

SECTION 2: RECOGNITION OF ADVERTISING

Question 3:

- i) Given BCAP's policy consideration, do you agree that rule 2.1, which requires advertisements to be obviously distinguishable from editorial content, should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that rule 2.3, which requires special care to be taken when using a title, logo, set or music associated with a programme broadcast on that medium, should replace present TV rule 2.2.2 (d), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why.

<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Christian concern for our nation/ Christian legal centre; Global Radio; Mobile Entertainment Forum; UTV Radio</p> <p>An individual An organisation</p>	<p><i>Christian concern for our nation/ Christian legal centre Mobile Entertainment Forum An individual An organisation</i></p> <p>All the above agreed with the proposals identified in Question 3</p> <p><i>Summaries of significant points:</i></p> <p>1. <i>UTV Radio:</i> Agreed with proposed rules provided that BCAP drafts guidance to support 2.1 and 2.3, to acknowledge radio's differences from television and take into account the characteristics of radio, particularly speech radio.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. BCAP is not persuaded that the ASA adjudication cited failed to take into account the characteristics of speech radio.</p> <p>BCAP will consider developing supporting guidance to address in the characteristics of</p>
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	<p>Pointed to a recent ASA adjudication as an illustration of where the recognition rules fail to take into account the characteristics of speech radio.</p> <p>2. <i>Global Radio:</i> Suggested that, as the rules could go further than present radio rules, it would be helpful to have supporting guidance to clarify provision for presenter-read ads and sponsored programmes on speech radio stations.</p>	<p>speech radio in due course.</p> <p>2. BCAP does not consider that the rules go further than the present Radio Code. The rules merely support the present Radio rule that advertising must be clearly distinguishable from programming.</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>DCSF; Global Radio; Square1; Which?</p> <p>An individual</p>	<p><i>Summaries of significant points:</i></p> <p>1. <i>DCSF:</i> Proposed there should be specific provision to ensure separation of advertising within children's editorial content</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. BCAP's Recognition of Advertising rules apply no matter the type or time of programme. The ASA would enforce those rules rigorously no matter the age profile of the programme's audience.</p> <p>The Code includes many rules that protect children who BCAP acknowledges can be more credulous and therefore vulnerable to certain advertising techniques.</p> <p>Rules 32.8 – 32.11 "Children's merchandise, endorsements and appearances by persons from children's programmes" provide additional</p>

	<p>2. <i>An individual:</i> Expressed concern that Ofcom research showing audiences' ability to differentiate between advertising and editorial is due to the present rules and that the proposals could decrease this ability.</p> <p>Also concerned about wording of the rule giving advertisers the opportunity to intentionally flout the rule and claim in retrospect that it was obviously an advertisement.</p> <p>3. <i>Square1:</i></p>	<p>protection to prevent advertisers from abusing children's relationship with programmes directly targeted at them.</p> <p>For clarity, BCAP has included additional text in the 'Principle' paragraph at the top of this section referring to the Children section:</p> <p><i>"Other Sections of the Code contain product-specific or audience-specific rules that are intended to protect consumers from misleading marketing communications. For example, Section 5: Children contains rules that apply, as well as the general rules, to advertisements that fall under that Section."</i></p> <p>2. BCAP considers that within the current media landscape, consumers are likely to become increasingly media literate and the proposed change to the rules reflects this.</p> <p>The ASA would consider and potentially investigate complaints about potential breaches on a case-by-case basis. Importantly, the ASA's interpretation of the Code is final.</p> <p>3. The rules protect the viewer by pointing out to the</p>
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	<p>Agreed that advertising and editorial content should be easily distinguishable. Given that research shows that audiences can instinctively differentiate between content and advertising, is it necessary to point this out to the viewer?</p> <p>4. <i>Which?:</i> ii) Considered the proposed wording "needs special care" to be vague and too subjective</p>	<p>broadcaster and advertiser necessary limitations that are intended to prevent viewers from being misled or otherwise unfairly treated. The rules properly illuminate techniques that could – depending on the circumstances - confuse viewers and listeners; they urge caution in using those techniques but, as a bottom line, require the message to be quickly recognised as an advertisement.</p> <p>4. BCAP considers the proposed wording permits advertisers to use these creative techniques responsibly in a way that should not mislead the consumer but ultimately the message must be quickly recognised as an advertisement.</p>
<p>Question 4: Given BCAP's policy consideration, do you agree that rule 2.2, which requires special care to be used in ads that use an expression or sound effect associated with news bulletins or public service announcements, should replace present TV rule 2.1.2 (a), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why.</p>		
<i>Responses received in favour of BCAP's proposal from:</i>	<p><i>Summaries of significant points:</i></p> <p>No significant points raised</p>	<i>BCAP's evaluation of those points and action points:</i>
<i>Responses received against BCAP's proposal:</i>	<p><i>Summaries of significant points:</i></p> <p><i>An individual</i> Disagreed with this proposal</p>	<i>BCAP's evaluation of those points and action points:</i>

