

BCI Children's Advertising Code

Statement of Outcomes

Section 19(10) Statutory Review

July 2009

Introduction

Section 19(1)(c) of the Broadcasting Act, 2001 (“the 2001 Act”) requires the Broadcasting Commission of Ireland (“the Commission”) to develop a Code in respect of advertising and other forms of commercial communications of direct and indirect interest to children. This provision states:-

19.—(1) The Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section, prepare—

(c) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service, being advertising and other activities as aforesaid which relate to matters likely to be of direct or indirect interest to children.

This Code has been in effect since January 2005 and all radio and television broadcasters licensed in the State and those making use of a frequency or satellite capacity or uplink are required to ensure that all relevant broadcast material complies with the provisions of this Code.

Section 19(10) of the 2001 Act requires the Commission to undertake a Statutory Review of the effect of the Code every three years and prepare a report for the Minister for Communications, Energy and Natural Resources (“the Minister”) on the outcomes of this review. In this context, the Statutory Review of the Code took place between June 2007 and May 2008. In accordance with Section 19 (10) of the 2001 Act, the Commission has submitted its report to the Minister in relation to the review of the Code.

This Statement of Outcomes document details the process used by the BCI to undertake the Statutory Review and the BCI’s decisions regarding those parts of the Code that will not be revised and those parts that may be subject to revision following further consideration by the BCI in 2009 and 2010.

This Statement of Outcomes is structured as follows -

1. Overview of the BCI Children’s Advertising Code
2. Approach to Review
3. Review Outcomes
4. Revision of the BCI Children’s Advertising Code

1. Overview of the BCI Children’s Advertising Code

The BCI Children’s Advertising Code (“the Code”) was the first code to be developed further to the requirements of the 2001 Act and it has been in effect since January 2005. It was developed over three phases of consultation and was informed by qualitative and quantitative research as well as the findings of each phase of consultation.

The objectives of the Code are:

- To offer protection for children from inappropriate and harmful advertising;
- To ensure that Children’s Advertising acknowledges the special susceptibilities of children and does not exploit these susceptibilities;
- To ensure that Children’s Advertising is fair and presents the product or service advertised in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being advertised, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from Children’s Advertising on Irish broadcasting services.

The Code does not have as an objective a reduction in the volume of Children’s Advertising or indeed a reduction of particular types of Children’s Advertising that are permitted under the Code.

1.1 Structure of the Code

The Code sets out rules under twelve headings as follows:

- Social Values;
- Inexperience and Credulity;
- Undue Pressure;
- Special Protection for Children in Advertising;
- General Safety;
- Violence;
- Diet and Nutrition;
- Parental Responsibility;
- Programme Characters;
- Product Prohibitions and Restrictions;
- Identification and Separation, and ;
- Insertion of Advertising.

The Code also contains scheduling advice, criteria for assessing compliance, an outline of the jurisdiction of the code and the following definitions of a 'Child', 'Children's Advertising' and 'Children's Programmes':-

A Child is defined as:-

A person under 18 years of age.

Children's Advertising is defined as:-

Advertising that promotes products, services or activities that are deemed to be of particular interest to children and/or are broadcast during and between children's programmes.

Children's Programmes are defined as:-

Programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.¹

Any advert that does not fall within the definition of Children's Advertising is required to comply with the BCI General Advertising Code.

¹ This means that advertisements broadcast during any programme where over 50% of the audience watching are under-18 years of age must comply with the Code.

2. Approach to Review

The Commission's approach to the review of the Code was designed to meet the statutory requirement but also to enable the identification of issues and areas of the Code that may require revision in order to make the Code more effective and/or to address new concerns/issues not currently addressed by the current Code. The Commission decided to examine the Code in two stages. The first stage, the Statutory Review, was undertaken between June 2007 and May 2008. The second stage involves further consideration of the outcomes of the Statutory Review and, where necessary, public consultation regarding any proposed revisions to the Code. The second stage is underway and is currently due for completion in 2010.

A range of activities were undertaken as part of the **Statutory Review**. These activities endeavoured to provide information on: public and industry awareness of the Code; implementation and interpretation issues; issues of compliance by broadcasters; gaps (if any) in the current Code; the perceived and actual effect of the Code, and; advertising impacted by the Code. These activities also provided information regarding changes in the regulatory, legal and social environment, with a view to highlighting where the Code may need to be updated in light of these changes.

