

SECTION 4: HARM AND OFFENCE

Question 24: Do you agree that rule 4.7 (violence, crime, disorder and anti-social behaviour) should be included in the proposed BCAP Code? If your answer is no, please explain why.

Note that this question refers to rule 4.9 of the new published Code: rules numbers have changed due to a decision to move two of the rules in the Children section into the Harm and Offence section.

<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
<p>Advertising Association; Association for Interactive Media and Entertainment; Charity Law Association; Christian Concern for our Nation and Christian Legal Centre; Mobile Entertainment Forum; Square1 Communications Ltd;</p> <p>5 organisations requesting</p>	<p><i>An organisation requesting confidentiality said:</i></p> <p>1. Yes, in principle, however more clarity would be needed on what the basis of "anti-social behaviour" is. Would this be based on the criteria for serving ASBOs for example or some other criteria?</p> <p><i>Square1 Communications Ltd said:</i></p> <p>2. Agreed, however we feel some clarification</p>	<p>1. BCAP considers that the rule would provide the ASA with the scope to consider complaints, on a case-by-case basis, about anti-social behaviour featured in ads. The ASA makes similar subjective judgements under the existing Harm and Offence rules. BCAP considers that a principles-based rule, which is less susceptible to loopholes than prescriptive rules, is preferable.</p> <p>BCAP considers the rule is unlikely to increase the regulatory burden but rather clarify a requirement of the Communications Act. An ad that condoned or encouraged the sort of behaviour described by the rule would be likely to fall foul of existing Code rules.</p> <p>2. See 1, above.</p>

confidentiality; 2 individuals	should be given to each area. Is the advertising of some popular car theft computer games seen as encouraging violence or anti social behaviour?	For the sake of clarity, BCAP does not intend the rule to prevent categories of advertising (save those that are not already prohibited under the Prohibited Categories section of the Code).
<i>Responses received against BCAP's proposal:</i> None	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
<p>Question 25: Do you agree that rule 4.10 (behaviour grossly prejudicial to the protection of the environment) should be included in the proposed BCAP Code? If your answer is no, please explain why.</p> <p>Note that this question refers to rule 4.12 of the new published Code: rules numbers have changed due to a decision to move one of the rules in the Children section into the Harm and Offence section.</p>		
<i>Responses received in favour of BCAP's proposal from:</i> Advertising Association; Charity Law Association; Charity Law Association; Christian Concern for our Nation and Christian Legal	<i>Summaries of significant points:</i> <i>Charity Law Association said:</i> 1. It is, obviously, a matter of judgment as to what is meant as "grossly prejudicial". It must be borne in mind that there is minority body of opinion which does not accept that global warming is caused by the activities of mankind. Accordingly, consider amending rule 4.10 to read: "Advertisements must not condone or encourage behaviour which is regarded by	<i>BCAP's evaluation of those points and action points:</i> 1. BCAP proposed to amend the rule in line with the wording of the Audiovisual Media Services Directive. It intends there to be no change to advertising policy and practice. The existing rule in the TV Code states "Advertisements must not encourage or condone behaviour prejudicial to the protection of the environment" and is supplemented by a note of guidance that states "This does not prevent