<p>Christian concern for our nation/ Christian legal centre</p> <p>An individual</p>	<p><i>Significant points raised:</i></p> <p>1. <i>Christian concern for our nation/ Christian legal centre:</i> Said the proposed rule is much weaker than rule 2.1.2 (a). It is important to retain this rule to avoid confusion between news content and commercial advertisements.</p>	<p>1. BCAP considers that the proposed wording is proportionate as it permits advertisers to use 'news flash' type treatments where it is clear that the content is an advertisement but would prevent reckless use of such treatments which could mislead or harm audiences.</p> <p>The ASA would consider and potentially investigate complaints about potential breaches on a case-by-case basis.</p>
<p>Question 5:</p> <p>i) Given BCAP's policy consideration, do you agree that present TV rule 2.2.1, which requires Broadcasters to retain editorial independence and responsibility for the content and scheduling of programmes, should not be included in the proposed BCAP Code? If your answer is no, please explain why.</p> <p>ii) Given BCAP's policy consideration, do you agree that present TV rule 2.2.2 (a), which prevents advertisements from referring to the use or appearance of any product or service in any programme, should not be included in the proposed BCAP Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Square1</p>	<p><i>Summaries of significant points:</i></p> <p>Square1 An organisation: Both respondents agree</p>	<p><i>BCAP's evaluation of those points and action points:</i></p>

An organisation		
<p><i>Responses received against BCAP's proposal:</i></p> <p>Christian concern for our nation/ Christian legal centre</p> <p>An organisation</p>	<p><i>Summaries of significant points:</i></p> <p>1. <i>Christian concern for our nation/ Christian legal centre:</i></p> <p>i) Said rule 2.2.1 should be modified rather than removed.</p> <p>ii) Said this rule should be retained to ensure that there is a clear distinction between programmes and commercial advertising.</p> <p>2. <i>An organisation:</i> Expressed concern that statements such as “as seen on X Broadcaster” could be seen as potentially compromising editorial values.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1.</p> <p>i) BCAP considers it is inappropriate to include a rule about editorial content in the Advertising Codes, as this falls within the remit of Ofcom's Broadcasting Code.</p> <p>ii) BCAP considers that the absence of this rule in Radio and non-broadcast has not been detrimental to consumers and is unlikely to be so in TV. Any attempt to distort editorial content for commercial purposes would be covered by Ofcom's broadcasting Code</p> <p>2. See 1ii) above</p>
<p>Question 6:</p> <p>i) Given BCAP's policy consideration, do you agree that radio rule 18, section 2, that prevents station presenters from making personal testimonials within advertisements on stations on which they appear,</p>		

