

Children's Advertising Code
Phase Two
Consultation Document

Review of Adult Submissions Received

March 2004

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

Contents

<i>List of Tables</i>	v
<i>List of Appendices</i>	vi
Introduction	1
1. Social values	5
Introduction	5
European legislation and national codes	5
Examples from other countries	5
Questions asked	5
Feedback	6
Concluding remarks	9
2. Inexperience and credulity	10
Introduction	10
European legislation and national codes	10
Examples from other countries	10
Questions asked	11
Feedback	11
Concluding remarks	14
3. Avoiding undue pressure	16
Introduction	16
European legislation and national codes	16
Examples from other countries	16
Questions asked	17
Feedback	17
Concluding remarks	21

4. Special protection for children in advertising	22
Introduction	22
European legislation and national codes	22
Examples from other countries	23
Questions asked	23
Feedback	23
Sexualisation, testimonials, adult actors and privacy	23
European legislation and national codes	27
Concluding remarks	28
5. Safety/avoidance of harm	30
Introduction	30
European legislation and national codes	30
Examples from other countries	31
Questions asked	31
Feedback	31
Opinions of sample codes provided	32
Areas specified for consideration	33
Concluding remarks	38
6. Parental responsibility	39
Introduction	39
European legislation and national codes	39
Examples from other countries	39
Question asked	40
Feedback	40
The responsibility of parents or broadcasters?	40
Comparison of responses given by group belonged to	44
Concluding remarks	45
7. Promotion by programme characters, advertiser generated characters and personal endorsements	46
Introduction	46
European legislation and national codes	46
Examples from other countries	46
Questions asked	47
Feedback	47
Examples from other countries	50
Concluding remarks	50

8. Production prohibitions	52
Introduction	52
European legislation and national codes	52
Examples from other countries	52
Questions asked	53
Feedback	53
Concluding remarks	57
9. Factual presentation	58
Introduction	58
European legislation and national codes	58
Examples from other countries	58
Questions asked	59
Feedback	59
Concluding remarks	62
10. Price and purchase terms/comparison claims	63
Introduction	63
European legislation and national codes	63
Examples from other countries	64
Questions asked	64
Feedback	65
Concluding remarks	67
11. Identification, separation, insertion/scheduling of advertising	68
Introduction	68
Identification and separation of advertising	68
Questions asked	69
Feedback	69
Insertion and scheduling of advertising	72
Questions asked	72
Feedback	73
Concluding remarks	75
12. Use of split screen, virtual and interactive advertising	76
Introduction	76
Questions asked	76
Feedback	76
Concluding remarks	78

13. Assessment	79
Introduction	79
Identification of children’s advertising	79
What is a children’s programme?	79
Examples from other countries	79
Questions asked	80
Feedback	80
Concluding remarks	82
14. Administration and implementation of the code	84
Introduction	84
Monitoring	84
Complaints procedures	84
Interpretation of the code	84
Research	85
Review of the code	85
Questions asked	85
Feedback	85
Concluding remarks	89
Matters arising	91
Introduction	91
Feedback	91
Concluding remarks	94
<i>Appendices</i>	95
<i>Other relevant material</i>	111
<i>Submissions</i>	112

Tables

Table 1.1	Social values specified	7
Table 8.1	Suggested product prohibitions	55

Appendices

I	Extract from the ASAI code rules regarding 'Decency and Propriety'	95
II	Extract from the ASAI code rules regarding 'Honesty'	96
III	Extract from the ASAI code rules regarding 'Special protection for children in advertising'	99
IV	Extract from the ASAI code rules regarding 'Safety/avoidance of harm'	100
V	Extract from RTE's <i>Guidelines for Children's Advertising</i>	102
VI	Extract from the ASAI code rules regarding 'Parental responsibility'	103
VII	Extract from the ASAI code rules regarding 'Promotion by programme character, advertiser generated characters and personal endorsements'	104
VIII	Extract from the ASAI code rules regarding 'Production prohibitions'	105
IX	Extract from the ASAI code rules regarding 'Factual presentation'	106

X	Extract from RTE's <i>Guidelines for Children's Advertising</i>	107
XI	Extract from the ASAI code rules regarding 'Price and purchase terms/comparison claims'	108
XII	Extract from the ASAI code rules regarding 'Identification, separation, insertion/scheduling of advertising'	110

Introduction

On 9 October 2003, the Broadcasting Commission of Ireland (BCI) launched its *Children's Advertising Code – Phase 2 Consultation Document*.¹ This marked the second stage of a process designed to culminate in the creation of a code on children's advertising in Ireland. The impetus to respond to this area of commercial activity comes from the *Broadcasting Act, 2001* which requires the BCI to identify set standards to govern advertising and related practices aimed at children.² This will be the first code of its kind in Ireland.

The practical application of the children's advertising code will affect home-based broadcast media exclusively. It will apply equally to public and private broadcasters in Ireland. In addition, it will apply to those who make use of a frequency or satellite capacity or up-link in Ireland. More specifically, it will apply to RTÉ radio and television services, TG4, to those television and radio stations licensed under the *Radio and Television Act, 1988* (including the national broadcasters, TV3 and Today FM) as well as content contractors licensed by the BCI under the *Broadcasting Act, 2001*. It will not refer, however, to those services received from abroad – for example, Nickelodeon and MTV – which remain subject to the rules and regulations of their country of origin.

The scope of application may be narrow but the number of influences being brought to bear on the process is not. Phase 1 of the process marked the release of the first consultation document to the public accompanied by an advertisement in the national press inviting the public to participate. *Phase 2 Consultation Document* was designed to continue raising public awareness vis-à-vis the development of a children's advertising code. In addition to the circulation of materials to groups, organisations and industry related bodies, the public was invited, through a series of advertisements in print and broadcast media, to participate in the process. Participants could reply by post or on line at the BCI's website.³ The BCI pursued an approach that sought to

¹ The launch took place at the BCI's offices at Warrington Place, Dublin 2. From here on, the document will be referred to as *Phase 2 Consultation Document*.

² The BCI coordinates 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 regard are Sections 19.1(c), 19.2, 19.5, 19.7, 19.9 and 19.10 of the Broadcasting Act, 2001.

³ www.bci.ie.

invite and to accommodate diverse opinions while also being able to facilitate any pertinent new material arising in the process. Children were also consulted – firstly, through the release of a document specifically designed for them and secondly, through a children’s event which took place in Croke Park, Dublin on 24 January 2004. The underlining objective therefore was to involve as many people as possible so that the end result would be representative of Irish society today.

The process for developing the code is divided into three parts. Information gathered and reviewed in the first two phases will form the basis of work carried out in the third, and final, phase. In Phase 3, the BCI will produce a draft version of the children’s advertising code based on the views expressed in the consultation process and its own decisions arising from this process. On completion, this draft document will be available to the public for comment and will be finalised thereafter. Viewed collectively, the ultimate aim of the process is to devise a code which is feasible and easily applied.

Consultation document

Similarly to the first consultation document, a series of questions was posed in *Phase 2 Consultation Document*. It is therefore advised that that document be read in conjunction with this *Review of Adult Submissions*. Those adults wishing to participate could answer all or some of these questions. There are fourteen categories in the document and each follows a set format for the purposes of clarity and continuity. Beginning with an overview of existing European legislation, which must be taken into account within the proposed code, it continues on to outline the current position in the Irish statutory rules that refer specifically to children.⁴ Also referred to are rules contained in the self-regulatory or industry code of standards of practice operated by the Advertising Standards Authority for Ireland (ASAI).⁵ Viewed collectively, this approach reflects current practice but it must be noted that the self-regulatory system remains subordinate to legislative controls in operation in Ireland.

Following the legislative overview, the document provides examples from other countries as applicable. These are provided purely for explanatory purposes, to illustrate the type of rules in existence elsewhere. Specific questions pertaining to each topic are presented thereafter. The respondent was asked to consider the incorporation and/or reflection of certain themes and sentiments expressed throughout.

⁴ European legislation would include: Directive 89/552/EEC of the Council, 3 October 1989 (Television Without Frontiers); Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (revisions to Television Without Frontiers directive). Relevant Irish legislation would include: Department of Arts, Culture and the Gaeltacht (May 1995), *Codes of standards, practice prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services*; Department of Arts, Heritage, Gaeltacht and the Islands (October 1999), *Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services*.

⁵ Advertising Standards Authority for Ireland (2001), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), *Codes of Sales Promotion Practice* (3rd Edition).

Material reviewed in this document emanated from adult responses to the consultation exclusively. A separate review of children's submissions exists and is available from the BCI or on its website – www.bci.ie.

Present report

The present report summarises information submitted by adults in response to the *Phase 2 Consultation Document*. The approach taken is linear. It considers the initial request and the information received under fourteen principal headings. These form the sections which follow:

- Social values;
- Inexperience and credulity;
- Avoiding undue pressure;
- Special protection for children in advertising;
- Safety/avoidance of harm;
- Parental responsibility;
- Promotion of programme characters, advertiser generated characters and personal endorsements;
- Product prohibitions;
- Factual presentation;
- Price and purchase terms/comparison claims;
- Identification, separation, insertion/scheduling of advertising;
- Use of split screen, virtual and interactive advertising;
- Assessment;
- Code administration.

This report follows the format of the *Summary of Submissions Received* issued on completion of Phase 1.⁶ It introduces the subject matter and groups responses under the questions asked.

Approach taken

The approach taken to the consideration of the submissions was systematic and analytic. As this was a general call, all representations were afforded equal weighting.⁷ 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.

Attempts were made to follow a systematic approach – looking primarily at responses generally and then at the responses made according to the group to which the respondent belonged to. Four groups were distinguishable in this respect: (i) individuals; (ii) representative organisations; (iii) advertisers, advertising organisations and manufacturers; and, (iv) broadcasters. While informative, this

⁶ See R-BM Quinn (2003), *Children's Advertising Code – Summary of Submissions Received*, Dublin: Broadcasting Commission of Ireland, June.

⁷ It should be noted that the number attributed to respondents using the web changes. This occurs due to the sequence in which their responses were recorded for individual sections.

approach was not always possible, however, due to the nature and style of many of responses received. In addition, certain topics were recurring – for example, media education and food advertising. Consequently, such topics receive attention on a number of occasions as appropriate.

The reporting style of this document is informative rather than analytic. Responses received have been reviewed and the similarities/differences highlighted therein. Where additional comments and/or observations were made, consideration was given as appropriate.⁸ 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.

⁸ These are presented in the final section of this report: ‘Matters Arising’.

1. Social values

1.1. Introduction

The first topic broached was 'social values'. Two points of view were thereby juxtaposed. Primarily, it was noted that some people argue that advertising plays a significant role in the communication of social values and cultural norms. Conversely, there are those who believe determining specifics in this regard can be problematic due to the intangibility of the subject matter.

1.2. European legislation and national codes

Attention was drawn to Article 12 of the *Television Without Frontiers* directive which states that all advertising shall not

- Prejudice respect for human dignity;
- Include any discrimination on grounds of race, sex or nationality;
- Be offensive to religious or political beliefs;
- Encourage behaviour prejudicial to the protection of the environment.

The Irish statutory code reflects this requirement. The Advertising Standards Association of Ireland's (ASAI) code refers to social values in its general advertising rules. It requires, for example, that advertisements should be responsive to diversity in Irish society and should respect the principle of equality in any depiction of groups.

1.3. Examples from other countries

Attention was drawn to Canada. Here it is stated that 'Children's advertising must not be encouraged or portray a range of values that are inconsistent with the moral, ethical or legal standards of contemporary Canadian society.'⁹

1.4. Questions asked

Whether such aspects should be specified in the children's advertising code was thus opened for discussion. Respondents were asked if a broad or narrow approach to

⁹ Media Network, Canada (n.dat), *The Broadcast Code for Advertising to Children*, The Code/Guidelines and Procedures, pp.3-4.

social values should be included in the children's code? More specifically, the Broadcasting Commission of Ireland (BCI) asked:

- Do you believe that a section on social values should be included in the children's advertising code?
- If so, do you think that this should be stated in principle?
or
- Do you think there is a need to make explicit reference to particular social values that may be of particular relevance to children?
- If so, what are these values? Please include a rationale for your proposals?

1.5. Feedback

In assessing feedback, responses were considered from a general perspective. Following this, they were looked at from a more specific angle, comparing responses given by group the respondent belonged to.

1.5.1. Responses given

An overwhelming majority of respondents favoured the inclusion of a section on social values in the children's advertising code. Consideration of these responses, however, revealed a three-way split which can be outlined as follows: (a) those specifying social values they wanted to be included; (b) those voicing support for existing instruments – i.e., the *Television Without Frontiers* directive, the Irish statutory code and the ASAI code; and (c) those opting for a statement of principle rather than outlining specific values. Viewed collectively, respondents wanted the section on values to contribute to positive social behaviour.

Most of the individuals responding opted for the specific approach, outlining the values they wished to be included in the children's advertising code. In so doing, a difference of opinion emerged between those who wanted a modern version of Ireland to be represented and those who asserted more traditional values such as the two parent family unit, heterosexuality and the primacy of marriage. The areas specified have been grouped under common headings and are provided in Table 1.1. No prioritisation or weighting is given to these values at this time.

Table 1.1.
Social values specified

Values	<ul style="list-style-type: none"> • Fairness; • Equality; • Honesty; • Fair play; • Civic pride.
Respect for	<ul style="list-style-type: none"> • Others; • Parents; • Peers; • Elderly; • Difference; • Other religious persuasions; • Ethnic groups;¹⁰ • Human dignity; • Non-violence;¹¹ • Other political beliefs; • One's own sexuality; • Property; • Different socio-economic status; • Environment;
Recognition of	<ul style="list-style-type: none"> • Innocence of children; • Ireland's multi-racial culture; • Traditional family units; • Modern family units;¹² • Different body types.¹³
Avoidance of gender stereotyping; for example:	<ul style="list-style-type: none"> • Girls playing with dolls/boys playing with trucks; • Men as clumsy around house; • Women as having sole responsibility for child care.
Etiquette	<ul style="list-style-type: none"> • Good manners; • Neighbourliness; • Kindness; • Socially acceptable behaviour.

¹⁰ This includes the Travelling community

¹¹ This includes discouragement of bullying.

¹² This includes single parent families, same sex family units, mixed race families, mixed religion families, both parents working and where parents are disabled.

¹³ Recognition that children are short/tall, fat/slim and of mixed abilities.

Some respondents believed that those values enshrined in the *Television Without Frontiers* directive, Irish statutory code and ASAI code were sufficient. Consequently, they did not feel the need to take a more specific approach in this regard. Little detail was provided to explain why this was so. A few supported the approach taken by Canada, believing that ‘Advertising must not encourage or portray a range of values that are inconsistent with the moral, ethical or legal standards of contemporary “Irish” society.’¹⁴

Less people believed that social values should be stated in principle. Here an interesting situation arose. Arguments proposed to support a statement in principle, rather than a more specific approach, were similar to those arguing against the inclusion of social values in the code. In general, it was stated that social values are too subjective, making it difficult to codify them accurately. With the possibility of meaning very different things to different people, there would be a need to define social values included in specific detail. If this were to occur, the likelihood of these values and/or definitions going quickly out of date was great. As one respondent said, the difficulty lies ‘in the subjectivity of any particular social value and the reality that values change in time.’¹⁵

1.5.2. Comparison of responses given by group belonged to

Considering responses given according to membership of a specific category, the following observations can be offered. Individual respondents opted for a more specific approach, outlining the type of principles they would like to see included. Of the information offered, they veered towards a combination of two, three or all clauses provided from the sample of codes.

Representative organisations were not as expansive, with support often voiced for the *Television Without Frontiers* directive and/or the ASAI code. They also leaned towards supporting a statement of social values in principle rather than being more specific. The National Disability Authority (NDA), for example, stated that such values should be stated in principle given the subjective nature of value systems: ‘Value systems are likely to change over time and will differ according to culture.’¹⁶

Advertisers, advertising organisations and manufacturers were more prone to saying, while they supported fully the inclusion of a section on social values, they believed this should be stated in principle rather than delving into specifics. According to the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI), support for a section on social values among these particular respondents was due to the fact that ‘Advertisers recognise that they must meet the expectations of parents, regulators and society at large and act responsibly.’¹⁷ While some manufacturers – for example, Unilever and Nestlé Ireland – favoured a combination of the *Television Without Frontiers* directive and the ASAI code, the majority in this category, not surprisingly, favoured the inclusion of the wording from the ASAI code into the new children’s advertising code, believing its wording dealt with the area adequately.¹⁸ Safefood and Glanbia also supported the

¹⁴ Irene Lyons: written submission 6.

¹⁵ Anonymous: web submission 76.

¹⁶ NDA: written submission 51, p.10.

¹⁷ AAI/IAPI: written submission 50, p.4.

¹⁸ See Appendix I for the full extract of the ASAI code in this respect.

idea of stating the values in principle. According to the ASAI, its code does ‘not attempt to set social norms but to reflect them and it is flexible enough to deal with changing social norms and values over time.’¹⁹

With regards to broadcasters, the following can be said. While supporting the inclusion of a section on social values, TV3 agreed that it should be stated in principle only, ‘as is the present statutory requirement.’ ‘Any greater specificity [sic] in a matter of this nature’, it argued, ‘will automatically make the code too rigid and will necessitate frequent updating.’²⁰ In its submission, RTÉ did not adhere to the format set. Instead it attached its own set of social values as represented in its *Guidelines for Children’s Advertising*.²¹ Areas referred to are covered in Table 1.1.

1.6. Concluding remarks

Viewed collectively, there was a very positive response to the inclusion of a section on social values. While many favoured a statement in principle, substantial information was provided should a more specific approach prove desirable. The difference of approach seen when individuals and industry groups are compared should also be taken into consideration. Support for the ASAI wording might be indicative that since this approach has been considered feasible, applicable and flexible, it could form the basis of the approach now to be adopted. According to those in the category of advertisers, advertising organisations and manufacturers, this would lean towards a statement in principle and away from specifics which might become dated, and thus irrelevant, in a very short time. Interestingly, the ASAI code is decidedly more specific in this regard than might be suggested.²²

Regarding the examples provided in *Phase 2 Consultation Document*, the majority of respondents veered away from these, choosing to give their own opinions. Nevertheless, support for the ASAI code and for a continuation of co-regulation was prominent throughout answers given by advertisers, advertising organisations and manufacturers. It will be seen that this is a theme running through all responses and submissions emanating from this category.

¹⁹ ASAI: written submission 39, p.6.

²⁰ TV3: written submission 21.

²¹ RTÉ: written submission 28; attachment.

²² See Appendix I for further information.

2. Inexperience and credulity

2.1. Introduction

Children develop at different stages and at different paces. Their ability to question what they hear and see is not automatic but develops over time. In this area of commercial activity, therefore, a child's capacity to understand and to interpret advertising deepens as he progresses towards adulthood.

Such factors have implications for advertising directed at children. Children may believe a product to be bigger or better than it actually is. Consequently, it is believed that in designing advertisements for younger people, particular attention must be paid to the level of knowledge, sophistication and maturity of the intended audience.

2.2. European legislation and national codes

Reference to the inexperience and credulity of children is included in the *Television Without Frontiers* directive. More specifically, Article 16(a) states that 'advertising shall not directly exhort minors to buy a product or service by exploiting their inexperience and credulity.' Similar requirements appear in the Irish statutory code. The Advertising Standards Association of Ireland's (ASAI) code states that an advertisement should not exploit the loyalty, credulity, vulnerability or lack of experience of children. They should not be made to feel inferior to others if they did not buy an advertised product.²³

2.3. Examples from other countries

In the *Phase 2 Consultation Document*, attention was also drawn to practices in other countries. In New Zealand, for example, advertising 'must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse the trust or exploit the lack of knowledge of children, exploit the superstitious or without justifiable reason play on fear.'²⁴ Similarly in Finland, advertising should not 'exploit the special trust placed in parents, teachers or

²³ Advertising Standards Association of Ireland (2002), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), *Codes of Sales Promotion Practice* (3rd Edition), p.42.

²⁴ Advertising Standards Authority, New Zealand (2001), *Code of Practice – Code for Advertising to Children*, p.3.

other persons.’²⁵ In Australia, it is stated that advertising must not mislead or deceive children.²⁶

2.4. Questions asked

Based on all aspects observed, the Broadcasting Commission of Ireland (BCI) asked three key questions. These were as follows:

- The children’s advertising code will contain a rule regarding the inexperience and credulity of children. Do you believe the wording of the *Television Without Frontiers* Directive, as outlined above, is sufficient for the Irish children’s advertising code?
- If not, which, if any of the above examples from the ASAI code and/or from other countries, provided above, do you wish to see incorporated into the Irish children’s advertising code?
- Are there additional rules you wish to see included under this heading? Please provide any proposals you may have in this regard as well as a rationale for their inclusion.

2.5. Feedback

‘Inexperience and credulity’ elicited many responses stating, for example, that ‘Advertisers should not be allowed to fool children with false images and misleading promises.’²⁷ Information received is now considered from general and specific perspectives.

2.5.1. Responses given

The general consensus among respondents was that Article 16(a) of the *Television Without Frontiers* directive was too vague and unspecific to be of any real value in a children’s advertising code. While many respondents favoured the approach taken in New Zealand, the majority of respondents favoured a mix of the concepts put forward with the New Zealand clause as the core of any approach taken in the proposed Irish code. Regarding the clauses to be added on, the ASAI’s emphasis on the non-exploitation of children and not making children ‘feel inferior to others if they did not buy an advertised product’ took precedence above all others. Another addition requested was that the word ‘indirectly’ be added if ‘directly exhort minors’ is used.²⁸ This received substantial support among individual respondents, being echoed by the National College of Art and Design (NCAD) when it said ‘Sophisticated editing and sequencing of images can amount to indirect exhortation.’²⁹ Less reference was made to the example from Finland and the Australian example attracted no comment at all.

²⁵ *Act on Television and Radio Operations* (Act No.7444/1998).

²⁶ Community Broadcasting Association, Australia (2001), *Community Television Code of Practice*, p.4.

²⁷ Anonymous: web submission 40.

²⁸ Anonymous: web submission 44.

²⁹ NCAD: written submission 44.

2.5.2. Comparison of responses given by group belonged to

Replies from individuals suggested that, as children were vulnerable, their inexperience and credulity should not be played upon in this instance. One respondent stated that since children do not have a critical faculty, they warrant protection: 'Advertising to the uncritical is cynical.'³⁰ For many, the wording of the *Television Without Frontiers* directive was insufficient, that it was 'not strong enough'.³¹ Consequently, each favoured a mix of this section with the Irish statutory code, the ASAI code and/or examples from other countries. A few opted for a combination of all elements.³² Most support was voiced for the clause from New Zealand.

Information from representative organisations on this topic was comparatively scant. The Family and Media Association (FMA) supported the *Television Without Frontiers* directive while the National Disability Authority (NDA) supported a combination of the *Television Without Frontiers* directive with the ASAI code.³³ The Children's Rights Alliance (CRA) favoured the *Television Without Frontiers* directive but similarly to the individual respondents requested the inclusion of the word 'indirectly'.³⁴ The Law Reform Committee voiced its support for a combination of the *Television Without Frontiers* directive and the New Zealand example. It continued on to say

How well this works in practice must be debated, as there will be such differing opinions on the value of products advertised, on what is exploitation and what is straightforward communication of information. However, that is not to undervalue such a standard, which will be of use in at least the most extreme cases.³⁵

Views of the advertisers, advertising organisations and manufacturers can be outlined as follows. The idea to address the subject of 'inexperience and credulity' was generally welcomed. The Food and Drink Industry, Ireland (FDII) stated that the move was 'welcomed by industry who recognise that planning or designing communications to children must be directed at children at their level of knowledge and sophistication.'³⁶ Others also expressed dissatisfaction with the *Television Without Frontiers* directive. Nestlé Ireland suggested a combination of this wording with that of the ASAI code. Others expressing a preference opted for the ASAI code exclusively, believing it covers all relevant issues.³⁷ Interestingly some in this category asserted that children were capable of more understanding than was often acknowledged. The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) stated that since television had been a part of daily life in Ireland since the 1960s, children were 'very familiar with advertising and from the age of 8 years understand full well its commercial intent and easily differentiate it from programming.' 'Any argument', they continued, 'that calls for the

³⁰ Jane Buggle: email submission 20.

³¹ Anonymous: web submission 55.

³² Kathleen Hughes: web submission L13.

³³ FMA: written submission 54; and the NDA: written submission 51.

³⁴ CRA: written submission 38.

³⁵ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

³⁶ FDII: written submission 57. The FDII was formerly the Food and Drink Federation (FDP).

³⁷ See Appendix II for a full transcript of the ASAI code in this regard.

insulation of children from advertising citing naivety or lack of understanding is at best an over simplification.’³⁸ While making this observation, however, the AAI and IAPI did voice support for the BCI’s proposal to address the issue of ‘inexperience and credulity.’ More specifically, they said

This is an important aspect of self-regulatory codes of advertising to children in Europe and is necessary to ensure that children’s natural credulity and lack of life experience are not exploited. Whilst we encourage the Commission to address this issue in the Code, any provisions must be proportional to and in line with the reality of children’s understanding of advertising and their use of the media today.

³⁹

Similarly to other groups in this category, it professed the belief that different ages require different approaches and different levels of protection. Kerry Foods also referred to the ability of children. Here it said

As a brand leader in Childrens’ [sic] cheese snacking we in Kerry Foods conduct childrens consumer research on a regular basis. The children can be as young as 6. In our experience advertising plays a key communication role in this category for both parties once respected and codes adhered to. Children have a general appreciation for advertising and its usage. They have the ability and necessary language to make their own judgement while understanding the objective of each ‘manufacturer’; to deliver awareness, and provide product information. It is a relevant tool for both groups manufacturers and children.⁴⁰

Information was also received from some of the principal broadcasters. TV3 felt that no change was necessary: ‘We believe that the current code is appropriate. It is a given, in advertising generally, that the advertising copy must be truthful, so it is superfluous to have additional sections on not being misleading, as all general codes deal with this matter in any event.’⁴¹ RTÉ did not give a direct response to the questions set. Pertinent information, however, was contained in the *Guidelines for Children’s Advertising* which RTÉ submitted.⁴²

2.5.3. *Additional rules suggested*

Requests for additional rules to be included were sparse, emanating almost exclusively from the category of individual respondents. One respondent believed that any written text on the screen should be also be spoken. In addition, this person

³⁸ AAI/API: written submission 50, p.5.

³⁹ AAI/API: written submission 50, p.5.

⁴⁰ Kerry Foods: web submission, L1.

⁴¹ TV3: written submission 21.