<p>Centre; Global Radio; Mobile Entertainment Forum; RadioCentre; Which?;</p> <p>4 organisations requesting confidentiality;</p> <p>An individual</p>	<p>the significant body of scientific opinion as being grossly prejudicial to the protection of the environment”.</p> <p><i>Global Radio and RadioCentre said:</i> 2. We would appreciate some clarity on how the ASA will assess what constitutes “behaviour grossly prejudicial to the environment”.</p> <p>The imposition of this rule on radio is the result of making rules consistent between TV and radio. Whilst we are content with the principle, we would like to note that this does not indicate our general support for television rules to be transposed to radio without careful consideration of their relevance to the medium. Subject to our concern about the provenance of this change, we are content that such a new rule should be required of radio.</p>	<p>responsible advertising for products or services which may have adverse environmental impact in normal use or in their manufacturing processes”.</p> <p>BCAP proposed – both for the sake of conciseness and for the sake of consistency with the Audiovisual Media Services Directive – to omit the note of guidance from the Code and replace it simply with the word “grossly”. The intention of the rule, and the way in which it is interpreted by the ASA, is unlikely to change on the basis of BCAP’s proposed amendment. BCAP therefore considers the wording of the rule is clear.</p> <p>2. See 1, above.</p> <p>BCAP intends that the ASA would consider complaints about radio ads against the rule in the same way it does complaints about TV ads.</p> <p>The existing rule would not prevent ads for products that, in their use or manufacture, have a detrimental effect on the environment. The rule is intended to prevent ads from condoning or encouraging wilful behaviour that would adversely impact on the environment. The rule therefore would not ban ads for cars.</p>
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	<p>However, we are concerned that there needs to be detailed guidance as to interpretation of the rule, since there will inevitably be a considerable amount of subjectivity in the assessment as to what constitutes “grossly prejudicial”. We seek clarification as to this guidance and request that any adjudications should be backed up by “the significant consensus of scientific opinion”.</p> <p>We would also appreciate confirmation that this rule will not be used to prevent the advertising of, for example, petrol-driven vehicles, without good reason or further legislation.</p> <p><i>An individual said:</i></p> <p>3. Rule 6.8 has gone from talking about ‘behaviour prejudicial to the environment’ to ‘behaviour grossly prejudicial to the protection of the environment’. This is a massive change and one which will allow through a lot of advertisements for products which are prejudicial to the environment, on the basis that they are not ‘grossly prejudicial’ or are not ‘prejudicial to the protection of’ the environment. I could make a case for a nuclear bomb being not grossly prejudicial to the protection of the environment since it would not stop protection being carried out elsewhere from the site where the bomb was dropped. The change has no purpose apart from allowing less</p>	<p>3. As stated in 1, above, BCAP does not intend the rule to constitute a change in advertising policy and practice. The addition of “grossly” to the rule is intended to permit only those creative treatments permitted under the existing rule.</p>
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	<p>environmentally friendly companies to advertise. I would strongly advise the original wording of rule 6.8 should be retained. We should be tightening legislation to protect the environment, not weakening it to the point of virtual non-existence.</p> <p><i>Which? said:</i></p> <p>4. We agree in principle with adding rule 4.10. However, we question the use of the word 'grossly'. We note that the reason for this appears to be to reflect the wording in the Audiovisual Media Services Directive. If the word 'grossly' is not required for this reason, we would recommend that it be removed. Otherwise, advertisers have too much leeway in terms of creating advertisements that could be said to encourage environmentally-damaging behaviour.</p>	<p>4. See 3, above.</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>None</p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>
<p>Question 26: Taking into account its policy consideration, do you agree with BCAP's proposal not to include in the proposed Code the present radio Harm rule (rule 10, section 2 of the present Radio Code)? If your answer is no, please explain why.</p>		

<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; Charity Law Association; Mobile Entertainment Forum;</p> <p>3 organisations requesting confidentiality</p>	<p><i>Summaries of significant points:</i></p> <p><i>Charity Law Association said:</i></p> <p>1. Yes we agree with this rule, save consider the addition of the following words:</p> <p style="padding-left: 40px;">“No advertising is acceptable which infringes or is likely to infringe the intellectual property rights of third parties”.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. The prevention of infringements of intellectual property rights does not fall within the scope of the Code: such disputes may be settled through the Courts and not by the ASA.</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>Christian Concern for our Nation and Christian Legal Centre;</p> <p>An organisation requesting confidentiality;</p> <p>An individual</p>	<p><i>Summaries of significant points:</i></p> <p><i>Christian Concern for our Nation and Christian Legal Centre said:</i></p> <p>1. No, we disagree. The radio rule specifically states that advertisers must not harm listeners, nor exploit either personally or financially, their vulnerability. Whilst the general principles would help ensure this does not happen, this rule should still be included. It provides a higher level of specific protection for the vulnerable than the general principle cover serious or widespread offence or harm. The radio harm rule should be extended to watchers of TV. The need not to exploit the vulnerable is particularly important.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. When proposing to omit the radio Harm rule, BCAP made clear it did not intend the proposed Code to be more permissive: the proposed Code includes many rules that prevent ads from causing specific types of harm, as well as a rule that ensures ads are prepared with a due sense of responsibility to society. The Principle at the beginning of the Compliance section makes clear the overarching principles of the Code are that ads should not mislead, cause serious or widespread offence or harm, especially to children or the vulnerable.</p>

