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**ADVERTISING STANDARDS AUTHORITY RESPONSE TO THE
DR TANYA BYRON REVIEW OF CHILDREN AND NEW TECHNOLOGY**

Dear Dr Byron

1. Introduction

- 1.1 The Advertising Standards Authority (ASA) is grateful for the opportunity to provide evidence to the Byron Review of Children and New Technology. The ASA is happy for this evidence to be published.
- 1.2 The ASA is the UK self-regulatory body for ensuring that all ads, wherever they appear, are legal, decent, honest and truthful.
- 1.3 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.
- 1.4 The protection of children is the heart of the ASA's work. The rules aim to protect children from harmful and offensive advertising and to ensure that their credulity, loyalty, vulnerability or lack of experience is not exploited. A child is defined as a person under the age of 16.
- 1.5 The ASA's role lies in judging the content of advertisements and claims that are made within those advertisements. The ASA cannot make moral judgments about the products or services being advertised. From time to time the ASA does receive complaints that actually object to the product or service e.g. a violent computer game or a lap dancing bar. If a product or service can be legally sold and marketed, it is the role of the ASA and the Ad Codes to ensure that advertisements are socially responsible.
- 1.6 This response provides:
 - A summary of the UK advertising self-regulatory system. More detailed information can be found on our website www.asa.org.uk.
 - Details of the ASA's work in protecting children and regulating advertising for video games and on the internet

Chairman Rt Hon Lord Smith of Finsbury • **Director General** Christopher Graham
ASA Council James Best • Sally Cartwright • Jean Coussins • Elizabeth Fagan • Christine Farnish • Sunil Gadhia • Alison Goodman • David Harker
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2. Advertising Self-regulation in the UK

- 2.1 The ASA system is responsible for maintaining standards in advertising content in all media in the UK.
- 2.2 The advertising self-regulatory system was established by the marketing industry in 1962 to regulate non-broadcast advertisements (e.g. print, poster, cinema).
- 2.3 The ASA had been successfully operating for more than forty years when the communications regulator Ofcom took the decision to contract-out responsibility for broadcast (TV and radio) advertising to the ASA system in a co-regulatory partnership. This created, for the first time in the UK, a one-stop shop for advertising complaints.

2.4 How does the system work?

- 2.4.1 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.
- 2.4.2 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. Furthermore, the system is structured so that it does not operate in an unfair or anti-competitive manner or restrict free speech unjustifiably.

2.5 About CAP/ BCAP

- 2.5.1 The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the industry committees responsible for drafting the Advertising Codes.
- 2.5.2 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

2.5.3 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)

2.5.4 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

2.5.5 The Advertising Codes can be accessed at:

<http://www.bcap.org.uk/cap/codes/>.

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

2.6 About ASA

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

2.6.2 Final adjudications are decided by the ASA Council and are published on the ASA website. The Council's membership incorporates two-thirds members of the public (i.e. teachers, parents and community representatives) and one-third advertising experts.

2.6.3 The ASA Council is chaired by former Culture Secretary, the Rt Hon Lord Smith of Finsbury. Council is two thirds lay members of the public and one third industry representatives.

2.6.4 The industry representatives do not represent a specific interest, but provide Council with an expert knowledge of advertising. Council

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

Members must withdraw from the discussion if there is a conflict of interest.

2.7 What happens if there is an upheld adjudication?

- 2.7.1 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.
- 2.7.2 As already stated, ASA adjudications are enforced through CAP and 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.
- 2.7.3 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.

2.8 Effective self-regulation of non-broadcast advertising

- 2.8.1 The CAP Code is written and maintained by CAP.
- 2.8.2 Although the Code does 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.
- 2.8.3 The ASA is recognised by the Office of Fair Trading (OFT) as the 'established means' for enforcing the Control of Misleading Advertisements Regulations 1988 (as amended).
- 2.8.4 The OFT acts as a 'backstop' regulator for the ASA in respect of misleading advertising; those few advertisers that demonstrate their inability to work within the self-regulatory system can be referred to the OFT for statutory action. In the main part advertisers do comply with the self-regulatory system; since 2000 the ASA has had to refer fewer than thirty advertisers to the OFT.

