

Guidance on advertising in-game purchases

Committee of Advertising Practice and Broadcast Committee of Advertising Practice statement on new guidance to explain how the Advertising Codes apply to the marketing of in-game purchases in apps and video games



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1. Executive summary

Following public consultation, the Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code), and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (the BCAP Code), are introducing new guidance to explain how the Advertising Codes apply to the marketing of in-game purchases in apps and video games.

CAP and BCAP received nine responses, each of which was mixed in support for and objections to the proposed guidance. A summary of these responses can be found in part 3 below, along with a detailed discussion of the most significant changes to the guidance. An evaluation of the responses can be found in the accompanying evaluation table.

The majority of the proposed guidance has been retained in the final version. However, substantial changes have been made to the sections on remit, the presentation of virtual currency price statements, and the way in which the guidance handles concerns about gambling and loot boxes.

The revised guidance is published alongside this document.

CAP and BCAP are mindful of the need to avoid unintended consequences of introducing new guidance and to ensure that it is effective. As such, the guidance will be subject to review after 12 months.

The guidance newly clarifies several means by which advertisers of games with in-game purchasing should seek to ensure that their ads are not misleading. In recognition that, for some advertisers, changes to in-game content may be required, the ASA will be willing to deal with complaints on an informal footing for a period of 6 months for in-game content and 3 months for all other ads covered by the guidance to allow industry to implement any changes effectively. Following this period, the ASA will return to their usual procedures for determining whether to pursue cases formally.

2. Background

Following increased awareness of concerns raised by the public, the video game press, campaign and research organisations, and by Government Select Committees about the potential for in-game purchasing, particularly of random-item products (often called ‘loot boxes’), to cause harm and/or to mislead consumers, CAP and BCAP examined the role of advertising in this area with a view to determine whether regulatory intervention was appropriate. The following issues raised by concerned parties were considered to be in scope for further work:

- Clarity of information at point of purchase
- Responsibility of advertising messages
- Truthfulness in advertising of games containing purchasing

The Advertising Codes already contain prohibitions on harmful and misleading advertising, and CAP and BCAP did not consider that further rules were necessary to address these specific issues in the interactive entertainment sector. Instead, they proposed the publication of a formal piece of Advertising Guidance, to explain to advertisers how the existing Codes apply to this specific matter, i.e. what responsible and truthful marketing looks like for in-game purchasing.

Activity by other regulatory organisations

Gambling Commission

One of the chief concerns raised was that random-item purchasing (‘loot boxes’) are a form of gambling, leading the Gambling Commission to consider whether random-item purchasing fell within the legal definition of gambling (and thus within their scope). They concluded that:

In practical terms... where in-game items obtained via loot boxes are confined for use within the game and cannot be cashed out it is unlikely to be caught as a licensable gambling activity.¹

CAP and BCAP understand that this type of random-item purchase is by far the most common. In the same statement, the Commission noted that the public are not necessarily specifically concerned with whether these items are defined as gambling, but whether they have the potential to cause harm to children.

Not all random-item purchases are, however, confined to the game and unable to be cashed out. The Commission noted that these may be considered differently:

Where there are readily accessible opportunities to cash in or exchange those awarded in-game items for money or money’s worth those elements of the game are likely to be considered licensable gambling activities.²

¹ <https://www.gamblingcommission.gov.uk/news-action-and-statistics/News/loot-boxes-within-video-games>

² <http://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf>

Purchases caught by gambling legislation in this way would be subject to the same regulation and enforcement as more common forms of gambling, including their marketing communications falling under the gambling rules of the CAP and BCAP Codes.

Department for Digital, Culture, Media and Sport

In June 2020, the Government responded to a report by the DCMS Select Committee, which called for further regulation of random-item purchasing as part of their report on Immersive and Addictive Technologies. One of the recommendations of this report was “to specify that loot boxes are a game of chance”³ covered by the Gambling Act 2005 (and therefore under the scope of the Gambling Commission). A call for evidence, aimed at players and at industry, launched in September 2020 and is intended to gather evidence and understand the impact of loot boxes. At the time of publishing this statement, the call for evidence has closed, with the outcome yet to be released.

