

***Children's Advertising Code***  
***Phase One Consultation Document***

Summary of Submissions Received  
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Dr. Ruth-Blandina M. Quinn,  
Research Officer,  
Broadcasting Commission of Ireland

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# Introduction

On 3 April 2003, the Broadcasting Commission of Ireland (BCI) launched its *Phase 1 Consultation Document 2003 - Children's Advertising Code*.<sup>1</sup> The culmination of significant preparation, this marked the formal initiation of a process designed to lead to the production of Ireland's first children's advertising code. The impetus to respond came from the Broadcasting Act, 2001 which requires the Commission to identify set standards that would govern advertising and related practices aimed at children.<sup>2</sup>

The practical application of the children's advertising code will be comparatively narrow – affecting home-based broadcast media exclusively.<sup>3</sup> The range of influences to be brought to bear on the process, however, will not be limited. Eliciting the views of a cross-section of the Irish population is at the very core of the process currently underway at the BCI.

## **Consultation document**

The *Phase 1 Consultation Document* is a key element in the process. In design, it highlights the main issues for consideration while posing a series of questions to be addressed. Responses from relevant groups (advertising agencies, children's organisations, broadcasters, etc.) and from the general public were invited during the April launch. The invitation to contribute was extended further when an advertisement was carried in the national press.<sup>4</sup>

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<sup>1</sup> The Shelbourne Hotel, Dublin. From here on, the document will be referred to as *Phase 1 Consultation Document*.

<sup>2</sup> The BCI co-ordinates principal activities unfolding in Irish radio and television. Legislation outlining its functions, and thus underpinning its work, is the Radio and Television Act, 1988 and the Broadcasting Act, 2001. Relevant sections in this instance are Sections 19.1(c), 19.2, 19.5, 19.7, 19.8, 19.9 and 19.10 of Broadcasting Act, 2001.

<sup>3</sup> The code produced will apply equally to public and private broadcasters. It will also apply to those who make use of a frequency or satellite capacity or up-link based in Ireland.

<sup>4</sup> 4 April 2003. The closing date for submissions was 30 May 2003.

## **Present document**

The present report summarises information submitted in response to the *Phase 1 Consultation Document*. The approach taken is linear. It considers the initial request and the information received under a series of six principal headings. These form the sections which follow:

- Process;
- Principles;
- Definitions of general advertising terms;
- Definitions of ‘child’ and ‘children’s advertising’;
- Framework of the code;
- Research.

## **Approach taken**

The approach taken to the consideration of the submissions was systematic and analytic. As this was a general call, all representations received were afforded equal weighting. The method applied allowed for a thorough appraisal of information received in terms of respondent’s objectives, context and content and his/her overall contribution to the code currently being developed.

The reporting style of this document is informative rather than analytic, however. Responses received have been reviewed and the similarities/differences are highlighted herein. Where additional comments and/or observations were made, consideration was given as appropriate.<sup>5</sup> Viewed as a whole, this document should be seen as part of the overall process in the development of the code for children’s advertising rather than a stand alone report *per se*.

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<sup>5</sup> These are presented in the final section of this report: ‘Matters Arising’.

# 1. Process

## 1.1. Introduction

The Broadcasting Commission of Ireland (BCI) recognises the complexity of the area that is advertising and children. Consequently, the approach taken is designed not merely to raise public awareness but to proactively involve people in the formulation of the code. The process being followed therefore has as its principal aim the legitimisation of the final document to be produced and subsequently, to be implemented.

Input was not restricted to the content of the code exclusively but extended further by seeking comment on the overall framework within which a code could be created. In the *Phase 1 Consultation Document*, therefore, the Commission detailed the approach to be taken and outlined the reasoning underlying its approval.<sup>6</sup> In so doing, it envisaged that the project will be undertaken in three stages which are as follows:

- Phase I:* Preliminary phase in the development of the code;
- Phase II:* Second public consultation on the substance of the code;
- Phase III:* Consultation on draft code.

Acknowledging the inherent subjectivity of this topic, the Commission sought an approach that could accommodate diverse opinions while also being able to facilitate pertinent new material that could arise. Interested parties were asked whether or not they were satisfied with the phased process proposed and if not, to provide an alternative direction or suggestions vis-à-vis a restructuring of the approach presented as appropriate.

## 1.2. Feedback

The graduated approach proposed in the *Phase 1 Consultation Document* was generally accepted by all respondents. The openness of the process and its ability to facilitate opinions of interested parties were applauded. It was not accepted in its entirety, however.

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<sup>6</sup> See pages 8-9 of the *Phase 1 Consultation Document*.

Given the different compositions and agendas of people responding, different points were highlighted albeit in common categories. The key areas arising can be documented as follows.

### *1.2.1. Process of consultation*

One of the common threads was found in the area of ‘consultation’. The Association of Advertisers in Ireland (AAI) and Institute of Advertising Practitioners in Ireland (IAPI) accepted the phased process ‘provided that there is full consultation between interested parties at each stage as it is implemented.’<sup>7</sup>

Organisations representing children took a narrower approach, asking why, if the code was to affect them directly, had children not been consulted from the outset of this process.<sup>8</sup> The following extract can be taken as a summary of views expressed:

The National Children’s Office (NCO) is concerned about the fact that children will not be consulted during phase 1 of the BCI consultation process. It is our belief that children should have the same entry point to the BCI consultation as all other individuals and groups. The National Children’s Strategy, which is Government policy, states that children and young people should be consulted on all matters of public policy that affects their lives. In order to achieve this goal, the BCI should consult with children in an age appropriate, inclusive and representative manner.

Furthermore, the NCO suggested that ‘the questions and issues raised in phase 1,...be put to children and young people during phase 2.’<sup>9</sup> Comhairle na nÓg and Dáil na nÓg have been put forward as suitable points of contact between the BCI and children, access which the NCO can facilitate.<sup>10</sup>

Similar points were made by the Irish Society for the Prevention of Cruelty to Children (ISPCC). In addition, it suggested that an appropriately framed document be made available to children in order to involve them as early as possible, ‘to include children’s feedback at this stage of the process.’<sup>11</sup> Whether or not a child-friendly edition of the final code would be produced was also queried.<sup>12</sup>

The Children’s Rights Alliance welcomed the openness of the approach and the fact that the Commission is to use public forums to consult with key groups. In this respect, it strongly urged the Commission ‘to engage in meaningful consultation with children and young people under the age of 18 in relation to the development of the code and [that] this consultation should begin as early as possible.’<sup>13</sup>

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<sup>7</sup> AAI/IAPI, p.2.

<sup>8</sup> ISPCC, p.1; Children’s Rights Alliance, p. 2; NCO, p.2.

<sup>9</sup> NCO, p.3.

<sup>10</sup> The NCO stated: ‘These are permanent structures for children and young people in several [City Development Boards] around the country. Where such permanent structures exist and regular meetings of young people are taking place, it should be possible to arrange consultations on the BCI code’ (p.3).

<sup>11</sup> ISPCC, p.1.

<sup>12</sup> ISPCC, p.2.

<sup>13</sup> Children’s Rights Alliance, p.2

While accepting the process generally, the Food and Drink Federation (FDF) still harboured reservations. It felt that it was unclear exactly how the Commission would proactively involve the key groups specified. In its opinion, the actual mechanism by which to consult was absent.<sup>14</sup>

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The role that children might play is emphasised throughout the submissions received. In general, there was consensus surrounding the idea that

Age-appropriate consultation and qualitative research will lead to the production of a code that most accurately reflects both consumption patterns and developmental reality among children and young people in relation to advertising.<sup>15</sup>

For the FDF, the approach taken must be specialised not generalised. Planning and/or designing communications aimed at children therefore must be directed at their unique level of knowledge and sophistication.<sup>16</sup>

#### *1.2.2. Limitations/pace of process*

While accepting the approach as suggested, comments were made vis-à-vis the reality of achieving all stages identified. In this respect, Prof. Colm Ó Briain of the National College of Art and Design (NCAD) stated that

With regard to the regulatory principles and the consultation process we have a concern that this will be cumbersome, slow and exhausting. Although this initial process of consultation about consultation is important, we believe that subsequent phases will need to be clearly focussed if they are to be productive.<sup>17</sup>

TV3, while welcoming the process generally, also expressed reservations regarding the time frame for the formulation of the children's advertising code. It hoped that the development of this children's code would not delay the preparation of other codes.

### **1.3. Concluding remarks**

While there were criticisms, dissent and additional observations, no alternative approach was suggested nor a new process put forward. There was therefore a general acceptance of the three phases as proposed albeit with some fine tuning.

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<sup>14</sup> FDF, p.2.

<sup>15</sup> Children's Rights Alliance, p.2.

<sup>16</sup> FDF, p.2.

<sup>17</sup> NCAD, p.1.

## 2. Principles

### 2.1. Introduction

In Section 4 of the *Phase 1 Consultation Document*, attention was drawn to the regulatory principles of the Broadcasting Commission of Ireland (BCI) and information was provided vis-à-vis how these would be applied to the process of developing codes generally and to the formulation of a code for children's advertising specifically.<sup>18</sup> In so doing, the Commission was outlining what it considered important in formulating and implementing its regulatory policy in this regard. Here such principles as transparency, dialogue, and flexibility were highlighted.

