

A Model of Advertising Regulation in the Digital World

David S. Waller

University of Technology, Sydney

David.Waller@uts.edu.au

Gayle F. Kerr

Queensland University of Technology

gf.kerr@qut.edu.au

Kathleen Mortimer

University of Northampton

Kathleen.Mortimer@northampton.ac.uk

Sonia Jane Dickinson

Curtin University of Technology

Sonia.dickinson@cbs.curtin.edu.au

Abstract

Advertising comes under some form of regulation, whether self or government regulated, in countries around the world, to ensure that it does not offend, mislead or deceive. However, the growth of various types of digital media has resulted in commercials formerly banned in a country now being available to be watched globally on the Internet. This paper examines the functionality of informal regulatory processes enabled by digital media. In doing this, a conceptual model is proposed that explores the influence of the public, advertisers and regulatory bodies in the contemporary media environment. The model presents some important implications for both advertisers and regulatory bodies in an international context.

INTRODUCTION

In countries throughout the world, the advertising shown to the public has some form of regulation to make sure that the communicated message is suitable and legal. The most widely used system for regulation in advertising is self-regulation (Boddewyn, 1989; Rotfeld, 1992; Shaver, 2003; Harker, 2004; Parsons and Schumacher, 2012). Within this system, the advertising industry regulates the communication and conduct of its members by imposing a code of ethics, sanctions for violation of this code, and enforcement procedures to ensure compliance. While this system is not perfect and criticised for being sided too closely to industry, it is preferred to a government-regulated system (Parsons and Schumacher, 2012). Universally, a member of the general public who is offended by an advertisement can lodge a comment or complaint, an advertiser responds or complies, and the regulator liaises, formulates and, in most cases, enforces determinations. However, external to this formal process, new communication infrastructures provide these entities with alternate exchange platforms (Kerr et al., 2012).

The aims of this paper are to (1) examine the context regarding offensive advertisements that trigger complaint processes and establish a model of the traditional self-regulation process; and (2) discuss the functionality of the informal regulatory processes enabled by digital media resulting in the creation of a conceptual model that explores the influence of the general public, advertisers and regulatory bodies in a contemporary media environment. The paper will contribute to the literature by developing a conceptual model that explores the actions of the three main entities in a self-regulatory environment, and presenting them in a digital media environment.

OFFENSIVE ADVERTISING

Advertisements can be found to be offensive on two different dimensions: offensive products and offensive execution (Barnes and Dotson, 1990). Most studies have concentrated on attitudes towards the advertisement of potentially offensive or controversial products (Waller, 1999; Prendergast et al., 2002; Waller, 2005). It should be recognised that the creative execution used in an advertisement, even one for a product that is not by nature controversial (such as a tourism campaign), can make the advertisement controversial (Waller, 1999). This execution-based controversy appears to be growing whereby organisations are using controversial words, images and messages to gain attention and brand awareness (Brown, 2001; Pieters et al., 2002; Pope et al., 2004) as well as bonus media coverage (Brown, 2001). Therefore, some communications are designed with an original, albeit high risk, execution to obtain attention and brand awareness.

This controversial advertising strategy has been successful in both commercial and social marketing contexts with companies such as French Connection U.K., Rip'n'Roll Safe Sex, as well as smoking and drinking public service announcements gaining considerable publicity by way of inexpensive controversial campaigns (Severn et al., 1990; Waller, 1999; Crosier and Erdogan, 2001; Dahl et al., 2003; Miller, 2003). Notwithstanding these benefits, advertisers walk a fine line between being original and offensive. An offensive advertisement can result in negative publicity, complaints to industry or advertising regulatory bodies, falling sales, and product boycotts (Crosier and Erdogan, 2001; Waller, 2005). The risks are illustrated by well-known advertisers Benetton and Calvin Klein, whose controversial advertising campaigns backfired resulting in damage to the company and its brand image (Irvine, 2000; Curtis, 2002; Pope et al., 2004).

ETHICAL JUDGEMENT

The theoretical basis for understanding the potential offence caused by certain advertisements is found in an individual's ethical judgment. All people do not process and decode advertisements the same way, particularly across cultures and even media channels. The messages reflected in advertising must be weighed in the context of an individual's (or society's) moral philosophy or ethical judgment (Arthur and Quester, 2003; Dean, 2005). If advertising messages are contrary to prevailing standards, they will give offense (Waller, 2005).