Activities undertaken included a mix of quantitative and qualitative research, namely:-

- i) A **national attitudinal survey** examining awareness of the Code and attitudes to the regulation of advertising seen or heard by children. Ipsos MORI were contracted to conduct this activity. A total of **1,209 'in-home' interviews** were conducted throughout the Republic of Ireland. 955 interviews were conducted with adults and 254 interviews were conducted with children. The purpose of the survey was to assess whether the current Code and the approach taken in the Code adequately reflects the concerns of the Irish public (including children) about advertising seen and heard by children and to examine attitudes to the regulation of advertising.
- ii) A **review of policies, practices and legislation** governing advertising to children in other jurisdictions. This research was conducted by regulatory expert Deirdre Kevin. International and European comparisons of approaches to the regulation of Children's Advertising were undertaken as part of this research. In particular, the research examined trends in the statutory and non-statutory regulation of Children's Advertising in a range of jurisdictions for the 2003 to 2007 period. In addition to developments in Europe, the review examined developments in the USA, Canada, New Zealand and the United Kingdom.
- iii) A **stakeholder consultation** with key stakeholders concerning the Code. This research, also undertaken by Ipsos MORI, involved consultation with industry, health and consumer bodies, children, parents and governmental bodies. The research was intended to elicit the views of these stakeholders concerning: awareness of the Code; satisfaction or dissatisfaction with any provisions of the Code; recommendations/suggestions to address issues arising and/or perceived gaps in the Code, and; implementation issues associated with the Code.

In total, eight in-depth interviews and three mini-discussion groups were conducted with ‘expert’ stakeholders, three discussion groups were conducted with children, one discussion group was conducted with parents and four paired in-depth interviews were conducted with parents and very young children.

The following ‘expert’ stakeholders were interviewed: National Heart Alliance; Dental Health Foundation; Irish Nutrition and Dietetic Institute; safe food; Irish Heart Foundation; National Youth Council of Ireland; Children’s Rights Alliance; Health Promotion Policy Unit RTÉ; TV3; TG4; Today FM; Institute of Advertising Practitioners Ireland (IAPI); Association of Advertisers (AAI); Advertising Standards Authority of Ireland (ASAI); Central Copy Clearance Ireland; Irish Business and Employers Confederation (IBEC);

- iv) A report on **advertising trends**, detailing the types and volumes of advertising seen by children examining any apparent trends/changes in the period.² This research was conducted by Insight Statistical Consulting and examined year-on-year trends in television advertising viewed by adults and children, including advertising broadcast during programmes where over 50% of the audience was under-18 years of age. This was supplemented by in-house research that examined television audience profiles;³
- v) **Research and compliance monitoring** which reviewed the outcomes of monitoring undertaken by the Commission over the past three years as well as a specific piece of monitoring undertaken for the purposes of this review;⁴
- vi) A review of compliance examining complaints to the **BCC**, and;
- vii) An examination of issues arising from the introduction of the **BCI General Advertising Code** to ascertain whether any incongruence exists in the regulation of general advertising and advertising to children.

² Information in this regard was derived from data provided by AGB Nielsen Media Research.

³ Information in this regard was also derived from data provided by AGB Nielsen Media Research.

⁴ The Research Monitoring examined three days of output across seven radio and television services.

2.1 Approach to Outcomes of Review

In determining the parts of the Code that should be subject to further consideration and possible revision and those that should not, the Commission had regard to the outcomes of the research undertaken and the outcomes of the other activities undertaken as part of the Statutory Review. In particular, the following was considered:

- Whether the Statutory Review highlighted any legal or regulatory changes at an Irish or European level and the implications of these changes for the Code, e.g. the introduction of the Audio Visual Media Services Directive (AVMS), and the Broadcasting Bill, 2008;
- Whether, in the case of key substantive issues which had attracted considerable debate and controversy in 2003/04 and were raised again during the Statutory Review, any new information was presented that would suggest that a reconsideration of these issues was warranted e.g. rules on diet and nutrition.
- Whether any significant implementation issues had arisen in respect of any of the rules contained in the Code as well as the specific nature of these issues;
- Whether any significant compliance issues had arisen in respect of any of the rules contained in the Code as well as the specific nature of these issues, and;
- Whether a rule or rules had operated satisfactorily such that the rule or rules required no further consideration at this time.

The review resulted in the identification of a range of issues which were categorised as follows:-

- **Interpretation issues** - these did not relate to the substance of the rule and could be addressed by the issuance of Guidance Notes e.g. what constitutes 'mealtime' in the context of Rule 7.2?
- **Implementation issues** – these did not relate to the substance of the rule but rather the manner in which it was implemented e.g. dissatisfaction with the wording/size/placement of on-screen messages.
- **Substantive issues** - these related to the substance of the rule e.g. should specific rules exist within Section 7 (Diet and Nutrition) that address foods that are high salt/fat/sugar?

The Commission has determined that **interpretation issues** and some **minor implementation issues** will be addressed via the provision of published Guidance Notes to assist broadcasters, the public, advertisers and other stakeholders in their understanding and interpretation of the Code.

More **substantial implementation** issues and those issues relating to the **substance of the rules** have influenced decisions regarding areas of the Code which will be subject to further consideration as part of the revision of the Code to be undertaken in 2009 and 2010. The approach to the revision process is detailed in Section 4 of this document.

3. Outcomes of the Statutory Review

Following consideration of the results of the Statutory Review, the Commission has reached the following decisions in respect of each element of the Code.