2.9 Co-regulation in broadcast advertising

- 2.9.1 In November 2004, the ASA(B) and BCAP assumed responsibility for maintaining standards for broadcast advertising in the UK in a co-regulatory relationship with Ofcom².
- 2.9.2 In practice, this means that the ASA system is responsible on a day-to-day basis for broadcast advertising content standards. BCAP inherited the TV and Radio Advertising Codes from Ofcom and is responsible for maintaining these.
- 2.9.3 The ASA is able to refer licensees to Ofcom for regulatory action where necessary. Ofcom is able to levy fines and revoke licenses.
- 2.9.4 The system has been described as self-regulation within a co-regulatory framework. It is underpinned by an enabling statutory instrument³, a formal Deed between Ofcom and ASA(B), BCAP and the Broadcast Advertising Standards Board of Finance (Basbof)⁴. The arrangement is monitored against clear reporting obligations and key performance indicators.

2.10 Why self-regulation?

- 2.10.1 The ASA one-stop shop 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.

² Information about the ASA's relationship with Ofcom, can be found at http://www.ofcom.org.uk/consult/condocs/reg_broad_ad/

³ The Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004. <http://www.opsi.gov.uk/si/si2004/20041975.htm>

⁴ Under the contracting out agreement there are three bodies that deal with broadcast advertising:

- ASA(B) (Advertising Standards Authority Broadcast Ltd) – the complaints adjudications body
- BCAP (Broadcast Committee of Advertising Practice Ltd) – the Code body
- Basbof (Broadcast Advertising Standards Board of Finance Ltd) – the funding body

- **Free to consumers** – The system is funded by the industry, not the tax payer, via a 0.1% levy on the cost of advertising space. The money is collected by two arms-length bodies, the Advertising Standards Board of Finance (Asbof) and the broadcast equivalent, Basbof. The entire ASA system is funded by a 0.1% levy on advertising space (0.2% for direct mail). The levy is collected by two arms-length bodies, the Advertising Standards Board of Finance (Asbof www.asbof.co.uk) and the Broadcast Advertising Standards Board of Finance (Basbof www.basbof.co.uk). The levy yields significant resources: the ASA was provided with £8 million to run the system in 2007.
- **Simpler for Advertisers** - Advertisers have only to deal with one body during the complaints process.
- **Harmonious decision making** - Cross media advertising decisions, eg. single advertising campaigns running on several media platforms, are made by a single organisation.
- **Corporate Social Responsibility** - Effective self-regulation works because it is powered and driven by a sense of corporate social responsibility amongst advertising stakeholders. Advertisers have an interest in maintaining the system and a level playing field because it:
 - Maintains consumer confidence in commercial communications
 - Reduces costs by ensuring that advertising claims are kept within bounds
 - Is a cost-effective way to resolve grievances, without the requirement for expensive lawyers

2.10.2 Public awareness is important to the ASA. The ASA is one of the best-known regulators in the country, scoring far more highly than regulators like Ofcom and the Press Complaints Commission. Broadcasters (via their licences) and non-broadcast media owners are committed to promoting the existence of the ASA and in the last year the ASA has run a cross-media advertising campaign to raise awareness of its work among consumers. Keeping the ASA's profile high is a continuous task and one that is taken seriously.

3. Advertisements appearing in new technology

- 3.1 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.
- 3.2 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.
- 3.3 This means that the CAP Code covers online advertising e.g. banner ads, pop-ups etc; advertising content in commercial e-mails; sales promotions wherever they appear online; 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.
- 3.4 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.)
- 3.5 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.
- 3.6 Complaints received about internet advertising rose in 2006 by 32.7% from 2005⁵. Making the internet the second most complained about non-broadcast media (behind national press)⁶. In 2001, the Internet ranked as the eighth most complained about media of all non-broadcast media.

⁵ 1557 complaints about Internet in 2005 and 2066 complaints were received in 2006.