Ethical judgment of advertising can be grouped based on the following theories: (a) idealism (or deontology), which says actions are judged on the rightness or wrongness of the action itself; (b) pragmatism (teleology), which says that an act is right if it results in the greatest good for all those affected; or (c) relativism, which says that no universal ethical rules exist and that decisions are merely a function of time, place, and culture (Arthur and Quester, 2003; Dean, 2005). However, these are not mutually exclusive when judging the ethical value of a potentially offensive advertisement. A number of elements from these philosophies may be taken into account, as an advertisement may include violent images that an individual may judge deontologically to be wrong, but teleologically to be reasonable because the advertisement is for road safety, which would be for the better good of the community (Waller et al., 2013).

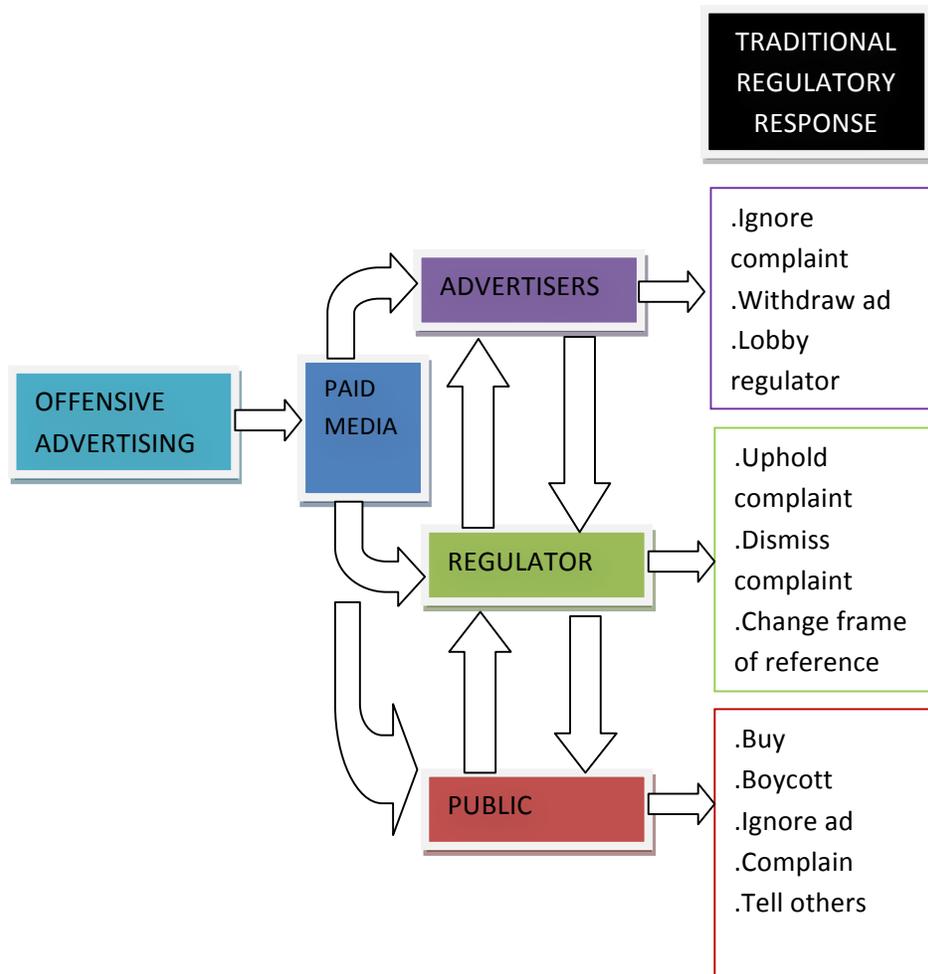
Execution techniques commonly perceived as potentially offensive and high risk include: Anti-Social Behaviour, Indecent Language, Nudity, Racist, Sexist, and Subject Too Personal (Waller et al., 2005). Within the traditional regulatory system, the course of action if someone is offended

by an advertisement would be that they complain to the main regulatory body. The following will present a model of the self-regulatory process.

