



Audio description in TV advertising – a call for evidence

1. A call for evidence

Today, the Broadcast Committee of Advertising Practice (BCAP) is announcing an open call for evidence to assist in its regulation of TV advertisements that include content provided by means of audio description; this is an additional facility supplied by broadcasters that is designed to allow blind and partially sighted members of the audience to gain access to TV content. BCAP is especially interested in understanding the experience of those members of the audience for whom audio description is provided, and whether its current approach to this service is appropriate: to that end, BCAP pre-consulted with the RNIB to inform its policy thinking. BCAP will evaluate the evidence it receives and publish its analysis together with an outline of any related actions later in the year.

2. Why now?

Since BCAP (together with its non-broadcast sister body, the Committee of Advertising Practice) published a [statement](#) covering, in part, the application of the BCAP Code to information given in access services in 2017, it has become aware that some advertisers are beginning to provide TV advertisements with audio description (see [here](#) for an example), but that they face challenges in doing so. Further details are given below. BCAP welcomes the fact that advertisers are beginning to offer audio-described ads and wishes to explore whether its current approach to TV advertisements that include content provided by means of audio description is appropriately flexible and maintains the right balance between facilitating inclusion of blind and partially sighted members of the TV audience and the protection of the rights of those members of the audience, especially their right not to be misled by advertising. The clearer BCAP can be about its expectations of advertising with audio description, the more confidence advertisers may have in providing the service and the independent Advertising Standards Authority (ASA) may have in regulating TV advertisements that include content provided by means of access services.

3. Background information

Ofcom imposes a quota on provision of editorial content with access services on TV and in 2017, 85 channels were required to provide access services, accounting for over 90% of television viewing in the UK.¹ The Digital Economy Act 2017 sets an objective for Ofcom to consult on how best to extend access service requirements to notified on-demand audio-visual media services, in order to make recommendations to Government for regulatory standards.

¹ “Under Sections 303 to 305 of the Communications Act 2003 (‘the Act’), Ofcom is required to draw up, and from time to time review and revise, a code giving guidance as to the extent to which television services should promote the understanding and 1 Directive 2010/13/EU has been extended to cover Norway, Iceland and Lichtenstein, which are member states of the European Economic Area. 2 Ofcom, Access services on non-domestic channels, 1 October 2012 (http://stakeholders.ofcom.org.uk/binaries/consultations/access-services-nondomestic/statement/Non_dom_access_services.pdf) (‘2012 Statement’) Ofcom’s Code on Television Access Services 3 enjoyment by persons who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind)”. - [Ofcom’s Code on Television Access Services](#)



Provision of access services up until now has ostensibly been a matter of ensuring that the “public good” of TV editorial content is made available on a proportionate basis to members of the audience who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind). There is no quota for provision of access services for advertisements. Last year, CAP and BCAP issued a [statement](#) on the remit of the Codes over ads that provide audio description and other access services, which includes the following:

... when AD [audio description] is added, blind and partially sighted viewers, and the ASA Council, might reasonably consider that the AD should include any essential visual elements, for example, on-screen text which qualifies spoken claims. For this reason not all ads may lend themselves to audio description, such as those which include large amounts of mandatory or qualifying on-screen text.

Where the ASA receives a complaint specifically about an ad with AD from or on behalf of a blind or partially sighted audience member it may well assess only the AD and other audio elements, and not the visuals, against the Code. These elements, taken on their own merits, should therefore not mislead, harm or offend.

BCAP has been made aware that there may be circumstances when not all the qualifying information given in on-screen text (in a TV advertisement originally produced without audio description) can be accommodated in the newly added AD track. The AD track has to be fitted around the contents of the existing voiceover of the ad, which is heard by all of the audience except those with a hearing disability. BCAP has been informed of examples of ads where the voiceover makes a claim which is immediately qualified in on-screen text, but the voiceover continues without leaving space for the audio description track to include the on-screen information. This risks misleading visually impaired members of the audience by omitting information that explains important limitations to the main, spoken advertising claim.

BCAP’s general position is that significant limitations and qualifications should be stated clearly and in a timely manner, as is required under rules in Section 3 (Misleading advertising) of its Code. Rule 3.2 states:

3.2

Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers



depends on the context, the medium and, if the medium of the advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means.

[Appendix 3](#) to the BCAP Code sets out BCAP's understanding of how the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) should inform decisions made under the Code:

Advertisements are misleading if they

- are likely to deceive consumers and
- are likely to cause consumers to take transactional decisions that they would not otherwise have taken.

"Transactional decisions" are consumers' decisions about whether to buy, pay for, exercise contractual rights in relation to, keep or dispose of goods or services. They include decisions to act and decisions not to act.

Advertisements can mislead consumers even if they do not include false information; for example, they can deceive through presentation or by omitting important information that consumers need to make an informed transactional decision.

