- [Consumer research on European perceptions towards digital advertising](#)
- 3 in 4 consumers have a general awareness of the GDPR. 2 out of 3 consumers have reasonable knowledge of how data is used for advertising.
- Users of the AdChoices icon feel more informed, better understand data use, and are more receptive towards Data-Driven Advertising

- Need: more understanding about the use of information for younger generations
- EDAA launched an [educational resource](#) with MediaSmart in the UK
  - Highlights importance of education, especially for younger people
  - Objective: help young people understand digital advertising
  - UK Pilot in 2020 for teachers of young people aged 11-16
  - EU roll out coming in 2021

7. **ICC Transversal Projects**
   Update from Charly Gordon, Deputy Director of the ICC Digital Economy Commission regarding work on Artificial Intelligence and engagement related to the EU Digital Services Act.

   Artificial Intelligence:
   - The objective of the ICC Digital Economy Commission is to provide thought leadership and shape policy developments that promote investment and the use of ICTs, facilitate trade in the digital economy, foster trust in digital environments.
   - The ICC Digital Economy Commission is founded on 4 pillars: data governance; cybersecurity; trustworthy technologies (building trust throughout the ecosystem) and connectivity and access
   - AI is a collection of technologies that bring together data, algorithms and computing power
   - Using these technologies, computers can be trained to accomplish specific tasks by processing large amounts of data and recognising patterns in the data
   - These technologies lead to productivity gains and economic growth
   - The private sector can use AI technologies to develop new products and services
   - Disruptive effects of AI: human agency, transparency and algorithm biased
   - Key enablers: effective use and adoption of AI relies on having strong ICT ecosystems; steady flow of high quality and diverse data; and having an ecosystem of trust
   - The foundational Paper on Human-Centric and Trustworthy AI will provide thought leadership on innovative, trustworthy and human-centric AI. The paper was commissioned through the ICC Research Foundation and will be delivered in partnership with Oxford's Saïd Business School and industry experts. The project seeks to develop a set of principles, supported by industry case studies and best practice examples, that will help business implement ethical AI technologies.
   - Advocacy: The ICC Innovation for All (IFA) hub seeks to leverage the ICC global network of business leaders to help inform and shape policy discussions as well as enable targeted conversations with policy makers to promote business views on the governance of AI.
   - Cross-ICC Commission coordination: Given the cross-cutting and disruptive effects of AI technologies in many policy areas, IFA is looking to ensure ICC-wide coordination of AI-related work. For instance, AI can improve systems to identify copyright-infringing websites and improve the advertising networks' placement of ads according to responsible practices (ICC Commission on Marketing & Advertising). AI can also have more negative effects on markets and lead to anti-competitive behaviours, linked to dynamic pricing (ICC Commission on Competition).
   - Online content:
     - Challenges:
       - the presence of illegal (e.g. counterfeit products, criminal activities, violent content) and harmful content (e.g. misinformation, harmful advertising) online is increasingly eroding the trust between online intermediaries and users;
       - policy makers have been placing increased pressure on technology companies (web hosts, search engines, e-commerce sites, social

media sites, payment processors, ad networks) to control the content on their platforms;
- the increasing use of algorithmic personalisation and tailored content is leading to discussions on the ethical considerations of such practices
- tensions between the local socio-cultural specificities of content and the global nature of the Internet is leading to fragmentary dynamics and the balkanisation of the global network
  - o Responses:
    - capacity building: inform and upskill private sector stakeholders to enable them to engage in technical discussions with policy makers;
    - policy development: develop a common understanding of the issues and provide a forum for private sector stakeholders to discuss policy initiatives
    - advocacy: enable targeted conversations with policy makers to promote business views on the governance of online content
- Increasing use of AI in marketing and advertising sector: Call to action: Commission on Digital Economy to coordinate with Commission on Marketing on foundational paper on AI – case studies on use of AI in advertising and marketing sector Digital Services Act:

  EU Digital Services Act
- On 19 February, the EC published 'Shaping Europe's Digital Future' announcing its plans to present a new framework to increase and harmonise the responsibilities of online intermediaries in the Single Market.
- The legislative proposal will update the eCommerce Directive (2000) and set out the extent to which online intermediaries will have to police illegal and possibly harmful content online.
- The current legal ambiguity threatens the integrity of the Single Market and the EC is eager ensure greater harmonization between Member States.
- Member States are taking the initiative and are exploring new regulatory mechanisms that may further fragment the Single Market (e.g. NetzDG and Loi Avia).
- EC views the DSA for IA (and DMA for competition) as a tool to protect citizens and their rights from new online harms and an opportunity to strengthen competition in the online marketplace (i.e. prevent the 'tipping of markets').
- ICC Secretariat is providing guidance to members throughout the process (DSA Scene Setter) and engaging with the European Commission (DG CNECT) to share business perspectives.

8. **Governmental and intergovernmental issue watch**
   Members active in these processes shared latest developments on legislative and regulatory initiatives of relevance for Commission members as referenced in the IGO table circulated to members.