Definition of ‘Child’

The current **definition** of a ‘Child’ as a person under-18 years of age will be retained. In addition, the **Principle of Age Differentiation** i.e. the application of different age categories to different rules in the Code will also be retained.⁵ However, the manner in which the Principle of Age Differentiation is applied to **specific** rules contained in the Code may be subject to revision.

Definition of ‘Children’s Advertising’

The elements of the definition of Children’s Advertising that relates to *advertises for products and services of particular interest to children* **and** *advertises broadcast during and between Children’s Programmes commonly referred to as such*, remain suitable and will not be subject to revision.

Further consideration will be given to the desirability or otherwise of lowering the over-50% audience profile element of the definition of Children’s Advertising in the case of adverts for specific products and services seen/heard by children that are of public concern.

Jurisdiction

The jurisdictional provisions contained in the Code will not be subject to revision at this time.

Scheduling

The content of this section of the Code remains suitable and will not be subject to revision at this time.

Assessment

The content of this section of the Code, including the contextual factors detailed, remain suitable and will not be subject to revision at this time.

Social Values

The rule under the heading Social Values remains suitable and will not be subject to revision at this time.

Guidance will be provided so as to assist the interpretation of this rule.

⁵ Different rules apply to advertisements seen by/targeting:- all children Under-18, those under-15, and; those under-6 years of age

Inexperience and Credulity

The rules under the heading Inexperience and Credulity in respect of the use of on-screen messages will be subject to further consideration and may be revised.

Undue Pressure

The rules pertaining to Undue Pressure remain suitable and will not be revised at this time.

Research on the issue of undue pressure will be undertaken in the interest of increasing public knowledge and understanding of this issue.

Special Protection for Children in Advertising

The rules under the heading Special Protection for Children in Advertising remain suitable and will not be revised at this time.

General Safety

The rules under the heading General Safety remain suitable and will not be revised at this time.

Advice in respect of Rule 5.4 will be provided in Guidance Notes to be developed to accompany the Code.

Violence

The rules under this heading remain suitable and will not be revised at this time.

Diet and Nutrition

The rules under the heading Diet and Nutrition will be subject to further consideration and may be subject to revision. This view has been reached by the Commission having taken into account the ongoing concern about advertising of this nature and the findings of the review in respect of the rules under this heading. The decision was also taken having had regard to legislative proposals set out in the Broadcasting Bill 2008 in respect of particular classes of food and beverages, in particular, foods high in fat, salt and sugar (HFSS).

Parental Responsibility

The rule under the heading Parental Responsibility remains suitable and will not be revised at this time.

Programme Characters

Further consideration will be given as to whether the rule under this heading should be revised so that the use of characters from new or current movies to promote products and services to children should be subject to specific regulation under the Code.

Clarification will be provided via Guidance Notes on the implementation of the requirement regarding ‘broadcast seasons’ in the context of Rule 9.1.

Product Prohibitions and Restrictions

Prohibitions on adverts for products and services currently referenced in the Code will not be revised at this time.

Further consideration will be given as to whether additional prohibitions and restrictions on specific products and services should be introduced into the Code.

Identification and Separation

Rules under the heading Identification and Separation will be subject to revision in the context of the transposition of the European Audio Visual Media Services Directive (“AVMS Directive”).

Insertion of Advertising

The rules under this heading will be updated to reflect minor changes in ‘insertion’ rules introduced by the AVMS Directive. The rules under this heading will not be substantially revised at this time.

Commercial Communications

The introduction of the term ‘Commercial Communications’ into the Code will be the subject of further consideration in the context of the revision of the Code.

Awareness

The Commission’s future communications planning will address issues highlighted by the review in respect of awareness and familiarity with the Code amongst the public and other key stakeholders, including health and children’s interest groups.

4. Revision of the Code

The BCI has decided to examine the issues arising from the Statutory Review of the BCI Children's Advertising Code with a view to revising the Code. This will be undertaken in two phases. Areas of the Code to be examined in each phase are as follows:-

- **Phase One** - 2009

This phase will address the rules under the heading Diet and Nutrition as well as the merits or otherwise of extending the rule under the heading Programme Characters to include the use of characters from new and current movies in Children's Advertising.

- **Phase Two** - 2010

This phase will address: the rules under the headings of Identification, Separation and Insertion; the use of on-screen messages in the context of rules under the heading Inexperience and Credulity; the desirability or otherwise of additional product restrictions and prohibitions; the application of the Principle of Differentiation to specific rules in the Code, and; the use of the term Commercial Communications.

This two-phase revision will be undertaken using a range of quantitative and qualitative methodologies. The methodologies include: -

- the convening of an Expert Working group to assist in the possible revision of the Diet and Nutrition rules;
- focus groups with children in order to address issues highlighted by the Statutory Review regarding the use of on-screen messages during Children's Advertising;
- the undertaking of research regarding Irish television audiences and advertising;
- consultation on any proposed changes to the current Code, and;
- the development of Guidance Notes addressing the rules in the Code.

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