

mediawatch-uk response to changes to the Broadcast Code for Advertising Practice

We are grateful for the opportunity presented by this consultation to express our concerns about the some of the changes to the Code being proposed in this review.

We wish to comment upon only 4 of the questions posed as follows:

Guns: Q55 asks if “you agree with the proposal to strengthen the present prohibition to TV advertising for guns and replica guns...”

We would first of all like to express our support for the proposal to “strengthen” the present prohibition on advertising for guns and replica guns.

We believe that the portrayal of guns on television and in film is a serious matter. It represents harmful material, within the terms of the Communications Act 2003, which as a society we can well do without.

The monitoring of films, conducted by mediawatch-uk over a twelve year period, shows that the use of firearms is by far the most commonly portrayed fictional violence. As such this amounts to glamorisation of firearms. We believe that this is a serious hindrance to efforts to stop the use of firearms in a climate where the illegal use of them is a very serious and growing problem.

Any use or representation of firearms, real or replica, in any advertisement surely adds to the impression that their use is legitimate and “cool”.

Accordingly, we suggest that the BCAP should be amended and extended to preclude the use of guns or replica guns in any TV advertisement and not just those for the advertising of such articles themselves.

Pornography: Q54 asks if “you agree with the proposal to relax the present prohibition on TV advertising for pornography products...”

We do not agree with the proposal to relax the present prohibition on advertising pornography products. Pornography distorts human sexuality and undermines dignity and respect for others by making sexual intimacy into little more than a spectator sport without love, commitment or responsibility. Pornography has been cited in research as a contributory factor in marital breakdown, sexual crime, such as rape and attempted rape and contributes to sexual dysfunction.

Porn UK

First major study of online pornography reveals 1 in 4 adults downloaded images last year

Record numbers of men and women are downloading pornography from the Internet, making Britain the fastest-growing market in the world for the booming £20bn adult website industry. In the first definitive portrait of the nation's consumption of pornography, the *Independent on Sunday* can today reveal that more than nine million men – almost 40 per cent of the male population – used pornography websites last year, compared with an estimated two million in 2000. In a major survey for the IoS by Nielsen NetRatings, a world leader in Internet analysis, research discloses that women are among the fastest-growing users of pornography on the Internet, with a 30 per cent rise from one million to 1.4 million in the past twelve months. The figures also show that more than half of all children – some seven million – have encountered pornography on the Internet “while looking for something else”. The surge in use of web pornography mirrors a huge boom in the number of hard-core sex films available to buy legally in the UK over the past few years. Film censors passed more hard-core sex films last year than 18-rated movies. **Relationship agencies have reported that as many as 40 per cent of couple with problems believe that pornography has contributed to their difficulties.** The UK porn industry is estimated to be now worth about £1bn, compared with £20bn worldwide. British internet surfers look up the word “porn” more than anyone else in the English-speaking world.

Independent on Sunday 28/5/2006

Read more...

<http://www.independent.co.uk/news/uk/this-britain/sexcom-we-are-a-nation-addicted-to-porn-and-nearly-11-million-of-us-got-our-fix-on-the-net-last-year-480091.html>

The Department of Justice commissioned a meta-analysis of available research on the effects of viewing extreme and other pornography to support the Government's legislation (The Criminal Justice and Immigration Act) to make a new criminal offence of possessing extreme pornographic material.

This study, published in September 2007, examined numerous other studies including a meta-analysis by Oddone-Paolucci and Violato (2000) which reviewed 46 studies. They concluded that the results were “**clear and consistent [that] exposure to pornography puts one at increased risk for developing sexually deviant tendencies, committing sexual offences, experiencing difficulties in one's intimate relationships and accepting rape myths**”.

Ministry of Justice report: <http://www.justice.gov.uk/publications/research280907.htm>

The responsibility-free philosophy pornography promotes has led to a sexual health crisis among the young and middle aged. We note that a recent survey, conducted by *The Sex Education Show vs Pornography* on Channel 4 TV, found that teenagers learned more about sex from pornography than from any other source.

Whilst we are aware that there are many pornography TV channels operating within the UK, licensed by Ofcom, it would certainly spoil the viewing of many people, who have no wish to view such material, if advertisements for these channels, or any other pornography products, were to invade the mainstream TV channels with advertising promotions.

