

C-76: Online Platforms

Issues & Recommendations

C-76: Online Platforms: Definition

Section 319 of the Act is amended by adding:

“online platform” includes an **Internet site** or **Internet application** whose owner or operator, in the course of their commercial activities, **sells, directly or indirectly, advertising space on the site or application** to persons or groups. (plateforme en ligne)

C-76: Online Platforms: Registry Obligation

325.1(2) The **owner or operator** of an **online platform** that **sells, directly or indirectly, advertising space** to the [designated] persons and groups shall **publish on the platform** a registry of the persons' and groups' **partisan advertising messages** and **election advertising messages published on the platform** during that period

C-76: Online Platforms: Registry Contents

325.1(3) The registry referred to in subsection (2) shall include the following:

(a) an **electronic copy** of each **partisan advertising message** and each **election advertising message** published **on the platform**; and

(b) for each advertising message referred to in paragraph (a), the **name of the person who authorized** the advertising message's publication on the platform

C-76: Online Platforms: Penalties (No Knowledge)

495(1) Every person is guilty of an offence who:

(a.1) being the owner or operator of an online platform,
contravenes subsection 325.1(2) or (4) (failure to publish registry
of partisan advertising messages and election advertising
messages for required publication period) **or subsection 325.1(5)**
(failure to keep information for required period);

500(1) ... [and] is liable on summary conviction to **a fine** of not
more than \$2,000 **or to imprisonment** for a term of not more than
three months, or to both.

C-76: Online Platforms: Penalties (Knowledge)

495(4) Every person is guilty of an offence who

(a) being the owner or operator of an online platform, **knowingly** **contravenes subsection 325.1(2) or (4)** (failure to publish registry of partisan advertising messages and election advertising messages for required publication period) **or subsection 325.1(5)** (failure to keep information for required period)

500(4) ... [and] is liable on summary conviction to a fine of not more than \$50,000.

C-76: Online Platforms: Recap

Every “online platform”, which includes any website, platform or app, that

1. Offers advertising inventory;
2. Displays **any** “partisan advertising” or “elections advertising” during the prescribed periods; and
3. Meets the minimum traffic thresholds (3M visits/month if English, 1M visits/month if French, 100K visits/month other language)

MUST publish a registry of **each** partisan and elections advertising message displayed on their website, platform or app during the prescribed periods, along with prescribed identification information for each ad displayed

C-76: Online Platforms: Recap

Failure to comply with this obligation is a strict liability offence, with sanction including both fine and imprisonment

- Knowledge of non-compliance not required to be liable

Knowingly failing to comply with this obligation is **also** a separate offence, with sanction including fine only

C-76: Online Platforms: Scope

The definition of “online platform” and obligations are so broad, they will capture not just “social media” or large platforms, but:

- Most national and regional news publishers;
- Virtually all multi-cultural publications, as minority linguistic groups disproportionately impacted due to low traffic thresholds

Further, as programmatic display advertising targets audience **regardless of where the service is located**, this also sweeps in:

- **All popular ad-supported sites**, including News, Entertainment, Music and other sites;
- **All popular ad-supported apps**, including games, productivity, utilities, etc.

Majority of these are not Canadian nor have extensive presence in Canada

C-76: Online Platforms: Monitoring

Requiring “online platforms” to publish a registry of all partisan and election advertising (backed by criminal sanctions for failure to comply) effectively creates **obligation** for “online platforms” (that meet minimum traffic thresholds) to **proactively monitor and detect any partisan or elections advertising**:

- Cannot comply with registry obligation if do not know partisan or elections advertising has been displayed;
- Most 3rd parties use self-service tools to run advertising campaigns. Challenging to know if they are compliant with registry obligations, but failure to identify and include their partisan or election advertising in registry means online platform non-compliant;
- Programmatic display advertising is entirely automated. Many publishers will not even know they displayed a partisan or election ad until after the fact (and only if notified), and may find themselves unknowingly subject to the registry requirement

