

SECTION 6: PRIVACY

Question 15:

- i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Privacy section, 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 Privacy rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?
- iii) Do you have other comments on this section?

Responses received from:

Advertising Association;
Asda;
Association for Interactive Media and Entertainment;
British Gas;
Charity Law Association;
E.ON Energy Ltd;
Institute of Practitioners in Advertising;
Institute of Sales Promotion;

Summaries of significant points:

These organisations, and an individual, agreed the rules in the proposed Privacy section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document:

Advertising Association;
Asda;
Association for Interactive Media and Entertainment;
E.ON Energy Ltd;
Institute of Practitioners in Advertising;
Institute of Sales Promotion;

CAP's evaluation of those points and action points:

<p>RWE npower; 3 organisations requesting confidentiality An individual</p>	<p>RWE npower; 3 organisations requesting confidentiality</p> <p><i>1. Charity Law Association said:</i> The section should deal with the use of photographs taken of members of the public without their knowledge and/or permission in compliance with recent authority in the European Court of Human Rights of <i>Reklos and Davourlis v Greece</i>. Any such use would constitute an infringement of such a member of the public's privacy, in particular, a photograph that included a child.</p>	<p>1. CAP understands that a marketer that features a person in a marketing communication without obtaining his or her consent is not, in and of itself, a breach of that person's rights in the UK.</p> <p>The Privacy section prevents the use of a person's image in marketing communications if that person is featured in an adverse or offensive way and if his or her permission has not first been obtained. The rules also urge marketers to obtain permission before, for example, referring to or portraying a member of the public or his or her identifiable possession in a marketing communication.</p> <p>By urging marketers to obtain such permission, the rules are not inconsistent with the law: in fact, the rules help marketers to avoid infringing people's privacy. CAP understands that, if a marketer has the permission of the person to be featured in a marketing communication, it would be unlikely that that person would have successful cause for legal action unless he or she were featured in a manner different to that agreed.</p> <p>The ASA may, under CAP's rules, consider the use of an image in a marketing communication to</p>
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