

Consultation on speed claims in broadband advertising (2017):

CAP and BCAP's evaluation of responses



1. Introduction

Following public consultation, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) have decided to introduce new guidance on the advertising of broadband speeds.

CAP and BCAP have published a separate regulatory statement setting out the rationale for their decision. This document provides detailed responses to specific comments received during the consultation.

1.1 How to use this document

This document should be read alongside the [consultation document](#).

2. List of respondents and their abbreviations used in this document

1	BT, Plusnet and EE joint response	BT
2	Communications Consumer Panel and Advisory Committee for Older and Disabled People joint response	CCP
3	Foundation for Information Society Policy	FISP
4	Gigaclear	GC
5	Incorporated Society of British Advertisers	ISBA
6	Internet Service Providers Association	ISPA
7	Local Government Association	LGA
8	Ofcom	Ofcom
9	Radiocentre	RC
10	Sky	Sky
11	SSE	SSE
12	TalkTalk	TT
13	Think Broadband	TB
14	Virgin Media	VM
15	Vodafone	VF

3. Evaluation of consultation responses

Option A: 24-hour median download speed		
Respondent(s)	Comments	CAP and BCAP's evaluation
VF and VM	The respondents on the left agreed with the proposal. A summary of significant points follows below:	
VF	<p>GfK report and VF's consumer insight suggest a range could be confusing for consumers.</p> <p>Complexity of a range makes a concise, unambiguous marketing message difficult and people would need to spend too much time to understand a broadband ad.</p> <p>Supports 24-hour average download speed, and favours a mode, but happy with using a median.</p>	<p>CAP agrees that a range has the potential to cause confusion for consumers.</p> <p>CAP has not seen evidence of why a mode would be more meaningful than a median: a mode has the potential to distort consumers' expectations if speeds are clustered at a certain place in the distribution of speeds for a service, whereas a median always represents the middle point.</p>
VM	<p>Supports median download speed because of consumer research and the use of a 51% threshold in Financial Conduct Authority (FCA) rules on the availability of APRs used in financial advertising.</p> <p>Supports measurement of national network performance over a 24-hour average to provide consumers – who use their broadband service at different points throughout the day – with the clearest picture of the general capability and performance of the service.</p> <p>Sees no consumer benefit in advertising of a range of speeds. Unclear how a range could be communicated in a way that would not confuse the consumer, or force the advertiser to display a significant amount of contextual information. Might have the converse effect of confusing the consumer.</p>	<p>CAP agrees that a median measure is useful to consumers.</p> <p>CAP considers that a 24-hour average has the potential to mislead consumers by not providing an indication of the speed they are likely to receive at the times when they use the internet the most.</p> <p>CAP agrees that a range has the potential to confuse consumers.</p>

VM commissioned two pieces of research (by ICM and Britain Thinks) which explored attitudes to, and comprehension of, four different bases for speed claims: the current '10% rule', a majority, a 24-hour average' and a peak-time average. Respondents expressed a strong dislike of the 10% rule.

In the ICM study, a majority rule was favoured by a significant margin, and was the most easily understood.

Speeds throughout the day are important, not just speeds between 8 and 10pm (this was particularly true for those who use broadband throughout the day, such as homeworkers – VM provided further research that 8.2 million British employees work from home at least one day a week, but only 3% of homeworkers are busiest at 8 – 10 pm)

CAP notes that respondents disliked the "10% rule" and that the ASA research showed that the use of "up to" claims supported by availability of speeds to 10% of consumers has the potential to mislead. As a result of this research, CAP developed the four options set out in the consultation document.

CAP notes the support for a majority rule.

CAP agrees that speeds throughout the day are important but considers that a 24-hour average has the potential to mislead consumers by not providing an indication of the speed they are likely to receive at the times when they use the internet the most. CAP notes Virgin Media's reference to research on homeworkers but has not seen the research itself. However, CAP considers that the following factors are relevant to assessing the finding that "8.2 million British employees work from home at least one day a week, but only 3% of homeworkers are busiest at 8 – 10 pm":

- 8.2 million homeworkers does not constitute a majority of customers.
- At least one day a week does not constitute the majority of time spent using the internet.

CAP considers that these statistics suggest that advertising claims made about speeds at certain times of day could be validly targeted at homeworkers as a specific group rather than the average consumer to whom the guidance must address itself. Although internet use may vary for homeworkers with more use throughout the day and a 24-hour measurement may therefore be more useful for them, the statistics do not suggest that the busiest time for most consumers, or indeed most VM consumers, is throughout the day as opposed to between 8 and 10pm. VM would need to

	<p>In the ICM study, 43% of respondents said they would prefer ads to show speeds relating to general performance than speeds at peak time.</p> <p>The research showed some support for a peak-time measurement but consumers did not always understand what peak time meant. When five options were presented to them, only 5% of respondents were able to identify correctly the timing of the peak. VM argues there is a risk of confusion if peak-time measurements are used.</p> <p>The actual period of peak-time usage for broadband services changes depending on the time of year, for example extending over a longer period of the day during school holidays. One-to-many national communications cannot be amended frequently enough to take into account variations of this nature.</p> <p>Guidance should encourage use of numerical speed claims rather than phrases used to convey superior speed. Appreciate that CAP and BCAP cannot mandate the use of speed figures by advertisers, but it should encourage best practice and discourage advertisers from employing potentially misleading practices. Speed is material to transactional decisions and any omission of</p>	<p>provide evidence of the busiest time for its customers to support a claim that a peak-time measurement was not a meaningful measure for consumers generally.</p> <p>CAP notes that the research did not test what proportion of consumers would have supported a peak-time measure had they known that the service was likely to experience a slowdown at peak-time and that a 24-hour measure would not make this clear to them. CAP considers that peak time does not depend on consumer awareness to take place: while it might be valuable to make consumers more aware of the times when they might expect slower speeds, the most important objective for guidance on advertising of speeds is to manage consumer expectations of speeds at the times when they are most likely to use the internet. In this context, CAP and BCAP consider a peak-time measurement is appropriate.</p> <p>CAP does not consider that the response has demonstrated that peak time varies to such an extent that it cannot provide a meaningful basis for measurement. However, CAP considers that if advertisers were able to provide evidence to the ASA that a different timeframe was the most busiest time for most users, it would be open to advertisers to use such a timeframe as the basis for speed claims, as it would constitute “peak time” for the advertised service and demonstrate to consumers the limits of performance at this time.</p> <p>For the reasons set out in section 5.3 of the consultation document, CAP and BCAP cannot prescribe that non-numerical speed claims must be qualified with numerical speed claims; however, if complaints were received on</p>
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	<p>it from an ad renders it misleading under the CPRs.</p> <p>Where a non-numerical speed claim (for example, “superfast” or “ultrafast”) is made by an advertiser, it should be qualified with a speed figure so that the consumer can make an informed choice by understanding what the advertised service or product is likely to provide</p>	<p>this basis, the ASA would consider whether ads were misleading on a case-by-case basis.</p>

