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Culture, Media and Sport Committee
House of Commons
7 Millbank
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BY EMAIL cmscom@parliament.uk

**ADVERTISING STANDARDS AUTHORITY RESPONSE TO THE
CULTURE MEDIA AND SPORTS SELECT COMMITTEE INQUIRY INTO
HARMFUL CONTENT ON THE INTERNET AND IN VIDEO GAMES**

Dear Mr Dyball

1. Introduction

- 1.1 The Advertising Standards Authority (ASA) is grateful for the opportunity to provide evidence to the Culture, Media and Sport Committee inquiry into *Harmful Content on the Internet and in Video Games*. The ASA is happy for this evidence to be published.
- 1.2 If the Culture, Media and Sport Committee decides to focus on advertising regulation in particular during the course of its inquiry, the ASA would be keen to provide oral evidence and answer Committee members' questions directly.
- 1.3 The ASA also responded to the *Tanya Byron Review of Children and New Technology*. This response can be found at:
http://www.asa.org.uk/NR/rdonlyres/9CBE1EBE-F443-4135-B3C7-9C5F0549FD8A/0/Byron_response_final.pdf
- 1.4 The ASA is the UK self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful.
- 1.5 The protection of consumers, children and the vulnerable is at the heart of the ASA's work. The rules aim to protect young and vulnerable members of society from harmful and offensive advertising and to ensure

that their credulity, loyalty, vulnerability or lack of experience is not exploited.

- 1.6 This response provides:
- A summary of the UK advertising self-regulatory system.
 - Details of the ASA's work in protecting children and the vulnerable and regulating advertising for video games and on the internet.

2. Advertising Self-regulation in the UK

- 2.1 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. Compliance with the Codes and ASA adjudications is binding on all advertisers. It is not a voluntary system.
- 2.2 The system is both self-regulatory (for non-broadcast advertising) and co-regulatory (for TV and radio advertising). The Codes do sit within the legal framework, which means that, where appropriate, they reflect the standards required in law, e.g. misleading advertising.
- 2.3 The ASA is responsible for administering five Advertising Codes and deals with more than 20,000 complaints per year.
- 2.4 Final adjudications on complaints are decided by the ASA Council and are published on the ASA website. The Council's membership incorporates two-thirds members of the public, one-third advertising experts and is chaired by former Culture Secretary, Lord (Chris Smith) of Finsbury.
- 2.5 In the event that the ASA upholds a complaint against an advertisement, the advertiser or broadcaster is required to amend, withdraw or schedule the advertisement appropriately.
- 2.6 ASA adjudications are enforced through the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). Advertisers that breach the Code face financial loss from having an ad campaign pulled and loss of reputation through the publication of upheld adjudications.

2.7 For those advertisers who refuse to comply with an adjudication, industry and other pressures can be brought to bear; for example: poster pre-vetting can be imposed and direct marketing companies can have benefits such as Royal Mail bulk mailing discounts removed. In very serious and extreme cases of non-compliance advertisers can be referred to the OFT and broadcasters can be referred to Ofcom.

3 About CAP/BCAP

3.1 The ASA is responsible for administering all five Advertising Codes and deals with more than 20,000 complaints per year.

3.2 CAP and BCAP are the industry committees responsible for drafting the Advertising Codes.

3.3 The Committee members represent the three main parts of the advertising industry, namely the advertising agencies, media owners (e.g. poster site owners, newspapers, broadcasters) and the advertisers themselves.¹

3.4 CAP writes and updates:

- the British Code of Advertising, Sales Promotion and Direct Marketing ('the CAP Code'), which governs non-broadcast advertising (e.g. print, poster, cinema, online)

3.5 BCAP writes and updates:

- The BCAP TV Advertising Standards Code
- The BCAP Radio Advertising Standards Code
- The BCAP Code on Text Services
- The Rules on the Scheduling of Television Advertisements

3.6 Although the Codes do reflect the standards required by law, the aspects of the Code covering harm, offence, taste and decency and social responsibility are entirely self-regulatory. The ASA therefore protects consumers from issues not covered by the legal system.

