

Evaluation of Responses: Proposals for guidance on the use of “Up to” Speed claims in Broadband advertising

Guidance Part 1 – Speed claims

OPTION A: Speed claims based on the theoretical maximum speed are likely to be acceptable provided that they are qualified appropriately.

QUESTION 1: Do respondents agree with CAP and BCAP’s view that guidance should recommend a change to advertising practice? If not, please explain why?

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
1.1.1	Virgin Media Which?	<p>The present policy of permitting theoretical maximum speeds is problematic because:</p> <ul style="list-style-type: none"> i. Such speeds are misleading and an ineffective way of informing consumers of the likely speed range they will receive; and ii. Even if the speeds were adjusted for measured performance, taking the absolute maximum speed achieved, such a measure is still likely to mislead consumers about the actual speed they will receive. 	<p>Broadband is a complex product, subject to a variety of technical factors, which cause actual speeds for individual users to vary, sometimes quite significantly. These complexities cannot easily be communicated to consumers if only one figure is used. CAP and BCAP consider that consumer understanding can only be facilitated by the provision of more information where appropriate.</p> <p>The present policy allows the use of speed claims based on the theoretical maximum speed that a given service could provide. CAP and BCAP consider that such claims are likely to have a significant impact on consumer expectations of the product. However, in practice no user will ever achieve the theoretical maximum speed. Even though the present ASA policy requires the qualifier “up to” and, for ADSL2+ services, a statement that actual performance will vary significantly with distance from the exchange, permitting such a prominent but inherently misleading claim undoubtedly exaggerates the speed of service that consumers will receive.</p> <p>CAP and BCAP consider that the present approach is at odds with our general objectives and is likely to lead to consumers being misled into making transactional decisions that they would not have otherwise taken.</p>
1.1.2	BSkyB	Option A allows broadband suppliers to advertise theoretical maximum speeds that exaggerate the actual capability or performance of a service. For example, some broadband suppliers offer “up to 24Mb” ADSL2+ services; notwithstanding the fact that the impact of IP headers means that no consumer can receive that theoretical maximum speed.	
1.1.3	BSkyB	Option A allows advertisers to refer to a maximum speed without being required to demonstrate that such speed can be achieved	The ASA adopted a pragmatic position when it first considered the matter. Broadband was a new, developing technology and the services

		in practice. This practice is inconsistent with established advertising principles on claims that cannot be substantiated.	<p>then available did not feature speeds that varied so significantly between different users. The roll out of superfast ADSL2+ services, offering headline speeds of 20Mbit/s and 24Mbit/s has resulted in a significant numbers of consumers being unable to achieve speeds anywhere near the advertised headline due to the effects of signal attenuation. Furthermore, the broadband market has diversified with developments in cable, mobile and other high speed technologies, which suffer from different types of limitation to the speeds users achieve.</p> <p>For the reasons outlined in the evaluation of points 1.1.1 and 1.1.2, CAP and BCAP now agree that the present position is no longer tenable.</p>
1.1.4	BSkyB	"Up to" qualifications indicate that consumers may not receive the maximum advertised speed, but they do not make clear that the maximum speed may vary significantly.	CAP and BCAP agree that an "up to" disclaimer, in and of itself, is inadequate to communicate the degree of variation in the speed of service available to consumers. They consider that preceding a theoretical maximum speed claim with "up to" contradicts and does not qualify the claim, as no consumer is able to achieve the stated maximum.
1.1.5	Ofcom	Ofcom sent a summary of consumer research, which suggested that consumers favoured a change in the current advertising practice. Many respondents expressed considerable scepticism about the use in advertising of "up to" speeds.	CAP and BCAP note the research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.
1.1.6	Virgin Media	<p>Virgin Media provided a summary of research they commissioned, which showed that:</p> <ul style="list-style-type: none"> - 91% of respondents agreed that broadband speeds are slower than advertised; - 67% were frustrated because broadband speeds were slower than advertised; - 76% disagreed with the statement that advertised connection speeds tend to be accurate; and - 40% of respondents did not know what to expect from a service advertised as "up to 20Mb". 	CAP and BCAP note the research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.
1.1.7	Virgin Media	Virgin Media provided details of their campaign, Stop the Broadband Con, which included a petition that was signed by over 15,000 people.	CAP and BCAP note the research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.

1.1.8	Ofcom	<p>Unless consumers are clearly informed about such disparities, there is a risk that they will suffer disappointment and detriment as a result of receiving lower speeds than they are led to expect through advertising.</p> <p>Ofcom sent a summary of research, which indicated that more than one in four broadband consumers received slower speeds than they expected when they first got the service.</p>	CAP and BCAP note the research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.
1.1.9	Which?	Which? sent a summary of their ISP Survey from September 2010, which showed 26% of respondents experienced very slow speeds. This was the single most quoted problem among a range of broadband problems mentioned by survey respondents.	
1.1.10	Which?	Which? sent a summary of their Conversation Pieces, which suggested that many consumers are unhappy about their speeds and feel that the advertised speeds show no relation to what they can get in reality.	
1.1.11	Ofcom Which?	The broadband market has evolved considerably since the current approach was adopted, and, in combination, these changes mean that new guidance is needed in order to prevent consumers being misled. Technological developments have raised consumers' expectations about speeds and these have been reinforced by internet service provider's (ISP) advertising of ever faster headline speeds.	Developments in the market are a key factor behind CAP and BCAP's decision to launch the Review of the ASA's policy in this area.
1.1.12	Ofcom	<p>Consumers are able to choose between broadband delivered by ADSL, VDSL, cable and cellular networks, which are advertised at different speeds, and vary hugely in the actual speeds delivered. Advertising on the basis of theoretical maximum speeds has the potential both to mislead consumers about the capabilities of current generation services, and also the respective capabilities of current and next generation broadband services.</p> <ul style="list-style-type: none"> i. Consumers are being offered services with faster headline speeds than the package they currently receive, for example, considering whether to upgrade from ADSL to ADSL2+ services. For consumers with a line length of more than 3km, there is little difference between ADSL and ADSL2+ but some ISPs charge more for higher speeds as part of premium packages. ii. The average speed for consumers on "up to" 20/24Mbit/s 	CAP and BCAP note the recent development of the mobile and VDSL platforms and that they were not as prominent in the market when the ASA originally considered the speeds issue. CAP and BCAP do not consider that the present policy communicates the characteristics of different types of service effectively in order to give consumers the information they require to make informed choices.

		<p>ADSL2+ services was 6.2Mbit/s whereas the average speed for consumers on up to 20Mbit/s cable services was 18Mbit/s. Moreover, research showed that, on average, consumers with an “up to” 10Mbit/s cable package received significantly higher average speeds (9.6Mbit/s) than the average for “up to” 20/24 Mbit/s ADSL2+ services (6.2Mbit/s).</p> <p>iii. Mobile broadband services are also being used by a significant number of consumers either in addition to, or instead of, fixed broadband. While mobile broadband is not commonly advertised on the basis of an “up to” speed, as noted in the Consultation Document, mobile broadband speeds are typically much lower than theoretical speeds.</p> <p>iv. The increasingly wider availability of fibre-to-the-cabinet VDSL services leads to a growing risk that consumers will make inappropriate and detrimental choices between these newer services and current generation ADSL services. BT’s Infinity VDSL service has a headline speed of “up to” 40Mbit/s and has an average speed of 31.1Mbit/s, nearly five times as great as the average speed for ADSL2+ services. The distribution of speeds achieved is also very different from that delivered to ADSL customers, with three-quarters of customers receiving average speeds of above 30Mbit/s.</p>	
1.1.13	Ofcom	Ofcom sent a summary of qualitative research they had carried out which indicated that consumers would welcome more information on broadband speeds in order to allow them to make effective and informed choices between different packages.	CAP and BCAP note the research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.
1.1.14	Virgin Media	The Ofcom Voluntary Code of Practice is useful in providing consumers with additional information at the point of sale, but the key driver of broadband purchasing decisions is the advertising and the initial message communicated to consumers.	<p>As the Consultation Document made clear, advertising plays an important part in the transactional process. Although different media are constrained to a greater or lesser extent by time and space and more information may be provided at different stages in the transactional process, CAP and BCAP acknowledge that the present policy is problematic.</p> <p>Evidence of consumer concern underlines the need for the guidance to recommend a change to advertising practice. In particular, as noted in the evaluation of points 1.1.1 and 1.1.2, advertised speed claims are important indicators of the characteristics of a broadband service. CAP and BCAP therefore consider that such claims should be presented in a manner that appropriately sets consumer expectations. They do not consider that the present ASA policy achieves this objective.</p>

1.1.15	Ofcom	<p>The ASA stated in a 2007 adjudication that “speeds of 8Mbps would allow users to take advantage of the vast majority of speed intensive services and functions, such as video streaming and online gaming.” Even if this were once true, it no longer holds as many households are using a broader range of internet-connected devices such as televisions, game consoles and smartphones, as well as multiple computers.</p> <p>Ofcom research shows that:</p> <ul style="list-style-type: none"> - 67% of adults access the internet through a computer at home; - 28% of adults said they use a mobile phone to access; - 10% said they use a games console; and - 6% a portable media device. 	<p>As noted above, CAP and BCAP consider that marketing communications should include different levels of information to properly manage consumer expectations of the likely speeds they will receive at the advertising stage. The ASA Council will assess, on a case-by-case basis, whether the information presented in a marketing communication has adequately set the consumer’s expectation of the likely performance of a service. CAP and BCAP acknowledge that consumer expectations and the minimum speeds required to undertake popular online activities have increased over time; the Guidance will allow for case-by-case consideration.</p>
1.1.16	Ofcom	<p>Constraints on advertising should not be based on an arbitrary or point-in-time view of the bandwidth needs of consumers.</p> <p>The history of broadband development in the UK shows that as consumers take up faster broadband services, websites and other service providers begin offering more bandwidth-hungry services. For example, when higher-speed broadband services became more common, website developers began using Flash and similar technologies. As higher speeds became available, it became viable to develop and offer more bandwidth-hungry services.</p> <p>This dynamic relationship between broadband networks and services means that it is difficult to foresee the developments faster broadband services make possible or anticipate their bandwidth needs. Consumers misled by advertising may not take up faster networks which in turn constrains the growth of the new broadband applications which increase the need for faster networks.</p>	<p>CAP and BCAP acknowledge that consumer expectations and the minimum speeds required to undertake popular online activities have increased over time; the Guidance will allow for case-by-case consideration.</p> <p>CAP and BCAP are mindful of the need to create a framework that does not impact on a particular type of service unfairly. They also recognise the need for advertising to perform the function of providing consumers with the information they require to make informed choices. However, the guidance is not intended to encourage certain economic outcomes for the development of broadband markets.</p>

1.1.17	Ofcom	There is the potential for the rollout and take-up of superfast broadband services to be constrained by misleading advertising, thereby causing consumer detriment and slowing down investment in faster broadband networks. This would impact on Government initiatives for the UK to have the best superfast broadband network in Europe by 2015, and limit the effectiveness of the £530 million it intends to spend.	
1.1.18	Virgin Media	Virgin Media said their research showed the impact current broadband advertising practices had on consumers' willingness to upgrade to higher speed services. They believed that it acted as a barrier to investment in next generation networks.	
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
1.2.1	An Organisation Requesting Confidentiality	The current rules are fair, simple and transparent. They are easy to understand and communicate. They cannot be manipulated and apply to every customers' circumstances. They also facilitate comparison between products. No other option fulfils all these criteria.	CAP and BCAP note these general points and consider that they are addressed in the rest of this section and the wider evaluation.
1.2.2	An Organisation Requesting Confidentiality	<p>Actual broadband speeds depend on the individual user's circumstances. There are factors that an ISP can control, such as line length, the technology used and levels of investment in network capacity and others that it cannot, such as the time of day, type of download, computer set up, internal wiring, and the type and number of devices used.</p> <p>As the Consultation Document recognised, it is impossible to advertise one exact figure that all customers can expect to receive. The present policy has evolved to address this problem and, although it is not perfect, none of the alternative options improve upon it.</p>	<p>CAP and BCAP note actual broadband speeds are highly dependent on the individual user's circumstances; this is especially the case for ADSL and mobile services. They do not agree, however, that this makes it impossible to give consumers a reasonable indication of what speeds they are likely to attain. CAP and BCAP consider that consumer understanding of the complex nature of such services can only be facilitated by the provision of appropriate information to manage their expectations.</p> <p>CAP and BCAP also note the point about the evolution of the present policy, but disagree that it cannot be improved upon. The present policy recognises that there is a need to provide a range of information. However, for the reasons outlined in the section 1.1 above, CAP and BCAP do not consider that those requirements are sufficient.</p>
1.2.3	Telefonica O2	Broadband is a sophisticated purchase, which consumers do not carry out on impulse. It is also a complex service that cannot be easily explained to a broad audience because each individual consumer's experience will be different. The present policy is the only viable way to communicate speed to a range of consumers.	CAP and BCAP acknowledge that there are factors beyond the control of the ISP, but would point out that, for this reason, it does not propose to include them within the scope of the guidance.

1.2.4	An Organisation Requesting Confidentiality An Individual	Over time the average consumer has come to understand the current terminology with regard to “up to” broadband speeds. The majority understand that the speeds they actually attain may not be the top speed advertised. The current approach also makes that clear with the disclaimer “Top speeds vary dependent on distance from the exchange”.	CAP and BCAP acknowledge that Ofcom research, for instance, has found that there is a reasonable level of understanding in relation to the limitations to which broadband speeds are subject. However, the understanding is by no means universal and must be considered against the various pieces of consumer research that show concern about how speeds are advertised. Furthermore, with technologies such as ADSL2+, there are a significant number of consumers whose line length renders them prone to receiving speeds that are very significantly lower than an advertised theoretical maximum. As stated in section 1.1 above, CAP and BCAP also consider that the present requirement for a disclaimer does not do enough to ensure that consumers understand the potential for variations in performance, particularly between different types of service.
1.2.5	Telefonica O2	The Ofcom Voluntary Code ensures consumers can only make a purchase once they have been advised of their likely speeds. This is the only means of providing all consumers with reasonably accurate indication of their likely speeds.	[See the evaluation of point 1.1.14 above]
1.2.6	An Organisation Requesting Confidentiality	Of the approximately 30 million UK broadband users, the 200 complaints a year to the ASA represent 0.007% of the entire customer base. We invite CAP and BCAP to consider whether the 200 dissatisfied customers supports the allegation that the current rules mislead customers into buying broadband.	[See the evaluation of point 1.2.4 above]
1.2.7	An Organisation Requesting Confidentiality	<p>CAP and BCAP need to consider whether Option A, in conjunction with the three qualifiers proposed, will result in advertising that is likely to mislead consumers.</p> <p>They would read the advertising and know:</p> <ul style="list-style-type: none"> i. What range of speeds were possible; ii. What factors affect speed and so gauge an understanding of why broadband speeds vary; and iii. That they should contact the ISP to find out what speed on that range they are likely to receive before they commit to purchase. <p>With this information, we do not believe that the average consumer would be misled into making a transactional decision they would not have otherwise made.</p>	CAP and BCAP acknowledge that all the proposals for the presentation of speed claims must be considered in the context of a range of information that will be recommended by the guidance. The issue of what qualifying information should be included is considered in greater detail in the evaluation of points relating to sections 8, 9 and 10 below.
1.2.8	Everything Everywhere	The ability to communicate a headline “up to” speed must be maintained. Consumers will be able to easily compare the	CAP and BCAP do not propose to prohibit the use of headline or “up to” speed claims. The concern is over whether the use of theoretical

		headline speeds, and therefore relative investment of each competitor. Dynamic innovation and investment in new technology will therefore continue to be encouraged.	<p>maximum speeds gives consumers a reasonable expectation of how a service is likely to perform for them in comparison with another, particularly given that it is likely that most consumers will not achieve even close to the figure given. For example, according to Ofcom research, the average speed of an ADSL2+ service, advertised at 20Mbit/s or 24Mbit/s, is lower than that of a cable service advertised at 10Mbit/s. CAP and BCAP consider there is a very significant potential for consumers to make transactional decisions that they would not otherwise have made on the basis of such theoretical maximum speed claims.</p> <p>As noted in the evaluation of points 1.1.16-1.1.18 above, CAP and BCAP do not consider that it is an objective of the Review to secure a particular economic outcome for the evolution of the broadband market.</p>
1.2.9	An Organisation Requesting Confidentiality	The proposed options for change will create a system which places national providers at a disadvantage when compared to those providers of services primarily to urban areas where customers tend to live much closer to an exchange.	<p>CAP and BCAP note the concerns over gathering substantiation for networks that have a larger rural customer base where line lengths tend to be longer. These have been addressed in the proposals for substantiation requirements. Specifically, CAP and BCAP acknowledge that methods of normalisation could be employed to account for customer bases with a significant proportion of longer rural lines.</p> <p>[See the evaluation of points relating to section 11 below]</p>
1.2.10	An Organisation Requesting Confidentiality	There is a significant risk that requiring an “average speed” or similar in advertisements will discourage service providers from offering services to locations further away from telephone exchanges. This will reduce competition and investment in the areas where it is needed most, if service providers believe that their average speed rating will be reduced by offering the services in rural areas.	<p>Notwithstanding the evaluation of point 1.2.9 above, CAP and BCAP do not consider that issues of investment and the development of the broadband network in the future are relevant to the Review.</p> <p>[See also the evaluation of points 1.1.16-1.1.18 above]</p>
1.2.11	An Organisation Requesting Confidentiality	Changes to the current regime, as set out within the Consultation Document, will lead to costs that are prohibitive and unnecessary. Such costs are likely to lead to increased costs for customers. Ofcom carried out its research into broadband speeds for only the eight largest providers due to cost restraints and the significant expense of a wider study.	CAP and BCAP consider that this is beyond the scope of the Review’s consideration. The guidance will impose no restrictions that will force providers to halt the sale of broadband services or increase their price. ISPs already have access to the technology necessary to carry out speed testing of their services. Indeed they are already required to do so by the present ASA policy. Furthermore, the substantiation section below takes a principle-based approach to collecting substantiation in order to avoid being overly prescriptive in mandating a particular methodology.