Following on from the overview of the Commission's principles, views were sought on whether or not there was general satisfaction regarding the application of the Commission's regulatory principles to the development of the children's advertising code. Once again the list was not presented as definitive. Respondents were asked, therefore, to identify additional principles that he/she thought should be applied.

### 2.2. Feedback

There was general acceptance of the principles as being 'appropriate and worthy'.<sup>19</sup> Moreover, their ability to change was highlighted in some responses. The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI), for example, stated that they were 'satisfied with the BCI's proposals for a Broadcast code that formulates basic regulation principles in a framework that is flexible and adaptable to change in the social and economic environment.'<sup>20</sup> These points were reiterated by the Food Safety Promotion Board which stated that it was essential for the code to 'be adaptable to the ever-changing technology and environment given the dynamics of both.'<sup>21</sup>

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<sup>18</sup> These principles were developed by the BCI as part of a public consultation process in 2001. They have been adopted by the Commission as the principles which will guide its regulatory activities in general. Principles outlined are: (a) flexible and consistent approach; (b) adequate regulation based on current conditions; (c) openness and dialogue; (d) clear decision-making. See pages 10-11 of the *Phase 1 Consultation Document* for further information.

<sup>19</sup> Food Safety Promotion Board, p.1.

<sup>20</sup> AAI/IAPI, p.2.

<sup>21</sup> Food Safety Promotion Board, p.1.

### 2.2.1. Consultation

Once again, the process of consultation emerged as a key area. Comments were divided between the issues of who should be consulted and how such access might occur.

The principle of making contact with, and taking account of, children was emphasised repeatedly. The Irish Society for the Prevention of Cruelty to Children (ISPCC), for example, pointed out that the national press was an unsatisfactory means by which to make contact with children and consequently, requested that more child-friendly methods be adopted.<sup>22</sup> It was also suggested that when such information is collected, that analysis of children's inputs should be carried out separately from all others and their views highlighted in reports produced accordingly.<sup>23</sup>

The need to recognise the changing landscape that is Irish childhood was emphasised. Here the Equality Authority demonstrated that one approach does not fit all:

In the context of non-discrimination it is not appropriate to be blind to the differences between children. Indeed, it would be important at the outset to realise that children have many different identities based on gender, the type of family they live in...gay or lesbian, as well as heterosexual, some children will come from Black and minority ethnic groups, different religions, no religion and some will be members of the Traveller community, while others will be children with different disabilities, whether physical, mental or intellectual, and finally children will come from different age groups.<sup>24</sup>

The heterogeneous makeup of 21<sup>st</sup> century Ireland must, therefore, be recognised. In this particular context, 'Consciousness of the multiple identities of children will need to be to the fore when consulting, formulating definitions, commissioning or undertaking research and when drafting the code generally.'<sup>25</sup>

Suggestions for additional groups to be consulted were made. One respondent asked for unions to be identified as key constituent groups and consulted accordingly.<sup>26</sup>

### 2.2.2 Inclusion of additional principles

Interested parties were asked to identify other principles as appropriate. Two additional principles were outlined.

#### 'Equity'

The NCO stated that the National Children's Strategy (2000) indicated that, as an operating principle, all actions relating to children should be 'equitable.' Based on

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<sup>22</sup> ISPCC, p.1. This was made in reference to Section 4.2.1.3. which stated that the Commission would make contact with constituent groups through the national press.

<sup>23</sup> National Children's Office (NCO), p. 4.

<sup>24</sup> Equality Authority, p.1.

<sup>25</sup> Equality Authority, p.1.

<sup>26</sup> Geralyn Costello (individual), p.1. She proposed the inclusion of the INTO, ASTI, TUI and NPC.

this, the NCO asked that 'Equity' be identified within the principles governing the consultation. Further elaboration on this principle was, however, not forthcoming.<sup>27</sup>

#### 'Protection'

The Labour Party also suggested an additional principle – or more specifically, a 'protection' principle - which it believed deserves a position of prominence as one that underlines the approach taken by the Commission. Inclusion of this principle is necessary, it stated, because 'By reason of their age and credulity, inexperience and vulnerability, children can be taken advantage of and are therefore in need of special protection.'<sup>28</sup>

### **2.3. Concluding Remarks**

General agreement exists regarding the regulatory principles proposed by the Broadcasting Commission. Limited suggestions were made vis-à-vis changes to the list and new principles to be added.

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<sup>27</sup> NCO, p.4.

<sup>28</sup> Tommy Broughan, spokesperson for The Labour Party, p.2.

## 3. Definitions of General Advertising Terms

### 3.1. Introduction

The *Phase 1 Consultation Document* highlights the need for clarity and generally agreed definitions for Statutory key terms. A common understanding will aid clear interpretation of the code produced and contribute to its overall acceptance amongst relevant groups. More specifically, it is believed that without such definitions, any future regulations may prove difficult to enforce.

Consideration of principal terms in the consultation document was multi-layered and straddled a number of sections. Section 5 of the document is dealt with here. It addressed terms common to most areas of commercial communication and, therefore, ones that will prove relevant to other codes to be framed by the Commission. Conversely, the focus in Section 6 was narrow, concentrating on the more specific terms of ‘child’ and ‘children’s advertising’ which are central to the code currently being devised.

In Section 5 of the consultation document, the general terms were treated on two separate levels. Primarily, it considered those key terms where Irish and/or EU definitions are already in existence. Secondly, it dealt with terms where no Irish and/or EU statutory definition exists. Reflecting this division, consideration of submissions received is also split into two. In both instances, the Commission hoped to elicit views regarding the suitability and accuracy of definitions proposed.

### 3.2. EU definitions

A series of terms was identified and each defined in turn.<sup>29</sup> The Commission asked whether or not the definitions presented were deemed acceptable and if not, that alternatives be proposed as appropriate.<sup>30</sup>

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<sup>29</sup> These were: (a) ‘advertising’; (b) ‘sponsorship’; (c) ‘misleading advertising’; (d) ‘comparative advertising’; (e) ‘surreptitious advertising’; (f) ‘teleshopping’.

<sup>30</sup> Attention was drawn at this point to the fact that developments unfolding at EU level may impact on definitions agreed (i.e. the current revision of the Television Without Frontiers Directive) and these may change accordingly.

### 3.3. Feedback

There was agreement surrounding the need to clarify key terms so as to avoid misrepresentation. Respondents also accepted generally the definitions proposed to be appropriate, until such times as the EU amend or introduce new definitions. Observations made can be outlined as follows.

#### 3.3.1. *Scope of definitions*

Emphasis was placed on providing general terms rather than specifics.<sup>31</sup> Being too narrow in meanings ascribed to key terms has, it was stated, ‘the potential danger of making the proposed codes and standards dated in an area of rapid change and developing technology.’<sup>32</sup>

#### 3.3.2. *‘Advertising’*

The Children’s Rights Alliance argued for a broader definition of the term ‘advertising.’ It highlighted that the definition as offered does not include advertising where no payment is made. More specifically, it stated that

An apparent weakness of the EU definition of ‘advertising’ as listed in the consultation document is that it is confined to paid advertising. For the purpose of the code, this definition should be broadened to cover any advertising, including public service advertising, regardless of whether the broadcaster is paid.<sup>33</sup>

Here attention is drawn to the definition offered by the Independent Television Commission (ITC) in the UK which includes commercial and public service advertising.<sup>34</sup> The Children’s Rights Alliance requested that the ITC definition be incorporated in the one proposed by the BCI.

The Children’s Rights Alliance highlighted that the EU ‘define advertising as any form of announcement for commercial or promotional purposes but does not make explicit reference to the promotion of a cause or idea.’<sup>35</sup> Again, the Alliance argued for a broadening out of this definition. Here attention was drawn to the Norwegian broadcasting code where its definition includes ‘Any form of promotion of product, service, cause or idea...’ and the Alliance asked that the BCI do likewise.<sup>36</sup>

The Food and Drink Federation (FDF) also had reservations concerning the definition of ‘advertising’ as presented. It believed that it was unclear and ‘reads more like a

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<sup>31</sup> Association of Advertisers in Ireland (AAI) and Institute of Advertising Practitioners in Ireland (IAPI), p.1; Children’s Rights Alliance, p.1.

<sup>32</sup> AAI/IAPI, p.1.

<sup>33</sup> Children’s Rights Alliance, p.3.

<sup>34</sup> ITC definition: ‘For the purposes of the Code, the terms ‘advertisement’ and ‘advertising’ mean any publicity (by licensees themselves or the advertisers) in breaks during or between programmes. This is irrespective of whether payment is made. The rules also apply to ‘teleshopping’ channels, windows and spots.’

<sup>35</sup> Children’s Rights Alliance, p.3.

<sup>36</sup> Children’s Rights Alliance, p.4.

definition of sponsorship.’<sup>37</sup> No alternative definition was identified nor proposed, however. In addition, the FDF asked ‘how a situation such as sponsorship of televised sporting events might be categorised.’<sup>38</sup> No additional information was forthcoming in this respect.

### 3.3.3. ‘Misleading advertising’

The Crisis Pregnancy Agency found this definition too limited in its approach as it referred to the effect of ‘misleading advertising’ on *economic* behaviour exclusively. This Agency stated that ‘misleading advertising’ was wider in scope than this suggested as it can also impact adversely on, for example, an individual’s *social* behaviour.<sup>39</sup> The need to broaden out this definition was therefore demonstrated, although no suitable replacement was suggested.