Option B: peak-time median download speed		
Respondent(s)	Comments	CAP and BCAP's evaluation
BT, LGA, Ofcom, RC, Sky and TT.	The respondents on the left agreed with the proposal. A summary of significant points follows below:	
BT	<p>Option A</p> <p>A 24-hour average speed does not give a true reflection of the performance of the internet at the time when most people use it, or “peak” time, defined by Ofcom as between 8 and 10pm, 7 days a week for residential broadband customers. The resulting contention causes a reduction in speed across all technologies, and has a significantly greater impact on cable, as opposed to FTTC/VDSL, services because of the way that network is engineered.</p> <p>The most recent fixed-line Ofcom Broadband Speed Report sets out the average speed by ISP at peak time and over 24 hours (page 28). A cable service of up-to 200 Mbps delivers average speeds of 173.1 Mbps over 24 hours, but only 149.5 Mbps at the busiest times (a reduction of over 25% from the current advertised speed of up to 200 Mbps.)</p> <p>The same is true (although to a lesser degree) of all copper and fibre-to-the-cabinet services. If a 24-hour average is used, the lower speeds experienced at peak time will not be made clear to the consumer. Instead, the 24-hour average merges the higher speeds when relatively few people are using the internet (for example in the early hours of the morning), with slower speeds available at peak time, creating a skewed and potentially misleading impression of the speed that will be available to the consumer when they need it most.</p> <p>Concerns about the slow-down in speed at peak time were raised on page 36 of the ASA research as follows:</p> <p style="padding-left: 40px;"><i>“Does the average figure take into account both peak and off-peak times? More tech savvy participants suggested that any average figures should do this.”</i></p> <p>Clear that consumers aware of the difference in speed want to see a figure that will explain the difference between peak-time speed and 24-hour average speed.</p>	<p>CAP agrees.</p> <p>CAP notes the variation between the peak-time and 24-hour measurements contained in the Ofcom report.</p> <p>CAP agrees.</p> <p>CAP agrees that performance of broadband at peak time is important information affecting consumers' decisions.</p>

	<p>Smallprint is not sufficient to explain that the advertised speed is not available to users at the busiest time; it would contradict, not clarify, the headline claim, contrary to CAP rule 3.9 and BCAP rule 3.10.</p> <p>Option B</p> <p>Speeds quoted in advertising should be the median sync speed minus a measured peak time overhead, and described in advertising as “Average XMbps”. BT agrees with Ofcom’s definition of peak time (8pm-10pm, 7 days a week).</p> <p>Option B allows ISPs to advertise a speed claim that is more meaningful for more customers than a 24-hour average, as it takes account of traffic on the network at the busiest times. It allows consistency with Ofcom’s work on personalised speed range estimates.</p> <p>To calculate this speed, a provider could:</p> <ul style="list-style-type: none"> start with the “sync” speed (the maximum speed the line is capable of); take the median point of all the sync speeds of customers on each product; and apply a percentage reduction caused by internet traffic at peak time to the median sync speed – the percentage reduction is the difference between the average maximum through-put speed and the peak time through-put speed. These speeds are measured by Ofcom in conjunction with its research partner Sam Knows. <p>Where there is no existing customer base, or a very small customer base (for example at the launch of a new product), the ISP should be able to demonstrate the likely average speed through lab tests, mathematical modelling and trial data.</p> <p>A “legal” is sufficient to clarify the claim, and should explain that the speed is based on peak time speeds available to at least 50% of users, e.g:</p> <p style="padding-left: 40px;"><i>Average X Mbps – based on speed available to at least 50% of customers at the busiest times.</i></p> <p>Options C and D</p>	<p>The ASA can only assess whether such speed claims would be misleading on a case-by-case basis.</p> <p>CAP notes BT’s view on substantiation but does not consider that it can prescribe this for all ads.</p> <p>CAP agrees.</p> <p>CAP notes BT’s view on substantiation.</p> <p>All ISPs would need to hold substantiation to show that speed claims are representative of actual performance.</p> <p>The positioning and necessity of clarification would be assessed by the ASA on a case-by-case basis.</p>
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<p>BT agrees that a personalised speed estimate provided as a range (e.g. under Ofcom’s Residential Broadband Speed Code of Practice) is useful to the consumer, but does not think that the type of general speed range proposed by the consultation gives the same level of certainty as using the median.</p> <p>During the ASA research, concerns were raised about speed ranges by those with more knowledge about broadband. They felt that a range would be too broad to provide useful information, particularly to those who did not think they were “typical” customers, and could fall outside the range.</p> <p>The research noted, at page 39, that <i>“Most participants felt optimistic that they would fall within the typical range,”</i> with one participant commenting that <i>“the range information is good because it manages your expectations.”</i></p> <p>This appears to show that most consumers will interpret a range as an indication of the speeds they are likely to get, not an indication of the speed they are likely to get if they fall within the range. As such, BT does not agree that quoting “typical” speed ranges will provide consumers with sufficient clarity about the speed of the service.</p> <p>Even if it could be explained clearly, by quoting the speed at the 20th and 80th percentile, this would provide 60% of customers with less certainty about their potential speed than if a median were used. It would also be confusing for consumers to move from a “typical” speed range in advertising to the personalised speed range estimate provided at point of sale.</p> <p>Finally, for cable services, a speed range is unlikely to show any significant difference between the 20th and the 80th percentile, so would not provide meaningful information for the consumer.</p> <p>Application of guidance to business-to-business advertising</p> <p>Before deciding whether to review the relevance of the guidance to business-to-business advertising, CAP should demonstrate that there is a need for change due to widespread lack of understanding about “up to” speeds among business customers. BT would expect CAP to carry out research in this area and consult on it before any changes were made, allowing sufficient time for implementation.</p> <p>BT considers that business customers are likely to be more conscious of the type of speeds they will need to carry out online tasks, as in many cases these will be critical to their business. They are therefore more likely to understand the different speeds offered by copper and fibre business broadband services and the different service level agreements that accompany these products.</p>	<p>CAP agrees.</p> <p>CAP notes that those with more knowledge provided this view but considers that others with less knowledge did not share this view.</p> <p>CAP agrees that the use of a range has the potential to confuse consumers who may not understand the claim.</p> <p>CAP agrees.</p> <p>CAP’s guidance will be focused on business-to-consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a particular business audience.</p> <p>CAP considers that some businesses may understand more about their needs in relation to broadband and about broadband speeds generally.</p>
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	<p>BT is not aware of any ASA complaints from business customers about the speed of their business broadband service.</p>	
<p>LGA</p>	<p>Median speed vs range</p> <p>Provides table showing potential impact of options B and D on what consumers would see for four anonymous providers using four types of technology. Claims that the figures show stark difference in speeds that majority of consumers will face compared to the “up to” speeds received by 10% of consumers. The difference is particularly significant for ADSL2+.</p> <p>Median speed is more easily comparable, particularly where consumers have little time to understand an offer (e.g. billboard or television ads). Some consumers might incorrectly understand a speed range as the maximum and minimum speed their connection might experience, and consumers will not know where in the range the speed they will get is. Ofcom already recommends a speed range is provided at point of sale; however, at that point, a user will spend time to understand what a speed range might mean.</p> <p>Peak-time vs 24-hour median</p> <p>It is important that consumers have access to information about peak-time performance, as they are most likely to rely on their broadband during these times, and experience reductions in speed caused by contention and traffic management policies.</p> <p>LGA provides evidence to show that amongst some products including Fibre to the Premises (FTTP), performance can drop at peak time (6pm to midnight), some by more than 10 per cent. This is backed up by Ofcom’s most recent Broadband Performance Report which monitors the level of performance consumers receive from their broadband service. It recorded that the lowest average download speeds were experienced between 9pm and 10pm across all technologies. This suggests that a peak-time measurement would be most transparent.</p> <p>Application of guidance to business-to-business advertising</p> <p>The Federation of Small Businesses has highlighted that SMEs do not have access to enough information to make informed choices on their broadband connection. Separate Ofcom research found that some SMEs were confused about how the 'actual' speed of their broadband service compared to the 'headline' maximum speed used in advertising, while a fifth were not satisfied</p>	<p>CAP agrees that options B and D would result in a difference in speed claims appearing in ads.</p> <p>CAP agrees that the use of a range may cause confusion in the ways described.</p> <p>CAP agrees that a peak-time measurement provides transparency about the slowdown that may occur at peak time, and that it is important for consumers to have this information.</p> <p>CAP’s guidance will be focused on business-to-consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a</p>

