

## **Application of CAP Code to marketing communications appearing on websites, apps and cross-border platforms**

This statement sets out a clarification of CAP's remit over marketing communications appearing on websites, apps and cross-border platforms (for example, social media and retail platforms) to ensure that the scope of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing is easily understood by advertisers and consumers.

Since [1 March 2011](#), the Advertising Standards Authority (ASA) has regulated advertisers' own marketing communications on their own websites and in other non-paid-for space online under their control. Importantly, the category of "other non-paid-for space online under their control" brought many non-paid-for ads on social media platforms into the scope of the CAP Code for the first time.

In order to provide certainty to both advertisers and consumers about the boundaries of the UK self-regulatory system, CAP's remit must be set out transparently and easily understood. CAP is therefore amending the CAP Code to ensure that the principles under which it has developed its remit over marketing communications appearing on websites, apps and cross-border platforms, and the application of these principles by the ASA to ever-changing cross-border media, are articulated clearly in the CAP Code.

Currently, Ilc of the Scope of the CAP Code deals with the ASA's remit over direct marketing communications and website advertising as follows:

*[Il The Code does not apply to:...]*

*c. marketing communications in foreign media. Direct marketing communications that originate outside the United Kingdom and promotions and marketing communications on non-UK websites, if targeted at UK consumers, are subject to the jurisdiction of the relevant authority in the country from which they originate if that authority operates a suitable cross-border complaint system. If it does not, the Advertising Standards Authority (ASA) will take what action it can. Most members of the European Union, and many non-European countries, have a self-regulatory organisation that is a member of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA).*

CAP considers that the current diverse nature of marketing communications on cross-border platforms and the ASA's application of CAP's remit to them – which have developed since CAP's online remit extension in 2011 – should be articulated clearly in the CAP Code. Such platforms can attract many forms of paid-for and non-paid-for marketing communications from advertisers based in many jurisdictions, with diverse regulatory systems and cross-border complaint processes. Marketing communications appearing on such platforms are sometimes untargeted, but also use diverse forms of targeting, including the targeting of consumers based in different locations. Additionally, the platforms themselves often have processes in place to work with the self-regulatory system in order to ensure that only responsible marketing communications appear on them.

CAP considers that the following wording more clearly articulates the principles that it and the ASA use to determine the remit of marketing communications appearing on websites, apps and cross-border platforms:

*[The Code does not apply to]*

*c. marketing communications on websites, apps and cross-border platforms (for example, social media platforms or retail platforms) unless they meet at least one of the following criteria:*

- Non-paid-for marketing communications from or by marketers with a UK registered company address.*
- Marketing communications appearing on websites with a “.uk” top-level domain.*
- Paid-for marketing communications from or by marketers targeting people in the UK.*

*Marketing communications on websites, apps and cross-border platforms that do not meet at least one of these criteria will fall outside of the scope of the CAP Code.*

*Most members of the European Union, and many non-European Union countries, have a self-regulatory organisation that is a member of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA). The ASA will use the cross-border complaints system in the following situations involving marketing communications on websites, apps and cross-border platforms:*

- Where non-paid-for marketing communications which are outside the remit of the CAP Code target UK consumers, the ASA will refer complaints about them to the relevant authority in the country in which the marketer is registered if that authority operates a suitable cross-border complaint system. If a suitable cross-border complaint system is not operated, the ASA will take what action it can.*
- Where the ASA receives complaints about paid-for marketing communications by marketers without a UK-registered address which target UK consumers, and the ASA considers that it is unable to take action in response to such complaints, the ASA will refer the complaints to the relevant authority in the country in which the marketer is registered if that authority operates a suitable cross-border complaint system.*

*Direct marketing communications from marketers with a non-UK-registered company address are subject to the jurisdiction of the relevant authority in the country in which the marketer is registered if that authority operates a suitable*

*cross-border complaint system. If a suitable cross-border complaint system is not operated, the ASA will take what action it can.*

The CAP Code will therefore not apply to:

- non-paid-for marketing communications on websites, apps and cross-border platforms from or by marketers without a UK registered company address; or
- paid-for marketing communications on websites, apps and cross-border platforms not targeted at UK consumers.

Factors that would increase the likelihood of a marketing communication being regarded as targeting UK consumers include:

- prices being given in sterling;
- consumers being provided with a UK telephone number or geographic address for support;
- consumers being invited to visit physical premises in the UK; and
- the marketer being subject to regulation under UK regimes (for example, being subject to regulation by the Gambling Commission).

These changes will take effect immediately, and CAP will have regard to the need for further guidance.