	<p>The statutory framework is based upon ensuring that advertising which is harmful and offensive in television and radio is prevented.</p> <p><i>An individual said:</i></p> <p>2. I think the original code is stronger. There is a big difference between having 'a sense of responsibility' and to 'not harm nor exploit listeners'. I would most strongly recommend either that this rule is left in its present form or that the new rule should encompass all the aspects of the old one.</p>	<p>Furthermore, BCAP proposed to omit the radio Harm rule because it was mindful the ASA had never investigated a complaint against it.</p> <p>BCAP is content that the proposed Code would meet the requirement of the Communications Act that the inclusion of advertising that may be harmful is prevented.</p> <p>2. See 1, above.</p>
<p>Question 27:</p> <p>i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Harm and Offence section are necessary and easily understandable? If your answer is no, please explain why.</p> <p>ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise be given dedicated consideration?</p> <p>Do you have other comments on this section?</p>		

<p><i>Responses received from:</i></p> <p>Advertising Association; Asda; Charity Law Association; Changing Faces; Christian Concern for our Nation and Christian Legal Centre; Consumer Focus; Glasgow Community Safety Services; Mobile Entertainment Forum; RWE npower;</p> <p>5 organisations requesting confidentiality;</p> <p>Three individuals</p>	<p>These organisations agreed the rules in the proposed Harm and Offence section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document:</p> <p>Advertising Association; Asda; Charity Law Association; Changing Faces; Mobile Entertainment Forum; RWE npower; 4 organisations requesting confidentiality;</p> <p>An individual</p> <p><i>Summaries of significant points:</i></p> <p><i>British Naturism said:</i></p> <p>1. The code does not recognise that there are many situations where the two requirements of avoiding harm and offence conflict and it does not provide a rule for resolving the conflict. We firmly believe that considerations of harm must always take precedence over offence. Anything else is indistinguishable from prejudice.</p> <p>The rules are almost entirely concerned with the</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1. Rule 4.2 of BCAP's new published Code, which seeks to prevent ads from causing serious or widespread offence, is deliberately principles-based. That approach provides the ASA the scope to consider complaints about offensive advertising by taking into account the context, medium, audience, product and prevailing standards. The ASA must make subjective judgements, on a case-by-case basis, about the likelihood of an ad causing either serious or</p>
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	<p>rights of marketers and the rights of individuals receiving advertising material. Marketing materials are part of the general pattern of life and they do have an impact on society as a whole. The code needs to give more weight to the general well-being of society.</p> <p><i>Christian Concern for our Nation and Christian Legal Centre said:</i></p> <p>2. We strongly disagree with the changes being made to this section and believe that they will result in a significant weakening of the code and make it an ineffective vehicle to maintain advertising standards. The detail in this section must be retained.</p> <p>The current code makes it clear that the rules are to prevent advertising causing offence to viewers generally or to particular groups in society (for example by causing significant distress, disgust or insult, or by offending against widespread public feeling). This is replaced by the less detailed principle statement that “Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence”. The BCAP Code should aim</p>	<p>widespread offence.</p> <p>BCAP considers that there is not a conflict between new rule 4.1 (which prevents harm being caused to those under 18), new rule 4.2 (which protects the audience from offensive ads) and rule 1.2 (which protects consumers from socially irresponsible advertising, including that which is or could be harmful). It would be possible for an ad to breach one, two or all of those rules.</p> <p>2. The rules do not amount to a relaxation in advertising policy and practice: BCAP intends that the new Code maintains the same level of protection from harmful and offensive material as the existing Code. The proposed rules would ensure that no advertisement causes serious offence (to anyone) or widespread offence; and, in either case, the context in which an ad is broadcast would be taken into account by the ASA when considering a complaint. The rules may be supplemented with guidance in due course.</p>