	<p>they were getting the speeds they had paid for. The new guidance should apply to business-to-business advertising as well.</p> <p>Upload speeds</p> <p>LGA argues that CAP should advise providers to display upload speed with equal prominence when download speeds are advertised, highlighting the importance of upload speeds and citing evidence showing differences in download vs upload speeds for the same providers.</p> <p>Review of guidance</p> <p>CAP should review the new guidance within two years</p>	<p>particular business audience.</p> <p>CAP is only able to provide guidance on what it considers to be misleading. CAP does not consider that it can specify that ads in general should provide information about upload speeds wherever information about download speeds is provided. However, where information about upload speeds is provided, it must not be likely to mislead.</p> <p>While not committing to a specific review period, CAP will ensure that its guidance remains fit for purpose.</p>
Ofcom	<p>Peak-time vs 24-hour measure</p> <p>The speeds delivered by fixed broadband connections vary by time of day, with speeds slowing down during busy periods when traffic volumes on ISPs' networks are highest. As peak-time is when traffic volumes are highest, and consumers are most likely to be using their service, it provides a better indication of the actual speeds consumers are likely to experience. In addition, as peak-time speeds tend to be the lowest ones that a consumer will get, this would help manage a consumer's expectation of the service they would receive.</p> <p>Some technologies suffer from peak-time slowdown more than others, for instance cable networks. However, the impact of a change to peak-time speed information in adverts for those technologies is mitigated by the fact that the speeds they achieve throughout the day, including at peak time, are still consistently higher than those of other widely available technologies.</p> <p>Using peak-time speeds will mean that the full potential of some packages, such as maximum speeds or speeds during other hours in the day, will not be displayed. In turn this would not reflect the experience of consumers who would use their service in quieter times. However, on balance, Ofcom believes that consumers are less likely to be disappointed by the actual performance of their service if they under-estimate rather than over-estimate the speeds they are likely to get.</p> <p>Median vs range</p>	<p>CAP agrees.</p> <p>CAP agrees.</p> <p>The ASA would consider whether the use of more than one speed claim in an ad was misleading on a case-by-case basis. However, CAP considers that a peak-time measurement is preferable, as it represents the time at which most consumers use the internet.</p>

	<p>Notes ASA research findings that speed is important for consumers deciding between providers, that it can be difficult for consumers to compare different offers and that most consumers are unaware of the actual speeds they receive. For most, a median point is easier for comparison than a range, as it may be unclear which figures to compare in a range, especially if the ranges in different speed claims overlap or the ranges are large.</p> <p>Although a range would have the advantage of highlighting to consumers that providers do not know for certain what speeds an individual consumer would receive, Ofcom considers that the simplicity of a median speed is more helpful to consumers who want to compare broadband services.</p> <p>Ofcom Broadband Speeds Code</p> <p>Speed estimates provided under the Broadband Speeds Codes are given in the form of a 20th to 80th percentile range. A range is useful in this context because the Broadband Speeds Codes require individual speed estimates for specific lines and these estimates will vary depending on the characteristics of the line. These estimates are based on the speeds received by consumers with similar lines and, as the range covers 60% of these consumers, it gives the speeds that a majority of consumers with similar lines receive. A range at point of sale can therefore give consumers more targeted information on what performance they can expect from a particular service at their own address.</p> <p>Ofcom recognises that using a median in advertising and a range at point of sale means that consumers will not receive the same information across these formats. Because of this, advertisers may also want to notify consumers that they will receive an estimated speed range at point of sale (in accordance with the Broadband Speeds Codes).</p> <p>Advertising and point-of-sale information serve two different purposes for consumers. Consumers use speed claims in advertising as a comparison measure and as an expectation of what the product can deliver. In contrast, the aim of point of sale information is to ensure that consumers have sufficient information about the performance that they can expect to receive from a specific package to enable them to make an informed choice prior to entering into a contract.</p> <p>In light of these different purposes, Ofcom does not think that the use of a median in advertising and a range at point of sale will inhibit consumer understanding, for three reasons:</p> <p>Advertised speeds are claims that must apply to consumers as a whole, whereas the</p>	<p>CAP agrees.</p> <p>CAP agrees that a median speed is more helpful to consumers and that, if presented appropriately, it would convey the uncertainty of speeds that individual consumers receive.</p> <p>CAP agrees,</p> <p>CAP agrees that advertisers may wish to notify consumers of this.</p> <p>CAP agrees.</p> <p>CAP agrees.</p>
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Broadband Speeds Codes information is for an individual consumer based on estimated speeds.

