

EASA's contribution – Gen AI CoP drafting – Working Group 2

This document covers the question of the WG 2 pertaining to the definition of 'deep fake' and to the specific case of the disclosure of 'evidently creative work' containing a 'deep fake'.

EASA's key recommendations:

- Article 3(60) and Article 50(4) AI Act must be carefully interpreted **to avoid any catch-all disclosure requirement** for all AI-influenced content, which would **generate labelling fatigue** and be **no more informative than the absence of disclosure**, undermining Article 50's core purpose.
- Recommended interpretation of the **cumulative criteria** in the deep fake definition:
 1. "AI-generated or manipulated **image, audio or video** content"
 - Meaning: AI-generated or manipulated text is not covered by the deep fake definition. Also, since advertisements are not "informing the public on matters of public interest", they are out of scope of Article 50(4) provisions applying to such content.
 2. "**Resembles existing** persons, objects, places, entities or events"
 - Meaning: non-realistic visuals (cartoon) shall not qualify as deep fake. In addition, visuals bearing high but generic resemblance with reality would not qualify as deep fake either, as long as no specific person, object, place, entity or event, is undoubtedly identifiable.
 3. "Would **falsely** appear to a person to be **authentic or truthful**"
 - Meaning: this criterion relies on the **deceptive** dimension of the AI-generated or manipulated element, as the term "falsely" indicates. Whenever the deceptive dimension is absent, no mandatory disclosure obligation would apply.
- For those advertisements meeting the 3 cumulative criteria recalled above, disclosure should apply, as per Article 50(4), taking into account **the "evidently creative" nature of advertising**. GenAI disclosure should be applied "in an appropriate manner **that does not hamper the display or enjoyment of the work**".

About EASA

1. [EASA](#) represents and coordinates collective advertising self-regulatory systems across Europe, promoting high ethical standards in commercial communications. Its membership is made up of 28 independent advertising [self-regulatory organisations](#) (SROs), which enforce advertising self-regulatory codes of conduct at the national level, [14 advertising industry associations](#)

(advertisers, agencies, media), and [2 digital pure players](#), all supporting the self-regulatory systems and committing to their principles.

2. The effectiveness of the advertising self-regulatory systems and their strong contribution to the protection of consumers are well-documented facts. Due to its high flexibility, quick response to consumer complaints and adaptability to changing market realities, self-regulation is a particularly suitable tool, which supports regulatory instruments laying down rules to protect consumers from unfair commercial practices. Advertising self-regulatory systems, promoted by EASA and its members, complement other regulatory tools and help to ensure that traders are aware of their responsibilities, thus helping to ensure high overall compliance with the rules regarding unfair commercial practices.
3. Advertising self-regulatory codes are based on the principles enshrined in the Advertising and Marketing Communications Code¹ (ICC Code), complemented by ICC interpretative guidelines, called ICC Frameworks. The latest revision of the ICC Code made clear that its scope extends to AI-generated content.
4. All the Codes of advertising self-regulatory organisations are applicable irrespective of the means used for the generation and for the dissemination of the ad. In practice, it means that AI-generated content in advertisements has to be just as compliant as any other ad content.

I. Impact of the AI Act's generative AI transparency provisions on the advertising ecosystem

A. The legal provisions at issue

5. The advertising sector is particularly affected by the transparency obligation under Article 50(4) AI Act, read in conjunction with the definition of “deep fake” under Article 3(60).
6. **The definition of deep fake under Article 3(60)** covers “*AI-generated or manipulated image, audio or video content that resembles existing persons, objects, places, entities or events and would falsely appear to a person to be authentic or truthful*”.
7. **Article 50(4)** requires deployers of AI systems to disclose to the recipient the synthetic nature of artificially generated or manipulated content. For “*evidently artistic, creative, satirical, fictional or analogous work or programme, the transparency obligations*” are limited to disclosing “*in an appropriate manner that does not hamper the display or enjoyment of the work*”.

¹ See [ICC Advertising and Marketing Communications Code, 2024 edition](#)

8. Due to these provisions' vague wording, stakeholders in the advertising sector face **significant legal uncertainty regarding the interpretation and practical implementation** of this transparency requirement.
9. We would also remind here that the provisions prohibiting unfair, misleading and deceptive content under the Unfair Commercial Practices Directive (UCPD) apply to any commercial practice, including AI-generated or manipulated advertisements.