			[See also the evaluation of points 12.34 and 12.35 below]
1.2.12	An Organisation Requesting Confidentiality	<p>The following factors have no relevance to advertising broadband speeds and should not be part of a rationale for a change in the current policy:</p> <ul style="list-style-type: none"> i. The disparity between theoretical maximum and access line speed and throughput – there are too many causal factors beyond the ISPs control; ii. The increase in bandwidth hungry applications and consumer behaviour; iii. The increase in households using a single broadband connection to operate multiple devices; and iv. That people located more than a certain distance from an exchange are going to receive slower speeds than those who live very close to an exchange. 	<p>As noted in the evaluation of points 1.2.2 and 1.2.3 above, factors that are beyond ISPs control are beyond the scope of the guidance. However, CAP and BCAP do not agree with point (i) as there are a variety of factors that are either inherent to the technology or under the ISP's control, for instance, the impact of signal attenuation or of contention ratios. Their impact is significant and is a cause of significant consumer detriment in some cases. The fundamental question for the Review of advertising policy is how the advertising element of the transactional process should respond.</p> <p>With regard to points (ii) and (iii), CAP and BCAP consider that the behaviour of consumers using broadband services is central to the Review's understanding of the likely expectations of consumers in relation to a broadband service and its advertising.</p> <p>With regard to point (iv), CAP and BCAP consider that the impact of signal attenuation is one of the principal reasons for the need to recommend a change in advertising policy. For the reasons outlined in section 1.1 above, there is a need to ensure consumers are provided with enough information to make informed choices.</p>
1.2.13	An Organisation Requesting Confidentiality	<p>Consumers are increasingly using mobile devices to access the internet. It is important that any method of stating broadband speeds should apply equally to mobiles. Using different methods is likely to confuse the consumer. Consumers understand that the speed available on their mobile varies depending on the signal strength, which in turn depends on the distance from the nearest mast. Thus, there is no typical speed, which can be quoted for mobiles other than the theoretical maximum speed.</p>	<p>CAP and BCAP note the respondent's concern. The issue of how mobile services are treated by the guidance is discussed in greater detail in section 12 below.</p>

1.2.14	Vodafone	The Mobile Broadband Group agreed principles for the marketing of mobile broadband services, and the lack of mobile operator advertising focused on speed, militate against the need for a change to advertising practice in relation mobile services.	
<p>OPTION B: If a speed is advertised, that speed must be available to at least 10% of users.</p> <p>QUESTION 2: Do you consider that Option B meets CAP and BCAP's policy objectives? Please give reasons for your answer.</p>			
	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
2.1.1	BSkyB An Organisation Requesting Confidentiality	Availability to at least 10% of users is consistent with Government policy on pricing as set out in the BIS Pricing Practices Guidance.	CAP and BCAP consider that, given the complexity of the issue and the need to provide various pieces of information to consumers, it is important for the guidance to adopt a recognised availability benchmark for maximum speed claims.
2.1.2	BSkyB	Option B is consistent with established ASA policy and CAP's existing guidance; including CAP's published Help Note Price Claims in Telecommunications Advertising. 10% availability of the maximum benefit attributed to an "up to" or "from" price claim is likely to be considered a reasonable proportion that avoids exaggeration.	CAP and BCAP acknowledge the respondent's point but are concerned that Option B does not provide a reasonable indication of the level of variation of the speed of some services.
2.1.3	BSkyB	We are not aware of ASA complaints or other data that call the effectiveness of Option B into question. Also, given the lack of complaints to the ASA concerning the use of "up to" for broadband speed claims, and the high consumer awareness of the factors affecting DSL broadband speeds noted in the Consultation Document, there is no substantive evidence to show that consumers require any higher protection in this area.	Although Option B would bring the approach to maximum speed claims into line with established advertising policy, CAP and BCAP are concerned that it would not in itself provide the necessary information to set consumers' expectations of the level of variation in speeds that can affect some services. Although the consultation quoted research that found 75% of users were aware of the impact of signal attenuation to some degree, the same research found that 64% of users were unaware of the speed they received. Furthermore, Ofcom research has consistently shown that there is an enduring but significant minority of

			<p>consumers, around one in five, who are unhappy with the speed of their broadband service.</p> <p>CAP and BCAP therefore consider that the potential for consumers to be misled by current advertising practice warrants a change to the way speed of service is communicated in advertising. They consider that the 10% criterion should be applied to maximum speed claims, but that further qualifying information may be required. The latter issue is addressed in greater detail below.</p>
2.1.4	BSkyB	<p>Option B is sufficient to meet CAP and BCAP's policy objectives. Nonetheless, we recommend the following improvement to be consistent with our comments for Option A above:</p> <p>"Unless the advertisement says otherwise, an advertised speed should be available to a reasonable proportion of consumers. 10% of users is likely to be considered a reasonable proportion that avoids exaggeration."</p>	CAP and BCAP agree that the guidance should provide clarification on how the guidance should relate to different types of speed claim.
2.1.5	An Organisation Requesting Confidentiality	Option B is the best alternative to Option A. It will result in one number being used to describe speed in contrast to Options C1 and C2 and 10% is reasonably close to the headline speed. Under Option B, speeds will still have relevance to the majority of consumers and ISPs will not be forced to grossly undersell the capability of their service. The use of one number will also ensure that consumers are not confused.	For the reasons outlined in the evaluation of points made on Option A and the evaluation of 2.1.3 above, CAP and BCAP disagree that one number is likely to be adequate to communicate speed of service to consumers in all circumstances. A maximum speed claim based on 10% availability, quoted in isolation, could mislead consumers in certain circumstances. For instance, on many ADSL2+ services, a significant proportion of users will achieve speeds of under half of the quoted 10% speed. CAP and BCAP consider that the circumstances of different platforms and individual services on the same platform may require the provision of different levels of information.
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
2.2.1	An Organisation Requesting Confidentiality Three Individuals	The proposal runs a higher risk of misleading consumers than advertising theoretical maximum speeds because 90% of customers will still be unable to obtain the advertised speed. Furthermore, customers a certain distance from the exchange will receive the advertised speed, whilst 100% of customers living further away will not.	No approach can be completely accurate for all consumers due to the degree of variation in the speeds available to different individuals. However, CAP and BCAP do not agree that the use of the 10% availability criterion will result in consumers being less well informed than the current policy which permits claims of a maximum benefit that no consumer can actually achieve. CAP and BCAP note the respondents' concern over how actual speeds, for ADSL services, are related to a consumer's distance from their local telephone exchange. They do not consider, however, that it is a valid reason to maintain the

			<p>present policy. The proposals for the presentation of speed claims must be considered in the context of a variety of information recommended by the guidance.</p> <p>[See the evaluation of sections 3, 8 and 9 below]</p>
2.2.2	Ofcom	Option B would continue to allow consumers to think that they are likely to receive the specific headline or average speed and suffer detriment and disappointment when they do not do so.	<p>CAP and BCAP acknowledge that stated maximum speed based on 10% availability suffers from some of the concerns noted under the evaluation of Option A. It does not give consumers an indication of the level of variation that affects certain services. For this reason, they consider that there is a need for further levels of information to reasonably manage consumer expectations.</p> <p>[See the evaluation of section 3 below]</p>
2.2.3	An Organisation Requesting Confidentiality	Advertisements will need to include further explanatory information to explain that the speed is only achieved by 10% of customers. If this is added to other informational requirements, advertisements will become overly complex and potentially confusing to consumers.	CAP and BCAP consider that it is the advertiser's responsibility to ensure that the recommended approach results in clear advertising that is not likely to mislead consumers. However, in line with the approach to pricing, they do not consider that providers should have to explain that a stated maximum speed is based on 10% availability. Nevertheless, CAP and BCAP would reiterate that broadband is a complex product and advertising for it must manage consumer expectations appropriately.
2.2.4	An Organisation Requesting Confidentiality	The 10% availability requirement tends to work with pricing claims as retailers can easily dictate what items are included at that figure and which are not. Such an approach is not easily transferable to the promotion of broadband speeds, due to the lack of control by ISPs.	CAP and BCAP do not agree with such a distinction. The effects of signal attenuation are inherent to the technology and can be meaningfully measured and communicated to the consumer prior to them signing up to the service. ISPs have control over the provision of that information. Similarly, they have the aggregate data to allow them to provide consumers with meaningful information to manage their expectations of the likely performance of their service at the advertising stage of the transactional process.
2.2.5	Ofcom	Although Option B is in line with current practice in relation to pricing, broadband is fundamentally different to products that are subject to those guidelines. All consumers attempting to purchase a product advertised with savings of, for instance "up to 50%" have the same opportunity to purchase the item. However, because broadband speed depends on location, consumers do not have the same opportunity to obtain an advertised broadband speed.	CAP and BCAP note Ofcom's distinction between prices and broadband but would stress that the proposal does not seek to replicate the terms of the BIS Pricing Practices Guidance. The approach seeks merely to use a generally accepted and established benchmark for availability and apply it to meet the Review's policy objectives. CAP and BCAP consider it legitimate for an advertiser to wish to give a 'best case' figure for the performance of their service but would agree that, without other information to contextualise the maximum speed claim, it could mislead.
2.2.6	An Individual	It is likely that many of the existing services meet this	CAP and BCAP acknowledge the respondent's concerns. The section

		requirement, or fall slightly short and could easily adjust their service to meet this requirement, or could meet the requirement simply by adjusting their quoted speeds down by a few Mbit/s. Consequently, there would be no practical change to a situation that you have recognised as falling short of consumer expectations.	of the Consultation Document on Substantiation Requirements was designed to address them and ensure that the basis of any stated speed claims is reasonably representative of actual performance on a particular service. [See also the evaluation of section 11 below]
2.2.7	Ofcom	Ofcom sent a summary of research they had carried out, which showed Option B was regarded by consumers as being little different to present policy.	CAP and BCAP note the research and consider that it supports the proposed action and considerations outlined in the evaluation of point 2.1.3 and subsequently in section 2.
2.2.8	An Organisation Requesting Confidentiality	CAP and BCAP must appreciate that both networks and performance data can be manipulated to produce speeds that appear faster than they are. ISPs can adapt their networks to produce faster speeds at the expense of reliability and functionality, which are other significant factors in user experience. Such speeds could be used to substantiate advertised speed claims but would not reflect the real speeds enjoyed because no ISP would want to provide a service that does not function properly.	CAP and BCAP acknowledge the respondent's concerns. The section of the Consultation Document on Substantiation Requirements was designed to address them and ensure that the basis of any stated speed claims reasonably representative of actual performance on a particular service. [See also the evaluation of section 11 below]
2.2.9	An Organisation Requesting Confidentiality	<p>There are many possible variables in the measurement of what speeds users achieve. Allowing ISPs to pick and choose how they make the calculation is problematic. This is further complicated by the substantiation requirements for normalisation, IP headers, DNS translation and the variety of data transfer used to measure line speed.</p> <p>For example, for a 20Mbit/s service the following speeds could be advertised legitimately based on various calculations¹:</p> <ul style="list-style-type: none"> - 18.4Mbit/s – All lines at max access speed - 19.5Mbit/s – Excluding lines over 5km - 19.8Mbit/s – Excluding customers on a lower tariff - 15Mbit/s – Average of peak and off peak: around 900,000 customers would receive less than this - 17Mbit/s – Weighted average of peak and off peak - approx one million consumers would receive less than this - 20Mbit/s – Speed at 1km from the exchange 	<p>CAP and BCAP acknowledge the respondent's concerns. The section of the Consultation Document on Substantiation Requirements was designed to address them and ensure that the basis of any stated speed claims is reasonably representative of actual performance on a particular service.</p> <p>[See also the evaluation of section 11 below]</p>
2.2.10	An Organisation Requesting Confidentiality	We are concerned that the policy will discriminate against providers with higher rural customer base.	CAP and BCAP note the concerns over gathering substantiation for networks that have a larger rural customer base where line lengths

¹ The respondent used actual line speed testing data to calculate the example figures.