We remind the ASA here that pornography products classified 'R18' by the British Board of Film Classification may be sold legally only through licensed sex establishments to people who can verify that they are 18 years of age or older. Moreover, Ofcom, to its credit, has maintained the prohibition on 'R18' classified and 'R18' standard material. It would, to say the least, be inconsistent to permit 'R18' pornography products to be advertised on TV especially so when there can be no guarantee that such advertisements would not be seen by people under the age of 18. This would also conflict with Ofcom's duties to protect the under-18s from offensive and harmful material. The ASA must be consistent with these rulings and, at the very least, should specifically preclude the advertising of 'R18' and 'R18' standard material.

We believe this proposed relaxation is much more about providing additional sources of revenue to support commercial television whereas the priority for the ASA really ought to be safeguarding the sensibilities of viewers. **For these reasons the present prohibition should be maintained.** The onus is on commercial broadcasters to raise sufficient revenue by commissioning and transmitting programmes that attract viewers.

Maintaining this prohibition will not measurably harm the global pornography industry because, sadly, it is now too well established, but it will protect the interests of many viewers who do not want pornography and who already feel betrayed by the Government and the regulator who permit the transmission of such material on numerous digital TV channels.

Abortion: Q62 asks if you agree with the proposal to change the rules on “post-conception advice services...”

We do not agree with the proposal to permit the advertising of “post-conception advice services”. Whilst we recognise the Government's efforts to reduce teenage pregnancies it is at least questionable that the advertising of such services on TV will have any real impact on this problem. The target group is least likely to be influenced by TV advertising. We understand that advertising agencies know that old formats, such as TV advertising, simply do not get their messages through any more. Advertisers are, and have been for some time, migrating to the Internet where messages can be more accurately targeted.

The better solution, however unrealistic it may seem, is to promote marriage as the context within which sexual intimacy is right and proper. The present promotion by the media of recreational, casual sexual activity must be reversed. Advertising “post-conception advice services” on TV is the culmination of a prolonged period of failed social policy in this important area of intimate human activity.

We note the remarks made in Parliament on 16 June 2009 by Mr Justice Coleridge which are relevant:

Marriage should be promoted by the Government to end the 'social anarchy' of family breakdown, a senior judge said last night. Mr Justice Coleridge accused mothers and fathers who fail to commit to each other of engaging in a game of 'pass the partner' that has left millions of children 'scarred for life'.

In a hard-hitting speech in Parliament, he called for a change of attitude that would attach a 'stigma' to those who destroy family life and said a National Commission should be established to devise solutions for the 'epidemic' of broken homes.

He said: 'The reaffirmation of marriage as the gold standard would be a start.'

Calling for 'a fundamental change in individual attitude and behaviour', he said: 'What is a matter of private concern when it is on a small scale becomes a matter of public concern when it reaches epidemic proportions.

Daily Mail 17/6/2009

Read more...

<http://www.dailymail.co.uk/news/article-1193545/Only-marriage-mend-broken-Britain-says-judge.html>

Moreover, there are some charitable agencies operating in this sphere which simply cannot afford TV advertising and so relaxing the prohibition would discriminate against these agencies which allocate all their limited resources to helping people to overcome their difficulties and improving their situation.

Advertising "post-conception advice services" could diminish respect for human life by making abortion seem no more important or significant than other services advertised on TV.

As with Q54 above, we believe this proposed relaxation is much more about allowing additional sources of revenue to support commercial television whereas the priority for the ASA really ought to be safeguarding the sensibilities of viewers. For these reasons the present prohibition should be maintained. The onus is on commercial broadcasters to raise sufficient revenue by commissioning and transmitting programmes that attract viewers.

Condoms: Q147 asks if "you agree that television advertisements for condoms should be relaxed from its present restriction..."

We do not agree with the proposal to relax the present restrictions on advertisements for condoms. Moreover, we would argue that the present restrictions are already too relaxed. Whilst we recognise

the Government's desire to reduce teenage pregnancies and sexually transmitted infections it is questionable whether more advertising of condoms on TV will solve these problems. In fact, because of the permissive philosophy underlying this proposal, it may add to the very problem it attempts to solve.

We note recent reports (*Daily Mail*, 8 June 2009) that boys as young as twelve will be issued with 'condom cards' allowing them to collect free contraceptives without even their parents being informed. The rationale for this is said to be the Government's belief that these cards will reduce teenage pregnancy and the spread of sexually transmitted diseases. Condoms have been widely available for many years with little or no restriction and yet these problems have become worse, rather than better, as time has passed and so a radically different and new approach is needed.

We note the conclusions of research, '*Social Evils*', and published 11/6/2009, conducted by the Joseph Rowntree Foundation which found that collapsing moral values were named as blights on the lives of millions. The people who responded to their research said that "moral boundaries have been lost or blurred, and right and wrong no longer exist".