⁴² RTÉ: written submission 28.

suggested a number of specifications which might be given.⁴³ Advertisements should include information on

- All additional extras required;
- The number of batteries required;
- How long batteries last during continual play;
- Identify if the help of a parent or guardian is required;
- How many players a game is suitable for;
- Should be clear regarding what extra parts are needed for full enjoyment but which are not included.

Dr. Charles Spillane while not offering additional rules, made an observation. This was as follows:

The Irish education system fails to train children from the earliest ages in critical analysis of the media and the messages that it promotes. I would advocate that the code contains provisions for a % [sic] of advertising revenue targeted at children, to be devoted to the independent development and provision of media analysis skills for all children in Ireland's primary and secondary schools. The children of Ireland should be empowered to overcome their inexperience and credulity regarding the mechanisms and objectives of advertising.⁴⁴

With reference to the advertisement of alcohol, one respondent stated that the message must be very clear, expressed in language that was accessible to children rather than to such people as public health officials and experts. Using an unsuitable level of language could negate the overall effect of the message being broadcast. To substantiate the point, this person stated that 'Messages such as "drink sensibly" are ambiguous and ineffective.'⁴⁵

2.6. Concluding remarks

There was substantial support for the inclusion of a section in the children's advertising code that deals with 'inexperience and credulity.' How that can be expressed generated no overall consensus, however. The following observations can be offered. Firstly, there was agreement that the wording of the *Television Without Frontiers* directive was inadequate in this regard and needed to be strengthened considerably. Secondly, there was significant support for the contents of the New Zealand clause which many felt should form the basis of the new code being developed. And finally, there was support for the inclusion of the word 'indirect' so that the resultant clause could reflect both the conscious and subconscious influence of advertising.

Regarding the ability of children, there was a difference between the views of advertisers, advertising organisations and manufacturers on the one hand and the

⁴³ Anonymous: web submission L5.

⁴⁴ Dr. Charles Spillane: web submission 94.

⁴⁵ Anonymous: web submission L21.

remaining groups on the other. Here it was seen that while children's inexperience and credulity should not be exploited, children were seen by the former group as being more advanced than was sometimes acknowledged. This resulted in a call from some quarters for different age groups to be approached differently.

3. Avoiding undue pressure

3.1. Introduction

Advertising influences children. How and to what degree, however, has been the subject of much debate. Some people argue that this commercial activity encourages children to ‘pester’ their parents and guardians for a specific item or service. Others connect the phenomenon of ‘pester power’ with peer pressure, with the influence on a child of his/her friends. In the *Phase 2 Consultation Document*, attention was drawn to how undue pressure on parents and/or guardians arising from advertising to children might be avoided. This includes the language of advertisements where the use of words such as ‘only’, ‘just’, ‘bargain’ prevail; words which might heighten the overall appeal of the product in question.

3.2. European legislation and national codes

Article 16(b) of the *Television Without Frontiers* directive states that advertising ‘shall not directly encourage minors to persuade their parents or others to purchase the goods and services being advertised.’ The Irish statutory code echoes this. The Advertising Standards Association of Ireland’s (ASAI) code states that advertising should not undermine the authority, responsibility or judgement of parents or guardians. In addition, advertisements should not include any appeals to children to persuade their parents or other adults to buy advertised products for them.⁴⁶

3.3. Examples from other countries

In Finland, it is stated that advertising should not encourage children to pester parents or others to purchase a product nor should it give the impression that everyone can afford the said product.⁴⁷ The 2002 code of the Independent Television Commission (ITC) in the United Kingdom states that the cost of the product should not be

⁴⁶ Advertising Standards Association of Ireland (2002), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), *Codes of Sales Promotion Practice* (3rd Edition), p.42.

⁴⁷ *Act on Television and Radio Operations*, (Act 7444/1998). Also: *MTV3 Finland’s Television Advertising Regulations* (1999), Chapter 6: “Children and Advertising”, May.

minimised by the use of such words as ‘only’ or ‘just’.⁴⁸ In Denmark, it is requested that advertisers do not promise prizes as a reward for winning a new purchaser.⁴⁹

In some countries, reference is also made to a child’s self-image. In Canada, for example, children’s advertising ‘may not imply that possession or use of a product makes the owner superior or that without it the child will be open to ridicule and contempt.’⁵⁰ The 2002 ITC code develops this further with the inclusion of ‘family’. Here it states that children must not ‘be made to feel inferior or disloyal if they or their family do not use a particular product or service.’⁵¹

3.4. Questions asked

Based on information reviewed, the Broadcasting Commission of Ireland (BCI) posed a series of questions. These were as follows:

- The code will contain a section on the avoidance of undue pressure. Do you believe the wording of the *Television Without Frontiers* Directive, as outlined above, is sufficient for the Irish children’s advertising code?
- If not, which, if any, of the examples outlined above from the ASAI code and from other countries do you believe should be included in the Irish children’s advertising code?
- Are there additional rules that you believe should be included under this heading? If so, please provide details as well as a rationale for their inclusion.

3.5. Feedback

Consideration of the responses revealed consensus vis-à-vis the inclusion of a section encouraging the avoidance of undue pressure. Findings are now presented from general and specific viewpoints.

3.5.1. Responses given

The majority of respondents stated that the wording of Article 16(b) the *Television Without Frontiers* directive was ‘insufficient’ and ‘inadequate’; only a handful suggested that it was acceptable on its own. They did not, however, discard it in its entirety but opted for using it as a basis on which to graft on ideas coming from other jurisdictions. Regarding the directive itself, many argued in favour of the inclusion of the word ‘indirectly’, to read that advertising ‘shall not directly *or indirectly* encourage minors...’⁵² The National College of Art and Design (NCAD) reiterated its point made in response to the second question, that the inclusion of ‘indirectly’ was

⁴⁸ ITC (2002), *The ITC Advertising Standards Code* – Section 7: ‘Children’, p.33.

⁴⁹ The Executive of Culture’s Executive Order No. 489 (1997), *Executive order concerning radio and television advertisements and programme sponsorship*, 11 June.

⁵⁰ Media Awareness Network (n.dat.), *The Broadcast Code for Advertising to Children*, The Code/Guidelines and Procedures, p.4.

⁵¹ ITC (2002), *The ITC Advertising Standards Code* – Section 7: ‘Children’, p.33.

⁵² Heather Walsh: email submission L4.

essential as ‘Sophisticated editing and sequencing of images can amount to indirect encouragement.’⁵³

Respondents in the main favoured the use of the *Television Without Frontiers* directive with all elements gleaned from other jurisdictions. Less favoured the use of the ASAI code as a basis with information included from some or all of the other countries.

3.5.2. Comparisons of responses given by group belonged to

Significant differences occurred when responses were considered by group belonged to. Among individual responses, support for the *Television Without Frontiers* directive as the basis for the new code received substantial, and significant, support. Suggested additions were some or all of the examples obtained from other jurisdictions with particular support voiced for the UK, Denmark and Canada. The need to include the word ‘indirectly’ also received considerable attention and support.

Regarding the representative organisations, using the EU directive as a basis also received support but again with additions. Some organisations drew on the examples provided. The Law Reform Committee opted for inclusion of all elements provided.⁵⁴ AMEN favoured a mix of the EU directive with information taken from the UK and Canada.⁵⁵ Again support for the ITC’s reference to ‘family’ received general support. The Family and Media Association (FMA) looked for a blend of the EU directive with the ASAI code and the section from the ITC’s 2002 code.⁵⁶ The National Disability Authority (NDA) favoured a mix of the EU directive and the ASAI code.⁵⁷

Examples of possible rewording were offered by some. The Children’s Rights Alliance (CRA) suggested the code incorporate an amended version of the directive to read as follows:

Advertising “shall not directly or *indirectly* encourage minors to persuade their parents or others to purchase the goods and services being advertised *or imply that everyone can afford the product – by, for example, using words such as ‘only €xxx.’ Children must not be made feel inferior, unpopular or disloyal if they or their family do not buy a particular product or service.*⁵⁸

Submissions received from the advertisers, advertising organisations and manufacturers chose a different route. These groups supported the use of the ASAI code.⁵⁹ The majority, however, did not accept this as being sufficient on its own. Rather they saw it as being a suitable basis upon which further elements could be added. Some did favour the use of the EU directive, for example *Safefood*, but these

⁵³ NCAD: written submission 44.

⁵⁴ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

⁵⁵ AMEN: written submission 5.

⁵⁶ FMA: written submission 54.

⁵⁷ NDA: written submission 51.

⁵⁸ CRA: written submission 38; its emphasis.

⁵⁹ The relevant section of the ASAI code is 5.3(c): ‘Advertisements should not undermine the authority, responsibility or judgement of parents or guardians. Advertisements should not include any appeal to children to persuade their parents or other adults to buy advertised products for them.’

were in a minority.⁶⁰ Irish International BBDO supported the ASAI code coupled with information from the ITC code, Canada and New Zealand. Zenith Optimedia leaned towards the ASAI code with Finnish and Canadian elements added while Nestlé (Ireland) Ltd. opted for a combination of the ASAI code with the EU directive.⁶¹ Lending support for the ASAI code, Food and Drink Industry, Ireland (FDII) stated ‘that advertising should mirror society and not lead it. We believe that advertising messages and the governing of such messages must be seen in the context of parental, family and teacher guidance.’⁶²

The ASAI favoured its own code. On this point, it said

The ASAI Code explains, in a general way, the rule relating to “pester power” to say that advertising should not undermine the authority, responsibility or judgement of parents. It is felt that this is an appropriate setting for the particular rule on pester power and is useful to meet concerns that may arise that advertising may sometimes appear to make life difficult for parents without necessarily directly appealing to children to persuade their parents.⁶³

Unlike responses received from the other groups, the ASAI argued against references to indirect influences. Here it stated that the new code ‘should not concern itself with any indirect influence which it is sometimes felt that adult advertising may have on encouraging an interest in children in the products and services advertised, whether or not the products are for use by children.’⁶⁴

The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) supported the ASAI code. The submission continued on to say that ‘The aim of many self-regulatory codes, which have included provisions on ‘pester power’, has been to ensure, wherever possible, that advertising does not contribute to increased requests generated by children and, as a result, increase the pressure on parents.’⁶⁵

Viewpoints from broadcasters were as follows. While agreeing that parents and/or guardians should not be placed under pressure, TV3 stated that

Given that the code will have a statutory basis we would caution against using expressions such as “feel inferior or disloyal” as they are ambiguous and a more straight forward wording will cover most instances of possible abuse. In the event that another approach is undertaken it will be extremely difficult to adhere to the EU principles for regulation, in

⁶⁰ Safefood: written submission, p.5

⁶¹ Irish International BBDO: written submission 45, p.2; Zenith Optimedia: web submission L5; Nestlé (Ireland) Ltd.: written submission 41.

⁶² FDII: written submission 57, p.3. The FDII was formerly the Food and Drink Federation (FDP).

⁶³ ASAI: written submission 39, p.9.

⁶⁴ ASAI: written submission 39, p.9.

⁶⁵ AAI/IAPI: written submission 50, p.8

particular the “pursuance of clear policy goals” and ensuring “legal certainty.”

RTÉ did not provide information specifically on this area. Similar emphases, however, are included in its *Guidelines for Children’s Advertising* which was attached to its submission.⁶⁶

3.5.3. *Observations made and additional rules suggested*

Several people put forward their observations while others proffered additional elements. These can be outlined as follows.

‘Pester power’, it was argued by some, is not always a negative phenomenon. Martin Kelly said

It depends what you mean by pester power. If you mean by repetitive ads, then probably yes. However, it is not a problem if the message is good – i.e.: “drink milk – them bones, them bones need calcium” versus “I’d rather have a bowl of coco-pops”. The key is to getting the content correct and appropriate, then its up to the advertiser to determine if they want to advertise or not.⁶⁷

The role parents play in children’s lives was often referred to. Stephen Jio’s observation echoed sentiments expressed:

I am somewhat at odds with this as an inclusion at all. Pester Power [sic] is a factor only when parents allow this behaviour to succeed. The problem I see with this is that it shifts the responsibility of parenting, in this particular instance, away from the parent. Yes, undue pressure should not be applied to children, however the degree of this element cannot be measured.⁶⁸

Nestlé (Ireland) Ltd. also referred to the parental role, something which it believed received sufficient attention in the ASAI code. Here it stated

It is...important to remember that children learn by parental guidance and example. Parents have a responsibility to make children understand that they can’t always have everything they want. This parental role is recognised and protected in the ASAI code, which states that advertising should not undermine the authority, responsibility or judgement of parents or guardians.⁶⁹

The promotion of free gifts was also referred to. Providing such incentives to encourage first purchases was seen as unacceptable by many. So too was encouraging

⁶⁶ RTÉ: written submission 28. See, for example, 1(d) and (k) of the guidelines.

⁶⁷ Martin Kelly: written submission, 18.

⁶⁸ Stephen Jio: web submission, 28.

⁶⁹ Nestlé (Ireland) Ltd.: written submission 41.

children to buy for the benefit of others. Stressing this point, the NCAD said ‘The Code should carry a rule which prohibits promotion of schemes to assist schools in acquiring materials or equipment through credits brought through purchasing.’ Why it believed this necessary is due to the fact that this was seen as ‘an insidious way of reaching children through teachers with a view to putting pressure on parents to purchase goods and services.’⁷⁰

To reduce pressure, it was suggested that the number of advertisements broadcast per hour be contained. Here the BA in Media Studies class at NUI Maynooth suggested that there be no more than six advertisements in an hour, that children’s advertisements should not be broadcast prior to 3 p.m. and that products advertised should not exceed a specified amount; for example, €65.⁷¹ Restrictions on the price of products advertised was supported by a significant number. Heather Walsh said that ‘Costs should be clearly stated without qualification or minimisation.’⁷² The Law Reform Committee stated that

It may be helpful to require products costing over an agreed threshold (say €100) to give an indication of the standard price. We recognise that prohibiting advertising of products costing more than a certain price is unfair on the producers of such products (for example, PlayStation), and would restrict revenue for the media, but not mentioning a price can lead to illusions on the part of young children.⁷³

3.6. Concluding remarks

The general consensus was that the *Television Without Frontiers* directive was not sufficiently detailed to deal with this particular area. A more rounded approach was required whether it used the EU directive or the ASAI code as its basis. Favour was found for the inclusion of ‘family’, a restriction on advertisers promoting their product by the use of prizes and the need to protect children from not feeling inferior or subject to ridicule should they not acquire a given item. Inclusion of ‘indirect influence’ also received significant support.

Observations and elements suggested covered a number of themes. These ranged from the presentation of cost, the level of cost permissible and the volume of advertisements broadcast. The role of parents vis-à-vis pester power also received considerable attention. For Una Tierney, “‘Pester power’ is only as powerful as a parent allows.”⁷⁴

⁷⁰ NCAD: written submission 44.

⁷¹ The Centre for Media Studies, NUI Maynooth: written submission 46, p.10.

⁷² Heather Walsh: email submission L4.

⁷³ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

⁷⁴ Una Tierney: written submission 75.

4. Special protection for children in advertising

4.1. Introduction

How children are to be portrayed and represented in advertisements was addressed under this heading. A number of issues were hereby outlined – for example, the use of adult actors to portray children and the privacy of the child – and respondents were asked to respond to these accordingly.

4.2. European legislation and national codes

Existing practice was referred to. The *Television Without Frontiers* directive makes no specific reference to the principal issues. Article 16, however, does state that ‘television advertising shall not cause moral or physical detriment to minors.’ Article 16(c) states that advertising shall not exploit the special trust minors place in parents, teachers or other persons. The Council of Europe’s *Convention on Transfrontier Television* states that ‘Advertising addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities.’ The Irish statutory code echoes these references. The Advertising Standards Association of Ireland’s (ASAI) code states that children should not be portrayed in a manner that offends against accepted standards of good taste and decency.⁷⁵ It continues on to say that an advertisement should not ask children to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians.⁷⁶

4.3. Examples from other countries

In the United Kingdom, reference was made to specific issues concerning the protection of children in advertising, The Independent Television Commission’s (ITC) 2002 code deemed that advertising must not portray children in a sexually provocative manner. Consequently, children must not appear naked or in a state of partial undress and advertising must not provide anxiety in children over their bodily

⁷⁵ Advertising Standards Association of Ireland (2002), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), Codes of Sales Promotion Practice (3rd Edition), pp 41-2.

⁷⁶ Advertising Standards Association of Ireland, p.43.

appearance.⁷⁷ In Denmark, children under 14 years of age may only appear in television advertisements when it is appropriate to do so – for example, as a natural element of the depicted environment or to demonstrate the use of products associated with children.⁷⁸

4.4. Questions asked

From the information presented, respondents were asked to consider a number of related themes. Questions asked were as follows:

- The code will include a section dealing with the special protection of children in advertising. In that regard, which of these areas, if any, should be included in this section?
 - (a) The sexualisation of children;
 - (b) The use of children to formally present products or services that they could not be expected to buy themselves or to comment or provide testimonials on products or services;
 - (c) The use of adult actors to portray children and whether this can offend the dignity of children;
 - (d) The privacy of the child and the child's family.
- Do you consider that any of the examples from the ASAI code or the examples from other countries should be included in the code? If so, which ones?
- Are there additional matters or rules which you consider should be included? If so, please provide details in this regard and include a rationale for your proposals.

4.5. Feedback

Support was given for the inclusion of a section which would afford special protection for children in advertising. The feedback section is hereby divided into two distinct sections – one dealing with the four areas specified and the second considering the clauses proffered.

4.6. Sexualisation, testimonials, adult actors and privacy

The majority of respondents supported the inclusion of restrictions being placed on all four areas. Observations on these areas are considered here in brief. The nature of the responses made is indicative that this is an area which should be approached with caution as it is in need of great care and attention to detail. Perceived difficulties, ambiguities, the need for clear interpretation and flexible application peppered a number of submissions. Such points have been highlighted as applicable.

4.6.1. The sexualisation of children

Support from all groups was voiced for prohibiting the sexualisation of those under 18. How this is to be determined, however, was questioned by Martin Kelly when he

⁷⁷ Independent Television Commission (2002), *The ITC Advertising Standards Code*, Section 7: 'Children', p.36.

⁷⁸ The Executive of Culture's Executive Order No. 489 (1997), *Executive Order concerning Radio and Television Advertising and Programme Sponsorship*, 11 June.

said ‘...sexualisation can be a fine line, e.g. does that include make-up for girls for example (e.g. Barbie ads) or does it include boys or girls “fancying” each other, e.g. in the pre-teen age group (10-12)?’⁷⁹ The need for clear, and consistent, interpretation is hereby highlighted.

The possible contents of this section were referred to. Catherine Murphy said ‘I hope there will be an absolute ban on sexual images on children – e.g. small children dressed in skimpy clothes while dancing like adult pop stars. I know that this is a very subjective thing but could there be guidelines on the use of obvious adult type make-up on young girls, high heeled shoes, levels of skin exposed...etc.’⁸⁰ Such sentiments were echoed by Grace Wells when she stated that ‘Rules against the sexualisation of children should be very clearly defined. It is not merely nudity which is an issue but the way children are dressed and made-up. They should not be dressed as mini adults. Their childhood must be protected.’⁸¹ Stephen Jio felt there were two issues at work here. More specifically, he stated that

one is the labour standards of employing children and the other is the end product of the advertisement. Regarding the labour standards, I would presume that it is illegal to compromise a child’s dignity, which would include the sexualisation or any other action that could harm the child in any way. This would cover these issues, as would laws regarding child pornography. The dignity of the child is paramount, but advertisers should be accountable to the same standards as everybody else.⁸²

4.6.2. *Product promotions and testimonials*

Restricting the use of children in promoting products also received support. According to Heather Walsh, ‘Testimonials from children...may have an effect on children viewing and may then constitute peer pressure and add to the ‘pester power’ of the advertisements.’⁸³ The National College for Art and Design (NCAD) also voiced its support for restrictions in the use of children to present products and/or services.⁸⁴ Some respondents argued against the use of children under 18 years old in advertising generally. Here one person stated that

I don’t believe that any child i.e. person less than 18 should be allowed to appear in or promote any advertising campaign for a product. As minors, children cannot enter into contracts without their guardians’ consent so it is usually in the adult’s rather than the child’s interests that they participate in this kind of promotion. This amounts to double exploitation – once by the product manufacturers and again by the child’s

⁷⁹ Martin Kelly: written submission 18.

⁸⁰ Catherine Murphy: web submission 48.

⁸¹ Grace Wells: web submission 82.

⁸² Stephen Jio: web submission 14.

⁸³ Heather Walsh: email submission L4.

⁸⁴ NCAD: written submission 44, p.1.

‘contract manager’ who will also benefit financially from any payments.⁸⁵

A variety of other arguments was presented at this point. Firstly, many people felt that children could promote certain products but it was not acceptable, or often appropriate, for them to promote others. Here it was felt that while children were necessary for nappy adverts, seating children on toilets to promote toilet paper, toilet wipes or toilet air fresheners was not acceptable. The latter situation was seen as an invasion of privacy and something which embarrassed those children watching. The argument put forward by some advertisers, advertising organisations and manufacturers was that while children must be protected, ‘The portrayal of children in advertising is essential to demonstrate a wide range of products and services relevant to family life.’⁸⁶ Observations made in this respect serve to highlight both the need for clear wording in the new code that can be flexible in its application and the possible need to review advertisements on a case by case basis.

4.6.3. Using adult actors to portray children

This area attracted some conflicting opinions. Primarily, its inclusion alongside such larger issues as ‘The sexualisation of children’ was questioned. Stuart Fogarty, for example, said he agreed the sexualisation of children is an issue but failed ‘to understand that an adult pretending to be a child’ is relevant.⁸⁷ This introduced the complexity of regulating for this area. While there was support for protecting the dignity of children, there was also acknowledgement that using adult actors to depict children might not be offensive but may actually be humorous. This duality is highlighted by Lynn O’Keeffe who said that while protection is necessary in some cases, other circumstances allow for it. ‘I can see no harm’, Ms. O’Keeffe continued, ‘in adult actors depicting children such as in the Bernardos add [sic] or the current Vicks Vapour Rub add [sic], which is very clever in its depiction of adults sleeping “like babies”.’ The Law Reform Committee also voiced its reservations about this section when it said

...we accept that it may offend children’s dignity. Certain advertisements using children as actors do that anyway...it is not in the interests of advertisers to do this, and absurd characterisations is an accepted convention in comedy...Prohibiting this may be going too far in the cause of political correctness.

Grace Wells echoed this opinion. On this point, she said she did not ‘feel that the use of adult actors as children offends their dignity – there are many worse crimes that occur towards children within adverts.’⁸⁸

One respondent voiced concern regarding the role of children in adult oriented advertising – ‘these images are particularly powerful for children as they depict the

⁸⁵ Anonymous: web submission 20.

⁸⁶ AAI/IAP: written submission 50, p.10.

⁸⁷ Stuart Fogarty: web submission 66.

⁸⁸ Grace Wells: email submission 82.

child in a role with an adult.’⁸⁹ This point was reiterated by another respondent – ‘...there is an increasing abuse of the use of children to sell products to parents.’⁹⁰

Other portrayals of children emerged for consideration. Brian Patterson raised the issue of body image and the need for caution to be applied. According to Mr. Patterson, ‘Physical attributes such as obesity or diminutive stature should not be used as vehicles of humour.’⁹¹ Pdraig Haran requested suggestions that ‘thinner is more beautiful’ be excluded.’ The effect of such a message, he continued, could have long lasting consequences on a child’s well being.⁹² The BA in Media Studies class at NUI Maynooth developed this point further by saying that ‘...stereotypical images can provoke anxiety in children regarding their own body image, religion, race, socio-economic background, etc.’ and these should therefore be prohibited.⁹³ Another respondent said that

There are specific aspects in the UK model which we need to take on board or even expand. The key one is ensuring that children are not featured in such a way as to create anxiety in children over their appearance, body, shape, attractiveness, as distinct from the issues of taste and decency.⁹⁴

The portrayal of disabled children was presented for consideration. The National Disability Authority (NDA) asked that children with disabilities

not be portrayed in such a way in advertising as would serve to propagate negative views among their peers and the general population as a result of advertising. If children with a disability appear in advertisements or where advertisements are directly targeted at individuals with a disability, this should protect children with a disability from negative attitudes as a direct result.⁹⁵

Special protection for the portrayal of chronically sick children in advertisements was requested. Here Mirjana Kocova said that ‘Their appearance on TV or in the media as advertisement for doctors, surgeons or special health procedures should be banned. Special rules should be applied even if fund raising for some child is undertaken.’⁹⁶

4.6.4. *Privacy*

There was overwhelming support for protecting the privacy of the child and of his/her family. Some felt this was a necessary provision so that the ties between family and child, which are all important in childhood years, are not tampered with. Another respondent felt that protecting the privacy of children was indeed important given the fact that ‘we live in a society increasingly in the grip of reality TV.’⁹⁷ Consensus

⁸⁹ Anonymous: web submission 19.

⁹⁰ Anonymous: web submission 84.

⁹¹ Brian Patterson: web submission 21.

⁹² Pdraig Haran: web submission 76.

⁹³ The Centre for Media Studies, NUI Maynooth: written submission 46, p.11.

⁹⁴ Anonymous: web submission 11.

⁹⁵ NDA: written submission, p.11.

⁹⁶ Mirjana Kocova: web submission 77.

⁹⁷ Heather Walsh: email submission L4.

existed that no information should be given without permission having been obtained from parents or guardians.⁹⁸ On this point, TV3 said that ‘children should be informed that they should seek parental consent before supplying private information. This is suggested as it is accepted practice for codes that involve calling back phone lines (for competition lines/request lines etc.) to provide for bill payers consent.’⁹⁹

4.7. European legislation and national codes

In responding to the tasks set, more people concentrated on the four areas specified than providing their assent/dissent for the examples provided. Information received is hereby reviewed.

4.7.1. Responses given

There was general consensus that the *Television Without Frontiers* directive was inadequate in this regard. The majority chose to disregard it altogether, a handful suggested coupling it with the rather extensive wording of the ASAI code while only a couple supported its use on its own.¹⁰⁰ Only one respondent suggested the Council of Europe’s *Convention on Transfrontier Television* should be adopted.¹⁰¹ There was significant support for examples provided from the UK and from Denmark. Respondents chose to select either country separately or in combination with the ASAI code. A few respondents supported the use of details from the UK, Denmark and the ASAI code.

