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31 October 2008

RESPONSE TO THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE CONSULTATION ON PROPOSALS FOR IMPLEMENTATION IN THE UNITED KINGDOM

Introduction

1. Overview of Advertising Standards Authority

- 1.1 The Advertising Standards Authority (ASA) is the UK self-regulatory body for ensuring that all ads, wherever they appear, are legal, decent, honest and truthful.
- 1.2 The ASA is widely recognised as being responsible for controlling marketing communications in all media in the UK and we work closely with statutory regulatory partners, such as the Office of Communications (Ofcom) and the Office of Fair Trading (OFT).
- 1.3 Two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are responsible for writing and maintaining the Advertising Codes. CAP is responsible for the non-broadcast Code and BCAP is responsible for the TV and radio Codes.¹
- 1.4 More information about the ASA one-stop-shop and the benefits it brings to consumers and industry is detailed at **Annex A**.

¹ The Advertising Codes can be found at: <http://www.cap.org.uk/cap/codes/>

- 1.5 The ASA welcomes the opportunity to respond to the Government's plans for implementing the Audiovisual Media Services Directive (AVMS; 'the Directive') in the UK.

2 Response summary

2.1 This ASA response will not address each consultation question in turn and will offer no views on some matters. This is because it is important that any decisions about the structure and breadth of advertising co-regulation are made by the industry itself. That said, the advertising regulatory system is ready, willing and able to adapt to develop an appropriate system for the regulation of Video-On-Demand (VOD) advertising under AVMS.

2.2 The ASA naturally supports a simple regulatory structure that is in line with better regulation principles and for that reason this response will make the case for:

- Responsibility for regulation of VOD advertising remaining with the ASA as part of the 'one-stop shop' self-regulatory and co-regulatory model.
- Ofcom being responsible for assigning powers for VOD advertising, rather than those powers being assigned by central government or a third party such as the VOD content regulator(s).
- A simple form of co-regulation to be established for VOD services, something more akin to self-regulation, with the necessary legal underpinning, rather than an onerous co-regulatory structure.

Regulation of VOD advertising

3. VOD advertising regulation under AVMS

3.1 Currently, advertisements accompanying VOD programmes are subject to advertising self-regulation. Advertising must comply with the CAP

Code² and complaints can be made to the ASA. The ASA has not encountered any particular problems with such advertising.

- 3.2 However, the ASA acknowledges that the purely self-regulatory status quo cannot be maintained under the AVMS Directive.
- 3.3 As a self-regulatory and co-regulatory body, the ASA is encouraged that the UK Government has taken the opportunity provided by the Directive to permit co-regulation to play a full role in regulating audio visual media services.
- 3.4 However, the ASA is aware that there are many different degrees of co-regulation, which sit between pure self-regulation and statutory regulation, as indicated below in **Figure 1**.

Figure 1



- 3.5 Given that there is already an effective self-regulatory system in place to control VOD advertisements, it seems unnecessary to devise an onerous (or very formal) system of co-regulation to control VOD advertising under AVMS. Since the Directive is supportive of both self-regulation and co-regulation it seems sensible to provide the most flexible regulatory structure permissible under the Directive. The ASA self-regulatory model has proven that such an approach is workable and effective; the ASA comprises many forms of self-regulation within a co-regulatory framework and the formality of these various arrangements does not have a particular bearing on compliance levels.

² The CAP Code is the non-broadcast advertising code. All the Advertising Codes can be accessed at www.cap.org.uk

ANNEX A – About the ASA one-stop shop

1. The ASA has been responsible for policing non-broadcast advertising standards since 1962, when the industry established the ASA as an independent complaints body to administer the new CAP Code for non-broadcast advertising.
2. The self-regulatory system is based on a concordat between advertisers, agencies and the media that each will act in support of the highest standards in advertising. It is not a voluntary system.
3. The success of the self-regulatory system led to the contracting-out of broadcast regulation (TV and radio) by Ofcom in 2004. This move was approved by Parliament and created a 'one-stop shop' for all advertising complaints⁵.
4. Two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are responsible for writing and maintaining the Advertising Codes. CAP is responsible for the non-broadcast Code and BCAP is responsible for the TV and radio Codes.⁶
5. The industry worked hard to create a robust regulatory structure for broadcast advertising, which would ensure consistent cross-platform regulation for the benefit of both consumers and advertisers. This included ensuring appropriate funding was put in place for the new regulatory system and creating a fully representative industry code-owning committee (BCAP).
6. Generally speaking, the ASA now regulates all advertisements in 'paid for space', anywhere in the UK, including in VOD services. Although primarily a complaints based regulator, the ASA also conducts daily pro-active monitoring of ads in all media and regularly undertakes compliance surveys of advertisements published by sectors about which there is particular societal concern or in sectors where compliance may be poor.

⁵ Agreed through a formal Memorandum of Understanding (MOU), with the Deregulation and Contracting Out Act 1994 (DCOA) as the legal function that enables the partnership

⁶ The Advertising Codes can be found at: <http://www.cap.org.uk/cap/codes/>

7. The system is entirely funded by industry, through a levy of 0.1% on display advertising space and airtime and 0.2% on Royal Mail Mailsort contracts. The levies are collected by two arm-length funding bodies, the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof)⁷. Last year the ASA was awarded £8m to run the system.
8. The ASA 'one-stop shop' advertising regulatory system brings great benefits for consumers and for business:
- **Easier for consumers** – The establishment of a single complaints body has made it easier for consumers to negotiate the complaints system. This is illustrated by the fact that in the ten months prior to November 2004, the ASA received 5,814 complaints about TV advertising from consumers, which it was at that time unable to act upon.
 - **Free to the taxpayer** – The system is funded by the industry, not the tax payer, via the 0.1% levy on the cost of advertising space.
 - **Simpler for Advertisers** – Advertisers are now well-used to working with the ASA model. Not only do advertisers have to deal with just one body during the complaints process; nearly all aspects of advertising regulation are under one roof (CAP and BCAP code development; Copy Advice⁸; complaints and investigations; and compliance and monitoring). Currently, all the advertising Codes are being reviewed by CAP and BCAP to ensure they remain relevant and robust, yet simple to use.
 - **Technology neutral and high standards for all approach** – The ASA deals with advertisements in all media, meaning it is technology neutral. The ASA believes that all ads should be subject to the same high standards regardless of the media in which they appear (while taking into account the context and audience of the marketing communication).

⁷ www.asbof.co.uk

⁸ Copy Advice is a non-broadcast service: pre-clearance for television and radio advertisements is not conducted by the one-stop shop system, but by Clearcast (TV www.clearcast.co.uk) and the RACC (radio www.racc.co.uk)