<p>should not be included in the proposed Code? If your answer is no, please explain why.</p> <p>ii) Given BCAP's policy consideration, do you agree that radio station presenters who do not currently and regularly read the news should be exempted from the rule that restricts presenters from featuring in radio advertisements that promote a product or service that could be seen to compromise the impartiality of their programming role? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>An individual</p>	<p><i>Summaries of significant points:</i></p> <p>1. <i>An individual:</i> Agreed with proposals but unsure how 2.5 would be interpreted and regulated</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. The ASA would consider and potentially investigate complaints about potential breaches on a case-by-case basis.</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>Christian concern for our nation/ Christian legal centre Sainsbury's supermarkets STV</p> <p>An individual</p>	<p><i>Summaries of significant points:</i></p> <p>1. <i>Christian concern for our nation/ Christian legal centre:</i> i) Said it is important to maintain the rule that station presenters should not make personal testimonials with advertisements on stations on which they appear.</p> <p>ii) Suggested that rule 2.4 should be applied to TV and Radio</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. i) BCAP considers that maintaining this rule would be disproportionate. The proposed rules in this section prevent audiences from being confused or misled and additionally, proposed rule 3.44 prevents testimonials from being misleading.</p> <p>ii) BCAP considers, in the absence of any known problems with the present radio rule, strengthening the radio restriction to bring it into line with the television rule is not merited.</p>

	<p>2. <i>Sainsbury's supermarket; STV; An individual:</i> The same principle should apply to both media.</p> <p>Radio presenters have equal authority and impact as TV presenters due to the nature of the medium. Therefore, consistency should be maintained across all broadcasting media.</p> <p>3. <i>An individual:</i> Suggested that rules 2.4 and 2.5 should include a phrase such as "or within the last year" after the words "currently and regularly". A regular newsreader's reputation for impartiality remains with them for some time after they cease the activity.</p>	<p>2. BCAP proposes to maintain the present, stricter, television restriction because it considers the potential to undermine the value that both the [Communications] Act and the public place on broadcast news services is greater because of the audio-visual aspect of TV.</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 therefore considers that the proposed distinct rules for TV and Radio are proportionate.</p> <p>3. BCAP is concerned not to undermine the value that both the Act and the public place on broadcast news services. It therefore proposes to prevent the use of radio and TV newsreaders in advertisements for products that may be seen compromise their <i>current</i> programming role. That goes along way to ensuring that the viewer receives the news from what he or she considers being an impartial source, as befits the Communications Act. If the individual no longer has a news reading role, they have no 'newsreading role' to compromise.</p>
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Question 7:

- i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules on the Recognition of Advertising are necessary and easily understandable? If your answer is no, please explain why.
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Advertising rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here or in Section 32 on Scheduling and that should be retained or otherwise be given dedicated consideration?
- iii) Do you have other comments on this section?

<p><i>Responses received from:</i></p> <p>Advertising Association; AIME; ASDA; Charity Law Association; Christian concern for our nation/ Christian legal centre; E.ON Energy Limited; RadioCentre; An individual</p> <p>Three organisations</p>	<p><i>Advertising Association</i> <i>AIME</i> <i>ASDA</i> <i>Charity Law Association</i> <i>E.ON Energy Limited</i> <i>An individual</i> <i>Two organisations</i></p> <p>All the above agree that the proposed rules in this section are necessary and easily understandable</p> <p>None of the above identify any changes that should be given dedicated consideration or raise further comments</p> <p><i>Summaries of significant points:</i></p> <p>1. <i>Christian concern for our nation/</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. BCAP considers that the proposed rules are</p>
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	<p><i>Christian legal centre:</i> Said that they are necessary but not as easily understood or as robust as the present rules.</p> <p>2. <i>RadioCentre:</i> Expressed concern that, as presently drafted, and without detailed guidance some rules (in particular rules 2.1 and 2.3) could be interpreted to the detriment of radio advertisements or radio Sponsorship & Promotions treatments.</p> <p>The specific nature of radio, where output is characterised as a continuous stream of live output, rather than clearly segmented programmes, means that editorial and advertising are naturally less distinct than on TV.</p> <p>These concerns are also prompted by a recent ASA ruling against London's LBC 97.3 which the respondent contends failed to take account of the characteristics of radio as outlined above.</p> <p>Recommend that BCAP publishes clear radio-specific guidance to accompany these new rules.</p> <p>3. <i>An organisation:</i> Agreed that rules are necessary but felt they are also long and confusing.</p>	<p>proportionate and clear</p> <p>2. See above.</p> <p>BCAP will consider developing supporting guidance to address in the characteristics of speech radio in due course.</p> <p>3. BCAP considers that the proposed rules are proportionate, clear and as succinct as possible.</p>
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