¹ Details of the members of CAP and BCAP can be found at:
<http://www.bcap.org.uk/cap/links/CAP+Members/>

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

3.8 The advertising industry through CAP and BCAP enforce the adjudications of the ASA.

4. Advertisements appearing in new technology

4.1 The ASA deals with advertisements in all media. Those platforms that are generally referred to as 'new technology', fall under the scope of the non-broadcast CAP Code.

4.2 Section 1.1d of the CAP Code states that, in addition to conventional media, the Code applies to advertisements in non-broadcast electronic media, including online advertisements in paid-for space.

4.3 This means that the CAP Code covers online advertising, such as: banner ads and pop-ups; advertising content in commercial e-mails; commercial text messages; viral marketing e-mails; paid-for entries in search engine results; ads on electronic kiosks and billboards and ads in electronic games.

4.4 The ASA takes a 'technology neutral and high standards for all approach' to advertising regulation. The ASA believes that all ads should be subject to the same high standards, regardless of the media platform through which they are delivered. However, this should not prevent the regulator from taking sensible decisions regarding the targeting of advertisements (e.g. an 'adult' advertisement may be appropriately placed around adult content online, but may be deemed inappropriate on family or child friendly websites.)

5 Regulating Website Content

5.1 The CAP Code does not cover companies' own websites. Advertisements are generally classed as marketing communications that appear in paid-for space. Companies' own websites are not paid for space, which means that the content of these sites is currently classed as editorial, not advertising, material.

- 5.2 Complaints received about internet advertising rose in 2006 by 32.7% from 2005,² making the internet the second most complained about non-broadcast media (behind national press).³ In contrast, 2001 saw the internet ranked as the eighth most complained about media of all non-broadcast media.
- 5.3 Even so, of the 2066 complaints received in 2006, approximately 90% were out of remit because they related to website content and not advertisements in paid-for space.
- 5.4 Chris Smith, in his speech to the Incorporated Society of British Advertisers in July 2007, highlighted the rise in complaints and the need to obtain consumer trust in the online space. He called on the industry to consider the various options such as trusted spaces, kite marks, voluntary codes and new advertising rules.
- 5.5 The industry is responding to this call. The Advertising Association has established the Digital Media Group, a task force formed to future-proof self-regulation of digital media and, in particular, online.
- 5.6 There are lots of issues that need to be resolved when undertaking to regulate aspects of the internet. For example, if it were decided that the ASA system should be extended to include some aspects of web material, then consideration would need to be made in relation to how compliance with the rules would be gained, how can we distinguish which material should be subject to regulation? i.e. what types of sites and what types of content on those sites.
- 5.7 There are some jurisdiction issues with regulating content and advertisements on the internet. The ASA applies the 'country of origin' principle to online advertising. If it is possible to determine that an advertisement originated in the UK or the company that hosts the advertisement is based in the UK, the ASA will seek to resolve a complaint. If the advertisement originated outside the UK the ASA may

² 1557 complaints about Internet in 2005 and 2066 complaints were received in 2006.

³ Internet is the third most complained about media behind television (8594 complaints) and national press (3370 complaints)

be able to refer the complaint on to an equivalent regulatory body in the relevant country.⁴

6. Protection of Children under the Advertising Codes

- 6.1 The ASA takes its responsibility to protect children from harmful and offensive advertising seriously. When the ASA considers a complaint, it must take into account the likely audience or intended audience of the advertisement; that specifically includes children.
- 6.2 On top of the general rules that are aimed at protecting all consumers, the Advertising Codes contain specific rules that provide additional protection for children.
- 6.3 For example, the Codes prevent ‘pressure to purchase’ tactics from being used in ads aimed at children. Other rules state that advertisers should not take advantage of the vulnerability or credulity of children.
- 6.4 In addition there are specific rules to ensure socially responsible advertising of age restricted products, such as gambling and alcohol. The rules for these products prevent companies from aiming their ads at under 18s and from using particular techniques with particular appeal to under 18s.
- 6.5 The Codes also contain clauses preventing ads from causing widespread or serious offence, or from encouraging or condoning anti-social behaviour.
- 6.6 This is built upon in the children-specific sections of the Codes, which contain rules that stipulate that marketing communications addressed to, targeted at or featuring children should not contain anything that is likely to result in their physical mental or moral harm.
- 6.7 All of the Codes contain rules about ads that are targeted at young people and children. In non-broadcast advertising, the ASA will take into account where an advertisement has appeared i.e. the type of media