	Confidentiality		<p>tend to be longer. These have been addressed in the proposals for substantiation requirements.</p> <p>[See the evaluation of points relating to section 11 below]</p>
2.2.11	Vodafone	The limitations of mobile providers' control over 'real user' experience, as noted in the Consultation Document, militate against options that make requirements in terms of availability to a percentage of users or 'actual speeds available'. Following Option B would simply not be practical or helpful for consumers, in the mobile environment.	CAP and BCAP note Vodafone's concern. The issue of the applicability of the guidance to mobile services is discussed in greater detail in section 12 below.
<p>OPTION C1: Speed claims based on a theoretical maximum speed are likely to be acceptable provided that they are qualified prominently with a statement of typical performance. The "typical" performance claim must be based on the inter-quartile range of actual speeds received by all subscribers to a service. For example, an advertisement for a service described as 'Up to 20 Meg' might state "Typical Performance: 8-12 Meg".</p> <p>QUESTION 3: Do you consider that Option C1 meets CAP and BCAP's policy objectives? Please give reasons for your answer.</p>			
	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:

3.1.1	Ofcom	<p>Ofcom consumer research indicated a strong preference for typical speed range (TSR) to be given either equal or near equal prominence in the advertising. Consumers stated that placing the TSR in the small print would render it ineffective to all intents and purposes. We therefore recommend that if an “up to” maximum speed is used in advertising, then a TSR must have at least equal prominence.</p>	<p>CAP and BCAP note Ofcom’s research and consider that it supports the view that consumers, in certain circumstances, might require further information to qualify a stated maximum speed claim. However, they are concerned that, although the concept of a typical performance range, such as a TSR, is likely to be acceptable as one form of further qualifying information, the guidance cannot be overly prescriptive to the exclusion of other, similarly acceptable alternatives.</p> <p>CAP and BCAP have acknowledged the complexity of the broadband speeds issue, owing in a large part to the sheer variation in user outcomes across platforms and individual services. They consider that this precludes the adoption of a ‘one size fits all’ approach to the information that should be included in advertising. Moreover, because the EU Directive from which the Consumer Protection Regulations 2008 (CPRs) derive is a maximum harmonisation measure, CAP and BCAP cannot apply a greater or lesser restriction on advertising than is provided for in the CPRs. For these reasons, CAP and BCAP do not consider that the guidance can require the approach laid out in Option C1.</p> <p>In practical terms, CAP and BCAP are concerned that certain services, which do not suffer from high variations in speeds between users, cannot reasonably be required by the guidance to include qualifying information, such as a TSR. For example, data taken from Ofcom’s Broadband Speeds Research shows that a 10Mbit/s cable service would have a typical performance range of 9.6-9.8 Mbit/s. CAP and BCAP consider that minor variations, such as this, would be conveyed by other qualifying information, namely the “up to” qualifier used in conjunction with the maximum speed claim.</p> <p>By contrast, a key concern of stakeholders and consumers has been instances where users are unable to achieve speeds that are anywhere near the stated maximum. The variation for ADSL2+ and mobile services, in particular, is notably significant. If consumers do not understand from a marketing communication that they may not attain certain minimum speeds, which enable access to common online activities such as streaming video content, CAP and BCAP consider that the marketing communication may mislead the average consumer and cause them to take a transactional decision that they might not otherwise have taken. As further information is only required where the average consumer is likely to be misled, CAP and BCAP consider that the use of such strong qualifying information should be commensurate to the potential for the average consumer to be misled.</p>
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3.1.2	Ofcom	<p>Ofcom sent a summary of research they had carried out, which showed that qualifying the theoretical maximum speed with a TSR was viewed positively and was seen by consumers as helping them make a more informed choice of provider on the basis of speed.</p> <p>It was regarded as having at least two positive effects encouraging:</p> <ul style="list-style-type: none"> i. Consumers to exercise more discretion when choosing a provider on the basis of speed; and ii. Providers to improve the actual speeds that are offered to consumers. 	<p>As discussed in section 2 of the evaluation below, CAP and BCAP envisage that this qualification requirement will form one level of the informational requirements recommended by the guidance. For instance, lesser qualifications are likely to be necessary in instances where there are limitations to the speed of services, which although significant, do not have the same extensive impact as the example considered above. For example, where traffic management results in the potential for consumers' speeds to be significantly reduced at certain times.</p> <p>In relation to Ofcom's recommendation that any qualifier must have at least equal prominence, CAP and BCAP do not consider that a qualification, such as a typical performance range, need be given equal prominence to the maximum speed provided that it is presented clearly. They consider that such a requirement would go beyond established advertising practice on qualifications unjustifiably and note the findings of Ofcom's research only expressed concerns over a typical performance range qualifier appearing in the small print. The issue of qualification is dealt with in more detail in part 2 below.</p> <p>In response to points (ii), although CAP and BCAP acknowledge the importance of providing consumers with the necessary information to make choices between different products, they do not consider that providing incentives for provider to develop their networks is relevant to the Review.</p>
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
3.2.1	BSkyB	<p>Current advertising practice allows broadband suppliers to advertise theoretical maximum speeds that exaggerate the actual capability or performance of a service. For example, some broadband suppliers offer "up to 24Mb" ADSL2+ services notwithstanding the fact that the impact of IP headers means that no consumer can receive that theoretical maximum speed. Option C1 allows this practice to continue.</p>	<p>CAP and BCAP acknowledge that Option C1, as drafted, continues to offer a maximum benefit that no consumer can achieve. Even though the addition of a typical speed range would qualify the theoretical maximum headline, CAP and BCAP are concerned that the approach would be contradictory as no user would be able to achieve the stated speed.</p> <p>In line with the evaluations of points 2.1.3, 3.1.1 and 3.1.2, CAP and BCAP consider that the typical performance range concept proposed in Option C1 is one possible approach that could, where necessary, be used in conjunction with the 10% maximum speed criterion in Option B to qualify a maximum speed claim.</p>

3.2.2	An Organisation Requesting Confidentiality	Option C1 does not provide the consumer with details of their own speed in a relevant or meaningful way. In addition, a range of speeds may differ depending on time of day or other environmental factors at the time of the assessment.	As noted above, no approach can be completely accurate for all consumers due to the degree of variation in the speeds available to different individuals. However, CAP and BCAP expect only that providers use data that provides a reasonable indication of actual performance, not absolute accuracy. They consider that the provision of information, such as that in the evaluation of point 3.2.1 above, is likely to provide consumers with the necessary information to set their expectations of the likely performance of a service at the advertising stage of the transactional process prior to making their transactional decision.
3.2.3	BSkyB	The requirements of Option C1 to be a disproportionate response to the policy objectives. The words “up to” are sufficient to indicate that some consumers may not receive the maximum advertised speed.	CAP and BCAP agree that a requirement for all marketing communications to include a qualifier, such as that proposed in Option C1, would be disproportionate. They consider that there are instances where lesser qualifications are likely to be sufficient to manage consumers’ expectations of the performance of a service. As noted in the evaluation of points 3.1.1 and 3.1.2 above, however, there are instances where a significant number of customers fail to achieve speeds close enough to the stated maximum speed to render an “up to” qualifier sufficient. Indeed, CAP and BCAP consider that in certain instances, the variation is so significant as to warrant qualifications of a similar strength to the typical performance range proposed under Option C1.
3.2.4	BSKyB An Organisation Requesting Confidentiality An Organisation Requesting Confidentiality	<p>There are serious practical concerns about the transparency of the information to be given and the potential for ambiguity and confusion, as consumers choosing to subscribe to an ADSL services would receive up to six speed indications during the sales process comprising the:</p> <ul style="list-style-type: none"> - Theoretical maximum speed of the product (in the advert); - Maximum speed achieved by the 25th percentile of the ISPs customer base (in the advert); - Maximum speed achieved by the 75th percentile of the ISPs customer base (in the advert); - Maximum speed achieved by the 20th percentile of the ISPs customers that have a line with similar characteristics to their own (at point of sale); - Maximum speed achieved by the 80th percentile of the ISPs customers that have a line with similar characteristics to their own (at point of sale); and possibly - Single point speed estimate at point of sale, where ISPs choose to additionally provide that at point of sale. 	<p>CAP and BCAP would point out that the speeds provided at the points of sale under the terms of the Ofcom Voluntary Code are not part of providers’ advertising and are provided at a point in the transactional process when the consumer has more opportunity to clarify what the characteristics of the product are, for instance, by asking a sales person.</p> <p>CAP and BCAP consider that it is the responsibility of providers to ensure that they communicate the information recommended by the guidance in a clear manner. Broadband is a complex product and the necessary levels of information should be provided to consumers before commitment to effectively manage consumer expectation.</p>

		Option C1 will result in all broadband advertising having to include three numbers based on different types of speed. The typical speed range will be meaningless for the 50% of consumers who fall in either in the top 25% or the bottom 25% of speeds.	
3.2.5	BSkyB An Individual	The differences in broadband access technologies are simply too great to give a reliable and meaningful “typical” speed estimate that applies to all technologies without misleading consumers. The broad distribution of DSL speeds does not allow a “typical” indicator to give any meaningful impression of the capabilities of the service, so much so that the term is inherently contradictory for services based on DSL technologies, would unfairly favour more predictable technologies without explaining the different ways that these services run.	CAP and BCAP have sought to ensure a platform-neutral approach, while acknowledging that the guidance should take into account very significant material differences between technologies. Nevertheless, CAP and BCAP do not agree that, within the framework proposed, ADSL services would be unfairly penalised. They do consider, however, that it is important that consumers understand from the advertising that certain platforms or services are subject to greater variation in speeds.
3.2.6	BSkyB	Comparative advertising is inevitable under CAP and BCAP’s new guidance and we consider that cross technology comparisons based on a C1 “typical” performance indicator are likely to fall foul of Rule 3.38 of the CAP Code by giving the misleading impression that the “typical” estimates are equally reliable and therefore for using an unfair basis for comparison.	CAP and BCAP would reiterate that it is the advertiser’s responsibility to ensure that any comparisons based on performance data are presented clearly and in accordance with the Codes. Any comparative claims made following this Review into advertising policy should conform to this. CAP and BCAP would, however, also point out that the ASA has already considered and accepted comparative claims based on average performance data. Furthermore, the proposed substantiation requirements have been drafted with the intention of ensuring that data collected for substantiation purposes is representative of user experience.
3.2.7	BSkyB Two Individuals	Consumers are likely to assume that “typical” speeds are representative of the speeds that they will receive. However, differences in broadband access technologies mean that the likelihood of receiving a broadband speed in the region the “typical” speed shown may differ vastly.	This Review has acknowledged that it is not possible within advertising to provide the consumer with details of the individual speeds they can expect and, consequently, CAP and BCAP do not consider that such criticism holds. The policy must be considered within the context of a variety of information provided to consumers to manage their expectations of what each service can achieve.
3.2.8	BSkyB	<p>Comparisons that are based on information that is unreliable are likely to mislead consumers and may cause them to make transactional decisions that they would not otherwise make.</p> <p>Including the maximum speed is unlikely to correct consumers’ expectation that they are equally likely to get the “typical” speed shown. It is crucial to comparative advertising that the elements of a comparison are not selected to give marketers an unrepresentative advantage.</p> <p>As such, we consider that Option C1 is likely to be incompatible with the comparative advertising provisions of the Advertising Codes and the CPRs and BPRs.</p>	

3.2.9	An Organisation Requesting Confidentiality	<p>There are many possible variables in the measurement of what speeds users achieve. Allowing ISPs to pick and choose how they make the calculation is problematic. This is further complicated by the substantiation requirements for normalisation, IP headers, DNS translation and the variety of data transfer used to measure line speed.</p> <p>For example, for an 8Mbit/s service the following speeds could be advertised legitimately based on various calculations²:</p> <ul style="list-style-type: none"> - 6.5-8Mbit/s – Taking all lines at max access speed - 6-7.2Mbit/s – At average line access speed <p>For this distribution, the proportion of users ‘disappointed’ by not receiving the typical speed would be:</p> <ul style="list-style-type: none"> - 25% – Taking all lines at max access speed - 15% – Applying 95% confidence limits - 60% – During peak hours 	<p>CAP and BCAP acknowledge the respondent’s concerns. The section of the Consultation Document on Substantiation Requirements was designed to address them and ensure that the basis of any stated speed claims is reasonably representative of actual performance on a particular service.</p> <p>[See also the evaluation of section 11 below]</p>
3.2.10	Two Organisations Requesting Confidentiality	<p>Option C1 will place national service providers at a significant disadvantage when advertising compared to service providers only offering services to customers who are geographically close to exchanges.</p>	<p>CAP and BCAP note the concerns over gathering substantiation for networks that have a larger rural customer base where line lengths tend to be longer. These have been addressed in the proposals for substantiation requirements. However, as noted in the evaluation of points 1.1.16-1.1.18 above, CAP and BCAP do not consider that the evolution of the broadband market going forward is a relevant consideration.</p>
3.2.11	An Organisation Requesting Confidentiality	<p>There is a significant risk that Option C1 will discourage service providers from offering services to locations further away from telephone exchanges. This will reduce competition and investment in the areas where it is needed most, if service providers believe that their average speed rating will be reduced by offering the services in rural areas.</p>	<p>[See the evaluation of points relating to section 11 below]</p>

² The respondent used actual line speed testing data to calculate the example figures.

OPTION C2: Speed claims based on a theoretical maximum speed are likely to be acceptable provided that they are qualified prominently with a statement of typical performance. The “typical” performance claimed must be the median speed received by subscribers to the service. For example, an advertisement for a service described as ‘Up to 24 Meg’ might state “Typical Performance: 10 Meg”.

QUESTION 4: Do you consider that Option C2 meets CAP and BCAP’s policy objectives? Please give reasons for your answer.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
4.1.1	An Individual	The combination of the 50% median speed and the “up to” theoretical maximum speed is the most informative method of advertising. It represents the best practice for industry and is fairest to the general public by allowing them to comprehend what service is realistically available to them.	<p>Although the evaluation of response to Option C1 above concludes that qualifying information, such as a typical performance range, is likely to be acceptable in circumstances where further information is required due to high levels of variation in speeds on a service, CAP and BCAP do not consider that an average speed is likely to be similarly acceptable.</p> <p>CAP and BCAP have noted throughout the evaluation document their concerns about the use of a single figure to communicate speed of services, which is subject to significant variation. They consider that an average figure would give too vague an indication of likely performance. In particular, CAP and BCAP are concerned that consumers who are likely to receive speeds so far from the maximum that they inhibit the ability to carry out common online activities should be given a clearer indication of that likelihood, as noted in the evaluation of points 3.1.1 and 3.1.2 above.</p> <p>Although CAP and BCAP do not consider that an average figure is likely to be acceptable as a qualification to meet this requirement, they consider that other speed indications are likely to do so. For instance, a statement that a proportion of customers can expect to achieve speeds below a certain “X% of our customers receive speeds below YMbit/s”, or a statement that a proportion of customers can expect to achieve speeds above a certain speed. For example, “X% of our customers receive speeds above YMbit/s”. In either example, the levels chosen should satisfy the need to communicate to consumers the likelihood of receiving speeds so far from the stated maximum that they inhibit the ability to carry out common online activities.</p>

	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
4.2.1	BSkyB	Current advertising practice allows broadband suppliers to advertise theoretical maximum speeds that exaggerate the actual capability or performance of a service. For example, some broadband suppliers offer "up to 24Mb" ADSL2+ services notwithstanding the fact that the impact of IP headers means that no consumer can receive that theoretical maximum speed. Option C2 allows this practice to continue.	[See the evaluation of point 3.2.1 above]
4.2.2	An Individual	The figure proposed is not likely to be meaningful to consumers, who are not interested in the "typical" speed but rather the speed that they will receive.	Notwithstanding the evaluation of point 4.1.1, these points are addressed more generally in the evaluation of point 3.2.2 above.
4.2.3	An Organisation Requesting Confidentiality	Option C2 does not provide the consumer with details of their own speed in a relevant or meaningful way. In addition, an average speed may differ depending on time of day or other environmental factors at the time of the assessment.	
4.2.4	BSkyB An Organisation Requesting Confidentiality An Organisation Requesting Confidentiality	<p>There are serious practical concerns about the transparency of the information to be given and the potential for ambiguity and confusion, as consumers choosing to subscribe to an ADSL services would receive up to five speed indications during the sales process comprising:</p> <ul style="list-style-type: none"> - the maximum speed of the product (in the advert); - the maximum speed achieved by the 50th percentile of the ISPs customer base (in the advert); - the maximum speed achieved by the 20th percentile of the ISPs customers that have a line with similar characteristics to their own (at point of sale); - the maximum speed achieved by the 80th percentile of the ISPs customers that have a line with similar characteristics to their own (at point of sale); and possibly - single point speed estimate (where ISPs choose to additionally provide that at point of sale) (at point of sale). <p>Option C2 will result in all broadband advertising having to include two numbers based on different types of speed. The typical performance figure will be meaningless for the large number of consumers achieving speeds significantly above or</p>	<p>CAP and BCAP do not consider that the concern expressed over the number of speed indications required in the transactional process is a valid criticism. However, they do acknowledge concern over whether the use of an average figure in conjunction with a headline maximum provide consumers with a meaningful indication of the likely performance of a service.</p> <p>[See the evaluation of point 4.1.1 above]</p>

		below the average.	
4.2.5	BSkyB	The differences in broadband access technologies are simply too great to give a reliable and meaningful “typical” speed estimate that applies to all technologies without misleading consumers. The broad distribution of DSL speeds does not allow a “typical” indicator to give any meaningful impression of the capabilities of the service, so much so that the term is inherently contradictory for services based on DSL technologies, would unfairly favour more predictable technologies without explaining the different ways that these services run.	[See the evaluation of point 4.1.1 above]
4.2.6	BSkyB	Comparative advertising is inevitable under CAP and BCAP’s new guidance and we consider that cross technology comparisons based on a C1 “typical” performance indicator are likely to fall foul of Rule 3.38 of the CAP Code by giving the misleading impression that the “typical” estimates are equally reliable and therefore for using an unfair basis for comparison.	[See the evaluation of points 3.2.6-3.2.8 above]
4.2.7	BSkyB	Consumers are likely to assume that “typical” speeds are representative of the speeds that they will receive. However, differences in broadband access technologies mean that the likelihood of receiving a broadband speed in the region the “typical” speed shown may differ vastly.	
4.2.8	BSkyB	<p>Comparisons that are based on information that is unreliable are likely to mislead consumers and may cause them to make transactional decisions that they would not otherwise make.</p> <p>Including the maximum speed is unlikely to correct consumers’ expectation that they are equally likely to get the “typical” speed shown. It is crucial to comparative advertising that the elements of a comparison are not selected to give marketers an unrepresentative advantage.</p> <p>As such, we consider that Option C2 is likely to be incompatible with the comparative advertising provisions of the Advertising Codes and the CPRs and BPRs.</p>	
4.2.9	An Organisation Requesting Confidentiality	There are many possible variables in the measurement of what speeds users achieve. Allowing ISPs to pick and choose how they make the calculation is problematic. This is further complicated by the substantiation requirements for normalisation, IP headers, DNS translation and the variety of	CAP and BCAP acknowledge the respondent’s concerns. The section of the Consultation Document on Substantiation Requirements was designed to address them and ensure that the basis of any stated speed claims is reasonably representative of actual performance on a particular service.

