

# Placement of advertising in video-on-demand services

Advertising Guidance (non-broadcast)

## Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the UK Code of Advertising (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast marketing communications.

Advertising Guidance is intended to guide advertisers, agencies and media owners how to interpret the Codes but is not a substitute for those Codes. Advertising Guidance reflects CAP's and/or BCAP's intended effect of the Codes but neither constitutes new rules nor binds the ASA Councils in the event of a complaint about an advertisement that follows it.

For pre-publication advice on specific non-broadcast advertisements, consult the CAP Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or you can log a written enquiry via our [online request form](#).

For advice on specific radio advertisements, consult the [Radio Centre](#), and for TV advertisements, [Clearcast](#).

For the full list of Advertising Guidance, please [visit our website](#).

## Overview

On-demand audiovisual services allow users to select a huge variety of media content across a host of different platforms to view or listen to as they choose. On-demand services vary significantly in their functionality, technical capabilities and platforms and can be accessed through a diverse range of internet enabled devices, from PCs, tablets and TVs to mobile phones.

Marketers hold primary responsibility for complying with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ('the CAP Code', 'the Code'). However, providers of on-demand services, as the publisher of a marketing communication, also accept an obligation to abide by the Code.

This guidance provides a principle and example-based outline of how on-demand service providers should ensure that the placement of marketing communications is likely to comply with the requirements of the Code. While it represents CAP's considered view on the proper interpretation of the relevant rules, it does not bind the ASA Council in making decisions on individual cases.

Compliance with the CAP Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. The ASA is likely to consider the placement and targeting of advertisements as an important factor, especially in cases where, for reasons of social responsibility or preventing serious or widespread offence and harm to children, an advertisement might not be suitable for certain audiences.

This guidance focuses specifically on regulated on-demand services. These are considered to be TV-like and are regulated under provisions of the Communications Act 2003 (as amended). This guidance focuses only on issues related to compliance with the CAP Code and not the statutory provisions of the Communications Act, which are reflected in Appendix 2 of the CAP Code. However, regulated on-demand services must also ensure that they comply with the provisions of Appendix 2.

A summary of the wider statutory framework underpinning on-demand services and how that relates to the CAP Code is included in Annex 1 below.

## Scope of the Guidance

### On-demand service providers and their obligation as publishers

In non-broadcast media, marketers hold primary responsibility for complying with the CAP Code. In addition to this, the Code recognises the importance of other parties involved in preparing or publishing marketing communications in ensuring that their placement does not breach CAP rules on social responsibility, harm and offence or harm to children. Within this framework, publishers accept an obligation to comply with the Code.

In the same way as other providers of media space, on-demand service providers are regarded as publishers for the purposes of the CAP Code.

For cases involving social responsibility, certain issues of harm and offence and/or harm to children, the ASA will request that the publisher provides a written response to the complaint. This is considered as part of the investigation, alongside the marketer's response, and a summary is included in the published adjudication.

CAP acknowledges the potential for other third parties, with which the provider has a contractual arrangement, to be involved in the placement of advertising. On-demand service providers are cautioned that, whilst the ASA will take the actions of these parties into account when assessing complaints, the on-demand service provider acting as a publisher, accepts ultimate responsibility.

### Applicability

On-demand services are diverse, in terms of format, functionality, technical capabilities and technology. This guidance applies only to regulated on-demand service providers under the terms of paragraph 368A of the Communications Act.

CAP acknowledges the similarities between regulated on-demand services and other on-demand services. This guidance is not intended to cover the latter; it is based on the application of the general standards enforced by the ASA with which all publishers are obliged to comply.

In line with the provisions of Appendix 2 of the Code, the guidance applies only to advertising that can be viewed by a user of the service as a result of the user selecting a programme to view.

## Relevant provisions of the Code

Publishers, including on-demand service providers, have a responsibility for compliance with the Code in cases investigated under the following rules:

1.3 (Social responsibility);

4.1 (Offence);

4.2 (Fear and distress);

4.3 (References to the dead);

4.4 (Anti-social behaviour); and

5.1 (Harm to children).