4.7.2. Comparison of responses given by group belonged to

Individual submissions provided the most varied responses. While support was given for three main approaches – the ITC code, the example from Denmark and the ASAI code – respondents were divided in their support for a single country, two countries, either country in combination with the ASAI code or all examples grouped together. Regarding support for the Danish clause, suggestions were made that if adopted, the age limit be raised to ‘18.’¹⁰²

Responses received from representative organisations were decidedly more consistent. The Law Reform Committee supported the ASAI code with information taken from the UK and Denmark.¹⁰³ The NDA opted for a coupling of the EU directive with the ASAI code while the Family and Media Association (FMA) supported this approach with the addition of information from the UK.¹⁰⁴ The Children’s Rights Alliance (CRA) did not answer the question directly, choosing instead to provide its own wording:

- ‘Children should not appear in advertisements unless such an appearance is either a natural element of the depicted environment, or necessary in order to explain or demonstrate the use of products associated with children.

⁹⁸ Anonymous: web submission 58.

⁹⁹ TV3: written submission 21.

¹⁰⁰ See Appendix III for relevant sections of the ASAI code. TV3, for example, supported the EU directive without any additions.

¹⁰¹ Food and Drinks Industry, Ireland: written submission 57, p.3.

¹⁰² Heather Walsh: email submission L4.

¹⁰³ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

¹⁰⁴ NDA: written submission 51, p.11; FMA: written submission 54, p.2.

- Children should not be used in advertisements to formally present products or services that they could not be expected to buy themselves or to comment or to provide testimonials on products or services.
- Adult actors should not be used to portray children.
- Advertising must not provoke anxiety in children regarding their bodily appearance. Neither must it portray any child in a sexually provocative manner.
- Children must not appear naked or in a state of partial undress.¹⁰⁵

Submissions made by advertisers, advertising organisations and manufacturers were linear in their approach. With the exception of the ASAI and Irish International BBDO who supported the ASAI code on its own, all others supported the ASAI code in combination with other clause/s. Some supported the pairing of the ASAI code with the EU directive.¹⁰⁶ *Safefood* was alone in its support for the EU directive exclusively while *Glanbia* opted for use of the ASAI code in combination with the Irish statutory code.¹⁰⁷ The Food and Drink Industry, Ireland (FDII) supported the use of the ASAI code in conjunction with the EU directive, the Council of Europe's *Convention on Transfrontier Television* and the UK's ITC code 2002.¹⁰⁸ *Zenith Optimedia* preferred the ASAI code with information from the Danish example added.

Among the broadcasters, TV3 supported the *Television Without Frontiers* directive. RTÉ, while not responding directly to the questions asked, included many of the elements highlighted in its submission and attachments.¹⁰⁹

4.8. Concluding remarks

There was particular support for three main examples. The ASAI code, the 2002 ITC code and the example from Denmark were seen as applicable, whether singularly or in combination of two or all. There was general agreement that the *Television Without Frontiers* directive was inadequate in this respect and the majority chose to discard it and look elsewhere.

Information reviewed is indicative that in affording special protection to children, one is indeed confronted with a very complex area, one in need of particular care and attention. While there was general support for the inclusion of all areas specified, the responses received showed there were various views prevailing. In their submissions, respondents showed that there were situations and/or depictions that were acceptable and those which were deemed unacceptable. Prohibitions and possibilities were thereby suggested.

The four areas specified were brought into question. Some believed that certain areas – for example, the sexualisation of children – was more a priority than the use of adult actors depicting children, one in greater need of protection and thus, regulation. The

¹⁰⁵ CRA: written submission 38.

¹⁰⁶ Unilever: written submission 36; Nestlé (Ireland) Ltd.: written submission 41; AAI/IAPI: written submission 50, p.11; Tayto Ltd.: written submission 53, p.2.

¹⁰⁷ *Safefood*: written submission 47, p.5; *Glanbia*: written submission 48.

¹⁰⁸ FDII: written submission 57, pp 3-4; *Zenith Optimedia*: web submission, 75.

¹⁰⁹ RTÉ: written submission 28 – 'Section 7. Restrictions imposed by Children's Advertising Codes' – recommendations. Also see *Guidelines for Children's Advertising* (for example, 1(a) and (b)).

argument was put forward from the advertising sector that it is necessary to use children to advertise certain products and that such a practice is acceptable once standards of taste and decency are maintained. Viewed collectively, submissions reviewed illustrate that this is an area in need of attention to detail. It also suggests that emphasis should be placed on using clear and accessible wording which provides a basis for clear interpretation and flexible application.

The ASAI asserted in overseeing this area, regulation 'is best left to self-regulation where each case can be decided on its own particular merits in the light of current social norms and concerns.'¹¹⁰ Based on the variety of responses received and the different elements highlighted, providing protection for children may indeed necessitate an individual approach rather than more extensive prohibitions.

¹¹⁰ ASAI: written submission 39, p.10.

5. Safety/avoidance of harm

5.1. Introduction

Regulations referring to the safety and protection of children were reviewed in this section. Attention was drawn to attempts to present advertising which has the potential to mentally, socially, physically or morally harm a child or young person. Situations specified include the depiction of children in unsafe environments and/or engaged in anti-social activities.

Other aspects were included. Certain regulations require that advertising does not arouse fear in children, whether through the inclusion of violent or aggressive images or arousing a child's fear of loneliness or of being rejected. Reference to advertising food to children is also contained herein.

5.2. European legislation and national codes

In examining current practice in this regard, one discovered that there is extensive material available – some broad and some specific. In Article 16(d), the *Television Without Frontiers* directive states that 'advertising shall not unreasonably show minors in dangerous situations.' The Irish code is more specific in this regard when it states that:

Advertisements should not encourage behaviour prejudicial to health or safety. Advertisements should not without justifiable reason depict or describe situations which show dangerous practices or a disregard for safety. Special care should be taken in advertisements directed towards or depicting children.

The Advertising Standards Association of Ireland's (ASAI) code is more specific.¹¹¹ It outlines a number of requirements relating to child safety and the avoidance of harm.¹¹² Included in those identified are: that children are not shown talking to strangers or in unsafe situations; that children should not be depicted as unattended in street scenes until they are old enough to take responsibility for their own safety; that

¹¹¹ See Appendix IV for the relevant sections of the ASAI code.

¹¹² Advertising Standards Association of Ireland (2002), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), Codes of Sales Promotion Practice (3rd Edition), pp 41-2.

a fireguard should be in place on an open fire if a child is present; and, that advertising should not encourage an unhealthy lifestyle, unhealthy eating or drinking habits.¹¹³

5.3. Examples from other countries

Examples gleaned from other countries follow similar themes. In Australia, for example, advertisers are required to avoid the portrayal of violence and other frightening images in children's advertising.¹¹⁴ In New Zealand, children are not to be depicted in advertisements behaving in a socially unacceptable fashion nor should they be encouraged to do so. In addition, children should not be portrayed behaving in a vindictive or bullying manner.¹¹⁵

Referring to the advertisement of food to children, one sees advertisements in New Zealand are not permitted to encourage inappropriate purchase or excessive consumption. Pushing this further, Danish advertisements for confectionary and soft drinks cannot indicate that a product can replace regular meals.¹¹⁶

5.4. Questions asked

On the basis of information reviewed, respondents were asked to consider a number of questions on interrelated themes. These were as follows:

- Which, if any, or all, of the examples outlined above that draw on examples from Ireland and other countries, do you believe should be included in the children's advertising code?
- In answering, please make reference to the following headings as appropriate:
 - (a) General safety;
 - (b) Safety in the home;
 - (c) Road safety;
 - (d) Behaviour;
 - (e) Use of violence in advertising;
 - (f) Diet and nutrition.
- Are there additional rules you believe should be included?
Please provide a rationale for their inclusion.

5.5. Feedback

This section is divided into two distinct parts to reflect the two questions asked. Firstly, responses to samples from existing codes are considered. Thereafter, consideration is given to observations made on the five areas specified.

¹¹³ ASAI (2002), pp 41-3.

¹¹⁴ Advertising Federation of Australia (n.dat), *Advertising to Children*, p.2.

¹¹⁵ Advertising Standards Authority, New Zealand (2001), *Code of Practice – Code for Advertising to Children*, pp 2-3.

¹¹⁶ The Executive of Culture's Executive Order No. 489 (1997), *Executive Order concerning Radio and Television Advertising and Programme Sponsorship*, 11 June.

5.6. Opinions of sample codes provided

Compared to other sections, there was a very limited response to this question. Instead people chose to focus their attention on the six areas listed. Consideration of the responses made is presented according to general and specific perspectives.

5.6.1. Responses given

The *Television Without Frontiers* directive received no support from any of the respondents. Only four supported this approach but only if it were combined with additional information.¹¹⁷ Many people supported the inclusion of elements from all examples provided. There was significant support for the ASAI code either on its own or in combination with sample material from other countries. Most popular of information obtained from other jurisdictions were the clauses from New Zealand and Australia with more limited support being voiced for Denmark.

5.6.2. Comparison of responses given by group belonged to

Individual respondents provided more varied answers. Approximately half supported the inclusion of elements from all examples listed. The remainder favoured the ASAI code – either exclusively or in combination with one or more examples from other jurisdictions. Examples receiving most support were New Zealand and Australia. Less support was voiced for Denmark.

The representative organisations were more linear in their approach. The Children’s Rights Alliance (CRA) favoured the EU directive with the Irish statutory code and the ASAI code, the National Disability Authority (NDA) favoured the EU directive with the ASAI code while the Family and Media Association (FMA) favoured the combination of the EU directive, the Irish statutory code, the ASAI code with the example from Australia.¹¹⁸ The Law Reform Committee was alone in voicing its support for the inclusion of all elements mentioned.¹¹⁹

Advertisers, advertising organisations and manufacturers were united in their support of the ASAI code. All but one respondent supported the ASAI code exclusively.¹²⁰ *Safefood* was alone in supporting the EU directive in combination with the Irish statutory code. Concern was voiced by many in this camp, however, regarding the feasibility and timing of this section. More particularly, reference was paid to the forthcoming EU directive on health claims and it was believed that the BCI should not pre-empt this directive.¹²¹

TV3 supported the use of the ASAI code in this instance. RTÉ did not answer this question directly. Pertinent information, however, is supplied in its *Guidelines for*

¹¹⁷ Children’s Rights Alliance: written submission 38; National Disability Authority: written submission 51, p.11; Family and Media Association: written submission 54, p.2; *Safefood*: written submission 47, p.6.

¹¹⁸ CRA: written submission 38; NDA: written submission 51, p.11; and FMA: written submission 54, p.2.

¹¹⁹ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

¹²⁰ Unilever: written submission 36, p.5; Nestlé (Ireland) Ltd.: written submission 41; Irish International BBDO: written submission 45, p.3; ASAI: written submission 39; AAI/IAPI: written submission 50, p.12; Tayto Ltd.: written submission 52, p.2; Zenith Optimedia: web submission 47; and the Bank of Ireland: web submission 54.

¹²¹ Unilever: written submission 36, p.5; Irish International BBDO: written submission 45; AAI/IAPI: written submission 50, p.13; and Zenith Optimedia: web submission 47.

Children's Advertising. Section 2 is particularly relevant, and extensive, in this regard.¹²²

5.7. Areas specified for consideration

Of the areas specified, 'Diet and nutrition' received the most responses and consequently, this section is heavily tilted towards the consideration of what has emerged to be a very controversial topic. Opinions were voiced concerning the other five categories but to a far less extent. Information provided is now grouped under the headings listed.

5.7.1. General safety

Of those who responded to this section, there was agreement that advertisements should provide positive role modelling in the area of safety and general behaviour. Advertisements, it was argued, should not contain unsafe actions which might be easily emulated by members of a young audience. The only occasion when it was believed such an action was warranted was in the context of a public safety announcement.¹²³ While supporting these principal points, Sally O'Reilly developed this further by adding that

certain adverts show unrealistically thin women and this has a negative effect on children's self-image. I see this as a safety and a health issue. Advert actors are losing weight at an alarming rate. Somehow this needs to be looked at and people presented more realistically and healthily. Children are now dieting – this is unacceptable and their role models include those in advertising.¹²⁴

The Congress of Trade Unions (ICTU) also lent its support to this topic. The code, it said, should 'ensure that children and young people in advertising are never shown behaving in any way that may endanger themselves or others.'¹²⁵ Along similar, albeit more developed, lines the BA in Media Studies class at NUI Maynooth suggested that children's advertisements should not contain 'any dangerous action, stunt or gesture or reference to same, which, if emulated by children would pose a serious risk to their safety.'¹²⁶

5.7.2. Safety in the home

There was generally support for advertisements to reflect aspects of safety in the home. One respondent added that there should be a clear depiction of safe practices within the home, with 'the emphasis [on] parental instruction in household practices.'¹²⁷

5.7.3. Road safety

Support was given for safety on the roads. Responses focussed on how the roads were used and for the promotion of seat belts, helmets and all other protective measures.

¹²² See Appendix 5 for Section 2 of RTÉ's *Guidelines for Children's Advertising*.

¹²³ TV3: written submission 21.

¹²⁴ Sally O'Reilly: web submission 19.

¹²⁵ ICTU: written submission 49.

¹²⁶ The Centre for Media Studies, NUI Maynooth: written submission 46, p.12.

¹²⁷ Paul Butler: web submission 28.

5.7.4. Behaviour

Under this heading, support was given to the New Zealand code so that advertisements would ensure that children behave in a socially acceptable manner. There should not be, one respondent added, any ‘depictions of vindictive or bullying behaviour and no sexually suggestive or degrading images included.’¹²⁸ Some respondents recommended that acceptable behaviour included respect for others, animals and the environment.¹²⁹

5.7.5. Use of violence in advertising

Particular concern was voiced for this area with many respondents requesting that inappropriate violence be banned from advertising. One respondent developed this point by saying that restrictions on violence should also cover toy advertisements aimed at boys – for example, wrestlers, soldiers, guns, etc. This was seen as necessary, it was argued, as such advertisements ‘can promote an acceptance of violence among children.’¹³⁰

5.7.6. Diet and nutrition

‘Nutrition and Diet’ was the centre of attention. The level of information attracted on the advertisement of food products was overwhelming. This parallels a growth in research on obesity and the link, albeit not proven to any conclusive degree, between television and increasing levels of obesity among young people.

Among the respondents, there was general agreement that unhealthy eating habits should not be encouraged. How that might be achieved, however, elicited very different responses. The following is a sample of the opinions and/or requests proffered.

Some requested a ban on all ‘unhealthy’ foods – those containing too much sugar, salt and/or fat – and on all ‘junk food.’ Restrictions on advertising such food stuffs, it was argued, should be met by a corresponding increase of advertisements for healthy foods such as fruit, vegetables and cheese.¹³¹

The BA in Media Studies class at NUI Maynooth believed that foods with a high sugar content should carry warnings. In addition, it proposed sample wording for the new code: ‘No advertisement aimed at children should encourage an unhealthy lifestyle of unhealthy eating or drinking habits. Any food product intended for consumption by children should be depicted within the framework of a healthy balanced diet.’¹³²

In its submission, *Safefood* echoes this emphasis on food products advertised to children being seen in the context of a recommended diet, something it believes ‘gets little support’ at present.¹³³ ‘In light of [the] alarming rise in the levels of overweight and obesity’, it continued, ‘and the negative effect of advertising on children’s diet it is appropriate and necessary to adopt a precautionary approach in relation to the

¹²⁸ Jacinta Byrne: web submission 9.

¹²⁹ Natalia Mogelos: web submission 25; Paul Butler: web submission 28.

¹³⁰ Anonymous: web submission 1.

¹³¹ See, for example, Bodywhys: written submission 40.

¹³² The Centre for Media Studies, NUI Maynooth: written submission 46, p.13.

¹³³ *Safefood*: written submission 47, p.3.

advertising of food to children.’¹³⁴ *Safefood* outlined what it considered to be six fundamental principles and asked for these to be assimilated into the new code. These were as follows:

1. that advertising should not be used to promote energy-dense micronutrient-poor foods;
2. that the Children’s Advertising Code should support advertising that promotes messages related to public good and human well-being that are endorsed by government policies;
3. that there must be restrictions placed on the use of personalities to promote foodstuffs;
4. that the times during which advertising to children is allowed must be regulated;
5. that the amount of advertising to children, by types of category of food advertised must be regulated;
6. that advertising as a whole and not just individual advertisements must be monitored.’¹³⁵

One respondent linked food promotion with education. Here it was said that ‘Products that can harm children’s health, such as high fat foods, should always educate children about the problems with over-consumption. If this message is not explicit and clear, then the advertisement should be prohibited.’¹³⁶

Throughout its submission, the Green Party focussed considerable attention on the subject of food advertisement. Ideally, it stated, it would like to see a ban imposed on such advertising, on any product which could compromise the physical health and well being of children.¹³⁷ It requested that the BCI

introduce measures to prohibit the promotion as part of children’s television broadcast schedules of the sale and/or consumption of foodstuffs and beverages with high concentrations of (i) sugar; (ii) salt; and (iii) fat. The prohibition should also apply before/during/immediately following all programmes likely to be viewed by all children as indicated in programme indexing.¹³⁸

Lynn O’Keeffe questioned current codes and their actual enforcement. Here she referred to the ASAI code saying that snack foods should not be presented as a substitute for meals. And yet, she noted, that ‘Rice Krispies compares itself to Spinnach [sic], Dairylea Lunchables as a ‘lunch’, Sunny D as a good source of Vit. C...’¹³⁹ Effective and consistent application of the new code is therefore highlighted as essential. For Ms. O’Keeffe, imposing restrictions on foods containing high levels of sugar, salt and fat would not be sufficient. ‘Sugar-free’ products are also a concern. More specifically, she states that

¹³⁴ *Safefood*: written submission 47, p.3.

¹³⁵ *Safefood*: written submission 47, p.3.

¹³⁶ Anonymous: web submission 37.

¹³⁷ Green Party: written submission 43, p.10.

¹³⁸ Green Party: written submission 43, p. 24.

¹³⁹ Lynn O’Keeffe: written submission 20.

it is harmful to advertise as sugar free products that contain lots of other sugars, i.e. glucose, sucrose, fructose, aspartame, saccharine. Some advertising makes it extremely difficult for parents to encourage healthy eating...Hundreds of products are advertised as sugar free or toothkind but contain high levels of sugars.¹⁴⁰

Regarding the level of sugar, salt and fat, one respondent asked for instructions to be given with each item. Developing this point, it was said that

All food products should show the value of sugar, salt and fats compared to average daily recommended. For example, if a 'snack' product contains 70% of the salt recommended in a day then this would need to be highlighted or "no more than 1.5 should be consumed in a 24 hour period" (similar to paracetamol, etc.).¹⁴¹

One respondent believed the promotion of food products should also receive due consideration. In this respect, it was advised that no foods be advertised with the use of cartoon or puppet characters.¹⁴²

Advertisers, advertising organisations and manufacturers did not argue against the notion that obesity is increasingly becoming a problem of the young. They did, however, argue against attempts to lay all blame at their door. For Nestlé (Ireland) Ltd., 'Public concern over the increase of overweight children is right and justified. However the effect of advertising on this development is grossly overstated.'¹⁴³ Putting eating habits in context, this section offered a number of points for consideration. There was considerable unanimity among groups in this category.

Principally, groups in this category stated which food and drink beverages are not harmful in themselves. It is over indulgence that contributes to obesity. Furthermore, they argued that what children eat and the volume of which they consume is determined by the parents and/or guardians, by those most proximate to them. Consequently,

Parental likes and dislikes of food dictate to a large extent what is available in the home for children to taste. This has a significant impact during the most critical period of children's taste development. Particularly when they are very young.¹⁴⁴

Acknowledging that advertising is one contributory factor to obesity among children, it was argued that it is not the only one. Other prime factors must be taken into consideration – most prominent of which was the corresponding decline of physical exercise as levels of obesity increase.¹⁴⁵ Regarding these contributory factors, Nestlé

¹⁴⁰ Lynn O'Keeffe: written submission 20.

¹⁴¹ Anonymous: web submission 21.

¹⁴² Anonymous: web submission 1.

¹⁴³ Nestlé (Ireland) Ltd.: written submission 41.

¹⁴⁴ AAI/IAPI: written submission 50, p. 13.

¹⁴⁵ Irish International BBDO: written submission 45, p.3; Zenith Optimedia: web submission 47.

(Ireland) Ltd. stated that ‘Changes in society, such as the prevalence of ‘eating on the run’, increase in disposable income, rise of the single parent family etc. have all led to changes in eating habits and behaviour.’¹⁴⁶ The Food and Drink Industry, Ireland (FDII) also counted advertising of food and drink products as only one factor in dietary habit formation. It would add ‘sibling and peer pressure’ to the list.¹⁴⁷ To counteract increasing weight gain, Nestlé (Ireland) Ltd. suggests ‘Education on appropriate eating and exercise habits and parental control over children’s eating patterns rather than stricter restrictions on food advertising is key to addressing the issues of children’s diet and nutrition.’¹⁴⁸

RTÉ referred to food advertising in its submission, to how any restrictions might be implemented while highlighting its opinion vis-à-vis the implications should an all-out ban be applied.¹⁴⁹ Here it stated that

Understandably concerns have been raised about the sugar and salt content of some foods which are advertised primarily for children. RTÉ believes that a voluntary approach to this issue would be more effective than [sic] a ban. The ban would only drive advertisements for these products to non-Irish channels. A voluntary code adopted by the industry would allow for the requirement to state the sugar or salt content, to suggest balanced diets, to restrict the number of advertisements for certain foods, etc. to apply across the industry, encompassing both Irish and UK channels with targeted Irish audiences.¹⁵⁰

5.7.7. Additional rules suggested

Additional areas for consideration were suggested by only the few. The Children’s Rights Alliance (CRA) asked the BCI to protect children from advertisements for medicines and remedies. Here it stated that ‘Children are susceptible to pressure to take supplements which are claimed to boost energy and performance, particularly around the time of school examinations. For this reason, advertising should not suggest that normal good health can be improved by using a product.’¹⁵¹

The BA in Media Studies class also suggested some additions. Firstly, they referred to the safety of toys and other children’s products. According to these respondents,

Any product advertised which is aimed at children and requires the use of protective equipment (e.g. helmets, protective padding, etc.) shall clearly state this within the advertisement. Furthermore, such products should be advertised in a way that clearly depicts all necessary protective equipment when the product is being used.¹⁵²

¹⁴⁶ Nestlé (Ireland) Ltd.: written submission 41.

¹⁴⁷ FDII: written submission 57, p.4.

¹⁴⁸ Nestlé (Ireland) Ltd.: written submission 41.

¹⁴⁹ RTÉ: written submission 28.

¹⁵⁰ RTÉ: written submission 28.

¹⁵¹ CRA: written submission 38.

¹⁵² The Centre for Media Studies, NUI Maynooth: written submission 46, p.12.

In addition, it stressed that all toys advertised should conform to minimum quality standards. The CE mark, it was suggested, would provide such information.¹⁵³

MEAS (Mature Enjoyment of Alcohol in Society Limited) requested an addition. It stated that television advertising ‘could be an effective medium to raise awareness/education of children on the risks, dangers, consequences of underage drinking. The code should provide for such initiatives and include necessary safeguards.’¹⁵⁴

5.8. Concluding remarks

Responses to this section were decidedly uneven with considerable focus placed on ‘nutrition and diet.’ Limited attention was paid to the samples of codes provided. From information received, however, it was possible to determine support for the ASAI code as a basis for the new code with information grafted on from Australia, New Zealand and Denmark. Such an approach reflects the views of all groups responding.

Of the six areas specified, there was general support for the different aspects of safety and behaviour provided. Considerable support was voiced for a ban on the use of violence in advertisements unless it was in the guise of a public announcement and thus, deemed necessary.

The level of response given to the section on ‘nutrition and diet’ is indicative that this is an area in need of great consideration and perhaps, detail. Although not proven conclusively, the link between levels of obesity and advertising food products to children is linked in the minds of many. The category of advertisers, advertising organisations and manufacturers highlighted that advertising of food products is only one contributory factor among many and that the role parents play in food selection and over consumption must also be given due consideration. In addition, changing lifestyles and declining rates of physical exercise are also believed to play their parts.

At the conclusion of this overview, one thing is very clear. As an issue, the advertisement of food ‘is complex and requires sustainable professional consideration and measured response.’¹⁵⁵

¹⁵³ The Centre for Media Studies, NUI Maynooth: written submission 46, p.12.

¹⁵⁴ MEAS: written submission 52, p.1.

¹⁵⁵ FDII: written submission 57, p.4.

6. Parental responsibility

6.1. Introduction

The role advertisers play, and the regulations they should adhere to, in advertising to children form the basis of the *Phase 2 Consultation Document*. Broadcasters also carry responsibility for the material broadcast and the advertising accepted. This does not exclude parents and/or guardians from consideration. Attention was therefore drawn at this juncture to how a balance between the responsibility of advertisers/broadcasters and parents/guardians might be reflected in the children's advertising code. More specifically, while the code will contain rules to govern advertising to children, it will remain the responsibility of parents to ensure that children are watching age appropriate material. The aim of the code would be to support the role of the parents in protecting the well-being of children rather than assuming total responsibility for the material to which children are exposed.

6.2. European legislation and national codes

Acknowledging the role played by parents and/or guardians in television viewing patterns of children is a comparatively new departure. No specific reference appears therefore in the *Television Without Frontiers* directive or the Irish statutory code. The Advertising Standards Association of Ireland's (ASAI) code states that 'Advertisements should not undermine the authority, responsibility or judgement of parents or guardians.'¹⁵⁶

6.3. Examples from other countries

There is scant reference to this dual responsibility in codes produced in other countries. In Australia, however, it has been said that 'while parents have the prime responsibility to provide guidance to children regarding the commercial world, advertisers should support the parent-child relationship.'¹⁵⁷

¹⁵⁶ ASAI: written submission 39, p.13. This clause was omitted from the *Phase 2 Consultation* document. With the exception of some groups from industry, no opinions were therefore voiced on the applicability of this clause. See appendix VI for relevant sections from the ASAI code.

¹⁵⁷ Advertising Federation of Australia (n.dat), *Advertising to Children*, p.4.

6.4. Question asked

Introducing this topic for further discussion, the Broadcasting Commission of Ireland (BCI) asked one key question. It was

- In what way do you think the balance between parents/guardians and advertisers/broadcasters should be expressed in the context of the children's advertising code? Please provide a rationale for your proposal.

