

Statement of Outcomes

Children's Advertising Code

Introduction

This document outlines the decisions taken by the Broadcasting Commission of Ireland, in relation to the Children's Advertising Code. These decisions were informed by the submissions received throughout the consultation and in response to the third and final phase of consultation. For a brief description of the three phases of consultation please see the Commission's website www.bci.ie/public.html.

Consultation on the Children's Advertising Code is now complete. Some final work regarding specific definitions will be undertaken at the Commission's meeting on September 6th. The Children's Advertising Code will be launched in early October 2004 and will be implemented as of January 1st, 2005. The Children's Advertising Code will replace section 14 of the Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services as drawn up by the Minister for Arts, Culture and the Gaeltacht in the exercise of his powers under Section 4(1) of the Broadcasting Act 1995. This document outlines the decisions taken by the Commission under each of the headings of the code, as they will appear in the final code.

1. Definitions

1.1 *Definition of a child*

The Commission has defined a child as:

Any person under the age of 18, with a recognition that different levels of protection are required by children of different ages, in particular those under 6 years of age and those aged 15 and over.

In defining a child, the Commission had regard to the fact, that as a State party to the UN Convention on the Rights of the Child, the State has a duty of protection and care, for all children and young people under the age of 18. The National Children's Strategy and the Age of Majority Act 1985 also define a child as a person under 18.

The Commission also had regard to a majority of submissions received, that expressed the view that the relative maturity of children can vary enormously and that the degree of regulation and protection assigned to children by the code should vary accordingly. In particular, mention was made of very young children and those aged 15 and over.

The Commission in formulating its definition, did so, on a basis that would permit the code to afford protection to all children, with the recognition that the levels of protection required vary according to age.

Within the third phase of consultation, the issue arose as how the definition is to be applied throughout the code. No compelling arguments were put forward for change to the original definition, provided the Commission addressed the principle of differentiation between age groups.

The Commission acknowledged the views, as expressed in the phase three submissions, that there is a need for a more explicit statement of the manner in which the principle of differentiation between age groups is to be given practical effect in the code. To this end, the Commission will provide a categorisation for each provision in the code, based on three distinct age groups. These age groups are those under 6 years of age, those under 15 years of age and those under 18 years of age. Under each heading in the code, a number of general principles that apply to all children under 18 will be outlined. Where there are additional protections to be afforded to younger children or young people, these have been assigned an under 6 or under 15 categorisation.

This has been done in order to ensure that while the code offers protection to all children, it adequately and explicitly addresses the principle of affording different levels of protection to children according to age.

1.2 Definition of Children's Advertising

Children's advertising has been defined as:

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

1.3 Definition of Children's programmes

Children's programmes have been 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.

2. Jurisdiction

The Children's Advertising Code will apply to broadcasters under the jurisdiction of the Republic of Ireland or those who make use of a frequency or satellite capacity or up link based in the Republic of Ireland. In practical terms, the Children's Advertising Code will apply to RTÉ radio and television services and TG4, television and radio services licensed under the Radio and Television Act 1988 (including TV3 and Today FM) as well as services licensed by the BCI under the Broadcasting Act 2001. The Children's Advertising Code will not apply to other services commonly received in this country and which are licensed in other jurisdictions.

3. Scheduling

The draft code presented a number of provisions in relation to the scheduling of children's advertising. A number of submissions received made reference to the perception that the draft code has proposed the introduction of a new watershed. The watershed is an informal concept, that is used by broadcasters and is traditionally regarded as being after 9pm, after which time adult themed programming can be broadcast.

In the draft rules, under scheduling and within the indicative guidelines, reference is made to 10pm. The draft codes states that programming after 10pm will not generally be regarded as children's programming. The 10pm cut off was included, based on an assessment of the Commission's own research into children's viewing patterns. This research would suggest that after 10pm the majority of children would not be viewing.

