

# Consultation on marketing to children and naming prizewinners:

## CAP's evaluation of responses



## 1. Introduction

**Following public consultation, the Committee of Advertising Practice (CAP) has decided to amend its rules on marketing to children and naming prizewinners: these changes seek to reflect relevant parts of the Data Protection Act 2018.**

CAP has published a separate [regulatory statement](#) setting out the rationale for its decision. This document provides detailed responses to specific comments received during the consultation. This document should be read alongside the [consultation document](#).

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

	<b>Organisation</b>	<b>Abbreviation</b>
<b>1</b>	Keystone Law	KL
<b>2</b>	Market Research Society	MRS

### 3. Section 4: CAP's proposals for change

#### Comments on proposal 4.1 (marketing to children: CAP Code rule 10.15)

CAP received no submissions relating to this proposal.

#### Comments on proposal 4.2 (publication of prizewinners' names: CAP Code rule 8.28.5)

Respondent/s	Comments	CAP's evaluation:
KL	<p>Considers that the proposed wording is overly prescriptive in relation to:</p> <ul style="list-style-type: none"><li>• the time at which entrants to a prize promotion should be informed of the promoter's publicity intentions; and</li><li>• the time at which promoters can obtain consent to the publicity.</li></ul>	<p>CAP disagrees.</p> <p>CAP's proposal sought to remove the requirement for promoters to obtain consent to publish prizewinners' names, on the following basis:</p> <ul style="list-style-type: none"><li>• Consent is withdrawable at any time and has to be as easy to withdraw as to give. This presents difficulties where information is published and then consent withdrawn.</li><li>• The requirement to provide consent to enter a competition is likely to be viewed as a condition of service and, under Article 7(4) GDPR, and this will have an impact on whether consent is freely given. CAP considers it is likely that consent in this scenario would be seen as not freely given if an individual cannot enter a competition if they do not consent.</li></ul>

	<p>Sees no compliance argument that both actions must be carried out before entry, as long as the information is given and the consent is obtained prior to publication (or processing for the purposes of publication).</p>	<ul style="list-style-type: none"> <li>• Under the GDPR, promoters do not have to use consent as a basis for processing if another basis for processing is open to them. CAP considers that subject to the circumstances and meeting the requirements for relying on this basis, promoters might appropriately rely on legitimate interests. Because of this, CAP considers that the rule should not prescribe the basis for processing.</li> </ul> <p>CAP disagrees. CAP considers that a promoter must inform entrants, at or before the time of entry, that it will publish their details in the event that they win. The Article 13 GDPR requirement to inform data subjects about the purposes of processing for which the personal data is intended is a requirement to provide this information at the time of obtaining the data: this gives data subjects the ability to make an informed decision on whether to provide their personal data.</p> <p>An entrant may choose not to enter the promotion (which would involve the submission of personal data by the entrant and processing of that data by the promoter) if winning the promotion would result in his or her personal data being published or provided to the ASA. If an entrant enters, wins, and is subsequently told that his or her name is to be published or provided to the ASA, on the grounds of legitimate interests, a promoter may still have compelling legitimate grounds under Article 21.1 of the GDPR (to publicly demonstrate the legitimacy of the promotion or to demonstrate it to the ASA) to publish or provide personal data</p>
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	<p>In relation to promotions which include a prize-claims process, a promoter is more likely to comply with the GDPR requirement to avoid capturing more personal data than needed, by avoiding capturing the full name of entrants at the time of entry and instead waiting to capture the names solely from winners at the time when they claim prizes.</p>	<p>to the ASA even if the entrant objects (this is in contrast to the absolute right to withdraw consent). Providing the information at the time of entry allows entrants to make an informed choice of whether or not to enter and, therefore, whether or not to submit personal data over which they may lose full control. It ensures that promoters comply with Article 13(1)(d) of the GDPR by informing data subjects of the legitimate interests being pursued by the promoter at the time of obtaining their data.</p> <p>CAP disagrees. A promoter may need to capture the full name and contact details of entrants at the time of entry so that they can be identified and contacted during the promotion; for example, if there is a problem with their entry, or to identify genuine entrants / exclude multiple entries by the same person, as well as to contact them in the event of their winning the promotion. CAP considers that these reasons are compatible with the GDPR requirement to avoid capturing more personal data than is needed.</p>
MRS	<p>MRS supports the amendment of rule 8.28.5 to ensure compliance with transparency, fairness and lawfulness principle of the EU General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018 (DPA). It is important that the privacy rights of prizewinners' rights are respected whilst maintaining public confidence and credibility on the regulation of these activities.</p> <p>MRS agrees that the legal basis for publication of the names of prize winners must be clearly identified. As the Information Commissioner's Office has noted there is no hierarchy of legal grounds and it is important to choose the ground that is best suited to the processing activity. Consent of the data subjects or contractual necessity are unlikely to be appropriate grounds in these circumstances and legitimate interests is a more appropriate processing ground.</p> <p>It is important that prize promoters (who are likely to be the data controllers) are aware of their obligations, in particular ensuring that their privacy policy and the prize promotion</p>	<p>CAP agrees.</p> <p>CAP agrees.</p> <p>CAP agrees.</p>

	<p>rules clearly set out the lawful bases that are being used for:</p> <ul style="list-style-type: none"> <li>• processing the personal data of prizewinners; and</li> <li>• providing details to the ASA on request.</li> </ul> <p>If either of these processing grounds are based on the legitimate interest (of the data controller), then a legitimate interest assessment should be completed. CAP may wish to consider providing a template for this that smaller for profit and not for profit organisations can use for their activities in this sphere.</p> <p>Prize promoters will need to be clear in the competition terms and conditions that full personal details may be provided to the ASA/CAP so that appropriate investigations and steps can be taken to verify prize winners and probity of the promotional activity.</p>	<p>CAP is considering how best to point advertisers to relevant guidance (for example, from the ICO) on legitimate interests but will not duplicate this guidance by providing templates of its own.</p> <p>CAP agrees.</p>
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