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ASA submission to the DG Connect consultation:

Green Paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

1. Introduction

- 1.1** The Advertising Standards Authority (ASA) is grateful for the opportunity to respond to the European Commission's Green Paper 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values'.
- 1.2** The ASA is the UK's self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful for the benefit of consumers, business and society. For 50 years the ASA has provided effective advertising regulation at no cost to the tax payer.
- 1.3** Media convergence is an on-going process. A measure of the success of the ASA system is the extent to which we have been able to extend and adapt to meet the regulatory imperatives of an evolving media landscape - without the need for legislation.
- 1.4** That we have been able to do so is due, in part, to our self-regulatory approach which naturally allows a greater degree of flexibility than a legislative approach. Today, consumers benefit from a proportionate set of protections that apply to ads in all media. Business benefit from joined-up and consistent regulation.
- 1.5** Consequently, the ASA argues for the maintenance of an open approach by policy makers when considering regulatory solutions to convergence: one that recognises the benefits to consumers and business of a single, cross-media advertising regulator, and therefore continues to allow the space for self-regulatory solutions to regulatory challenges as they emerge.

Legal, decent, honest and truthful

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1.6 This submission provides an overview of:

- The ASA's role as the UK's advertising regulator
- The changing advertising regulatory environment
- The ASA's view of convergence and its impact on content standards regulation

2 The ASA's role as the UK's advertising regulator

- 2.1** The independent ASA administers the UK Advertising Codes that are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)¹. Members of these bodies include representatives of advertisers, agencies, media owners, broadcasters and other industry groups, all of which are committed to upholding the highest standards in advertising.
- 2.2** The Advertising Codes² are developed in line with widely accepted better regulation principles. These require that regulation is transparent, accountable, proportionate, consistent and targeted. The Codes are designed to protect those whose circumstances put them in need of special protection (e.g. children) while retaining an environment in which responsible advertising can operate to the benefit of the wider economy. Code provisions relating to harm, offence and social responsibility exceed substantially what is required in law – including the AVMS Directive.
- 2.3** The Advertising Codes cover ads in all media including broadcast (television and radio), non-broadcast (e.g. billboards, magazines, newspapers, direct mail and including video-on-demand) – which also includes online (e.g. marketing communications on companies' own websites and social media under their control, pop-up and banner ads, email, paid-search).
- 2.4** The ASA system is both self-regulatory³ (for non-broadcast advertising) and co-regulatory⁴ (for TV and radio advertising). Whilst the regulatory structures behind the broadcast and non-broadcast Codes may therefore differ (e.g. the CAP and BCAP Code writing bodies have different industry memberships) both sets of Codes are predominantly aligned and the spirit of the Codes is consistency applied by the independent ASA.
- 2.5** In 2012 the ASA received complaints about 18, 990 ads across all media (31,298 complaints). As a result of ASA action, 3,700 ad campaigns were amended or withdrawn.

¹ www.cap.org.uk

² <http://asa.org.uk/Advertising-Codes.aspx>

³ <http://asa.org.uk/Regulation-Explained/Control-of-ads/Self-regulation-non-broadcast.aspx>

⁴ <http://asa.org.uk/Regulation-Explained/Control-of-ads/Co-regulation-broadcast.aspx>

- 2.6** Compliance with the Codes is mandatory for all advertisers and broadcasters – there is no opt-out. Our compliance surveys show that the majority of advertisers, and the millions of ads that appear in the UK each year, overwhelmingly comply with the rules.

3 Responding to a changing regulatory environment

- 3.1** The UK advertising industry, through CAP and BCAP, is responsible for ensuring that the UK Advertising Codes and the ASA itself has the appropriate remit and authority to keep UK advertising legal, decent, honest and truthful, in line with consumer expectations and in the face of a constantly shifting media landscape.