The role of advertising regulation

The majority of concerns raised in relation to in-game purchasing concern the nature of random-item purchasing. The question of whether these products should be defined as gambling and banned either from sale or advertising is a question of law, and falls outside of the scope of CAP and BCAP regulation. However, CAP and BCAP nonetheless recognised that there were matters closely related to this central issue that do concern advertising and which could be addressed as part of the wider regulatory framework:

- Clarity of information at point of purchase
- Responsibility of advertising messages
- Truthfulness in advertising of games containing purchasing

To this end, CAP and BCAP considered the extent to which advertising in these areas could pose a risk of consumer detriment, and what regulatory action would be most appropriate to mitigate any such risks.

Key sections of proposed guidance

Presentation of pricing information

CAP and BCAP were concerned that the combination of proprietary virtual currency, bundling, and odd-pricing may have a serious impact on the ability of consumers (particularly children or vulnerable people) to understand how much real-world money they are spending on in-game items and, therefore, impact on their ability to make an informed decision about a purchase. Under the Advertising Codes, where an ad quotes a price for a product, the inclusive price of the product (or how it is calculated) is material information to a consumer’s transactional decision.⁴ Where the price is present but obscured, CAP and BCAP consider that this is unlikely to be compliant with the requirements of the Codes.

³ <https://www.gov.uk/government/publications/government-response-to-the-digital-culture-media-sport-select-committee-report-on-immersive-and-addictive-technologies/government-response-to-the-digital-culture-media-sport-select-committee-report-on-immersive-and-addictive-technologies#loot-boxes-and-gambling>

⁴ 3.4

For marketing communications that quote prices for advertised products, material information [for the purposes of rule 3.3] includes:

3.4.3

The proposed guidance, therefore, explained that the real-world prices for in-game purchased products should be made clear to consumers in the storefront, considering the following:

- Whether proprietary currency is used
- How bundling affects price
- The relationship between the cost of currency and the cost of items, where odd-pricing is a relevant issue

Presentation of in-game purchases

There is a variety of ways in which in-game purchases may be presented to consumers, both in and out of the game. Some of these messages may emphasise the functionality of the items, others may focus on the ‘rarity’ of particular skins and the exclusivity of owning them. With random-item purchasing, the ads may revolve around the chance of obtaining something particularly rare or useful.

While many of these approaches are unlikely to cause particular detriment, CAP and BCAP were concerned that some types of messaging (particularly when in a time-dependent context) may have the potential to cause detriment to some vulnerable individuals, including by misleading them about the nature or purpose of the purchase.

From CAP and BCAP’s understanding of the available evidence, the consultation suggested that there was a sufficient basis to suggest that regulatory intervention on the part of vulnerable people was appropriate here, as random-item purchasing could be considered to be a riskier product category. The proposed guidance sought to do this by ensuring that messaging around the purchase of in-game items (especially random-item purchasing) reduced the risk of harm to vulnerable people by prohibiting links to gambling imagery and content.

Advertising games containing in-game purchasing

CAP and BCAP also had concerns about the advertising of games that contain purchase mechanisms and whether it was clear that some content featured in an ad might be subject to an additional cost (or large investment of game time). Although it would be legitimate for advertisers to include optional extras as part of their marketing, there is a need to avoid implying that items requiring further purchase are included in the basic game. The guidance sought to ensure that the content of an ad was a reasonable presentation of what a consumer could expect to encounter in the course of ordinary gameplay, without preventing ads from featuring advanced levels or scenes.