Social Evils report: <http://www.jrf.org.uk/work/workarea/social-evils>

In these circumstances the provision of condoms to children and the advertising of them on TV will do little to solve the problems the Government wishes to solve. There can be no doubt that these problems have arisen, at least in part, by the portrayal of casual recreational sexual activity in pornography, in TV programmes and in films routinely shown on TV and in the cinema. Without a radical change in the way human relationships are portrayed and promoted we simply do not believe that advertising condoms on TV will change anything, least of all reduce the rate of teenage pregnancy or sexually transmitted infections.

As with Q54 above, we believe this proposed relaxation is much more about attracting additional sources of revenue to support commercial television whereas the priority for the ASA really ought to be safeguarding the sensibilities of viewers. For these reasons the present prohibition should be maintained. The onus is on commercial broadcasters to raise sufficient revenue by commissioning and transmitting programmes that attract viewers.

We remind the ASA of the provisions of the EU Audio Visual Media Services directive which states:

Protection of minors in television broadcasting

Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes **which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.**

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

Although this refers to programmes we believe the ASA should accept the spirit of these provisions and apply them to TV advertising.

The Medicines and Healthcare products Regulatory Agency (MHRA) Response

Section 11: Medicines, Medical Devices, Treatments, and Health

Services including clinics, establishments and the like offering advice on, or treatment in, medical, personal or other health matters

Question 59

Given BCAP's policy consideration, do you agree that rule 11.9 should be included in the proposed BCAP Code? If your answer is no, please explain why.

A - No objection

Medicinal claims

Question 60

Given BCAP's policy consideration, do you agree that rule 11.4 should be included in the proposed BCAP Code? If your answer is no, please explain why.

A - Yes, and the MHRA confirms it is content with the definition of a medicinal claim given in the rule.

The use of health professionals in advertisements

Question 61

i) Given BCAP's policy consideration, do you agree that, unless prevented by law, it is not necessary to maintain the present prohibition on the use of health professionals in TV advertisements for products that have nutritional, therapeutic or prophylactic effects and in radio advertisements for treatments? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that rules 11.6, 11.7 and 11.8 should be included in the proposed BCAP Code? If your answer is no, please explain why.

A - No objection to either since the new rules maintain the legal prohibition on endorsement of medicines. It may be clearer to reiterate in rule 11.8 that health professional testimonials are not permitted for medicinal products.

Family planning centres

Question 62

i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

A - Not for the MHRA

Hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis or psychotherapy

Question 63

Given BCAP's policy consideration, do you agree that rule 11.10, supported by rule 11.9, should

be included in the proposed BCAP Code? If your answer is no, please explain why.

A – Not for the MHRA

Remote personalised advice

Question 64

- i) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 11.13? If your answer is no, please explain why.
- ii) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 12.3 in the Weight Control and Slimming Section? If your answer is no, please explain why.

A – Yes to both.

Radio: sales promotions in medicine advertisements

Question 65

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete radio rule 3.4.28? If your answer is no, please explain why.

A – Yes. The MHRA welcomes the recognition in the consultation of the need for restraint in the advertising of analgesic products but recognises that the provisions of rules 1.2 and 11.4 address this.

Anti-drugs and anti-AIDS messages

Question 66

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete the radio rule on anti-AIDS and anti-drugs messages from BCAP's proposed Code? If your answer is no, please explain why.

A- Yes

Other questions

Question 67

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Medicines, Medical Devices, Treatments and Health Section are necessary and easily understandable? If your answer is no, please explain why.

A - Yes

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Medicines, Medical Devices, Treatments and Health rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

A - No

iii) Do you have other comments on this section?

Section 11.19 should refer to a licence from the MHRA **or** EMEA.

Section 12: Weight Control and Slimming

Irresponsible use of a weight-control or slimming product or service

Question 68

Given BCAP's policy consideration, do you agree that 12.4, which presently applies to TV advertisements for weight control or slimming products or services, should equally apply to those advertisements on radio? If your answer is no, please explain why.

A- Yes

Dietary control and weight-loss surgery

Question 69

Given BCAP's policy consideration, do you agree that broadcast advertisements for establishments offering weight control or slimming treatments are acceptable only if they make clear that dietary control is necessary to achieve weight loss? If your answer is no, please explain why?

A – Not for MHRA

Question 70

Given BCAP's policy consideration, do you agree that advertisements for establishments that provide immediate weight loss surgery are acceptable but those must not refer to the amount of weight that can be lost? If your answer is no, please explain why?