- 3.2** Consequently, in response to changing technology and consumer behaviour, industry has expanded our remit significantly over the last decade:

- **Broadcast advertising (2004):** In 2004 the ASA took on the regulation of broadcast advertising from Ofcom, under a co-regulatory partnership. This move effectively created a 'one-stop-shop' for advertising complaints whereby the ASA has day-to-day responsibility for maintaining standards and for acting on complaints about TV and radio ads alongside non-broadcast media.
- **Video-on-demand (2009):** In December 2009 the ASA entered into a further co-regulatory partnership with Ofcom to regulate advertisements accompanying VOD services (e.g. ITV Player, 4OD).
- **Companies' own websites (2011):** Since March 2011, and in a landmark move, the ASA's online remit was extended to include advertisers' own marketing communications on their own websites and in other non-paid-for space online under their control (e.g. on Facebook and Twitter).

Previously, the ASA's online remit had applied only to advertisements in paid-for space (e.g. display ads and paid search) and sales promotions wherever they appeared.

- **Online behavioural advertising (2013):** In February 2013, we took up responsibility for new rules to provide the public with notice of, and control over, online behavioural advertising (OBA), a form of targeted advertising.
- 3.3** The self-/co-regulatory system of ASA and CAP and BCAP has proven, time and again, that it is capable of adapting its regulation in line with wider business, technical and societal need. In its recent policy paper, 'Connectivity, content and consumers: Britain's digital platform for growth', the UK Government commented that the ASA was an "...exemplar of successful self-regulation" and that the "UK has

found self-regulation of (...) emerging advertising practices to be a useful and effective approach”⁵.

4 ASA view of convergence and content standards regulation

4.1 The impact of convergence and how we’ve responded

4.2 Media convergence is an on-going process, and advertising has not been immune from its impact. Today, a television ad once limited to appearing in traditional linear broadcasting may also appear before or during a VOD programme, on a company’s own website or on its social media page. All may be viewed through one, internet ready TV set – or a computer or mobile phone. The ASA system has worked hard to respond successfully to these changes (as detailed in the previous section), meaning that today a “TV ad” is subject to ASA regulation whether it appears online, during a VOD programme or on linear TV.

4.3 Indeed, the rapid growth of online advertising and marketing has, perhaps, been the greatest test facing advertising regulation in recent times. By extending the ASA’s online remit, industry successfully met these matters head on.

4.4 The ability of industry to have done so can be attributed in part to a common sense and flexible approach to regulation by policy makers at UK and European level. Whilst being part of the conversation, they have considered statutory regulation to be a last resort rather than first consideration and have allowed the self-regulatory system enough space to develop its own solutions.

4.5 Of course, leaving such a space presupposes such systems can be effective. We believe that the success of the ASA system is in no small part due to our approach to regulation that is based on the enduring principles that ads should be legal, decent, honest and truthful, with rules applied in an appropriate manner, commensurate with consumer expectations and the media context in which they appear. By approaching each new regulatory challenge from these first principles, we have been able to successfully adapt our remit and approach to meet each new context.

4.6 How we regulate social media, which can carry videos and other types of content that would previously exist separately, is a good example of how principles based regulation is applied to new media or advertising platforms.

4.7 Encouragingly, recent monitoring activity by the ASA system of children’s experience of advertising on social media showed that 98.4% of the ads they see stick to the rules. However, we also found that a significant number of children

appear to be providing a false age when they register.⁶ As a result, we're exploring whether we need to take a tighter line on age-restricted ads in social media or if further research in this area would be helpful. The Committee of Advertising Practice will also be considering whether new guidance for advertisers on targeting ads online is needed.

4.8 It is not just through changes to our remit that we have adapted. In 2009 CAP and BCAP conducted a full Code Review to ensure that the rules, in their entirety, remain fit-for-purpose now and into the future, with consumer protection and social responsibility at their heart. The Code Review brought in harmonisation (as far as practicable) across media, and reduced the number of Codes from five to two. The Codes are not set in stone – they are constantly updated, must faster than would be possible through legislation.

4.9 Consumer expectations

4.10 Recent research by the UK Communications regulator Ofcom⁷ has shown that audiences have nuanced expectations when it comes to regulation in a converged world. Whilst views on the appropriate level of regulation differ between media (e.g. the internet compared to linear TV), the blurring of the lines between regulated and less regulated content brought on by convergence (e.g. single platform hosting open internet, VOD and TV services) is naturally one area of concern, especially with regard to the protection of minors from inappropriate content.