Consultation

The consultation invited comments on the proposed guidance, particularly welcoming comments on the degree to which the guidance addressed concerns about advertising for in-game purchasing, and whether the guidance would present a disproportionate impact on the video game industry or a specific part thereof.

the price of the advertised product, including taxes, or, if the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated

3. Consultation responses

The consultation received nine responses, from industry representatives, campaign and public interest groups, academics, and private individuals. Within the responses there was support for each aspect of the guidance, as well as some criticisms and suggestions for change. No response was either entirely supportive or entirely critical; all had mixed views on the likely effectiveness and/or the practicality of the guidance. CAP and BCAP have published the responses they received, and carried out a detailed evaluation of all significant points made in these responses, which is set out in a separate evaluation table. The most substantive points are also summarised below. The analysis led to three significant sets of changes, which are expanded upon below, rather than in the table, to allow for more detail.

The revised guidance is published alongside this document.

Substantive points from responses

Including odds in marketing for random-item purchasing

Two respondents recommended that the guidance should require advertisers to state the odds of receiving valuable items within the game and/or before the game is purchased. Although CAP and BCAP understand that some countries now require the disclosure of odds for loot boxes, no evidence has been provided demonstrating that such information is readily understood or acted upon by consumers, affects player behaviour, or reduces risks of potential harm. Therefore, there is currently no sufficient basis to introduce this requirement to the CAP and BCAP Codes.

Concerns relating to game design

Several respondents raised concerns that touched upon elements of game design, such as misleadingly scripted tutorials, checks to confirm in-game purchases were intentional, and the presence of in-game purchasing in and of itself. These elements of the in-game purchasing environment are a matter of product or platform design, editorial choices, and business practice rather than marketing. Therefore, they fall outside of the content that CAP and BCAP are entitled to regulate and, by extension, are deliberately not included in the guidance.

Defining random-item purchasing as gambling

One respondent stated that loot boxes were a form of gambling, and that a recent survey suggested that young people agreed. They therefore recommended that loot boxes should be subject to the same advertising regulations as other gambling products. As outlined above, the Gambling Commission is the statutory body responsible for regulating and licencing gambling activity, so CAP and BCAP must have regard to the GC's decisions about what does and does not constitute gambling activity in the eyes of the law. Where a particular activity is considered by them to be gambling and licenced accordingly, ads for that activity would be covered by CAP and BCAP's gambling rules. However, as the GC has stated that loot boxes do not ordinarily fall into this category, CAP and BCAP are not in a position to treat them as such under the Codes.

Children and in-game purchasing

Two respondents raised a range of concerns about children, including their exposure to any form of marketing for in-game purchases. The CAP and BCAP Codes allow marketers to target under-16s, but prohibit such ads from directly exhorting children to buy (e.g. by using “buy now!” messaging). This means that ads appearing in children’s media, including games, cannot use explicit calls to action and are therefore reduced in the immediacy of their impact. While CAP and BCAP acknowledge the objections made by respondents, consideration of whether generally to allow advertising to children in the in-game purchasing market (or at all) is outside the scope of the current consultation.

Significant amendments to the proposed guidance

Remit

In-game storefronts may fall within the scope of the CAP Code if they are directly connected to the sale of goods and services; in the context of a game, this would mean a direct connection to a real-world transaction. To satisfy this, the proposed guidance stated that storefronts would be in remit if the virtual currency that they used could be purchased for real money.

Industry respondents to the consultation stated that the actual purchase in these situations was of the virtual currency itself, not the in-game items. They argued that in many cases the purchase of virtual currency was simply the purchase of an in-game resource, and that it was then up to the player to decide how to use that resource within the game world itself.

This view gave way to concerns that some of the guidance may stray from regulating advertising content into regulating game content. This was of particular concern for games that were paid-for and standalone (e.g. large console or computer games) but that allowed players to top-up in-game virtual currency. In such games, it was felt inappropriate for advertising regulation to extend to the in-game storefronts where consumers could use the virtual currency they had purchased. CAP agreed that it was not the intention of the guidance to regulate editorial game content, and sought to elucidate the boundary between advertising and game content.