		<p>data transfer used to measure line speed.</p> <p>For a 20Mbit/s service the following speeds could be advertised legitimately based on various calculations³:</p> <ul style="list-style-type: none"> - 14.4Mbit/s – Excluding long lines and incorrect tariffs - 18.5Mbit/s – Normalising to 1km line length - 15Mbit/s – Normalising to customer profile: around 900,000 consumers would receive less than this - 16Mbit/s – With an upper bound of 99% confidence limits - 17Mbit/s – The initial speed before ISP data management policies cut in. <p>For an 8Mbit/s service the following speeds could be advertised legitimately based on various calculations:</p> <ul style="list-style-type: none"> - 8Mbit/s – Taking all lines at max access speed - 8Mbit/s – Excluding long lines and incorrect tariffs - 7.5Mbit/s – Averaging peak and off peak 	[See also the evaluation of section 11 below]
4.2.10	Two Organisations Requesting Confidentiality	Option C2 will place national service providers at a significant disadvantage when advertising compared to service providers only offering services to customers who are geographically close to exchanges.	CAP and BCAP note the concerns over gathering substantiation for networks that have a larger rural customer base where line lengths tend to be longer. These have been addressed in the proposals for substantiation requirements. However, as noted in the evaluation of points 1.1.16-1.1.18 above, CAP and BCAP do not consider that the evolution of the broadband market going forward is a relevant consideration.
4.2.11	An Organisation Requesting Confidentiality	There is a significant risk that Option C2 will discourage service providers from offering services to locations further away from telephone exchanges. This will reduce competition and investment in the areas where it is needed most, if service providers believe that their average speed rating will be reduced by offering the services in rural areas.	[See the evaluation of points relating to section 11 below]
4.2.12	Vodafone	The limitations of mobile providers' control over 'real user' experience, as noted in the Consultation Document, militate against options, which make requirements in terms of availability to a percentage of users or 'actual speeds available'. Following Option C2 would simply not be practical or helpful for consumers, in the mobile environment.	. The issue of the applicability of the guidance to mobile services is discussed in greater detail in section 12 below.

³ The respondent used actual line speed testing data to calculate the example figures.

QUESTION 5i): Do you consider that the inter-quartile range is a suitable benchmark for a “typical” performance as a qualifier? Please give reasons for your answer.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
5.1.1	An Individual	The inter-quartile range of performance gives a very good indication of the kind of speeds that can be achieved. It eliminates those with unusually fast connections and those with unusually slow connections and focuses on the core "average" customer experience. It takes into account the performance of the ISP as much as the performance of the broadband technology. For instance, if the service is over-contended the lower range figure will be lower.	CAP and BCAP acknowledge, for the reasons outlined in the evaluation of points 3.1.1 and 3.1.2 above, that a TSR may have a role in qualifying maximum speed claims. However, they are not proportionate in all circumstance and other alternatives are open to the marketer as a means of providing a clear qualification where speed claims are subject to highly significant variations for a significant number of users. For instance, providers who choose to use the approach of a range of speed data may use ranges other than the inter-quartile range, provided that they can satisfy the ASA that the approach taken is not likely to mislead the average consumer.
5.1.2	Ofcom	Although they noted the difficulties of identifying an appropriate basis for a typical performance range due to the fact that a proportion of users would always achieve speeds outside it, Ofcom sent details of their consumer research, which indicated that most consumers thought the inter-quartile range was an acceptable compromise.	CAP and BCAP note Ofcom’s research and consider that it supports the proposal to adopt the typical performance range concept in line with the approach outlined in the evaluation of points 3.1.1 and 3.1.2 above
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
5.2.1	BSkyB Two Organisations Requesting Confidentiality	Consumers are likely to understand any “typical” performance statement to be indicative of the speed that they are likely to receive. The approach is arbitrary and is inherently inaccurate for 50% of consumers. Although some will be better informed, others will not. Such consumers may make different transactional decisions than they would have otherwise made. As CAP and BCAP’s guidance must be consistent with the requirements of the CPRs, this approach is not viable.	In line with the evaluation of point 3.2.2 above, CAP and BCAP do not consider that a range of information in a marketing communication is likely to lead the average consumer to understand that they will get a particular speed. Rather, they consider that the provision of information will give the consumer the information they require to set their expectations of the likely performance of the service, for instance, if there is a significant possibility that they might not get close to an advertised maximum speed. Furthermore, CAP and BCAP have made clear throughout the Evaluation Document that each policy proposal must be considered in the context of the whole, which consists in a variety of information to be provided in the marketing communication. As one example, they

			<p>consider that a range is an appropriate complement to a maximum speed based on the 10% criterion.</p> <p>CAP and BCAP acknowledge the respondents' concern, however, over the apparent arbitrary nature of the proposal. The guidance does not seek to prescribe the approach that advertisers must take. As acknowledged in various points in the evaluation above, other approaches, either different types of disclaimer or different ranges are likely to be acceptable, provided that the advertiser can satisfy the ASA that the approach is not likely to mislead the average consumer.</p>
5.2.2	An Organisation Requesting Confidentiality	Should a "typical" performance qualifier be necessary, the inter-quartile range is unsuitable because it will provide a competitive advantage for service providers who offer broadband only to urban areas.	<p>CAP and BCAP note the concerns over gathering substantiation for networks that have a larger rural customer base where line lengths tend to be longer. These have been addressed in the proposals for substantiation requirements.</p> <p>[See the evaluation of points relating to section 11 below]</p>
5.2.3	BSkyB An Individual	<p>The ASA's established policy for "unlimited" claims defines "atypical" users to mean not more than 2% of the customer base. It therefore follows that "typical" is taken to refer to the experience of around 98% of the base. It is not tenable to have "typical" used to mean 98% in one context, and 50% in the closely related context of broadband advertising.</p> <p>Combining the established ASA policy that 98% of consumers' experience is "typical" with the effect of Option C1, each of the bottom and top quartiles will comprise "typical" consumers that will not receive the "typical" speeds shown and may in fact be able to receive maximum speeds 10Mbit/s or more higher than the "typical" speed shown. The inter-quartile range will not be a meaningful piece of information for this group.</p>	<p>CAP and BCAP do not consider that the use of the term "atypical" in the ASA's existing policy on "unlimited" claims is relevant to the definitions used in the proposals for "up to" speed claims. The term has a very specific meaning in relation to that policy and was coined to denote a tiny minority of extremely heavy telecommunication service users. In this paper, the term "typical" is used to communicate what most consumers can reasonably expect to receive as a matter of course.</p>
5.2.4	An Organisation Requesting Confidentiality	Advertisements will have to explain that the speeds quoted alongside the theoretical maximum represent the subset range of speeds that the middle 50% of its current customer base achieves.	CAP and BCAP consider that advertisements must state all qualifications clearly.
5.2.5	An Organisation Requesting Confidentiality	Should a "typical" performance qualifier be necessary, the inter-quartile range is unsuitable because it will provide a competitive advantage for service providers who offer broadband only to urban areas.	Notwithstanding the evaluation of point 5.2.1 above, CAP and BCAP note the concerns over gathering substantiation for networks that have a larger rural customer base where line lengths tend to be longer. These have been addressed in the proposals for substantiation requirements.

			[See the evaluation of points relating to section 11 below]
QUESTION 5ii): Do you consider that the speed received by at least 50% of subscribers (the median speed) is a suitable benchmark for “typical” performance as a qualifier? Please give reasons for your answer.			
	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
5.3.1	An Individual	The combination of the 50% median speed and the “up to” theoretical maximum figure allows consumers to understand what speeds are realistically available to them. Using a figure less than 50% will not be informative to consumers as it fails to highlight a realistic service attainment under real world conditions.	[See the evaluation of point 4.1.1 above]
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
5.4.1	An Organisation Requesting Confidentiality	Consumers are likely to understand any “typical” performance statement to be indicative of the speed that they are likely to receive. The approach is arbitrary and is inherently inaccurate to a significant number of consumers. Although some will be better informed, others will not.	[See the evaluation of point 4.1.1 above]
5.4.3	BSkyB	<p>The median speed under-exaggerates the speed achieved for nearly 50% of consumers. The measure is therefore implicitly down-weighted to exclude the impact of very fast speeds where those are broadly distributed. The average consumer is unlikely to understand this, and is likely to consider the figure shown to be a reliable estimate of the speed that they will likely receive, which is almost certain to be inaccurate. For example, an advertisement for an ADSL2+ service at “up to 20Mb (typically 5Mb)” is likely to deceive average consumers that can receive a maximum of 14Mb because many will assume themselves to be “typical” and rely on the information given.</p> <p>These customers may take a transactional decision based on an advert that he or she would not have taken otherwise, and may</p>	[See the evaluation of point 4.1.1 above]

		pay for a potentially more expensive VDSL or cable product unnecessarily.	
If you would like to propose another benchmark, why do you consider that benchmark is preferable?			
	Respondent:	Summary of significant points:	CAP and BCAP's evaluation and action points:
5.5.1	BSkyB	We have given consideration to what a suitable "typical" indication that might work for DSL services, however, we have not been able to find a clear solution and consider that "typical" speed estimates are likely to be incapable of substantiation for DSL technologies, because the speed a customer receives is almost wholly dependent on their line length and advertisers have no control over or awareness of the distance of a given consumer from their local telephone exchange.	This point is addressed in various evaluations above, in particular section 3.2.
5.5.2	An Individual	A preferable benchmark is the speed that every paying consumer is guaranteed to receive 99% of the time. This would encourage providers to offer packages at different price points based on the service actually delivered, and ensure that no one pays for a service level that they fail to receive.	CAP and BCAP consider that certain point speed claims might be acceptable, as noted in the evaluation of point 4.1.1 above.

OPTION D: Advertisers must be able to show that the claimed speed is achieved by at least 50% of users.

QUESTION 6: Do you consider Option D meets CAP and BCAP's policy objectives? Please give reasons for your answer.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
	N/A	N/A	N/A
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
6.2.1	BSkyB South Witham Broadband Three Organisations Requesting Confidentiality	Option D will result in ISPs having to: <ul style="list-style-type: none"> i. Include a speed in their advertising that is meaningless to the vast majority of customers; and ii. Undersell ADSL products significantly, in the case of ADSL2+ some users might in practice achieve actual speeds 10-15Mbit/s higher. <p>There is significant potential for consumers to be misled because they will be presented with a number that very few customers will actually receive</p>	CAP and BCAP consider that this proposal suffers from many of the problems identified with the use of average speeds in the evaluation of Option C2 above, but to a greater extent, given that the average figure would be the only speed indication in the marketing communication. CAP and BCAP therefore consider that this Option does not meet their objectives.
6.2.2	RACC	This proposal is compatible with the policy objectives because it reflects actual, real-life consumer experience. However, this approach may be unduly restrictive because of the significant number of users who would achieve greater speeds.	[See the evaluation of point 6.2.1 above]
6.2.3	BSkyB	Option D would significantly mislead consumers about ADSL2+ and VDSL service capabilities. We do not agree with Consultation Document's assertion that the speed achieved by 50% of consumers would be "more representative", as only a tiny proportion of ADSL consumers would receive that particular speed. This option has considerable likelihood of misleading consumers, who are likely to understand a "typical estimate" to be a "reliable estimate".	[See the evaluation of point 6.2.1 above]
6.2.4	Ofcom	Option D suffers from one of the problems with the current	[See the evaluation of point 6.2.1 above]

		approach, consumers may think that they are likely to receive the specific headline or average speed and suffer detriment and disappointment when they do not do so.	
6.2.5	Which?	Advertising only one speed, even if available to at least 50% of customers, is too restrictive as it potentially excludes a large proportion of consumers that will receive less or more than the advertised speed. Ranges are better in communicating the possibility of variations, especially as speeds will vary according to different external factors such as distance from exchange and traffic during peak times.	[See the evaluation of point 6.2.1 above]
6.2.6	BSkyB South Witham Broadband An Organisation Requesting Confidentiality	It is also commercially unfair, especially to DSL providers, because consumers may think that the speed advertised is the best speed an ISP can provide. While the cable speed may be close to the speed that the consumer will receive, the vast distribution of DSL speeds means that it is highly unlikely that the consumer would receive the “up to 5Mb” for the ADSL2+ service. If a median is used, the ADSL user’s actual speed may be a lot higher than that shown. DSL providers would not be able to communicate that to consumers.	[See the evaluation of point 6.2.1 above]
6.2.7	BSkyB	Comparisons that are based on information that is unreliable are likely to mislead consumers and may cause them to make transactional decisions that they would not otherwise make. Including the maximum speed is unlikely to correct consumers’ expectation that they are equally likely to get the “typical” speed shown. It is crucial to comparative advertising that the elements of a comparison are not selected to give marketers an unrepresentative advantage. As such, we consider that Option D is likely to be incompatible with the comparative advertising provisions of the Advertising Codes and the CPRs and BPRs.	[See the evaluation of point 6.2.1 above]
6.2.8	Everything Everywhere	Providers who make these investments must be able to communicate the benefit that offers to their customers. For this reason, Everything Everywhere strongly considers that the ability to communicate a headline “up to” speed must be maintained. Consumers will be able to easily compare the headline speeds, and therefore relative investment of each competitor. Dynamic innovation and investment in new technology will therefore continue to be encouraged. Everything Everywhere would not therefore support the introduction of new guidance consistent with Option D as it	[See the evaluation of point 6.2.1 above]

		would remove the ability for a provider to advertise a headline “up to” speed.	
6.2.9	An Individual	Not showing the theoretical maximum speed fails to inform consumers of the technological limitations that their local telephone exchange or broadband service may have.	[See the evaluation of point 6.2.1 above]
6.2.10	Ofcom	A single figure statement of average speed is likely to be unrepresentative of the level of performance for many consumers unless it is presented in a manner equivalent to stating a range, for example, “Half of consumers get a speed of 12Mbit/s or more”. Such a description may not be easy for consumers to understand.	[See the evaluation of point 6.2.1 above]
6.2.11	An Organisation Requesting Confidentiality	Option D will result in the provision of excessive information, with multiple speeds being shown within any one advertisement.	[See the evaluation of point 6.2.1 above]
6.2.12	Telefonica O2	Average speeds will skew available speed claims in favour of smaller ISPs, which have smaller unbundled or wholesaled IP stream networks.	[See the evaluation of point 6.2.1 above]
6.2.13	An Organisation Requesting Confidentiality	Option D would discriminate against providers with higher rural customer bases.	[See the evaluation of point 6.2.1 above]
6.2.14	An Organisation Requesting Confidentiality	In addition, an average speed may differ depending on time of day or other environmental factors at the time of the assessment.	[See the evaluation of point 6.2.1 above]
6.2.15	An Individual	Option D does not go far enough as only 50% of consumers will still not receive the stated speed. Advertisements should state a guaranteed minimum speed in conjunction with the theoretical maximum.	CAP and BCAP consider that the proposed benchmark is arbitrary and unlikely to provide consumers with a meaningful indication of the speeds they are likely to receive. The level of variation in mobile and ADSL services would render any guaranteed minimum speed meaningless.
6.2.16	Vodafone	The limitations of mobile providers’ control over ‘real user’ experience, as noted in the Consultation Document, militate against options, which make requirements in terms of availability to a percentage of users or ‘actual speeds available’. Following Option D would simply not be practical, or helpful for consumers, in the mobile environment.	CAP and BCAP note Vodafone’s concern and consider that it supports their decision to reject Option D. The issue of the applicability of the guidance to mobile services is discussed in greater detail in section 12 below. [See the evaluation of point 6.2.1 above]

QUESTION 7: Do you consider a benchmark other than 50% is preferable under this option? Please give reasons for your answer.

