

CHILDREN'S ADVERTISING CODE

STATEMENT OF OUTCOMES

PHASE 1 PUBLIC CONSULTATION

Introduction

In April 2003, the Broadcasting Commission of Ireland launched the first phase of development of the children's advertising code in pursuance of its statutory remit, further to the provisions of section 19 of the Broadcasting Act 2001. As part of phase one, a public consultation document was prepared and circulated. The purpose of this document was twofold. It outlined the Commission's statement of intent with regard to the manner in which it proposed to develop the children's advertising code. It also highlighted the need to define key terms that will be central to the future debate and discussion on children's advertising, in particular, the definition of 'child' and 'children's advertising'. Twenty submissions were received in response to this first consultation document and the majority of respondents addressed all of the issues raised.

The following report details the decisions taken by the Commission on the issues raised within the phase one consultation document on foot of the submissions received. These are outlined hereunder using the following headings:

- Definition of a child
- Definition of children's advertising
- Process
- Application of regulatory principles
- Definition of key advertising terms defined on a statutory basis
- Definition of advertising terms not defined at EU level
- Framework of the Code
- Research

In reaching its decisions, the Commission considered the diversity of views presented within the submissions. This document outlines in brief the range of views that were examined in the debate and discussions, which took place at Commission level, as well as the rationale for the decisions taken. These outcomes will now be used to inform the second phase of the development of the children's advertising code.

1. Definition of a Child

(i) *Summary of deliberations*

The consultation document invited views, as to the most appropriate age by which to define a child, within the context of children's broadcast advertising. It also asked for views as to whether the Commission should make a distinction between a 'child' and a 'youth/minor'.

Two key issues were considered by the Commission arising from the submissions received.

The first relates to the appropriate age by which to define a child. The second issue concerns recognition of the principle that children of various ages require differing levels of protection, in light of what is seen as their relative maturity, cognitive ability and circumstances.

The Commission accepted the arguments presented by the children's organisations, generally, that as a State party to the UN Convention on the Rights of the Child, the State has a duty of protection and care for all children and young people under the age of 18. The National Children's Strategy and the Age of Majority Act 1985 also define the child as a person under 18.

However a majority of submissions received, including some of those received from children's organisations expressed the view that the relative maturity of children can vary enormously and that the degree of regulation and protection assigned to children by the code should vary accordingly. In particular, the children's organisations pointed to the need for increased protection for young children, while the broadcasters and advertisers argued that those over fifteen required less protection.

With regard to the appropriate age at which to define a child, the Commission also accepted the arguments presented by broadcasters and advertisers generally, that there is a general recognition within the media that children over 15 are deemed to be 'less credulous' and, therefore, in need of less protection from advertising than those under 15. Cinema certification standards as well as television audience research identifies children as those under 15. The preponderance of those countries included in the Commission's own research, while recognising 18 as the age of majority, use either 12 or 14/15 as the upper age limit when defining a child in the context of children's advertising.

(ii) *Definition*

Based on these views, the Commission has decided to define a child in principle as any person under the age of 18. However, the Commission recognises in principle that different levels of protection are required by children of different ages. The children's code will be developed taking cognisance of both these principles.

This will see a code of standards produced which, while applying to **all** children, i.e. those under 18, will be mindful of the relative levels of protection required by very young children and those over 15.

2. Definition of Children's Advertising

The consultation document posited four elements that could be used to formulate a definition of children's advertising. The Commission asked for views as to which element or combination of elements should be used to define children's advertising. The elements posited were:

- The nature of the product or service and its intended audience
- The time at which the advertisement is broadcast
- The type of programming around the advertisement
- The language, visuals, actors and characters used in the advertisement.

In considering the views presented in the majority of the submissions received, two options emerged.

The first identified children's advertising as:

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

This would see children's advertising defined with reference to the programming surrounding the advertising and the nature of the product or service being advertised.

Those who supported this view argued that the inclusion of the additional two elements (time of broadcast and language/actors/visuals/characters) would not differentiate between advertising directed at children and advertising seen by children. This would, it was argued, result in unfair restrictions being placed on advertising directed at adults.

The second option combined all four elements and identified children's advertising as:

'that which promotes products, services or activities which are deemed to be of particular interest to children; and/or is broadcast between particular hours deemed to be children's viewing times; and/or during and between children's programmes; and/or which use children as subjects/actors within the advert or use language, visuals or characters that may be attractive to children.

This view was premised on a number of arguments. It was argued that there is a blurring between child viewing times and adult viewing times, that children do not always watch age appropriate material and that they are often exposed to adult advertising as a result. Therefore, in order to offer protection to children, the code should include advertising directed at adults but seen by those under 18.

(i) *Summary of deliberations*

In reaching its decision, the Commission was mindful of a number of factors. Firstly, the Commission considered the definition of child and children's advertising in tandem as the relationship between these two definitions will ultimately decide the breadth of advertising that will fall within the scope of the code. It also considered how the definition would facilitate the practical implementation of the code, the balance of interests between broadcaster and advertisers and viewers and listeners, the impact of the broader media environment and the issue of parental responsibility.

The Commission, in considering the above two options, concluded that the broader definition of advertising could potentially see all advertising come under the children's advertising code. Given that all advertising will be covered by the BCI's general advertising code, it is reasonable to argue that the purpose of the children's advertising code is not to become a second general advertising code but rather to provide particular protection for children.