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	<p>to maintain high standards of advertising not to let standards slip to the lowest common denominator of “generally accepted” standards with the BCAP arbitrarily deciding exactly what those are and taking no account of the views of “particular groups in society”. This new proposed principle could easily be used to allow virtually every type of advertisement even if a significant number of people from particular groups in society complained. The word “widespread” offence could be used to ignore virtually every complaint. We would suggest that the current code should be kept and improved upon.</p> <p><i>Christian Concern for our Nation and Christian Legal Centre said:</i></p> <p>3. The new proposed rule 4.1 omits the phrase “or offends against public feeling”. It is very important that this phrase is included. Does this mean that advertisements are now to be allowed to offend against public feeling in a section which is meant to provide protection against harm and offence?</p> <p><i>Christian Concern for our Nation and Christian Legal Centre said:</i></p> <p>4. The current rule 6.1 provides important explanatory notes which help to sustain and maintain higher standards. These notes should be retained and included in the proposed Code. They</p>	<p>3. Again, the rules will not amount to a relaxation in advertising policy and practice. An ad that would be likely to breach the existing TV Offence rule (6.1) because it offended against public feeling would also be likely to breach new published rule 4.2.</p> <p>4. When it produced the proposed Code, BCAP decided not to include notes of guidance from the legacy Codes; instead, those notes of guidance may form the basis of supplementary guidance documents in due course.</p>
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	<p>include standards on shared values on sex and nudity and the use of offensive language, the portrayal of sexual violence, respect for spiritual beliefs and respect for the interest and dignity of minorities.</p> <p><i>Christian Concern for our Nation and Christian Legal Centre said:</i></p> <p>5. The proposed rule 4.8 should state that advertisements must not distress the audience, it should not add the proviso of “without justifiable reason”.</p> <p><i>Consumer Focus said:</i></p> <p>6. We believe that the general accessibility guidelines issued by the Equality and Human Rights Commission should form basic standards for marketing under the Code.</p>	<p>5. BCAP and the ASA have a long-standing policy that ads may include material that could distress the audience if the purpose of that material is to alert the audience to, for example, an important cause. For example, a public-service ad could warn the audience of the dangers of smoking without breaching the Code. Such material must, however, still be justified: the ASA would not permit an ad to include material likely to cause significant distress, even if it were for an important cause.</p> <p>6. The purpose of the proposed Code is to ensure advertising remains legal, decent honest and truthful; the rules in the Harm and Offence section of the Code are intended to prevent ads from harming consumers or from causing serious or widespread offence.</p> <p>The Code does not conflict with the Equality and Human Rights Commission’s (EHRC’s) guidelines, but is intended to secure different objectives. BCAP considers it unnecessary to</p>
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	<p><i>Glasgow Community Safety Services said:</i></p> <p>7. The sexual objectification of women through advertising can lead to a range of harms, such as body and self esteem issues; eating disorders; the desire for plastic surgery; constant monitoring of appearance; violence; sexist attitudes; sexual harassment; the view that women are always sexually available; a detrimental impact on men's ability to build lasting, healthy, mutually respectful relationships; and racism. Images of thin, highly sexualised young women now saturate the advertising industry.</p> <p>In light of the harms outlined by irresponsible, sexist advertising we are pleased the CAP has included a section in the Review (part 2, section 4), entitled "harm and offence". In particular we support the commitment to ensuring marketing communications "contain nothing that is likely to condone or encourage violence or anti-social behaviour". These proposals outline a commitment to greater social responsibility in the media and we would hope these recommendations</p>	<p>duplicate the EHRC's guidelines in its Code, and inappropriate to expect the ASA to consider complaints under them, given the EHRC is the expert body for maintaining and enforcing its own guidelines.</p> <p>7. The Code ensures that ads do not cause serious or widespread offence, with particular care being taken on the grounds of sex and sexual orientation. The proposed rules therefore provide the ASA the scope to uphold complaints about ads, on a case-by-case basis, that depict women in such a way that is likely to cause harm or offence. BCAP therefore considers Glasgow Community Safety Services' (GCSS's) point relates more to the interpretation of the Code than to the proposed rules themselves. In the absence of evidence that the depiction of women in advertising currently acceptable to the ASA is harmful, it would be disproportionate for BCAP to introduce prescriptive rules on the depiction of women in advertising.</p> <p>Compliance with the Code would be judged, by the ASA, on the context, medium, audience, product and prevailing standards, ensuring the ASA is able to take into account the way in which an ad is targeted when considering if its appearance is likely to cause serious or</p>