	Respondent:	Summary of significant points:	CAP and BCAP's evaluation and action points:
7.1	BSkyB	CAP and BCAP should avoid a prescriptive benchmark, as the acceptable benchmark could in principle change depending on the claim being made. Nevertheless, as a general guide, a benchmark of 10% is a reasonable proportion that avoids exaggeration.	CAP and BCAP note the respondent's points. [See also the evaluation of points relating to Option B]
7.2	An Organisation Requesting Confidentiality	At an athletics tournament there may be seven different distance races: 100m, 200m, 400m, 5,000m, 10,000m, half marathon and full marathon. The runners who entered these races would all complete the distances in different times. If someone calculated the average speed and then used that speed to articulate what the average or median or mode speed was it would not give anyone an accurate understanding of any of the speeds the individual runners achieved. The scenario mirrors the broadband speed market as it only involves seven numbers rather than millions. Therefore, we submit that benchmarks are not helpful tools for consumers in this context.	CAP and BCAP acknowledge that it is impossible to provide each consumer with an accurate indication of the speed they will receive on an individual basis. However, CAP and BCAP do not consider that this is a reasonable objection to their proposals. They would reiterate that the various proposed approaches must be considered in the context of the whole, which consists in a variety of information to be provided in the marketing communication.

Guidance Part 2 – Additional Information

QUALIFIER 1: Speed claims must always be qualified with the phrase “up to”.

QUESTION 8: Do you consider that the proposal, as it is worded, is sufficient to meet CAP and BCAP’s policy objectives? If not, please explain why.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
8.1.1	Ofcom	We also suggest that headline “up to” speeds can only be used if a material number of actual customers receive the headline speed in practice as a downstream speed. This would prevent, for example, ISPs from advertising ADSL2+ services with headline download speeds of 24Mbit/s, which no actual consumer can attain as an actual speed.	CAP and BCAP consider that the use of the “up to” qualifier should be carried over from the present ASA policy. Owing to their decision to adopt the approach to maximum speed claims outlined in Option B, they consider that the use of “up to” will aid the fulfilment of the Review’s policy objectives.
8.1.2	An Organisation Requesting Confidentiality	All the proposed qualifiers should be used in advertising. They will help consumers understand how variable broadband speeds are. The present policy approach in addition to the qualifications and a personalised speed quote at the point of sale are adequate to fulfil CAP’s policy objectives. The more informed the public become about broadband speeds, the more informed choices they will be able to make.	[See the evaluation of points relating to Option A]
8.1.3	An Organisation Requesting Confidentiality	The “up to” qualifier should be retained wherever a theoretical maximum speed is used.	
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP’s evaluation and action points:
8.2.1	An Individual	The problem with the “up to” disclaimer is that if the average consumer knew what they were actually receiving, there would be a staggering number of complaints; the vast majority do not know how to find out.	CAP and BCAP note that individuals have different ways of obtaining an accurate individual speed estimate, not least under the provisions of the Ofcom Voluntary Code. They acknowledge the problems with the use of the “up to” qualifier but would point out that they have proposed a new approach to maximum speed claims to ensure that the practice is in line with the ASA’s general principles.

8.2.2	BSkyB	<p>Advertisers can make speed claims that do not refer to the maximum speed of a broadband product. For example,</p> <ul style="list-style-type: none"> i. It may be possible for a service to advertise a minimum speed, which would not require an “up to” qualification; ii. A cable provider could advertise its peak time average speed over the last month as an indicative benefit; and iii. When speeds are expressed as an average, they would not require “up to” qualification. <p>CAP and BCAP should make it clear that “up to” claims are only required where the speed is available to some consumers only or at some times only, and would otherwise be misleading (e.g. it should be clear that those do apply for Options C and D above).</p>	CAP and BCAP acknowledge BSkyB's point and will make clear the application of the guidance to maximum speed claims only.
8.2.3	An Organisation Requesting Confidentiality [PO]	If CAP and BCAP chose Option B, the “up to” qualifier should not be used as the quoted speed will not be the maximum possible.	CAP and BCAP would point out that the 10% criterion is a generally accepted benchmark for availability in advertising policy where “up to” and “from” claims are used. It serves to manage consumer expectations where the available maximum is subject to variation due to conditions.

QUALIFIER 2: Significant factors limiting consumers' ability to achieve an advertised speed must be stated prominently i.e. in the body copy of print ads or the equivalent for other types of advertisement.

A significant factor is a limitation that results in a significant proportion of users achieving actual speeds that are markedly lower than advertised. For instance, the ASA currently requires ADSL providers to include a qualification referring specifically to the effect of signal attenuation. Evidence of the impact of a given factor will be considered on a case-by-case basis.

The wording of a qualification must make clear, in terms easily understood by consumers, the likely effect of the relevant factor on consumers' ability to achieve an advertised speed. In particular, advertisers should avoid technical terms unless they are widely understood by consumers or are explained clearly within the ad.

QUESTION 9: Do you consider that the proposal, as it is worded, is sufficient to meet CAP and BCAP's policy objectives? Please give reasons for your answer.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
9.1.1	Ofcom	Even now some broadband advertisers do not make clear in the body copy of their advertisements that "up to" speeds depend on line quality and distance from the exchange, instead confining this information to the small print. Other ISPs include the words "up to" preceding the headline speed but do so in a smaller and less noticeable font size to the headline number, thereby potentially misleading some customers. In other examples, ISPs have included words such as "superfast" in association with ADSL services, thereby potentially misleading consumers into thinking that the services offered are delivering speeds equivalent to those available using fibre-based next generation technology. Clear guidance is needed to prevent consumers from being misled.	<p>CAP and BCAP would point out that Ofcom's first concern describes a practice that would breach the ASA's present policy as well as the policy CAP and BCAP recommend should be adopted in its place. However, the new guidance will reiterate the requirement for prominence to be given to particular qualifiers. However, CAP and BCAP do not consider that it is appropriate for the guidance to prescribe exactly how claims and qualifiers should appear in marketing communications. The ASA has an established general position on the presentation of qualifications to which telecommunications advertising will continue to be subject.</p> <p>CAP and BCAP acknowledge the need to ensure claims that are likely to have the same or similar meaning as those covered by the guidance are properly considered in the guidance. CAP and BCAP acknowledge that words such as "superfast" could in some contexts be problematic.</p> <p>More broadly, CAP and BCAP acknowledge the need for the guidance to provide clarity on how significant factors that affect users' speeds should be communicated to consumers ensuring that they are not likely to be misled. They consider that Qualifier 2 should form a second level of qualifying information recommended by the guidance, between Qualifier 1 and the type of further qualifying information outlined and discussed in the evaluation of points 3.1.1 and 3.1.2 above.</p> <p>CAP and BCAP stress the importance of providing the consumer with the necessary information to ensure that the average consumer is not</p>

			likely to be misled into making a transactional decision they would not have otherwise taken. They consider that the use of different levels of qualifying information, employed commensurately to the potential for consumers to be misled, will achieve this objective.
9.1.2	An Organisation Requesting Confidentiality	All the proposed qualifiers should be used in advertising. They will help consumers understand how variable broadband speeds are. The present policy approach in addition to the qualifications and a personalised speed quote at the point of sale are adequate to fulfil CAP's policy objectives. The more informed the public become about broadband speeds, the more informed choices they will be able to make.	[See the evaluation of points relating to Option A]
	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
9.2.1	An Organisation Requesting Confidentiality	The inclusion of the qualifier within the body copy of advertising material runs a significant risk of providing too much information at one point which may lead to confusion and ambiguity. The performance limitation wording should be linked by an asterisk or other symbol, to any speed claim and placed as qualifier at the bottom of the page. We believe that this is in line with CAP guidance on claims that require qualification.	<p>CAP and BCAP consider that advertising plays an important part in the transactional process but one that is constrained, to a greater or lesser extent depending on the medium, by time and space. However, this must be set against the need to provide consumers with the information necessary to manage their expectations of what speed they are likely to receive. The requirement for a signal attenuation disclaimer is part of the ASA's current policy and has not resulted in an unreasonable burden on advertisers and, as evidence from Ofcom research suggests, it has had a potential impact on consumer awareness of the impact of signal attenuation since it was introduced in late 2006.</p> <p>Moreover, while the ASA has an established general position on issue of prominence, there are instances where the ASA considers that special prominence is required, for instance, that a given qualifier should always be in the body copy or of equivalent prominence in onscreen text.</p>
9.2.2	An Individual	<p>How many consumers know where their local exchange is and how they can estimate their distance from it?</p> <p>Additionally, the metals used for the cabling between the home and the exchange make a difference as do the quantity and types of connectors and joins on the line.</p>	CAP and BCAP acknowledge the respondent's concern about consumer understanding of concepts such as line length. However, they consider that the role of advertising is to provide consumers with the appropriate level of information to inform their decision to enquire further about a product. Furthermore, CAP and BCAP note the wide variety of sources, not least under the provisions of the Ofcom Voluntary Code, which allow consumers to test their line and get an estimate of their distance from the exchange.

9.2.3	An Individual	<p>It makes a great deal of sense that clear and comprehensive information on possible limiting factors should be available to potential users before they buy. However, it does not follow that this information must be included within the advertisement; a reference as to where to obtain it may be sufficient, and in some cases preferable. Where limiting factors are:</p> <ul style="list-style-type: none"> i. Universal and independent of the service provider, it makes sense for this to be available from a single, universally available source; and ii. Under the control of the ISP it must be their responsibility to make clear to the prospective user what those limitations are and how they will be applied. This would apply to, for instance, contention ratio and traffic shaping. 	<p>CAP and BCAP agree that providers should make clear the significant limitations that apply to their service. It is the purpose of the Review to establish those limitations that should be made clear in advertising. Other sources of information fall outside the scope of the Review.</p>
9.2.4	RACC	<p>RACC does not consider that it is necessary to indicate significant limiting factors to advertised speeds provided that the speed quoted is representative of the actual speed achieved by a significant proportion of customers and that the speed is qualified by 'up to'.</p>	<p>As stated throughout this document, CAP and BCAP consider that the most appropriate policy approach is to provide consumers with a variety of information about the nature of a given service, including an indication of the likely degree of variation that affects speeds on a particular service, along with an indication of what factors cause that variation.</p>
9.2.5	BSkyB	<p>The policy should address all "significant limitations" not just "limitations that affect a significant proportion of consumers" only. Consumers' ability to achieve their maximum line speed can be significantly impacted by traffic management, for instance. Consumers do not currently have high awareness of this and the impact of traffic management on a product that is heavily traffic managed may affect an average consumer's transactional decision to take that product. As worded, the current policy would only require advertisers to make body copy qualifications where a "significant proportion" of consumers are affected by the reduction above.</p>	<p>CAP and BCAP note the respondent's point that the disclaimer requirement as proposed does not cover instances where a limitation might significantly affect a small proportion of consumers. They understand that, although some models of subscriber-based traffic management tend only to affect a small minority of users, the effects can be significant in terms of the reduction in speeds of the affected users</p> <p>CAP and BCAP do not consider that it is feasible or proportionate for all marketing communications to list every factor that might have an impact on an individual's service, given the sheer number of factors. However, they acknowledge that, where the omission of information about a limitation is likely to deceive the average consumer and cause them to make a transactional decision they would otherwise not have made, a qualification should be included to alert the consumer to the present of that limitation.</p> <p>CAP and BCAP will make clear in the guidance that, while the inclusion of a significant condition disclaimer might be triggered because a limitation affects a significant proportion of users, it may also be triggered where a limitation affects only a small number of consumers,</p>

			<p>for example, certain types of traffic management. The ASA will assess each instance on a case-by-case basis in accordance with the test outlined above.</p> <p>[See also the evaluation of point 9.1.1 above]</p>
9.2.6	Vodafone	The factors that affect mobile broadband speed are numerous and some are highly complex and technical. It is not practical, and of questionable consumer benefit, to attempt to explain all these factors in the body copy of advertisements for mobile products.	CAP and BCAP note Vodafone's concern. However, they consider that it is not unreasonable, in principle, for a mobile provider to provide consumers with information about the likely significant limitations of their services at the advertising stage. The issue of the applicability of the guidance to mobile services is discussed in greater detail in section 12 below.
<p>QUALIFIER 3: Advertisers should include a prominent disclaimer, i.e. in the body copy of non-broadcast ads or the equivalent, advising consumers that they can confirm the likely actual speed that they will receive at the point of sale.</p> <p>QUESTION 10: Do you consider that the proposal, as it is worded, is sufficient to meet CAP and BCAP's policy objectives? Please give reasons for your answer.</p>			
	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
10.1.1	Ofcom	It should be a requirement that advertisers include a prominent disclaimer alerting consumers to the fact that they can confirm the likely speed that they will receive at the point of sale. ISPs who have signed up to Ofcom's Voluntary Code of Practice on broadband speeds are already required to provide an accurate estimate of the maximum speed a customer's line is capable of during the sign-up process.	<p>CAP and BCAP note the proposed disclaimer highlights a requirement of the Ofcom Voluntary Code. Although CAP and BCAP are also mindful of the limitations on time and space to which advertising is subject, particularly in broadcast media, they consider that invitations to check speed with a provider might have a role in improving consumer understanding. However, they are concerned that in certain circumstances, the inclusion of only a qualifier inviting a consumer to contact a provider for a speed estimate might result in the consumer making a transactional decision without the necessary information to ensure that are not likely to have been misled.</p> <p>CAP and BCAP consider that the guidance should make clear that providers may wish to include such information. However, whether this disclaimer is sufficient to ensure that the average consumer is not likely to be misled can only be judged by the ASA Council on a case-by-case basis.</p>
10.1.2	Which?	Advertisements should include a disclaimer that informs consumers about their right to receive a realistic estimate at the point of sale of the speed they are likely to receive.	
10.1.3	An Organisation Requesting Confidentiality	All the proposed qualifiers should be used in advertising. They will help consumers understand how variable broadband speeds are. The present policy approach in addition to the qualifications and a personalised speed quote at the point of sale are adequate to fulfil CAP's policy objectives. The more informed the public become about broadband speeds, the more informed choices they will be able to make.	

	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
10.2.1	BSkyB	Used in conjunction with amended Option B Qualifiers 1 and 2 are sufficient to ensure that consumers are not misled. Qualifier 3 is not a qualification as such and is additional information that advertisers should be able to provide in footnotes and without a body copy requirement.	[See the evaluation of points 10.1.1-10.1.3 above]
10.2.2	BSkyB	As additional information, we consider that this that Qualifier 3 should be optional. However, as a reference to Ofcom's Voluntary Code on Broadband Speeds, CAP and BCAP's guidance should make it clear that this information is relevant for all fixed line broadband advertisers. Where this information is included in DSL advertising, it will also be helpful for advertisers to highlight that consumers can get a DSL speed estimate online.	
10.2.3	An Organisation Requesting Confidentiality	The majority of broadband service providers do provide such information prior to a consumer signing up to receiving their services. This information is often freely available on service provider websites, not necessarily only at the point of sale. The inclusion of further wording within the body copy of advertisements is likely to cause confusion and ambiguity on the part of the average consumer. Consumers have come accustomed to further information and details being included at the bottom of advertising material.	

10.2.4	RACC	Consumers often find warning and qualifying messages confusing, and ‘zone out’ when these messages come on. Research by the Radio Advertising Bureau in 2004 ⁴ indicated that many listeners feel that it would be better for qualifying information to be delivered at a later stage in the decision-making process. For these reasons, RACC favours those options in the proposals that limit the amount of qualifying information that would have to be featured in advertisements, and which would direct the potential purchasers to where they can obtain full information about the broadband performance they are likely to experience and the factors that are likely to affect their broadband performance.	
10.2.5	Everything Everywhere	The content of Question 10 in the Consultation Document, which refers to “likely actual speed”, is inconsistent with the Ofcom Voluntary Code, which uses the term “estimated line access” speed.	
10.2.6	Vodafone	This is not a practical or useful option in the mobile broadband environment, given the number of factors that affect speed and the fact that the consumer is being sold a mobile product.	

