

19 February 2016

ASA response to Culture, Media and Sport Committee inquiry into establishing world-class connectivity throughout the UK

1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Committee of Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’
- 1.2. The ASA System welcomes the opportunity to submit written evidence to the Culture, Media and Sport Committee’s inquiry into establishing world-class connectivity throughout the UK.
- 1.3. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for over 50 years and the broadcast Advertising Code (written and maintained by BCAP) for over ten, with our remit further extended in 2011 to include company’s advertising claims on their own websites and in social media spaces under their control. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes acting on complaints and proactively checking the media to take action against misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules remain fit-for-purpose.
- 1.4. In addition to investigating ads, we also provide a wealth of training and advice services for advertisers (most of which are free) to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place.
- 1.5. This response focuses solely on speed-claims in broadband advertising and the work that the ASA, CAP and BCAP have undertaken to prevent consumers from being misled.

2. Advertising of Broadband Speeds

- 2.1. The ASA responded to consumer concerns about headline speed claims in broadband ads not reflecting the service they received in 2010, asking CAP and BCAP to review broadband speed claims in advertisements as part of a wider look at the sector.
- 2.2. As a result, following a public consultation they published guidance which came into effect in April 2012, designed to give advertisers greater clarity on how to advertise their services and protect consumers from being misled. This stated that maximum speed claims should be based on the actual experience of users, with advertisers able to demonstrate that the maximum speeds quoted in their advertising can be achieved by at least 10 per cent of customers.
- 2.3. The guidance also adopts a responsive approach to providing consumers with information dependent upon the likelihood of them being misled. It requires marketers to include

additional levels of information dependent upon the performance profile of their service. Services such as cable, where users consistently achieve close to the top speed, are required only to include an “up to” qualifier, whereas ADSL2+ services, where performance is more mixed, must include a prominent disclaimer making clear to consumers that speeds vary significantly dependent on the user’s distance from the exchange. Additionally, services with very poor speed profiles are required to include actual user data to make explicitly clear the increased likelihood that a consumer responding to the ad might not achieve anywhere near the advertised maximum.

- 2.4. The guidance was addressed to maximum speed claims because those were the most prevalent advertising claims for broadband services at that time: under consumer protection law, CAP and BCAP cannot mandate information in all advertising (such as indicative speed ranges, for example), and so the guidance was focused on what to do to avoid misleading with a maximum speed claim.
- 2.5. A number of factors impact on the actual broadband speeds that households will receive from the same broadband provider, including geographical location, time of day, and number of connected devices. The variation in speeds between households is also far greater for ADSL copper wire technology than for cable. This, combined with the one-to-many nature of advertising, means that most broadband providers are not practically able to communicate the speed that each customer will get.
- 2.6. It is legitimate for businesses to advertise key features of their products in the most positive light, but they must not mislead consumers. Our regulations must align with the Consumer Protection from Unfair Trading Regulations 2008, which determine that ads are misleading if they cause ‘reasonably well informed, reasonably observant and circumspect’ consumers to respond to an ad through the presentation of false information or the omission of important information.
- 2.7. Broadband technology has been in use in the UK for over ten years, and our guidance to advertisers therefore makes the reasonable assumption that many consumers are likely to understand, at least at a basic level, the limitations of broadband and the fluctuations in speed, such as that a household based in a rural location is more likely to receive a slower broadband speed than one in a city. Our guidance requires the minimum amount of qualifying information necessary to help consumers make an informed choice as to whether to respond to the ad. We believe that this prevents consumers from being misled should they take a decision to respond to the ad and enquire further as to the speed they’re likely to get.
- 2.8. The introduction of the new guidance in 2012 has given the ASA much greater scope to clamp down on ads making speed claims that potentially mislead consumers, and we have taken action against various advertisements by broadband providers, making clear how the guidance will be interpreted and applied.
- 2.9. The result of this has been that both the number of complaints against ads about broadband speed and the number of cases we have investigated have steadily declined since the introduction of our guidance on our position in 2012, falling by roughly 60 per cent, with the number of complaints falling to 42 in 2015 from 180 in 2012, and with the number of cases falling from 138 to 39 during the same time period. We have also noticed a general shift in the trends of broadband advertising, with providers moving away from advertisements based on speed claims.

- 2.10. We are therefore satisfied that the action we have taken so far to address misleading speed claims in broadband advertising continues to have the desired impact. We continue to review the evidence, and will take further action if we need to, making sure we balance calls for change against the importance of us avoiding unnecessary burdens on business.
- 2.11. We are happy to provide the Committee with any additional information or detail on the points raised in this submission, if that would be useful.

3. Contact Details

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