

SECTION 33: OTHER COMMENTS

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?

<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
<p>Alliance Boots; Asda; AIME; Bayer Plc; British Retail Consortium (Consumer Affairs Policy Group); Central Office of Information (COI); Charity Law Association; Christian Concern for our Nation (CCFON); Consumer Focus; Electronic Retailing Association (ERA) UK; Mobile Entertainment Forum (MEF); Square 1 Communications Ltd; Channel 4</p>	<p>A single UK Ad Code</p> <p>1. Alliance Boots, Bayer Plc, British Retail Consortium (Consumer Affairs Policy Group) and AIME questioned if it is necessary to maintain two Advertising Codes; one for broadcast and one for non-broadcast. A single Code should be the goal.</p>	<p>A single UK Ad Code</p> <p>1. The BCAP Code applies to broadcasters that are licensed by Ofcom. The CAP Code applies primarily to the advertiser. There is a co-regulatory framework for broadcast and a self-regulatory system for non-broadcast. That is the fundamental reason why a single Code cannot be made at this time. However, the Codes do now share many of the same rules as each other in key areas such as misleading advertising, harm and offence.</p> <p>By conducting the reviews of the Codes in parallel, we have tried to ensure the maximum possible consistency of approach.</p> <p>The decision to maintain distinct Codes recognises those fundamental differences and ensures that regulation of advertisements in both media sectors is proportionate.</p>

	<p>2. Asda said there is a need for greater consistency between the CAP and BCAP Codes.</p> <p>3. AIME, MEF, Square 1 Communications Ltd, Channel 4 and the COI welcome the proposal to replace the current four Advertising Codes with a single, user-friendly Code covering TV and radio ads.</p> <p>Electronic Retailing Association (ERA) UK said – by and large – the proposed BCAP Code is a significant improvement on the present BCAP TV Code.</p> <p>Lewis Silkin LLP noted the few substantive</p>	<p>2. By conducting the reviews of the Codes in parallel, we have tried to ensure the maximum possible consistency of approach.</p> <p>The decision to maintain distinct Codes recognises those fundamental differences and ensures that regulation of advertisements in both media sectors is proportionate.</p> <p>By bringing the Advertising Codes ‘under one roof’ albeit under separate Committees, the Codes have invariably become more consistent but not the same. Crucially, in areas such as misleading advertising, offence and harm the Codes are much more consistent than is presently the case and now both Codes include an overarching ‘Social Responsibility’ rule.</p> <p>3. BCAP welcomes these respondents’ comments.</p>
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	<p>changes to the BCAP Code is testament to both the efficacy of BCAP and the ability of co-regulation to move with the fast moving marketing and media landscape and changing consumer expectations; in stark contrast to strict statutory regulation.</p> <p>Relative length of the BCAP Code</p> <p>Alliance Boots questioned why the BCAP Code is far longer and far more detailed than the CAP Code given that they cover the same ground and address the same principles of ensuring that advertising is legal decent, honest and truthful.</p>	<p>Relative length of the BCAP Code</p> <p>The Code Review is a review of the existing Codes. The existing Codes do cover the same principles but the Codes have developed differently under separate organisations, taking into account the differences between broadcast and non-broadcast media (see above). For example, the BCAP Codes include a section on Faith advertising and the CAP Code does not. That is likely to reflect the broader reach of broadcast advertising and its unique place in the family home and therefore the greater potential for ads about faith to impact on the individual and faith based communities in the UK. There is, arguably, a greater onus on broadcast ads about faith to be more responsible because of that greater potential for harm and offence, both to the individual and to society. That may merit inclusion of a specific section on 'Faith Advertising' in the BCAP Code, whilst the general rules in the CAP Code arguably suffice to regulate faith ads in non-broadcast marketing communications. BCAP has been open-minded</p>
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	<p>A media neutral Broadcast Ad Code?</p> <p>Alliance Boots said the Broadcast Code is not media neutral as it introduces a different set of controls for radio compared to television.</p> <p>UTV Radio noted uniting radio regulation with that of television presents particular risks for radio (especially speech radio), which we encourage BCAP to negate through its drafting of guidance and careful implementation of the finalised Code.</p>	<p>throughout the consultation process about the need to include new rules or delete or revise existing rules in line with its explicit general policy objectives.</p> <p>A media neutral Broadcast Ad Code?</p> <p>As digital broadcast media converge and as multi-media advertising campaigns become more prevalent, it is important, where justified, to have greater consistency in the setting of standards for broadcast advertisements. The interpretation of the Code will continue to take into account the characteristics of television and radio and other contextual factors that determine whether an advertisement complies with the Code.</p> <p>Radio has traditionally been regulated with a lighter touch. BCAP's policy is not to increase the regulatory burden on radio unless factors relevant to the review of an existing rule merit, in BCAP's opinion, a strengthening of the existing Radio Code.</p> <p>BCAP's proposed Code generally includes rules for broadcast advertisements and, seldom, rules for television only and rules for radio only. BCAP has proposed to make or retain that distinction if BCAP considers the facts justify that approach. Facts that could justify a different approach for television or radio include, but are not limited to, the technical constraints of the medium, audience</p>
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	<p>expectations, the visual aspect of television, research specific to TV or radio, including TV or radio advertisements and TV's place in the family home.</p> <p>Reflecting law in the Codes</p> <p>1. Asda said the Code should make reference to 'must' only where legislation is in place. It should revert to 'should' for other rules.</p> <p>2. Consumer Focus said the Advertising Codes need to incorporate the law at a minimum and give guidance on compliance, not cherry pick aspects of the law.</p> <p>Principles v detailed rules</p> <p>1. AIME said the Code has become more prescriptive and lengthy, attempting to address every conceivable situation. It, and Square 1 Communications Ltd, prefers a core Code stating clear principles surrounded by flexible Help Notes</p>	<p>Reflecting law in the Codes</p> <p>1. Compliance with the BCAP Code is not voluntary. 'Must' accurately reflects the obligation on the part of the broadcaster (BCAP) to comply with the rules in the Code, irrespective of whether the rules copy out provisions in the law or not.</p> <p>2. It is simply not practical to transpose into the Codes every provision of law that is applicable to marketing communications covered by the CAP and BCAP Codes. Quite aside from the impossibility of the task, it would render the Code unwieldy, thereby diminishing the protection it affords to consumers and the level playing field it provides to advertisers.</p> <p>Principles v detailed rules</p> <p>1. The BCAP Code includes detailed rules that give effect to general rules and principles set out in the Codes. The detailed rules have been introduced to the Codes over time and make clear advertising practices that the regulator – through</p>
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	<p>or Guidelines, which can be amended at will without costly guidelines.</p>	<p>consultation – has determined to be unacceptable; either because they mislead, offend, have the clear potential to harm or are otherwise irresponsible. Unlike Guidance, detailed rules are not a ‘guide’ to complying with general rules and principles; they reflect provisions that must be complied with. BCAP’s consultation has invited consumers to endorse or argue against rules that BCAP proposes as ‘necessary’. Detailed rules provide clarity to advertising practitioners and give – as far as possible – certainty in planning and executing marketing campaigns before they are broadcast or published. This is in keeping with better regulation; focusing on prevention rather than cure, by helping the advertiser and the ASA to forgo costly, disruptive and avoidable regulatory action in the future.</p>
	<p>2. Christian Concern for our Nation (CCFON) said the Code contains weak principles that make it substantially more difficult for an individual to complain about falling standards and much easier to ignore complaints.</p> <p>Relevant standards objective?</p> <p>AIME and Square 1 Communications Ltd questioned if the following was a relevant</p>	<p>2. BCAP disagrees on both points; it includes – in key sections - overarching principles to assist broadcasters to comply with the spirit and the letter of the rules and BCAP does not accept or understand why those robust principles would make it more difficult for an individual to complain.</p> <p>Relevant standards objective?</p> <p>BCAP and Ofcom consider it is a legal obligation to secure standards objective (s.319(2) (f)) in</p>