MODEL OF TRADITIONAL SELF REGULATION PROCESS

A conceptual model which diagrammatically portrays the traditional self-regulation process is presented in Figure 1. The model includes three entities involved in the advertising self-regulatory process: the general public, advertisers, and the self-regulatory body (Kerr, 2007). The following literature review supports the model by examining each of the key players presented in the model and the power that they have over the process.

Figure 1: Traditional Process of Advertising Self-Regulation



Regulatory Bodies in the Advertising Regulation Process

Advertising is regulated by a variety of frameworks in order to ensure that it does not offend, mislead or deceive. While these regulatory frameworks range from full government regulation to minimal intervention, the most widely used system is advertising self-regulation (Boddewyn, 1989; Rotfeld, 1992; Kerr and Moran, 2002; Shaver, 2003; Harker, 2004; Parsons and Schumacher, 2012). Self-regulation versus government regulation has been the subject of intensive research for more than two decades (LaBarbera, 1980; Armstrong and Ozanne, 1983;

Boddewyn, 1989; Rotfeld, 1992; Harker, 2003). However, it has been commonly agreed that self-regulation is preferable to government regulation, except where the consequence of failure is too high or the possibility of collusion too great (Shaver, 2003).

The advertising self-regulation infrastructure of many nations is similar, consisting of advertising agencies, media, government and self-regulatory bodies. Similarity can be found in the self-regulation systems used in U.S.A. (National Advertising Division), U.K. (ASA), Singapore (Advertising Standards Authority), Australia (Advertising Standards Board) and New Zealand (Advertising Standards Authority). Characteristically, these authorities consider written complaints about advertising in mainstream media and make adjudications based on the Advertiser Code of Ethics. Within the described self-regulatory environment, if the complaint is upheld the self-regulatory body may decide that the showing of the advertisement should be restricted or that it should be removed from all paid media. While the regulatory body may request the advertiser to remove the offending advertisement, the board itself often has no power to do so, albeit in most cases, the advertiser cooperates and the advertisement can no longer be viewed by the general public on paid media.

The General Public in the Advertising Regulation Process

Based on general findings from literature, the traditional model of self-regulation shown in Figure 1 proposes that when an advertisement is exposed to the general public, those who are offended by the advertisement can complain by communicating directly to the advertiser, complain to the regulatory body, or act individually by ignoring the message, not purchasing the product, boycotting the product, or telling others (Volkov et al., 2002). More commonly, however, the general public takes no action despite dissatisfaction (Day and Ash, 1979; Richins,

1983; Andreasen, 1984, 1985). Complaints lodged through formal regulatory processes by the general public represent a tiny percentage of the population (Volkov et al., 2002), meaning that it is contentious whether the formal regulatory complaint process truly captures a public viewpoint. In Australia, for example, formal complaints have been increasing since 2001; however, the representativeness of complainant perspectives is debatable. The literature demonstrates that complainants are generally older, educated, possess greater financial resources and are highly participatory with the capacity to take action (see Volkov et al., 2002 for a review).

Specific to controversial campaigns, research has shown that males and younger people have a greater level of acceptance, with advertisers overtly using sexual or violent images to attract younger people (Barnes and Dotson, 1990; Grazer and Keesling, 1995; Waller, 1999; Bushman and Bonacci, 2002; Reichert, 2003; Waller and Fam, 2003; Waller, 2005). This is further supported by research findings where women are more likely to be offended by the use of swearing in advertising than men, particularly women over fifty (Waller, 1999; Prendergast, Ho and Phau, 2002, Fahy et al., 1995).

Advertisers in the Advertising Regulation Process

Advertising practitioners need to make ethical decisions in the areas of message creation and delivery to create socially desirable advertising (Rotzoll and Christians, 1980; Chen and Liu, 1998). Rotfeld et al. (2004: 72) notes, however, that “pressure to secure audience and advertising revenue takes precedence over what is a small percentage of complaints compared with the volume of advertising carried by each vehicle”.