6.5. Feedback

The majority of respondents supported the inclusion of a section referring to, and supporting, parental responsibility. There were two exceptions, however. Dr. Charles Spillane did not believe that a section on parental responsibility was essential. 'The burden of liability and scrutiny', he continued, 'should rest with the (a) commercial companies (b) their advertisers and (c) the broadcasters that relay the advertising.'¹⁵⁸ Similar sentiments were expressed by Kathleen Hughes when she said 'It is not appropriate that parental responsibility is expressed in the advertising code, which is primarily for advertisers.'¹⁵⁹

In responding to this section, most people focused on giving their opinion on the topic raised with less giving consideration to the example provided from Australia. Of those who did consider its applicability, of which there were few, there was support for adopting this approach and wording. Although some individuals voiced support for the inclusion of this measure, support was more noticeable among the category of advertisers, advertising organisations and manufacturers.¹⁶⁰ The Family and Media Association (FMA) also believed this was an appropriate inclusion.¹⁶¹

Opinions given on the topic of parental responsibility divided into three camps. These were that (a) responsibility lies with the parents; (b) responsibility lies with the broadcasters and/or advertisers; and (c) responsibility lies with both. Details provided are now considered using these three points as headings. This will provide a general overview of opinions expressed. Thereafter, the approach will consider information given according to the group belonged to. In conclusion, the option receiving most support will be identified and suggestions made vis-à-vis the way forward.

6.6. The responsibility of parents or broadcasters?

Opinions voiced, often fervent in nature, were not always clear cut. Many responses falling into the category of 'responsibility lies with both' could as easily have been put into one or both of the other two groups. What is presented hereunder is simply a cross sample of the views expressed under each heading.

¹⁵⁸ Dr. Charles Spillane: web submission 60.

¹⁵⁹ Kathleen Hughes: web submission 93.

¹⁶⁰ Zenith Optimedia: web submission 94; Nestlé (Ireland) Ltd.: written submission 41; Irish International BBDO: written submission 45; Glanbia: written submission 48; Tayto Ltd.: written submission 53, p.2; and the FDII: written submission 57.

¹⁶¹ FMA: written submission 54.

6.6.1. *Responsibility lies with the parents*

In general, the view was expressed that parents must take a more active role in monitoring what their children watch on television. Points were raised regarding individual parents' ability to carry out this function. A number of factors were held accountable for this – ranging from ability to availability. Jacinta Byrne believed that 'Parents do have the ultimate responsibility but unfortunately not all parents are aware of the influence advertising and broadcasting may have on their child...' ¹⁶² Another respondent stated that 'Parents have the responsibility not to let their children watch tv unsupervised for long periods.' ¹⁶³ While acknowledging changing life styles and two parents often having to work, concern was voiced by some that television was often being used in *loco parentis* and that parents needed to realise that it was 'not a babysitter.' ¹⁶⁴ Another respondent said that '...parents have a dramatic role in controlling what their kids do. We should not absolve them from this.' ¹⁶⁵ Anne Gorey felt that 'Some parents take their job lightly and allow children watch unsuitable things but television cannot be responsible for this. There is no way to police parents.' ¹⁶⁶

Children being cared for by minders often results in parents being removed from monitoring their children's viewing patterns. Reliance is therefore on broadcasters to provide age appropriate programmes and advertisements in their absence. Nevertheless allowing television sets in children's bedrooms was also questioned. It was believed that in doing so parents were relinquishing 'control over what children are exposed to.' ¹⁶⁷

Stephen Jio provided a number of points on the role and position of parental responsibility. In so doing, he said

I believe parental responsibility lies entirely with the parents. If parents perform their due diligence in the area of what they allow and not their children to view [sic], then advertisers and broadcasters will react appropriately. What should be recommended is for broadcasters to provide parental guides of their programming and advertising as to help parents determine what is appropriate and what is not. This does not move any of the responsibility away from the parent, it does however provide an additional tool for the parent. ¹⁶⁸

TV3 also stated that it considered the parent to hold the main responsibility in this respect. More specifically, it said

We believe that parents must have the primary responsibility for the upbringing of their children and also for the concepts/ideas they are exposed to. Given that children's

¹⁶² Jacinta Byrne: web submission 43.

¹⁶³ Anonymous: web submission 53.

¹⁶⁴ Anonymous: web submission 53.

¹⁶⁵ Stuart Fogarty: web submission 84.

¹⁶⁶ Anne Gorey: written submission 4.

¹⁶⁷ AAI/IAPI: written submission 50, pp 8-9.

¹⁶⁸ Stephen Jio: web submission 41.

advertising is taken as that which is aimed at children or in programmes aimed at them it is only appropriate that parents should ensure that their children are not watching certain programming that in their judgement is otherwise unsuitable to their particular values.¹⁶⁹

6.6.2. *Responsibility lies with the broadcaster*

Information provided under this heading was the other side of the proverbial coin. Similar arguments were voiced to those listed above but this time responsibility was placed at the feet of broadcasters and/or advertisers. Tony Carey believed that the broadcasters should be responsible for what is broadcast as parents are not always able to control what is watched.¹⁷⁰ According to Jacki Conway ‘The balance should lie with the broadcaster provided the code is mandatory and not merely in the form of guidelines. Many parents use the TV as an electronic babysitter at certain times and will not be monitoring what there [sic] children are watching...’¹⁷¹

Even if parents are diligent, it was highlighted that watch with mother is not always a possibility as time outside the room can be used helping with home work of older children to attending to general household duties.¹⁷² Greater reliance is therefore being placed on broadcasters to be responsible for the material broadcast, that it is targeted at the correct age groups accordingly. According to Alison Lopez

While parents are ultimately responsible for what their children watch, it is not always possible or practical for parents to be in the same room as the child. It would be reassuring to know that while the child is watching Barney or the Teletubbies that no inappropriate ads will be broadcast, the onus is on the broadcaster to ensure that the age of the audience is taken into account. Likewise with regard to adult programming during the day which may be watched in the company of young children, the broadcaster should take this into account. Both parents/guardians and the broadcaster should be aware that at certain times of the day there is the possibility of a mixed-age audience and ads should be age appropriate.¹⁷³

Furthermore, one respondent said ‘Parents cannot be expected to police what they take on good faith to be children’s programmes.’ This is seen as a growing area of concern given the number of families where both parents work and where child care is often left to someone outside the family unit. The BA in Media Studies class in NUI Maynooth picked up this point when it said

We believe that the code should include a section on parental responsibility, as a broadcaster alone cannot be aware of each individual child’s emotional intellectual response to

¹⁶⁹ TV3: written submission 21.

¹⁷⁰ Tony Carey: web submission 10.

¹⁷¹ Jacki Conway: web submission 12.

¹⁷² Jacki Conway: web submission 12.

¹⁷³ Alison Lopez: web submission 8.

commercial advertising. It is also the responsibility of parents/guardians to assist their child in the development of self-responsibility. However it is unrealistic to leave all responsibility in the hands of the 21st century parent who cannot be constantly supervising the viewing for their child. Therefore it is necessary to include definite guidelines and regulations for broadcasters.¹⁷⁴

6.6.3. Responsibility lies with both.

A significant number of respondents believed that responsibility should lie with both the parent/s and the broadcasters. This was not perceived as an equal split, however. Some argued that primary responsibility lay with the parent and less with the broadcaster and vice versa. In general, the view professed was that while parents have ultimate responsibility for their children, this responsibility should not be undermined by advertisers and/or broadcasters; it should be supported.¹⁷⁵ Some respondents believed the balance was tilted in the other direction with the initial responsibility lying 'with the broadcaster because it is not always possible to edit everything your child watches on TV or sees in other media.'¹⁷⁶ Others felt that responsibility should be split between the two. More specifically, 'The responsibility is shared. Parents can control what programmes their children watch but which have an expectation that the ads during such programmes will be appropriate.'¹⁷⁷ One respondent believed that 'while parents are ultimately responsible for the exposure of their children to advertisements, it should be conceivable that the approach by advertisers is one of empathy with the parent or guardian rather than antipathy.'¹⁷⁸ And finally, one person responded that '...parental responsibility is supported by the code but the code cannot substitute the parent.'¹⁷⁹

6.6.4. Additional observations

One point recurred throughout the overview. This was the role parents and appropriate organisations could/should play on an on-going basis. It was felt that there was room for constant consultation between the regulatory authority and the parents on this matter.¹⁸⁰ More specifically, it was stated that

Relevant parents organisations should be given information on any changes proposed to the new proposed Children's Advertising Code and should be represented on a newly appointed and designated panel or subgroup of the Advertising Authority which would have responsibility for child directed advertising. All parents should have the right to give their opinion on any advertising and if relevant complain to this special panel of the Advertising Authority.¹⁸¹

¹⁷⁴ The Centre for Media Studies, NUI Maynooth: written submission 46, pp.16-7.

¹⁷⁵ Anonymous: web submission 1.

¹⁷⁶ Anonymous: web submission 34.

¹⁷⁷ Anonymous: web submission 26.

¹⁷⁸ Anonymous: web submission 90.

¹⁷⁹ Anonymous: web submission 17.

¹⁸⁰ Anonymous: web submission 35.

¹⁸¹ Anonymous: web submission 35.

The Green Party also made reference to such a role. Here it said that ‘We invite the BCI to provide mechanisms for parents and guardians of children, and their representative bodies, to comment on and register complaints about the development, enforcement and review of the new Code on Children’s Advertising.’¹⁸²

The subject of media awareness was raised. The BA in Media Studies class at NUI Maynooth believed that it was ‘essential that children develop the critical skills they need to become able consumers.’¹⁸³ The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) also referred to this: ‘The advertising industry deeply respects the primacy of the parental role in children’s lives and proposes media awareness for children (Media Smart...) and programme profiling to assist parents in effecting positive change.’¹⁸⁴

6.7. Comparison of responses given by group belonged to

The least number of individual respondents supported the idea that responsibility lay primarily with the parents. Interestingly, this was supported by a number of respondents from the advertisers, advertising organisations and manufacturers.¹⁸⁵ It was stressed by these groups that parents are, and remain, the primary influence during the formative years of children. On this point, Tayto Ltd. stated that it

fully endorses the primacy of parental responsibility and feels that the wealth of research available highlighting the role of the parent as the single largest factor influencing children, particularly young children should be reflected in the formulation of any code on advertising to children. Tayto Ltd. believes that the importance that parents play in their children’s well-being and media exposure is paramount and that the BCI code should recognise this accordingly.¹⁸⁶

The National Disability Authority voiced similar sentiments. Here it said

While there are many facets in society, which affect a child’s personal and social development including advertising in the broadcasting media, it remains the primary responsibility of the parent/s to provide guidance for children. Parents can be assisted in this by advertisers through the Code contributing to the parent/child relationship in a constructive and socially responsible manner.

The category of individual respondents was alone in voicing its support for responsibility lying with broadcasters exclusively. Twin arguments were thereby proposed. Firstly, it was felt that if children were watching television at appropriate

¹⁸² The Green Party: written submission 43, p.23.

¹⁸³ The Centre for Media Studies, NUI Maynooth: written submission 46, p.17.

¹⁸⁴ AAI/IAPI: written submission 50. This topic is picked up again in more detail in Section 14.

¹⁸⁵ Zenith Optimedia: web submission 94; Bank of Ireland: web submission 101; TV3: written submission 21; Glanbia: written submission 41; AAI/IAPI: written submission 50; and Tayto Ltd.: written submission 53.

¹⁸⁶ Tayto Ltd.: written submission 53,p.2.

times, it was up to the broadcaster to ensure that material watched and advertisements seen suited the majority audience. And secondly, it was expressed that given the significant shifts in lifestyles and child care arrangements, there was greater responsibility being placed on the broadcaster to ensure that unsuitable and inappropriate material was not transmitted in the parents' absence.

The majority of support was given for shared responsibility between parents/guardians and broadcasters/advertisers. As was seen, this was not an equal split but see-sawed between the two. This option attracted support from individual respondents, representative organisations and from the advertisers, advertising organisations and manufacturers.¹⁸⁷ On this point, the Children's Rights Alliance (CRA) said

The responsibilities and duties of parents and guardians are stressed throughout the Convention on the Rights of the Child. But the Convention also emphasises the role of the State in supporting and supplementing the role of parents. The Alliance would argue that the State has a duty to ensure, through an official Children's Code, that advertisers recognise their societal obligations to support parents in their role and ensure that children are not subject to irresponsible and potentially damaging advertising...It is the duty of advertisers to be truthful measured on the basis of children's ability to interpret messages.

6.8. Concluding remarks

Opinions - they were aplenty. Unfortunately, with the exception of those voicing support for the Australian clause and the ASAI for its own, none of the respondents answered in succinct terms the question set. Considerable support was expressed, however, for a situation where the parents have primary responsibility and the broadcasters support and protect this position accordingly. This is similar to the two clauses highlighted.

Compiling the dearth of information into one provision proves problematic. One suggestion might be to adopt the wording of the Australian clause and/or the clause from the ASAI code – with or without modification. Based on the information reviewed throughout this section, a combination of both clauses might indeed be appropriate. These clauses are therefore presented hereunder for further consideration:

Australia - 'While parents have the prime responsibility to provide guidance to children regarding the commercial world, advertisers should support the parent-child relationship.'¹⁸⁸

ASAI - 'Advertisements should not undermine the authority, responsibility or judgement of parents or guardians.'¹⁸⁹

¹⁸⁷ For example, the Children's Rights Alliance and the Food and Drink Industry, Ireland.

¹⁸⁸ Advertising Federation of Australia (n.dat), *Advertising to Children*, p.4.

7. Promotion by programme characters, advertiser generated characters and personal endorsements

7.1. Introduction

Attention is drawn to the use of well known programme characters or presenters, both real and animated, to promote and/or endorse products and services to children. It has been argued that using familiar characters in advertising exerts undue influence on children culminating in a sense of loyalty to the product and/or service advertised. Exceptions are made, however. Some countries do allow use of such characters when the advertisement and the appearance of a particular character is part of a public campaign directed at children promoting nutrition, safety or education.¹⁹⁰ In addition, puppets, persons and characters created specifically to promote a product and/or service are often deemed acceptable.¹⁹¹

7.2. European legislation and national codes

There is no reference to this area in the *Television Without Frontiers* directive. In addition, no mention is made to these themes in the Irish statutory code or the Advertising Standards Association of Ireland's (ASAI) code.

7.3. Examples from other countries

References to the use of programme characters and presenters do appear in the codes of some countries. In the 1998 code of the Independent Television Commission (ITC), United Kingdom, it was stated that advertisements 'in which personalities or other characters (including puppets, etc.) who appear regularly in any children's television programme on any UK television channel, present or positively endorse products or services of particular interest to children must not be transmitted.'¹⁹² In Denmark,

¹⁸⁹ ASAI: written submission 39, p.13. This clause was omitted from the *Phase 2 Consultation* document. With the exception of some groups from industry, no opinions were therefore voiced on the applicability of this clause. See appendix VI for relevant sections from the ASAI code.

¹⁹⁰ Media Awareness Network, Canada (n.dat), *The Broadcast Code for Advertising to Children*, The Code/Guidelines and Procedures, pp 2-3.

¹⁹¹ Media Awareness Network, Canada (n.dat), *The Broadcast Code for Advertising to Children*, The Code/Guidelines and Procedures, pp 2-3.

¹⁹² Independent Television Commission (1998), *The ITC Code of Advertising Standards and Practice*, p.4.

‘figures, puppets and similar which are important and regular elements in children’s programmes may not appear in advertisements for products of particular interest to children.’ In addition, people associated with children’s programmes may not advertise products of particular interest to children.¹⁹³

7.4. Questions asked

Taking these factors into account, the Broadcasting Commission of Ireland (BCI) asked two questions. These were as follows:

- Is it appropriate that well known programme characters or puppets should be permitted to promote/endorse products and services in any, some or all situations as they relate to children? Please provide a rationale for your views.
- What rules do you believe should be included in the code in relation to this heading? Please provide a rationale for your response.

7.5. Feedback

Nearly all respondents stated that using well known characters or puppets should not be permitted in the endorsement of products and/or services. Themes proposed moved along very similar lines. Sentiments expressed are therefore illustrated by the following sample of quotes.

7.5.1. Overview of sentiments expressed

The National College of Art and Design (NCAD) highlighted the potential manipulation of children if such familiar characters are to be used. Here it said that

Children have difficulty distinguishing between fantasy and reality on television until early school years and those under the age of 8 years have virtually no comprehension of the persuasive intentions of advertising. They identify strongly with some television personalities and characters – human, puppet and animated. They see them either in loco parentis, as an uncle or aunty, or as a very special best friend. The association of such personalities/characters with commercial goods and services amounts to a grave abuse of the trust which children place in them.¹⁹⁴

People have expectations vis-à-vis the behaviour of television personalities. On this point, Shane O’Flynn said

Children television personalities have a responsibility to their audience that they will remain a role model and an instrument of educational learning or entertainment. To cross the roles of

¹⁹³ The Executive of Culture’s Executive Order No. 489 (1997), *Executive Order concerning Radio and Television Advertising and Programme Sponsorship*, 11 June.

¹⁹⁴ NCAD: written submission 44, p.2.

these i.e. an advertising role and an educational tool has proven by various international studies to be both confusing and harmful to the elements of trust attained by the television personalities.¹⁹⁵

Familiarity breeds a sense of loyalty which in turn leads to an increase in demand. For some respondents therefore the use of well known characters – whether real or animated – is linked to the concept of ‘pester power’. More specifically, ‘Characters can be used to promote products putting undue pressure on both children and parents to live up to sometimes unrealistic expectations that they should have that product. It is usually the parents that cannot afford something that submit to the pressure.’¹⁹⁶ Other respondents pushed this connection between character and pressure further, linking it with nutrition and demands for often energy-dense micro-nutrient poor foods. Views expressed are represented by the following quote:

I don’t think that it is appropriate that tv [sic] characters or puppets should be permitted to promote/endorse by, for example, barney, tweenies etc. These products are generally not good for children and sell in large quantities because of the endorsement. These products have an unfair advantage over others. Parents who do not want to buy these products because in the case of cereals for example of their high sugar content, feel pressurised by their children.¹⁹⁷

7.5.2. *Advertisers, advertising organisations and manufacturers*

This category also agreed that the use of well known characters should be restricted as children are not always aware of the difference between television programmes and advertisements. Respondents, however, did ask for a clear demarcation to be made between familiar characters that emerge from television programmes and those characters which are advertising generated for the purposes of specific advertising campaigns.¹⁹⁸ As such characters are not used elsewhere, the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) argue that ‘The use of advertising-generated characters, including animated characters, should not be included in the Code as it has been demonstrated they do not cause confusion or the blurring of content.’ Furthermore, the AAI and IAPI believe the ‘responsible use of characters should be ensured by including in the Code a provision such as the following:

- Assuming the guidance notes on credulity and the other relevant sections of the code are adhered to, there should be no reason why fantasy and animation characters are inappropriate in communication with children.
- Commercials or advertisements featuring characters from programmes or publications primarily directed to children should not be adjacent to programmes or articles in which the same personality or character appears.’¹⁹⁹

¹⁹⁵ Shane O’Flynn: web submission 7.

¹⁹⁶ Marianne Meally: web submission 25.

¹⁹⁷ Anonymous: web submission 72.

¹⁹⁸ Examples of such would be *McDonald’s* Ronald McDonald; *Rice Krispies* ‘Snap’, ‘Crackle’ and ‘Pop’; and *Ribena’s* ‘Ribena Berries.’

¹⁹⁹ AAI/IAPI: written submission 50, p.15

The ASAI believed that ‘The basic purpose is to protect children because of their special characteristics in particular their loyalty, credulity, vulnerability or lack of experience.’ It does, however, feel that existing rules in its own code are capable of dealing with situations now under discussion, that these clauses allow for a clear distinction to be made between advertising and programming. Moreover, it states that ‘These rules, when added to by the specific rules for children referred to earlier, are generally flexible enough to deal adequately with advertisements carrying characters of interest to children.’²⁰⁰

7.5.3. Broadcasters

In general, the view was expressed that use of familiar characters was not always appropriate. On this point, TV3 stated that

We believe that no children’s presenter (on a given particular channel) or characters from children’s programmes should be used on, in or around a programme targeted to children that the character normally appears in, other than in the context of safety announcements i.e. Road safety etc. We do not believe there should be a blanket prohibition against characters advertising products as unworkable and unrealistic. Our recommendation is common practice in many jurisdictions.²⁰¹

RTÉ did not give a direct response to this question. In the *Guidelines for Children’s Advertising*, however, Section 1(h) states that ‘The personalities or characters on children’s’ programmes shall not be used to promote products, premiums, or services around their own programmes’ while 1(h) states that ‘nationally known persons, other than professional actors or presenters, shall not be used in advertising directed to children under 12, to endorse products or premiums either directly or indirectly.’²⁰²

7.5.4. Arguments against

While the vast majority of respondents were in favour of restrictions being placed on the use of well known characters, there were a few people who did not perceive this as being a problem. The following illustrate points made in this respect. Stuart Fogarty believed that ‘Yes, of course it should be permitted. Why not? They appeal to kids – not exploit them.’²⁰³ Another respondent did not perceive this as a problem ‘as long as the guidelines for how advertising is conceived, created and transmitted for children is properly controlled.’²⁰⁴ Stephen Jio said he did ‘not believe any rules should be in place for this. Yes, media characters can influence a child, however in the end it is still a parent who will make the final decision on supporting the product advertised.’²⁰⁵ And finally,

²⁰⁰ ASAI: written submission 39, p.14. See Appendix VII for clauses highlighted by the ASAI in its code.

²⁰¹ TV3: written submission 21.

²⁰² RTÉ: written submission 28.

²⁰³ Stuart Fogarty: web submission 87.

²⁰⁴ Anonymous: web submission 93.

²⁰⁵ Stephen Jio: web submission 41.

Provided the general philosophy that advertising to children is allowed and provided that the individual products are allowed to be advertised to children, then I see no reason why characters or personalities should not be allowed to endorse products. Product endorsement is a commercial right of personalities and animation companies whether it is on television or on a pack.²⁰⁶

7.6. Examples from other countries

Few respondents from any of the categories specified chose to deal with the examples from countries provided. Of those replying, support was given to Denmark and the UK, either singularly or in combination; a slight majority opting for the latter.²⁰⁷

7.7. Concluding remarks

An overwhelming majority of respondents sought the use of restrictions on occasions when familiar characters might be used in the promotion of products and/or services. Emphasis was placed on the fact that in emulating the characters, children may develop a false sense of loyalty to such characters; a displaced sense of trust. In turn, this can result in increased demands for certain items over others and increasing levels of pressure being placed on parents.

Those working in the advertising industry would see this as being a general appreciation of the subject. Consequently, they requested a more specific approach. In short, they wanted a clear distinction made between well known programme characters and those generated specifically for the purposes of advertising campaigns. Where they would see restrictions being placed on the former, it was argued that the latter should not fall within the ambit of the Children's Advertising Code.

No one proposed a blanket ban on the use of such characters. Exceptions were suggested where the use of such characters might be deemed appropriate. The use of well known programme characters or puppets could be used to promote

- Healthy living – for example, diet and exercise;
- Road safety;
- Personal safety;
- Education;
- Other public service campaigns;
- Anti-bullying campaigns;
- Charitable causes;
- Health issues.

²⁰⁶ Anonymous: web submission 82.

²⁰⁷ Only 14 respondents referred to these examples: Denmark (5); UK (3); and Denmark/UK (6).

The need for a tiered approach is hereby highlighted. In addition, the ASAI believed that ‘While there may be a limited case for rules of a pragmatic nature in this area, nevertheless any such restrictions should be commensurate with the perceived dangers to be averted.’²⁰⁸

²⁰⁸ ASAI: written submission 39, p.14.

8. Production prohibitions

8.1. Introduction

It is suggested that certain products may not be advertised to children and/or have specific restrictions attached to them. Items proposed include tobacco products, alcohol and medicines.

8.2. European legislation and national codes

This matter is dealt with extensively in the *Television Without Frontiers* directive where the advertisement of tobacco and of medicinal products/treatments available only on prescription is not allowed while television advertising for alcoholic drinks must comply with certain criteria; for example, such advertising may not be aimed specifically at minors or show children consuming these drinks. The Irish statutory code echoes this provision for the advertising of alcohol. In addition, advertisers are required to take account of the age profile of the viewers and listeners so that advertisements are communicated, as far as possible, to adults. The *Broadcasting Act, 2001* also makes provision for the consideration of ‘the merits or otherwise and the feasibility of the code containing a prohibition on a specified class or classes of advertising in so far as it relates to children.’ In short, the children’s advertising code can include provisions which prohibit the advertising of certain categories of products and services to children or the advertising of certain products and services to children under a particular age.

8.3. Examples from other countries

Similar prohibitions exist in other countries. In the United Kingdom (UK), for example, advertisements for alcoholic drinks, liqueur chocolates, condoms, lotteries, bingo, matches, medicines, vitamins, certain religious matter and slimming products are among the items which must not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.²⁰⁹ In addition, restrictions are placed on the advertisement of

²⁰⁹ The Children’s Society, UK (2002), *Response to: ITC’s Advertising Code Review Consultation – Amendments to the Independent Television Commission’s Code of Advertising Standards and Practice*, p.2.

gambling and on introduction and dating services.²¹⁰ Reference is also made to the fact that advertisements for medicinal products and/or treatments should not be directed to those under 16 years. In the UK, reference is also paid to religious advertising, where it is not acceptable if designed to appeal particularly to those under 18.²¹¹ ‘Nor may it appear in breaks in or adjacent to programmes intended principally for them or likely to appeal particularly to them.’²¹² One exception is made, however, and that is for advertising publications, merchandise or other items ‘provided there is no recruitment or fund-raising link.’²¹³

Regarding alcohol, *The Dutch Advertising Code* states that advertising messages shall not show young people’s idols drinking or encouraging the consumption of alcoholic beverages, if their message is aimed specifically at minors.²¹⁴ The Canadian approach encompasses drugs, proprietary medicines and vitamins in any pharmaceutical form which are prohibited. One exception is made, however, and this is children’s fluoride toothpaste.²¹⁵

8.4. Questions asked

Based on information reviewed, the Broadcasting Commission of Ireland (BCI) asked two questions. These were as follows:

- What products do you believe should be prohibited from being advertised to children? Please provide a rationale for your views.
- Are there products that you believe should be prohibited from being advertised to certain age groups? If so, what are these products and what is the age group from which you believe they should be prohibited? (e.g. of age categories: pre-school, 4-14, 15-17). Again please provide a rationale for your views.

8.5. Feedback

Few chose to refer to the examples proffered from other codes. Of those that did respond, some people favoured a mix of information from other jurisdictions while those in the category of advertisers, advertising organisations and manufacturers supported the ASAI code.²¹⁶ Furthermore, only a handful of respondents linked product prohibitions with actual age groupings. There was a consensus, however, that advertisements should not be aimed at pre-school children while others thought that there should be heavy restrictions on food advertising to the 4-14 age bracket. The

²¹⁰ Independent Television Commission (2002), *The ITC Advertising Standards Code*- Section 7: ‘Children’, p.65 and p.66.