A – Not for MHRA

Calorie-reduced or energy-reduced foods and drinks

Question 71

Given BCAP's policy consideration, do you agree that a broadcast advertisement for a calorie-reduced or energy-reduced food or drink may be targeted at under 18s, provided the advertisement does not present the product as part of a slimming regime and does not use the theme of slimming or weight control? If your answer is no, please explain why.

A – Not for MHRA

Safety and efficacy of slimming or weight control products or services

Question 72

Given BCAP's policy consideration, do you agree that, before it is advertised, the safety and efficacy of a slimming or weight control product must be assessed by a qualified independent medical professional or another health specialist professional? If your answer is no, please explain why.

A – Yes, although you may wish to take into consideration that the safety and efficacy of a medicine will have been assessed by the MHRA or EMEA before being granted a licence.

Establishments offering medically supervised treatment

Question 73

Given BCAP's policy consideration, do you agree that advertisements for overseas clinics and

other establishments offering medically supervised treatments are, in principle, acceptable if they are run in accordance with broadly equivalent requirements to those established by the Department of Health's National Minimum Standards Regulations? If your answer is no, please explain why?

A – Not for MHRA

Targeting the obese

Question 74

Given BCAP's policy consideration, do you agree it is justified to allow advertisements for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine to target people who are obese? If your answer is no, please explain why?

A – Yes, the MHRA and EMEA will have taken into account the professional support required before licensing any product for the treatment of obese people available through pharmacies.

Rate of weight loss

Question 75

Given BCAP's policy consideration, do you agree that rule 12.9 should include a rate of weight loss that is compatible with generally accepted good medical and dietary practice? If your answer is no, please explain why.

A - Yes

Very Low-Calorie Diets (VLCDs)

Question 76

Given BCAP's policy consideration, do you agree that rule 12.14.4 should reference 'Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children' (2006) published by the National Institute for Health and Clinical Excellence' and not Government COMA Report No.31, The Use of Very Low Calorie Diets? If your answer is no, please explain why?

A – Not for MHRA

Other questions

Question 77

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Weight Control and Slimming section are necessary and easily understandable? If your answer is no, please explain why?

A - Yes

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Weight Control and Slimming rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

A - No

iii) Do you have other comments on this section?

A - No

Section 16: Charities

Medicine advertisements and donations to charities

Question 100

i) Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on charity-based promotions in medicine advertisements should be deleted? If your answer is no, please explain why.

A – Yes, in the MHRA's view there is no requirement under the Medicines (Advertising) Regulations 1994 for the prohibition.

ii) Given BCAP's policy consideration, do you agree that 16.7 should be included in the new code? If your answer is no, please explain why.

A – Yes.

Section 31: Other Categories of Radio Advertisements that Require Central Copy Clearance

Restrictions around children's programmes

Question 146

Given BCAP's policy consideration, do you agree with BCAP's proposal to extend the restriction on advertisements for low alcohol drinks, medicines, vitamins and other dietary supplements from around programmes made for children to programmes of particular appeal to audiences below the age of 16? If your answer is no, please explain why.

A – Yes, in the MHRA's view this is consistent with the prohibition on advertising medicines to children in the legislation.

Question 157

Do you have other comments or observations on BCAP's proposed Code that you would like BCAP to take into account in its evaluation of consultation responses?

A – No

Metropolitan Cathedral of Christ the King Liverpool

Dear Sir/ Madam,

Please can you explain your reason for wanting to allow condom manufacturers and abortion providers to advertise themselves on television before the 9pm watershed?

Advertising to such a young audience will give the wrong message that sexual promiscuity is normal and valuable, when in fact promiscuity causes untold health problems to young people. It is clear that condoms and abortion clinics are not the answer to the sexual health epidemic sweeping the world at present. Advertising condoms and abortion clinics will send out the message to young people that irresponsible and immature sexual activity is fine. What young people need to be educated about is maturity and responsibility, as well as chastity and fidelity. That is the way forward.

So I am writing to oppose your proposals to advertise abortion clinics and condoms, which are clearly not the answer.

Yours Faithfully,

As an organisation we strongly oppose the proposals to advertise abortion on television and to advertise condoms before 9pm.

Our deep concern is that this will expose children and underage youngsters to information and pictures too explicit for their years and emotional maturity.

In addition such information is also likely to encourage youngsters to experiment with sexual relationships. Recent reports have stated the benefits of a stable relationship on children, rather than of single parenthood. Such information would also encourage abortions which people may not have otherwise undertaken.

The emotional long-term trauma of abortion is often not addressed before hand, nor is true counselling often offered afterwards, as has been the case of people we have had to help.