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	<p>are adhered to.</p> <p>We would recommend that gender equality be mainstreamed into media regulation – at present concerns relating to the sexualisation of women are judged solely on the grounds of obscenity and decency. We would suggest that this must be extended to gender equality by bodies such as OFCOM and ASA and this regulation is enacted via legislation in order to enhance its credibility.</p> <p>Ideally, we would be in favour of legislative sanctions banning all forms of pornographic material and adverts containing such objectifying images due to our belief that it is degrading to the women involved, harmful to users and complicit in violence against women both in its production and consumption.</p> <p><i>An individual said:</i></p> <p>8. I am very upset at the lowering of the standards of adverts on TV. Declining moral standards by TV in swearing, nudity and etc are helping to the lowering of moral conduct.</p> <p><i>An individual said:</i></p> <p>9. I believe that the rules as currently framed do not provide a strong enough protection against pornographic and other sexual images which are</p>	<p>widespread offence. In reaching those decisions, the ASA considers audience figures to ensure an ad is suitably scheduled. Again, it would be disproportionate for BCAP to prohibit categories of products or services from being advertised if they are presently being advertised and scheduled in a way that complies with the Code.</p> <p>BCAP is unable to comment on GCSS's comments in favour of legislative sanctions banning pornographic images and ads that contain images that objectify women.</p> <p>8. and 9. The Code ensures that ads do not cause serious or widespread offence. The proposed rules therefore provide the ASA the scope to uphold complaints about ads, on a case-by-case basis, that could cause harm or offence, including those featuring nudity or swearing. BCAP therefore considers the respondents' points relate more to the interpretation of the Code than to the rules themselves. In the absence of evidence that advertising currently acceptable to the ASA is harmful or offensive, it</p>
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	<p>offensive to women and to wider society.</p> <p><i>Samaritans said:</i></p> <p>10. As part of our work to reduce suicide, Samaritans have committed to working more closely with regulators, particularly those responsible for media issues, to address our concerns relating to the representation of suicide in the public domain.</p> <p>Samaritans believes that the evidence of the impact of the media on vulnerable people is well established and irrefutable. In 1981, German television screened a six-part series called <i>Death of a Student</i>. At the start of each episode, a scene of a young man killing himself on a railway line was shown. During the series, deaths recorded by this method increased by 175%.</p> <p>Therefore we are taking this opportunity to share our expertise and experience on the role of the media in suicide prevention. Our intention is to inform the ASA's CAP code committee on best practice with the aim of reducing future deaths by suicide. In the last six months we have become aware of some advertisements that we feel have failed to recognise this best practice. We recognise that we may not have taken adequate steps in the past to extend our expertise on suicide prevention</p>	<p>would be disproportionate for BCAP to introduce stricter rules.</p> <p>10. BCAP's rule that ensures ads are socially responsible (1.2), combined with other rules – in particular, 4.1 (Harm to under 18s), 4.2 (Offence) and 4.4 ("Advertisements must not include material that is likely to condone or encourage behaviour that prejudices health or safety") – ensure that the ASA can uphold complaints about an ad that is likely to condone or encourage suicide.</p> <p>The rules in the Harm and Offence section of the Code are deliberately principles-based. That approach provides the ASA the scope to consider complaints about potentially harmful or offensive advertising on a case-by-case basis, taking into account relevant factors such as context, medium and audience. BCAP considers its principles-based approach in the Harm and Offence section more helpful than a prescriptive approach on advertising techniques: over-arching principles embody the spirit of the Code, are readily understandable and minimise the risk of an unscrupulous advertiser exploiting loopholes in prescriptive rules that would, by their nature, be likely applied by the letter.</p> <p>BCAP agrees with Samaritans that it is important</p>
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	<p>to the advertising industry and, by responding to this consultation, we are acting to address this.</p> <p>Based on research into the media's influence on suicide prevention (http://www.samaritans.org/media_centre/media_guidelines.aspx), Samaritans would suggest the following points are included within the code. They have been written to reflect the language of the existing code.</p> <ol style="list-style-type: none"> 1. Marketing Communications and Advertisements must not portray suicidal acts either through the use of graphic images (photographic or illustrative) which provide methodology or detail on how to complete the suicide act. 2. Marketers and Advertisers must take particular care not to glorify or normalise suicide and its effects, such as representing a positive dimension because of the death. 3. Marketers and Advertisers must pay attention to the context (including time and location) of the communication, and particularly to its likely impact on distressed or vulnerable people. <p>We believe these points condense the key factors that can lead to imitative suicidal behaviour and urge the ASA CAP code review team to recognise them within the code.</p>	<p>to ensure advertising does not have a harmful effect on consumers; BCAP is confident that the Code secures that need. Nevertheless, BCAP empathises with Samaritans' desire for more explicit guidance on the portrayal of suicide in advertising and will consider the need to produce guidance.</p>
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