B. Risks incurred by blanket disclosure obligations for the advertising sector

10. The primary purpose of advertising is to influence consumer behaviour by creating awareness, generating desire, and driving purchasing decisions. It bridges the gap between producers and consumers by communicating product benefits, availability, and value propositions. Beyond immediate sales, advertising builds brand recognition and loyalty, helping companies establish long-term market positions and customer relationships. Advertisers employ various creative formats across multiple channels – from traditional print and broadcast media to digital campaigns using video, interactive content, and immersive experiences. Techniques include storytelling, humour, repetition, and visual imagery to create memorable impressions and emotional connections with audiences. The growing use of AI in advertising raises important questions about when and how consumers should be informed about synthetic elements in advertising.
11. Therefore, in the interest of both the advertising industry and consumers, it is essential to establish and apply a practical transparency framework for advertising content produced with AI assistance. Striking the right balance is key: transparency requirements must be such as to effectively mitigate a risk of deception causing detriment to consumers, while avoiding excessive labelling that could undermine the very purpose of disclosure.
12. **An indiscriminate, catch-all disclosure requirement** for all AI-influenced media content – whether fully generated or merely AI-assisted – **would generate labelling fatigue** and be no more informative to the average consumer than providing no disclosure at all. As a result, recipients would likely disregard such ubiquitous labels, undermining Article 50's core purpose of ensuring consumer awareness of AI-generated content.
13. Additionally, excessive labelling of non-misleading content could inadvertently lead audiences to assume that all unlabelled content is automatically truthful, otherwise known as the “implied truth effect”. This could be exploited by malicious actors and **undermine consumer confidence** in legitimate AI-generated or AI-assisted content that poses no risk of deception.
14. To avoid an erosion of trust in AI-generated or AI-assisted content in advertising, **we recommend taking the interpretative approach explained below to apply Article 50(4) and the definition of deep fake.**

II. “Deep fake”: clarifying the boundaries of the concept

15. The implementation of Article 50(4), first subparagraph, should remain strictly within the boundaries of the definition of “deep fake”, as detailed in the three sections below, each of which covers one of the three cumulative criteria contained in the definition.

A. “AI-generated or manipulated image, audio or video content...”

16. The phrase “AI-generated or manipulated image, audio or video content” leaves out of the deep fake definition any AI-generated or manipulated text.

17. Whereas Article 50(4) establishes that AI generated or manipulated text “published with the purpose of informing the public on matters of public interest” shall be disclosed, this does not apply to advertising. Informing the public on matters of public interest is clearly not the goal of commercial ads, which are focused on the promotion of goods, services, or brand image.

B. “...that resembles existing persons, objects, places, entities or events...”

18. Recitals may help us shed light on the suitable interpretation of this provision – this is precisely what Recitals are meant for. Recital 134 gives us a hint to better understand the deep fake definition, in the shape of the adverb “appreciably” which precedes the verb “resembles”. This term indicates that the resemblance with an existing person, object, place, entity, or event must be strong and striking rather than vague and generic.

19. Beyond this purposive approach, a textualist approach calls similarly for a narrow interpretation of Article 3(60) of the AI Act. Based on the definition of deep fake in Article 3(60), the terminology “resembles” and “existing” indicates that **disclosure obligations under Article 50(4) do not cover AI-generated content that appears realistic but depicts generic rather than identifiable persons, places, entities, events or objects.**

20. Typically, AI-generated content representing realistically a famous (therefore identifiable) person, object, place, entity, or event, shall be labelled as per Art. 3(60) and Art. 50(4) of the AI Act. Conversely, realistic resemblance with persons, places, entities, events or objects, that cannot be uniquely identified would not fall under the disclosure obligation.

C. “...and would falsely appear to a person to be authentic or truthful.”

21. The European Commission’s Impact Assessment, which paved the way to the legislative proposal in 2021, is a useful reminder of the underlying goal of the policymakers in Art. 50(4). In section 5.4.2, letter d), the intended transparency obligations are qualified as “minimal” and would apply to “cases where people might be **deceived**”, namely the chatbots and the deep fakes. This notion of deception is key to interpret correctly the deep fake transparency provisions.

22. Furthermore, the choice of the term “deep fake” itself is another element revealing the intention of the policymakers. Indeed, deepfake, a portmanteau of “deep learning” and “fake”, typically refers to the tech-enabled misrepresentation of a particular and identifiable person, as doing or saying something that they did not actually do or say for real. This is a clear case of **deception**, where the person, the image of which is generated in the deep fake, can be recognised and identified by the user.
23. The term “falsely” in the AI Act deep fake definition comes as a confirmation of the clues gathered above, demonstrating that the **deceptive** dimension is part of the approach to determine what is, or is not, a deep fake. Whenever this deceptive dimension is absent, no mandatory disclosure obligation would apply, because the content would not “falsely” appear authentic or truthful.

III. Self-regulation is part of the solution

24. As explained in the “About EASA” section further above, **advertising self-regulation fosters responsible advertising via tools which are efficient, swift and free to consumers**. EASA and the advertising self-regulatory systems that it represents are continuously working against deceptive practices, including those resulting from the use of AI-generated or manipulated content. Given their proven expertise and recognised independent guidelines, these self-regulatory bodies in the advertising sector are ideally positioned to establish reliable standards and provide societal safeguards.
25. EASA would therefore recommend being closely consulted in the drafting of any future Commission Guidelines touching on AI-generated content disclosure, of the future code on the transparency requirements, or – as the case may be – any upcoming revision of the AI Act.

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