Point of sale is a better time for providers to give tailored advice to consumers, and allows them to explain in more detail what each measure represents.

If a range were adopted for advertising claims, consumers would still receive a different range measure at point of sale (i.e. one for their own service rather than a national figure). We believe that a median speed in advertising will lead to less confusion than using two different ranges, one in advertising and one at point of sale.

Qualifying information

Agrees that any terms used to qualify a quoted speed, for instance “average”, would need to be explained in the advert to reduce confusion and aid consumer understanding and transparency.

Any claims about speeds used in advertising will always be limited in their relevance to an individual consumer, due to the wide number of factors that can affect connection performance. As CAP/BCAP’s consultation states, individual consumers will only receive the most accurate indication on their likely speeds by checking directly with providers or third-party websites, for instance Ofcom’s own broadband speed checker. Ofcom therefore supports the inclusion of statements in ads urging consumers to check their speeds independently or with providers.

Other measures affecting performance

Ofcom considers that advertisers should make clear that speed is not the only measure affecting service, and that it is important to encourage consumers to consider other sets of performance measurements to understand the overall performance of individual ISP packages.

Application of guidance to business-to-business advertising

It may be more difficult for businesses to understand and compare residential and business services if they are advertised on the basis of different speeds. Businesses would therefore also be likely to benefit from better advertised information on broadband speeds. The extension of the guidance to standard business-to-business/non-residential broadband services would also bring the guidance in line with the Ofcom Broadband Speeds Codes, which cover residential services and most business services. However, the business market is different to the residential market, being more fragmented and with a greater number of small providers offering more specific services. In addition, the choices that businesses make about their broadband service can be

CAP notes Ofcom’s support for sufficient explanation of terms and for urging consumers to check their speeds.

CAP considers that the inclusion / omission of such information would need to be considered on a case-by-case basis by the ASA.

CAP’s guidance will be focused on business-to-consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a particular business audience. The guidance is purely about speed claims but the ASA will take all relevant context into account when assessing ads.

	<p>driven by different factors to residential consumers, for instance reliability or upload speeds. These differences may have implications for how business-to-business services are advertised, and guidance in this area may require more flexibility.</p>	
RC	<p>Submission based on the following assumptions:</p> <ul style="list-style-type: none"> a) the average listener has no firm grasp of the meaning of stated speeds beyond their use as a comparison, either within a single advertiser’s range of services, or between services provided by different advertisers; b) the understanding of what a user can expect from a 52Mbps service that they cannot get from a 30Mbps is limited only to the broad comparative notions that they will experience faster downloads, less buffering, etc; and c) the de facto function of speed claims is not to determine whether a specific speed meets the requirements of a particular user, but how a particular provider’s speeds compare with its competitors – therefore, the most important requirement is consistency between different providers’ commercials. <p>Options A and B</p> <p>Both options sensible but supports B because by focusing on peak-time download speeds, issues such as contention would be automatically represented in the figure, which reflects most users’ experience at times when they are most likely to be using the service.</p> <p>The inclusion of how the average is calculated would be unwieldy; most listeners will lose focus on the information, making it, at best, redundant, and, at worst, detrimental to the advertiser.</p> <p>Options C and D</p> <p>Using two numbers in each speed claim doubles the level of attention required by the listener, reducing their immediate retention of the information they require.</p> <p>It will not necessarily be clear to listeners that the range represents percentiles of users, rather than a range of speeds each individual user can expect to receive over time. This confusion would be detrimental both to marketer and the prospective customer. This could be rectified by the use of a clarification in the ad itself, but again this would add to the cognitive load for the</p>	<p>CAP agrees.</p> <p>CAP agrees.</p> <p>CAP agrees.</p> <p>CAP agrees that ranges have the potential to confuse.</p>

	<p>listener –understanding would likely be reduced further rather than increased.</p> <p>Application of guidance to business-to-business advertising</p> <p>Guidance should be confined to business-to-consumer advertising because the process of selecting an ISP for a business is likely to vary from the consumer experience, and involve more expertise on the side of the business seeking internet access.</p> <p>Regional vs national advertising</p> <p>Smaller operators may be disadvantaged unfairly by campaigns for national providers. RC asks BCAP for clarification on regional requirements for speed claims – if an ad is going out for a national provider, quoting national speeds that are unattainable in the region the ad is being broadcast, there is a risk of the ad being misleading, potentially inviting an unfair comparison with regional providers who may outperform the speeds of national providers.</p>	<p>CAP’s guidance will be focused on business-to-consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a particular business audience.</p> <p>CAP considers that any regional restrictions would need to be made clear in an ad if the ad would be rendered misleading without such clarification.</p>
Sky	<p>Option B</p> <p>Option B is the only option that enables consumers to take informed transactional decisions based on how services perform when they are most likely to be used.</p> <p>Option A</p> <p>Cites a Watchdog study from July 2017 which found that cable customers with up to 200Mb connections received just 3% of the promised speeds at peak time.</p> <p>Does not support Option A because 24-hour speeds allow peak time congestion to be hidden and to be averaged out over times that a network may be wholly unused and that are unrepresentative of actual use (e.g. when people are sleeping and when many residential subscribers are at away from home at work for most of the day). Argues that the network congestion caused in the study was within the ISP’s control.</p> <p>Notes that it has been argued that some homeworkers, who use the internet during the day, could be misled by peak-time average download speeds. However, considers that finding that a</p>	<p>CAP agrees.</p> <p>CAP agrees.</p> <p>CAP considers that homeworkers constitute a specific target group rather than the average consumer to whom</p>