²¹¹ Radio Authority, UK (1997), *Advertising and Sponsorship Code* – Appendix 7, Religious Advertising, n.dat.

²¹² Independent Television Commission (2002), *The ITC Advertising Standards Code*- Section 7: ‘Children’, p.58.

²¹³ Independent Television Commission (2002), *The ITC Advertising Standards Code*- Section 7: ‘Children’, p.58.

²¹⁴ *The Dutch Advertising Code* (2000), p.11.

²¹⁵ Advertising Standards Canada (2001), *Broadcast Code for Advertising to Children*, p.3.

²¹⁶ See Appendix VIII for relevant sections of the ASAI code.

Health Promotion Unit (HPU) stated that ‘audience profiling should be used as a basis to restrict all alcohol advertising around programmes where children and adolescents comprise more than 25% of the viewers...’,²¹⁷

Rather than focusing on the two identified concerns, people channelled their energy into specifying which products they considered should be banned. There was a marked degree of overlap in the products suggested. For the purposes of clarity, the items identified are represented in Table 8.1. No prioritisation or weighting is given to these items at this time.

²¹⁷ HPU, Department of Health and Children: written submission 32.

Table 8.1
Suggested product prohibitions

Medical	<ul style="list-style-type: none"> • Over the counter medicines; • Medicines only available on prescription; • Cough medicines.
Financial/Legal	<ul style="list-style-type: none"> • Credit cards; • Banking; • Loan companies; • Insurance; • Mortgages; • Solicitors;
Charitable	<ul style="list-style-type: none"> • Using images of children for the purposes of fund raising.
Food	<ul style="list-style-type: none"> • Sweets; • Biscuits; • Cakes; • Energy-dense micro nutrient poor food (e.g. junk food); • Convenience foods; • Junk food restaurants; • Liqueur chocolates.
Non-alcoholic beverages	<ul style="list-style-type: none"> • Carbonated drinks; • Still drinks and/or dilutables with high sugar content; • Sugar-free drinks containing high levels of artificial sweeteners.
Alcohol	<ul style="list-style-type: none"> • Alco-pops; • Beer
Image enhancing	<ul style="list-style-type: none"> • Make-up; • Clothes; • Pre-teen 'girls' magazines; • Slimming products; • Body image icons; • Hair dye; • Toiletries for children;
Gambling	<ul style="list-style-type: none"> • Gambling services; • Book makers; • Lottery.
Games	<ul style="list-style-type: none"> • Of a violent/military nature; • High price electronic and computer games.
Personal relations	<ul style="list-style-type: none"> • Dating services; • Condoms.
Telephone services	<ul style="list-style-type: none"> • Premium rate numbers; • Sex phone lines; • Horoscope phone lines.
Miscellaneous	<ul style="list-style-type: none"> • Drink-driving campaigns;²¹⁸ • Tobacco products; • Religious matter and/or beliefs;

²¹⁸ Anonymous: web submission 139, suggested that these advertisements should be banned because 'Children don't drive and should not have to watch those ads. They are very upsetting for adults but even more so for children.'

Such a list of possibilities and yet how to choose? For Bob Quinn, ‘The BCI is not God and it cannot arbitrate between lesser and greater poisons.’²¹⁹ Stephen Jio also struggled with this conundrum. On this point, he said

I find the determination of whether or not a product is being specifically targeted to a child very difficult. What I do believe is in providing time periods for when a product can be shown. Certain items that are non-essential for general populace, recreational in nature, for a mature user, should not be shown in a time period that would be deemed for children’s programming. This is a broadcaster’s responsibility and not an advertiser’s.²²⁰

Many items were listed but some received more attention compared to others. A significant majority sought prohibitions on the advertisement of food and drink which contained high levels of sugar, additives, artificial sweeteners, salt and fat. Others wanted restrictions placed on the advertising of alcohol.

Others opted for different approaches. Stuart Fogarty stated that advertisements should not be possible for those products ‘which are illegal for kids to purchase/use. Only.’²²¹ Another respondent chose to focus not on what should be prohibited but on what should be allowed. Lesley Whiteside said

All products that do not benefit the welfare of the child should not be sold using child-targeted advertising. Health products (e.g. toothpaste), healthy eating (e.g. milk, fruit), fitness (e.g. Tennis Ireland), safety (e.g. cycle helmets), education (e.g. language classes) would be the main areas to be encouraged. The rationale is that parents are the primary educators of children and it is they and not advertisers who should be informing their children of what they should need or value.²²²

The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners of Ireland (IAPI) also paid reference to the role of parents. Here they said: ‘We feel it appropriate to restate the primacy of the parent’s role in deciding what products are suitable for their children, as prohibitions can be somewhat subjective. What one may find threatening could well be seen as totally innocuous by another.’ Consequently, they support the use of the existing codes and are hesitant about making too specific changes, believing that any limits imposed could violate basic rights of free expression.²²³ The ASAI was also supportive of maintaining the status quo. More specifically, it said

The prohibition of advertising is essentially a matter for statute-based regulation rather than self-regulation. The ASAI Codes already provides [sic] that an advertisement addressed

²¹⁹ Bob Quinn: written submission 12.

²²⁰ Stephen Jio: web submission 78.

²²¹ Stuart Fogarty: Web submission 87.

²²² Lesley Whiteside: web submission 99.

²²³ AAI/IAPI: written submission 60, p.16.

to children should not feature products that are unsuitable for children and alcohol advertisements should not be directed at minors. The perceived need to protect young people from certain products or services will vary over time and it is considered that general rules capable of flexible implementation are adequate.²²⁴

The Food and Drink Industry, Ireland (FDII) voiced other concerns. These were as follows:

...we would like to highlight the fact that the whole area of claims in the food and drink industry is very strictly regulated and no claim can be made without the proper substantiation. Currently an EU directive on health claims is being developed. FDII members are involved in this process and will adhere to the final decision and feel that the BCI code should not pre-empt this.²²⁵

8.6. Concluding remarks

All respondents believed that children should be protected but how this is to happen and to what intensity should protection run is difficult to establish. Some people highlighted what they believe should be prohibited while others took a more streamlined approach, suggesting areas and/or items where advertising might be permitted. The AAI and IAPI highlighted the inherent subjectivity of choice in this regard when they said that what might be deemed harmful by one set of parents might be considered as harmless by another. It is difficult therefore to determine what approach to take and what areas to select. What may appear important today – for example, the advertisement of food – may easily be supplanted by other concerns in a very short space of time – for example, body image. Viewed collectively, these factors illustrate a need to adopt a flexible approach, one that is applicable and capable of remaining relevant over time. Alas, information reviewed does not identify the specifics.

²²⁴ ASAI: written submission 389, p.15. See Appendix VIII, for information on clauses from codes that the ASAI consider to be relevant in this regard.

²²⁵ FDII: written submission 57, p.6.

9. Factual presentation

9.1. Introduction

'Factual presentation' refers to the manner in which an item and/or service is represented to children in advertising. A number of themes were grouped under this heading. Primarily, it highlighted rules designed to ensure that products are not presented in a fashion that will mislead children. 'Misleadingness' in this respect refers to the provision of inaccurate information on size, appearance, overall performance, durability, colour or the level of skill required to use a given product. Rules concerning subliminal messages have also been included at this juncture. These refer to advertising which uses techniques to transmit messages below the threshold of normal awareness.

9.2. European legislation and national codes

References are made to these points in European legislation and national codes. In Article 10(3) of the *Television Without Frontiers* directive, it is deemed that advertising and teleshopping shall not use subliminal techniques. The Irish statutory code is more extensive, stating that advertisements should not be misleading or prejudice the interests of consumers. More particularly, no advertisement should contain 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 of service advertised or its suitability for the purpose recommended. The Advertising Standards Association of Ireland's (ASAI) code refers to the fact that advertisements directed towards children should allow them to judge accurately the size, characteristics and performance of any product advertised.²²⁶ In addition, a product which constitutes part of a series should be clearly indicated as such and should include the method of acquiring the series.²²⁷

9.3. Examples from other countries

Information gleaned from other countries can be outlined as follows. In Canada, for example, emphasis is placed on the fact that an item and/or service should be

²²⁶ Advertising Standards Association of Ireland (2002), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), *Codes of Sales Promotion Practice* (3rd Edition), p.42.

²²⁷ Advertising Standards Association of Ireland (2002), p.42.

represented accurately to children in an advertisement. In addition, ‘When children’s advertising shows results from a drawing, construction, craft or modelling kit, the results should be reasonably attainable by average children.’²²⁸ In New Zealand, similar references are made to the fact that representations made to children should not mislead them about the size or performance of the product advertised.²²⁹ The following proviso is also included: ‘In the case of a product that must be assembled, this should be made clear, and where appropriate, the source of power [for example, batteries] and performance should be indicated.’²³⁰ In the United Kingdom (UK), it is stated that where parts, accessories or batteries, which a child might reasonably suppose to be part of a normal purchase, are available only at extra cost, this must be made clear and advertisements for expensive toys, games and comparable children’s products must include an indication of their price.²³¹ In Greece, it is specified that ‘special care should be taken to ensure that, in any form of advertising, the size and attributes of the advertised products are properly appraised, especially regarding the natural condition and operation of the product.’²³²

9.4. Questions asked

Drawing together information from legislative positions and the experience of other countries, the Broadcasting Commission of Ireland (BCI) asked two key questions. These were

- Which, if any or all, of the examples provided above, do you believe should be included in the children’s advertising code?
- Are there additional rules that you believe should be included in the code under this heading? Please provide a rationale for their inclusion.

9.5. Feedback

In assessing feedback, responses were considered from a general perspective. Thereafter a more specific approach was adopted, comparing responses given by group the respondent belonged to.

9.5.1. Responses given

The general consensus was that information relayed to children in advertisements should be age appropriate, be legible and above all be truthful so that expectations should not be raised unnecessarily. Advertisements should not exploit the inexperience and credulity of children. Such an approach was deemed necessary for

²²⁸ Media Awareness Network, Canada (n.dat), *The Broadcast Code for Advertising to Children*, The Code/Guidelines and Procedures, p.1.

²²⁹ Advertising Standards Authority, New Zealand (2001), *Code of Practice – Code for Advertising to Children*, p.3.

²³⁰ Advertising Standards Authority, New Zealand (2001), p.2.

²³¹ Independent Television Commission (1998), *The ITC Code of Advertising Standards and Practice*, p.4.

²³² Greece (1993), Annex for Advertising to Children.

children ‘whose innate imagination will lend them to assuming more about a product than an adult would perceive from the same advert.’²³³

²³³ Stephen Mulcahy: web submission 6.

Responses to the questions varied significantly. Of the examples given, some opted for one, a combination or all information to be included. Many favoured the use of the ASAI code either as a basis or on its own.²³⁴ Little support was voiced for the Irish code in isolation. Article 10(3) of the *Television Without Frontiers* directive was favoured by no respondent and would only be included if the BCI opted to reflect ‘all’ clauses in the new children’s advertising code. One respondent felt that viewed together, the Irish statutory code and the EU directive were simply ‘too small’.²³⁵ Referring to examples given from other jurisdictions, all clauses found favour but with majority support being given for Canada and the UK.

9.5.2. *Comparison of responses given by group belonged to*

Consideration of responses received according to group belonged to reveals a more specific picture. Individual respondents were more varied in their views, with some opting for the ASAI as a basis or alone. Support for approaches adopted in other countries outweighed support for examples provided from European legislation and national codes. All country examples received support with Canada and the UK being the forerunners. Of those few respondents making reference to subliminal methods, all agreed such should not be permissible. One respondent summed up some of the views expressed by saying

Subliminal advertising should be completely prohibited as you are powerless against this sort of thing. Written, sound, photographic and other visual presentations must not exaggerate service, product or premium characteristics, such as performance, speed, size, colour, durability. The realistic size of the product must be clearly established.²³⁶

The representative organisations also produced varied approaches. The Family and Media Association (FMA) favoured the inclusion of all clauses.²³⁷ Amen supported a combination of Canada, New Zealand and the UK.²³⁸ The Law Reform Committee favoured the use of the ASAI code as a basis upon which the new code should be developed and this ‘could usefully be supplemented by the individual elements in the Canadian, UK, New Zealand and Greek codes...’²³⁹

In the category of advertisers, advertising organisations and manufacturers, all respondents favoured the use of the ASAI code exclusively,²⁴⁰ the common belief being that it had ‘served the industry and the consumer well and would be appropriate for the new Code.’²⁴¹ More specifically, Irish International BBDO considered that the ASAI code was ‘particularly thorough...’ while Nestlé (Ireland) Ltd. stated ‘The

²³⁴ See Appendix IX for relevant clauses from the ASAI code.

²³⁵ Anonymous: web submission 2.

²³⁶ Anonymous: web submission 16.

²³⁷ FMA: written submission 54, p.4.

²³⁸ Amen: written submission 5.

²³⁹ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

²⁴⁰ Bank of Ireland: web submission 47; Zenith Optimedia: web submission 51; Unilever: written submission 36; ASAI: written submission 39; Nestlé (Ireland) Ltd.: written submission 41; Irish International BBDO: written submission 45, p.5; Safefood: written submission 47, p.7; Glanbia: written submission 48, p.4; AAI/IAPI: written submission 50, pp.16-7; Tayto Ltd.: written submission 53, p.3; and Food and Drink Industry, Ireland: written submission 57, p.6.

²⁴¹ AAI/IAPI: written submission 50, p.17.

ASAI code has detailed and stringent guidelines in this regard, which should be incorporated into the Children's Advertising Code.'²⁴²

Referring to the principal broadcasters in Ireland, TV3 believed that the Irish statutory code was sufficient. Here it said that

The current statutory code, which prevents misleading advertising, is a very good basis. It also prohibits the exaggeration of what can be attained by a normal child using the product. This should be sufficient for the current process.²⁴³

In its submission, RTÉ did not answer either question set. It did, however, provide relevant information in its *Guidelines for Children's Advertising*.²⁴⁴ Section 1(l) and Section 3 are particularly relevant in this regard.²⁴⁵

9.5.3. *Additional information*

Some respondents provided additional information which they asked to be given due consideration. Views expressed are outlined hereunder.

9.5.3.1. Matching age of child in advertisement to product advertised.

Amen asked that only those children of the appropriate age should advertise certain toys. 'This would ensure', it continued, 'that a child of a younger age would understand that a product might not be too complicated or otherwise unsuitable for them.'²⁴⁶

9.5.3.2. Media education

One respondent stressed that there was a need for children to be able to identify an advertisement. In order for them to do so, it was advised that '...the BCI could...run a series of ads aimed at children to educate them about what advertising is and to encourage them to make their own choices and to remember that there is another side to every story.'²⁴⁷ Similar sentiments were expressed by the Green Party when it said

Children and young people must be equipped with the skills to interpret and judge advertising content on television. There is a particular responsibility on public service broadcasters to include, in their factual and educational content, programmes and features to support the acquisition of media literacy skills as a tool to combat the effect of advertising on children, with the aim of giving young people the analytical tools to understand how the media influences their thoughts and actions.²⁴⁸

²⁴² Irish International BBDO: written submission 45, p.5; Nestlé (Ireland) Ltd.: written submission 41.

²⁴³ TV3: written submission 21.

²⁴⁴ RTÉ: written submission 28.

²⁴⁵ See Appendix X for relevant sections from RTÉ *Guidelines for Children's Advertising*.

²⁴⁶ Amen: written submission 5.

²⁴⁷ Anonymous: web submission 44.

²⁴⁸ The Green Party: written submission 43, p.27.

It should be pointed out that such concerns have not been overlooked by the advertising sector. Throughout its submission, the AAI and IAPI also paid reference to the need for media education and the role that it could play in the provision of such.²⁴⁹ This topic will be picked up in more detail in Section 14.

9.5.3.3. Pricing

Pricing, many believed, should be legible for all viewers and should remain on the screen for such time as to allow the viewer to read it. In addition, Lynn O’Keeffe asked that advertisements should appear in Euro at all times. It is not, she argued, ‘factual’ to have prices quoted in Sterling exclusively.²⁵⁰

9.5.3.4. Food advertisement

Once again, the advertisement of food received attention. *SafeFood* stated that ‘Within the code, food products bearing unsubstantiated, misleading or meaningless claims, including claims concerning the nutritional value of foods, should not be permitted.’²⁵¹ Food and Drink Industry, Ireland (FDII) also expressed concerns. It stated that, in relation specifically to food and beverage advertisements, ‘we feel that they should not encourage or condone excess consumption and portion size should be appropriate to the setting portrayed.’ Furthermore, the FDII believed ‘that copy, sound and visual presentation of food products should accurately represent all material characteristics advertised including taste, size and content, as well as nutrition and health benefits. It should not mislead consumers in any way.’²⁵²

9.6. **Concluding remarks**

There was general consensus among all respondents that ‘misleadingness’ in children’s advertising was not appropriate and should be avoided, that there was a need to ‘stick to the facts, and avoid value judgements.’²⁵³ Of the examples provided, most support was given to the ASAI code exclusively or to using it as a basis with examples from other countries grafted on, most particularly details from Canada and the UK. There was a significant minority who requested that the new code reflect all issues raised.

The idea of media awareness and education emerged once again. Here it was perceived that not only must one ensure that advertisements are inherently truthful but there was a need to develop awareness among children regarding how to distinguish advertising from programming and also how to recognise the commercial intent of such messages.

²⁴⁹ AAI/API: written submission 50.

²⁵⁰ Lynn O’Keeffe: written submission 20.

²⁵¹ *SafeFood*: written submission 47, p.7.

²⁵² FDII: written submission 57, p.6.

²⁵³ Anonymous: web submission 27.

10. Price and purchase terms/ comparison claims

10.1. Introduction

Attention was drawn in this section to how price and purchase terms of a product or service are presented in children's advertising. A number of themes were considered therein. Primarily, it considered the price of items, how these are presented to children and the style of language used; for example, 'only' or 'just'. Secondly, reference was made to the issue of comparisons between competitor's products and/or services or older versions of a product. And finally, the issue of substantiation was identified. Substantiation refers to the ability of the advertiser to prove any claims that he has made regarding the product or service if required.

10.2. European legislation and national codes

While these themes are not dealt with in the *Television Without Frontiers* directive or the Irish statutory code, they are referred to in the code of the Advertising Standards Association of Ireland (ASAI).²⁵⁴ The *Phase 2 Consultation Document* highlighted that much of the information presented in the ASAI code refers to advertising generally rather than children's advertising specifically. Respondents were asked therefore to consider stipulations outlined in the context of children's advertising. In reviewing relevant material from the ASAI code, the section was divided into three parts. These divides are reflected in the sections which follow.

10.2.1. Price

The ASAI code states that care must be taken so the accurate price of a given item and/or service appears in an advertisement. It is also stipulated that, with the exception of advertisements addressed exclusively to the trade, prices quoted should normally include VAT and other additional costs as applicable. This includes charges arising from the method of purchase or payment. And finally, it is stated that if the price of one product is dependent on the purchase of another, the extent of any commitment required of consumers should be made clear.

²⁵⁴ Advertising Standards Association of Ireland (2002), *Manual of Advertising Self-Regulation with the...Code of Advertising Standards for Ireland* (5th Edition), *Codes of Sales Promotion Practice* (3rd Edition).

10.2.2. Comparison claims between products

Comparisons are generally considered acceptable where the information presented is accurate and can be substantiated. Such references can be explicit or implied and can relate to advertiser's own products or those of their competitors. Unfair attacks or attempts to discredit other businesses and/or their products are deemed inappropriate and thus, unacceptable.

10.2.3. Substantiation

All claims made must be capable of substantiation. Where requested, relevant documentation should be forwarded to the ASAI without delay. Information supplied must be able to support both detailed claims and the overall impression created by the advertisement.

10.3. Examples from other countries

Material taken from the United Kingdom (UK) reveals the prices of products advertised to children must not be minimised by words such as 'only' or 'just'.²⁵⁵ References to free gifts for children in advertisements must include all qualifying conditions.²⁵⁶ It is also stated in the UK that 'Except in the case of television services carrying advertising directed exclusively at non-UK audiences, advertisements for expensive toys, games and comparable children's products must include an indication of their price.'²⁵⁷ Information from Denmark shows that statements of price should not give children and young people an unrealistic idea of the value of the product, for example by using the word 'only'.²⁵⁸ It is also contended 'that marketing should not imply that the advertised product is immediately within reach of every family budget.'²⁵⁹

10.4. Questions asked

From the information reviewed, the Broadcasting Commission of Ireland (BCI) asked respondents to consider three questions. These were:

- Which, if any or all, of the above examples of rules, referring to price, comparison claims and substantiation, do you believe should be included in the children's advertising code? Please make reference to the specific rules under each heading that you wish to be included.
- Are there additional rules in relation to price claims, comparison claims and substantiation that you believe should be included in the children's code?

²⁵⁵ Independent Television Commission (1998), *The ITC Code of Advertising and Practice*, p.4; Radio Authority, UK (1997), *Advertising and Sponsorship Code – Appendix 3: Advertising and Children*, n.pag.

²⁵⁶ Radio Authority, UK (1997), n.pag.

²⁵⁷ Independent Television Commission (2002), *The ITC Advertising Standards Code – Section 7: 'Children'*, p.33.

²⁵⁸ The Executive of Culture's Executive Order No. 489 (1997), *Executive Order concerning Radio and Television Advertising and Programme Sponsorship*, n.pag.

²⁵⁹ Guidelines from the Consumer Ombudsman, Denmark, (2002), *Children, Young People and Marketing Practice*, July, p.5.

- Please outline what additional rules should be included and provide a rationale for their inclusion.

10.5. Feedback

Review of feedback is presented as a triptych. Firstly, the general responses are outlined. Secondly, answers received by group belonged to are considered thereafter. And finally, additional information arising is identified.

10.5.1. Responses given

Using the ASAI code as a basis or on its own received considerable support among all categories. One can surmise therefore that this was due to the extensive nature of the ASAI's approach.²⁶⁰ Some respondents opted for examples from Denmark and/or the UK to be used in conjunction with the ASAI code. Others favoured the use of all clauses specified while the remaining respondents supported the use of examples from Denmark and/or the UK exclusively.

Significant support was given to not using the words 'only' and 'just' in advertisements aimed at children as, it was believed, these 'can put undue pressure on parents and minimise the cost of items.'²⁶¹ There was a general belief that prices should be as accurate as possible:

...prices quoted should reflect the actual price that the customer will pay, including taxes etc. Quoting a price and then sticking an asterisk beside it referring the viewer to the small print at the bottom of the screen – which gives some idea of the REAL price – is simply not good enough. This is bad enough in the adult world, but if children see something advertised at 9.99, they will believe that is the actual price.²⁶²

10.5.2. Comparison of responses given by group belonged to

Individual respondents varied most in their answers given. Support was voiced for the ASAI code – either in combination with other examples or on its own. Some leaned towards supporting Denmark and/or the UK with the ASAI code, alone or together.

Few in the category of representative organisations chose to respond to this question. The Law Reform Committee supported the use of the ASAI code supplemented with information from Denmark and the UK.²⁶³ The Green Party favoured the Danish approach.²⁶⁴ While not answering specifically the questions set, the Children's Rights Alliance (CRA) chose to outline its own approach. This was as follows:

1. Comparative advertising should provide factual information. Comparisons should not falsely represent other products or previous versions of the same product.

²⁶⁰ See Appendix XI for the relevant clauses in this regard.

²⁶¹ Anonymous: web submission 15.

²⁶² Anonymous: web submission 29.

²⁶³ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

²⁶⁴ The Green Party: written submission 43.

2. Comparative claims should be presented in ways that children can clearly understand. Consultation with children can assist further with the development of this section.
3. Comparative claims should be supported by appropriate and adequate substantiation.²⁶⁵

In the category of advertisers, advertising organisations and manufacturers, all but one submission favoured the ASAI code exclusively.²⁶⁶ The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) opted for a different track. According to these respondents, ‘the adoption in the Code by the Commission of the general ASAI code provisions regarding substantiation, comparison claims and price,’ they said, ‘with the addition of the UK recommendation on the minimisation of price would be more than adequate in this regard.’²⁶⁷

For TV3, ‘...provided advertisers abide by the general basic rules of not misleading audiences in terms of price and performance then children’s specific rules should be minimal and address specific areas.’²⁶⁸ RTÉ chose not to answer the questions set. Similar information, however, features in its *Guidelines for Children’s Advertising*.²⁶⁹

10.5.3. Information arising

Referring to pricing, requests were made that advertisements should give Euro prices ‘as it is misleading to the children when they see the sterling price.’²⁷⁰ In addition, many respondents asked that all prices quoted be inclusive of VAT, that there be no hidden costs.

Terms and conditions were also highlighted for attention. It was believed that all such details should be identified, that ‘Prices should be clear and include all expenditure as in postage and packaging, admin costs, etc.’²⁷¹

The presentation of price was referred to. Some respondents asked that it be deemed necessary for this to appear in a legible format and displayed for sufficient time to allow the viewer to read it.

The requirement of batteries was also noted. Here it was suggested that information regarding batteries – whether they were or were not included – should be stated clearly in both audio and visual means.²⁷²

Safefood also asked for its concerns to be addressed. It said it wished ‘to express concern at the possible use of advertising which promotes inappropriate portion size

²⁶⁵ CRA: written submission 38, p.11.

²⁶⁶ Zenith Optimedia: web submission 33; Bank of Ireland: web submission 36; Unilever: written submission 36; ASAI: written submission 39; Nestlé (Ireland) Ltd.: written submission 41; Irish International BBDO: written submission 45, p.5; Tayto Ltd.: written submission 53; FDII: written submission 57.

²⁶⁷ AAI/IAPI: written submission 50, p.17.

²⁶⁸ TV3: written submission 21.

²⁶⁹ RTÉ: written submission 28; see *Guidelines to Children’s Advertising* – in particular 1(k) and 3(d).

²⁷⁰ Anonymous: web submission 6.

²⁷¹ Anonymous: web submission 9.

²⁷² The Centre for Media Studies, NUI Maynooth: written submission 46, p.26.

through price reductions, e.g. two for the price of one. WHO/FAO have indicated that large portion sizes increase the risk of weight gain and obesity.²⁷³

10.6. Concluding remarks

General support was expressed for the approach identified. There was specific support among all categories regarding the use of the ASAI code, either alone or in conjunction with examples from Denmark and/or the UK. Irrespective of approach suggested, there was consensus that prices must be accurate, legible and with the necessary information displayed in such a way that a realistic picture is instantly obtainable and children's expectations are not raised unduly.

²⁷³ *Safefood*: written submission 47.