⁶ Internet is the third most complained about media behind television (8594 complaints) and national press (3370 complaints)

- 3.7 Furthermore, 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.
- 3.8 The ASA Chairman, Rt Hon Lord Smith of Finsbury, 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.
- 3.9 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 advertising online.
- 3.10 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. Presumably non-consumer/ non-marketing material such as Annual Reports and editorial pieces newspaper editorial, but perhaps sales claims
- 3.11 There are some jurisdictional 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 be able to refer the complaint on to an equivalent regulatory body in the relevant country.

4. Protection of Children under the Advertising Codes

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 Perhaps most interestingly for this Review, the Codes contain clauses preventing ads from causing widespread or serious offence, or from encouraging or condoning anti-social behaviour.

Example from the BCAP TV Advertising Standards Code

6.1 Offence

Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling

6.2 Violence and cruelty

(a) Advertisements must not encourage or condone violence or cruelty

(b) Gratuitous and realistic portrayals of cruel or irresponsible treatment of people or animals are not acceptable

- 4.6 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.

Example from the CAP Code

47.1 For the purposes of the Code, a child is someone under 16. The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered; marketing communications that are acceptable for young teenagers will not necessarily be acceptable for young children. The ASA will take these factors into account when assessing marketing communications.

47.2 Marketing communications addressed to, targeted at or featuring children should contain nothing that is likely to result in their physical, mental or moral harm.

- 4.7 All of the Codes contain rules about ads that are targeted at young people in children. In non-broadcast advertising, the ASA will take into account where an advertisement has appeared i.e. the type of media 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.
- 4.8 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.
- 4.9 In terms of targeting in cinema, film classifications do not logically translate for advertising targeting. For example, the film classification system is not based on the likely audience for a film; it is based on whether the content of the film can be seen by persons of a particular age. By way of illustration, films such as 'Sense and Sensibility (U) and Memoirs of a Geisha (12) probably attracted a resoundingly adult audience, whereas High School Musical (U) and Harry Potter and the Order of the Phoenix (12) probably attracted a much younger audience.

Therefore the ASA takes into account the likely audience of a film rather than its BBFC classification. The ASA believes that this approach is sensible and that any alternative approach based on the film classification system would be impractical and heavy handed.

- 4.10 The BCAP Advertising Codes also contain targeting requirements. Broadcasters must take into account the likely audience when scheduling advertisements. This means that those ads that are unsuitable to be seen by children, must be scheduled away from programmes that are made for or particularly appealing to children.

Example extract from the BCAP Radio Code

8 Scheduling

Licensees must exercise responsible judgements when scheduling categories of advertisement which may be unsuitable for children and younger people, for those listening to religious programmes and around sensitive programming or news items.

The station's actual audience profile according to research, rather than its target audience profile, should be taken into account when deciding whether or not advertising is suitable for the station or time of day (and see Rule 9 Good Taste, Decency and Offence to Public Feeling, below).

Example extract from the Rules on the scheduling of television advertisements

Children and young people 4.2.1

(iv) Depending on content and, in particular, on the extent and nature of any portrayal of violence or sexual activity, an alternative timing restriction such as post 7.30pm, post 9pm or even later may often be appropriate for material in category (d) (v), particularly that which is 18 rated.

(v) Again subject to content, this does not preclude the scheduling in or adjacent to children's programmes of advertisements containing brief extracts from films where these are used in connection with promotional offers derived from films for other types of product or service.

4.11 All of the Advertising Codes can be viewed at www.bcap.org.uk/codes and the relevant sections from the Codes are listed in the Annex to this submission.

4.12 CAP and BCAP are currently undertaking a full review of all of the Advertising Codes. The draft Codes will be released for public consultation towards the end of 2008.

5 ASA action under the Advertising Codes

5.1 The ASA takes its responsibilities under the Codes very seriously, particularly when it comes to protecting children.

5.2 Preventing an advertising campaign from running is a far-reaching and serious step and the ASA does not take the decision to remove an advertisement lightly. In removing an advertising campaign the ASA is restricting freedom of speech and is answerable under the Human Rights Act 1998. Our decisions are judicially reviewable.