## 3.4. Terms not defined at EU level

Other key terms were identified.<sup>40</sup> As no statutory definitions exist at national and/or EU levels, the Commission proposed a series of working definitions for consideration. Respondents were asked if they accepted these definitions and if not, to propose alternatives as appropriate. Again, it was emphasised that the list was not deemed conclusive and consequently, other terms considered missing should be proposed and, where possible, defined.<sup>41</sup>

## 3.5. Feedback

Acceptance of the working definitions was not universal. While representative organisations for children accepted the terms as proposed, with the condition that they might be revised or amended at a later date, those representatives from the advertising industry and from broadcasting were more apprehensive.

The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) illustrated a number of points in their joint submission. Firstly, they stated that while the existing EU definitions were acceptable, it is not advisable for the BCI to encompass a set of definitions not accepted at EU level ‘in the hope that at some point in the future they could be retrospectively applied.’ They found this approach unsatisfactory. These organisations stated that they

would be unhappy with an open-ended clause in such a key area as the definition of general advertising terms. Such a clause could be used as a restrictive measure in its own right that, when retrospectively applied, could make other sections

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<sup>37</sup> FDF, p.3.

<sup>38</sup> FDF, p.3.

<sup>39</sup> Crisis Pregnancy Agency, p.2.

<sup>40</sup> These were: (a) ‘subliminal advertising’; (b) ‘virtual advertising’; (c) ‘interactive advertising’; and (d) ‘split screen advertising.’

<sup>41</sup> Once more, attention was drawn to the fact that developments occurring at EU level might have an impact, especially if definitions for this second category of terms were forthcoming.

of the code redundant as their drafting depended on a different set of base criteria.<sup>42</sup>

They continued on to say that

For the sake of transparency and fairness and as most of the key aspects within the children's advertising arena are independent, we feel that a set of base criteria should be applied to the drafting of the regulations which cannot be undermined or supplanted by retrospective actions. In the area of advertising definitions the current base criteria are the existing EU definitions and as all parties will not have issue with EU definitions, the code should be drafted to them alone.<sup>43</sup>

On the basis of information presented, AAI and IAPI believed that terms not defined at EU level should not be included for consideration. TV3 agreed with this stance albeit for different reasons. For this broadcaster, it was considered

dangerous to define [these terms] as they are very context based and as such prone to mis-definition etc. This is not to say that these terms cannot be addressed or dealt with otherwise because we believe that in the main existing definitions can be used to cover them. Subliminal and virtual advertising, for example, can be considered forms of surreptitious advertising.<sup>44</sup>

Rather than use the working definitions proposed pending EU determination, TV3 suggested using existing definitions. Here it believed that definitions proposed by the ITC would be more suitable.<sup>45</sup>

The Independent Broadcasters of Ireland (IBI) also voiced its concern. It stated that terms currently in use in Britain were more appropriate than using the working definitions proposed.<sup>46</sup> The context of these definitions and the need to co-ordinate developments with outsiders was once again stressed:

Services originating in the UK have an equal impact on children in this country in terms of advertising. As a result, it is important that the BCI seeks some form of co-ordination with the ITC in the UK in developing a children's advertising code. This will be more easily done if there is agreement between the two bodies in the key terms being used.<sup>47</sup>

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<sup>42</sup> AAI/API, p.2.

<sup>43</sup> AAI/API, pp 2-3.

<sup>44</sup> TV3, p.4.

<sup>45</sup> TV3, p.4.

<sup>46</sup> IBI, p.2.

<sup>47</sup> IBI, p.2.

### **3.6. Concluding Remarks**

In responding, a distinction was made regarding the definitions proposed. No additional terms were proposed in either category albeit some ‘tweaking’ being suggested for the first set of definitions.

In general, the first category of key terms already defined at national and/or EU level was accepted by the majority of respondents. Suggestions were made vis-à-vis the broadening out definitions of ‘advertising’ and ‘misleading advertising’.

The second category proposed by the Commission did not receive such applause. Rather the working definitions were greeted with suspicion and apprehension by the advertising industry and broadcasters. The absence of grounding in EU convention, and consequently, the possibility of subsequent change, proved unacceptable to some. Suggestions were made to accept existing definitions in use at other comparable organisations – for example, the ITC – instead of adhering to the working definitions as proposed. Conversely, children’s organisations accepted the working definitions as presented, with the condition that these may be revised or changed at a later date.

## 4. Definitions of ‘Child’ and ‘Children’s Advertising’

### 4.1. Introduction

It is necessary to identify clearly the two central terms in the devising of a children’s code: ‘child’ and ‘children’s advertising.’ Separate consideration was given to these terms in the *Phase 1 Consultation Document* and this division is reflected herein.<sup>48</sup>

### 4.2. ‘Child’

‘Child’ is an inherently complex term generating much discussion and producing an ever increasing volume of descriptions. Nevertheless, it is essential to identify, and to agree upon, a workable understanding of what constitutes a child for the specific purposes of this code. Moreover, it is imperative to identify who is targeted in the commercial activity that is ‘children’s advertising’ and more significantly, to identify who is to be protected. Once the subject has been identified in clear and succinct terms, it helps clarify many key areas in the formulation of the code and makes its enforcement more credible.

‘Age’ has been suggested as a determinant of what should be considered a ‘child’. Information from Ireland, the EU and a sample of non-EU States was considered to see what age was attributed to ‘child’ and what the age of majority was in the countries identified. Where the terms ‘child’ and ‘youth/minor’ were used in individual States, the distinction made was highlighted accordingly.

Interested parties were asked to respond to four key questions in this regard. Firstly, they were asked if they accepted ‘age’ as a successful determinant of what constitutes a child and to give reasons to account for that choice. If acceptable, they were then asked what was the most appropriate age at which to define the term ‘child’, as it pertains to children’s broadcast media, and again to account for their choice. Following on, the third question asked if the Commission should make a distinction between ‘child’ and ‘youth/minor’, that if such a distinction is to be made what ages

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<sup>48</sup> See pages 14-7 of the *Phase 1 Consultation Document*.

apply to the two categories. And finally, the Commission asked if age was not deemed applicable in this context, that suitable alternatives be proposed and substantiated.

### 4.3. Feedback

There was general agreement vis-à-vis the need to define/clarify what constituted a ‘child’ for the purposes of this particular code. Thereafter, much difference of opinion was present in the submissions received.

#### 4.3.1. Age as a determinant

Using age as a means to determine what constitutes a child was accepted by some, but not all, respondents. Various factors were evaluated by the interested parties regarding children’s developmental process – for example, level of school participation versus age. Age, however, was accepted by the majority as ‘the least ambiguous option’,<sup>49</sup> as the best ‘common indicator for individuals, groups and institutions alike’,<sup>50</sup> - so long as ‘sufficient distinctions’ were applied as appropriate.<sup>51</sup> This indicated that there was acceptance that the term ‘child’ was not as applicable to all age groups falling under the established age of majority.

Broadcasters were also in acceptance of using age as a determinant. For TV3, ‘the only appropriate way to define a child is based on age.’<sup>52</sup> RTE stated that ‘in developing a Code it is essential to introduce age categorisation.’<sup>53</sup>

Representative organisations for the advertising industry were not entirely convinced that this approach was necessary. Based on experience of its own code, the Association of Advertisers in Ireland (ASAI) stated that

Because of the absence of specific rules on the placement of advertisements in the different media, the ASAI code has not found it necessary to define child or to define different categories of child for persons under the age of majority. Each case is decided on its own particular merits...The Code is implemented in the spirit as well as in the letter and this gives flexibility in deciding if rules have been breached or not.<sup>54</sup>

For the ASAI, the actual purposes of defining a child must be clear from the outset.<sup>55</sup> This, in turn, depends on the range of ‘protections’ to be afforded; that is, on the scope of the BCI code being produced.<sup>56</sup> Referring specifically to the children’s code, ASAI added that any classification by age

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<sup>49</sup> Catholic Youth Care, p.2.

<sup>50</sup> NCAD, p.1.

<sup>51</sup> Dr. Con Bushe (media consultant), p.1; ISPPC, p.2; Catholic Youth Care, p.2; GERALYN COSTELLO (individual), p.1; Catholic Rights Alliance, p.4.

<sup>52</sup> TV3, p.5.

<sup>53</sup> RTE, p.2.

<sup>54</sup> ASAI, p.4(a).

<sup>55</sup> ASAI, p.2(b)

<sup>56</sup> ASAI, p.2(b)

should be pragmatic in nature and easily interpreted and enforced. In the case of broadcast media the age profile of the audience would have to be known.<sup>57</sup>

The Association of Advertisers in Ireland (AAI) and Institute of Advertising Practitioners of Ireland (IAPI) were not convinced that age was suitable in this context. Moreover, they were ‘nervous about using age as the sole measure of what constitutes a child as no mechanism can clearly establish a boundary between childhood adolescence and coming adulthood [sic].’<sup>58</sup>

#### 4.3.2. *Appropriate age to define the term ‘child’*

Regarding the cut-off point, disagreement rather than accord was in evidence. For many, the cut off point of 18 years was acceptable.<sup>59</sup> The Children’s Rights Alliance referred to several key documents to support its acceptance of 18 years old.<sup>60</sup> The National Children’s Office (NCO) took a similar approach:

The National Children’s Office agrees that age is a satisfactory means to determine what constitutes a child within the context of a workable children’s advertising code. To conform with the provisions of the United Nations Convention on the Rights of the Child (1989) and the National Children’s Strategy (2000), we recommend the most appropriate age range to define the term ‘child’ within this context is under 18 years of age. In regard to existing legislation, you may wish to note that both the Child Care Act, 1991 and the Children Act, 2001 define a child as a person under the age of 18.<sup>61</sup>

The ASAI supports this view. ‘Given that the legal age of a minor is under 18’, it stated, ‘it should be the primary base.’<sup>62</sup>

A number of respondents made reference to the definition of the Education (Welfare) Act, 2000 as ‘being the most appropriate age to define the term “child”’.<sup>63</sup> This Act defines ‘child’ as being 6-16.