11. Identification, separation, insertion/ scheduling of advertising

11.1. Introduction

Two distinct themes were considered in this section of the *Phase 2 Consultation Document*. Primarily, the identification and separation of advertising was dealt with and secondly, the insertion and scheduling of advertising was addressed. The division between the dual themes is reflected hereunder. Comparative analysis of different codes reveals emphasis is placed on the need to distinguish clearly advertising from general programming. This is especially pertinent when this commercial activity is aimed at children. Consequently, the codes of many countries provide rules regarding the separation of advertising from programming, the insertion of children's advertising into programming and when this advertising can be scheduled for. Reference is also made to surreptitious advertising.

11.2. Identification and separation of advertising.

Information from European legislation and the Irish statutory code was considered. No material from the Advertising Standards Association of Ireland's (ASAI) code was included in this section of the *Phase 2 – Consultation Document*.²⁷⁴

11.2.1. European legislation and national codes

The *Television Without Frontiers* directive states that advertising and programming should be clearly distinguishable. In addition, it states that surreptitious advertising and teleshopping should not be permitted.

The Irish code echoes these stipulations but goes further. Situations and performances reminiscent of broadcast programmes must not be used in such a way as to blur the distinction between programmes and advertisements and that references to programmes in advertisements are considered unacceptable.

Referring to surreptitious advertising, the code defines the activity as the representation in words or pictures of goods, services, etc., in programmes when such representation is intended by the broadcaster to serve advertising purposes and might mislead the public as to its nature. Such representation is considered to be intentional,

²⁷⁴ The ASAI code does make reference to accessibility to commercial messages. See Appendix XII for relevant text.

in particular if it is done in return for payment or similar consideration and is, as a result, not permitted.

Section 25 of the code refers to indirect advertising of products and services within programmes by presenters. Promotion of, gratuitous remarks to or the declaration of association with specific products ‘on air’ is not permitted.

11.2.2. Examples from other countries

In Australia, reference is made to distinguishing clearly advertising material from mainstream programming.²⁷⁵ In the United Kingdom, it is said that in order to separate advertising from programming, no excerpts from films or items parodying other television programmes should be included.²⁷⁶ Finland has been more specific in its approach, stating that the viewer must be able to recognise advertising immediately with respect to image, text and sound.²⁷⁷

11.3. Questions asked

Referring to the identification and separation of advertising, the Broadcasting Commission of Ireland (BCI) posed two key questions. These were:

- In addition to the general requirement under the *Television Without Frontiers* directive that advertising must be distinguishable from television programmes, which, if any or all, of the examples outlined above, do you believe should be included in the children’s advertising code?
- Should there be any differences in the rules for radio and television? If not, what rules are relevant for each? Please provide a rationale for each of your responses.

11.4. Feedback

In their submissions, people paid reference to a number of interrelated themes. Primarily, this section addresses responses to examples given, looking at these from a general perspective and then according to group belonged to. Thereafter the approach changes, considering information received thematically.

11.4.1. Responses given

The majority of respondents chose not to refer directly to the examples given but to provide their own opinions on the issues raised. It should be noted that in so doing, all elements referred to in the examples were touched upon.

Of those that did reply, general support was voiced for the *Television Without Frontiers* directive, the majority of which supported its combination with other examples – with all, the Irish code, the UK and/or the RTÉ code.

²⁷⁵ Advertising Federation of Australia (n.dat), *Advertising to Children*, p.1.

²⁷⁶ The Children’s Society, UK (2002), *Response to: ITC’s Advertising Code Review Consultation – Amendments to the Independent Television Commission’s Code of Advertising Standards and Practice*, p.1.

²⁷⁷ Consumer Ombudsman’s Guidelines (2001), *Children and Marketing*, p.2.

11.4.2. Comparison of responses given by group belonged to

Responses from the category of individuals produced more varied responses. Some favoured the EU directive in combination with other examples, some favoured the reflection of all elements identified while others opted for the UK or Finnish examples.

The representative organisations were not well represented. The Law Reform Committee was alone in addressing this question; it supported the Irish code.²⁷⁸

A more streamlined approach was identified among the category of advertisers, advertising organisations and manufacturers. Here support was generally expressed for the EU directive in combination with the RTÉ code and/or the ASAI code.²⁷⁹ Zenith Optimedia was alone in its support for the EU directive while the ASAI supported its own code exclusively.²⁸⁰

The broadcasters opted for a more general approach to all matters highlighted. TV3 stated that

In addition to the general restrictions in EU/Irish law we do not consider it appropriate to have other rules applied provided that it is clear that advertising is separate from programming. Obviously general issues such as “taste and decency” would apply to the depiction of children in advertising...²⁸¹

RTÉ chose not to refer to the questions set. Relevant information supplied dealt with the applicability of a children’s advertising code, believing that it ‘should only apply to advertisements aimed at children and broadcast in programmes primarily aimed at children (i.e. up to 18.00 on television)’.²⁸² In its *Guidelines for Children’s Advertising*, Section 1(h) states ‘The personalities or characters on children’s programmes shall not be used to promote products, premiums, or services around their own programmes.’

11.4.3. Separation

The majority of respondents believed a clear distinction should be made obvious between advertisement and programming. For Conor Flavin, ‘A suitable time between the end of a programme and the beginning of commercial adverts should take place, so the mind can cognitively distinguish between the programme and the commercial endeavour.’²⁸³ Others believed commercial messages should be instantly recognisable and therefore suggested that the word ‘advertisement’ appear in the corner of the advertisement.

²⁷⁸ Law Reform Committee of the Law Society of Ireland (Child Law Group): written submission 25.

²⁷⁹ Unilever: written submission 36; Irish International BBO: written submission 45; Glanbia: written submission 48, p.5; AAI/IAP: written submission 50, p.18; Tayto Ltd: written submission 53, p.3; and FDII: written submission 57, p.6.

²⁸⁰ Zenith Optimedia: web submission 53; ASAI: written submission 39, p.18.

²⁸¹ TV3: written submission 21.

²⁸² RTÉ: written submission 28.

²⁸³ Conor Flavin: web submission 9.

Many references were paid to advertising to pre-school children. This category was seen as in need of particular protection ‘given their inability to discriminate between television advertising and programming...’²⁸⁴

For the Children’s Rights Alliance (CRA), ‘the question of ensuring that advertising is clearly separated from programmes is a crucially important one for a Children’s Advertising Code.’ Continuing on, the CRA stated that ‘The viewer must therefore be able to recognise advertising immediately with respect to image, text and sound.’²⁸⁵

11.4.4. Radio and television

Of those responding to this question, some people believed any code devised should apply equally to broadcast media, to television and to radio. There were those, however, who believed television was in greater need of regulation than radio. The belief held was that children should receive greater protection from television advertising than radio advertising to which they are less exposed. In addition, it was believed the distinction between advertising on radio is far clearer than on television advertising. Views expressed include ‘The impact of vision as an advertising medium far outweighs any other and as such there should be a difference in the rules between advertising on TV and radio.’²⁸⁶ More specifically, ‘Radio rules do not have to be as severe as there is only an aural impact. The double whammy of the visual and aural impact on small children provided by TV means that the code needs to be very specific.’²⁸⁷

11.4.5. Trailers for films

Concern was expressed in a number of submissions regarding the broadcast of trailers for adult films during peak viewing times for children. Some of these, it was believed, carried inappropriate images for children and greater care was advised.²⁸⁸ Helen Kenny was particularly vocal on this point when she said

I have a problem with the scheduling of promotional advertising for upcoming programmes, movies etc. These ads are often shown around 5.30-7.30 pm. In most households children are not yet in bed, have probably just finished watching kids TV and the parents have the news on. It is very difficult to switch off the ads in time and my own children have been scared by what they have seen (even though it was switched off after a few seconds)...according to [BCI] research the highest number of children are watching TV during this time.²⁸⁹

David French believed that a clear distinction also needed to be drawn between programme and trailer. Here he said that ‘Clear marking of advertising should include a text overlay (similar to subtext) showing that a video clip is an advert.’²⁹⁰

²⁸⁴ Safefood: written submission 47, p.7.

²⁸⁵ CRA: written submission 38.

²⁸⁶ Anonymous: web submission 22.

²⁸⁷ Jacki Conway: web submission 6.

²⁸⁸ Anonymous: web submission 10.

²⁸⁹ Helen Kenny: web submission 7.

²⁹⁰ David French: web submission 8.

11.4.6. Product placement and television presenters' endorsements

In general, it was believed that product placement in childrens' programming was unacceptable. So too was the endorsement of certain products or mention of particular brand names by children's television presenters. One person added that 'commercial companies should not be allowed to sponsor programmes or competition prizes.'²⁹¹

11.5. Insertion and scheduling of advertising

Reference was made to when, where and how often an advertisement is placed in the television and/or radio schedule. Included was the time of day when the advertisement is broadcast, the type of programme during which the advertisement is broadcast and the number of times advertisements are broadcast during that programme.

11.5.1. European legislation and national codes

The *Television Without Frontiers* directive addresses the insertion and scheduling of advertisements. More specifically, Article 11(5) states that 'News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping.' The Irish statutory code echoes these provisions. No additional information is offered, however.

11.5.2. Examples from other countries

Information obtained from the United Kingdom (UK) is extensive in this regard. Advertisements for merchandise based on children's programmes, for example, must not be broadcast in any of the two hours preceding or succeeding episodes of the relevant programme. In addition, 'appropriate timing restrictions must be applied to advertisements which might harm or distress children of particular ages or which are otherwise unsuitable for them.'²⁹²

11.6. Questions asked

Based on information reviewed in this section on the insertion and scheduling of advertising, the Broadcasting Commission of Ireland asked three questions. These were as follows:

- In addition to the general requirement under the *Television Without Frontiers* directive, do you believe that any of the above examples of rules should be included in the children's advertising code?
- Are there any additional scheduling restrictions that you believe should be applied? Please provide a rationale for their inclusion.
- Are there specific scheduling restrictions you believe should be applied for children of a particular age group? Again, please specify the age group and include a rationale for your proposals.

²⁹¹ Anonymous: web submission 30.

²⁹² Independent Television Commission (2002), *The ITC Advertising Standards Code* – Section 7: 'Children, p.36.

11.7. Feedback

Few respondents chose to refer to the examples provided but voiced their concerns regarding elements highlighted. Reflecting this the feedback for this section proceeds thematically rather than matching answers to questions set.

11.7.1. Timeframes or genres

Few respondents chose to refer to genres outside of children's programming. More concern, however, was expressed for the time of the broadcast. Many people believed there should be no advertisements in the early morning as this was a time where it was less likely that parents and/or guardians would be monitoring 'as most would consider that this is prime time for innocuous children's TV.'²⁹³ This respondent added that 'As the father of three boys...I have become slightly shocked at the quantity and hard sell nature of toy advertising done at this time of the morning.'²⁹⁴

Referring to a time span of thirty minutes, Jacki Conway believed this was not satisfactory as it could be easily subverted. 'At a minimum', she continued, it needs to be upgraded to the UK code. I believe that there actually should be no advertising during or within 1 hour either side of TV programmes aimed at under 14s.' The National College of Art and Design (NCAD) stated that '...the Irish Children's Advertising Code should also prohibit advertising when a number of shorter programmes are transmitted in clusters of less than 30 minutes total duration.'²⁹⁵

Some respondents suggested no interruptions for advertising during children's programmes. On this point, Mairide Woods stated that 'Advertisements should not interrupt children's programmes. They should not pretend to be news items and should not resemble other children's programmes.'²⁹⁶

11.7.2. Teleshopping

Teleshopping received scant attention from those making submissions. The BA class in Media Studies at NUI Maynooth asked for a clear distinction to be drawn between television advertising and teleshopping so that each could be instantly identifiable and 'kept quite separate from other parts of the programme service by visual and/or auditory means.'²⁹⁷

11.7.3. Christmas advertising

Concern was voiced regarding the increasing length of the Christmas advertising period, sometimes stemming back as far as August. This extension was seen as an unnecessary invasion and of precipitating a corresponding increase of pressure on parents at what is already considered a stressful period. Suggestions were made to introduce restrictions whereby the length of Christmas advertising campaigns could be truncated to being after a specified date. Suggestions made included not until after Halloween or until after 1st December. According to one respondent,

...advertising should respect seasonal considerations as a way of separating advertising from everyday fact. For example

²⁹³ Anonymous: web submission 4.

²⁹⁴ Anonymous: web submission 4.

²⁹⁵ NCAD: written submission 44, p.2.

²⁹⁶ Mairide Woods: web submission 56.

²⁹⁷ The Centre for Media Studies, NUI Maynooth: written submission 46, p.28.

Christmas does not start on November 1st and lasts 7 weeks. Advertising for products linked to cultural and religious events should have a time-limit prior to that event.²⁹⁸

In her submission, Sally Horn linked these start dates with the welfare of small children. More specifically, she offered the following viewpoint

I feel very strongly that Christmas advertising should not be allowed prior to Dec. 1st. Very young children don't have a concept of time and getting them excited about Christmas mid and late October leaves them feeling very frustrated and ultimately disappointed by the time Christmas comes because their expectations have been so heightened, yet they are made to wait and wait.²⁹⁹

Padraig Haran expressed a similar point of view. He referred to children being swamped by the volume of commercial messages. In this respect, Mr. Haran contends

that pre-Christmas advertising should be subject to strict controls. It is reasonable that products should be advertised and seen by children but not through saturation advertising with the same products appearing a number of times per hour. As it is parents who are the ultimate target of this advertising I would argue much of this advertising should be limited to adult viewing times.³⁰⁰

Another respondent believed the number of advertisements should not increase at Christmas times. Instead they should remain at a consistent level throughout the year.³⁰¹

11.7.4. Volume of advertisements broadcast

Throughout submissions made, the volume and concentration of advertisements directed at children was referred to. Many people believed the number of advertisements broadcast in an hour was in need of regulation. It has been suggested therefore that 'The BCI should seriously consider the volume of commercial messages children are exposed to continually in their daily lives, and think about ways of reducing their over commercialisation in children not least in terms of over stimulation with media messages.'³⁰² Another respondent stated that 'Children are bombarded constantly by product placement in programmes and then again during the advertising breaks. There is an obvious trend in Ireland towards an American style of advertising whereby as soon as the opening titles of a programme are finished the programme cuts to an ad break.'³⁰³

²⁹⁸ Anonymous: web submission 17.

²⁹⁹ Sally Horn: written submission 2.

³⁰⁰ Padraig Haran: web submission 54.

³⁰¹ Anonymous: web submission 58.

³⁰² Anonymous: web submission 11 (in answer to Section 8).

³⁰³ Anonymous: web submission (in answer to Section 8).

Believing the number of advertisements broadcast should be capped, Therese Brady also linked the volume of advertisements transmitted with the affect on children. More specifically, she said ‘The repetition of ads for the same product should be minimised – children seem to become almost hypnotised by seeing the same ads so many times in even an hour’s tv viewing.’³⁰⁴ According to Bob Quinn, ‘The infamy is contained not in the individual message but in its epileptic frequency.’³⁰⁵

The Joint Advertising Education Committee (JAEC) also picked up this theme. Referring to the advertisement of food, it said

We consider that Food and Drinks Advertising should be monitored on a product-contingent basis i.e. if a food or drink product has a high % of saturated fats, sugar or additives it should be allowed only limited advertising during children’s programming. These types of foods could be advertised as ‘special occasion food’ as opposed to ‘everyday food’ and perhaps be subject to an ‘Eat in Moderation’ health warning.³⁰⁶

Concern vis-à-vis the volume of advertisements broadcast was not seen as pertaining to Christmas exclusively. While many highlighted such seasonal advertisements as being of particular concern, there were others who believed this to be an all-year-round problem. In short, many supported the notion that the ‘Total percentage of advertising should be...tightly controlled during children’s programming hours.’³⁰⁷

11.8. Concluding remarks

Throughout Section 11, it was noted that respondents chose to give opinions regarding the points raised rather than to answer questions set directly. Nevertheless, it was seen that in adopting this approach, respondents touched on all elements proposed with some additional information forthcoming. Areas also highlighted for attention and further discussion included the trailers for films, Christmas advertising period and the volume of advertisements broadcast.

³⁰⁴ Therese Brady: web submission 27.

³⁰⁵ Bob Quinn: written submission 12.

³⁰⁶ JAEC: written submission 26.

³⁰⁷ David French: web submission 8.

12. Use of split screen, virtual and interactive advertising

12.1. Introduction

Techniques for broadcasting advertisements are in constant flux. Split screen, virtual and interactive advertising are currently highlighted for consideration. No regulations exist at European or national level.³⁰⁸ In devising the general advertising code, it is expected that rules will be agreed upon to govern these three particular techniques and such rules will apply to advertising directed at children accordingly.

12.2. Questions asked

At this juncture, respondents were asked if they believed that there were particular issues vis-à-vis children which should be included in any rules dealing with these techniques. More specifically, the Broadcasting Commission of Ireland (BCI) asked

- Are there particular issues with regard to children that you believe should be included in any rules that govern these advertising techniques?
- What are these issues and please provide a rationale for each?

12.3. Feedback

Few people chose to respond to this section. Even then there was a degree of hesitancy among respondents to deal with these matters. Due to a lack of direct knowledge of the techniques in question, some felt reluctant to voice an opinion while others said they were unsure of the sentiments they expressed. Of those voicing an opinion, the tendency was to refer to all techniques together rather than give each specific attention.

From the information supplied, it became obvious that the majority of individuals were against the use of these techniques in children's advertising. The general view

³⁰⁸ Section 3 of the *Phase 1 Consultation Document* dealt with definitions of general advertising terms. 'Split screen', 'virtual' and 'interactive' advertising were considered. See also R-BM Quinn (2003), *Phase 1 Consultation Document – Summary of Submission Received*, June, pp. 11-13 and *Phase 2 Consultation Document*, pp 7-8 for further information.

expressed was that as advertising could have a significant influence on children, there was no need to adopt more ‘sophisticated’ methods to get the message through.³⁰⁹ Lynn O’Keeffe was opposed to the use of any of the techniques suggested. Prohibiting use of them was necessary, she continued, ‘so as to maintain a clear distinction between adverts and entertainment.’³¹⁰ Another person felt that ‘Techniques whose intent is to blur the distinction between information and persuasion should never be allowed in any form of programming, whether to children or adults.’³¹¹

Some respondents questioned the affect such techniques could have on the viewing children. Many believed these would be distracting for children and could interfere with levels of concentration. Here one respondent said the use of split screen, virtual and interactive advertising

should be banned from children’s advertising. Children need to learn to focus for more than 15 seconds so that they can learn effectively; television habits of zapping and now split-screen viewing are making this more difficult. Interactive advertising should only be for adults.³¹²

Concern was also expressed for the privacy of the child and his/her family unit. In the absence of guaranteed adult supervision, asking children for information through interactive advertising was considered unacceptable.³¹³

A few respondents felt the use of split screen, virtual and interactive advertising could be permissible under certain conditions. The principal concern voiced was that ‘any advertising techniques allowed by the code should be based on a requirement that they CANNOT harm the most vulnerable of our children in any way.’³¹⁴

Those in the category of advertisers, advertising organisations and manufacturers took a different view. Zenith Optimedia and Irish International BBDO believed this was not a matter for a children’s advertising code. Instead, they asserted, this would be dealt with under the terms of the forthcoming general advertising code. Such positioning, they felt, was more appropriate.³¹⁵ The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) also supported this view, advising that ‘The BCI code should adopt the relevant EU definitions on split screen, virtual, interactive and other technical innovations as and when they arise, in the general television code.’³¹⁶

³⁰⁹ Therese Brady: web submission 6.

³¹⁰ Lynn O’Keeffe: written submission 20.

³¹¹ Anonymous: web submission 22.

³¹² Anonymous: web submission 5.

³¹³ Julie Walsh Power: written submission 3.

³¹⁴ Anonymous: web submission 14; Stephen Jio: web submission 10.

³¹⁵ Zenith Optimedia: web submission 27; Irish International BBDO: written submission 45.

³¹⁶ AAI/IAPI: written submission 50, p.19.

12.4. Concluding remarks

Due to a lack of knowledge on these three techniques, there was a general reluctance among those responding to proffer an opinion. Interference with concentration levels of children and the potential impingement on privacy emerged as the two primary concerns. Questions were also raised regarding the newness of such methods and the belief that it may be too early to act. In this situation, some believed that if rules were indeed drawn up, it should be on the basis ‘that they will be constantly reviewed.’³¹⁷ The AAI and IAPI also paid reference to this point. In their joint submission, they said ‘As these forms of advertising develop issues may arise, but for the time being it would be inappropriate to second guess on a legislative basis, the issues that may arise for children’s advertising in this regard.’³¹⁸

³¹⁷ Anonymous: web submission 20.

³¹⁸ AAI/API: written submission 50, p.19.

13. Assessment

13.1. Introduction

Two principal themes were considered under this heading. These were the identification of children's advertising and what constitutes a children's programme. Referring to these areas is deemed important as it addresses how individual advertisements might be assessed with the advent of a new code for children's advertising.

13.2. Identification of children's advertising

For the purposes of this code, the Broadcasting Commission of Ireland (BCI) defines 'a child' as any person under 18 years of age. It defines 'children's advertising' as advertising which promotes products, services or activities that are deemed to be of particular interest to children and/or is broadcast during and between children's programmes. What now emerges for consideration is the identification of advertising that could be deemed children's advertising simply because it is broadcast during or between children's programming and/or programming appealing to children.

13.3. What is a children's programme?

Some programmes are easy to distinguish as appealing to children while others are more difficult to categorise. Submissions received for the *Phase 1 Consultation Document* raised the point as to how a children's advertising code would apply to programmes which are aimed at an adult audience albeit attracting significant numbers of child viewers. Examples provided included soap operas and pre-Watershed comedies. How such programming is approached was now opened up for discussion.

13.4. Examples from other countries

The Independent Television Commission (ITC), United Kingdom states that a programme will have a particular appeal to the relevant age range when audience measurement shows it is likely to be relatively more popular with that age range than for the population as a whole. Consequently, this type of audience indexing would see assessment of the suitability of advertising being made with regard to the composition of the audience based on audience measurement figures. If this were to occur, a

programme attracting significant numbers of viewers under age 18 might be dealt with as a children's programme and thus, advertising transmitted during this particular programme would be accepted as children's advertising.

Two points should be noted. Firstly, the Broadcasting Commission's definition of a child identifies those under age 18 *while* breaking this into age groups to reflect different levels of maturity.³¹⁹ And secondly, the balance between the broadcasters' responsibility in scheduling advertising and parental responsibility in ensuring that children are watching age-appropriate material was raised once again.

13.5. Questions asked

The BCI posed a series of questions in this regard. These were as follows:

- How should a children's programme be defined?
- How should advertising that is broadcast during programmes targeting adults but which are also watched by children be assessed?
- How should the recognition of the different levels of protection required by children of different ages, in particular very young children and those over the age of fifteen, be incorporated into this assessment?
- What guidance should the code offer to broadcasters and parents regarding the assessment of this type of advertising?
- In all instances, please provide a rationale for your views.

13.6. Feedback

It was believed that in approaching this area, BCI has set itself 'a very difficult task.'³²⁰ Responses received were grouped around questions set and are outlined hereunder.

13.6.1. Defining a children's programme

Viewed comparatively, there was a marked difference between how individuals defined a children's programme and what the advertisers, advertising organisations and manufacturers considered it to be. Individuals believed it could be defined as any programme children watch while the latter category believed it was any programme specifically aimed at children. Broadcasters would also agree that a children's programme 'should be defined as one purposefully targeted at children and the majority of sustained viewing is done by children.'³²¹

13.6.2. Pre-watershed advertising broadcast outside children's peak viewing times

Two distinct views were decipherable in this respect. These cut across submissions from all respondents rather than being category specific. Many people supported the view that all advertisements prior to 9pm should be protected by the children's

³¹⁹ These groupings are: (a) pre-school children; (b) 4-14; and, (c) 15-18.

³²⁰ Catherine Murphy: web submission 5.

³²¹ TV3: written submission 21.

advertising code. Others believed this to be unsuitable and consequently, opted for audience indexing.³²² These views are outlined hereunder.

Many people considered 9pm to be a suitable cut-off point as a time frame when the children's advertising code applied. According to David French, 'To be effective a code has to be enforceable and the simplest definition of children's programming is pre 9pm.'³²³ Specifying a time, however, does not all problems solve. Some respondents noted that some programmes can overlap this – most particularly, the *Late Late Toy Show* and the *Champion's League*.³²⁴

The other option, audience indexing, received considerable support from all categories. This was seen as a more flexible approach, one which could adapt to the programme being viewed rather than the time being broadcast. Furthermore, it was believed that ratings could be used with updates given annually to re-assess what is being watched by children.³²⁵ The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) also supported the notion of audience indexing. More specifically, they said

When audience measurement shows that a programme is likely to be relatively more popular with children than for the population as a whole, the programme is classified as a children's programme and the suitability of advertising is defined accordingly. We recommend that a children's programme be defined as such when 50% or more of its audience is composed of children.³²⁶

The Green Party voiced its support for audience indexing. Here is stated

In the first instance, special care must be exercised during the dedicated children's television schedule. However, we invite the Commission to use audience indexing to identify those programmes placed elsewhere on schedules (early or late evenings) which are being viewed by children, so as to ensure that the guidelines set out in the new Code apply to all appropriate times throughout broadcast schedules.³²⁷

The use of audience indexing is seen as paramount when dealing with alcohol advertising. On this point, MEAS (Mature Enjoyment of Alcohol in Society Limited) said that such a method 'is likely to be a more accurate mechanism for ensuring that alcohol advertisements are not viewed by children, than is a time determined mechanism.'³²⁸

³²² Some respondents referred to this as 'audience profiling.'

³²³ David French: web submission 19.

³²⁴ Rachel Maguire: web submission 28; Anonymous: web submission 11.

³²⁵ Lynn O'Keeffe: written submission 20.

³²⁶ AAI/IAPI: written submission 50, p. 20.

³²⁷ Green Party: written submission 43, p.28.

³²⁸ MEAS: written submission 52, p.1.

13.6.3. Different levels of protection for different age groups

The belief was expressed that children in the younger categories should be protected – some put this as those under 8 while others opted for pre-school children. Others chose to identify specific age groups. Irish International BBDO stated that ‘While development in children is not consistent by age, IIBBDO feel that the generally accepted stages of progression should be used: 0 to 4 years (pre-school), 5 to 11 years (primary school), 12 to 14 years (‘tweenies’) and 15 to 17 years (minors/youths). AAI and IAPI took these groupings one step further by attempting to match age group specified with level of protection to be afforded. More specifically, they recommended the following:

0-4 years	no advertising accepted for this group at present
5-11 years	higher: responsible parental guidance required
11-14 years	lower: require some parental guidance
15-17 years	lowest: virtual adults ³²⁹

Jacki Conway felt specifying age alone was not sufficient, however. There should also be, she added, a limit on the total number of advertisements transmitted.³³⁰

13.6.4. Guidance for broadcasters and parents

If audiences are indexed, it is believed this will result in more appropriate advertisements being broadcast at specific times. Furthermore, advertisements broadcast could be coded according to age group thereafter.