4. Options

BCAP has identified two options relating to the regulation of TV ads (originally produced without audio description) where pre-existing time and creative limitations prevent the inclusion of significant qualifications presented by means of AD. One option is to maintain the present position, which is that those ads that newly include AD tracks but cannot make time for significant qualifications to be audio-described are impermissible as they simply do not lend themselves to that format: here, visually impaired members of the audience who choose to activate and may develop a degree of reliance on AD services, may hear the main, spoken claim, but not the significant qualifying claim necessary for regulatory purposes e.g. main claim: 'Garden Furniture Sale'; qualifying claim 'Own brand products only'. In these circumstances, either the main claim requiring qualification should be amended to remove the need for qualifying information, or the ad should not appear at all in that form.

The other option is to explore whether there are suitable alternative means by which the advertiser can make the significant qualifying information available to blind and partially sighted members of the audience. For example, the audio description track could be used to refer listeners to an alternative source of information on a website. BCAP understands that screen reading features and assistive technology are



increasingly available to help blind and partially sighted people to access the internet. Alternatively ads could give a telephone number that provided pre-recorded information or a text-back service where information was relayed via SMS. BCAP is unlikely to be able to mandate a given approach, and different users will have different preferences, but any information or suggestions respondents can provide on the suitability of these or other options will be welcomed.

5. Benefits and risks

At present, blind and partially sighted members of the audience receive limited information from advertisements broadcast during programmes they access on TV. A considerable amount of information in TV advertisements is communicated through images and on-screen text, but voiceovers in ads can clearly have impact and make claims for products that could arouse interest among blind and partially sighted consumers. Ads with audio description can provide more contextual information to those members of the audience. This allows for more informed transactional decisions (see Section 3) and promotes the inclusion of blind and partially sighted members of the audience. A key message coming back from pre-consultation with the RNIB was that more information is better than no information.

However, referring members of the audience elsewhere for key information also incurs risks. Generally speaking, BCAP and the ASA regard a decision to [enquire further](#) about a product to be a transactional decision. In cases where a significant piece of information is only provided at a later point, the ASA might conclude that the omission of that information from the ad initially seen or heard by the consumer could deceive them into enquiring further, making the ad misleading. Pre-consultation with the RNIB suggested strong agreement with the need to prioritise essential information to understand the product being advertised over desirable, creative content. In particular, it is key for the ad to be clear about the nature of the advertised product.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) require BCAP and the ASA to provide greater protection where the target audience of an ad is vulnerable. European Commission [guidance](#) on the Unfair Commercial Practices Directive (from which the CPRs derive) mentions sensory impairment explicitly in the context of vulnerable consumers. BCAP also needs to consider whether obliging certain members of the audience to access information separately places those people at a disadvantage: it could be discriminatory. In particular, problems could arise if the webpage used to provide information to blind and partially sighted consumers also contained advertising messages. In those circumstances, the need to provide information separately could be argued to have been exploited as an opportunity for further advertising.

In choosing between the options described in section 4 above, BCAP will need to assess whether the benefits of providing more information separately from TV ads outweigh the risks described here.

It is also important to note that, in the longer term, advertisers who wish to make their ads accessible should aim to integrate accessibility within the creative structure



of the advert at the production stage. Any proposals for an alternative approach adopted by BCAP as an outcome of this call for evidence (assuming no legal or other obstacles preclude such an alternative) would be made on an interim basis, in recognition of the practical advantages in allowing advertisers to fit audio description to their existing ad inventory pending the development of integrated access service advertising. To that end, BCAP welcomes comments from respondents on how long the period might be during which an alternative approach would be permissible.

6. Evidence

BCAP has only been able to find information relating to audio description and other access services in editorial content in the UK. Ofcom provides a great deal of information on this subject, most recently in its [Access services report: 2017](#). However, BCAP is not presently aware of evidence that relates to how blind and partially sighted members of the TV audience receive and react to TV advertisements with audio description. It would be particularly helpful to know more about the level of attention blind and partially sighted members of the TV audience pay to advertisements, how likely they are to respond to an ad and enquire further on the basis of the information they receive and how an awareness of the incomplete nature of the information they receive from audiovisual ads affects their attitudes towards those ads.

BCAP is mindful of the fact that its recent discussions of these issues have focused on audio description, blind and partially sighted people, but that access services also include subtitling and signing for members of the TV audience who are deaf or have a dual sensory impairment. There may be different issues connected with how subtitling of voiceovers in advertising combine with on-screen text and how that information affects the transactional decisions of consumers who are deaf or have a dual sensory impairment. BCAP welcomes information and views on this subject too.

While this call for evidence relates to TV advertisements, the principles may also apply to other media. BCAP will share insights from this exercise with its sister body, the Committee of Advertising Practice, which sets the rules and guidance for non-broadcast marketing communications, including audiovisual marketing communications such as cinema and online video ads.

Submitting your evidence

BCAP provides a document to support stakeholders' submission of evidence, including for those who wish to argue for regulatory change or to better understand BCAP and CAP's approach to policy-making. Submissions should be sent to AdPolicy@cap.org.uk by 7 February 2019.