A significant number of respondents supported ‘15’ as pertaining specifically to broadcasting.<sup>64</sup> Those older than 15, many argued, need little or no protection due to their advanced stage of development and their increasing proximity to adulthood.

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<sup>57</sup> ASAI, p.3(b).

<sup>58</sup> AAI/IAPI, p.3.

<sup>59</sup> ISPCC, p.2.

<sup>60</sup> Children’s Rights Alliance, p. 1 and p.4; NCO, p.6.

<sup>61</sup> NCO, p.6.

<sup>62</sup> ASAI, p. 3(b).

<sup>63</sup> NCAD, p.1; Dr. Con Bushe, p.1; Catholic Youth Care, p.2.

<sup>64</sup> RTE, p.2; TV3, p.5; IBI, p.3; Costello, p.2; FDF, p.3; Crisis Pregnancy Agency, p.2.

#### 4.3.3. 'Child' and 'youth/minor'

While accepting age as a means of defining the term 'child', there is little agreement of how those falling under 18 should be approached. Dividing them into two distinct categories is accepted by only the few. The NCAD, for example, supported the view that those under the age of majority be subdivided into two groups – under 16 years of age being classified as 'child' while under 18 being classified as 'youth/minor.'<sup>65</sup>

For many, this was too simplistic an approach and further divisions were necessary, if different levels of development, and protection, were to be accounted for. The Irish Society for the Prevention of Cruelty to Children (ISPCC), for example, disagreed with a two-way split, albeit not explaining why nor offering an alternative.<sup>66</sup> Others proposed three to four subdivisions for people under 18 years of age. RTÉ stated, for example, that it currently has three principal categories in this respect and different rules for advertising apply.<sup>67</sup> Based on its own experience and code, it recommended that 'advertising aimed at children be clearly classified into three categories – under 5 years of age, 5-12 years of age and 13-15 years of age.'<sup>68</sup> It classifies these three as referring to 'child' while 15-17 is classified as 'young person.' TV3 suggested three categories:

One that relates to those under 10 and then 10-14 and 15-onwards. It is widely accepted that children develop rapidly in their pre teen and early teen years and as such they should be separated from very young children who may very well be credulous and easily exploited.<sup>69</sup>

It would consider those aged 15 and upwards as requiring very little regulation, a point substantiated by RTÉ, FDF and IBI.<sup>70</sup> Here TV3 stated that 'Any controls on this age group should be very simple and passive in the sense that certain activities should simply be stopped from happening rather than any other approach i.e. no advertisements of alcohol, no presentation of illegal activities in a glamorous or enticing fashion.'<sup>71</sup>

Catholic Youth Care suggested three principal groupings '0-5, 6-16, 16-18.'<sup>72</sup> Dr. Con Bushe suggested a three-way distinction as 'Under-sixes, Middle Years (6-12) and teenagers/Young Adults (13-18).'<sup>73</sup>

The AAI and IAPI, while voicing their own reservations vis-à-vis using age as a determinant in this respect, stated that there are three or four recognised broad bands of progression to adulthood. These refer to level of school attendance rather than age as a determinant:

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<sup>65</sup> NCAD, p.1.

<sup>66</sup> ISPCC, p.2.

<sup>67</sup> RTE, pp.1-2.

<sup>68</sup> RTE, p.1.

<sup>69</sup> TV3, p.5.

<sup>70</sup> RTE, p.2; IBI, p.3; FDF, p.3.

<sup>71</sup> TV3, p.5.

<sup>72</sup> Catholic Youth Care, p.2.

<sup>73</sup> Dr. Con Bushe, p.1.

- Pre-school or toddlers
- Primary school
- Secondary school (usually divided into early teens 12-14)
- Youths 15+ <sup>74</sup>

Considering age as a determinant, AAI and IAPI refer to the ESOMAR guidelines for international research.<sup>75</sup> Here they stated that a child is defined as under the age of 14 while a young person is aged 14-17.<sup>76</sup> Age and development are linked. According to these organisations, therefore, age cannot be accepted as the only way to classify children. More specifically, they stated that

This 12-14 age range also marks the change from child to adult in physical, emotional and mental terms. When these elements are considered a solely age-based definition looks all the more arbitrary as people mature at different rates.<sup>77</sup>

Accepting that distinctions will be made, albeit not where the actual point lies, many agree that different levels of protection will apply to each, diluting the restrictions as maturity develops. There is strong agreement, however, that those in the youngest category deserve special protection and safeguards due to their vulnerability to exploitation and their inability to judge the commercial intent behind advertisements.<sup>78</sup> The majority accept that this group is constituted of six year olds and under.

The NCO was not convinced fully of the merits of subdivision. While accepting that advertising aimed at the youngest group should be subject to the strictest regulations, it considered ‘the proposed dual approach to demarcation...a distinction drawn between ‘child’s and youth/minor’ [sic], as an unsatisfactory measure to ensure this.’<sup>79</sup> Furthermore, it added

The Consultation document argues that demarcating on this basis would give the code added flexibility, which in turn would allow the code to recognise different needs or degrees of protection necessary for children of different ages. However, we believe that this approach would fail to recognise the considerable differences that exist within each of these groups in terms of ability to understand advertising messages and distinguish between advertising messages and programme content.<sup>80</sup>

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<sup>74</sup> AAI/API, p.3.

<sup>75</sup> European in origin, the European Society for Opinion and Marketing Research was established in 1948. Since then it has increased its base becoming an organisation with increased global concerns while retaining the name ESOMAR. It has 4000 members in 100 countries, users and providers of research. It has developed specific guidelines to be adhered to in the surveying/researching of particular subject matter, for example, children, elections/opinion polls, etc.

<sup>76</sup> AAI/API, p.4.

<sup>77</sup> AAI/API, p.4.

<sup>78</sup> NCAD, p.1; Dr. Con. Bushe, p.1.

<sup>79</sup> NCO, p.6.

<sup>80</sup> NCO, p.6.

The Food Safety Promotion Board thought this distinction might be redundant. It stated that

There may be no necessity to differentiate “child” from “youth/minor” as the latter group are not as susceptible to advertising, having a better understanding of the psychology and social implications of advertising, as well as having better appreciation of fiscal implications.<sup>81</sup>

#### 4.3.4. *Alternatives to using age as a determinant*

As seen above, the majority of respondents would accept age as the most satisfactory determinant albeit not completely. The AAI and IAPI, while acknowledging that some method of classification needs to be employed, voiced reservations vis-à-vis the applicability of age in this respect. Instead, they favoured developmental stages and/or educational levels as the principal determinants, asserting that age alone could not account for the fact that children develop at different paces. For them, the parameters of demarcation should have no hard edges.

Referring to the other methods, the AAI and IAPI highlight the transformation many children undergo when changing from primary to secondary education.<sup>82</sup> At this stage, children are often considered capable of decision making, of making ‘decisions (with guidance) which can have profound future implications.’<sup>83</sup> What is the significance of these observations in the present context, however? According to the AAI and IAPI,

This is where we feel the age definition breaks down, as it cannot adapt to circumstance. A definition that views a seven year old the same way as a thirteen year old is impractical as they are not even remotely the same. Therefore relative maturity and life position should be factored into the definition. They could be extended to the regulatory code through a simple process of audience definition and profiling which would allow children with more mature interest to view, with parental guidance, certain programming and the associated advertising.<sup>84</sup>

In addition, they stated that ‘If you establish a code which embraces the concept of audience profiling, advertising will, as much as is possible, only reach the audience for which it is intended regardless of airing time.’<sup>85</sup> Children, they agreed, must be protected but factors defining what constitutes a ‘child’ are but shifting sands and, consequently, the approach taken must be as flexible as possible. Children of the 1980s, for example, are not as developed as their equivalents today. ‘This is not to

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<sup>81</sup> Food Safety Promotion Board, p.2.

<sup>82</sup> AAI/IAPI, p.4.

<sup>83</sup> AAI/IAPI, p.4.

<sup>84</sup> AAI/IAPI, p.4.

<sup>85</sup> AAI/IAPI, p.5.

imply that they don't need to be protected, rather the level of protection needs to be regularly reviewed.'<sup>86</sup>

#### **4.4. 'Children's advertising'**

It is necessary to identify the commercial activity that is 'children's advertising.' It is essential to outline this area if one is to be clear about what is included and, as importantly, what is excluded. It helps clarify the suitability of the timing of commercial messages and the style of advertisements being aimed at young people. And it is important to consider whether 'children's advertising' is advertising aimed at children and/or advertising viewed by children.