C-76: Online Platforms: “Election Advertising”

“election advertising” means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, **including by taking a position on an issue with which a registered party or candidate is associated**

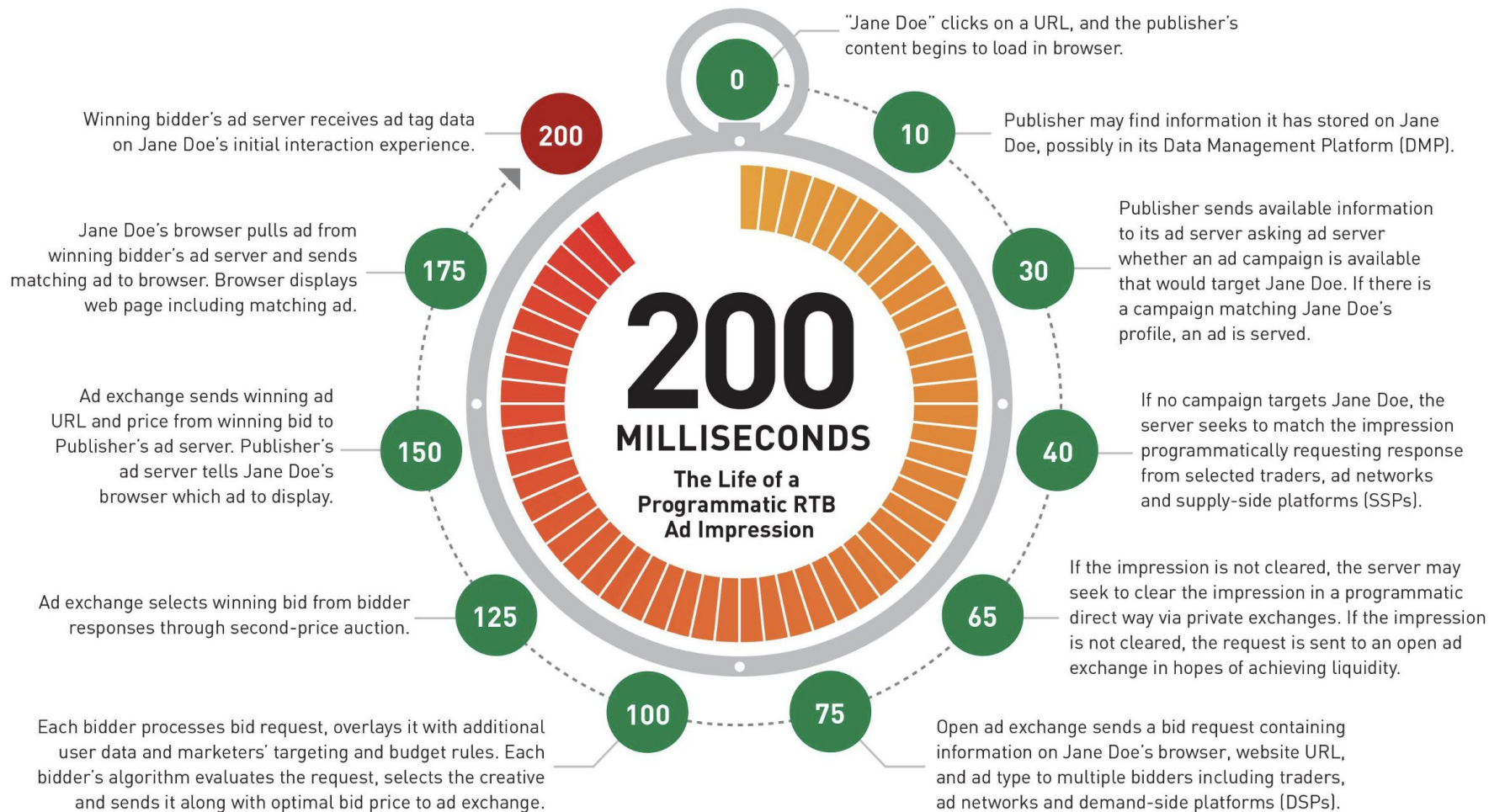
- Registry requirement will require proactive monitoring of all advertising and inclusion of any advertising or advocacy that might potentially be a political issue
- Issue ads are highly contextual and notoriously difficult to identify reliably
 - Especially as definition of "issue associated with party or candidate" is fluid and will change and evolve during a campaign, and no centralized list of “issues”
- Even if include all advertising from designated groups in registry (which would be over inclusive), broad definition of “election advertising” and potential liability for error (even if 3rd party misrepresented) will make this extremely challenging