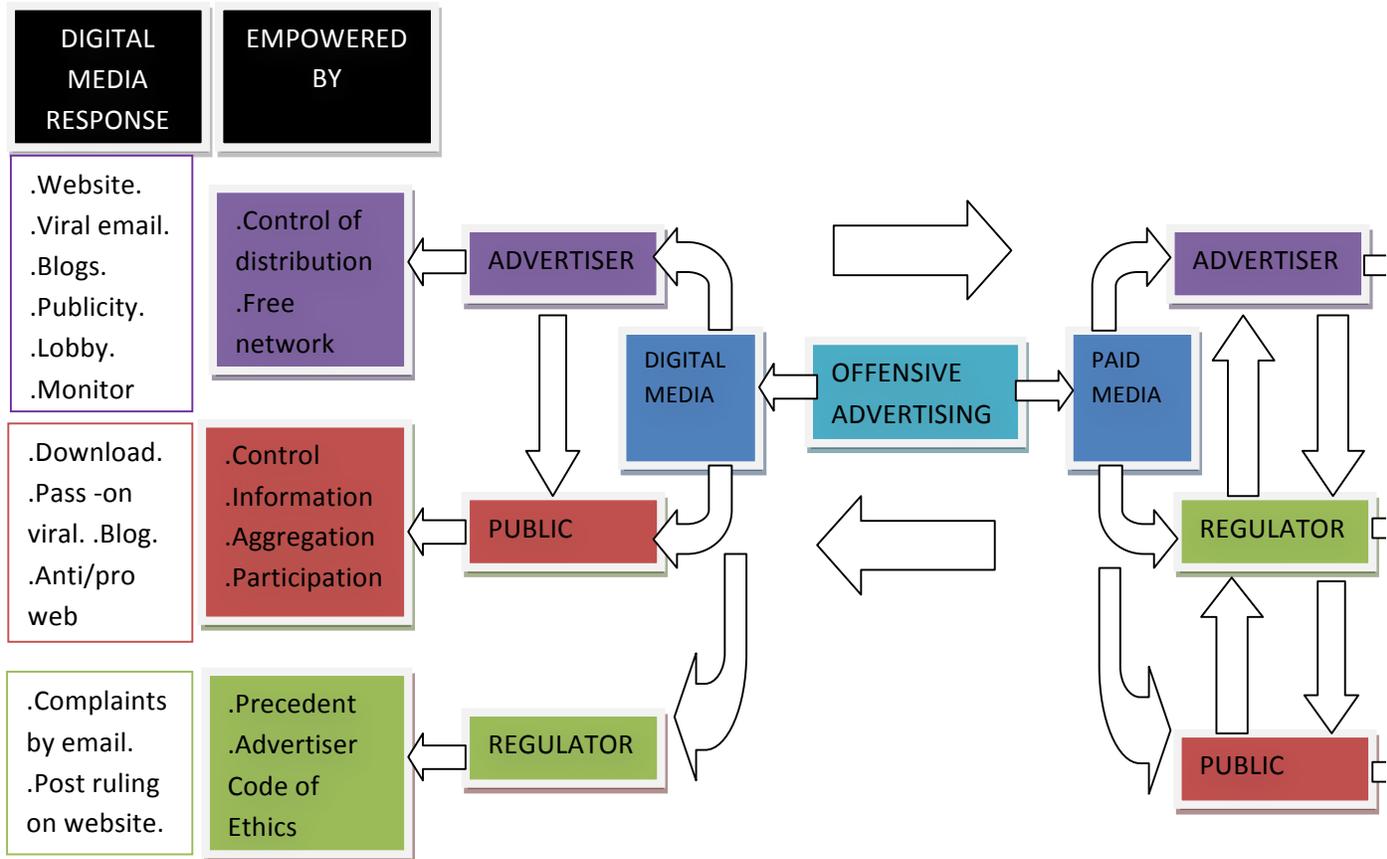
There are three different types of ethical decisions that advertising professionals have to make (Shaver, 2003). The first type concerns group activities regulated by law, such as laws relating to misleading advertising. These laws provide clear directives for compliance, so no ethical reasoning is required at the individual level. The second type concerns group activities regulated by industry codes. These situations require some level of ethical reasoning by the individual to compare how the ethical dilemma fits with existing guidelines. However, true ethical reasoning, the third form of ethical decision making, involves decisions not clearly covered by either regulation or the codes. These situations are generally most concerned with decisions on content and message delivery. It is here that ethical decisions are made in the largely unregulated and constantly changing media environment.