The effect of your proposals, both before the 9pm watershed, and after, will be detrimental to the long term well being of individuals and to the nation as a whole.

Where will you be years later when the people whose lives have been messed up need help? What help can you offer people then? For healing broken lives and hearts is the work of the Lord Jesus Christ.

If you care for individuals, if you care for our nations, you will not proceed with these proposals, which can only add to the moral decadence we are already in.

MOBILE BROADBAND GROUP

Advertising to children

1. The MBG supports BCAP in taking a responsible line with regard to advertising to children. This is central to the purpose of the Code.
2. However, with respect one particular aspect, there is a change which is not explained and which the MBG believes needs to be modified.
3. The existing Code contains rule 7.1.4 in respect of expensive toys:
4. "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."
5. The updated Code is proposing: "Advertisements for an expensive product or service of interest to children must include a statement of the product or service's price or, if it is not possible to include a precise price, an approximate price. BCAP considers a product or service of interest to children costing £30 or more to be expensive."
6. The justification given for this change is set out in paragraph 5.19 of the consultation document: "That rule requires price information to be included in TV advertisements, which could assist parents and guardians to cut short pleas by children for expensive products of interest to them; the aim is to prevent children from pestering adults about advertised products. BCAP proposes to extend the rule to advertisements broadcast on all Ofcom-licensed television channels, not only those broadcast to UK audiences, because it considers that the policy underpinning the rule is equally relevant to non-UK audiences.."
7. BCAP considers the rule is merited for TV because the audio-visual impact of television and the scheduling of toy and game advertisements around children's TV programmes. Those factors are not relevant to radio and BCAP therefore does not propose to extend the rule to radio."
8. The category of products and services that might be deemed 'of interest to children' potentially widens the scope of the previous rule which limited such products to "expensive toys, games and comparable children's products". By removing clear definitions of specific products which may be considered of interest to children leaves a fairly extensive array of products and services where the child either might have goods themselves or play a part in family decision making. It could include trainers, sports equipment, and even cars. However, this new rule seems to apply for all advertising not just advertising that is scheduled around children's programmes
9. It seems to the MBG that such provisions could involve unwarranted restrictions on the editorial content of advertisements. The MBG favours retention of the existing text (i.e. not using the phrase 'of interest to children') or at least making it clear that the 'expensive product' rule only relates to adverts scheduled around children's programming.

MOBILE ENTERTAINMENT FORUM

Specific Response to Questions

• Part 2 - Section 1 (Compliance)

Question 1

Given BCAP's policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code? If your answer is no, please explain why.

MEF Response:

We agree that advertisements must be prepared with a sense of responsibility to the audience and to society.

• Part 2 – Section 2 (Recognition of Advertising)

Question 3

i) Given BCAP's policy consideration, do you agree that rule 2.1 should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP

Code? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that rule 2.3 should replace present TV rule 2.2.2 (d), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why

MEF Answer:

MEF agrees that advertisements must be clearly distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement.

• Part 2 – Section 3 (Misleading)

General comment:

As all the new provisions relate to a general duty to not mislead, it might be appropriate to have just one provision. Earlier in the consultation document, BCAP proposes that the Code will be supplemented by guidance, which will be made available separately from the code. The guidance is to help users of the Code to interpret rules. Many of the proposed provisions appearing in Section 3 could be provided as guidance rather than prescriptive rules contained in the Code.

Amongst others, this could apply to the following proposed provisions:

Rule 3.13

Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

Rule 3.23

Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by consumers.

Rule 3.27

Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand.

Rule 3.28

if the advertiser does not intend to fulfill orders, because the purpose of the advertisement is to assess potential demand, the advertisement must make that clear.

Rule 3.39

Advertisements may compare a price with a recommended retail price (RRP) or similar if it does not differ significantly from the price at which the product is generally sold.

Question 8

Given BCAP's policy consideration, do you agree that rules 3.4 and 3.5 should be included in the Code? If your answer is no, please explain why.

MEF Response:

We agree that that a proper distinction is made between claims that require substantiation and those that do not.

Use of the word 'Free'

There is the possibility of conflict and confusion if the promotion relates to a product or services obtained by engaging a premium rate number.

The PhonepayPlus Code states:

5.11 Use of the word 'free'

"No premium rate service or product obtained through it may be promoted as being free unless:

- a. a product or service has been purchased by the consumer using a premium rate service and a second product or service of an equal or greater value is provided at no extra charge, or
- b. a product is provided through the premium rate service and the cost to the user does not exceed the delivery costs of the product and the promotional material states the maximum cost of the call."