⁴ The ASA is a member of the European Advertising Standards Alliance (EASA www.easa-alliance.org). This is an alliance of all of the advertising self regulatory bodies across the EU and beyond. EASA coordinates cross-border complaints.

used and its likely audience. For example, an ad appearing in a magazine or newspaper might be viewed differently than when on a more public space such as a billboard.

- 6.8 In the non-broadcast media (including online ads), the ASA will make a judgment based on the likely content of the media in question, as well as the content of the advertisement. The ASA's judgment takes into account the appropriate protection of consumers and children from harmful advertising, but without placing unreasonable restrictions on advertising freedoms.
- 6.9 All of the Advertising Codes can be viewed at www.cap.org.uk/codes and the relevant sections from the Codes are listed in the Annex to this submission.
- 6.10 CAP and BCAP are currently undertaking a full review of all of the Advertising Codes. The draft Codes are currently expected to be released for public consultation towards the end of 2008.

7 Harmful and Offensive Advertising

- 7.1 The CAP Codes protect consumers and children by stipulating that marketing communications should not contain anything that condones or is likely to provoke violence or anti-social behaviour. They must also not cause fear or distress without good reason or use shocking claims or images merely to attract attention.
- 7.2 The ASA has the power to remove an advertisement pending investigation. The ASA has used this power twice since November 2004 and on both occasions it has been to protect children from harmful advertising.⁵
- 7.3 In terms of violent or offensive advertising, the judgments that the ASA has to make may sometimes be difficult, as some depictions of violence may be acceptable, for example for a charity or public safety campaign.

⁵ Tango (November 2004): http://www.asa.org.uk/NR/rdonlyres/C28460CC-0E05-48C3-822B-5DE2C57A6328/0/ASA_Broadcast_Advertising_Adjudications_24Nov2004.pdf and thepool.com (April 2006): http://www.asa.org.uk/asa/adjudications/non_broadcast/Adjudication+Details.htm?Adjudication_id=41194

- 7.4 In 2007 there was been a significant increase in complaints about violent imagery being used in advertising. In 2007 the ASA has received 1879 complaints about 568 ads that depicted or alluded to violence compared with 1054 complaints about 254 ads in 2006. In terms of video game advertising the ASA received 156 complaints about 87 advertisements in 2007.
- 7.5 The ASA seeks to ensure that it is kept fully updated with public concerns and attitudes towards issues in advertising. It is important that the ASA has the ability to develop and progress with new issues and concerns as they arise.
- 7.6 One of the ways in which the ASA monitors the public's opinion and attitudes is through holding regular seminars and workshops on issues which have attracted an increasing number of complaints.
- 7.7 The ASA also undertakes research into people's attitudes towards advertising and compliance with the advertising standards codes within specific sectors and media.

8. Conclusion

- 8.1 The ASA is UK self-regulatory system for ensuring that all ads, wherever they appear are legal, decent, honest and truthful.
- 8.2 The ASA protects consumers, children and the vulnerable from potentially harmful advertising both offline and online by enforcing the CAP and BCAP Codes.
- 8.3 Where necessary the ASA is able to act immediately to protect consumers by removing ads pending investigation.
- 8.4 Advertising self-regulation is able to adapt quickly and flexibly to changes in the advertising market, including the use of new technologies.
- 8.5 The ASA is keen to ensure that advertising self-regulation remains relevant and trusted by consumers and the industry. We will read the results of the inquiry with great interest.

8.6 The ASA is grateful for having been provided with the opportunity to have input into this inquiry. If there are any questions arising from this response please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Taffe'.

Lynsay Taffe
Communications and Policy Manager