	<p>service is faster than expected is unlikely to cause the average consumer to make a transactional decision that they would not otherwise make, whereas the reverse may do.</p> <p>Option C</p> <p>Rejects Option C for the reasons given for response on Option A.</p> <p>Option D</p> <p>Sky does not reject or favour Option D because it considers that the sheer number of figures being presented to consumers is likely to cause confusion or information overload in real world advertising. Consumers could realistically be presented with more than seven numbers within very little time or space:</p> <ol style="list-style-type: none"> 1. price; 2. set-up costs; 3. minimum term; 4. typical minimum speed; 5. typical maximum speed; 6. monthly usage limit; 7. details of any mobile minutes, mobile data or television channels included in an offer. <p>Consumers receive a personal and more accurate range estimate at point of sale and that is the appropriate place for more detailed information.</p> <p>Alternative options</p> <p>Speed estimates should be based on peak time mean (and not median) average speeds for three reasons:</p> <p>Consumers receive mean ‘averages’ during their sales process (at point of sale and in welcome letters, under Ofcom’s Broadband Speeds Code) - median average is out of line with other regulation, raises potential for confusion in the message that consumers receive and increases complexity by requiring ISPs to maintain two ‘average’ measures of speed.</p>	<p>the guidance must address itself.</p> <p>CAP agrees.</p> <p>CAP agrees.</p> <p>CAP agrees.</p> <p>CAP considers that a median is more appropriate as it guarantees that speeds are available to 50% of consumers whereas a mean does not. CAP considers that point-of-sale information provides a different function to advertising and that measures will not cause confusion. CAP also notes Ofcom’s response supports the use of a median.</p> <p>CAP notes these comments but considers that the benefits to consumers in having a median, over a mean, outweigh the potential practical difficulties of</p>
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	<p>Mean averages allow consumers and the ASA to better hold advertisers to account using Ofcom’s Broadband Speeds Report, which is extremely robust and based on mean average speeds reporting. Without an authoritative independent report, consumers and the ASA will have no central place to compare the speeds advertised with those reported by Ofcom’s panel; consumer complaints may fall and ASA complaint investigation times may increase, both to consumer and advertiser detriment.</p> <p>The mean average is the ‘average’ understood by consumers in natural language and therefore requires the least explanation and qualification, which is more transparent.</p> <p>CAP and BCAP should clarify in its guidance that:</p> <p>“UK average” download speeds is sufficient to describe the basis on which an average is calculated with no further qualification (there was some confusion as to whether the figure was local or national and this is a simple solution that both informs and preserves footnote text for other key qualifications, which is important in broadcast advertising where time and space are limited);</p> <p>superfast VDSL(FTTC) services require no or fewer qualifications based on signal attenuation than ADSL services because signal attenuation is unlikely to significantly affect the average consumer’s experience of a VDSL (FTTC) service (provider-controlled congestion is different); and</p> <p>advertised speeds are properly calculated to the router and not to the end user device - CAP and BCAP’s existing guidance takes this view; however, the ASA Council has ruled that speeds calculated from the router should be heavily qualified and that consumers expect speeds to be calculated to the device, which is out of keeping with CAP and BCAP’s guidance and with telecoms regulators at both national level (Ofcom) and at European supranational level (quotes BEREC ‘s proposed <i>Net Neutrality Regulatory Assessment Methodology 2017</i>) in support of this).</p> <p>Application of guidance to business-to-business advertising</p> <p>Scope of guidance should be confined to business-to-consumer advertising of residential</p>	<p>enforcement.</p> <p>CAP considers that any claim used will need to be set out it clearly in an ad and that a median is the more meaningful measure. CAP considers that a median speed can be described with sufficient clarity.</p> <p>CAP agrees.</p> <p>CAP agrees and the guidance will make clear that information affecting consumers’ transactional decisions will need to be included in ads, and that that information may vary depending on the nature of the product being advertised.</p> <p>CAP’s guidance will continue to state that speed claims must be representative of actual performance, and the ASA will continue to assess whether claims meet this criterion on a case-by-case basis.</p> <p>CAP’s guidance will be focused on business-to-</p>
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	broadband services.	consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a particular business audience.
TT	<p>Peak-time vs 24-hour measure</p> <p>Recommended approach should be consistent with Ofcom’s Broadband Speeds Code. The two documents together describe the journey to create the right expectations by the consumer about the speed that they can expect to receive when they purchase a broadband service from a specific provider. The Ofcom broadband speed code is currently being revised to comply with the EU TSM Regulation. This means that the broadband speed code will require the use of the peak-time speed (expected to be 8-10pm for residential customers) by providers when they provide the relevant speed information at the point of sale.</p> <p>Ofcom’s (and TT’s own) research clearly suggests that all current mainstream technologies (ADSL, FTTC and Cable) users are likely to focus their use of their broadband services between 4pm and 10pm with an even larger peak of users between 8pm and 10pm. That is why Ofcom has opted for the approach of using the peak-time speed for its revised Broadband Speeds Code.</p> <p>TT’s own research also suggests that approximately 75% of consumers predominantly consider the speed in peak times when making a decision on a broadband package.</p> <p>TT’s own research suggests that the most unreliable time of day for broadband use across all products is the evening. This applies across all technologies including ADSL, FTTC and Cable. It is therefore important to ensure that consumers base their purchasing decisions on the speed that they are most likely to experience in practice.</p> <p>In contrast to the peak-time speed, the use of a 24-hour average speed would risk misleading consumers about the broadband speed they would likely achieve in practice. It is important that advertised broadband speeds do not undermine consumer confidence in broadband technology. The requirement to advertise a speed that the customer is more likely to receive, i.e. peak-time speed, would also ensure that providers do not seek to hide the true performance of their networks. This is particularly the case when providers are making large changes to their network such as during network expansion projects, which can impact on broadband speeds during peak hours.</p>	<p>CAP considers that consistency can be useful to consumers but cannot be the determining factor in the approach that CAP recommends. However, CAP considers that a peak-time measure is preferable, as it represents the time at which most consumers use the internet.</p> <p>CAP notes Ofcom’s research on peak-time use.</p> <p>CAP has not seen TT’s research but it considers that a peak-time measure reflects the speed that consumers are most likely to experience in practice.</p> <p>CAP agrees that 24-hour average speeds have the potential to mislead by not conveying to consumers the slowdown in speeds that can occur at the time they are most likely to use their broadband.</p>