4.11 In addition, we know from the complaints we have received about ads appearing on companies' own websites that, whilst consumers may have nuanced expectations when it comes to offensive content in different media, they don't expect to be misled by advertisements wherever they appear. As we conduct more of our commercial lives online, this is, perhaps, unsurprising.

4.12 This all points to a need for the 'right' type of regulation, rather than identical regulation. Consumers expect certain standards and sometimes they expect those standards to be the same, but they also recognise that sometimes the context is different. Even in a converged world, regulation should be appropriate to each context.

4.13 By taking an approach to regulation that is guided by our enduring principles that ads should be legal, decent, honest and truthful, with rules applied in a common-sense way, we have been able to build a regulatory system that is sensitive to nuances in consumer expectation, but consistent in principle and approach.

4.14 The European Advertising Standards Alliance's (EASA) cross border complaints mechanism has enabled self-regulation to deal with issues arising from cross-

⁶ <http://www.asa.org.uk/News-resources/Media-Centre/2013/ASA-research-shows-children-are-registering-on-social-media-under-false-ages.aspx>

⁷ <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf>

border regulation, which is particularly important in an online market. The existing approach to cross border referrals, administered by the EASA, has proven to be effective in ensuring that the advertiser (whose advertising may circulate in more than one country) is answerable only to their domestic regulator.

4.15 This approach avoids double jeopardy (different national regulators reaching different decisions) and advertisers being confused as to which rules to adhere to. Whilst we acknowledge that there may be concerns about the multiplicity of territories from which people sell into the EU using websites, we consider that a country of destination approach would not be the best way to mitigate the effects of a global web-based marketplace.

4.16 Benefits of the ASA ‘one stop shop’

4.17 With the landmark extension of the ASA’s remit online, consumers and society benefit from a cost free, fast and established cross-media complaints-handling service. They do not have to track down different complaints bodies for the same advertising appearing in different places, e.g. on a poster or a website, and can be confident that robust rules apply to advertising wherever it appears.

4.18 As well as this the ASA joined up with other media regulators to create the online information portal called Parent Port. The website is designed to make it easier for parents to understand the standards that businesses and organisations have to follow across media, it also helps them to find the right regulator if they want to make a complaint or provide feedback on a particular issue (<https://www.parentport.org.uk/>).

4.19 It isn’t, however, just consumers who benefit. Advertisers whose marketing extends both to traditional media and their own websites now enjoy joined-up, consistent regulation which strengthens the principles of fair competition that are generally accepted in business. If an ad appears on a website, on a poster or on TV – advertisers and business can be confident that by complying with the Advertising Codes they are getting it right.

5 Conclusion

5.1 Convergence is an on-going process. We cannot say for sure how the landscape will change or how ads might reach consumers in five, ten or even 20 years’ time. But this has always been the case. That is why we strongly subscribe to taking a consistent approach based on the enduring principles that ads are legal, decent, honest and truthful, wherever they appear, and making sure that these are applied in an appropriate manner.

5.2 Taking this approach over fifty years has meant that the self-/co-regulatory ASA system has a very successful track record of dealing with new regulatory developments as they have emerged and, even in the fast moving communications

landscape of the last decade, the public has continued to benefit from a high level of protection and business has benefited from a level playing field.

- 5.3** This success has been recognised by the Government, most recently by the Rt Hon Jeremy Hunt MP, former Secretary of State for Culture, Media and Sport:

“The Government recognises the ASA as a highly successful model of both self and co-regulation; and that the UK’s advertising regulatory system is well respected and seen as a gold standard worldwide.”⁸

- 5.4** Looking ahead to a more connected world of internet-ready TVs, smarter phones and even more social media, we ask that policy makers remain sensitive to the benefits (to consumers and business) of a single, media-neutral advertising regulator; one with a strong track record and determination to regulate effectively
- 5.5** What, ultimately, we seek from policy makers at UK and European level is the continued trust in a flexible and open-minded approach to policy making that has allowed the ASA to become the highly respected and effective ad regulator it is today.

6 Contact details

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⁸ Letter to Rt Hon Chris Smith of Finsbury, ASA Chairman, on 2 March 2012