5.3 The ASA does have 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.⁷

5.4 In terms of violent or offensive advertising, the judgments that the ASA has to make may sometimes be difficult, for example some depictions of violence may be acceptable, for example for a charity or public safety campaign.

5.5 This year there has been a significant increase in complaints about violent imagery being used in advertising. So far in 2007 the ASA has received 1748 complaints about 523 ads that depicted or alluded to violence compared with 1054 complaints about 254 ads in 2006. In terms of video game advertising the ASA has received 98 complaints about 55 advertisements in 2007.

⁷ 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

- 5.6 The increase in complaints prompted the ASA to focus its recent consumer seminar in Nottingham on violence imagery in advertising. The ASA's decisions under the Codes attempt the public's attitudes and this event provided a good opportunity for the ASA to test the public pulse on this issue. The seminar was attended by those with a personal or professional interest in the issue. A report of the matters raised at the seminar will be published and presented to the ASA's decision-making Council.⁸
- 5.7 The ASA seeks to ensure that it is kept fully updated with the public's 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.
- 5.8 While the ASA Council will take guidance from public opinion when making adjudications, for example, taking account of whether an issue is particularly sensitive, the ASA will not make adjudications that reflect public opinion or political sensitivities. For example, the ad which attracted the largest number of complaints in the ASA's history did not have its complaints upheld as it did not break the Code rules, while the actors within the ad demonstrated poor table manners; the ad was not offensive or misleading.
- 5.9 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.
- 5.10 All ASA adjudications are published weekly on the ASA website. Adjudications are held on our searchable online database for five years.⁹

⁸ http://www.cap.org.uk/cap/news_events/news/2007/ASA+and+CAP+visit+Nottingham.htm

⁹ After five years, details of adjudications are available upon request

5.11 Following are some examples of the ASA's work.

5.11.1 Acclaim Entertainment – November 2002

For example, the ASA upheld a complaint against an ad which appeared within a magazine for a video game. The ad depicted a young boy with slash marks across his face. The complainants objected that the advertisement was offensive and socially irresponsible because it showed a distressed-looking child with facial injuries.



The ASA considered the image of the injured child distressing, likely to cause serious or widespread offence and socially irresponsible.¹⁰

5.11.2 Midway Games – April 2003

The ASA also upheld a complaint against an online viral ad for the video game 'Mortal Kombat'. The ad showed an office meeting during which two businessmen with differing views were commanded to fight. The complainant felt that the level of violence was gratuitous and offensive.



The ASA upheld the complaint as the ad was likely to cause fear or distress and serious or widespread offence and that the advertiser had used shocking images to attract attention to their product.¹¹

5.11.3 Entertainment Film Distributors Ltd – November 2007

The ASA received 51 complaints against poster ads for the film 'Shoot 'Em Up'. The posters showed actors from the film holding guns, and in one case pointing them towards the viewer.



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http://www.asa.org.uk/asa/adjudications/non_broadcast/Adjudication+Details.htm?Adjudication_id=34847

11

http://www.asa.org.uk/asa/adjudications/non_broadcast/Adjudication+Details.htm?Adjudication_id=35806

The ASA found that the prominence of the gun in poster, the action shot and the actor's expression could be seen to condone violence by glorifying or glamorising the use of guns.¹²

5.11.4 Reebok – May 2005

An example of an ad that breached the Codes for offence, violence and cruelty, and mental harm to children was an ad for Reebok featuring the rapper 50 Cent. The ad portrayed 50 Cent as a 'cool' survivor of gun crime. This had the potential to encourage or condone violence; particularly among vulnerable or younger viewers. While there was a suggestion of a post-9pm restriction for the ad, the ASA felt that this would not be sufficient as the advertisements could still be seen by older children who may have watched TV at a later time.¹³



5.11.5 EA Games – August 2007

An ad which breached the CAP Codes for decency, social responsibility, safety, violence and anti-social behaviour was a poster for the video game 'Burnout Dominator'. The poster showed a car wreck with the words 'Destroy your way to inner peace'. The implication that people could achieve inner peace through acts of violence was felt to be offensive and could cause wide-spread harm. It was also irresponsible for the advertiser to display the poster in the London Underground where it would be viewed by children.¹⁴