As can be seen, the above PpP provision differs from the proposed provision in the BCAP Code. This is likely to cause confusion and multiple rules for similar services paid for with different mechanisms. Where services are paid for using a premium rate mechanism, only one set of rules should apply to avoid double jeopardy.

• Part 2- Section 4 (Harm and Offence)

MEF agrees with all proposals under this section.

• Part 2 – Section 5 (Children)

Question 28

Given BCAP's policy consideration, do you agree that rule 5.7 should be included in the Code?

If your answer is no, please explain why.

MEF Answer

We agree that advertisements must not exploit the special trust children place in parents, guardians, teachers or other persons.

Question 30

MEF Answer:

The inclusion of the new rule is also in direct conflict with the current PpP Code of Practice which states:

“7.5.1 Definition of children's services Children's services are services which, either wholly or in part, are aimed at or should have been expected to be particularly attractive to children, who are defined for the purposes of this Code as people under 16 years of age.”

The PpP Code goes on to state that:

“7.5.2 Promotional material for children's services must clearly state: a. the usual cost of the service, b. that the service should only be used with the agreement of the person responsible for paying the phone bill. 7.5.3 Children's services, and any associated promotional material, must not:

a. contain anything which is likely to result in harm to children or others or which exploits their credulity, lack of experience or sense of loyalty, b. include anything which a reasonable parent would not wish their child to hear or learn about in this way, c. make direct appeals to children to buy or donate, unless the product, service or donation is one which they could reasonably be expected to afford for themselves, d. encourage children to use other premium rate services or the same service again.

7.5.4 Children's services must not: a. generally cost more than £3, or in the case of subscription services (see paragraph 7.12), more than £3per month, b. involve competitions that offer cash prizes or prizes readily converted to cash.”

These paragraphs are seemingly incompatible with the new wording set out in the BCAP Code and create a conflict between rules applicable to the advertising for the services falling under the jurisdiction of the two regulatory bodies.

There is a serious need for BCAP to provide clear examples on the practical application of the proposed provisions given the conflict between the BCAP and PpP Codes. This is especially true since the BCAP Code does not cover, for example, programme sponsorship.

MOBILE MEDIA PRODUCTION

Dear Sirs,

The BCAP Code Review - Consultation on the proposed BCAP Broadcast Advertising Standards Code

We refer to the above consultation.

We have seen a copy of the response being given in respect to this consultation by the Association of Interactive Media & Entertainment ("AIME") and would confirm that we are in agreement with its contents.

We fail to understand how this consultation can be regarded as being consistent with the principles of good regulation as enunciated by the UK Government's Department for Business Innovation and Skills.

There is no transparent justification for a consultation which seeks to reclassify certain types of service as teleshopping. Many of these services are already very substantially regulated under a combination of Ofcom's Broadcasting Code and the PhonepayPlus Code of Practice and an additional tier of regulation will only serve in our view to make the regulatory process more opaque and **less accountable**.

Regulators should aim to **simplify and modernise existing regulations**. This consultation does quite the opposite. The regulatory burden proposed by BCAP would add yet a further layer of regulation to that which already exists.

Many of the businesses affected are prime drivers of new technologies which employ many thousands of people whose jobs would be put at risk by the BCAP proposals. The premium rate industry alone is estimated to generate revenues in the order of [£x] per annum yielding to the Exchequer valuable tax revenues which stand to be lost.

There has been a palpable lack of **transparency** regarding the motivation for this consultation. Ofcom has itself not concluded its own consultations into the use of premium rate services in programmes and it does seem to us to be a case of "putting the cart before the horse" to have a consultation of this nature before Ofcom has concluded its own deliberations **and before** members of the public as well as affected business interests have been given a reasonable opportunity to comment on the same.

Indeed, only this week, Ofcom have announced yet another consultation, this time into proposed changes to the Ofcom Broadcasting Code concerning TV and Radio.

Good regulation should be **proportionate**. It cannot be **proportionate** to bring forward proposals which will wreck many a good business and destroy jobs etc, where in respect to the highly popular consumer driven services affected, there is **no evidence** of consumer harm and the legal justification for reclassifying certain services including psychic and adult, as teleshopping, remains open to challenge in the courts.

We believe that certain of the information contained in the BCAP consultation is factually incorrect eg: the reference to "around 200 complaints" in paragraph 22.43 and in other instances information is not set in its correct context, the cumulative effect of which is that the reader is given a misleading impression of the actual evidence eg the reference to "drunken female presenters" in paragraph

22.43. It does not behove a regulator to select only those facts which suit its cause (or that of another agency to whom it is accountable, Ofcom) or to set those facts out in a way that misleads.