CAP concluded that, in some instances, virtual currencies can be a direct proxy for a real-world purchase – they are only available when bought for real-world money, and are then spent directly on digital items. In other games, there is no mechanism at all for purchasing the virtual currency and, therefore, no transactional decision. In many games, the currency can be earned in-game and *also* purchased as a ‘top-up’ for in-game use. CAP considered that it would be appropriate to arrange the principles of the guidance along the split between digital currencies that are a direct analogue for real-world money and those that are in-game resources that can be topped-up.

The guidance now states that in-game storefronts (and other in-game messaging about item purchases) are only within remit if they use real money or a virtual currency that can only be obtained by purchasing it with real money. Where a virtual currency can be earned in the game, the storefront is outside of remit, regardless of whether the currency can also be purchased.

Virtual currency price statements

Two public interest groups strongly supported the proposals that real-world monetary values should accompany virtual currency price statements. Industry respondents raised two significant objections to the proposed guidelines: that it conflicted with other industry guidance from a statutory body, and that it did not take into account the complexity of calculate real-world price statements. CAP and BCAP agree that the real-world price of in-game purchases should be readily available to consumers, and consider that the exact means by which this is done will depend on the context of the game, storefront, or ad in question. In response to the concerns raised about the practicality and consistency of the proposals, as highlighted by the industry respondents, CAP and BCAP considered whether this principle could be reflected more effectively in the guidance, whilst still maintaining protection for consumers.

With regard to other industry guidance, respondents noted that Principle 4 of the OFT principles for in-app purchases⁵ requires the separation of purchases for 'real-world currency' and gameplay. It states that:

While consumers may pay to obtain premium content or features, information about the ability to do so is separated from gameplay. Consumers are not prompted while playing the game to pay for additional content or features.

One industry respondent noted that to comply with this principle game developers often allowed players to purchase in-game virtual currency away from active gameplay. They can then use this purchased in-game virtual currency to acquire in-game items if they so choose. The examples given in the OFT guidance relate primarily to ensuring that games make clear whether a purchase is carried out using digital currency or real-world spending, and not blurring the two. Respondents were concerned that real-world price statements alongside virtual currency would undermine this requirement and make it unclear what digital products were being paid for directly and which were paid for through virtual currency.

In relation to calculating the real-world price statements, industry respondents noted that there were several ways in which virtual currency could be obtained, with the available mechanisms varying from game to game:

- Purchase, directly by the player through the game or a third party (e.g. physical gift cards)
- Earning, through gameplay or watching adverts
- Winning, through in-game or third-party competitions or promotions
- Gifting, by the game developer

This wide range of mechanics means that it may be very difficult, or potentially impossible, for some games to provide a representative real-world 'price' for an in-game item. Although the guidance acknowledged that an average or other representative price may be appropriate, respondents were concerned that this would be meaningless or even confusing for players because it would present an equivalent price that was not actually

⁵ This guidance was released by the Office of Fair Trading in 2014 and, following their dissolution, was adopted by the Competition and Markets Authority when they took on the relevant aspects of the OFT's work. The guidance is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288360/oft1519.pdf

obtainable. Respondents also raised the point that real-world price statements may imply that the digital items could be sold back by the player for the stated price, were available for that price, or that they held this value outside of the game world.

CAP and BCAP agreed with the industry respondents that there was the potential for consumer detriment and a lack of feasibility from the original proposals, and noted that the OFT recommendation to keep virtual and real currencies separate was predicated on protecting consumers. Although there were potential benefits to accompanying virtual price statements with real world values, which was the basis for the original guidance proposal, CAP and BCAP considered that these were outweighed by the protection provided by maintaining a separation between the two, and recognised that in many instances a real world value statement would not necessarily contribute to consumer understanding of the price and may even undermine it. Therefore, the amended guidance no longer requires advertisers to include real-world price statements for items purchased with virtual currencies.