5.11.6 Twentieth Century Fox Home Entertainment Ltd – November 2007

The ASA has recently upheld a complaint against an ad for the 18 rated horror film 'the Hills have Eyes 2' for breaching BCAP rules on the

¹² http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_43573.htm

¹³ http://www.asa.org.uk/NR/rdonlyres/ABDE91FE-4E42-4937-8DB1-749F3C4BFF38/0/Broadcast_report_18_May_05.pdf

¹⁴ http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42790.htm

scheduling of TV ads. The ad showed scenes of people being attacked, shooting guns and a monster licking a woman's face. VH1 and Paramount both showed the ad before 9pm which was inappropriate as children could have been watching at that time.¹⁵



7. Video Game Ratings

- 7.1 Because the ASA judges the content of the ad rather than the video game as a whole, the rating of the game is not necessarily of relevance to the complaint. For example, an advertiser for a video game that includes some violence could decide to focus the advertisement on the violent content of the game rather than the non-violent content.
- 7.2 However in regards to advertisements of video games around children's programming the ASA can take into consideration the rating provided to the game. The scheduling rules specifically ban ads for 18- or 15- rated films and videos from children's programmes; the ASA can apply the spirit of this rule to the advertising of video games.
- 7.3 However, because there is not a single, coherent rating system for video games in the UK, this is difficult for the ASA and the Codes to apply. Introducing a single and easily understandable rating system would be extremely useful and would help to reduce confusion amongst consumers. The ASA does not have a preference for either of the systems that are currently in use.

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 children 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 children by removing ads pending investigation.

¹⁵ http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_43605.htm

- 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 Review with great interest.
- 8.6 The ASA would welcome a recommendation from the Byron Review for a single video game rating system.
- 8.7 The ASA is grateful for having been provided with the opportunity to have input into this review. If there are any questions arising from this response please do not hesitate to contact me.

Yours sincerely



Lynsay Taffe
Communications and Policy Manager

ANNEX I

Relevant rules from the CAP (non-broadcast) Code

Fear and Distress

- 9.1** No marketing communication should cause fear or distress without good reason. Marketers should not use shocking claims or images merely to attract attention.
- 9.2** Marketers may use an appeal to fear to encourage prudent behaviour or to discourage dangerous or ill-advised actions; the fear likely to be aroused should not be disproportionate to the risk.

Violence and Anti-Social Behaviour

- 11.1** Marketing communications should contain nothing that condones or is likely to provoke violence or anti-social behaviour.

Children

- 29.1** Special care should be taken when promotions are addressed to children (people under 16) or when products intended for adults may fall into the hands of children.

Children

- 47.1** For the purposes of the Code, a child is someone under 16. The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered; marketing communications that are acceptable for young teenagers will not necessarily be acceptable for young children. The ASA will take these factors into account when assessing marketing communications.
- 47.2** Marketing communications addressed to, targeted at or featuring children should contain nothing that is likely to result in their physical, mental or moral harm:
- a)** they should not be encouraged to enter strange places or talk to strangers. Care is needed when they are asked to make collections, enter schemes or gather labels, wrappers, coupons and the like
 - b)** they should not be shown in hazardous situations or behaving dangerously in the home or outside except to promote safety. Children should not be shown unattended in street scenes unless they are old

enough to take responsibility for their own safety. Pedestrians and cyclists should be seen to observe the Highway Code

- c) they should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, certain medicines and household substances as well as certain electrical appliances and machinery, including agricultural equipment
- d) they should not be encouraged to copy any practice that might be unsafe for a child.

47.3 Marketing communications addressed to, targeted at or featuring children should not exploit their credulity, loyalty, vulnerability or lack of experience:

- a) they should not be made to feel inferior or unpopular for not buying the advertised product
- b) they should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a particular product
- c) it should be made easy for them to judge the size, characteristics and performance of any product advertised and to distinguish between real-life situations and fantasy
- d) adult permission should be obtained before they are committed to purchasing complex and costly products.