We support regulatory initiatives that are **consistent** and **targeted at cases where action is needed**. We cannot see that the process surrounding this BCAP consultation has been consistent. The practical effect of the BCAP proposals in respect to the free to air psychic and adult broadcast genre's will be to cause them great damage. Targeting these broadcast activities is not a response to a compelling "need", rather it is quite clearly a reaction by BCAP to pressure being brought to bear on them by Ofcom. It is all the more extraordinary that such targeted activity should be taking place given that Ofcom have not themselves concluded their own consultation process into PRS – how can it be possible to sensibly and reasonably postulate a "cure" before the need for a cure has been established?

Recent events in the UK and globally, have demonstrated the need for governments and those in position of authority to take urgent action in order to restore public confidence in their integrity. We cannot see how those of BCAP's proposals which would have the effect of banning certain popular genre's of free to air broadcast do anything but damage such confidence.

Yours faithfully,

Mobile Media Production Ltd



Dear Sir,

Thank you for the opportunity to respond to the consultation on the proposed changes to the CAP code.

Molson Coors takes its social responsibility obligations extremely seriously. We were founder members of the Portman Group when it was set up in 1989 and also provide substantial financial support for the Drinkaware Trust. We set out to comply fully with the letter and the spirit of all legislation and self regulatory codes around the sale and promotion of alcohol. The need to promote our brands responsibly is specifically highlighted in the Molson Coors Code of Conduct. All our marketing staff and marketing agencies receive regular training from the Portman Group on how to comply with industry self regulatory codes. Carling worked in partnership with the Scottish Government and Old Firm Football Clubs to be the first beer brand to run dedicated responsibility adverts on UK television. We also took a lead in removing Carling branding from children's replica shirts in Scotland, ahead of the Portman Group guidelines.

Molson Coors already complies with the vast majority of the proposed changes to the code relating to the promotion of alcohol drinks as a result of our compliance with the Portman Group's self regulatory code and our internal standards for responsible marketing. We have only one area of concern about the proposals relating to alcohol.

With the development of our brand C2, Molson Coors pioneered the creation of the “mid-strength” beer category in the UK. C2 is half the strength of mainstream lagers in the UK and we promote it as a 2% beer that tastes great. The mid-strength beer category is still a recent development with a relatively small proportion of the total UK beer market, but in other countries it commands a significant market share. For instance in Australia mid-strength beers make up 13% of beer sales. We believe that it would be in direct conflict with the interests of social responsibility to introduce controls that would limit the ability of companies to develop and market lower strength alternatives to existing strength products.

Therefore in response to Question 63, Molson Coors would not support any changes that would limit the communication of the benefits of consuming alcohol drinks with a lower alcohol content than would be normal for the category – even if the alcohol content was in excess of the legal definition of a low alcohol drink, which is 1.2% alcohol.

MOMENTUM YOUTH RESPONSE

Re: Abortion and Condom TV Advertisements

I believe that parents should have the right to educate their children on issues of sex education, including contraception and abortion. Parents are informed of their child's School's SRE programme and know when to approach the subject in the home. Exposing children to Abortion and Condom TV ads would take away a parent's right to decide when their child becomes aware of these issues and I strongly object to the proposal to advertise both items on the television.

Legally abortion is a medical procedure which requires the agreement of two doctors, in the event of the pregnancy involving a greater risk than a termination to the physical or mental health of the woman or her family. Surely advertising appendix removal services and heart surgery would also be considered for advertisement under this ridiculous proposal.

I also object entirely to condom advertisements whether shown before the 9pm watershed or after under the guise of "safe" sex. The primary function of a condom is birth control and not protection against STI's. The World Health Organisation states:

"An extensive review of all available studies was conducted by a panel convened by US National Institutes of Health (NIH) and the Centres for Disease Control and Prevention (CDC) in June 2000 in the United States, with the participation of WHO. The review concluded that condoms, when used correctly and consistently, are effective for preventing HIV infection in women and men and gonorrhoea in men. For other STIs, however, the available data are less complete."

Surely this is proof enough that showing condoms as protection against STI's is false advertising, at most an exaggeration of the truth.

Regards

MLAGB response to BCAP review.

To be sent with BCAP-provided cover sheet

Dear Sir or Madam,

A response to the BCAP Code Review from the Muzzle Loaders Association of Great Britain

Arms are an essential part of our history. Used for hunting self protection or warfare they might well be the single most important factor that shaped the development of the human race. Arms in the broadest sense of the word, therefore form an extremely important part of our heritage. They have had a central role, not just in military and social history, but in technological and industrial development, art and culture. Great Britain has been in the forefront of the development of the modern firearm.