A time was introduced in order to give practical effect to the principle of parental responsibility within the draft code. The code uses a system of audience indexing whereby if over 50% of those watching a programme are under 18 years of age, then the programme is deemed a children's programme. The principle of parental responsibility would be called upon in the event that a programme broadcast after 10pm attracted a predominantly child audience. In this situation, the programme would not be deemed a children's programme. There are always exceptions e.g. the Late Late Toy Show and the scheduling provisions make reference to programmes that are not ordinarily children's programmes, but that in exceptional circumstances attract a child audience.

The Commission has not posited 10pm as an official watershed. It is anticipated that within the Taste and Decency Code to be developed later this year, the issue of a watershed will arise and the draft code does not attempt to pre-empt that work.

Broadcasters and advertisers have requested that 9pm be used as the time to demarcate when adult viewing begins and the time at which the parental responsibility principle is implemented.

Outcome

The Commission has decided, that in the event that a programme broadcast after 9pm and before 10pm, is deemed a children's programme, by virtue of the audience figures, then only the general principles for under 18s will apply. The protections relating to under 15s and under 6s will not apply. This acknowledges that 9pm had traditionally been seen as a cut off point for adult viewing. However, it also acknowledges that this demarcation is not, perhaps, as clear –cut and therefore there is a transitional period between 9pm and 10pm.

The indicative guidelines have also been changed to acknowledge the application of the three different age categories, as follows:

If broadcasters consider that particular children's advertising is inappropriate for those aged under 6, then it should not be shown during and between children's programmes that target that age group.

If broadcasters consider that particular children's advertising is inappropriate or likely to cause distress to children under 15 years of age, then it should not be broadcast before 9pm.

If broadcasters consider that children's advertising contains material, of a sexual or a violent nature not suitable for children under 18, then a post 10pm restriction must be considered.

4. Social Values

There was general support for the inclusion of this section. It states that children's advertising shall not reflect values that are inconsistent with contemporary social values and then provides an indicative list of such values. The values listed draw on those outlined in the Televisions Without Frontiers Directive as well as those within the current Advertising

Standards Association of Ireland code. There were no strong views presented requiring substantial changes to this section and apart from some minor drafting changes, the section will appear largely as presented in the draft code.

5. Inexperience and Credulity

The section on inexperience and credulity has remained unchanged. However, the Commission has agreed, based on the submissions received in phase three, to categorise some of the provisions under the sub-headings of factual presentation and price of produce/service, according to age. Specifically, while the general principle will apply to all children, some of the provisions under each sub-heading will now apply to under 15s, with some applying to those under 6 years of age.

6. Avoiding Undue Pressure

There was general agreement expressed with regard to the proposed provisions under this heading and no substantial changes have been made. All the provisions under this heading will apply to all children under 18 years of age.

7. Special Protection for Children in Advertising

This heading covered a range of issues that concerned children not only as viewers and listeners but also as they are represented and portrayed in advertising. Four areas were considered and each is dealt with separately.

(i) Children endorsing products

The draft provisions under this heading were adopted. The provisions prohibit the use of children in children's advertising to comment on or endorse products that they could not reasonably be expected to use and would not usually be interested in themselves. There was some misunderstanding evident in the submissions received during phase three of consultation in relation to this provision and the following provides some clarification with regard to the intention of the provision.

The provisions under this heading do not preclude children from appearing in children's advertising. Children may appear in children's advertising as a natural element in the depicted environment or if they are necessary to explain or demonstrate the use of the product. This means that an advert for an adult product may contain children, but it may not use the child to endorse or comment on the product. Children shall only be used to comment on or endorse the product if it is something that they could reasonably be expected to use and in which they would usually be interested. This provision applies to all children under 18 years of age.

(ii) The Sexualisation of Children

The draft provision under this heading has been adopted and will be applied to all children under 18 years of age.

(iii) Privacy/Information

The draft provision under this heading has been adopted and will be applied to all children under 18 years of age.

(iv) *Adults pretending to be Children*

The draft provision under this heading has been adopted.