In the *Phase 1 Consultation Document*, some key elements to be taken into consideration were identified and explained.<sup>87</sup> Brief definitions of each were provided thereafter. On the basis of information supplied, the Commission asked for opinions vis-à-vis three prime areas. Firstly, it asked if elements discussed in this section covered all the relevant issues to be contained in a definition of 'children's advertising'. Secondly, it asked interested parties if they wished to suggest other elements and, if so, to explain why these might be included. And finally, if a definition of 'children's advertising' should contain one, all or a particular combination of the elements specified. Respondents were, therefore, asked to specify which they opted for and to account for that particular choice.

#### **4.5. Feedback**

While a need to define the term 'children's advertising' was accepted, there was also general agreement concerning the sheer complexity of this task. Responses made can be grouped according to questions set out in the *Phase 1 Consultation Document*.

Before dealing with the four main elements suggested as comprising a definition of 'children's advertising', respondents were asked to highlight additional elements that might also be taken into consideration. Responses submitted can be summarised as follows.

##### *4.5.1. Additional elements*

The Children's Rights Alliance raised a number of points that it wanted taken into account at this juncture. These focused mainly on the topic of children as actors.

Primarily, the Alliance considered the combination of 'the issue of advertising that is interesting to children and the issue of advertising using children as actors' featuring in the fourth element of section 6.2 of the consultation document. For this

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<sup>86</sup>AAI/IAPI, p.5.

<sup>87</sup> These were: (i) The nature of the product/service/activity being advertised and its intended target audience; (ii) the time at which the advertisement is broadcast; (iii) the type of programming around the advertisement; and (iv) the language, visuals, actors and characters used in the advertisement. For further information, see pages 16-7 of the *Phase One Consultation Document*.

organisation, these are two different issues and it believes, therefore, that they should be dealt with separately.<sup>88</sup>

Remaining on the theme of children as actors, the Alliance highlighted two contrasting, albeit not mutually exclusive, points. One refers to context, the other to representation. Firstly, it asked that ‘the protection of children appearing in advertisements directed towards adults be specifically mentioned, separately from the protection of children appearing in advertisements directed towards children exclusively.’<sup>89</sup> Secondly, it referred to the representation of children in advertisements. Attention was hereby paid to the Austrian Broadcasting Corporation whose code has a section dealing with advertising in which children are imitated. The Alliance asked that such a section be included in the code currently being produced by the BCI.<sup>90</sup>

#### *4.5.2. Elements to be included in defining the term ‘children’s advertising’*

Responses to this task can be divided into two broad categories. These categories can be identified as a split between organisations representative of children’s interests and those of advertisers and broadcasters.

##### Organisations representative of children’s interests

For the representative organisations, all four elements as set out in the document, were considered as essential in the definition of ‘children’s advertising.’<sup>91</sup> While accepting all four elements as presented, the Children’s Rights Alliance argued in favour of the Commission adopting the broadest possible definition for the purposes of this code.<sup>92</sup> Consequently, it urged that

‘Children’s advertising’ should be defined as all advertising that children see. Children’s advertising is not merely that which is directed at children or that which may appeal to children nor that in which children appear. This should be a guiding principle governing the code.<sup>93</sup>

Similarly, the NCO referred to the definition of ‘advertising’ being as inclusive as possible. It stated that in its view

The code should include advertising, which may be targeted at adults but which is viewed by or seen as attractive to children. There is a plethora of evidence to suggest that children do not always watch age appropriate material and are often exposed to adult advertising.<sup>94</sup>

The practical implications of using such a broad definition, however, were not addressed.

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<sup>88</sup> Children’s Rights Alliance, p.6.

<sup>89</sup> Children’s Rights Alliance, p.6.

<sup>90</sup> Children’s Rights Alliance, p.6.

<sup>91</sup> NCAD, p.1; Food Safety Promotion Board, p.2; ISPPCC, p.2.

<sup>92</sup> Children’s Rights Alliance, p.5.

<sup>93</sup> Children’s Rights Alliance, p.1.

<sup>94</sup> NCO, p.7.

Child development and television viewing times received considerable attention by many interested parties, albeit for quite different reasons. The Children's Rights Alliance, for example, referred to the timing of the advertisement, the classification of the programme and the fact that more and more children watch television beyond the watershed, thus exposing them to adult advertising which was a cause for concern. On the basis of the points made, the Alliance recommended that the BCI clarify the relationship between child development and television viewing times.<sup>95</sup> It also urged that the BCI 'adopt a code which recognised that people under 18 see the majority of advertising that is broadcast.'<sup>96</sup>

#### Advertisers and broadcasters

Advertisers and broadcasters took a narrower approach to defining 'children's advertising.' There was general agreement that the best definition would combine the first and third elements, namely that 'Children's advertising is advertising which promotes products, services or activities, that are directly targeted at children and is broadcast during and between children's programmes.'<sup>97</sup>

Similarly to the organisations representative of children's interests, the distinction between advertising aimed at children and advertising seen by children was highlighted. The limitations of this approach, however, were noted. TV3, while accepting these two dimensions, also acknowledged that this code

can only realistically deal with advertisements directed at children. In the context of advertisements which may be seen by children parental guidance of children's viewing has a role to play.<sup>98</sup>

The timing of advertisements was a theme referred to by many. TV3, for example, stated that

In relation to children's advertising, we believe the most appropriate definition is which is [sic] of particular interest to children and is broadcast during children's programmes. Children's programmes themselves have of necessity to be defined as those which are specifically targeted at children.<sup>99</sup>

TV3 stated that this highlighted the need for a further code, one by which programmes could be classified as children's or otherwise. Composition of audience remains the best means currently available by which to categorise advertising as 'children's advertising'.<sup>100</sup> In addition, approaches 'adopted should facilitate easy supervision of children's viewing and listening by their parents and guardians.'<sup>101</sup>

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<sup>95</sup> Children's Rights Alliance, p.6.

<sup>96</sup> Children's Rights Alliance, p.6.

<sup>97</sup> AAI/IAPI, p.5.

<sup>98</sup> TV3, p.2.

<sup>99</sup> TV3, p.5.

<sup>100</sup> ASAI, p.4(b).

<sup>101</sup> ASAI, p.4(b).

Many of the respondents pointed to the difficulty of using time as a means for categorising children's advertising given the fact that more adults watch day-time television than children. For the AAI and IAPI, a definition

Based on set viewing hours or the use of children as actors would make the regulatory code overly invasive and would dramatically limit the access of advertisers to audiences other than children. For example, if a set viewing time is factored into the definition then advertising targeting householders or pensioners would be deemed advertising to children as they are broadcast largely during day-time television.<sup>102</sup>

Using time as an indicator might lead to unnecessary restrictions on advertising generally. Moreover, the AAI and IAPI stated that

If the use of a child actor constitutes advertising to children then the appearance of a child in the rear seat of a Volvo, for illustrative purposes, would be advertising to children through the ad clearly targets potential Volvo buyers. This is plainly not the intention of the proposed code.<sup>103</sup>

#### **4.6. Concluding remarks**

Section 6 identified the two central themes in this area: 'child' and 'children's advertising.' For the purposes of clarity, consideration of such was divided in two and that split was reflected herein.

With reference to 'child', interested parties were given a four pronged task. While diversity emerged, there was general agreement that the route taken was sufficient although not perfect. Most prominently, there was agreement that different levels of protection apply to each age group, when identified, with restrictions becoming more limited as a child progresses through teen years and nears adulthood. In addition, there was agreement that in terms of their immaturity, those under six years of age constitute a group in need of special protection as their ability to understand the intent behind advertising is largely absent. No alternative approaches to the ones set out in the *Phase 1 Consultation Document* were put forward.

Consideration of 'children's advertising' brought forth similar levels of differing opinion. Again there was general agreement regarding the approach taken. Other elements were proposed, however, and additions made. With regards to the four elements proposed, a split between organisations representing children's interests on the one hand and advertisers and broadcasters on the other became apparent. Organisations representative of children's interests favoured a broader definition of 'children's advertising' – to include all advertising that children see as well as all advertising designed specifically for a child audience. Conversely, those on the other side of the fence opted for a more narrow approach, supporting the view that

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<sup>102</sup> AAI/IAPI, p.5.

<sup>103</sup> AAI/IAPI, p.5.

'children's advertising' is commercial messages aimed at children and designed with them in mind.

## 5. Framework of the Code

### 5.1. Introduction

Principal headings for the developing code, and the rationale explaining their inclusion, were provided in the *Phase 1 Consultation Document*.<sup>104</sup> Headings presented emanate from the Broadcasting Commission of Ireland's comprehensive review of advertising regulations on a number of different levels.<sup>105</sup> Relevant materials from the EU, the Television Without Frontiers Directive, other EU member States as well as at international levels generally were consulted. The headings isolated provided an outline for the code to follow – potential not realised. Once agreed, these headings will feed into the second phase by providing a basis for subsequent discussions to occur. At this preliminary stage, therefore, responses were requested that referred to the headings exclusively and *not* the content that might fall into each category.

Acknowledging that the headings presented may not be all inclusive, the Commission asked if topics specified adequately addressed the range of key issues that should be considered in developing this children's code. The approach taken in this regard was threefold. The Commission invited opinions regarding whether or not the respondent was satisfied with the list of headings as presented, if they felt other headings might be included and/or if some of these headings should be excluded.

### 5.2. Feedback

There was general acceptance regarding the headings proposed for the children's advertising code. Additions were made to the list supplied and opinions were voiced on certain aspects of the framework set out and its application.