The Muzzle Loaders Association of Great Britain was founded in 1953 to encourage an interest in muzzle loading firearms; to promote, regulate and safeguard their use and to preserve their freedom of collection. The Association has 32 Branches throughout the U K who pursue these objectives. The main Council of Management organizes National Competitions for rifle, pistol and clay pigeon shooters. Significant teams are regularly sent to compete in European and World Championships with considerable success.

The Association's 'Journal', published four times a year , provides a vehicle for publication of current news as well as papers on historical and technical research in our field. .

The Association's Council takes this opportunity not only to respond to Questions 55 and 56 in your consultation document, but also wishes to express its strong concern about the unjustified bias against firearms and shooting demonstrated by the current advertising Code. The imperfect understanding of British firearms legislation apparent in the consultation document is surprising and the offensive bracketing of shooting sports with illegal activities such as prostitution is to be deplored.

Your consultation paper is incorrect with regard to the age at which young persons may acquire or have possession of firearms (10.1 319(2)(a); over the sale of firearms (10.8) and over the precise nature of the controls over 'realistic imitation firearms' (10.12).

Shooting is a very well established participation sport in which about a million people are involved. It contributes c. £1.6 billion annually to the economy. The collecting of firearms and antique arms puts millions annually, into the economy. The possession and sale of modern firearms are tightly controlled by the Firearms Act 1968. In England and Wales there are around 2,792 registered firearm dealers. Given that the economic turnover is substantial, that the number of legitimate shooters and collectors are both significant and that the legal controls are so tight, the existing prohibition on television and radio advertising cannot reasonably be justified.

Question 55, We find ourselves in total disagreement with the existing prohibition on the advertising of material relating to shooting and shooting sports and request they be removed. The MLAGB can see no justification to the extension of the current prohibition to 'replica' firearms in view of the very tight controls put on manufacture, import and sale by the Violent Crime Reduction Act 2006.

Question 56, The MLAGB can see neither justification nor logic in a ban on advertising clay pigeon shooting, a popular, safe and well-regulated Olympic sport that is hardly 'liable to encourage the commission of crime'.

Yours faithfully,

Chairman MLAGB

MORTONS MARKETING

Dear Sirs

ASA & CAP Codes in Litigation cases

I write as a practitioner marketer offering market audit services which include commercial applications with reviews and reports written for the Courts as an expert witness. There are few of us needed because there are few cases, due to clear requirements regularly updated.

The Court needs for marketing expertise vary. Typically the two main needs are for market analysis for cases of quantum when contracts have broken down and for cases of supplier-client disputes over services provided. Cases have been resolved in the County, High and Appeal Courts.

It is my expert witness experience since 1997 that few solicitors and/or QC are familiar with the self regulatory nature of UK advertising or that this regulation has developed since 1962. This perhaps reflects the success of the CAP and BCAP Codes in self regulation?

ASA & contracts /complaints handling

However where disputes are unresolved by self negotiation or mediation, in high value and particularly lower values cases, the documentation received for review is often patchy and on request key documents, which might be expected to have been supplied, are often missing or claimed not to have existed, including contracts and letters of engagement. In some but not all instances this is due to legal teams' lack of familiarity as to what documentation good practice generates rather than unavailability. This is why the Courts require experts with relevant experience.

Currently the ASA offer no guidance on contracts. This was checked last week. With the wide range of organisations covered by ASA administered self regulation this is perhaps understandable. Technologies, markets, experience and scale of organisation vary greatly, from individual freelance copy writers and designers to global publishers and brand owners.

Other self regulatory bodies, such as the ICAEW, have required for many years that their members' contracts include a complaints handling section. This is based on notifying that any complaints should be made first to the supplier and if not resolved relayed to the ICAEW.

The introduction of such a requirement with the next set of Codes would underline the General principles of Legal, Decent, Honest and Truthful and would help to promote the long established ASA preproduction ASAsafety confidential, prompt and free checking service. This would have prevented the Code breaking actions by clients and agencies in most of the cases which I have seen.

Should the ASA wish to take this issue further, I am able to comment in principle and confidentially in practice across several media and market sectors. It is also my observation that General Principles 2.5 is not acknowledged sufficiently by some agencies who rely or over rely on the "primary responsibility of the marketer". This is particularly difficult to understand in cases where "the marketer" is a new start up or small organisation with no legal department or trained marketer and hence a greater reliance the self regulation of their agencies for proposals and finished work which is Legal, Decent, Honest and Truthful.

Yours sincerely