	<p>Guidance should only include one option</p> <p>Very important that Option B is the only option recommended from the four options presented in the consultation. It would be highly detrimental to consumer understanding and trust if the recommendations were to include more than one option. All current mainstream broadband technologies (ADSL, FTTC and Cable) display comparable effects on speeds during peak time (8-10pm) which therefore needs to be reflected in all providers' advertising. Meanwhile the current recommendations for calculating the relevant speed should be maintained to avoid any unfair trading practices that may result in distortions in the way speeds are presented in advertising.</p> <p>Range vs median</p> <p>Far from giving customers simpler, more transparent information, the use of a range risks further confusing customers. ISPs already provide customers with an estimated range at the point of sale that is specific to the customer's line. This allows customers to make decisions based on the lower and upper speeds they are likely to receive at their specific property. A separate range, tied to provider averages rather than to a customer's line would be less relevant to individual customers and so would risk adding unnecessary duplication and confusion.</p> <p>Flexibility of guidance to accommodate new technologies</p> <p>The broadband advertising recommendations should be able to meet the demands of new and faster broadband technologies (e.g. FTTP and G-Fast) while not unduly hindering their effective deployment in the consumer market. The four options require providers to have a sufficiently large representative base from which to calculate median speeds (or indeed speed ranges). Until a provider has achieved a sufficiently large base, they must be able to use other reasonable means of calculating the advertised broadband speeds. TT recommends the approach adopted by Ofcom in relation to the draft revised Broadband Speeds Code, which would allow providers to use an alternative (reasonable) methodology for estimating the speed if a new broadband package has fewer than 20,000 customers. Such an approach would ensure clear consumer information in the advertising of new broadband technologies in the early stages of market development without creating unnecessary obstacles to deployment.</p> <p>Implementation period</p> <p>TT believes that a reasonable implementation period is required to ensure that providers are able to make all the necessary system and process changes (as well as ensuring consistency</p>	<p>CAP has only recommended one approach for the advertising of numerical broadband speeds. Other approaches will be assessed on a case-by-case basis by the ASA and if advertisers use an alternative approach, they will have to demonstrate to the ASA, in the event of a complaint, why that approach is not likely to mislead.</p> <p>CAP agrees.</p> <p>CAP has not prescribed substantiation requirements in its guidance but newer providers will still be required to substantiate speed claims in their advertising and the ASA will assess such claims on a case-by-case basis.</p> <p>CAP agrees that a reasonable implementation period is required but considers that this period should be one of</p>
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	with speed algorithms needed under the revised Ofcom Broadband Speeds Code). TT cannot safely say that it would be able to implement the changes within 6 months but believes that a period of 9 months would be a more reasonable timeframe.	six months.
Which?	<p>Which?'s research finds that the presentation of the speed which is available to at least 50% of users results in the most conservative consumer expectations, so leaves them least likely to be misled.</p> <p>Our experimental research found that implicit speed expectations were not significantly affected by offering peak time or 24 hour measures of speed as an independent factor. However, Which?'s view is that a peak time average would be the most appropriate option to present to consumers in headline advertising. This would be the speed that consumers are most likely to experience when using their broadband connection and have a slower connection (if not on a fibre connection).</p>	<p>CAP notes the support for a median measurement.</p> <p>CAP agrees.</p>

No respondents favoured option C (24-hour range of download speeds)

Option D: peak-time range of download speeds		
Respondent(s)	Comments	CAP and BCAP's evaluation
FISP and GC	The respondents on the left agreed with the proposal. A summary of significant points follows below:	
FISP	<p>General</p> <p>Makes extensive comments about the use of “fibre” in marketing, analyses different types of technology, argues that speed claims will become largely irrelevant as technology develops and considers that advertising should focus on factors other than speed.</p> <p>Supports Option D but without specific reasons.</p> <p>Median</p> <p>FISP considers that 'median' measures are preferable to 'averages', as they exclude disproportional impacts from a relatively few intensive users.</p> <p>Mandatory qualifications</p> <p>FISP recommends that certain mandatory qualifications be presented in advertising to prospective purchasers. Society at large is well aware, for example, that 'Smoking Endangers</p>	<p>The consultation focuses on guidance on the use of numerical speed claims. CAP notes the view that speed claims will become irrelevant but its proposals relate to the current use of speed claims in advertising.</p> <p>CAP agrees.</p> <p>Because of the legal framework underpinning CAP's misleading advertising rules, as set out in the</p>

	<p>Health' and users should be made aware of service inadequacies before they invest. Examples could include:</p> <ul style="list-style-type: none"> This service is distance-related This Service is not 'Future-Proofed' This Service uses copper wire or cables for all or part of its delivery This service is not suitable for business users Low Upload Speeds make this service inappropriate for some applications <p>Application of guidance to business-to-business advertising</p> <p>Considers that guidance should apply to business-to-business advertising too. Providers typically provide different contention rates to business and 'residential' users, but the distinctions are rarely, if ever, adequately disclosed in advertising, or during procurement. FISP suggests that providers offering markedly different service options should state these clearly.</p>	<p>consultation document, CAP cannot lawfully prescribe mandatory information to be included in advertising.</p> <p>CAP's guidance will be focused on business-to-consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a particular business audience.</p>
GC	<p>General</p> <p>Proposes a principle of "maximum relevance", which dictates that claims must be as relevant to end-users as possible.</p> <p>Current guidance</p> <p>Current approach has potential to mislead and ASA's research reinforces this view. Summarises weaknesses of existing guidance as:</p> <ul style="list-style-type: none"> The "10% rule" means that advertised speeds are unachievable to 90% of customers who receive the service. This results in customer expectations concerning speed often being beyond that of the technical capability of their line, customer dissatisfaction and potentially the failure of the service to meet the needs of the customer. As this issue has persisted within the industry, it has tarnished speed claims more generally. Advertised speed claims must be as relevant to the end-user experience as possible, whilst balanced against the technical reality of variation of speed due to signal 	<p>CAP considers that making claims relevant to end-users is an important factor in determining its recommended approach.</p> <p>CAP agrees that the current approach has the potential to mislead consumers and that advertised speed claims should be as relevant to the end user as possible.</p> <p>A speed range could be helpful to consumers if they understand what it is. CAP considers that consumers may interpret a range as the speed they are likely to get</p>

attenuation, contention and protocol overheads.

Median or Range

Favours a range for three reasons:

conveys a speed point that the clear majority (80%) of customers will be able to achieve;

allows both speed and consistency of the product to be captured; and

gives flexibility to still advertise the higher end of speeds technically achievable.

Median allows for advertising of speed claims that around 50% of consumers will never achieve, whereas 80% of customers would be able to achieve the bottom end of the advertised range. A range is relevant to the clear majority of customers, yet still allows the advertisement of the upper speed and avoids the illogical extreme of only conveying speeds that all customers achieve.

Further, the range itself informs customers of the likelihood of a comparable service being achieved by the individual customer. A narrow 20th to 80th speed range would convey that that the network offers relatively consistent speeds across different lines, whereas a broad range would inform the customer of the relative inconsistency of speeds.

A range may then compel the end-user to seek further information through a line speed checker. This methodology puts the higher end (80th percentile) of the range into a more meaningful context, thereby equipping the customer to make an informed choice when selecting their provider.

individually, similar to figures provided at point of sale, rather than the range of speeds consumers generally are likely to receive. A range does not give the consumer an idea of where within the range they fall or, indeed, if they fall within the range. The ASA research showed that consumers tend to over-estimate where they are likely to fall in a range and this has the potential to mislead consumers. The research also showed that too much information can be confusing, and therefore a single number is preferable on these grounds as well.

