

# **Cooperation and information sharing in relation to communications markets between 1) the Advertising Standards Authority Limited (ASA) and Advertising Standards Authority (Broadcast) Limited (ASAB) and the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice Limited (BCAP)<sup>1</sup> and 2) the Office of Communications (Ofcom)**

## **Purpose of this document**

- This document details how the ASA, CAP and Ofcom (the Parties) will work together on an informal basis to cooperate and share information where relevant in relation to the communications industries (these include broadcasting (television and radio), telecommunications and postal services). Our organisations believe that by outlining this process of engagement in writing this should facilitate and encourage cooperation and information sharing, thereby enhancing their ability to exercise their respective functions.
- The document is a statement of intent that does not give rise to legally binding obligations on either Party. It is distinct from any Memorandum of Understanding between the ASA(B), the Broadcast Committee of Advertising Practice (BCAP), the Broadcast Advertising Standards Board of Finance (BASBOF) and Ofcom in relation to the co-regulation of broadcast advertising content.

## **Examples of types of cooperation and information sharing**

- Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise), and subject to the parties retaining discretion not to disclose information if doing so would fetter their ability to effectively carry out their regulatory functions:
  - Each Party will endeavour to alert the other Party to any potential breach of the legislation, conditions or Code rules<sup>2</sup> regulated or applied by that other Party, or to any potential contravention by a regulated entity within the communications market of any voluntary commitments made to that other Party, of which they become aware whilst undertaking regulatory duties, and will provide relevant and necessary supporting information.
  - The Parties will communicate regularly to discuss matters of mutual interest and seek to work together to find appropriate ways to effectively protect consumers in communications markets. This may involve, by way of example and where resources permit:
    - a. sharing of information (including information of a technical nature and analysis) between the Parties with a view to assisting either of those Parties with the conduct of investigations or the exercise of their other regulatory functions. Such information may be shared on either a confidential basis or for the purposes of placing on the record the view of the Party for the purposes of the other Party to exercise their regulatory functions;

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<sup>1</sup> References to ASA and CAP shall be taken to also include both the Non-Broadcast and Broadcast legal entities of both organisations

<sup>2</sup> Rules in the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing and in the UK Code of Broadcast Advertising

- b. Parties working together, where appropriate and without in any way fettering their discretion as independent regulators, to provide clarity regarding their respective powers and roles, to avoid conflicting regulation or voluntary commitments, and by cross-referencing each other's literature and guidance (where relevant); and
  - c. answering of specific queries from time to time.
- Such support may be requested and provided in connection with a specific case<sup>3</sup> or with the protection of consumers in communications markets more generally.
  - The Parties will consult one another at an early stage on any issues which might have significant implications for the other Party.

#### **Information shared by Ofcom with the ASA**

- Ofcom publishes a range of policy, research and other documents relevant to the telecoms, broadcasting and postal services markets and, in most instances, Ofcom would expect to be able to assist the ASA by sharing information that is already publicly available (or which is not otherwise prohibited from disclosure). Where Ofcom holds information which is not publicly available and which is subject to a general prohibition on disclosure, Ofcom will explore whether a number of limited information-sharing gateways may apply which enable the sharing of that information with the ASA.

#### **Information shared by the ASA with Ofcom**

- ASA and CAP publish a range of policy and research documents, rulings and other reports on the exercise of their regulatory functions across the communications market. In the exercise of some of these functions the ASA will sometimes refer details of on-going confidential investigations to Ofcom as the regulator of the communications market and request Ofcom's assistance (whether through the provision of specific information or Ofcom's view). The ASA and CAP will share with Ofcom other available information relevant to the exercise of our respective functions and will identify when such information is being shared on a confidential basis.

#### **Method of exchange**

- Appropriate security measures shall be followed to protect information transfers, in accordance with the sensitivity of the information and any classification that is applied by the sender. Each Party will determine for itself whether such methods of transfer are in compliance with their respective legal duties (whether statutory or not).

#### **Confidentiality and data breach reporting**

- Where confidential material is shared between the Parties it will be marked with the appropriate security classification.

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<sup>3</sup> Where the request arises as a result of the ASA's telecoms case work, Ofcom may be unable to provide analysis of advertisers' claims or evidence in their support if these do not originate in Ofcom's own research or analysis.


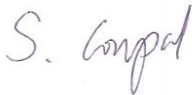


- Where confidential material is shared between the Parties which originates from a third party, the Party supplying that information will (i) need the consent of the person/business that provided the information, or (ii) need to show that disclosure is permitted without consent.
- Where one Party has received information from the other which is not already publicly available, it will request the other Party's consent (to be withheld at that Party's absolute discretion) before passing the information to a third party or using the information in a published document or ruling.
- Where confidential material obtained from, or shared by, the originating Party is wrongfully disclosed by the Party holding the information, this Party will bring this to the attention of the originating Party without delay. For the avoidance of doubt, this is in addition to obligations to report a personal data breach under the GDPR and/or DPA where personal data is contained in the information disclosed.

**Duration and review of this co-operation and information sharing agreement**

- The Parties will monitor the operation of this agreement and will review it every three years. Any minor changes identified between reviews may be agreed in writing between the Parties. Any issues arising in relation to this agreement will be notified to the point of contact for each organisation.

**Key contacts to facilitate exchange**

- The following individuals will be responsible for regular communication with the other Party and to oversee and co-ordinate the sharing of relevant information.

ASA and CAP	Ofcom
  	 

- Each Party will be responsible for notifying the other Party of any changes to the key contact details.
- The Parties may agree a more detailed process when consulting with each other, including agreed timelines for responding to specific queries.