The role of parents and/or guardian vis-à-vis children’s viewing patterns was repeated throughout the submissions made. It was generally accepted that ‘Parents/guardians must share responsibility for what their children watch...if they allow children to watch programmes after 9pm they must be aware that the advertisements are directed at adults.’³³¹ David French added that ‘The changeover of balance of duty between parent/guardian has to take place at some point.’³³² Irish International BBDO linked parents to advertisers in this respect. Here it said ‘Parents must be reminded of their responsibilities and their power of action and Advertisers should be reminded of their social responsibilities and the market consequences of failing to live up to them. But an overall drive for common sense and a realistic view of the real world is vital.’³³³

The Food and Drink Industry, Ireland (FDII) also emphasised dual responsibility albeit applying a different perspective. It said that ‘a balance needs to be struck between broadcasters’ responsibility in scheduling the advertising and the parents’ responsibility in ensuring that children are watching age-appropriate material.’³³⁴

13.7. Concluding remarks

Significant support was expressed for audience indexing and the flexibility of approach it might afford. Further precautions, however, were advised. The idea of a

³²⁹ AAI/IAPI: written submission 50, p.20.

³³⁰ Jacki Conway: web submission 20.

³³¹ Amen: written submission 5.

³³² David French: web submission 19.

³³³ IIBBDO: written submission 45, p.8.

³³⁴ FDII: written submission 57, p.6.

clearing house was raised by a number of respondents, a pre-vetting of advertisements prior to broadcasting. One person said

Adverts should be assessed proactively. All adverts should be pre-approved by the BCI that they do not break any code. Any system that allows adverts to be put out and only looked at following a complaint is almost useless.³³⁵

The importance of this was acknowledged by many. Unilever felt that ‘Each advertisement should be assessed on its individual merit, taking consideration of the context.’³³⁶ The BCI being vested with such responsibility was not accepted by all, however. Stuart Fogarty suggested ‘ASAI pre-vetting’ while others felt that this function should not be performed by the industry.³³⁷ It was also suggested that a ‘broadcasting council’ carry out this task.³³⁸

The role of parents and/or guardians also emerged for consideration. Many people felt parents must assume some responsibility for the viewing habits of their own children. If adults are to let children view television after 9pm, then they bear responsibility for the programmes and advertisements their children may be exposed to. Prior to this cut-off point, it was believed advertisements should not be of an overtly adult nature. Primary care may lie with parents but it must be acknowledged that parents often require guidance and ‘the support of a practical and effective advertising code.’³³⁹ The ASAI picked up on the latter point when it said ‘Any rules made in this area must be pragmatic, clear, easily implemented and be drawn up in a realistic assessment of current norms in relation to viewing and listening habits of children and their parents.’³⁴⁰ Collectively, this highlights the need for guidance on three fronts: for advertisers regarding what content matter is considered acceptable; for broadcasters concerning what can be broadcast when; and for parents about when are suitable viewing times for children and those times when caution must be applied.

³³⁵ Anonymous: web submission 26.

³³⁶ Unilever: written submission 36.

³³⁷ Stuart Fogarty: web submission 30; Anonymous: web submission 12. See Section 14 for further information on, and development of, this topic.

³³⁸ Anonymous: web submission 8.

³³⁹ Jim McVeigh: written submission 42.

³⁴⁰ ASAI: written submission 39.

14. Administration and implementation of the code

14.1. Introduction

In devising a new code for children's advertising, questions were asked regarding the subsequent administration, management and review procedures once such a code has been implemented. In so doing, these elements might be married to the existing work and profile of the Broadcasting Commission of Ireland (BCI). Five areas were specified in this regard and they are referred to hereunder.

14.2. Monitoring

As part of its statutory functions, radio and television stations licensed by the BCI are frequently monitored for compliance with the general advertising code. It is expected that those entities licensed by the BCI will be monitored in a similar fashion for compliance with the children's advertising code. Whether alternative methods should be sought or added that pertain particularly to children's advertising is a subject opened for debate in this second phase of consultation.

14.3. Complaints procedures

At present, any member of the public wishing to make a complaint regarding an advertisement or broadcaster which they believe to have broken the existing code may do so by contacting the Broadcasting Complaints Commission (BCC). Alternatively, representation might be made to the Advertising Standards Association of Ireland (ASAI). The industry's self-regulatory body, the ASAI, deals with all types of advertising.

14.4. Interpretation of the code

The BCI does not currently provide a clearing house for advertisements. Nevertheless, it is envisaged that the Commission would perform an educational role in raising awareness of the new children's advertising code among parents/guardians and advertisers and broadcasters. In addition, it will monitor the practical implementation of the code to determine if there are specific areas which might be posing difficulties for advertisers and/or broadcasters in adhering to these rules.

14.5. Research

Once implemented, it is expected that the children's advertising code will be subject to review. The role that research – both quantitative and qualitative – will play in the review process has been identified.

14.6. Review of the code

The code is to be reviewed on a tri-annual basis. It is envisaged that public consultation will form the basis of this review process.

14.7. Questions asked

Many themes were hereby juxtaposed. The BCI asked four key questions relating to these areas:

- Are you satisfied with the manner in which the Commission intends to monitor broadcasters for compliance with the children's advertising code? Please provide a rationale for your views.
- Do you agree that the Commission has an educational role to play in raising awareness of the existence and interpretation of the children's advertising code among parents/guardians and broadcasters and advertisers?
- Have you suggestions as to how this role could operate?
- Are you satisfied with the proposed timeframe and approach to the ongoing review of the children's code? Please provide a rationale for your views.

14.8. Feedback

Information was forthcoming on all four sections albeit in varying degrees. The majority chose to proffer opinions on monitoring, to a lesser degree on the educative role the BCI could carve out for itself and the timeframe for the review process. Least attention was paid to the role which research could/should play. Opinions expressed are considered hereunder, grouping responses under the three headings of (i) monitoring; (ii) educational role; and (iii) review.

14.8.1. Monitoring

While some respondents agreed with the monitoring role as outlined in *Phase 2 Consultation Document*, the majority believed this did not go far enough. The general belief was that the BCI needed 'teeth' in the implementation and coordination of the children's advertising code. This was seen as particularly necessary since the 'rights of children form a central tenet of the code.'³⁴¹ Monitoring, as it currently exists, was therefore seen as inadequate in this regard. Suggestions were made vis-à-vis how this might occur.

³⁴¹ Safefood: written submission 47, p.8.

Some respondents supported the introduction and application of punitive measures. The belief was that as an advertisement would not be assessed until *after* the breach had occurred, it was necessary to introduce some measure that could act as a deterrent. The most popular suggestion was the introduction of hefty fines. One person asked ‘how do you penalise a breach if you cannot issue fines? What is the penalty if a TV station breaks the code?’ The following extract sums up many of the points raised. Here Brendan Cooney stated

The monitoring system is fine but the fact that fines cannot be issued is ridiculous. As this country has seen with drink driving, speeding, housing, safety, etc. etc. [sic] applying laws without the possibility of sanction is a waste of time and money. This is self regulation and time and time again this has been shown not to work. Until the BCI has teeth and large ones at that this consultation and the result code of practice will be just a waste of everything.³⁴²

While agreeing that the code needed clout, there were those respondents who realised that the application of heavy fines and the use of heavy handed regulation in this regard could not all problems solve. Instead, it was recognised, this could have a negative impact on indigenous broadcasting while not shielding Irish children from all varieties of advertisements. Advertisers would by-pass Irish broadcasters to have advertisements broadcast into Ireland on satellite and non-national channels, losing revenue for home based channels and leaving children still ‘exposed to the bombardment of advertising.’³⁴³ ‘Though an excess of anything is undesirable’, says the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI), ‘severe advertising restriction in isolation will change little in our children’s lives.’³⁴⁴

Establishing a clearing house to facilitate the pre-vetting of advertisements received considerable support from respondents in all main categories. General dissatisfaction was expressed for the fact that currently breaches are only acted on long after the breach has occurred ‘thus negating the power of the code.’³⁴⁵ Pre-vetting was considered as a way to screen potentially offensive ads prior to broadcast. It should be recognised, however, that this too is not a failsafe process; advertisements are subjective matter where what is offensive to one is humorous or benign to another. Consequently, advertisements with the potential to offend can still slip through the gaps. One respondent stated that ‘All advertisements (for children or adults regardless) should pass through an authority who should decide if the use of the add [sic] is acceptable. The companies advertising should have to pay for this assessment as part of their advertising costs.’³⁴⁶ In the absence of a clearing house, David French says ‘it is difficult to see how the BCI can function effectively if it does not offer a screening service for ads.’³⁴⁷

³⁴² Brendan Cooney: web submission, 6.

³⁴³ Anonymous: web submission 14.

³⁴⁴ AAI/IAPI: written submission 50, 2.

³⁴⁵ Anonymous: web submission 1.

³⁴⁶ Anonymous: web submission 2.

³⁴⁷ David French: web submission 24.

If such a system is to be established, who should be vested with responsibility? Here differences emerged when the categories were compared. Individuals and representative organisations favoured different approaches, the main ones being the BCI takes charge exclusively, an independent body of experts is established to oversee this function or a panel comprising of parents, guardians, relevant representative groups empowered to guide ‘advertising for children, in a similar sense to the film censor.’³⁴⁸ Adam May believes that ‘It is only with the imposition of this kind of discipline that the advertising industry will take the regulations seriously.’³⁴⁹

Respondents from the category of advertisers, advertising organisations and manufacturers took a very different view. The majority believed that it should be industry pre-vetting along the same lines as is currently carried out for alcohol advertisements in Ireland. The belief expressed hinges on the role of the ASAI and an acceptance that it has the necessary expertise to carry out this role.

Stuart Fogarty made a statement which might be taken into consideration at this point. He stressed that ‘Advertising is not about offending anyone (let alone your target audience) but rather about selling to them. There’s no shame in that. Just the need to do it responsibly and we do.’³⁵⁰ The view was also expressed from respondents in this category that there should be a joint industry/BCI monitoring body to oversee adherence, the practicalities and difficulties of the code.³⁵¹ Indeed the ASAI asked that its ‘long-established system of advertising self-regulation...be acknowledged.’ Furthermore, it stated that ‘Methods of co-regulation could be devised to strengthen the protection of consumers and avoid confusion and unnecessary duplication.’³⁵² Here the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners (IAPI) stated that it is their

...recommendation that the BCI’s regulatory code should be a broad ‘light touch’ principle document only. The detailed provisions of advertising regulation should be the preserve of the ASAI self-regulatory code which is adaptable and may change over time to properly reflect Irish society. The ASAI also has the support and backing of the media and advertising industries to sanction code infractions.³⁵³

While co-regulation was suggested by many in this category, there was support for the role of the ASAI to be predominant over that of the BCI and the Broadcasting Complaints Commission (BCC). Here it was suggested that while complaints regarding programmes should be directed to the BCC, all complaints regarding advertising would be sent to the ASAI.³⁵⁴ Nestlé (Ireland) Ltd. suggested ‘that complaints should continue to be referred to the ASAI complaints committee with all complainants informed of their entitlement to take their complaint to the BCC if they

³⁴⁸ Paul Butler: web submission 26.

³⁴⁹ Adam May: web submission 40.

³⁵⁰ Stuart Fogarty: web submission 32.

³⁵¹ Irish International BBDO: written submission 45.

³⁵² ASAI: written submission 39.

³⁵³ AAI/IAPI: written submission 50, p.21.

³⁵⁴ See for example, Nestlé (Ireland) Ltd: written submission 41; and, Unilever: written submission 36.

are not satisfied with the response they receive.’³⁵⁵ According to Unilever, ‘We are not aware of any evidence to suggest that this has not served the public well.’³⁵⁶ Javelin/Young and Rubicam stated that

Even with the best will in the world, it is simply not possible for external bodies to legislate for and to monitor advertising standards as objectively as can the industry itself. It is also probable that third-party management of the task would, for want of intimate knowledge and understanding, have a heavy-handedness which in turn could have a negative effect on trade performance.³⁵⁷

14.8.2. Educational role

Support was voiced for the BCI having an educational role to play in raising awareness of the existence and interpretation of the children’s advertising code with many describing such a role as ‘crucial’ and ‘vital’.³⁵⁸ It was also asserted that this should be more extensive than suggested in the consultation document - taking in broadcasters, advertisers, parents and/or guardians and children. Contact should be made through the education system, in the home, through libraries and through the broadcast media. Catherine Murphy suggested that contact through the broadcast media be on-going rather than sporadic. More specifically, she suggested ‘a daily broadcast of telephone and email contact points for feedback on screen (and perhaps also permanently on display on airtel and on the website).’³⁵⁹ The importance attached to such a role is exemplified by the following respondent who said ‘Many parents/guardians would feel supported if they are made aware of this code.’³⁶⁰

Suggestions were made that a possible educational role should be considered jointly with the advertising industry.³⁶¹ In this respect, the AAI and IAPI said that

The BCI’s proposed educative role is welcomed by the advertising industry and could be implemented efficiently by supporting the Media Smart programme the IAPI and AAI propose. Media Smart is a pan-European initiative to teach and inform children how the media and advertising industries work. It gives them, at an early age, the critical analysis tools to enable them to assess advertising and its commercial intent and understand the differences between it and programming.^{362 363}

³⁵⁵ Nestle (Ireland) Ltd.: written submission 41.

³⁵⁶ Unilever: written submission 36.

³⁵⁷ Javelin/Young and Rubicam: written submission 55.

³⁵⁸ Anonymous: web submission 17; and, Anonymous: web submission 42.

³⁵⁹ Catherine Murphy: web submission 8.

³⁶⁰ Anonymous: web submission 42.

³⁶¹ For example, see Anonymous: web submission 38; Nestlé (Ireland) Ltd.: written submission 41; Tayto Ltd.: written submission 53, p.3.

³⁶² AAI/API: written submission 50, p.21.

³⁶³ 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). See also

RTÉ also referred to the educative role. More specifically, it stated that children needed to be educated regarding the function of advertising and that it was the responsibility of all broadcasters to encourage this by the production and transmission of “infomercials”. Broadcasters should be obliged to produce these infomercials on an annual basis.³⁶⁴

14.8.3. Review

While most respondents supported the notion of review, differences occurred regarding the length of time. Some found three years acceptable, too long or too short. The Food and Drinks Industry, Ireland (FDII) stated that three years was satisfactory and added that ‘we believe that the review process should be carried out in conjunction with a public consultation and a comprehensive study of research relating to the effectiveness of the achievement of the code’s objectives.’³⁶⁵ Safefood felt that three years was too long and wanted the code to be reviewed on a more regular basis.³⁶⁶ Lynn O’Keeffe, for example, believed that the three year period was too short and opted for five years instead.³⁶⁷

Some respondents in the category of advertisers, advertising organisations and manufacturers referred to a “period of grace”. More specifically, they proposed a settling in period after the code was introduced. Tayto Ltd. felt that at least a year should be allotted between the introduction of the code and it coming into effect; this lengthy period was to accommodate the long lead times in creative development.³⁶⁸ The AAI and IAPI set this time frame at a minimum of 6 months, again to reflect ‘the significant lead times and investment involved in television production and media planning [which] mean projects are initiated many months in advance of their first airing.’³⁶⁹ The FDII believed an interim stage should occur *before* the implementation of the code. This, it believed, is necessary so that manufacturers and advertisers could ‘understand the key areas of concern from the public and have some time to respond to specific issues related to our businesses as they occur.’³⁷⁰

RTÉ has also raised the idea of an interim period. Here it stated that ‘RTÉ’s preference is to see the introduction of a voluntary code in the first instance, with a review after 12 months to see if the voluntary code achieves the goals set out by the Broadcasting Commission of Ireland.’³⁷¹

www.weta.org/community/project/media/ for information on the Washington Educational Television Association’s experience of Media Smart.

³⁶⁴ RTÉ: written submission 28.

³⁶⁵ FDII: written submission 57, p.8.

³⁶⁶ Safefood: written submission 47.

³⁶⁷ Lynn O’Keeffe: written submission 20.

³⁶⁸ Tayto Ltd.: written submission, p.4.

³⁶⁹ AAI/IAPI: written submission 50, p.21.

³⁷⁰ FDII: written submission 57, p.7.

³⁷¹ RTÉ: written submission 28.

14.9. Concluding remarks

Areas considered referred to the implementation, monitoring and review of the children's advertising code once introduced. In general, it was felt the BCI should have clout vis-à-vis the introduction and supervision of the code. Consequently, considerable support was expressed for the establishment of a clearing house, a system where potentially offensive material might be weeded out at root. Throughout this section, the role of the BCI in such implementation and monitoring was both considered and questioned. Many felt the ASAI should retain its position with regard to advertising.

Different viewpoints were therefore juxtaposed. Many areas remain for consideration, most notably what type of monitoring system might best fit the needs of children and of children's advertising. The current system is, according to a significant number of respondents, unsuitable for such a task.

Matters arising

Introduction

Throughout the *Phase 2 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 and effective albeit not exclusive. While interested parties were asked to group responses under set headings, efforts were made to accommodate new material arising.

Additional information was considered thoroughly, included when and where applicable. Points made, but falling outside the framework specified, are considered hereunder.

Feedback

Three main areas were highlighted for consideration. These are outlined as follows and points made are summarised thereafter.

- Co-regulation;
- Ban on children's advertising and the 'Country of Origin' principle;
- The *Late Late Toy Show*.

Co-regulation

In the summary of submissions produced on the *Phase 1 Consultation Document*, recurring 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.³⁷² Throughout submissions made in Phase 2, from advertisers, advertising organisations and manufacturers, these themes recurred. The opportunity for co-regulation was constantly proffered by this category; the central argument being 'If it ain't broke, don't fix it.' Some suggested that no change should be made to the current arrangements. An extract from the submission of Nestlé (Ireland) Ltd. reflects many of the sentiments expressed:

³⁷² See *Children's Advertising Code – Phase 1 Consultation Document*, pp 33-35.

Children’s advertising in Ireland is already strictly regulated by the industry itself and we at Nestlé advocate a continuation of this self-regulation rather than the introduction of potentially anti-competitive legislation. The ASAI code includes a lengthy and stringent section on advertising to children to all broadcast and non-broadcast media. It is our strong belief that the existing ASAI codes, along with the additional regulations in the RTE code and the Television Without Frontiers Directive, deal adequately with all the issues to be covered in the Children’s Advertising Code and that any further restrictions are unnecessary.³⁷³

TV3’s submission lent support to a system of ‘co-regulation or self-regulation’ with/by the ASAI. In so saying, it outlined five points it believed characterised what regulation should be. It should

1. be kept to a minimum necessary;
2. pursue clear policy goals;
3. ensure legal certainty;
4. be technologically neutral;
5. be enforced as closely as possible to the operators.³⁷⁴

Such characteristics, TV3 believed, could be achieved through a process of self-regulation, one ‘with a heavy emphasis on the advertisers would be appropriate.’³⁷⁵ On the role of the ASAI, RTE made two recommendations. Here it said

- ‘The ASAI remains on a non-statutory basis the first level of review. As there is a statutory right of access to the Broadcasting Complaints Commission [BCC] all complainants to the ASAI should be informed of their entitled [sic] to take their complaint to the BCC if they are not satisfied with the response they received.
- The BCC should continue to be the final reviewer of complaints concerning broadcast advertisements.’³⁷⁶

Understandably, the ASAI is supportive of a self-regulatory approach. More specifically, it said

It is requested that the BCI Codes should give recognition of a formal nature to the ASAI Codes. The work that the ASAI does in relation to the application of the Codes to commercial advertising is of a very transparent nature and the formal adjudications of its independent Complaints Committee are published. A recognition of the ASAI Code and its adjudications should facilitate the BCI’s monitoring role.³⁷⁷

³⁷³ Nestlé (Ireland) Ltd.: written submission 41.

³⁷⁴ TV3: written submission 21.

³⁷⁵ TV3: written submission 21.

³⁷⁶ RTE: written submission 28.

³⁷⁷ ASAI: written submission 39, p.1.

The Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) wanted the role of the ASAI to be maintained. Here they said

We believe...that the Code should recognise and respect the position of the ASAI and that, rather than aiming to supplant its role in the broadcast media arena, the Commission should aim for a situation of “co-regulation” with the ASAI. We support this approach as the ASAI Code has been fine-tuned over twenty years, to work to and beyond current, ethical, legal and market requirements. It should also be noted that the ASAI supported by the media, has a remit to apply sanctions to those who infringe the code?³⁷⁸

Submissions received from this category demonstrate that the ASAI and its codes are highly regarded. The codes are seen as flexible, applicable and relevant. They have been tried and tested. Consequently, it is believed that the codes should continue or at the very least, should form the basis of the new children’s code being developed.

*Ban on children’s advertising and the ‘Country of Origin’ principle*³⁷⁹

Requesting a ban on advertising directed at children under 12 appeared in a number of submissions albeit the level not being overly significant. In this context, Sweden was lauded as the example to follow. Acknowledging that children were surrounded by advertising in the print media, on billboards, sponsored events, there was still support for restrictions on the broadcast media of television and radio. Bob Quinn’s submission reflects sentiments expressed by many respondents when he said ‘Ban all advertising directly targeted at children and ban all advertising transmitted during children’s programming. Do as Sweden does: ban it.’³⁸⁰

The Green Party also expressed support for a ban on children’s advertising. While respecting the stance Sweden has taken, it did not accept this as flawless. It acknowledged that broadcasters have been successful in circumventing this ban by broadcasting from another jurisdiction *into* Sweden. In this respect, the Green Party made two requests. Principally, it asked that the Government and the BCI ‘pursue a more international regime for the control of children’s advertising reflective of the concerns raised in the course of the BCI consultation.’³⁸¹ And secondly, it called

on the Broadcasting Commission to alert the Government and the minister to the complex question of doing what is right on behalf of Irish children and their guardians in the Children’s Advertising Code, and the need for the Government to vigorously pursue opportunities to introduce protective measures at multi-lateral fora such as the renegotiation of the

³⁷⁸ AAI/IAPI: written submission, 50, p.1.

³⁷⁹ 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.

³⁸⁰ Bob Quinn: written submission 12.

³⁸¹ The Green Party: written submission 43, p.3.

Television Without Frontiers Directive, to ensure that Irish interests are adequately represented.³⁸²

A similar view was expressed by *Safefood*. It stated its concern that the new children's advertising code would be governed by the 'Country of Origin' principle. Believing that such could restrict the application of the code, *Safefood* expressed its full support for the Irish submission to the revision process of the *Television Without Frontiers* directive. More specifically, *Safefood* stated that

Ireland is concerned that its ability to introduce meaningful national measures is being eroded. It is contended that the objective of ensuring the free movement of television broadcasts can be achieved and the impact on smaller Member States lessened, if jurisdiction is determined on the basis of where a broadcast service is targeted rather than where a broadcaster has its headquarters.³⁸³

The 'Late Late Toy Show'

The *Late Late Toy Show* was mentioned in a number of submissions. Concerns expressed centred on the concentration of toys presented, the effect it had on children, the impact it had on parents in terms of pressure endured. Sean Whooley described this show as being 'in effect free advertising worth a lot of money to the supplier.' He continued on to question a number of elements: 'How are these toys selected? Does money change hands? Who is accountable for the selection criteria? We have all seen the supplier who says "As seen on the Late Late Show."' ³⁸⁴

Concluding remarks

Material arising, but falling outside the framework proper, was considered in this concluding section. As was seen, information presented covered a broad range of themes. Information featured in Phase 1 submissions – for example, co-regulation and the 'Country of Origin' principle – emerged once again for consideration. The number of respondents referring to the ASAI, and the maintaining of its role after the introduction of the new code, shows its perceived importance among those in the industry sector. It also demonstrates the need to clearly establish the BCI's position regarding this code: its formulation, implementation and revision.

³⁸² The Green Party: written submission 43, p.12.

³⁸³ *Safefood*: written submission 47, p.4.

³⁸⁴ Sean Whooley: written submission 13.

Appendix I

Extract from the ASAI code rules regarding ‘Decency and Propriety’,³⁸⁵

- 2.13 An advertisement should contain nothing that is likely to cause grave or widespread offence.
- 2.14 Advertisements should respect the dignity of all persons and should avoid causing offence on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveller community.
- 2.15 Advertisements should respect the principle of the equality of men and women. They should avoid sex stereotyping and any exploitation or demeaning of men and women. Where appropriate, advertisements should use generic terms that include both the masculine and feminine gender; for example, the term ‘business executive’ covers both men and women.
- 2.16 To avoid causing offence, advertisements should be responsive to the diversity in Irish society and advertisements which portray or refer to people within the groups mentioned in 2.14 should:
- (a) Respect the principle of equality in any depiction of these groups;
 - (b) Fully respect their dignity and not subject them to ridicule or offensive humour;
 - (c) Avoid stereotyping and negative or hurtful images;
 - (d) Not exploit them for unrelated commercial purposes;
 - (e) Not ridicule or exploit religious beliefs, symbols, rites or practices.
- 2.17 Advertisers should take account of public sensitivities in the preparation and publication of advertisements and avoid the exploitation of sexuality and the use of coarseness and undesirable innuendo. They should not use offensive or provocative copy or images merely to attract attention.
- 2.18 The fact that a product is offensive to some people is not in itself sufficient basis for objecting to an advertisement for the product. Advertisers should nevertheless avoid causing offence in such advertisements.
- 2.19 Compliance with the Code is assessed on the basis of the standards of taste, decency and propriety generally accepted in Ireland, taking account of the product involved, the media used, the location and context in which the advertisement is placed and the characteristics of the audience addressed.

³⁸⁵ ASAI: written submission 39, p.6.

Appendix II

Extract from the ASAI code rules regarding ‘Honesty’,³⁸⁶

- 2.20 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
- 2.21 The design and presentation of advertisements should allow them to be easily and clearly understood. Where footnotes are used they should be of sufficient size and prominence and easily legible; where appropriate they should be linked to the relevant part of the copy.

Extract from the ASAI code rules regarding ‘Advertising and Children’,³⁸⁷

Advertisements addressed to children should comply with the rules in this Section in addition to all other rules in the Code. There are rules relating to children and safety in Section 2, paragraph 2.27, to children and vitamins in Section 3, paragraph 3.10, to young people and advertising for alcoholic drinks in Section 6, paragraph 6.4, to children and Distance Selling in Section 8, paragraph 8.10, and rules relating to children and sales promotions in the Code of Sales Promotion Practice at paragraphs 12.27 and 12.28 and 12.59(h).