C-76: Online Platforms: Programmatic & RTB

Most online advertising is “programmatic” advertising, which uses software and automated processes to match an ad to a user

- Very efficient, and allows publishers to offer their audiences to advertisers, and for advertisers to reach specific audiences, without publisher and advertiser directly interacting
- When users visits site, publisher offers opportunity to serve an ad to that user on ad exchange, and advertisers will bid for that opportunity. The advertisers that wins the bid serves the ad **directly to the user**. This is called Real-Time Bidding (RTB)
- Publisher will not receive copy of ad, or necessarily know what ads were served. Similarly, advertiser will not necessarily know which sites ads delivered through until after it occurs
- Complex process and ecosystem

200MS: The Life of a Programmatic RTB Ad Impression

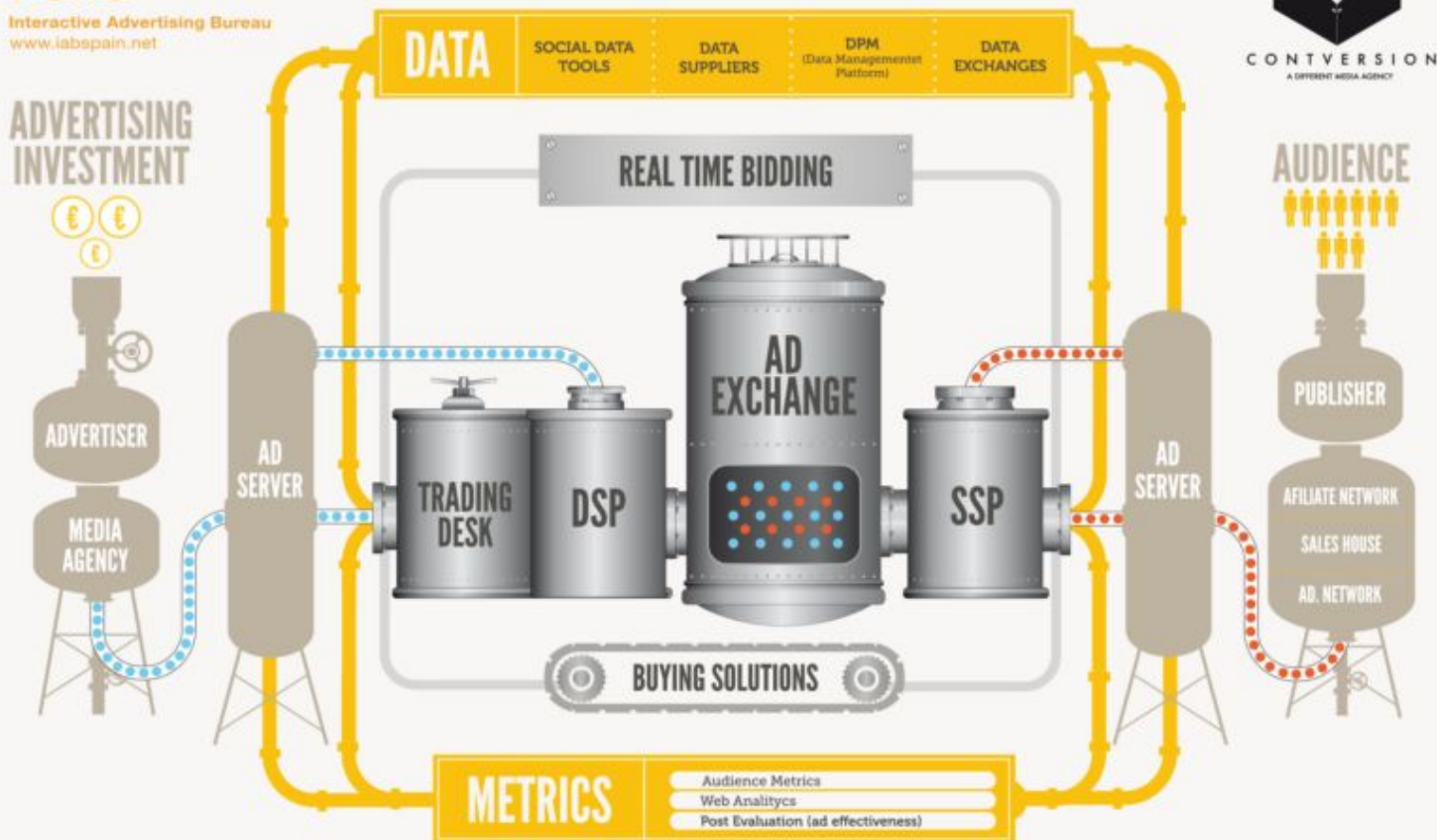


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C-76: Online Platforms: Programmatic Display

Most publishers use programmatic display (even if just for unsold, long-tail ad inventory)

- Programmatic display advertising infrastructure designed to serve display ads in real-time to relevant audience, not to enable publisher to obtain “electronic copies” of display ads that were served to the site or application
- No means to for site or app to retrieve all partisan advertising and election advertising that displayed on their site or app in a timely manner
- For programmatic display to accommodate registry requirement, entire underlying infrastructure would need to be changed and entirely new back-ends built
- Not achievable in the very short timelines contemplated by Bill C-76 (*i.e.* 6 months)

C-76: Online Platforms: Recommendations

Removal of new obligations in favour of co-ordinated regime

- Major platforms already voluntarily launching registries in advance of elections, these new obligations were not necessary
- New prescriptive obligations will introduce unintended consequences:
 - Reduce flexibility to address political ads issues and compromise launch of planned registries, as imposing specific conditions and requirements