With regard to the scope of the code, while recognising the concerns of the children's organisations, the Commission also considered the arguments made by broadcasters and advertisers. Namely, that there is a willingness to comply with the code and to operate self/co-regulatory mechanisms, in addition to those operated by the BCI and the BCC, as a way of ensuring that the code is fully implemented. The Commission concluded that there is a case for a narrower definition of children's advertising at this time, when a children's code is being introduced. This would allow the Commission to respond incrementally with a greater level of restriction, if and when required.

(ii) *Definition*

In conclusion, the Commission has agreed upon the definition of children's advertising as:

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

3. Process

The submissions received did not require that any amendments be made to the process proposed for the development of the code.

4. Application of Regulatory Principles

Arising from the consultation process, the Commission was requested to consider the inclusion of two additional principles, specific to the development of the children's advertising code.

The first concerned the inclusion of a 'protection' principle which would explicitly state that the primary purpose of the code is the protection of children given their age, credulity, inexperience and vulnerability. In considering this, the Commission decided that as the aspiration and design of the children's code is ultimately to offer a level of protection to children, it could be argued that the objective of a protection principle is already mainstreamed within the framework and content of the code and the development of the code is itself the embodiment of such a principle.

The second principle considered was the inclusion of an equity principle, which would posit that all actions relating to children during the development of the code, be 'equitable'. The Commission wishes to clarify that the principle of equity is already present within its regulatory principles, insofar, as it has committed itself to a process that is fair, reasonable and non discriminatory and which balances the rights and interests of all relevant interest groups, with a specific commitment to the inclusion of children's views within the process. For the above reasons, the Commission decided that no amendment is necessary to the existing regulatory principles.

5. Definition of Key Advertising Terms defined on a Statutory Basis

The Commission has decided to employ the definitions of general advertising terms as currently defined at EU level and/or in Irish statute. These definitions may be revised within the context of the revision of the Television without Frontiers Directive, and, if so, any changes made to these European definitions will be applied retrospectively to the children's code.

These definitions are:

Advertising is any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, in return for payment.

Sponsorship is defined as any contribution made by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audio visual works, to the financing of television and/or radio programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

Misleading advertising is defined as 'advertising which contains any element of spoken or visual presentation which is calculated to mislead either directly or by implication, with regard to the merits of the product or service advertised or its suitability for the purpose recommended.'

Comparative advertising is defined as 'all advertising that contains an explicit or implicit identification of a competitor or goods or services offered by a competitor.'

Surreptitious advertising is defined as 'the representation in words or pictures of goods, services, the name, the trade mark or the activities or a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.'

Subliminal advertising is 'advertising that includes any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of members of an audience without their being fully aware or fully aware of what has been done.'

Teleshopping is defined as 'direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.'

6. Definitions of Advertising Terms not defined at EU Level

The Commission has decided to employ working definitions of a number of advertising terms that are not currently defined at EU level. These terms are:

- Virtual advertising
- Interactive advertising
- Split Screen advertising

In reaching its decision, the Commission was mindful that these terms may soon be defined at EU level, within the context of the revision of the Television without Frontiers Directive and, for this reason, it might be appropriate to omit them from the development of the children's code. It also took cognisance of the view that these terms may be defined within other jurisdictions or that these terms could be included within more general definitions of advertising.

However, the Commission does not believe that the lack of statutory definitions of these terms at present merits their omission from the development of the children's advertising code. The Commission believes the development of the code should take cognisance of technological developments and the emergence of new advertising techniques, ensuring the code's relevance into the future. It was considered important that the public be made aware of the very different types of advertising that are being developed, so that the code would not be developed overly premised on traditional forms of television and radio advertising. The Commission will continue to work with the BCI working definitions on the understanding that they will be revised retrospectively if and when new EU definitions are agreed.

Virtual advertising is 'a television advertising technique, which allows broadcasters to electronically insert virtual advertising messages or sponsorship announcements into a television programme by altering the broadcast signal itself.'

Interactive advertising 'allows the viewer to interact with television by actively choosing the advertising content to which s/he wishes to be exposed for as long as s/he wants. Interactivity also allows the viewer to provide information directly to the broadcasters/advertiser by means of a return path, and/or to participate in an evolving interactive environment which is separate from the broadcast content.'

Split Screen advertising 'is a technique, which allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts.'

7. Framework for the Code

In considering the proposed framework for the code, the Commission agreed to include two additional headings proposed in the submissions received. These headings are:

- Parental responsibility
- Special protection for children in advertising

Parental Responsibility:

The issue of the balance of responsibility between the broadcaster and the parent is one, which has arisen within phase one and is expected to arise during the next phase of the development of the code. As such, the inclusion of this heading within the framework would allow this issue to be explored in a more coherent manner.

Special Protection:

With regard to the special protection of children in advertising, the Commission recognised that this could be dealt with under the existing heading of safety and avoidance of harm. However, it is proposed that it will be included as a separate heading. This decision is based on the scope afforded by this heading to consider issues such as the manner in which children are portrayed in advertising.

The Commission also considered the inclusion of a third heading 'the generation of anxiety and the use of persuasive language'. While recognising the importance of these issues, it was decided that they will be addressed under existing headings within the framework, namely social values, factual presentation and safety/avoidance of harm.

8. Research

The Commission recognised that there are issues arising in relation to research and children, including the 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. It was agreed that the Commission would consider such issues, but would do so at such time as it is developing actual research proposals.

Conclusion

The Commission is grateful to all those who took the time to make submissions on the issues raised within phase one of the development of the children's advertising code. The outcomes of this first phase and the decisions outlined above will now inform the development of the second and subsequent phases of the development of the children's code.