⁴ Research conducted by Navigator Research for RAB

Guidance Part 3 – Substantiation Requirements

The substantiation required for performance indications must be robust and sufficiently representative of actual performance.

The ASA has previously accepted data gathered on behalf of ISPs from independent third parties and from ISPs' own tests. Data from either source is acceptable but a suitable body of evidence will likely have the following characteristics:

- Data drawn from third party testing of a sample of lines should be normalised to account for factors such as line length on ADSL services and the profile of the overall customer base.
- Data drawn from an ISP's own line testing should be sufficiently representative of the experience of the customer base of a particular service and should be normalised to account for factors such as line length on ADSL services and the profile of the overall customer base.
- The ASA would normally ask to see line test data for all lines on a particular service. In cases of very large customer bases, it might request a random sample of user data from different exchanges or hubs that are representative of the overall profile of a customer base.
- All data should be adjusted to account for protocol overheads such as IP headers to ensure that it is representative of what users actually achieve.
- All data should account for the variations in speeds during the course of the day. It should take account of the reductions in speed caused by factors such as congestion during peak times and policies imposed by ISPs, such as traffic management. For instance, line testing could be carried out at peak and off-peak times in order to create an average performance for the line.
- All data should be periodically updated to ensure that it is an accurate representation of the current performance of a service. ISPs should employ reasonable statistical methods to account for short term variations in their customer base that might have a significant impact on the performance of a service, for instance, customer turnover.

QUESTION 11: Do you consider that the proposal for guidance on suitable substantiation for claims made in the form described by Options B, C1, C2 and D, as it is worded, is sufficient to meet CAP and BCAP's policy objectives? Please give reasons for your answer.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
	N/A	N/A	N/A

	Respondent making points against the proposal:	Summary of significant points:	CAP and BCAP's evaluation and action points:
11.2.1	An Organisation Requesting Confidentiality	<p>There are various ways to produce and interpret speed data. Statisticians could produce very different yet legitimate conclusions from the same data just by applying different methodologies. For example, to calculate an average performance as suggested in section 4.29 of the Consultative Document, a statistician could make any of the following assumptions:</p> <ul style="list-style-type: none"> i. Weight the speeds equally for each hour of the day ii. Weight the speeds equally by peak and off peak iii. Weight the speeds by volume of usage during each hour of the day <p>The speeds measured could be single thread, triple thread, page download, video download, could be to specific URLs or not, could make allowance for DNS translation and other protocols, could wait for packet loss to fall to an acceptable level, could take advantage of traffic measurement policies implemented for the period of measurement, and so on.</p>	<p>CAP and BCAP acknowledge the respondent's concerns about the potential for the substantiation requirements proposed in the Consultation Document to be interpreted in a variety of ways. Whilst they do not consider that it is appropriate for the guidance to prescribe one method of collecting and processing substantiation data, CAP and BCAP do consider that it is important to ensure that all the potentially relevant considerations, such as those highlighted by the respondent, are give appropriate consideration.</p> <p>CAP and BCAP consider that the guidance should set out more fully the various factors ISPs should take into account when gathering substantiation data and processing it for advertising purposes. They believe the most appropriate approach is to allow the ASA Council to assess substantiation whilst having regard to the criteria laid out in the guidance section addressing substantiation. This principle-based approach gives advertisers the flexibility to collect data appropriate to whatever claims they make currently or might wish to make in future. The key question for the ASA, as in any case it considers that involves documentary substantiation, will be whether the data is appropriate to substantiate the claim made, as it is likely to be understood by consumers. For instance, several respondents have raised the question of the rural/urban disparity in line lengths. CAP and BCAP consider that its proposed approach would allow an advertiser targeting a largely urban audience to use data appropriate to that group of consumers.</p>
11.2.2	An Organisation Requesting Confidentiality	<p>ISPs will find methodologies or formulas that benefit them most. The result is very likely to be that each ISP would advertise a speed that had been produced differently. As a consequence, consumers will:</p> <ul style="list-style-type: none"> i. not be able to make like for like comparisons between products; and ii. have less confidence in the advertising of ISPs, which is detrimental to all parties concerned. 	<p>As noted in the evaluation of point 11.2.1 above, the ASA Council will make an assessment of the evidence presented in line with its general approach to substantiation issues. CAP and BCAP acknowledge the potential for manipulation of data. However, the ASA will adjudicate over time to set acceptable standards on the basis of the criteria laid down in the guidance.</p> <p>CAP and BCAP note the respondent's concern over comparative advertising. However, they do not consider that this concern warrants a prescriptive approach to the acceptable approaches gathering substantiation. CAP and BCAP note from the ASA that comparisons between evidence bases drawn from significantly different sources, for instance third party data and data gathered from measurements carried out by an individual provider, are rare owing to the potential mismatch between methods of measurement. Nevertheless, CAP and</p>

			BCAP are satisfied that there are sources of comparative data, such as Ofcom's Broadband Speeds research, which will facilitate responsible comparative advertising.
11.2.3	An Organisation Requesting Confidentiality	The proposed wording on normalisation is insufficient. Normalisation for line length could use the national profile of line lengths, or the national profile of lines for a particular technology (such as ADSL2 or ADSL2+ or ADSL1), or the profile of that ISPs customer base, or of only the consumer customer base, or the customer base weighted to type of user, and etc.	[See the evaluation of point 11.2.1 above]
11.2.4	An Organisation Requesting Confidentiality	ISPs with large rural customer bases would be disadvantaged if it is not sufficiently taken into account. In addition, rural areas may be disadvantaged as ISPs may choose not to serve them in order to improve the speeds they can advertise. However, normalisation is very complex and subjective process and can be performed in a variety of ways. To reduce the risk of ISPs using different formulas CAP must either provide a detailed and thorough formula or appoint an agent to do it. Without such governance ISPs are at liberty to use different methodologies, which will produce incomparable speed numbers resulting in either disillusioned consumers and/or misled ones.	[See the evaluation of point 11.2.1 above]
11.2.5	An Organisation Requesting Confidentiality	If a change is made to the current guidance along the lines set out in one of Options B, C1, C2 and D, it is of utmost importance that all service providers use the same methods for obtaining data on broadband speeds achieved.	As noted in the evaluations of points 11.2.1 and 11.2.2 above, CAP and BCAP do not consider that the guidance should prescribe a particular method of collecting substantiation.
11.2.6	Everything Everywhere	Even with the proposed guidance on substantiation, in the absence of an official testing platform, the risk is that the results of such tests will vary so widely from network to network that consumers will not be able to place any real reliance on them. It is not clear how the methodology proposed would account for the difference in geographic reach of the different networks and/or the different demographic profiles of existing customers. Moreover, the lack of visibility of the methods used to test speeds could undermine the veracity of claims constructed in this way.	
11.2.7	Ofcom	The method of defining the typical speed range should be standardised so different ISPs do not use different methodologies, but this need not be specified in advance in	In line with the evaluations of points 3.1.1 and 3.1.2, CAP and BCAP do not consider that it is possible to mandate that all marketing communications should feature standardised qualifying information.

		<p>order to avoid over-complication. However, we recommend that after a suitable period the guidance is reviewed to consider whether more prescriptive methodological guidelines are necessary.</p>	<p>On Ofcom's second point, CAP and BCAP agree with Ofcom's view that substantiation requirements should be allowed to develop over time. However, rather than a set period of time followed by a review, the ASA will, in line with its normal practice, establish more exact boundaries as to the type of approaches to substantiation that are acceptable on a case-by-case basis. CAP and BCAP consider that approach should be maintained, in recognition of their objective to ensure that innovation in telecommunications advertising is not unduly restrained.</p>
11.2.8	Ofcom	<p>Ofcom sent an example of how they calculated the maximum and median speeds from speeds delivered to all panellists in their broadband speeds research. A typical performance range for cable and FTTC packages represent the inter-quartile range of average download speeds received by panellists. The typical performance range for ADSL was calculated by using the inter-quartile range from the modem synchronisation speed data collected from operators, and adjusting this range in proportion to the difference between the average modem synchronisation speed and the average measured speed for panellists. Typical performance ranges for cable and FTTC packages represent the inter-quartile range of average download speeds received by panellists. This is the most robust way of calculating the typical performance range from the data available to Ofcom, although we recognise that there are alternative methodologies for collecting and analysing data and reporting a typical performance range, which may be equally robust.</p>	<p>CAP and BCAP acknowledge Ofcom's example of how they calculated the performance of various platforms. They also noted Ofcom's recognition of the variety of approaches that could be taken and considered that it supports CAP and BCAP's proposed approach.</p>
11.2.9	Which?	<p>We have a strong preference for the development of one standard of how to measure speed. This standard currency should apply across the industry much like the use of the Annual Percentage Rate (APR) in financial services.</p> <p>ISPs should support claims of achievable speeds by collecting performance data and submitting it to the ASA.</p> <p>Confounding factors that can interfere with speeds should be controlled and samples of actual speeds must be representative of the overall customer base.</p> <p>Performance data should also account for variations that result from traffic management. Therefore measures of real speed must include daytime as well as peak-time speeds.</p> <p>Data should be regularly updated to reflect technological improvements that make it possible for ISPs to deliver better</p>	<p>Whilst they acknowledge and will incorporate into the guidance the various factors that Which? have identified, CAP and BCAP would point to the evaluation of points 11.2.1 and 11.2.2 above for the reasoning behind their decision not to prescribe a particular approach.</p>

		speeds than previously possible.	
11.2.10	An Organisation Requesting Confidentiality	CAP and BCAP cannot control how ISPs adjust the settings of their networks but it can control how the data is used and interpreted by using a nominated agent for all ISPs to use. This would be expensive and time consuming, plus getting the agreement of all ISPs to use the nominated agent may need further consultation. Even though this would be expensive and difficult, it is the only realistic way to ensure ISPs produce speed claims that are consistent, fair and useful for consumers to make informed decisions. CAP, in effect, would have to be the broadband speed moderator. We submit that there is no other adequate way to address this risk. Even if CAP produced a rigorous methodology/formula to use, unless it policed all broadband advertising it would not know whether the method had been followed on every occasion.	[See the evaluation of point 11.2.1 above]
11.2.11	Virgin Media	Measurement should be based on actual consumer experience. The Sam Knows testing methodology employed by Ofcom in their annual broadband research provides the most robust measurement of speeds customers actually receive. For those ISPs not already part of the Sam Knows testing panel, a consistent set of factors needs to be administered. Where there is a conflict between different sources of data the Sam Knows data should be given priority as it is widely regarded as the definitive measurement of user experience.	For the reasons outlined in the evaluation of points 11.2.1 and 11.2.2 above, CAP and BCAP do not agree that the guidance should prescribe a particular agent or authority.
11.2.12	Virgin Media	Although the proposals take account of IP headers and overheads, it should go further and take into the account the effect of congestion, which has just as significant an effect for all ISPs.	CAP and BCAP acknowledge Virgin Media's concern and will, in line with the evaluation of 11.2.1, ensure that the guidance takes it into account as appropriate.
11.2.13	BSkyB	Having regard to the principles of proportionality referred to above, we consider it important also for CAP and BCAP expressly that state that "up to" claims can be substantiated with data using access line speeds adjusted for the effects of IP headers.	[See the evaluation of point 11.2.1 above]
11.2.14	BSkyB	An access line speed adjusted for IP headers should give a realistic indication of the throughput a consumer could achieve and any variation from that is likely to be captured by existing "up to" qualifications. Moreover, as throughput varies consistently both over time and during the day, it would be wholly disproportionate to the consumer benefit to ask ISPs to	Although they have acknowledged throughout this document that it is impossible to provide an absolutely accurate representation of each consumer's likely speed, CAP and BCAP do not agree that it is disproportionate for the guidance to recommend that substantiation data be reasonably representative of user experience. Although they acknowledge there are difficulties in measuring actual throughput

		base speed indications on actual throughput speed.	speed, CAP and BCAP understand that it is possible to make testing data reasonably representative of users' experience through a variety of statistical methods that can be applied to any data to take account of the factors affecting speeds.
11.2.15	BSkyB	Speed claims based on actual throughput speed would either require ongoing testing by individual ISPs, which would increase costs and may drive ASA complaints from competing ISPs. Conversely, the alternative of having to establish an industry body to monitor speeds on an ongoing basis would require considerable overheads which would ultimately be passed onto consumers and which we do not consider in any way proportionate given the point immediately above.	[See the evaluation of point 11.2.13 above]
11.2.16	An Organisation Requesting Confidentiality	The most appropriate type of speed, other than the theoretical maximum, is access line speed. Protocols and factors, such as peak and off peak timings, have no impact on this speed. However, if an ISP wanted to run a particular campaign using throughput then these factors would become relevant and so should be considered, although CAP should provide more detailed guidance as to what and how these types of factors should be accounted for.	[See the evaluation of point 11.2.13 above]
11.2.17	Vodafone	Whilst we have no objection to robust substantiation, it is clear from the table of characteristics that insufficient thought has gone into mobile broadband as opposed to fixed.	The issue of the applicability of the guidance to mobile services is discussed in greater detail in section 12 below.
11.2.18	BSkyB	CAP and BCAP should be clearer about the requirements and how these apply for different kinds of speed claims. "Performance indications" may also be understood to mean "throughput" indications and we consider that it would be clearer to refer expressly to "speed claims". Bullet points 1-3, 5 & 6 explain the requirements for throughput based claims and bullet 4 explains the requirements for maximum speed claims. CAP and BCAP should distinguish both these and the requirements for each to avoid confusion.	CAP and BCAP acknowledge the need to ensure that the guidance uses clear and consistent terminology.

Other Comments			
12.1	BSkyB	<p>In carrying out this review it is important that CAP and BCAP:</p> <ul style="list-style-type: none"> i. Take proportionate, accountable and evidence based action that is technology neutral and does not favour any particular form of broadband access; ii. Have regard to the maximum harmonisation obligations of CPRs and do not introduce guidance that would require advertisers to go further than is necessary to ensure that advertisements for broadband services are unlikely to mislead the average consumer into making transactional decisions that they would not otherwise have made; and iii. Act objectively and within the scope of their respective powers, namely to regulate misleading claims in advertising, and not to provide a wider consumer information service. 	CAP and BCAP have taken these points into consideration.
12.2	BSkyB	<p>Certain proposals are outside the scope and remit of the Review, in particular:</p> <ul style="list-style-type: none"> i. The development and encouragement of new broadband technologies is not a relevant consideration for advertising policy, which is constrained by the CPRs; and ii. Proposals to prescribe a single way of advertising speeds, prohibit “up to” claims, prohibit theoretical maximum speed claims (or similar) are beyond the scope of the CPRs and would require primary European legislation. 	As noted in the evaluation of points 1.2.16-1.2.18, CAP and BCAP consider that it is not the purpose of the Review to secure a particular economic outcome. Furthermore, CAP and BCAP have made clear the nature of the guidance and their intention to avoid an unduly prescriptive approach.
12.3	An Organisation Requesting Confidentiality	This consultation is about advertising, not contractual offers. The law treats advertisements as invitations to treat and it is very important to always bear this in mind.	CAP and BCAP assure the respondent that the Review has taken these points into consideration.