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<sup>104</sup> These headings were: (a ) social values; (b) inexperience and credulity; (c) avoiding undue pressure; (d) identification, separation, insertion/scheduling of advertising; (e) use of split screen, virtual and interactive advertising; (f) production prohibitions; (g) factual presentation; (h) promotion by programme characters, advertiser generated characters and personal endorsements; (i) price and purchase terms/comparison claims; (j) safety/avoidance of harm; (k) assessment; (l) code of administration. For further information, see pages 18-9 of the *Phase 1 Consultation Document*.

<sup>105</sup> Quinn, R-BM (2002), *Advertising and Children*, Dublin: Broadcasting Commission of Ireland, December([www.bci.ie/Advertising%20and%20Children2.doc](http://www.bci.ie/Advertising%20and%20Children2.doc)).

Principally, representatives of the advertising industry accepted the framework while highlighting the need for such advertising regulation to be seen as unambiguous, transparent and accessible to all. In addition, they stated that if the code was significantly different to codes applying to other media, it might prove unnecessarily cumbersome and would ‘add an unnecessary bureaucratic layer to the regulatory process.’<sup>106</sup>

The importance of interpretation and ability to cope with change was highlighted. In this respect, TV3 stated that interpretation would have to be flexible to reflect the fast changing environment that is broadcasting. If not, the code produced would become outdated, quickly becoming ‘rigid and unworkable’.<sup>107</sup>

### 5.2.1. *Observations made*

Observations were made regarding some of the aspects highlighted in Section 7 of the *Phase 1 Consultation Document*.<sup>108</sup> Points raised in this respect can be summarised as follows.

#### (a) Social values

On this point, the Equality Authority stated that

the value of affirming diversity in society and the diversity of children’s identities in particular...and advertising should be encouraged to transmit such values. A separate heading might be included on the values which are advocated by advertising.<sup>109</sup>

#### (d) identification, separation, insertion/scheduling of advertising and

#### (e) use of split screen, virtual and interactive advertising

The ASAI stated that these ‘are of a technical or technological nature which raise considerations peculiar to the particular technology used and are relevant for all advertising to children or otherwise.’<sup>110</sup>

#### (h) Promotion by programme characters, advertisers generated characters and personal endorsements

The Food and Drinks Federation (FDF) stated that ‘there needs to be a very clear demarcation between what is an advertisement and what is a programme.’<sup>111</sup>

#### (k) Assessment

The FDF argued that it ‘is in this area where we believe co-regulation would be most useful, where the assessment would be carried out by cross-business government

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<sup>106</sup> Association of Advertisers in Ireland (AAI) and Institute of Advertising Practitioners of Ireland (IAPI), p.5.

<sup>107</sup> TV3, p.5.

<sup>108</sup> See pages 18-19 of the *Phase 1 Consultation Document*.

<sup>109</sup> Equality Authority, p.1.

<sup>110</sup> ASAI, p.6(b).

<sup>111</sup> FDF, p.3.

agencies.’<sup>112</sup> The ASAI believed that this together with *(l) Code Administration* ‘are of singular importance in the regulation of broadcast advertising of all kinds.’<sup>113</sup>

### 5.2.2. *Additional headings*

While accepting the headings as presented, suggestions were made for additions to be made under the framework of the code. The National College of Art and Design (NCAD) proposed two new headings which Prof. Colm O Briain outlined as follows:

#### *Generation of anxiety*

‘Advertising should avoid the possibilities of creating any form of alienation or exclusion amongst children in pursuance of the marketing and selling of a product.’<sup>114</sup>

#### *Use of persuasive language*

‘There should be a requirement for circumspect usage of certain words which are recognised as having persuasive power particularly when directed at children. Current research has identified many such words among which sensational, remarkable, miracle, magic, quick and easy.’<sup>115</sup>

Ó Briain elaborated further, stating that the importance of ‘this area of communication deserves a specific heading within the Commission’s framework, even though this may overlap with the fourth element identified as relevant to the definition of children’s advertising.’

Catholic Youth Care also asked for the inclusion of an additional heading.<sup>116</sup> In doing so, it highlighted the role that parents play vis-à-vis children watching television in the home:

#### *Parental responsibility*

‘Most television viewing is done at home. Parents must accept and implement firm policies in regard to viewing time, access to channels and be prepared to respond to questions posed by their children in relation to programmes and advertisements and to have an understanding of the Children’s Advertising Code and its rationale.’

The Children’s Rights Alliance also argued in favour of including additional headings.<sup>117</sup> Its approach was threefold. Firstly, it asked that the inclusion of ‘Safety/Avoidance of Harm’ should include advertising seen by children as well as advertising aimed specifically at children. Secondly, it asked that another section be provided under heading ‘(f) Product Prohibitions’ which would be entitled ‘Product Promotions.’ No further information was supplied to explain what was meant by this

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<sup>112</sup> FDF, p4.

<sup>113</sup> ASAI, p. 6(b).

<sup>114</sup> NCAD, p.1.

<sup>115</sup> NCAD, p.1.

<sup>116</sup> Catholic Youth Care, p.2.

<sup>117</sup> Children’s Rights Alliance, p.6.

title nor any indication of what might fall within this category. And finally, it asked that a heading entitled ‘Special protection for children in advertising’ be included. This would address the use of children as subjects/actors in advertising.

### *5.2.3. Additional observations*

The Children’s Rights Alliance stated, that while headings proposed by the Commission were generally acceptable, it would ask that the framework of the code ‘explicitly incorporate and reflect the principles of the UN Convention on the Rights of the Child and Children First National Guidelines for the Protection and Welfare of Children.’<sup>118</sup>

### **5.3. Concluding remarks**

The majority of respondents accepted the headings as set out in the *Phase 1 Consultation Document*. Some adjustments were made to the areas proposed while new additions were highlighted for inclusion.

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<sup>118</sup> Children’s Rights Alliance, p.6.

## 6. Research

### 6.1. Introduction

Section 19.7 of the Broadcasting Act, 2001 states that the Broadcasting Commission shall have regard to any existing research that it considers appropriate, conducted with respect to children and advertising, while Section 19.8 states that the Commission may conduct new research with respect to children and advertising. Research and the role it will play in the formulation of this code is, therefore, stipulated in the relevant statutory provisions.

In the *Phase 1 Consultation Document*, the Commission set out its understanding of these provisions and outlined the approach that it intends to pursue in the development of research on children's advertising.<sup>119</sup> In so doing, it emphasised its belief that research that is culturally specific to the Irish situation is required in which to ground the code created. The suggested approach to such research sought to involve qualitative and quantitative studies produced at national and international levels. Attention was also paid to the fact that areas for future research had not yet been established. Consequently, these were open to suggestions which may arise from the evolution of the process generally.

Taken collectively, opinions were sought by the Commission to see if there was general satisfaction regarding the approach identified in this regard. Conversely, it asked if not satisfied, to outline the reasons why and/or to provide alternative suggestions as appropriate.

### 6.2. Feedback

Proposals vis-à-vis future research to be carried out as part of the present process were accepted by the majority of respondents. The following quote draws together many of these viewpoints when it states that

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<sup>119</sup> See page 20 of the *Phase 1 Consultation Document*.

Research is essential to the process of development of the children's code. Both quantitative and qualitative research, supported by international findings will enhance the eventual code.<sup>120</sup>

The Independent Broadcasters of Ireland (IBI) concur with this point.<sup>121</sup> In their submission, they stated that 'targeted and comprehensive research will be crucial in creating the most effective code possible and [the IBI is] happy that the phased process will allow for adequate research.'<sup>122</sup>

The Commission's suggestions for research, however, were not accepted without question and/or further elaboration. Various aspects of the process and subject matter were highlighted accordingly.

### 6.2.1. Context

The context in which future research is to occur was referred to. Two aspects were emphasised here. Firstly, it was urged that future research be carried out not in isolation but 'while taking cognisance of existing research...'<sup>123</sup>

The second point was made by TV3 where more specific reference was paid to the context of the broadcasting arena. It urged that any research carried out would deal with the problem of children's exposure to commercial activity in its broadest sense. In this respect, it requested that rather than focus exclusively on the traditional view of media consumption, which it considers as invalid, that such information be sought within a context that encompasses 'foreign and domestic media consumption in general, outdoor media, terrestrial TV, satellite TV, print, internet, interactive services, SMS, etc.'<sup>124</sup> Reference to this wider context also appeared in the submission made by Catholic Youth Care.<sup>125</sup>

### 6.2.2. Time frame

At this point, it is relevant to repeat TV3's reference to time frame.<sup>126</sup> TV3 voiced concern that the research process in the development of the children's code should not delay preparation of other codes, that the formulation of the other codes specified in the Broadcasting Act, 2001 should run parallel to the current process rather than waiting for the children's code research to be completed. Apart from the obvious delay incurred, TV3 also expressed concern that this might impact adversely on Irish competitiveness in a broader arena.<sup>127</sup>

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<sup>120</sup> Food Safety Promotion Board, p.2.

<sup>121</sup> The IBI is the industry body for independent broadcasting in Ireland. At the time of writing, its membership was comprised of: CKR: Clare FM; Cork 96 FM; Dublin's 98 FM; East Coast Radio; FM 104; Galway Bay FM; Highland Radio; LMFM; Mid & North West Radio; Radio Kerry; Radio Kilkenny; Limerick's Live 95 FM; Midlands Radio 3; Shannonside/Northern Sound; South East Radio; Tipperary Mid West; Tipp FM; WLR FM; TV3.