	<p>standards objective of the BCAP Ad Code: “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material; ...” AIME considered this objective is relevant to broadcast programme content, which falls under Ofcom regulation.</p> <p>Guidance</p> <p>Charity Law Association said the removal of background notes is unhelpful.</p>	<p>regard to the setting of broadcast advertising standards.</p> <p>Guidance</p> <p>BCAP has removed from the new Code, ‘guidance’ to rules (from the existing Codes) if that ‘guidance’ is advisory (as opposed to necessary) to comply with a rule.</p> <p>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. (Because a BCAP objective is to ensure that each rule is easily understood, BCAP anticipates that guidance on the interpretation of a rule will not generally be considered necessary.) BCAP is not required to consult on guidance, which is non-binding, but BCAP will take into account responses to this consultation that raise concerns about the clarity of a rule and BCAP might produce guidance that addresses those concerns.</p> <p>Some guidance notes in the present BCAP</p>
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	<p>Codes have the force of a rule. In those cases, BCAP has either adopted the guidance as a rule in the new Code or, if it has changed or deleted it (constituting a change in advertising policy and practice), reviewed the guidance as part of its consultation.</p> <p>Code standards</p> <p>Christian Concern for our Nation (CCFON) said a single broadcast Code has resulted in the lowering of standards; a Code that does not sufficiently take into account the impact of audio-visual communications.</p> <p>A compulsory Code</p> <p>Sainsbury's Supermarket Limited said it had concerns about the de facto compulsory nature of the Code; the de facto element is introduced because it is impossible to place an ad unless it meets the criteria of the Code and in the case of TV and radio advertising is pre-cleared against the Code.</p>	<p>Code Standards</p> <p>BCAP considers its Code is line with the Communications Act's Standards Objective 319(2)(f): "that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material."</p> <p>A compulsory Code</p> <p>The proposed Code will apply to all broadcast advertisements (including teleshopping, content on self-promotional television channels, television text and interactive television advertisements) and programme sponsorship credits on radio and television services licensed by Ofcom. An Ofcom broadcasting licence condition (and a statutory obligation for S4C and S4C digital) is that radio and TV broadcasters <u>must</u> comply with the standards set out in the Code. To meet that licence condition, many broadcasters use the</p>
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