8. Safety and Avoidance of Harm

(i) *General safety, safety in the home, road safety and behaviour.*

The draft provisions are largely unchanged and the majority of them will apply to all children under 18. However, a number have been categorised as applying to under 15s.

9. The Use of Violence in Advertising

The general principle that children's advertising should not include violence or include scenes that will cause distress to children is unchanged and will apply to all children under 18. The restriction in relation to the scheduling of adverts that include violence as part of a public service message, or in order to demonstrate the product, has been given a separate age categorisation.

10. Diet and Nutrition

The Commission received a considerable number of submissions, in all three phases of consultation, in relation to the issue of diet and nutrition. The Commission has taken the view that the issue of obesity and the influence that advertising plays in this is very complex. In acknowledgement of this complexity, the Commission has not introduced any prohibitions on particular foods being advertised to children. Instead, in response to the considerable level of concern expressed by parents and children's interests groups, it proposes a range of awareness raising and educational measures, as well as provisions regarding the manner in which food advertising can be presented to children.

In some submissions received, it appears there was some confusion as to the type of advertising affected by these provisions. For the purpose of clarity, the BCI confirms that these provisions apply only to children's advertising, as defined earlier in this document. Food advertising that is not children's advertising is unaffected by these provisions.

Some drafting amendments have been made to the provisions contained under this heading, however, the spirit of the provisions is unchanged. These are as follows:

Children's advertising shall be responsible in the manner that food and drink are portrayed. It shall not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption or excessive or compulsive eating.

Children's advertising representing mealtime shall clearly and adequately depict the role of the product within the framework of a balanced diet.

Children's advertising shall not contain any misleading or incorrect information about the nutritional value of the product. It shall not make misleading or incorrect comparisons between foods. It shall not imply that particular foods are a substitute or replacement for fruit and/or vegetables.

The three remaining provisions raised a number of issues within the consultation process. A summary of the discussions and outcomes in relation to these three provisions is outlined below.

Toothbrush symbol and confectionery

The toothbrush symbol was included based on a concern expressed in phase two as to the effect on oral health of the consumption by children of high sugar foods. In addition, the provision was in keeping with the Commission's approach of awareness-raising and educational measures as opposed to prohibitions. In the consultation process, many people highlighted additional products that they believed should be included under this clause including 'fizzy' drinks. However, there were three main objections to this provision, broadly along three main themes:

- Lack of clarity as to the definition of confectionery
- The ability of children to correctly interpret the symbol concerned
- The view that to isolate confectionery was discriminatory

The Dental Health Foundation, the Society of Chief and Principal Dental Surgeons of Ireland and the Oral Health Promotion Research Group articulated the view that a toothbrush symbol could be ambiguous, in that children could misinterpret the symbol to mean that these foods are tooth friendly. They asked that a warning or message be placed on such adverts instead.

The Commission has decided to retain the spirit of this provision but will replace the toothbrush symbol with an on-screen message on all children's advertising for confectionery products. The Commission will in the coming weeks develop the wording of the message and the definition of confectionery.

Fast Food

Much concern was expressed during phase two in relation to the advertising to children of 'fast' food, including many calls for a prohibition of such advertising. In response to these concerns, the Commission included a provision in the draft code that required such advertising to carry an on-screen message, stating that such food should be eaten in moderation and as part of a balanced diet.

There has been some misunderstanding regarding the definition of fast food. The intention of the definition is not to include prepared and convenience foods or food that is purchased for preparation and cooking in the home. The intention is to target children's advertising for foods that are sold in cooked form, that can be procured quickly and are relatively inexpensive. Such factors, making this type of food, readily accessible to children.

The Commission is retaining this provision and will further clarify the intention of the provision in the final code.