5. Children lack adults’ knowledge, experience and maturity of judgement. Advertisements addressed directly or indirectly to children and advertisements likely to be seen or heard by them should have regard to the special characteristics of children and the ways in which they perceive and react to advertisements.
- 5.2 An advertisement should contain nothing that is likely to result in physical, mental or moral harm to children or that is likely to frighten or disturb them. For example,
- (a) Children should not be portrayed in a manner that offends against accepted standards of good taste and decency.
 - (b) They should not be encouraged to enter into unsafe situations or strange places or talk to strangers, e.g. for the purpose of making collections or accumulating labels, wrappers or coupons.

³⁸⁶ ASAI: written submission 39, p.7.

³⁸⁷ ASAI: written submission 39, p.7.

- (c) They should not be shown in morally or physically dangerous situations or behaving dangerously in the home or outside except to promote safety. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety.
 - (d) They should not be encouraged to engage in, or be portrayed engaging in anti-social behaviour; where they appear as pedestrians or cyclists they should be seen to observe the Rules of the Road. Special attention should be paid where relevant, to the wearing of car seat-belts and safety helmets.
 - (e) They should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, gas, medicines, certain household substances as well as certain electrical appliances and machinery, including agricultural equipment.
 - (f) An open fire in a domestic scene should always have a fireguard clearly visible when a child is included in the scene.
- 5.3 An advertisement should not exploit the loyalty, credulity, vulnerability or lack of experience of children. For example,
- (a) They should not be made to feel inferior or unpopular for not buying an advertised product.
 - (b) They should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a particular product.
 - (c) Advertisements should not undermine the authority, responsibility or judgement of parents or guardians. Advertisements should not include any appeal to children to persuade their parents or other adults to buy advertised products for them.
 - (d) A product that is part of a series should be clearly indicated as such and should include the method of acquiring the series.
- 5.4 An advertisement addressed to children:
- (a) Should not feature products that are unsuitable for children;
 - (b) Should make it easy for them to judge the actual size, characteristics and performance of any product advertised;
 - (c) Should not exaggerate what is attainable by an ordinary child using the product;
 - (d) Should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits; advertisements representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet; snack foods should be clearly represented as such, and not as substitutes for meals;
 - (e) Should not ask them to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians;
 - (f) Should not minimise the price of products by the use of such words as “only” or “just”.

Sales Promotions and Children

All supporting advertising material used in the presentation of sales promotions must conform with the *Code of Advertising Standards* which contain specific rules relating to advertising directed at children in Section 5.

- 12.28 A sales promotion should not exploit the loyalty, credulity, vulnerability or lack of experience of children:
- (a) They should not be made to feel inferior or unpopular for not buying a particular product;
 - (b) They should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy the product;
 - (c) They should not be asked to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians;
 - (d) Promotions should not undermine the authority, responsibility or judgement of parents and guardians. Promotions should not include any appeal to children to persuade their parents or other adults to buy advertised products for them;
 - (e) A product that is part of a series should be clearly indicated as such and should include the method of acquiring the series.

Appendix III

Extract from the ASAI code rules regarding ‘Special protection for children in advertising’,³⁸⁸

- 2.13 An advertisement should contain nothing that is likely to cause grave or widespread offence.
- 5.1 Children lack adults’ knowledge, experience and maturity of judgement. Advertisements addressed directly or indirectly to children and advertisements likely to be seen or heard by them should have regard to the special characteristics of children and the ways in which they perceive and react to advertisements.
- 5.2 An advertisement should contain nothing that is likely to result in physical, mental or moral harm to children or that is likely to frighten or disturb them. For example,
- (a) Children should not be portrayed in a manner that offends against accepted standards of good taste and decency.
 - (b) They should not be shown in morally or physically dangerous situations or behaving dangerously in the home or outside except to promote safety. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety.
 - (c) They should not be encouraged to engage in, or be portrayed engaging in anti-social behaviour; where they appear as pedestrians or cyclists they should be seen to observe the Rules of the Road. Special attention should be paid where relevant, to the wearing of car seat-belts and safety helmets.
- 5.4 An advertisement addressed to children:
- (e) Should not ask them to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians.

³⁸⁸ ASAI: written submission 39, p.10.

Appendix IV

Extract from the ASAI code rules regarding ‘Safety/avoidance of harm’³⁸⁹

- 5.1 Children lack adults’ knowledge, experience and maturity of judgement. Advertisements addressed directly or indirectly to children and advertisements likely to be seen or heard by them should have regard to the special characteristics of children and the ways in which they perceive and react to advertisements.
- 5.2 An advertisement should contain nothing that is likely to result in physical, mental or moral harm to children or that is likely to frighten or disturb them. For example,
- (a) Children should not be portrayed in a manner that offends against accepted standards of good taste and decency.
 - (b) They should not be encouraged to enter into unsafe situations or strange places or talk to strangers, e.g. for the purpose of making collections or accumulating labels, wrappers or coupons.
 - (c) They should not be shown in morally or physically dangerous situations or behaving dangerously in the home or outside except to promote safety. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety.
 - (d) They should not be encouraged to engage in, or be portrayed engaging in anti-social behaviour; where they appear as pedestrians or cyclists they should be seen to observe the Rules of the Road. Special attention should be paid where relevant, to the wearing of car seat-belts and safety helmets.
- 5.4 An advertisements addressed to children:
- (d) Should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits; advertisements representing mealtime should clearly adequately depict the role of the product within the framework of a balanced diet; snack foods should be clearly represented as such, and not as substitutes for meals;

Sales Promotions and Children

All supporting advertising material used in the presentation of sales promotions must conform with the Code of Advertising Standards which contain specific rules relating to advertising directed at children at Section 5.

³⁸⁹ ASAI: written submission 39, pp.11-12.

- 12.19 Promoters should have proper regard for normal safety precautions. Promotional products and samples should be distributed in such a way as to avoid the risk of harm to consumers. Special care should be taken when sales promotions are addressed to children or where products intended for adults may fall into the hands of children. Literature accompanying promotional items should contain any necessary safety warnings.
- 12.27 Sales promotions addressed to or likely to attract children:
- (a) Should be designed and conducted in a way that will not cause physical, mental or moral harm to children;
 - (b) Should not offer promotional products that are unsuitable for distribution to children;
 - (c) Should not encourage children to enter into unsafe situations or strange places or talk to strangers, e.g. for the purpose of making collections or accumulating labels, wrappers or coupons;
 - (d) Should make it clear that parental permission is required if prizes and incentives might cause conflict between children and their parents; examples include animals, bicycles, outings, concerts and holidays.

Appendix V

Extract from RTÉ's *Guidelines for Children's Advertising*³⁹⁰

2. *The Child in Advertisements*

The participation of children in advertisements is subject to the following conditions:

(a) *Employment*

It should be noted that the employment of children in the making of advertisements is governed by certain statutory provisions.

(b) *Safety*

Any situation in which children are to be seen or hear in advertisements should be considered carefully from the viewpoint of safety. For example,

- i. Children should not appear to be unattended in street scenes unless they are obviously old enough to be responsible for their own safety; should not be shown playing in the road, unless it is clearly shown to be a play-street or other safe area; should not be shown stepping carelessly off the pavement or crossing the road without undue care; in busy street scenes should be seen using a zebra crossing when crossing the road; and should be otherwise seen in general, as pedestrians or cyclists, to behave in accordance with the Rules of the road. [sic]
- ii. Children should not be seen leaning dangerously out of windows or over bridges, or climbing dangerous cliffs.
- iii. Small children should not be shown climbing up to high shelves or reaching up to take things from a table above their heads.
- iv. Medicines, disinfectants, antiseptics and caustic substances must not be shown within reach of children without close parental supervision, nor should children be shown using these products in any way.
- v. Children must not be shown using matches or any gas, paraffin, petrol, mechanical or mains-powered appliances which could lead to their suffering burns, electrical shock or other injury.
- vi. Children must not be shown driving or riding on agricultural machines (including tractor-drawn carts or implements).
- vii. An open fire in a domestic scene in an advertisement must always have a fireguard clearly visible if a child is included in the scene.

(c) *Good Manners and Behaviour*

Children in advertisements should be generally well-mannered and well-behaved.

³⁹⁰ RTE: written submission 28.

Appendix VI

Extract from the ASAI code rules regarding ‘Parental responsibility’,³⁹¹

- 5.3 An advertisement should not exploit the loyalty, credulity, vulnerability or lack of experience of children. For example,
- (c) Advertisements should not undermine the authority, responsibility or judgement of parents or guardians. Advertisements should not include any appeal to children to persuade their parents or other adults to buy advertised products for them.
- 5.4 An advertisement addressed to children:
- (c) Should not ask them to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians;
- 12.28 A sales promotion should not exploit the loyalty, credulity, vulnerability or lack of experience of children:
- (d) Promotions should not undermine the authority, responsibility or judgement of parents and guardians. Promotions should not include any appeal to children to persuade their parents or other adults to buy advertised products for them.

³⁹¹ ASAI: written submission 39, p.13.

Appendix VII

Extract from the ASAI code rules regarding ‘Promotion by programme character, advertiser generated characters and personal endorsements’,³⁹²

- 2.20 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
- 2.55 An advertisement should be designed and presented in such a way that it is immediately apparent that it is an advertisement.
- 2.56 An advertisement feature, announcement or promotion published in exchange for a payment or other reciprocal arrangement where the content is controlled by the advertiser should comply with the Code. It should also be clearly identified and distinguished from editorial matter.
- 5.1 Children lack adults’ knowledge, experience and maturity of judgement. Advertisements addressed directly or indirectly to children and advertisements likely to be seen or heard by them should have regard to the special characteristics of children and the ways in which they perceive and react to advertisements.
- 5.3 An advertisement should not exploit the loyalty, credulity, vulnerability or lack of experience of children.

³⁹² ASAI: written submission 39, p.14

Appendix VIII

Extract from the ASAI code rules regarding ‘Production prohibitions’,³⁹³

- 5.4 An advertisement addressed to children:
- (a) Should not feature products that are unsuitable for children:
- 6.4 Advertisements should not be directed at minors (those under 18 years of age) or in any way encourage them to start drinking. Accordingly:
- (a) Anyone depicted in an alcohol advertisement should be over twenty-five and should appear to be over twenty-five.
 - (b) Treatments that are likely to appeal to minors should not be used. Advertisements should not feature characters (real or fictitious), motifs, colours or styles that are likely to appeal particularly to minors in a way that would encourage them to drink.
 - (c) Alcohol advertising should not be placed in media primarily intended for minors. Advertisers should take account of the age profile so that advertisements are communicated, so far as is possible, to adults.
- 12.27 Sales promotions addressed to or likely to attract children:
- (a) Should be designed and conducted in a way that will not cause physical, mental or moral harm to children;
 - (b) Should not offer promotional products that are unsuitable for distribution to children;
 - (c) Should make it clear that parental permission is required if prizes and incentives might cause conflict between children and their parents; examples include animals, bicycles, outings, concerts and holidays.

³⁹³ ASAI: written submission 39, p.15.

Appendix IX

Extract from the ASAI code rules regarding ‘Factual presentation’,³⁹⁴

- 2.1 All advertisements should be legal, decent, honest and truthful.
- 2.20 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
- 5.4 An advertisement addressed to children:
- (a) Should not feature products that are unsuitable for children;
 - (b) Should make it easy for them to judge the actual size, characteristics and performance of any product advertised;
 - (c) Should not exaggerate what is attainable by an ordinary child using the product;
 - (d) Should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits; advertisements representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet; snack foods should not be clearly represented as such, and not as substitutes for meals;
 - (e) Should not ask them to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians;
 - (d) [sic] Should not minimise the price of products by the use of such words as “only” or “just”.
- 12.28 A sales promotion should not exploit the loyalty, credulity, vulnerability or lack of experience of children:
- (e) a product that is part of a series should be clearly indicated as such and should include the method of acquiring the series.

³⁹⁴ ASAI: written submission 39, p.16.

Appendix X

Extract from RTÉ's *Guidelines for Children's Advertising*³⁹⁵

1(l) When any parts that a child might reasonably suppose to be part of the purchase are available only at extra cost this must be made clear.

3 Advertisements for Toys and Games

Advertisements for toys, games and other products of interest to children must not mislead, taking into account the child's immaturity of judgment and experience. In particular:

- (a) The true size and scale of the product must be made easy to judge, preferably by showing it in relation to some common object by which its size and scale can be judged. In any demonstration, it must be made clear whether the toy is made to move mechanically or through manual operation.
- (b) Treatments which reflect the toy or game seen in action through the child's eye or in which real-life counterparts of a toy are seen working must be used with due restraint. There must be no confusion as to the noise produced by the toy, e.g. a toy racing car and its real-life counterpart.
- (c) Where advertisements show results from a drawing, construction, craft or modelling toy or kit, the results shown must be reasonably attainable by the average child and ease of assembly must not be exaggerated.
- (d) Advertisements for toys, games and similar products must include an indication of their price. When parts, accessories or batteries which a child might reasonably suppose to be part of a normal purchase are available only at extra cost, this must be made clear. The cost must not be minimised by the use of words such as "only" or "just".

³⁹⁵ RTÉ: written submission 28; attachment.

Appendix XI

Extract from the ASAI code rules regarding ‘Price and purchase terms/comparison claims’,³⁹⁶

Truthfulness

- 2.22 An advertisement should not mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- 2.38 If a price is stated in an advertisement, it should relate to the product depicted or specified in the advertisement. Care should be taken to ensure that prices and illustrated products match.
- 2.39 Except in advertisements addressed exclusively to the trade, prices quoted should normally include VAT and other taxes, duties or inescapable costs to the consumer. Where applicable, the amounts of any other charges such as those arising from the method of purchase or payment should be stated.
- 2.40 If the price of one product is dependent on the purchase of another, the extent of any commitment required of consumers should be made clear.
- 2.47 Comparisons are permitted in the interests of public information and vigorous competition. They can be explicit or implied and can relate to advertisers’ own products or those of their competitors.
- 2.48 Comparisons should be fair and should be so designed that there is no likelihood of a consumer being misled. The basis of selection should be clear and the elements of comparison should not be unfairly selected in a way that gives the advertisers an artificial advantage.
- 2.49 A claim that any product is superior to others should only be made where there is clear evidence to support the claim. Wording which implies superior or superlative status such as “number one”, “leading”, “largest” and the like should be capable of substantiation with market share data or similar proof.
- 2.50 Advertisers should not unfairly attack or discredit other businesses or their products.

Substantiation

- 2.9 Before offering an advertisement for publication, advertisers should be able to provide documentary evidence to substantiate all claims, whether direct or implied, that are capable of objective assessment. Relevant evidence should be sent without delay if requested by the Authority and should be adequate to

³⁹⁶ ASAI: written submission 39, p.17.

support both detailed claims and the overall impression created by the advertisement.

- 2.10 If there is a significant division of informed opinion about any claim made in an advertisement it should not be portrayed as universally accepted.
- 2.11 Advertisements should not exaggerate the value, accuracy or usefulness of claims contained in books, tapes, videos and the like that have not been independently substantiated.
- 12.18 A sales promotion should not mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Appendix XII

Extract from the ASAI code rules regarding ‘Identification, separation, insertion/scheduling of advertising’,³⁹⁷

- 2.1 All advertisements should be legal, decent, honest and truthful.
- 2.19 Compliance with the Code is assessed on the basis of the standards of taste, decency and propriety generally accepted in Ireland, taking account of the product involved, the media used, the location and context in which the advertisement is placed and the characters of the audience addressed.
- 2.20 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
- 2.21 The design and presentation of advertisements should allow them to be easily and clearly understood. Where footnotes are used they should be of sufficient size and prominence and easily legible; where appropriate they should be linked to the relevant part of the main copy.
- 2.55 An advertisement should be designed and presented in such a way that it is immediately apparent that it is an advertisement.

³⁹⁷ ASAI: written submission 39, p.18.

Other relevant materials

Radio and Television Act, 1988.

Broadcasting Act, 2001.

Broadcasting Commission of Ireland (2002), *Advertising and Children*, December.

Broadcasting Commission of Ireland (2003), *Children's Advertising Code – Phase 1 Consultation Document*, April.

Broadcasting Commission of Ireland (2003), *Children's Advertising Code - Summary of Submissions Received*, June.

Broadcasting Commission of Ireland (2003), *Children's Advertising Code – Research into children's viewing patterns in Ireland*, October.

Department of Arts, Culture and the Gaeltacht (1995), *Codes of standards, practice prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services*, May.

Department of Arts, Heritage, Gaeltacht and the Islands (1999), *Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services*, October.

Directive 89/552/EEC of the Council, 3 October 1989 (*Television Without Frontiers*).

Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (revisions to *Television Without Frontiers* directive).

Submissions³⁹⁸

Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI) – joint submission
Amen (Confidential advice line for male victims of domestic abuse)
Advertising Standards Authority of Ireland (ASAI)
BA in Media Studies (first year), NUI Maynooth
Banahan, Elaine
Bank of Ireland
Barrett, Michelle
Barry, Winny
Blair, Mrs. P
Bodywhys (help, support and understanding for anorexia and bulimia nervosa)
Bowden, Rosa
Brady, Derek
Brady, Jane
Brady, Therese
Brennan, Aishling
Brennan, Dr. Michael J.
Brennan, Nuala
Brinn, Casey
Brown, Michelle
Buggle, Jane
Bushe, Dr. Con
Butler, Paul
Byrne, Jacinta
Byrne, Patrick
Campbell, Kira
Carey, Helen
Carey, Tony
Carmody, Cait
Caron, Paul
Carr, Jim
Carroll, Eugene

³⁹⁸ This list represents those who provided their own name or that of their organisation. It should be noted that many responses given through the web site were done so anonymously.

Carroll, Michael
Casey, Philip
Cawley, Ciaran
Cawley, Oisin
Cawte, Andrew
Chambers, Fergal
Chapman, Ruth
Children's Rights Alliance
Christ the King School, Cork (Transition Year 2)
Cleere, Phyl
Coady, Fergus
Colbert, Con
Collins, Seamus
Collins, Tom
Comish, Janice
Connolly, Stephen
Conway, Jacki
Conwell, Brian
Cooney, Brendan
Corcoran, Stephen
Costello, Christopher
Costello, Geralyn
Coutts, Rachael
Cowzer, David
Crowley, Evelyn
Cueller, Trajen A.
Cullen, Paul
Cummins, Carmel
Cussen, Ciaran
Dalby, Barry
Daly, Alice
Delaney, Aidan
Dempsey, Garrett
Devane, Adrian
Devery, Maura
De Bhaldraithe, Padraic
De Buitléar, Bairbre and Cian
De Faoite, Diarmuid
DDFH&B Advertising
Dhaliwal, Hardip
Doherty, Dr. Ger
Doherty, Tom
Donovan, Noelle
Doolan, Lelia
Dowdall, Deborah
Dowling, Jim
Downs Syndrome Research Foundation (Catherine O'Neill)
Douglas, Mary
Doyle, Deirdre
Duffy, Barbara

Dukelow, Sandra
Dwyer, Dr. Benjamin
Dwyer, Martin
Enright, Cadogan
Family and Media Association
Feehily, Anne
Fennell, Desmond
Fennell, Kate
FETAC (Childcare Level 2 Students, Central Technical Institute, Clonmel)
Fitzgerald, Mary
Fitzmaurice, Tony
Flanagan, Vivienne
Flavin, Conor
Fleming, Tim
Fogarty, Stuart
Forte, Phylis
Food and Drink Industry, Ireland (FDII)
French, David
Freeley, Mary
Fyffes PLC (Dr. Laurence Swan)
Gageby, Elizabeth
Galvin, Philip
Gargan, Quentin
Garland, Joe and Helen
Garry, Sinead
Gaston, Philip
Georgia-Pacific Ireland Ltd.
Getsee, Loretta Jane and family
Gill, Liz
Gilsenan, Ciara
Glanbia PLC
Gorey, Anne
Green, Party
Grogan, Colm N.
Hackett, David
Hally, Bridget
Haran, Pdraig
Health Promotion Department & Community Nutrition and Dietetics Service, North
Western Health Board
Health Promotion Department, Southern Health Board
Health Promotion National Group (Catherine Murphy)
Health Promotion Unit (HPU), Department of Health and Children
Hearne, Dana (Professor of Women's Studies, Concordia University, Canada)
Hemmings, Louis
Henry, Dr. Fiona
Heraughty, Maura
Higgins, Barry
Higgins, Jennifer
Hodson, Nicole
Hollingsworth Bill

Holmes, Declan
Horn, Sally
Hu, Jiayin
Hughes, Gormla
Hughes, Kathleen
Hurley, Lisa
Hussey, Gemma
Igoe, Derval
Independent Broadcasters of Ireland
Iremonger, Susan
Irish Congress of Trade Unions
Irish Heart Foundation
Irish International BBDO
Irish Nutrition and Dietetics Institute
JAEC Professional Diploma in Advertising Class (Dublin)
Javelin/Young & Rubicam
Jio, Stephen
Jones, Rosie
Joyce, Emer
Keating, G.
Kehoe, Jennifer
Kelly, Aileen
Kelly, Eamonn
Kelly, Graeme
Kelly, Martin
Kelly, Mary
Kelly, Rita
Kennedy, Brian
Kennedy, Con
Kennedy, Joseph
Kennedy, Neil
Kennedy, Priscilla
Kenny, Helen
Keogh, Fiona
Kerry Foods (Ciara O'Callaghan)
Keyes, Jennifer
Khan, Yussuf
Kiely, Dr. Bernadette
Kirwan, Joe
Kocova, Mirjana
La Leche League of Ireland
Lawlor, Margaret-Anne
Law Reform Committee of the Law Society of Ireland (Child Law Group)
Lascor-O'Keefe, Lynn
Leahy, Linda
Leahy, Susan
Le Dû, Jean
Leonard, Janice
Little, David
Lonergan, Deirdre

Lopez, Alison
Loughnane, Fiona
Lovett, Conor
Lyons, Irene
Mac Amhlaoibh, Feargal
Mac Carthaigh, Pdraig
Mac Donncha, Sean
Mac Gabhann, Brian
Mac Neil, Kevin
Mc Avinue, Vicki Jeanne
Mc Carthy, Adrian
Mc Gann, Dearbhla
Mc Gettigan, Charlie
Mc Evilly, Mary
Mc Farlane, Stephen
Mc Intyre, Clare
Mc Loone, Margie
Mc Polin, Paula
Mc Veigh, Jim
Mackey, Sadie
Maguire, Rachael
Maher, Brendan
Malin, Mark
Malone, Michelle
Manning, Hugh
Mangan, Ciara
Marcus, Louis
May, Adam
Meally, Marianne
MEAS (Mature Enjoyment of Alcohol in Society Ltd)
Mengolas, Natalie
Merritt, Anna
Mills, Fiona
Moore, Christine
Moore, John
Mountain View Community Church (Heather G. Walsh, Leader of Children's
Ministry)
Mount Temple Comprehensive School, Dublin (Class 3i)
Mulcahy, Stephen
Mulholland, Gillian
Mullins, Clare
Murphy, Catherine
Murphy, Martha
Murphy, Pat
Murphy, Trish
Murray, Aengus
Naessens, Nicholas
National Disability Authority
National College of Art and Design
N.D.N.S.P.

Nestlé (Ireland) Ltd.
Nic Gabhainn, Saoirse
Nic Phaidin, Michelle
Ni Riada, Sorchu
Nolan, Phil
Normile, P. M.
Norris, Angela
North West Alcohol Forum
North Western Health Board
Nugent, Simon
Ohana, Bruno
O'Brien, Conor
O'Brien, Linda
O' Coistin, Seanan
O' Connor, Kate
O' Connor, Katie
O'Connor, Martin
O' Connor, Nuala
O Cuanachain, Hilary
O'Donnell, Eileen
O Drisceoil, Fachtna
O'Farrell, Irial
O'Farrell, Lorna
O'Flynn, Shane
O Floinn, Matt
O'Gorman, Ronnie
O hEallaithe, Donnacha
O'Meara, Frank
O'Neill, Donna
O'Reilly, Sally
O Riada, Eoghan
O'Shea, Anne
O'Sullivan, Deirdre
O'Sullivan, Melanie
Patterson, Brian
Paver-Walsh, Julie
Phelan, Blaise
Pierce, Lynn
Quinn, Alan
Quinn, Bairbre
Quinn, Bob
Quinn, Colm P.
Quinn, David
Quinn, Fiona
Quinn, Hannah
Quinn, Lal
Quinn, James
Quinn, Robert
RTÉ
Redfern, Patrick

Reeves, Kate
Regina Mundi College, Cork (Fourth Year class Students)
Robinson, Andrew
Roe, Una
Rudd, Claire
Ryan, Seana
Ryan, Peig
SafeFood – The Food Safety Promotion Board
Salesian Primary School, Limerick (Fourth Class Students)
Sanders, Marty
Savage, Dr. Angela
Scoil Íosa Parents Association, Carracastle
Scoil Mhicíl Naofa
Scoil Phobail Mhic Dara, Carna, Co. na Gaillimhe (teachers and pupils)
Scully, Clare
Sellers, Anthony
Sheerin, Brid
Sheerin, Helena
Sheils, Mark
Sherlock, Tom
Shiple, Gavin
Shercock National School, Co. Cavan (Sixth Class)
Smith, Mary-ellen
Somers, Sam
Spillane, Dr. Charles
Stacey, David
St Bridget's Senior Citizens Group, Galway (John Arden)
St. Dominic's College, Cabra, Dublin 7 (Second Year class)
St. Finian's College, Mullingar (Ann McGrath, Catering Department)
St. Philomena's National School, Bray (Fifth Class)
Symons, Siobhan
Tangney, Brendan
Tayto Ltd.
Thompson, Andrew
Tierney, Una
Toner, Oonagh
TV3
Tyrell-Brooke, Mary
Ui Neachtain, Collette
Unilever Ireland
Vaughan, Stephen
Vine, Paula
Viney, Michael and Ethna
Walczak, Ulrich
Wall, Michael
Walsh, Breda
Walsh, David
Walsh, Gertrude
Walsh, Tony
Warren, Susan

Wells, Grace
Whiteside, Lesley
Whooley, Karin
Whooley, Sean
Wolfe, Ger
Women in Media & Entertainment (Margaretta D'Arcy)
Women in the Home (WITH)
Woods, Mairide
Woods, Steve
Yeates, Kevin
Zenith Optimedia