12.4	BSkyB	The stated objective of seeking a consistent approach across different telecommunications services could be understood to suggest that Options A to D should be mutually exclusive, contrary to the non-prescriptive approach CAP and BCAP refers to at paragraph 3.5 of the Consultation Document. Providing claims are sufficiently explained, and qualified in a way that is not misleading, advertisers should be able to make different kinds of speed claims. We consider it important that CAP and BCAP make it clear that any options presented in its guidance are non-exhaustive.	CAP and BCAP consider that the complex nature of broadband services necessitates the provision of a variety of information to allow consumers to make informed decisions. The Guidance is intended merely to establish an approach that is likely to be acceptable and indicate the criteria by which the ASA might evaluate any differing approaches.
12.5	BSkyB	While proposals such as Option C1 would help to ensure that more consumers achieve the speed referred to in the advert, the role of CAP and BCAP's guidance is simply to ensure that advertising is not misleading, which is a different aim and does not of itself require that advertising claims are directed at as many consumers as possible i.e. advertisers can also make average speed claims, consistency of speed claims and top speed claims without misleading, providing the factors affecting those are properly qualified.	
12.6	Virgin Media	Advertising practices that are currently allowed in broadband advertising would not be tolerated in the advertising of products and services in other sectors.	CAP and BCAP acknowledge Virgin Media's concern and consider it supports their decision to publish new guidance recommending a change to advertising practice.
12.7	Consumer Focus	<p>In the last few years, broadband speeds have grown in importance as an issue for consumers, for two main reasons:</p> <ul style="list-style-type: none"> i. Consumers expect to get the speeds they sign up to and pay for; and ii. They are often unaware that these advertised speeds are different to those they actually receive. 	CAP and BCAP acknowledge Virgin Media's concern and consider it supports their decision to publish new guidance recommending a change to advertising practice. CAP and BCAP also consider that the options they have identified can combine to provide a range of information adequate to give consumers a reasonable expectation of the service they will receive.
12.8	Consumer Focus	Many online activities, such as watching BBC iPlayer and other TV on demand services, streaming videos and games require speeds much higher than 2Mbit/s. Consumers who are unable to receive a high speed connection will be unable to access high quality content from a range of websites; including those that provide Government services such as Directgov.	Although CAP and BCAP note the importance of achieving speeds of a certain level to ensure that users can access common online services, even ADSL2+ services, which are subject to more pronounced speed variations due to the effects of signal attenuation, generally provide speeds that allow consumers to access most common online services. However, continuing with the example of the average ADSL2+ service, there are still a significant proportion of consumers who cannot achieve the necessary speeds. This is why CAP and BCAP consider that the guidance should recommend different levels of qualifying information to ensure that services suffering from this or similar issues provide the consumer with the necessary information to make an informed choice.

12.9	Epitiro	While ISPs have promoted services based on download speed, the relationship between technical speed and the actual time it takes to complete a task is not always linked. Primarily consumers use broadband for email and web browsing. Epitiro data has shown that, after a point, higher speeds have little impact on the rate at which web pages are downloaded. This is due to the construction of web pages, which are comprised of many small artefacts, and the acceleration time required to achieve high speeds, whilst fetching each artefact. In most cases, the artefact is fully downloaded before high speeds can be achieved.	CAP and BCAP acknowledge Epitiro's point, but consider that it falls outside the scope of the Review, which merely seeks to establish what information is necessary in advertising to give consumers a reasonable expectation of the speed of service they will receive.
12.10	Epitiro	High-speeds are more likely to have a noticeable effect on consumers when downloading large files. Yet the majority of home users today use Wi-Fi where Epitiro data shows that an average of 30% of speed is lost in the wireless home environment. This indicates that consumers prefer mobility over absolute performance.	CAP and BCAP acknowledge the respondent's point, but consider that this is related to the user's hardware set-up and is therefore beyond the scope of the Review.
12.11	Epitiro	Increasingly consumers are being introduced to applications that require a sustained quality of service to meet satisfactory expectations or 'quality of experience'. For example, VoIP, video streaming and IPTV require suitable speeds however the service must have low latency, low packet loss and jitter and sustain these conditions for the period of use. Whilst speed is a factor, reliability of service quality over a sustained period will ultimately affect consumer satisfaction.	CAP and BCAP acknowledge the respondent's point, but consider that it is beyond the scope of the Review, which is concerned solely with the advertising of speed claims. However, CAP and BCAP acknowledge that, as they note from recent campaigns, ISPs might wish to emphasise factors such as this in their advertising.
12.12	BSkyB	Complaints data provides a crucial insight into consumers concerns. As CAP and BCAP recognise, the number of complaints has fallen significantly in recent years and predominantly now predate the introduction of Ofcom's Voluntary Code on Broadband Speeds in 2008. The ASA has only adjudicated on one complaint about the use of "up to" since 2008, which was made by an industry competitor and not upheld.	CAP and BCAP agree that complaint data is an important indicator of consumer concerns. However, it is not the only source of information in this respect. For instance, as noted in section 1.1, several respondents sent consumer research that strongly suggests consumers are concerned about broadband speed advertising.
12.13	BSkyB	While we note the Ofcom complaints data shows consumer concerns, the category of Ofcom complaints headed "speed slower than advertised" shows very low numbers of complaints by comparison with the number of consumers switching provider each year (less than 0.01%) and the categories "too slow all the time" and "too slow at certain times" are clearly outside the	CAP and BCAP agree that consumers should not make a transactional decision on the basis of information provided at the advertising stage that creates a false expectation about what maximum speed they can achieve. They consider the evidence and weight of responses demonstrates that current advertising practice does not help consumers establish a reasonable expectation of the speeds achieved

		scope of advertising. Under current practice, no consumer should ever sign up to a service with a false expectation about what maximum speed they can receive and all three of these categories are relevant to and likely to be driven by compliance with Ofcom's Voluntary Code on Broadband Speeds; specifically whether consumers' expectations were properly managed when a speed estimate was given at point of sale (and crucially, after the time of advertising).	on a particular service, and the recommendations for a change in advertising practice are intended to improve on that. Information given at point of sale falls outside the scope of the Review.
12.14	BSkyB	<p>Ofcom's 2010 Broadband Speed Report showed that 80% of consumers were 'satisfied' with their speed and more than half of those were 'very satisfied'. Consistent with this, research carried out by YouGov in October 2010 found that maximum speed ranks relatively low in consumer decision making processes and that consumers' decisions are influenced by a broad range of factors including reliability of service, price and available usage.</p> <p>BSkyB provided a summary of their research, which showed speeds being ranked as one of the three most important factors in 16% of cases compared, for instance, to price, which was cited in 46% of cases.</p>	The Review addresses the "up to" speed claims that advertisers have chosen to give prominence in their advertising in recent years. It seeks to establish whether those claims are likely to mislead. The research cited and summarised by Sky acknowledges that a significant proportion of consumers are dissatisfied with their broadband speeds and that a similar proportion cite speeds as an important influence in their decisions to purchase.
12.15	BSkyB	Multiple qualifications of the maximum speed consumers could receive may ultimately confuse consumers and overcrowd already complex telecommunications adverts, without bringing customers any closer to understanding the speed their personal line can carry as that can only be confirmed reliably by carrying out a line speed check.	[See the evaluation of point 3.2.4 above]
12.16	RACC	Consumers often find warning and qualifying messages confusing, and 'zone out' when these messages come on. Research by the Radio Advertising Bureau in 2004. ⁵ indicated that many listeners feel that it would be better for qualifying information to be delivered at a later stage in the decision-making process. For these reasons, RACC favours those options in the proposals that limit the amount of qualifying information that would have to be featured in advertisements, and which would direct the potential purchasers to where they can obtain full information about the broadband performance they are likely to experience and the factors that are likely to affect their broadband performance.	CAP and BCAP have made clear in the Consultation Document and in this document that advertising has its place in the transactional process and is constrained, to a greater or lesser extent, by time and space. However, this must be set against the need to provide consumers with the information necessary to manage their expectations of what speed they are likely to receive.

⁵ Research conducted by Navigator Research for RAB

12.17	An Organisation Requesting Confidentiality	Individual consumers making a decision about a broadband provider need to have confidence that they are comparing like with like. They need to know that whatever speed is advertised, this is only an indication of the service available, and that the actual speed will depend almost entirely on the length and quality of their line.	CAP and BCAP acknowledge the respondent's points and consider that the approach decided on satisfies this requirement.
12.18	An Organisation Requesting Confidentiality	Concern has been expressed that, as higher access speeds are rolled out, large numbers of consumers will be unable to benefit, and that as a result consumers will be misled. This will remain the possibility regardless of the representative speed chosen. An alternative approach to creating an informed consumer is to increase awareness of the factor that defines speed above all else.	CAP and BCAP acknowledge the respondent's points and consider that the approach decided on satisfies this requirement.
12.19	Everything Everywhere	As speed is just one factor for customer in selecting their provider, Everything Everywhere considers that the complex issue of speed should be discussed with each customer at point of sale rather than made the subject of what could be a confusing hierarchy of claims in marketing communications.	CAP and BCAP would reiterate that, although advertising is only one element in the transactional process, it does play its part in reasonably setting consumer expectations of a broadband service. Advertisers are not obliged to give speed claims in advertisements; if they do, they must ensure that the claims do not mislead.
12.20	An Organisation Requesting Confidentiality	Whatever speed is quoted, whether it is a maximum or any other representative value, the individual consumer has to translate this into what they might actually get. Thus, there is no special advantage in having a representative value. It just means a different interpretation on the part of the consumer. Whatever value is used, very few people will get what is advertised. Having a representative value that is capable of being manipulated by the ISPs would seem to be the worst possible choice.	CAP and BCAP do not agree that proposing an approach based on representative speeds is likely to cause problems for consumers, provided that they are explained clearly. The issue of the substantiation requirements used to support claims is addressed in section 11 above.
12.21	Epitiro	<p>CAP and BCAP should be aware that there are no standards for collecting data, measuring speeds or normalising measurements in terms of distance from the exchange.</p> <p>Wherever possible Epitiro incorporates testing methodologies based on recognised industry standards from bodies such as the ITU, ETSI and the GSMA. In the field of broadband analysis, standards are either not available in many cases or have fallen behind the advances of technology now available to the public.</p> <p>As there is no standard for measuring download speed, it is open to interpretation as to the construction of a speed test and the duration to which the speeds are reliably measured.</p>	CAP and BCAP acknowledge the points made by Epitiro but consider that it is for advertisers to create appropriate methodologies for the collection and processing of speed data along the lines of the criteria in the substantiation section of the Consultation Document. The key will be for advertisers to ensure that the approach they take produces speed data that is reasonably representative of actual user experience. The ASA Council will assess all approaches, whether they confirm to the guidance or otherwise, on a case-by-case basis.

		<p>Download speed could be measured as;</p> <ul style="list-style-type: none"> - The connection speed at which the CPE and DSLAM synchronise. - The maximum burst at which a stream of data packets can be sent - The average TCP throughput speed of downloading a sizable data file - The average HTTP speed of a web page or web page artefact 	
12.22	Epitiro	<p>The composition of the device used to make the measurement can directly affect the speeds measured. Factors include:</p> <p>The operating system: Linux, Windows or Apple-based devices based measurement devices may differ from in how they connect to the internet</p> <p>Web browsers: Internet Explorer, Safari, Firefox all play a critical role in how they interact with the internet, and consequently speed measurements will be affected depending on the browser used.</p>	
12.23	Epitiro	<p>CAP and BCAP have suggested further statistical analysis in the Options. For purposes of clarity and accuracy, the sample sizes will need to be stated by CAP and BCAP such that ISP understand the requirements. For example, Option B requires that 10% of users should achieve the quoted speeds. The 10% presumably could be a subset of a sample, however it would be beneficial to understand the original sample size required. Epitiro cautions that 10% of the Ofcom sized samples (about 20 people per ISP) would not be sufficient for statistically relevant findings.</p>	<p>CAP and BCAP do not consider that it is appropriate to mandate a particular sample size. The guidance will, however, make clear the criteria by which the ASA should assess an advertiser's approach to collecting substantiation. It should be noted that the ASA is highly experienced in dealing with substantiation relating to a variety of advertising sectors. Assessing whether appropriate sampling methodologies have been followed is an inherent part of this work.</p>
12.24	Epitiro	<p>As part of this consultation our recommendation is that the ASA, CAP and BCAP also include guidelines on acceptable measurements, sample sizes and statistical manipulation. This will ensure Epitiro and other analysts provide the industry with data in an acceptable format for marketing, and that ISPs and MNOs fully understand these requirements prior to undertaking measurement performance surveys. We would not recommend a change of policy without due consideration of measurement and statistical analysis standards.</p>	
12.25	BSkyB	<p>Signal quality, contention and environmental factors are not the</p>	<p>As noted in the proposals for substantiation requirements, the impact</p>

		<p>only factors that can affect consumers' speeds. Supplier controlled traffic management currently reduces the speeds of some heavy users by up to 75% or more. Although research shows a high level of consumer awareness of the factors affecting consumers' ability to receive maximum speeds claimed for ADSL products, a substantial 55% of the consumers asked below did not understand how traffic management would affect their broadband speed, or thought that it would have a low impact only. Unlike issues caused by line length, traffic management is optional for providers and can prevent consumers' ability to enjoy in practice the maximum speeds that their line can deliver. For example, while contention causes an approximate 0.8Mbit/s variation in ADSL speeds daily, traffic management of cable services could reduce speeds by 75% or up to 15Mbit/s for some customers.</p>	<p>of any traffic management policies should be taken into account when collecting substantiation data.</p> <p>[See also the evaluation of point 9.2.5 above]</p>
12.26	An Individual	<p>The consultation document does not mention upload speeds, but this is a significant factor for many, and in particular business users. It is likely upload speeds will be increasing significant for domestic users, such as for the many uses of video conferencing. With ADSL there is a clear, technology-driven link between download and upload speed. This has, to some extent, been perpetuated into more recent platforms. However, fibre changes the game. For instance, there is no inherent reason why FTTH upload speeds need be any different to download speeds, and alternative upload speed offerings are likely to become a relevant factor for users.</p> <p>The description and qualification for upload speed is the same as for download. It may be considered unnecessary to mandate that upload speed is included in advertising, but this is certainly something users should be able to determine before they buy.</p>	<p>The Review focuses solely on the issue of download speeds as they are the most common speed indication used in advertising and the point of concern for consumers and stakeholders. Although upload speeds are not directly addressed CAP and BCAP expect that the ASA would have regard where relevant to the principles laid out in the guidance on download speeds when considering a complaint about an upload speed claim, to ensure a consistent approach.</p>

12.27	An Individual	<p>Download speed and a monthly usage allowance are not the only factors that are required to ensure an internet connection is decent overall. Other factors, such as a decent upload speed and a decent ping, are also vital. For example, I subscribed to an internet connection that claimed, and achieved, a high download speed (10Mbit/s) and a high monthly allowance (unlimited), and yet on most days I was unable to play common online games, such as Age of Empires, Left4Dead2, etc. This is because the ping for my internet connection was typically very poor, which also meant that often even basic websites (e.g. BBC News, Gmail, etc) would be very slow to load.</p>	
12.28	South Broadband Witham	<p>Cable broadband operates at a fixed service speed, for example 10, 20, 30 and 50Mbit/s. There are also ADSL services with fixed link speeds 0.5, 1 and 2Mbit/s. These services are characterised by the fact that they either connect at their rated speed, or they fail. They do not slow down on account of line condition, interference etc. The measured data throughput can vary significantly due to contention, but nevertheless the link speed is a constant. The majority of ADSL services, and mobile broadband, are sold as variable link speed where the technology maintains a connection at the fastest speed it can manage in the prevailing conditions of line length, interference, location etc. ADSL that is sold as “up to 8Mb” can connect at anything from 160 to 8128kbits/s.</p> <p>It is important that the consumer knows whether a service being offered is fixed or variable rate. There is clearly a world of difference between 10Mbit/s cable that is 10Mbit/s and “up to” 8Mbit/s ADSL which can be anything from 0.16-8Mbit/s. This difference can be, and is, exploited in a misleading way by cable companies to suggest that the performance of up to 8Mbit/s is worse because it may only be running at 4Mbit/s when in fact the latter is a good performance given the line quality etc.</p> <p>All broadband products should clearly state whether there headline data rate or link speed is fixed by the technology or variable according to individual circumstances and location. This should reinforce the reality that a variable rate service is not necessarily going to be connecting at the maximum speed.</p>	<p>CAP and BCAP consider that, where a service varies significantly in the speed it provides to users, the maximum speed should be qualified with “up to” and should include appropriate levels of qualification with a to ensure that consumers have a reasonable understanding of the likely variations in speed. They also understand that variable link services like cable do not provide actual speeds at the user ends that are always in line with the advertised headline. Ofcom’s Broadband Speed research demonstrates that there are variations caused by factors like congestion and traffic management. CAP and BCAP consider the proposed approach in the guidance will give consumers a more meaningful indication of the nature of speeds on different types of service than using unfamiliar terms such as “fixed” or “variable” link.</p>