CAP considers that although the bottom end of the range is achievable by 80% of consumers, this constitutes the very minimum speed that those consumers will receive, as opposed to the speed that 80% of consumers are likely to achieve in practice, so does not provide a representative illustration. Although, a median applies to 50% of consumers it represents the speed they will actually receive.

CAP considers that although a range could help to highlight to consumers that providers do not know for certain what speeds an individual consumer would receive, the simplicity of a median speed is more helpful to consumers who want to compare broadband services.

CAP considers that consumers should always be advised to use speed-checkers, regardless of the basis of speed claims made in advertising.

CAP considers that although a range could help to highlight to consumers that providers do not know for certain what speeds an individual consumer would receive, the simplicity of a median speed is more helpful

The median point solution does not capture any of this nuance. As a single average point, the customer is unaware of the range either side of the 50th percentile point, so cannot gauge the likelihood of their service achieving a comparable speed.

Provides an example of 5 download sync speeds: 9, 12, 55, 58 and 60 Mbit/s. In the example, the median is 55 and the mean is 39. The median does not convey the variance of achievable speeds, failing in this example to show that 40% of customers fail to achieve a speed above 12. While on first glance this may suggest that the mean would be a more suitable average, it still suffers from the same criticism.

Because a range provides a contextualised view of advertised speeds, it enables competition on the likelihood of achieving comparable speeds to that of the headline speed as well as on headline speed alone.

A range also offers the customer a more relevant reflection of the nature of their broadband product than a single speed. Because of contention, signal attenuation and protocol overheads, a customer's download speed can vary. While the reality is that the range conveys sync speeds for different lines rather than variation on each line, the range will inform the customer about the variable nature of the product.

In comparison, the average single point figure of the median risks being interpreted as a single estimated speed. This concern is borne out in the ASA research and substantiates the group's preference for a range.

As FTTP ISPs are less susceptible to signal attenuation, the speeds they will convey in the range method will be narrow in comparison to FTTC and ADSL products. This method allows advertisers to promote features of their products, while better informing customers as to the likelihood of their service achieving comparable speeds to those advertised.

CAP may wish to consider if particularly narrow ranges (within 10% of the upper end of the range), be permitted to offer a single point measurement. GC would support this position as long as providers could choose whether to utilise this option.

to consumers who want to compare broadband services. A range also runs the risk of being interpreted as setting out the variation on a consumer's line rather than for the sync speeds on different lines.

CAP considers that median speeds would need to be qualified to explain what they are and if they were not, they would run the risk of being found to be misleading by the ASA.

	<p>Peak-time or 24-hour measure</p> <p>A peak-time measure provides the most relevant information to the end-user, as on an aggregate level, this reflects speeds at the time when the customer is most likely to use the service. If a 24-hour measurement is used, CAP ultimately takes the view that speeds achievable at 3am (where there is minimal contention) are equally as relevant to the customer as speeds achieved at 8pm. While this could be the case on an individual basis, the reality of mass market advertisement demands an aggregate view. When this view is taken, it is difficult to deny that speeds at peak times of usage will be of greater utility to the customer over speeds at off-peak times.</p> <p>GC acknowledges that a peak-time measure would involve the challenges of how to accommodate for peak-time variation across ISPs and how to reflect peak-time contention. GC believes that “peak time” can be broadly defined at an industry level (this is already done in Ofcom’s ‘Connected Nations’ report). Calculation of the impact of contention at peak time may need to vary depending on the technology being used, as the most appropriate network level to capture contention will vary across different technologies. Capturing this data may require significant software investment from each ISP. GC urges CAP to consult Ofcom on how best to capture peak-time contention, in light of Ofcom’s current work concerning the Broadband Speed Voluntary Code of Practice.</p> <p>‘Average’ or ‘typical’ speeds</p> <p>If a range is used, GC considers that an ad should convey that customers may experience speeds higher or lower than the range. GC supports the use of the phrase ‘typical speeds’, alongside the advertised range, with the methodology of how the range is calculated being included in the smallprint of the ad.</p> <p>Application of guidance to business-to-business advertising</p> <p>GC considers that the guidance should apply to business-to-business, as well as business-to-consumer advertising to ensure a consistent approach across different telecommunications services.</p> <p>Ofcom Broadband Speeds Code</p> <p>Ofcom is reviewing its Broadband Speeds Code, and as the underpinning EU legislation and</p>	<p>CAP agrees.</p> <p>CAP will continue to work with Ofcom to ensure consistency where appropriate. CAP considers that peak time is determined by when consumers are most likely to be accessing the internet.</p> <p>CAP does not consider that a range is more useful to consumers than a median and, as such, it does not express a view on this.</p> <p>CAP’s guidance will be focused on business-to-consumer marketing but it may be applied more widely where there are sufficiently similar circumstances between a consumer audience and, for example, a particular business audience.</p> <p>CAP will work with Ofcom on its definition of peak time.</p>
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	<p>BEREC guidance state that providers should detail estimates of 'realistic' and 'peak time' speeds, it is likely that Ofcom will seek to include a reflection of peak-time contention in any proposed changes to its Code. For purposes of practicality and making best use of resource, GC would urge CAP and Ofcom to align their definitions of "peak time".</p>	
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Other: responses that did not favour one option.

Respondent(s)	Comments	CAP and BCAP's evaluation
CCP, ISBA, ISPA and TB	<p>The respondents on the left either favoured more than one option or favoured alternative options to those included in the consultation. A summary of significant points follows below:</p>	
CCP	<p>Calls for ads to provide an assured minimum speed rather than a notional possible maximum speed and that ads should make clear that advertised speeds are to the premises.</p> <p>If advertised speeds are not achieved, providers should bill proportionately less to reflect the level of service that they are delivering to consumers. Speed-checking tools should be clearly signposted for consumers to use and not hidden in the small print under a claim of "up to" a certain speed.</p> <p>Consumers should be able to compare the deal they are offered by their current provider with those of other providers so that they are able to switch where and when appropriate. This can only be made possible if consumers are able to understand what the lowest speed they may get is and are able to compare this with consistent metrics from other providers. This is perhaps even more important to micro business owners, who may not specialise in IT and may not have the income to hire an IT specialist to set up their broadband connection as their larger counterparts would, but whose business may depend on their being able to access certain speeds. Misleading speed information is harmful to micro-businesses, particularly those with a disability.</p> <p>Recommends that broadband providers are obliged to give real-life examples of broadband speeds in their advertising, so that consumers are able to understand what a certain speed measurement actually means. Notes that some broadband providers already proactively provide this information. This provides a useful gauge to consumers, in understanding what speeds they actually require to meet their needs and/or and grow their business - instead of their paying extra to secure a higher speed bracket than they may need, just in case.</p>	<p>CAP does not consider that an assured minimum speed is the most relevant measure for a majority of consumers, and therefore is not the most meaningful. Speed claims in ads must be representative of actual performance.</p> <p>The CAP Code does not regulate the amount that consumers are billed. CAP notes the potential for misleading speed claims to harm micro-business, or those with a disability, and the ASA would assess such claims in the event of complaints.</p> <p>While CAP considers consumer education can be useful, it is not able, under law, to mandate advertisers to include such information in ads.</p>
ISBA	<p>ISBA supports the option for use of median download speed rather than range: it does not specify whether this should be measured at peak time or over 24 hours.</p> <p>ISBA believes that the use of median would be clearer to the consumer and best communicate speeds achievable by most consumers. The use of a range would not give the consumer any</p>	<p>CAP notes this support and agrees that a median is more meaningful to consumers than a range, and that a range would not provide any more certainty of the actual speed a consumer would achieve.</p>