The ASA will investigate the placement and targeting of content not covered by the scope of this guidance, for instance, banner advertisements published by on-demand service providers in conjunction with their regulated on-demand content, under its usual approach to such matters.

## Guidance

### Principles

CAP intends this guidance as an outline of a range of approaches to complying with the Code, which depend on the particular circumstances of an advertisement's content and placement.

The on-demand environment is inherently different to that of linear broadcast, which is covered by the UK Code of Broadcast Advertising. Although to a significant extent on-demand programmes and advertisements often have linear broadcast equivalents, issues of compliance with the CAP Code cannot be assessed on the basis of standards derived from the linear broadcast framework.

In all cases, on-demand service providers are expected to have regard to the nature and content of an advertisement. The key test is the ASA's expectation that issues arising should be given due consideration and that on-demand service providers should be able to explain how they took an appropriate course of action in placing the advertisement.

### Approach

As a first step, on-demand service providers should have processes in place to identify any potential compliance issues related to the content of advertisements. The provisions of the Code relevant to an on-demand service provider's responsibility as a publisher to identify potential compliance issues that fall under the following categories and/or examples:

#### Social responsibility

- Unsafe, irresponsible or illegal acts being depicted, condoned or encouraged

#### Harm and offence

- Offensive depictions of protected characteristics – race, religion, gender
- Depictions or encouragement of anti-social behaviour
- Depictions of violence
- Strong language – swearing, sexual terms
- Sexual imagery and nudity
- Controversial themes – charity advertisements, depictions of war

## Harm to children

- Depictions of dangerous behaviour by children
- Encouraging emulation of unsafe practices
- Encouragements to enter strange places or talk to strangers
- Unsuitable language – swearing, sexual terms
- Unsuitable themes – sexual, scary
- Unsuitable products – alcohol, gambling, contraceptives, slimming aids or weight reduction regimes

CAP considers that the issues above (and other potential compliance issues) exist on a spectrum of potential risk. The following is an example of how different issues might be categorised:

- Seriously offensive material and depictions or encouragement of illegal behaviour are unlikely to be acceptable in any placement context.
- Strong language or sexual and other adult themes are likely to be acceptable if placed appropriately to protect both children and prevent harm or offence being caused to the audience in general.
- Controversial, scary, violent or other unsuitable themes for children are likely to be acceptable if placed appropriately to protect children.

Although each advertisement must be assessed on a case-by-case basis, on-demand service providers are not required to treat every potential issue in the same way. It is for on-demand service providers to take appropriate steps to ensure that advertisements are placed around programming content that is appropriate.

The following examples draw on the potential issues listed above and the techniques outlined in subsequent sections might be utilised:

- To avoid serious or widespread offence, providers might employ timing restrictions similar to those on linear broadcast TV.
- Providers might seek to match the content of programming with advertising; for instance, having a film trailer with frightening content appearing during a programme with similar themes.
- To prevent potential harm to children, an advertisement featuring adult themes might be served using a timing restriction to limit exposure to children or served at any time around programming content that is unlikely to appeal to them.
- For particularly strong themes, such as sexual or violent content, providers might serve advertisements only to users subject to access controls.

- Providers should be aware that placement approaches and restrictions have their limits and will not be sufficient to mitigate certain issues. Advertising that is socially irresponsible because it, for instance, encourages people to break the law, is unlikely to be acceptable in any context. Similarly, an offensive depiction on the basis of race, gender or disability is unlikely to be acceptable.

## Placement techniques

### Programmes with clearly identifiable appeal

Some types of programming can be classified straight-forwardly. Using a subjective assessment of the programme and its content, an on-demand service provider may reasonably determine, for instance, that a programme is:

Obviously adult themed and it is therefore appropriate to place potentially problematic advertisements in and around it.

Targeted specifically at children (in particular, younger children), either through its commissioning or its content, and it is therefore inappropriate to place potentially problematic advertisements in and around it.

### Programmes with general appeal

Programmes with more general appeal can vary significantly in their likely audience. Advertisements featuring content that poses a potential compliance issue might be placed around these programmes, but on-demand service providers should be able to demonstrate that the audience of a programme was appropriate for the content of the advertisement placed in or around it.