47.4 Marketing communications addressed to or targeted at children:

- a) should not actively encourage them to make a nuisance of themselves to parents or others and should not undermine parental authority
- b) should not make a direct appeal to purchase unless the product is one that would be likely to interest children and that they could reasonably afford. Distance selling marketers should take care when using youth media not to promote products that are unsuitable for children
- c) should not exaggerate what is attainable by an ordinary child using the product being marketed
- d) should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods. **(This clause relates to ads that appeared before 1 July 2007. For ads that appeared after that date clause 47.7e applies.)**
- e) should not exploit their susceptibility to charitable appeals and should explain the extent to which their participation will help in any charity-linked promotions.

47.5 Promotions addressed to or targeted at children:

- a)** should not encourage excessive purchases in order to participate
- b)** should make clear that adult permission is required if prizes and incentives might cause conflict. Examples include animals, bicycles, tickets for outings, concerts and holidays
- c)** should clearly explain the number and type of any additional proofs of purchase needed to participate
- d)** should contain a prominent closing date
- e)** should not exaggerate the value of prizes or the chances of winning them.

47.6 Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

47.7

- a)** Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases. (see 47.4a)
- b)** Marketing communications should neither try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.
- c)** Marketing communications addressed to children should avoid high pressure and hard sell techniques; they should neither directly urge children to buy or persuade others to buy nor suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.
- d)** Products and prices should not be presented in marketing communications in a way that suggests children or their families can easily afford them.
- e)** Marketing communications addressed to or targeted directly at children should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

ANNEX II

Relevant rules from the CAP (Broadcast) Radio Codes

11 Children and Younger Listeners

Advertisements likely to be heard by a significant number of children (for the purpose of this Rule, those aged below 16 years) must not include any material which might result in harm to them, whether physically, mentally or morally.

Each station's audience research information should be used to determine whether significant numbers of children are listening at any particular time.

11.1 Misleadingness

Advertisements addressed to young listeners must not exaggerate or mislead about the size, qualities or capabilities of products.

11.2 Prices

Prices of products advertised to younger listeners must not be minimised by words such as 'only' or 'just'.

11.3 Immaturity and Credulity

Advertisements must not take advantage of the immaturity or natural credulity of children.

11.4 Inferiority

Advertisements must not lead children to believe that unless they have or use the product advertised they will be inferior in some way to other children or liable to be held in contempt or ridicule.

11.5 Direct Exhortation

Advertisements must not directly urge children to buy products or to ask adults to buy products for them. For example, children must not be directly invited to "ask Mum" or "ask Dad" to buy them an advertisers product.

11.6 Appeals to Loyalty

Advertisements must not take advantage of the sense of loyalty of children or suggest that, unless children buy or encourage others to buy a product or service, they will be failing in some duty or lacking in loyalty.

11.7 Distance Selling to Children

Advertisements must not invite children to purchase products by mail or telephone, including fax, email and via the Internet.

11.8 Competitions

- a) References to competitions for children are acceptable provided that any skill required is appropriate to the age of likely participants, and the values of the prizes and the chances of winning are not exaggerated;
- b) The published rules must be submitted in advance to the Licensee and the principal conditions of the competition must be included in the advertisement (see also Section 2, Rule 23 Competitions, Lotteries, Betting and Gaming).

11.9 Free Gifts

References to 'free' gifts for children in advertisements must include all qualifying conditions, erg. any time limit, how many products need to be bought, how many wrappers need to be collected, etc.

11.10 Health and Hygiene

- a) Advertising must not condone inappropriate health standards for children;
- b) Advertising must not suggest that confectionery and snack food products may be substituted for balanced meals.

11.11 Child Voiceovers and Presentation

- a) Children may take part in radio commercials, subject to all relevant legal requirements. However, they must not feature in advertisements in ways which might cause them moral harm, give concern about their welfare or be regarded as commercial exploitation;
- b) Children employed in commercials must not be used to present selling messages and calls to action about products or services which are likely to be beyond their understanding or which the law prevents them from buying themselves.