For all three kinds of ethical decisions, however, a basic education about the regulations, industry codes and professional and personal ethical standards is an important prerequisite. As depicted in Figure 1, the response from the industry practitioners when receiving complaints from the public is to ignore the complaint or withdraw the advertisement. It is also likely that they will lobby the regulatory body when the decision to uphold or dismiss the complaint is being made.

IMPACT OF DIGITAL MEDIA ON THE SELF-REGULATORY PROCESS

For this paper, digital media is communication that is nontraditional, communication messages disseminated from online or mobile platforms. The availability of digital media as a free and universal communication tool has an impact on the power of the three players: the general public, the advertiser and the regulatory body. This impact on each player is now examined, resulting in the conceptualisation of a model presented in Figure 2.

Figure 2: Advertising Self-Regulation in the Digital media Environment



Digital media and the self-regulatory body

The development of digital media has some positive impact on how the self-regulatory bodies undertake their responsibilities. It has certainly accelerated the complaint process, making it faster and more convenient by email and thus increasing the number of complaints (Advertising Standards Board, 2013). The Internet also provides an archive for its case studies, encouraging

advertising practitioners and students to learn from its rulings. However, as digital media is both difficult to regulate and largely unregulated, the self-regulatory body has little influence on its content or distribution. It is not uncommon for banned advertisements to be circulated widely on the Internet by advertisers and members of the general public, placing more power in their hands in terms of the content and distribution of advertising. If it can be proven that the balance of power has swayed towards the advertiser and the general public then the implication is that the self-regulatory board has less, or no, power in protecting the general public from offensive advertisements.

Digital media and the General Public

Fundamental marketing theory suggests that consumers have always had power over manufacturers in terms of their demand for goods or services (Kotler et al., 2006). They can ignore, resist, adapt and control their own choices and this choice alone is a form of empowerment (Denegri-Knott et al., 2006; Harrison et al. 2006; Shankar et al. 2006). This power has increased with the introduction of digital media, which allows the general public to respond through computer-mediated communication (CMC) to exponentially grow the impact of response and enable continuous electronic updates and rapid communication with multiple individuals simultaneously.

In applying consumer power in the online environment, Denegri-Knott (2006) proposed four strategies; control over the relationship, information, aggregation and participation. It is possible to apply these four strategies in terms of controversial advertising. The first, *control* over the relationship, allows consumers to control whether they engage with advertisers in terms of their advertising material. If they find an advertiser's campaign offensive they can block

communication from that company through spam filters or firewalls, unsubscribe from email lists and choose not to visit a particular website. Alternatively, if they enjoyed a particular controversial advertising campaign they can download it for personal consumption, send it to friends via email and talk about it on their blogs. Using the second strategy, the availability of *information* results in consumers being much better informed about advertisers' activities that include advertising campaigns and the view of others' on these campaigns. Some consumers may seek *aggregation*, whereby digital media enables them to join other like-minded consumers online to discuss specific advertising campaigns either in a positive or negative manner. In other aggregation, anti-brand communities seek to expose product faults or unethical advertiser activity. The final consumer power strategy is *participation*, where consumers actually create content. They may suggest product development ideas or edit other members' posts. Kerr et al. (2012) observed a fifth consumer power type, *self-liberation* as power, when exploring the use of blogs in the controversial Australian tourism campaign, "Where the bloody hell are you?" They observed the blogosphere as a conduit for controversial advertising, where like-minded people voiced their disdain for the regulators in Australia, the U.K. and Canada.

Digital media and Advertisers' Responses

Advertisers also appear empowered by digital media, which offers alternative response platforms and opportunities for both listening and dialogue with the general public. The positive flow-on effects from controversial advertising and the buzz that surrounds an advertising ban can be leveraged by the advertiser (Waller, 2005). While a regulatory body may uphold a complaint from the general public, the target audience is unlikely to feel the same way and, as such, a core of people who enjoy the controversial advertising and wish to consume it further, talk about it

and send it to colleagues. The advertiser facilitates this process by providing material on the Internet for distribution by interested parties via viral email and links to the website from blogs.