Use of celebrities, sports stars and children's heroes to advertise food

The Commission included this provision as one of a number of provisions designed to address concerns regarding the influence of advertising on children's choices in relation to food products. The draft celebrity provision was included, based on the potential for celebrity advertising to have a disproportionate influence on children as opposed to adults. This disproportionate influence is possible because of the child's inexperience and credulity and his/her sense of loyalty to celebrities and sports stars. The requirement for a children's advertising code is premised on the recognition that children are in need of protection from advertising in light of their special characteristics including their inexperience and credulity. While an adult may exercise some discernment, and cynicism even, regarding the intent of

celebrity advertising, a child may not yet possess this perspective or an understanding regarding the intention of this technique.

The provision is included in light of concerns expressed with regard to the influence of advertising on children's choices in relation to food and drink products and the issue of obesity. The Commission has not prohibited the advertising of any particular food products, but rather the use of a particular advertising technique. A number of the submissions would suggest that there is some confusion regarding this provision. The Children's Advertising Code will not preclude celebrities from advertising products other than food or beverages to children. This singling out of food and drink products was in direct response to the concerns of the public and health bodies as expressed during consultation, as well as the views of children and young people on the issue. Celebrities may still advertise food and drink products but not within advertising that is children's advertising, as defined in the code. The Commission will retain this provision.

11. Parental Responsibility

No issues were raised in relation to the draft provision and it remains unchanged.

12. Programme Characters

There was general support for this provision, a number of objections were raised, mainly regarding the two hour stipulation. Broadcasters and advertisers argued that as long as the advert is not scheduled during or adjacent to the programme in which the character appears, this should be sufficient.

The rule is prompted by a concern that children can be unduly influenced by virtue of the loyalty they feel for the character or personality. Another concern is the inability of young children to differentiate between programming and advertising. The two-hour stipulation is based on a recognition that children watch television in blocks of time and albeit they may not see the advert during the programme, they could be exposed to the advert within a short period after the programme. The two-hour stipulation aims to counter the effect of the potential proximity of the advert to the programme and to aid the differentiation of programming and advertising.

The Commission has had regard to an issue raised in relation to the wording of the provision. The word 'currently' will be included in the provision, so that these restrictions will apply to those characters and personalities currently appearing in children's programmes.

It is important to clarify that this rule only applies to characters and personalities from children's programmes, as defined earlier in the document. It does not apply to adult advertising or characters from adult programmes.

13. Product Prohibitions

The product prohibitions as outlined in the draft code have remained unchanged. Any new legislation regarding alcohol advertising will be incorporated into the General Advertising Code. If such legislation impacts on the Children's Advertising Code, it will be incorporated as appropriate.

14. Identification and Separation

The draft provisions remain unchanged.

15. Insertion of Advertising

The draft provision regarding Christmas themed advertising remains unchanged and will apply in 2005, as the code is being introduced in January 2005. However, the provision that precludes children's programmes of less than 30 minutes from being interrupted by advertising has been given an under 15 categorisation. This means that the provision applies to children's programmes where over 50% of the audience are under 15 years.

16. Assessment

The draft provision remains unchanged.

17. Moratorium

The consultation process asked whether a period of time should be allowed before the code is fully implemented. This time would permit broadcasters and advertisers to incorporate the code into their work, as well as allowing for existing advertising campaigns to run their course. In the responses received, there was no objection to the idea of a moratorium period.

The draft code has been available since April 2004 and it is intended that it will be finalised in late July and formally launched in early October of this year. The Children's Advertising Code will take effect as and from January 1st, 2005.

18. Pre-vetting

The issue of pre-vetting or copy clearance of adverts was raised within submissions. Currently the BCI does not operate a copy clearance centre. The Commission does however, on request, give a view and/or guidance the interpretation of the code and on scripts that are submitted. This view is without prejudice to any decisions made by the Broadcasting Complaints Commission.

The Commission has noted the intention of the advertising industry to establish a copy clearance initiative and welcomes such an initiative, as a positive response by the industry towards ensuring compliance with the code.

The Commission, while not having a formal involvement in such an initiative, will provide clarification and advice on the interpretation of the code, on request by the copy clearance system. This approach enables the Commission to provide guidance and support without becoming formally involved in the pre-vetting structure.