The exception to this Rule may be where a child acts out a role, although particular care should be taken in these circumstances to ensure that the child actor is not exploited or morally harmed in any way (see also Section 2, Rule 9 Good Taste, Decency and Offence to Public Feeling).

11.12 Testimonials

Children must not personally testify about products and services. They may, however, give spontaneous comments on matters in which they would have an obvious natural interest.

8 Scheduling

Advertisements for alcoholic drinks, sensational newspapers/magazines/websites (or their content) and violent or sexually explicit material must not be broadcast in or around programming/features aimed particularly at those aged below 18 years or around religious programming.

Particular care is required for the following categories: divination and the supernatural, sexual material, sanitary protection products, family planning products and services (including contraceptives, pregnancy-testing services/kits), anti-AIDS and anti-drugs messages, and solvent abuse advice.

ANNEX III

Relevant rules from the CAP (Broadcast) TV Codes

6.1 Offence

Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling

6.2 Violence and cruelty

- (a) Advertisements must not encourage or condone violence or cruelty
- (b) Gratuitous and realistic portrayals of cruel or irresponsible treatment of people or animals are not acceptable

6.4 Personal distress

Advertisements must not, without good reason, contain material which is likely to cause serious distress to significant numbers of viewers

6.6 Harmful or negative stereotypes

Advertisements must not prejudice respect for human dignity or humiliate, stigmatise or undermine the standing of identifiable groups of people

6.7 Health and safety

Advertisements must not encourage or condone behaviour prejudicial to health and safety and advertisements must not use techniques that may directly harm viewers

7.1 MISLEADING ADVERTISING AND CHILDREN

7.1.1 Children's inexperience

Advertising must not take advantage of children's inexperience or their natural credulity and sense of loyalty

7.1.2 Unrealistic expectations

Advertisements for products of interest to children must take account of the level of experience of those in the relevant age groups so as to avoid arousing unrealistic expectations.

7.1.3 Product characteristics

If advertisements for products of interest to children show or refer to characteristics which might influence a child's choice, those characteristics must be easy for children of the appropriate age to judge

7.1.4 Expensive toys

Except in the case of television services carrying advertising directed exclusively at non-UK audiences, advertisements for expensive toys, games and comparable children's products must include an indication of their price

7.1.5 Prices

Where advertising for a children's product contains a price, the cost must not be minimised by the use of words such as 'only' or 'just'.

7.2.3 Promotional offers

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

- (a) Advertisements featuring promotional offers linked to food products of interest to children must avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.
- (b) Advertisements should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product.
- (c) Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They should not directly encourage children only to collect promotional items or emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time. There should be no suggestion of "Hurry and buy".
- (d) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage children to eat more than they otherwise would.
- (e) The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

7.2.4 Use of characters and celebrities

Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

7.3 PRESSURE TO PURCHASE

7.3.1 Direct exhortation

Advertisements must not directly advise or ask children to buy or to ask their parents or others to make enquiries or purchases

7.3.2 Unfair pressure

Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not use a particular product or service

7.3.3 Children as presenters

Children in advertisements must not comment on product or service characteristics in which children their age would not usually be interested

7.3.4 Direct response

Advertisements which offer to sell products or services by mail, telephone, email, internet or other interactive electronic media must not be aimed at children

7.4 HARM AND DISTRESS

7.4.1 Mental harm

Advertisements must not contain material which could lead to social, moral or psychological harm to children

7.4.2 Physical harm

Advertisements must not contain material which could lead to physical harm to children

7.4.3 Bullying

Advertisements must not encourage or condone bullying

7.4.4 Vulnerability

Advertisements must neither encourage children to go off alone or with strangers nor show them doing so.

7.4.5 Sexuality

Advertisements must not portray children in a sexually provocative manner

7.4.6 Distress

Advertisements likely to cause distress to children must not be shown in children's programmes, or in programmes likely to be seen by significant numbers of younger children

7.4.7 Use of scheduling restrictions

Appropriate timing restrictions must be applied to advertisements which might harm or distress children of particular ages or which are otherwise unsuitable for them