The power of publicity as a digital media response is highlighted with statements made by advertisers, including alcohol brand Chivas, who publicly stated that the ‘outcry’ about their advertisements boosted advertising publicity (Moon, 2000). Footwear retailer Windsor Smith made similar remarks after controversy erupted when it launched a sexually provocative billboard campaign, indicating that they were ‘pleased’ with the publicity generated from complaints about their advertising, claiming that the free publicity was valued at around \$4 million. Marketing experts say those who complain are simply playing into the hands of marketers. Controversial advertisements are designed to generate complaints with advertisers reaping the rewards via free publicity and consumer-initiated demand. Kerr et al. (2012) supplied some evidence of this in the case of Tourism Australia with the advertiser producing both a controversial advertisement, as well as a website where the advertisement, once banned, became highly sought after and freely available.

DISCUSSION

The proposed model suggests that the availability of digital media empowers members of the general public to comment and pass on advertising to a global virtual audience. In the traditional self-regulatory process, an individual whose ethical judgment did not approve of an advertisement could complain to the self-regulatory board, boycott the product and company or perhaps express their feelings to others if they found somebody interested in talking about it. If they liked the advertisement, they could not express their approval other than again by talking to

likeminded people. Digital media facilitates transfer of information and opinion by bringing together huge numbers of like-minded people to talk in a free and unrestricted environment. It enables people to chat, share information, compare views and have a dialogue. This discussion can relate to the advertisement itself or actions of the self-regulatory authorities (Waller, 2012). This freedom can lead to some strong expression of opinion but generally does not lead to disciplinary action or the creation of pressure groups.

Despite the empowerment of consumers to share and comment on controversial advertising, it is unlikely that this public opinion would be instrumental in overturning a ruling of a self-regulatory body or even effecting its deliberation. This is a likely disconnect between the digital channels and the media habits of board members. Likewise, the channels of consumer complaint such as blogs or forums do not have the visibility amongst board members or key influencers such as the media. Advertisers, however, find the comments in blogs and online forums valuable enough to track and use sophisticated blog search tools, such as George Patterson Young and Rubicam's Australian developer Seer system which improves the ease of online environment monitoring compared to more traditional media monitoring. Advertisers use these comments for campaign validation and even campaign creation (Kerr et al., 2009; Dickinson and Kerr, forthcoming).

Of the three stakeholder groups (public, advertiser and regulators), advertisers are perhaps the most empowered in the digital media environment. They have the power to distribute advertising, even controversial or banned advertising, through website downloads. This not only gives them control of the distribution of advertising, but also gives them access to a free distribution network, which is more cost effective and infinitely farther reaching than their traditional networks. They also have the power to elicit consumer conversation and even co-creation in their advertising and other marketing matters. In addition, they have the power to track what is being

said electronically, instantly and invisibly. In fact, their power in the digital media environment is comparable with that of the self-regulatory body in the traditional system. Both have the power to control distribution of the advertising. The self-regulatory body controls what ads can be seen by upholding or dismissing complaints, or restricting advertising to certain time slots. The advertiser encourages distribution by making advertising material available online or through viral email.

Both also have the power to monitor public opinion on advertising. The self-regulatory board has a responsibility to listen to and address every public complaint on advertising. In 2012 the Australian Standards Board announced in a landmark ruling that it would be watching what advertisers place online and regulate “any advertising or marketing communications over which the advertiser has a degree of control” (Lee, 2012). This would include banner ads, Facebook and Twitter, although this would be more difficult on sites like YouTube. The advertisers monitor public opinion through blog searches and monitoring online forums. Finally, both have the power to exert some control in regulating advertising. The self-regulatory board works within the advertising code of ethics to uphold its principles. It is for this reason that it is vitally important that the advertiser in the digital media environment relies on what Shaver (2003) describes as true ethical reasoning to regulate the environment.

CONCLUSION

The proposed model suggests a transfer of power from regulators to advertisers and consumers in the digital media environment. While this model has been developed by focusing on controversial advertising, as the trigger of consumer complaint, further research could investigate whether the model applied to campaigns that are more conventional or even government or community service advertising. It would also be interesting to see whether this model was equally valid for

all digital media advertising including online, social and mobile. The answers to these questions would help further test the conceptual model proposed in this paper.

What is very clear is that the balance of advertising self-regulation has been changed forever by the transformation of advertising from a one-way, mass medium message to a brand new collaboration. In this transformation, the regulatory body has been by-passed and the roles of the general public and advertisers in controlling and championing advertising in the digital media environment have been empowered.

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