With this removed, however, it is still necessary for consumers to have ready access to information that allows that to understand the price of an in-game purchase. One of the factors affecting the real-world price, which contributed to the above amendment to the guidance, was that players may already hold some virtual currency that would offset the basic value of an item. CAP and BCAP considered that the amount of virtual currency already held by the player formed part of their decision to buy or find out more about an item (which constitutes the transactional decision), with a further part formed by the cost of any further virtual currency required to complete the purchase. Therefore, these pieces of information must be made readily accessible to players as part of the storefront or other in-game marketing message. The amended guidance now requires that where a storefront using virtual currency falls within remit, the value of an item should be clear to consumers. In most instances, the minimum requirement will fulfil the function of a clear statement of the digital currency price and an easily accessible or intuitive signpost to how much of the currency the player currently holds and/or the storefront area where this currency can be purchased. Other approaches may be acceptable if they achieve the same end.

Marketers should take care not to imply that purchase for real-world money is the only way to obtain this currency or item if that is not the case (e.g. if the items can be accessed through wait timers or free-to-play game mechanics).

References to gambling and gambling-like behaviours

As outlined above, the organisation responsible for determining whether random-item purchasing is a form of gambling is the Gambling Commission, and changes to the law surrounding this definition are subject to work by DCMS. CAP and BCAP must have regard to the law and its interpretation, and are not entitled to make a determination about whether random-item purchasing constitutes gambling or should be treated as such. The consultation made reference to a piece of academic research suggesting a potential link between loot box spend and problem gambling behaviour, which underpinned the proposal to potentially treat random-item purchasing as gambling-like behaviour that required more stringent restrictions.

Public health respondents provided references to their own surveys and focus group data, which showed some significant agreement with the notion that random-item purchasing was a form of gambling, including by players. Although CAP and BCAP acknowledge that this data shows the extent to which members of the public are concerned about the nature of random-item purchasing, this must be balanced against the need to ensure that the

guidance does not overreach its regulatory bounds by equating random-item purchasing with gambling. The definition of gambling notwithstanding, CAP and BCAP can apply more stringent restrictions to the advertising of certain products if there is evidence of harm, justified by general rules relating to social responsibility. At the point of consultation, CAP and BCAP's view was that the limited available academic evidence supported a cautious approach to loot box advertising.

The academic team responsible for the quoted research responded to the consultation; they commented that the evidence base as a whole for the impact of advertising random-item purchasing on consumer behaviour and well-being was very thin. Industry respondents echoed this, and raised further concerns that the initial guidance strayed too far beyond regulating advertising. They suggested that, by describing random-item purchasing as "gambling-like" and stating that it "may fulfil similar functions to gambling activities or be otherwise associated with problem gambling behaviours" the guidance implied that these were proven and uncontroversial links.

Having reviewed the issues raised, CAP and BCAP agree that that the evidence base, while indicative of a correlative relationship, is insufficient to support particular advertising restrictions at the current time because it does not establish a risk of harm. Moreover, CAP and BCAP also agree that the wording in the original proposals had the effect of implying that there was an established relationship between loot boxes and gambling, both in an advertising context and in terms of consumer behaviour.

To reflect the broader picture of the evidence base, the references to specific harms have been removed. These have been replaced with requirements for advertisers to take care that their advertising does not mislead about the chances of obtaining specific items through random-item purchasing, and notes that (as in every product sector) there may be consumers with particular vulnerabilities in this regard. To further bring the guidance in line with existing evidence, and to ensure clear demarcation in scope where gambling activity is concerned, all references to gambling and gambling-like activity have been removed.

4. Outcome

In light of the reasons set out in the consultation proposal, and the evaluation of consultation responses, CAP and BCAP will publish and enact the revised guidance on advertising in-game purchases.

5. Implementation

Existing advertisements should be changed or withdrawn as soon as possible.

In recognition that, for some advertisers, changes to in-game content may be required, the ASA will be willing to deal with complaints on an informal footing for a period of 6 months for in-game content and 3 months for all other ads covered by the guidance to allow industry to implement any changes effectively. Following this period, the ASA will return to their usual procedures for determining whether to pursue cases formally.

CAP and BCAP are mindful of the need to avoid unintended consequences of introducing new guidance and to ensure that it is effective. As such, the guidance will be subject to review after 12 months from publication.

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