<sup>122</sup> IBI, p.2.

<sup>123</sup> Geralyn Costello (individual), p.4.

<sup>124</sup> TV3, p.6.

<sup>125</sup> Catholic Youth Care, p.3.

<sup>126</sup> Referred to in '1. Process' under the heading '*Limitations/Pace*'.

<sup>127</sup> TV3, p.2.

### 6.2.3. *Children*

Attention was paid to carrying out research on children and to the role that they might directly play in the process. It was requested that research be carried out on the viewing patterns of children from all age groups so that the Commission's code would most accurately reflect 'the reality of advertisement viewing by children and young people' in Ireland.<sup>128</sup> Distinguishing between child and/or minor had particular significance in this respect, as viewing patterns are not akin to all groups. Consequently, the Children's Rights Alliance asked that the BCI conduct research on this topic to inform the development of a code that most accurately reflects the reality of advertisement consumption.'<sup>129</sup> In addition, it was urged that any age distinctions within the code be evidence-based 'and informed by BCI-commissioned research focusing on relevant children's developmental studies.'<sup>130</sup>

The actual involvement of children directly in the research process was also emphasised. Current research being based predominantly on parents' views rather than on the views of their off spring was emphasised. So too was the need to invert this balance.<sup>131</sup>

### 6.2.4. *Engaging children as research subjects*

The role that children can play, and their protection, in the research process was highlighted. The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) supported the concept of future research on the basis that there would be full consultation on the research design, carried out by 'a professional and totally independent Research Company.' This would be executed in line with ESOMAR's best practice guidelines for engaging children as research subjects. On conclusion of this work, the AAI and IAPI argued that 'There should...be full disclosure of the results to all interested parties.'<sup>132</sup> Whether this includes identifying the child subjects and/or participants is left unsaid.<sup>133</sup>

The National Children's Office (NCO) referred to the ethical issues surrounding researching such subject matter. Reference was made to the need for confidentiality and anonymity for children in the research process. More specifically, it stated that

We believe children should actively participate in research that directly relates to them. Ethical issues for consideration when understanding research include the appropriateness of the research design, informed consent, confidentiality and anonymity...We strongly recommend that if research is being undertaken with children ethic approval should be received [sic].<sup>134</sup>

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<sup>128</sup> Children's Rights Alliance, pp 1-2.

<sup>129</sup> Children's Rights Alliance, p.5.

<sup>130</sup> Children's Rights Alliance, p.7.

<sup>131</sup> Children's Rights Alliance, pp 6-7.

<sup>132</sup> AAI/IAPI, p.2.

<sup>133</sup> ESOMAR's guidelines on interviewing children refer to the ongoing need to protect children but do not mention keeping results or area interviewed confidential.

<sup>134</sup> NCO, p.8.

### **6.3. Concluding remarks**

In general, there was considerable support for further research to be conducted and an acceptance, albeit limited in certain cases, for the approach to be taken. One key area of agreement emerging was the willingness of certain organisations to contribute to this research and/or to be involved in the initial design.<sup>135</sup>

Some respondents highlighted the fact that there are particular issues to be considered in relation to research and children. Points made included ethical issues regarding the disclosure of research carried out using children as research subjects and the manner in which data arising from the research is considered and weighted. The Broadcasting Commission was asked to address these concerns prior to the initiation of further research.

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<sup>135</sup> Organisations such as the NCAD and the Food Safety Promotion Board voiced a willingness to contribute while AAI and IAPI indicated a desire to be one of many groups consulted on the research survey design.

# Matters Arising

## **Introduction**

Throughout the *Phase 1 Consultation Document*, emphasis was placed on striving for the development of the most succinct and relevant code possible. The approach taken was designed to be efficient, albeit not exclusive. While interested parties were asked to group their responses under a series of set headings, efforts were made to accommodate new material arising.

Additional information was considered thoroughly. Points made, but falling outside the framework specified in the consultation document, are included here without further comment or analysis.

## **Feedback**

A number of additional points were raised. The main areas are outlined as follows and issues highlighted are summarised thereafter.

- Co-regulation;
- Restrictions;
- Media awareness;
- ‘Country of Origin’ principle;
- Traditional media view versus contemporary spectrum;
- Merchandise in children’s programmes;
- Radio;
- Revenue generated.

### *Co-regulation*

Throughout the submissions received from the advertising industry, references were made to the existing situation vis-à-vis regulation, the role and experience of the Advertising Standards Association of Ireland (ASAI) and to the ASAI’s codes. A common thread running through these was uncertainty about what the ASAI role would be when the current process of the Broadcasting Commission of Ireland (BCI)

was completed and its code produced. Arguments were, therefore, put forward for a system of co-regulation between existing bodies and the BCI.

Emphasising that the ASAI codes are based on international convention and well established within the Irish context, the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) argued that the ASAI 'is well recognised and accepted by Government, consumers and the advertising industry alike.'<sup>136</sup> Consequently, these bodies would urge that such a position and experience be respected rather than supplanted. The work of the ASAI should, therefore, be seen as complementary to the new code being produced by the BCI and not in competition/conflict. Based on these tenets, the AAI and IAPI would argue in favour of a model of co-regulation.<sup>137</sup> They look to the experience of other States to support their suggestion for co-regulation – in particular, they specified the USA and the UK which they considered to be positive examples of this method of regulation.<sup>138</sup>

The ASAI also asked that the BCI take into account 'the established position of advertising self-regulation in Ireland and the protection it already affords to the public.'<sup>139</sup> ASAI stated that it aims to fill in perceived gaps in other regulation, not to repeat them. Recognising the pre-eminence of statute based rules, the ASAI stressed that it did not aim to clash with the work of other bodies.<sup>140</sup> In addition, it stated that

The ASAI requests that the BCI should explore a range of possibilities on the role of the ASAI and its Codes could play in supporting the BCI in implementing its mandate in relation to broadcast advertising. In making this request it is encouraged by the BCI's stated principles of flexibility, openness and co-operation and willingness to consider possibilities of opportunities for co-regulation and self-regulation.<sup>141</sup>

While attention was paid to self-regulation and/or co-regulation by the advertising industry, other organisations also highlighted this topic. The Food and Drink Federation (FDF), for example, stated that the BCI might consider possibilities or opportunities for both methods of control as '...the industry feels that this would be a new approach and strongly encourages it.'<sup>142</sup> Furthermore, the FDF said it 'would welcome a notion of co-regulation that would include bodies like the Food Safety Authority of Ireland and the Department of Health, etc.'<sup>143</sup>

The Independent Broadcasters of Ireland combined both emphases from the domains of advertising and broadcasting. Here it stated that it was

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<sup>136</sup> AAI/IAPI, p.1.

<sup>137</sup> The AAI/IAPI: 'We believe therefore that any proposed code should recognise and respect the position of ASAI and that a situation of "co-regulation" should be considered rather than any effort be made to supplant its role in broadcast media' (p.1).

<sup>138</sup> AAI/IAPI, pp 6-7. In the UK, the BACC/ITC is responsible for the regulation of broadcast advertising and the ASA UK is responsible for all else.

<sup>139</sup> ASAI, p.6 (a).

<sup>140</sup> ASAI, p.6 (a).

<sup>141</sup> ASAI, p.6 (a).

<sup>142</sup> FDF, p.2.

<sup>143</sup> FDF, p.2.

happy with the principles outlined by the Broadcasting Commission. [The IBI believes] that, in addition to the existing principles, the Broadcasting Commission should also undertake to explore opportunities for co-regulation with the broadcasting and advertising industries in relation to the children's advertising.<sup>144</sup>

Linking these to points raised elsewhere, one sees that viewed collectively suggestions have been made both to consult with others (for example, ITC and other regulators) and to regulate with other bodies (for example, State agencies/bodies and advertising industry bodies).

### *Restrictions*

Despite the content and overall objectives of the *Phase 1 Consultation Document*, arguments for tighter restrictions were nevertheless put forward. More specifically, the Combat Poverty Agency, while acknowledging the work of the BCI and its intention to develop a separate children's advertising code, stated its support for 'an absolute ban on advertising targeted on children as offering the most protection from the adverse consequences described in this submission.'<sup>145</sup> Alternatively, it added, should such a ban not be possible, restrictions in effect in other countries should be introduced. The recommendations put forward were:

- 'A ban on advertising targeted on children under 12.
- A ban on toy advertising between 7 am and 10 pm.
- A ban on advertising during children's programmes.
- Advertisements must not mislead children about the size, quality or properties of the products.
- No advertisement should imply that buying a product will make parents or children superior to others and that not having it will make them inferior.
- All advertisements for toys, games or similar products must include a clear indication of their price.'<sup>146</sup>

### *Media awareness*

Several comments were made regarding the need to educate young people properly on how to deal with increasing amounts of information coming from the media. RTE, for example, stated that it believes

children need to be educated in the understanding of the function of advertising and believes all broadcasters should have the responsibility for making broadcasting "infomercials"... which provide young viewers with a context in which to understand the role of advertising.<sup>147</sup>

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<sup>144</sup> IBI, p.2.

<sup>145</sup> Combat Poverty Agency, p.2.

<sup>146</sup> Combat Poverty Agency, p.2.

<sup>147</sup> RTE, p.2.

