

# CAP and BCAP regulatory statement on speed claims in broadband advertising

Committee of Advertising Practice and Broadcast Committee of Advertising Practice's new guidance on numerical speed claims in broadband advertising



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## 1. Summary

**Following research by the Advertising Standards Authority (ASA), pre-consultation with industry and consumer bodies and a full public consultation, CAP and BCAP are introducing new guidance on numerical speed claims in broadband advertising. The guidance will take effect on 23 May 2018, after a six-month implementation period.**

The guidance replaces the current recommended basis for numerical speed claims (speeds available to at least 10% of customers, described in ads as “up to”) with a new recommended approach (speeds available to at least 50% of customers at peak time, described in ads as “average”). It will apply to the advertising of residential broadband services but may be applied more widely where the circumstances of an ad for a different service (for example, a business broadband service) are sufficiently similar.

ASA research and pre-consultation indicated strongly that a change to the current position was supported by evidence and all key stakeholders. Consequently, CAP and BCAP [consulted](#) on the following options for the recommended basis for speed claims:

- median download speed measured at peak-time or over 24 hours; or
- a range of download speeds available to the 20th to 80th percentile of users measured at peak time or over 24 hours.

CAP and BCAP received a wide range of responses, from major ISPs, a trade body representing over 200 ISPs, consumer groups, think tanks and Ofcom. Respondents unanimously supported change, with most arguing for median speeds measured at peak time as the recommended basis for speed claims. Generally, most respondents favoured a single figure over a range and a peak-time measure over a 24-hour measure.

CAP and BCAP consider that the median download speed at peak time (between 8 and 10pm), described as “average”, is the most meaningful speed measure because:

- Consumers may interpret a range as the speed they are likely to get individually, as opposed to the range that consumers generally are likely to get, and a range does not tell consumers where in the range they fall, if at all. A median speed is easily understood and allows for consumers to make comparisons between different ads that they see.
- As peak time is when traffic volumes are highest and traffic management policies are most likely to apply, a peak-time measure provides a better indication of the actual speeds consumers are likely to experience. CAP and BCAP consider that a 24-hour measurement has the potential to mislead consumers by not providing an indication of the speed they are likely to receive at the time when they use the internet the most.

As noted in the consultation document, the approach recommended by CAP and BCAP is the one that they consider is the most likely to comply with the Codes: it is not, and cannot be, a mandatory approach to advertising speed claims. CAP and BCAP acknowledge that there might be different approaches to advertising a particular service – for example, targeting particular types of users – that are not likely to mislead. In the event of a complaint about such an ad, the ASA will ask advertisers to justify why that approach is not likely to mislead consumers. If advertisers are unable to do this, they run the risk of an upheld ruling by the ASA.

## 2. CAP and BCAP's decision to consult

### 2.1 The current position

CAP and BCAP's current guidance, entitled [Broadband speed claims Advertising Guidance \(non-broadcast and broadcast\)](#), came into effect on 1 April 2012 following public consultation between 26 January and 25 February 2011. CAP and BCAP's objective was to produce guidance for the industry on how to interpret the Misleading Advertising sections of the CAP and BCAP Code in relation to "up to" speed claims in both business-to-consumer and business-to-business advertising. The guidance recommends using maximum speed claims that are achievable by at least 10% of customers that are preceded with the words "up to" and qualified, where appropriate, with information to help manage consumers' expectations of achievable speeds and the factors affecting them. Substantiation for speed claims must be robust and reasonably representative of actual performance. For the reasons set out at 5.3 of the consultation document, it does not prescribe or proscribe approaches for all advertising).

### 2.2 Decision to consult

CAP and BCAP decided to consult for two reasons:

- Research carried out by the ASA into consumers' understanding of broadband speed claims suggested that consumers might be misled by the advertising of speed claims conforming to the guidance.
- Pre-consultation with internet service providers and concerns from the public and politicians suggested that a different approach to the advertising of broadband speeds was merited.

A detailed analysis of the ASA's research can be found at 6.1 of the consultation document but the key findings can be summarised as follows:

- Speed is an important factor for a significant proportion of consumers who are making decisions between broadband providers.
- Levels of knowledge and understanding of broadband speeds vary, but it is low overall with many not knowing what speed they need to carry out daily online tasks.
- Most people understand that the higher the number in the ad, the higher the speed of the service, but many are unclear on what this means for them and what speed they are likely to achieve. Some participants confused speed and reliability.
- Despite that uncertainty, most consumers believe they are likely to receive a speed at or close to the headline speed claim when, for many, that is not likely to be the case.

Views commonly expressed during pre-consultation can be summarised as:

- The current approach to numerical speed claims in CAP and BCAP's guidance (recommending 10% as a reasonable proportion of consumers for whom the speed claim is achievable) is no longer fit-for-purpose.

- Where numerical speeds are quoted, they should be available to around 50% of consumers.
- ISPs, along with regulators and consumer groups, have a role to play in educating consumers about the factors affecting broadband speed.
- A range does not give individual consumers an indication of whether they would fall within the range and if they did, where in the range they were likely to fall; the use of a range could mislead consumers, particularly those who did not fall within the range.
- A speed that 100% of consumers can achieve is dependent on the speed of the slowest consumer and does not give consumers an idea of the likely speed they will achieve.