 - require substantial engineering of ad serving infrastructure, which is not achievable in the short timelines contemplated
 - Creates obligation to proactively monitor systems for political advertising, which will impact platform's ability to offer advertising services

C-76: Online Platforms: Recommendations

Require all political advertisers to submit partisan and election ad creative and campaign information directly to Elections Canada

- Political advertisers already required to register and submit detailed expense reports
- Provides single, central repository for transparency and enforcement
 - Current proposal will create fragmented regime of multiple repositories across multiple websites, platforms and apps
- Potentially simplify enforcement as any political ad not in this repository would likely be in contravention

C-76: Online Platforms: Recommendations

Alternatively, and at a bare minimum:

- Exclude issue ads by adopting definition of “advertising” from s. 349.01 (Prohibition on Use of Foreign Funds by Third Parties)
- Obligation should only apply if “online platform” **knowingly** sells ad space to designated persons, to avoid publishers becoming unknowingly and inadvertently captured
- Allow platforms selling ad inventory on behalf of 3rd party publishers to maintain registry, even if ad displays on 3rd party site
 - Eliminate inclusion of “indirect” sale of ad space
 - Eliminate requirement that registry be published “on the platform” for ads displayed “on the platform”

C-76: Online Platforms: Recommendations

Alternatively, and at a bare minimum:

- Ensure online platforms can use information provided by advertisers in good faith
- To reflect knowledge requirement, remove strict liability offence by deleting s. 333(1)
 - Retains fines for knowing contravention of obligation
 - Focusses enforcement on fines rather than imprisonment, more appropriate given nature of contravention
- To confirm knowledge requirement for sale of ad space to foreign entity, expressly include reference that 282.4(5) only applies if **knowingly** sell advertising space