12.29	Vodafone	<p>Mobile operators, under the auspices of the Mobile Broadband Group (MBG), agreed principles on the marketing of mobile broadband services in June 2009, setting out guidelines on the provision of information on coverage, the factors that impact download speeds, and pricing. Given this self-regulatory code⁶, and the lack of mobile operator advertising focused on speed, Vodafone questions the necessity of CAP and BCAP regulation in mobile broadband speed advertising. The Consultation Document's talk of percentages, actual speeds and the substantiation requirements of actual performance reflect the fact that the characteristics of mobile broadband, as opposed to fixed broadband, have not been fully considered or accounted for.</p>	<p>CAP and BCAP note the points made by Vodafone in this section and in relation to the proposals above. Although it is CAP and BCAP's aim to adopt a consistent approach to all platforms, they consider that the guidance should take into account the extent to which consumer understanding and expectations are different across technologies.</p> <p>As outlined in the Consultation Document, mobile services suffer from the added limitation of the effect that signal strength has on the performance of mobile data services. As a consequence, the typical range of actual speeds for a mobile service is likely to 0Mbit/s up to the maximum actual speed. Clearly, such a statement is likely to hold little useful meaning for consumers.</p>
12.30	Vodafone	<p>Whilst we welcome the Consultation Document's recognition of contention's effect on mobile services, it should lead to the conclusion that availability to a percentage of users or 'actual speeds available' when attempting to present mobile broadband speed in advertising is not practical or helpful for the 'real life' experience of consumers.</p> <p>Contention has a greater effect on wireless as opposed to fixed technologies. A higher volume of connected devices causes 'cell shrinkage'; with a reduction in the distance the higher quality signals needed for higher speeds propagate from the site. Contention becomes a greater issue as mobile operators do not know how many of its customers will be in a given area; the services and the people who use them are mobile.</p>	<p>CAP and BCAP do not consider that mobile data services should be exempt from the scope of the guidance because they use the same types of claim and engender similar expectations among consumers about what they will be able to achieve as a result. However, they consider that it would be inappropriate for the guidance as outlined above to be applied to mobile services without modification.</p> <p>CAP and BCAP consider that it is as important to provide levels of information to consumers on mobile services as of any other kind of broadband service. However, they are particularly concerned that there was only one substantive consultation response outlining the perspective of mobile providers and therefore wish to seek further input and dialogue on how this approach could work for their services.</p>
12.31	Vodafone	<p>The effect of the distance between mast and user is greater than the effect of length of copper wire. The effect of being too far from a mast is that a customer's signal strength drops to zero. Vodafone suggests that the effect of signal quality should lead to the conclusion that 'availability to a percentage of users' or actual speeds available are not useful or practical when attempting to present mobile broadband speed in advertising.</p>	<p>The Review will carry out further work on the applicability of the guidance to mobile services. It will take into account the concerns expressed by the respondent and seek to adapt the provisions of the published guidance to allow them to apply to the advertising of mobile services.</p>

⁶ See http://www.mobilebroadbandgroup.com/documents/mbg_mobile_broadband_gpp_010609.pdf

12.32	Vodafone	<p>The Consultation Document recognises that “man-made structures and natural features interfere with signal strength”. However, the extent of how environmental factors affect signal strength is not fully appreciated. Most importantly, “typical” indoor signal strength will not be similar to ‘typical’ outdoor signal strength (even if all other factors were equal, which they are not) and even then there is not a “typical” indoor signal strength. A building’s material, the thickness of its walls and what floor the user is on will all fundamentally affect signal strength. Where one is, which side of a hill, in what sort of building, how high up and a host of other factors influence mobile signal strength; this number of variables from environmental factors in mobile militates against the concept of availability to a percentage of users or ‘actual speeds available’.</p> <p>Vodafone would stress that mobile signals, as currently operational in the 2.1 GHz bands, can vary significantly over very short distances, even across a street for example. Detailed coverage checkers are therefore key to identifying likely performance. Advising a consumer of the need to use a coverage checker at the point of sale is far more significant in setting user expectation than further qualification of such term as ‘typical’ or ‘average’.</p>	
12.33	Vodafone	<p>A further limitation that the Review should identify is device-dependant performance. The performance of a mobile service will depend on the device being used. There are devices in use that may not be capable of decoding the higher speeds available from some sites. Furthermore some devices have more advanced antennae systems than others, improving their performance against other devices with the same signal strength.</p>	
12.34	An Organisation Requesting Confidentiality	<p>In the event the status quo is replaced, depending on what option is supported, we submit that 6 months is an unreasonable period of grace. We have many systems and processes. All of these would have to be changed. This will take between 9 months and 1 year to do and will cost between £500,000 and £700,000 to carry out.</p>	<p>CAP and BCAP acknowledge the respondents’ concern over the cost to providers of any change to advertising practice. In particular, they note the respondent’s concern over the Consultation Document’s proposal for a six month period of grace for existing advertising campaigns and the immediate application of the new guidance for new campaigns that might already be in development.</p>
12.35	BSkyB	<p>CAP and BCAP should be aware that advertisers adapting to any new policy will have considerable internal training requirements and may be subject to lead times for consumer relationship management software development. As such,</p>	<p>CAP and BCAP would remind the respondent however, that changes required to advertising by an ASA adjudication would require an advertiser to amend an advertising campaign immediately. Furthermore, CAP and BCAP gave notice to the telecommunications</p>

		<p>advertisers' requirements will not be limited to simply changing the presentation of their maximum advertised broadband speed online and in new advertisements.</p> <p>CAP and BCAP have recognised a grace period of six months for existing advertising campaigns. However, telecoms advertising is a particularly competitive area and existing advertisements are unlikely to be live for six months to allow time for these changes.</p> <p>Due to the difficulty the ASA will have in assessing when such campaigns start and finish and, most significantly, due to the ISPs will require for internal training and systems development (as described above) we recommend a clear implementation period with a fixed implementation date. Consumers are likely to be less confused and better informed if ISPs are given an opportunity to ensure that all people and all elements within their sales processes are properly adapted to reflect changes in advertising policy and, given the media attention this consultation and CAP and BCAP's new guidance will receive, together with the raised awareness Ofcom's impending broadband speeds report will generate, we do not consider this approach risks any consumer harm.</p>	<p>industry that a Review was considering the present policies in mid-2010. As such, they consider that the proposal for a six month period of grace is proportionate.</p> <p>CAP and BCAP consider, however, that, in the interests of simplicity and in recognition of the business changes providers will have to make, the period of grace of six months will apply to both existing and new campaigns.</p>
12.36	South Broadband	<p>Witham</p> <p>The customer would be better informed if all references to speed were to be defined as the useful data throughput measurable at a computer interface, without any overheads. In practice, this would mean that an "up to 8Mb" ADSL service would become an "up to 6.8Mb" connection. This could be accommodated, as in some US web sites, as a qualifier such as "up to 8Mb ADSL – maximum data rate 6.8 Mbit/s".</p> <p>Alternatively the use of overhead-inclusive metrics could be banned, leaving the consumer experienced data throughput as the sole measure. This would greatly improve clarity and get rid of the erroneous view that "it is a theoretical number you only experience in the telephone exchange". The current number is not theoretical, but it is measured and expressed in a way that is not transparent to the end user and I believe that this practice should be terminated.</p>	<p>CAP and BCAP would point to the Substantiation Requirements section of the Consultation Document, which address the issue of protocol overheads.</p>
12.37	BSkyB	<p>Advertisers should not be prevented from referring to the maximum capability of a product provided that it is verifiable and does not mislead. It should be possible to make variations to</p>	<p>CAP and BCAP acknowledge that the guidance will not prescribe the approach advertisers must take. It will merely outline an approach that is likely to be compliant with the Codes. Advertisers may deviate from</p>

		<p>Option A to ensure that advertised “up to” speeds are based on the technical maximum speed that the product can actually achieve in practice, i.e. not theoretical, e.g. “up to 20Mb” for an ADSL2+ service. As recognised by broader advertising policy, the use of “up to” creates a presumption that the advertised benefit is available to a reasonable proportion of consumers in practice, but this presumption can be rebutted.</p> <p>CAP recognises this principle in its Help Note on Price Claims in Telecommunications Marketing:</p> <ul style="list-style-type: none"> - Claims stating “up to” or “from” are likely to be regarded as absolute claims referring to a range of savings unless qualified otherwise [...] <p>BIS also handles rebuttable presumptions for pricing well at paragraph 3.2.1 of its BIS Pricing Practices Guide, which states:</p> <ul style="list-style-type: none"> - Unless the advertisement says otherwise, the price indication should apply for a reasonable period. <p>This principle can be applied here, and amending the wording of BIS’s guidance for the purpose of this option should be that:</p> <ul style="list-style-type: none"> - Unless the advertisement says otherwise, an advertised speed should be available to a reasonable proportion of consumers. <p>An advertiser that prominently corrects the presumption that the maximum advertised speed is available to a reasonable proportion of consumers should be able to advertise the maximum achievable speed such as “up to 20Mb” albeit with different qualifications to those used currently. This would be a proportionate response to the concerns raised and particularly in the absence of ASA complaints about the use of “up to” speed claims in recent years.</p>	<p>the guidance, if they can satisfy the ASA that their approach is not likely to mislead.</p>
12.38	Everything Everywhere	<p>If it were considered that an indication of typical speed should be given, Everything Everywhere would favour an option where a provider can advertise an “up to” headline speed together with a typical speed that is available to at least 10% of users; a blend of options A and B. Providers can communicate the advantage that their investment and innovation provides and also the speed that is demonstrably achievable for a significant proportion of</p>	<p>CAP and BCAP have ruled out Options A, and elements of C1 and C2 on the basis that they permit the use of theoretical maximum speed claims. Everything Everywhere’s proposal would be subject to the same problem. Furthermore, the 10% criterion cannot reasonably be regarded as a ‘typical’ indication, but only an alternative ‘best case’ performance claim. CAP and BCAP do not consider that this approach is likely to be sufficient to ensure that consumers have information</p>

		customers.	necessary to manage their expectations of the likely performance of a service.
12.39	Virgin Media	<p>An “up to” speed claim based on 10% availability coupled with a single number typical speed disclaimer in the body copy of the ad. The 10% requirement is consistent with the OFT pricing guidelines and with the ASA’s interpretation of “up to” claims in other sectors.</p> <p>40% of respondents to Virgin Media’s research felt that a “typical speed” was the most important factor in defining a standard in broadband advertising. Virgin Media’s research also suggested that the addition of a “typical speed” disclaimer made the proposition easier for consumers to understand. Virgin Media added that, although their research suggested that a “typical range” was not regarded as material different in terms of the levels of consumer understanding, they believed a typical speed figure would be easier to implement.</p>	CAP and BCAP note this research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.
12.40	Which?	<p>Option B and C1 should be combined. Under this approach advertised headline speeds with the qualifier “up to” must be available to at least 10% of consumers and advertisements will further have to include a typical performance range reflecting the inter-quartile range of speeds. Although the inter-quartile range will exclude the 50% of customers that are in the bottom and top quartiles, Option C1 is more appropriate than Option C2. Basing typical speed on a median value will be too restrictive. Having two values, a headline speed available to 10% and an inter-quartile range, gives advertisers enough scope to manage expectations and will give consumers a better view of what speeds they can expect.</p> <p>Although there are merits to Option C2, such as having a single speed that is guaranteed to be available to at least 50%, it does not sufficiently reflect the fact that there will be large variations from this number and that consumers can end up getting faster or slower speeds.</p>	[See the evaluations of points relating to sections 2 and 3 above]
12.41	Consumer Focus	Consumer Focus is not in favour of using the term “up to” when communicating broadband speeds to customers. Ofcom research has consistently found that many ISPs aspire to deliver “up to” certain speeds and struggle to meet even half of the advertised speed. The term misleading and it does not provide the customer with the correct information that they need to	CAP and BCAP agree that an “up to” maximum speed, either theoretical or based on a minimum availability level, will, in many cases, be problematic in isolation. As they have noted in the evaluations above, CAP and BCAP are concerned that a maximum speed indication alone does not adequately convey the level of variation to which services are subject, for instance that impact of

		access vital services. We are aware that Ofcom has suggested using a typical speed range, which would represent the range of speeds actually achieved by half of customers. Unlike Ofcom, we are not in favour of using a theoretical maximum “up to” as a term alongside typical speed range messages of equal prominence. This is confusing and misleading to consumers and we propose that a more realistic achievable speed is used in advertising.	factors such as severe signal attenuation or more restrictive models of traffic management. For this reason they have proposed an approach that sets out criteria to assess the levels of information that should accompany a maximum “up to” speed claim commensurate to the potential for consumers to misled.
12.42	BSkyB	CAP and BCAP may wish to offer Option C1 as an optional way in which advertisers could qualify claims for some broadband access technologies, however, we do not consider that this solution can be imposed prescriptively on DSL services as a ‘one size fits all’. It essential that CAP and BCAP’s advertising policy does not favour or advantage one technology over another.	[See the evaluation of point 3.2.5 above]
12.43	BSkyB	CAP and BCAP may wish to propose Option C2 as an optional way in which advertisers could qualify claims for some broadband access technologies, however this solution cannot be imposed prescriptively on DSL services as a ‘one size fits all’.	
12.44	An Individual	The only way ISPs will have an incentive to improve their technology and infrastructure is through an outright ban on the term “up to” and its replacement with a cost per used bandwidth, for example, “£1 per megabit/second”.	CAP and BCAP consider that providers are free to offer either fixed-price or pay-as-you-go services, as they wish. CAP and BCAP’s concern is that advertisements do not mislead consumers, whatever the charging structure. As the Consultation Document made clear, it is not CAP and BCAP’s intention to constrain innovation in telecommunications advertising.
12.45	An Individual	All the proposals are completely unnecessary as the technology exists for ISP’s to charge for the service consumers actually receive. They have the infrastructure in place to offer a “pay as you go” service where consumers only pay for the service they actually receive.	
12.46	Ofcom	A potential development in broadband advertising may be to move away from advertising on the basis of stated speeds, but rather to set expectations of speeds by using descriptive words. We therefore recommend an additional requirement that any references to speeds in broadband adverts should be accompanied by a typical speed range, which has at least equal prominence.	[See the evaluation of point 9.1.1 above]
12.47	Virgin Media	A “typical speed” disclaimer should also be used wherever specific speeds are explicitly mentioned, for instance, with claims like “Superfast” or “Lightning Fast”.	[See the evaluation of point 9.1.1 above]

12.48	Ofcom	<p>To be useful and meaningful a typical speed range cannot encompass every single consumer who may buy the service in question. It is therefore important for advertisements to have clear and prominent qualifications, which make clear that the advertised speeds may not be achieved in practice.</p> <p>Ofcom sent details of their consumer research, which tested how prominent the typical performance range and other qualifications should be. Their summary showed a clear preference for information on typical performance ranges and other qualifications on broadband speeds to be prominently displayed in the body copy rather than in the small print. Furthermore, few consumers were inclined to read the small print in the context of advertising, i.e. prior to their decision to consider the offer in more detail at point of sale.</p>	CAP and BCAP note this research and consider that it supports the proposal outlined in the Consultation Document to publish new guidance recommending a change to advertising practice.
12.49	An Individual	<p>The proposals only cover the physical ADSL bearer capability, beyond that how does a consumer know their contention ratio? There should be some kind of industry “scoring” that allows a very simple panel to be used on advertising similar to the one that you get on foods, for example:</p> <p>Up to: 24mbit Typical: 8-12mbit Contention: 50:1 Data Fair Usage Policy: 30gb-unlimited</p>	CAP and BCAP consider that it would be unduly restrictive to prescribe a format for the presentation of performance information in broadband advertising. It is for providers themselves to ensure that information recommended in the guidance is presented in a clear manner.
12.50	Virgin Media	The significant limitations disclaimer should also be required in advertisements for “unlimited” broadband services.	CAP and BCAP do not consider that it is appropriate for the two sides of the Review to be conflated, although they acknowledge that there might seem to be some overlap. This element of the Review deals solely with “up to” speed claims and claims that are likely to have the same or similar meaning. “Unlimited” claims relate solely to usage rather than speed. CAP and BCAP consider that the proposals decided upon in the “unlimited” claims evaluation document are appropriate to meet CAP and BCAP’s policy objectives in that element of the review.