For instance, they might use audience data, either from the on-demand service or linear broadcast-derived audience indexing data, which may be used to give a reasonable indication of a programme's appeal. ASA adjudications have viewed the latter as significant in determining a programmes' likely appeal.

### Timing restrictions

Restrictions on the times at which an advertisement is served are one approach that may allow on-demand service providers to restrict access to certain groups, principally children, or place advertising that the audience in general is likely to regard as acceptable. For instance, it might be acceptable to serve potentially problematic advertisements during programming of general appeal that would ordinarily attract a significant child audience, if the programme is viewed after a certain time when the child audience is not likely to be significant.

CAP recognises that different on-demand technologies facilitate different approaches to timing restrictions; certain technologies will have inherent advantages in the potential for on-demand service providers to impose restrictions. Although the use of less capable technologies does not abrogate the on-demand service provider's responsibilities under the Code, the ASA will have regard to the specific circumstances of the on-demand technology used.

On-demand service providers should be able to demonstrate that any timing restriction based approaches were adhered to.

On-demand service providers should exercise caution over instances where they draw from data or clearance decisions based on linear broadcaster versions of advertisements that differ from the on-demand version.

## Placement restrictions regimes

On-demand service providers may follow other placement restriction schemes that are based on more criteria than just timing.

Clearcast offer such a scheme, which has been acknowledged as a route to compliance by the ASA. However, there is no requirement for on-demand service providers to pre-clear advertising.

On-demand service providers may use other schemes for determining placement restrictions, which will be assessed by the ASA on a case-by-case basis.

## Access controls

Some on-demand platforms offer the capacity to limit access, for instance, on the basis of parental controls or user account details.

It is likely to be acceptable for on-demand service providers to use such approaches to target content more effectively. Dependent upon the circumstance this might lessen the need for other types of restrictions for any given advertisement.

## Variations in platforms and technology

CAP is mindful of the variation in different types of on-demand audiovisual service, both in terms of platform and technologies involved in delivering the content and advertisements to users. The ASA will have regard to the variations in the technology used when assessing complaints.

On-demand service providers should, where possible, adapt the principles and specific points of this guidance to suit the particular circumstances of a platform or technology.

However, on-demand service providers should also be aware that placement approaches and restrictions have their limits and alone might not be sufficient to mitigate harms associated with certain types of content. For certain types of technology or platform, it might not be possible to adapt some or all of the provisions of this guidance due to inherent limitations. For instance, it will be very difficult for download-based on-demand platforms to use a timing restriction-based approach as users can watch the downloaded content at any time.

The ASA will assess complaints on a case-by-case basis.

## Appendix 1

### Wider on-demand framework

Advertising in on-demand services is subject to the CAP Code. Additionally, some advertising is also subject to regulation under the Communications Act 2003 (as amended). It is the on-demand service provider, not the marketer, that bears the primary responsibility for ensuring compliance with the Communications Act.

The standards set out in the Communications Act are reproduced in Appendix 2 to the CAP Code and the ASA will consider complaints that advertising falls short of those standards.

Not all providers of on-demand audiovisual content are subject to regulation under the Communications Act. The Communications Act defines the services to which it applies in paragraph 368A. Providers of such on-demand programme services are required to notify the Authority for Television on Demand (ATVOD). ATVOD has the responsibility for determining whether an audiovisual on-demand service falls within the scope of the Communications Act (subject to appeal to Ofcom).

Paragraph 368R (3) of the Communications Act defines the extent of the application of the on-demand. This definition is reproduced in Appendix 2 to the CAP Code, which states:

The rules in this section apply only to advertising “included” in a regulated on-demand service, which is advertising that can be viewed by a user of the service as a result of the user selecting a programme to view.

The rules in Appendix 2 of the CAP Code therefore apply to advertisements that:

1. are included in an “on-demand programme service” on ATVOD’s list of notified providers and
2. can be viewed as a result of the viewer selecting a programme to view

CAP has produced dedicated guidance, Advertising in video-on-demand services, on the scope of the application of Appendix 2.

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