### 2.3 Options included in consultation

In light of the information received from the ASA's research and during pre-consultation, including unanimous support for change from across industry and consumer groups, CAP and BCAP developed four options for a new recommended approach to advertising numerical speeds, which were based on the following criteria:

- If an ad includes a numerical speed claim, that speed should be achievable by many or most customers.
- Although the options for guidance are technology-neutral, the guidance is likely to have different implications according to the technology underpinning the service being offered: the greater the variation in consumer experience, the greater the amount of qualifying information that is likely to be required to ensure that consumers are not likely to be misled.
- Numbers on their own are unlikely to be enough, and qualifying information is likely to be necessary.
- Speed-checking facilities, for example those provided on ISPs' websites, are useful to consumers and should be promoted in ads wherever possible.

CAP and BCAP sought views on the following options for the basis of speed claims in their consultation:

- A. Median download speed for users over 24 hours.
- B. Median download speed for users at peak time.
- C. Range of download speeds available to the 20<sup>th</sup> to 80<sup>th</sup> percentile of users over 24 hours.
- D. Range of download speeds available to the 20<sup>th</sup> to 80<sup>th</sup> percentile of users at peak time.

CAP and BCAP proposed that the new guidance should apply to business-to-consumer advertising, but that it may also be relevant to business-to-business or other non-residential broadband service advertising. Respondents were invited to express a view on this.

### 3. Consultation responses

A full analysis of the consultation responses received can be found in the evaluation table. The number and nature of those responses can be summarised as follows:

- CAP and BCAP received 16 responses to the consultation, which were submitted by major ISPs, a trade body representing over 200 ISPs, consumer groups, think tanks and Ofcom.
- Respondents unanimously supported a change to the status quo (“up to” claims supported by 10% availability). Most respondents favoured median speeds measured at peak time as the approach that the guidance should recommend.
- Most respondents favoured a single figure over a range.
- Most respondents favoured a peak-time measure over a 24-hour measure.
- Limited views were received on the application of the guidance to non-residential broadband services.
- Mixed views were received on the application of the guidance to business-to-business advertising.
- Respondents noted the importance of CAP and BCAP aligning their work with Ofcom’s work on its voluntary code on point-of-sale information.
- Some respondents commented on ancillary matters (e.g. the use of words such as “fibre” and “superfast” in advertising) which fell outside the issues on which CAP and BCAP consulted.

## 4. Consultation outcome

CAP and BCAP have drafted amended guidance, and the key changes to the current guidance, along with their rationale, are summarised below. As noted in the consultation document, the option that CAP and BCAP propose to include in guidance is an approach to advertising broadband speeds that they recommend as being likely to comply with the Codes: it is not a mandatory approach for all advertising. Despite seeking to decide on one recommended approach, CAP and BCAP acknowledge that there might be different approaches to advertising the speed of particular service – for example, targeting particular types of users – that are not likely to mislead. In the event of a complaint about an ad, the ASA will ask advertisers using a different approach to that recommended in the guidance to justify why that approach is not likely to mislead consumers. If advertisers are unable to do this, they run the risk of an upheld ruling by the ASA.

### 4.1 Basis of speed claims

As noted above, respondents unanimously supported a change to the current approach to advertising speed claims. CAP and BCAP have decided to recommend the median download speed at peak time (between 8 and 10pm), described as “average”, as the basis for numerical broadband speed claims. A detailed consideration of the arguments for and against this option can be found in the evaluation table but the main arguments for CAP and BCAP’s selection of it can be summarised as follows:

#### Median vs range

- A speed range could be helpful to consumers if they understand what it is. CAP and BCAP consider that consumers may interpret a range as the speed they are likely to get 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 overestimate 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 and BCAP consider that a median speed is more easily comparable, particularly where consumers have little time to understand an offer (e.g. billboard, television or radio ads): the use of a range would require consumers to process at least two numbers when viewing an ad. If the ranges in different speed claims overlap, or the ranges are large, this also makes speed claims more difficult to compare.

#### 24-hour measurement vs peak-time measurement

- As peak time is when traffic volumes are highest and traffic management policies are most likely to apply, it provides a better indication of the actual speeds consumers are likely to experience. CAP and BCAP consider that a 24-hour measurement has the potential to mislead consumers by not providing an indication of the speed they are likely to receive at the time when they use the internet the most.
- CAP considers that advertising claims made about speeds at other times of day could be validly targeted at a specific group consumers who have a specific interest

in or need of this information; however, in the absence of such targeting, CAP and BCAP must have regard to the needs of the average consumer, and the information that is most useful to them at the time when they use the internet the most.

#### **4.2 Description of speed claims**

Although CAP and BCAP did not receive many representations on how a median speed should be described in ads, they received some support for using “average” to qualify numerical speed claims. CAP and BCAP consider that this term is easily understood and will be meaningful to most consumers. The new guidance makes clear that further qualification of the word “average”, or abbreviations which have the same meaning for consumers, may be needed if its absence would be likely to mislead.

#### **4.3 Application of guidance**

CAP and BCAP have drafted the new guidance with residential broadband services in mind; however, the guidance may be applied more widely where the circumstances of an ad for a different type of service (for example, a business broadband service) are sufficiently similar.

#### **4.4 Timeframe for implementation**

In order to allow advertisers sufficient time to make any changes following the new recommended approach, the new guidance will be subject to a six-month implementation period and take effect on **23 May 2018**.

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