Furthermore, RTE recommended that all broadcasters be obliged to transmit – on an annual basis – a series of infomercials designed to help educate children about aspects of advertising. Such infomercials, it believed, would remain the responsibility of broadcasters.<sup>148</sup>

The role of media awareness programmes in the development of young people is also acknowledged and supported by the advertising industry. The AAI and IAPI believe that through their collective experience and connections with representative organisations abroad, they are in a key position to coordinate, and to run, such courses.<sup>149</sup> Media education as it presently exists in Ireland, they argued, is inadequate and more rigorous media education such as *Media Smart* initiatives would be required.<sup>150</sup>

#### *‘Country of Origin’ principle*

Significant attention was paid to the ‘Country of Origin’ principle by advertisers and broadcasters alike.<sup>151</sup> Emphasis was thereby placed on drafting the children’s advertising code in a wider context, taking into account developments occurring elsewhere and elements that might impact on the code when produced.<sup>152</sup> As many children are exposed on a daily basis to advertisements coming in from non-Irish channels, this becomes a particular concern. More specifically, the introduction of a new code should not have an adverse effect on these dual industries, placing them at a disadvantage to advertisers and broadcasters abroad. In addition, the AAI and IAPI argued that ‘the application of extreme strictures upon Irish advertisers would have a limited effect upon the total volume of advertising children would be exposed to’.<sup>153</sup> This point was echoed, and developed, by TV3 when it stated that

The competitiveness of the Irish broadcast sector, particularly the independent sector with its sole reliance on advertising to survive, will be seriously undermined if any Irish regulations are overly cumbersome and restrictive in comparison with the UK based broadcasters **that now outnumber the Irish based and regulated channels offering advertising in Ireland.**<sup>154</sup>

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<sup>148</sup> RTE, p.2.

<sup>149</sup> AAI/IAPI, p.1 and p.7.

<sup>150</sup> Media Smart programmes have been launched in a number of different countries. Two principles lie at the core of this approach: (a) to help students understand the power and influence of the media; (b) to help students become informed, discriminating, and literate media consumers. Media Smart was launched in the UK on 13 November 2002 (see [www.mediasmart.org.uk](http://www.mediasmart.org.uk)). See also [www.weta.org/community/project/media/](http://www.weta.org/community/project/media/) for information on the Washington Educational Television Association’s experience of Media Smart.

<sup>151</sup> AAI/IAPI, p.7; TV3, p.1; RTE, p.3.

<sup>152</sup> The ‘Country of Origin’ principle means that advertising transmitted is subject to the laws of the country where the broadcaster transmits from and not the country to which it is transmitted. This has proved particularly relevant to Sweden where the ‘Country of Origin’ principle has been used – often successfully – to circumvent its national ban on advertising to children.

<sup>153</sup> AAI/IAPI, p.7.

<sup>154</sup> TV3, p.1; its emphasis.

This did not mean that it considers the introduction of Irish specific rules as unnecessary. It merely wanted to suggest that in devising rules to apply ‘that these be done with some sensitivity and awareness of the commercial reality.’<sup>155</sup>

RTE would be in accord with views expressed above. The application of the codes to Irish channels exclusively raised the following comment:

If the Code is too restrictive advertisers will divert a significant proportion of their advertising to channels not regulated in Ireland. Therefore it is necessary to draw up an Irish Code which takes account of other International Codes and of practices in other countries.<sup>156</sup>

The AAI and IAPI summarised these viewpoints. Here they stated that a highly restrictive environment would be undesirable because

- ‘Irish advertisers would be placed at a distinct disadvantage to their international competitors as how they promote their products could be severely curtailed.
- Irish advertising agencies would become increasingly irrelevant to international advertisers as UK based vehicles would offer them greater creative freedoms.
- Irish broadcasters could loose [sic] massive revenues to their internationally based competitors as they could potentially have greater minutage [sic] available, without restrictions throughout the day.
- Indigenous children’s programming budgets could be scaled back as the advertising revenue would not be there to support it.’<sup>157</sup>

#### *Traditional media view versus contemporary spectrum*

Throughout its submission, TV3 suggested that children’s exposure to advertising was not limited to television exclusively. This was, it stated, a traditional view which had changed considerably with advances made in technology. Consequently, it argued that all media, and in particular electronic media, should be taken into account especially as other means of transmitting advertising to children – for example, the internet – are considered more dangerous to children when compared to television albeit television having more controls and regulations.<sup>158</sup> The opportunities for advertising to influence children are now endless incorporating the traditional modes of print, billboard, cinema and broadcasting with such newer means as SMS and Internet, the latter two also being less susceptible to parental supervision.<sup>159</sup>

Devising restrictions for television alone would not only be myopic but could place it at a distinct economic disadvantage compared to other outlets for commercial communication. TV3 illustrated this point when it stated that if one media is ‘more

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<sup>155</sup> TV3, p.1.

<sup>156</sup> RTE, p.3.

<sup>157</sup> AAI/IAPI, p.7

<sup>158</sup> TV3, p.3.

<sup>159</sup> TV3, p.1.

difficult to use than another advertisers will merely displace to the less restrictive environment.’<sup>160</sup> Furthermore, TV3 stated that

the factors outlined above basically show that there is a need to consider the influences on children in a general sense, rather than just in relation to the Irish based Broadcasters as we would suggest that in regards to the totality of the influences that children are exposed to this is a minor one and that a holistic approach should be taken and all kinds of influence (be it UK based stations, print media – the majority of those aimed at a youth market being foreign printed, - internet SMS texting or otherwise) should be examined and controlled to the greatest extent possible.<sup>161</sup>

For the ASAI, this is considered one of the strengths of its approach. Here it stated that

The fact that the ASAI Codes apply to advertising in all media also affords considerable advantages. Advertising campaigns with aspects of themes and content common to several media are becoming more common. The application of the same regulatory principles and rules to all the commercial communications in a multi-media campaign makes for a more rational and effective approach as well as presenting advantages to the advertisers and to the public.<sup>162</sup>

Formulating a code for children and advertising, it is suggested, must be done within the greater context of other media. According to the AAI and IAPI therefore

It is vital that advertising regulation is seen to be unambiguous, transparent and easy to understand. A broadcast code, differing radically from the code that applies to other media would add an unnecessary bureaucratic layer to the regulatory process.<sup>163</sup>

#### *Merchandise in children’s programmes*

RTE made reference to situations where merchandise sales are embedded in children’s programmes. As a result, it asked that children’s advertising codes be applied to both advertising and programmes accordingly.<sup>164</sup>

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<sup>160</sup> TV3, p.1.

<sup>161</sup> TV3, p.1.

<sup>162</sup> ASAI, p.6(a).

<sup>163</sup> AAI/API, p.5.

<sup>164</sup> RTE, p.4.

### *Radio*

In general, submissions received focused on television exclusively. Scant reference was made, therefore, to radio. RTÉ, however, did refer to this other medium. In this respect, it stated that its recommendations

Have been made on the understanding that the Children's Advertising Code will primarily apply to television. Many of the principles apply equally to radio advertising.<sup>165</sup>

Furthermore, it recommended that 'All codes should apply equally, as appropriate, to television and radio.'<sup>166</sup>

### *Revenue generated*

Similarly to studies generated abroad, the issue of finance raised through children's advertising and its contribution to programming generally was raised.<sup>167</sup> Here the AAI and IAPI stated that

...Irish advertisers, through their expenditure on Irish broadcast media, have made a significant contribution, directly and indirectly, to the funding of programmes on these media. Excessive restrictions may, in spite of the significant licence fee increase, restrict the broadcaster's ability to maintain the quality of programming. Also a high percentage of programmes focused at children are on channels which are based outside the State and therefore not under the influence or control of the Broadcasting Commission. Excessive restrictions will place Irish advertisers and broadcasters at a disadvantage, bearing in mind the very open nature of our economy.<sup>168</sup>

### **Concluding remarks**

Material arising, but falling outside the framework proper, was considered in this concluding section. As seen, information presented covered a broad spectrum of themes. Co-regulation, competition, economic factors were just some of the areas included. Considered with information reviewed throughout this summary report, one is made acutely aware of the depth of the subject that is 'advertising and children.'

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<sup>165</sup> RTE, p.6.

<sup>166</sup> RTE, p.6.

<sup>167</sup> For further information, see: Quinn, R-BM (2002), *Advertising and Children*, Dublin: Broadcasting Commission of Ireland, December, pp 26-7 ([www.bci.ie/Advertising%20and%20Children2.doc](http://www.bci.ie/Advertising%20and%20Children2.doc)).

<sup>168</sup> AAI/IAPI, p.1.

# Submissions

Advertising Standards Authority of Ireland (ASAI).  
Association of Advertisers in Ireland (AAI) and Institute of Advertising Practitioners  
in Ireland (IAPI) – joint submission.  
Bushe, Dr. Con (Media Consultant)  
Catholic Youth Care.  
Children’s Rights Alliance.  
Combat Poverty Agency.  
Costello, Geralyn (individual).  
Crisis Pregnancy Agency.  
Dental Health Foundation, Ireland.  
Food and Drink Federation (FDF).  
Equality Authority.  
Health Promotion Unit, Department of Health and Children.  
Independent Broadcasters of Ireland (IBI).  
Irish Society for the Prevention of Cruelty to Children (ISPCC).  
Labour Party.  
National Children’s Office (NCO).  
National College of Art and Design (NCAD).  
Office of Tobacco Control.  
*Safefood*, Food Safety Promotion Board.  
RTE.  
TV3.