

Self regulation and Artificial Intelligence

ADVERTISING
REGULATORY
BOARD

In New York in September, one of the main topics on the table at both the NAD conference and at the launch of the ICAS Global Think Tank, was how regulators should and are responding to the use of AI in advertising.

For me, it was an interesting experience. I went in with the view that advertisers should be required to identify when advertising is

created by AI – and I left with my mind completely changed!

Here I share some of the things that I learnt about the risks and challenges of AI – and I share why I no longer think that we currently need to change anything in the regulatory space to respond to AI.

Gail S

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Global Resources

The EU Act on Artificial Intelligence comes into effect in February 2025.

The Act assigns AI applications into 3 risk categories:

1. Unacceptable risk – like government run social scoring of the type seen in China. These are banned.
2. High risk – like CV scanning tools that rank applicants.. These are regulated.
3. Low risk – these are applications that are unregulated.

You can find lots of information here - <https://artificialintelligenceact.eu/>

“In addition, common and legitimate commercial practices, for example in the field of advertising, that comply with the applicable law should not, in themselves, be regarded as constituting harmful manipulative AI-enabled practices.”

Recital 29 of the Act

The World Federation of Advertisers has also created an amazing resource on AI –

<https://wfanet.org/services/connect-to-your-peers/ai-community/ai-community>

“Nearly two-thirds of brand owners (63%) are already using generative AI in their marketing strategies, according to [new research](#) from the World Federation of Advertisers (WFA) but many have serious concerns about the technology.

Eighty percent of multinational brand owners have expressed concerns about how creative and media agency partners are using generative AI (gen AI) on their behalf and legal (66%), ethical (51%) and reputation (49%) risks were also cited as major roadblocks to more”

Remember that your gateway to WFA membership in South Africa is through MASA


(www.marketingsa.co.za)

The Council of Europe Framework Convention on artificial intelligence and human rights, democracy and rule of law is also open for signature. The Framework Convention was adopted by the Council of Europe Committee of Ministers on 17 May 2024. The 46 Council of Europe member states, the European Union and 11 non-member states (Argentina, Australia, Canada, Costa Rica, the Holy See, Israel, Japan, Mexico, Peru, the United States of America and Uruguay) negotiated the treaty.


You can read more about this here - <https://www.coe.int/en/web/portal/-/council-of-europe-opens-first-ever-global-treaty-on-ai-for-signature>

Concerns


Some concerns that were highlighted around the use of AI that advertisers should be aware of were raised.




Brands are worried about both intellectual property exploitation and data privacy breaches by AI. Unlike with the human equivalent, the AI would not necessarily be sensitive to the protected nature of this material. AI has access to vast swathes of information with no grasp of relevant protections.




When AI creates personally targeted ads it may create a combination that unpredictably is in breach of advertising rules as a result of the unique combination of elements. Regulators will still hold brands liable for this content.



AI may be used in the creation of deep fakes and scams. A deep fake is typically a video of a person in which their face or body has been digitally altered so that they appear to be someone else, typically used maliciously or to spread false information.



AI is informed by its input, drawing on the information that it farms from the internet. Globally, only 20% of women have access to the internet (!). Combined with the historic masculine bias in information sharing, and the proliferation of misogynistic stereotypes and actively harmful dialogues on the internet, AI might find itself educated to a sexist and misogynistic bias.



Similarly, AI is not exposed to sufficient diversity in images and voices, and therefore may skew to the “white male conservative” stance. AI used in translation may similarly display language sensitive stereotyping that the original “instructor” might not be able to assess.

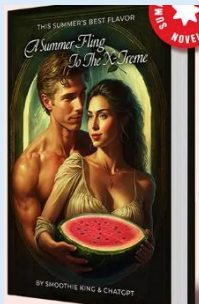
The self regulatory role

The use of digital graphics and enhancement in advertising is not new. We've seen photoshopping, green screening, dubbing and other changes to the "natural" presentation of reality. With these past challenges – and with the new challenges presented by AI – the essential question remains the same: Is the consumer being misled?

The use of AI per se is not misleading any more than the use of green-screen special effects is. It becomes misleading when the AI is used to create a misleading impression about the advertised product or service.

Existing rules are sufficient to address this challenge. In South Africa, most complaints would fall under Clause 4.2.1 of Section II which deals with Misleading claims.

An unexpected source of complaints is advertisers pretending to use AI in a more meaningful way than they actually are. You can see a case handled by the US self-regulator here - <https://bbbprograms.org/media-center/dd/telecom-business-solutions>



An interesting use of AI was by Smoothie King who used ChatGPT to write a romance novel featuring its product! Read more here - <https://www.marketingdive.com/news/smoothie-king-chatgpt-romance-novel/651253/>

The use of AI to create visuals can also result in the consumer being misled. In the UK, the Willy Wonka Chocolate Experience made headlines after AI generated videos promised a magical experience – and the reality was quite different! Read more here - <https://qz.com/willy-wonka-chocolate-experience-ai-ads-1851292670>



Marketers should remember that while using AI might not be against the rules, it might leave consumers feeling "tricked". Once you've spotted that a model has 6 fingers, it's hard to trust the claim that that advertiser is making.