

Advertising in video-on-demand services

Advertising Guidance (non-broadcast)

Legal, decent, honest and truthful

CAP 

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](#).

Revisions to this guidance:

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Overview

Advertising in video-on-demand services is subject to the CAP Code. The marketer bears the primary responsibility for ensuring that its advertising complies with the CAP Code.

Some advertising in video-on-demand services is subject to regulation under the Communications Act 2003 (as amended), in addition to the CAP Code. It is the video-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. The ASA will take up complaints that fall under Appendix 2 with the on-demand service provider; complaints that fall under the other rules in the CAP Code will be taken up with the marketer. To help video-on-demand service providers determine what advertising falls within the scope of Appendix 2 (that is, the advertising for which the ASA will hold them responsible), CAP has produced this guidance, in consultation with Ofcom.

Definitions

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 Association of 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 of the Communications Act states

(3) For the purposes of this Part, advertising is included in an on-demand programme service if it can be viewed by a user of the service as a result of the user selecting a programme to view.

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.

Interpretation

If advertising appears which is not as a result of the viewer selecting a programme to view, it will not be subject to regulation in accordance with the rules in Appendix 2. For example, advertising on navigation pages, such as a list of the programmes that are available to view, which appears before the viewer has selected a programme to view, is outside the scope of Appendix 2.

Advertising that can be viewed as a result of the viewer selecting a programme to view is subject to the rules in Appendix 2. This includes pre- and mid-roll advertisements that are displayed when the viewer selects a particular programme.

Advertisements need not be themselves audiovisual in order to fall within the scope of Appendix 2. All advertising that is displayed as a direct result of the viewer's choice of programme is covered by Appendix 2; so, for example, a banner advertisement that is targeted to a viewer who has chosen to view a particular programme would fall within the scope. A banner advertisement that is not displayed because the viewer has chosen to view a programme would not be considered by the ASA under Appendix 2 (but is subject to the rules in the rest of the CAP Code.)

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