Lucas Boudet, Director General, European Advertising Standards Alliance (EASA)
  EU Developments:
  - A Europe fit for the digital age: Digital Services Act
    - o Purpose: update of legal framework for digital services, by
    - o Proposing "*clear rules framing the responsibilities of digital services to address the risks faced by their users and to protect their rights*"
    - o Proposing "*ex ante rules covering large online platforms acting as gatekeepers*"
    - o Proposal to be presented on 9 December (tbc)

- o Some aspects of online advertising are expected to be in the scope
- o DSA calls for greater transparency and accountability and oversight of platforms, improve transparency of advertisements and advertisers
- o Get recognition of advertising self-regulation
- A European Green Deal and a Europe fit for the digital age: New Consumer Agenda
  - o New Consumer Agenda presented on 13 November 2020
  - o Purpose: "*updated overall strategic framework of the EU consumer policy*"
  - o Main elements: Covid-19 response, green transition, digital transition, protect vulnerable consumers, international cooperation and effective enforcement
  - o Legislative proposal on empowering consumers through green transition – 2021
  - o Purpose: "*to empower consumers for the green transition with better information on products' sustainability and better protection against certain practices such as greenwashing and early obsolescence*"
- A European Green Deal: Environmental Claims
  - o Legislative proposal on the substantiation of green claims – 2021
  - o Purpose: "*make the claims reliable, comparable and verifiable across the EU – reducing 'greenwashing' (companies giving a false impression of their environmental impact)."*
  - o Commission wants to give more guidance how companies should substantiate green claims
  - o Commission wants to make sure that outcome takes into account advertising self-regulation
- A European Green Deal: Farm to Fork Strategy - Code of conduct for responsible business and marketing practice
  - o European Green Deal - Farm-To-Fork Strategy - 20 May 2020.
  - o Purpose: "*make food systems fair, healthy and environmentally-friendly*"
  - o EU Code of conduct for responsible business and marketing practice, accompanied by a monitoring framework
  - o Purpose: increase "*availability and affordability of healthy, sustainable food options to reduce the overall environmental footprint of the food system*"
  - o Adapting marketing and advertising strategies, taking into account the needs of the most vulnerable – e.g. advertising campaigns for meat at very low prices must be avoided
  - o Mentions advertising as a tool for shaping the future as a more sustainable environment

Douglas Miller, Vice President, Global Privacy and Trust, Verizon Media

- Preliminary Report of the Inspection Service of the Belgian Data Protection Authority, APD, into the IAB Europe's TCF – Transparency & Consent Framework

  - o The preliminary report contained the conclusions of an investigation conducted by the Inspection Service and alleged that IAB Europe violated the GDPR and Belgian data protection law.
  - o It challenges the fact that the TCF allows for the processing of personal data on the basis of 'legitimate interests', suggesting that the TCF (and by extension, IAB Europe) "determines" this legal basis. However, it is the participants in the TCF who decide whether or not they want to rely on legitimate interests as their legal basis and for which purposes – the TCF does not decide or mandate that. And although several DPAs may not support the use of legitimate interests for profiling, the GDPR does not prohibit it.

- o The report also alleges that the TCF breaches the GDPR by not providing detailed rules for the processing of special category data. However the processing of this type of data is not permitted under the Framework – it is in fact explicitly excluded from its scope.
- o The report suggests that IAB Europe is a data controller, although IAB Europe is not making decisions about consumer personal data. Processing decisions and operations are carried out exclusively by companies in the course of their business activities. It is a novel and confusing approach, and there has been no evidence coming from other Data Protection Authorities (DPA) suggesting that this is the case. If it were recognised, it would put in question the work of other entities trying to support the industry's work, including self-regulatory bodies, and as such it would constitute a threat to codes of conduct more generally.
- o More generally, the report shows that Inspection Service is unhelpfully conflating entities (e.g. trade association vs. market players), their remit, roles and actual technical capabilities to process personal data.

- Schrems II ruling, the California Consumer Privacy Act and California Privacy Rights Act ballot initiative
  - o CCPA is in force
  - o They issued 4 different versions of regulations that companies are trying to adapt to
  - o There is an ongoing emphasis on dark patterns, companies are further pushed to not use any behavioural nudges
  - o Emergence of global privacy control that would enable consumers to exert their 'do not sell' control across their browser rather than company by company
  - o Question whether it is legal under the CCPA or beyond its intent: interpretation issues
  - o Most of the open issues in the CCPA are being closed by the California Privacy Rights Act (CPRA) of 2020 Ballot Initiative, which passed 56 to 43%
  - o The CPRA will take effect on January 1, 2023
  - o To be seen whether or not there will be meaningful enforcement of the CCPA
  - o Federal debate about federal privacy regulations: question as to whether there will be a federal law preventing state laws

9. **Any Other Business**
   It is likely that the next meeting will be a virtual one as it is still uncertain whether international travel will be possible in the first half of 2021. Members will be advised in due course on details for the next meeting.