	<p>more certainty of the speed they would achieve.</p> <p>ISBA also argues that the range envisaged, from the 20th to 80th percentile, will yield a broad result and will not be helpful to the consumer.</p>	
ISPA	<p>ISPA strongly supports either option A or B, and does not regard the use of a speed range as a viable alternative because:</p> <ol style="list-style-type: none"> 1. The provision of speed ranges in broadband advertising is highly likely to confuse consumers who would be required to process at least two or – in the case of multiple products being advertised in a single ad – even more speed figures in the often short time that they have available when viewing an ad. 2. A speed range would further fail to achieve the stated consultation criterion that “[i]f an ad includes a numerical speed claim, that speed should be achievable by many or most customers”. This issue was also raised in the GFK Qualitative Research for Broadband Speed report which was conducted on behalf of the Advertising Standards Authority and which indicated that speed ranges were not particularly well favoured by consumers. 3. Option A and B would preserve the use of a single speed figure in advertising as established by the current advertising guidance, and significantly increase the threshold in line with suggestions from ISPA but also various other interest groups, including Which?. 	<p>CAP agrees that ranges have the potential to confuse consumers.</p> <p>CAP considers that there were mixed views on ranges from the ASA’s research and that some consumers felt optimistic that they would fall within speed ranges presented.</p> <p>CAP considers the use of a single figure based on the median has less potential to mislead consumers than the use of a range.</p>
TB	<p>Makes points about the use of “fibre” in broadband advertising.</p> <p>It is unfair to compare speeds of different technologies, based on different coverage levels in marketing communications which has no way of segregating the market. Furthermore, the focus should be less on the absolute speed, and more about what applications the service is qualified for: e-mail/web browsing, watching online videos, live HD streaming, multiplayer games, video conferencing, heavy multi-user household, etc.</p> <p>Broadband speed claims are a key basis on which individuals make decisions, and some regulation in advertising is helpful to ensure claims are not intentionally misleading; however, the CAP proposals relating to statistical measurements do not improve the information available to consumers on their relevant lines, but simply shift which consumers are potentially receiving incorrect information.</p>	<p>This falls outside the scope of the consultation, which focuses on numerical speed claims.</p> <p>CAP cannot mandate the use of information about the types of functions that a service can perform, regardless of how useful this might be to consumers. Advertisers are free to make numerical speed claims as long as they do not mislead and CAP’s recommended approach seeks to look at the most meaningful way of measuring such speeds.</p> <p>The purpose of CAP’s proposal is to manage consumers’ expectations so that they are not misled: speed claims in ads will be presented in a way that does not suggest that consumers will get a certain speed, so will not constitute “incorrect information” – the claims will be based on average consumers.</p>

Advertising should provide prominently, details of the coverage area (in whatever form is appropriate for the type of advertising) to which it relates. This might be “Available to 50% of UK households” or “Available to 80% of properties in London” depending on the advertising location/targeting. For some online uses, personalised/localised estimates may even be possible which should be appropriately flagged.

The speeds claimed should be based on appropriately sourced data and wording, however the source of the data and methodology should be a matter for the advertiser.

We believe that a 80/20th percentile figure is potentially just as misleading as any other statistic due to the varied nature of speeds. We are concerned users will misunderstand reasons for such variations. However, any speed range provides a benefit over an average figure as a range in itself indicates variation. Similarly an “up to” figure is a range with a top speed. A clear small print wording on those two small words would be significant to remind users what it really means.

The recommendation that consumers source a personalised speed estimate based on their location cannot be underestimated irrespective of technology. Consideration may be worthwhile on whether this estimate must take into consideration local circumstances within the previous 90 days (i.e. congestion affecting speeds in that area); whilst we believe this would be ideal (and possible within cable operators), it is considerably more challenging in the FTTC market where retail operators at various levels have different levels of access to data. Such plans would need considerable consultation with key stakeholders.

CAP should consider promoting ‘good practice’ alternatives to standardise information based on suitability for particular applications rather than merely speed (e.g. satellite broadband is often unsuitable for some first-person online gaming due to latency; no matter how fast the speed); we would be happy to work with CAP and providers to help develop such standards. This could also be furthered by a neutral website which explains the issues to users in technology and provider-neutral manner, which could be promoted through media outreach and voluntary inclusion by providers of a link on advertising through a voluntary scheme.

Any measure of ‘peak time’ should be end-to-end measurements for a definition of the busiest period for each provider; peak for one provider may be off-peak for another with different customer profiles; further traffic engineering (also known as traffic management or traffic shaping) could be used to deliver performance for some applications, which further complicates the appropriateness of a service being much more complicated than the download speed which seems to be the primary way in which services are advertised, in a similar way to bus lanes

The ASA would assess whether any claims were appropriately targeted on a case-by-case basis. General claims in national media would need to be supported by representative evidence for the target audience as a whole.

CAP agrees that claims should be representative of actual performance and advertisers would need to hold evidence that this is the case.

CAP agrees that there is a potential for consumers to be misled by the use of a range and not understand what it signifies. CAP considers that a single median figure is more useful but still indicates that there is variation in speeds that consumers achieve.

CAP agrees that personalised estimates are useful but it does not regulate the provision of personalised estimates.

CAP considers that it is a matter for providers to promote “good practice” standards and it cannot set these out in its guidance.

CAP considers that advertisers making claims based on performance at peak time will need to hold evidence that the times chosen are in fact the busiest.

	<p>having a different average speed or range of speeds against other running lanes on a road.</p> <p>Any speed references should be based on (some standard size packet of) IP throughput, after overheads.</p>	<p>Speed claims must be representative of actual performance, and CAP considers that IP overheads are a factor that affects performance.</p>
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