

EASA Digital Marketing Communications Best Practice



EASA

The European Advertising Standards Alliance (EASA) is the single authoritative voice of advertising self-regulation. Its mission is to promote responsible advertising through best practice in self-regulation across the Single Market for the benefit of consumers and business.

EASA comprises, at the time of writing, 33 self-regulatory organisations (SROs), as well as 16 industry organisations representing advertising, agencies and media.

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Executive Summary

The European Advertising Standards Alliance (EASA) Digital Marketing Communications Best Practice is the result of intensive discussions EASA has held with the media, agencies, advertisers and self-regulatory organisation (SRO) members starting in early 2007, as well as the process of informal stakeholder consultation undertaken by EASA throughout 2008.

The documentation outlines EASA's current thinking about the remit and application of self-regulation in the digital space, through the development of a Recommendations of Best Practice based on the principles outlined by the International Chamber of Commerce's (ICC) Consolidated Code on Advertising and Marketing Communication Practice. (www.iccwbo.org)

The EASA Digital Marketing Communications Best Practice:

- Confirms the European advertising industry's commitment to apply effective self-regulation (SR) to all media platforms, including digital marketing communications.
- Recognises the global nature of digital media and the need to develop a coordinated response across EASA's membership.
- Provides clear guidance to EASA's SRO members on how to determine whether content under review is a marketing communication in the digital space. This definition is rooted in the global standards expressed in the current ICC Consolidated Code on advertising and marketing communication practice.
- Identifies a non-exhaustive list of digital marketing communications practices which would be considered to be in SRO remit.
- Identifies forms of digital content which lie outside of SRO remit under all circumstances.
- Provides an additional set of rules which will allow the SRO review of marketing communications on marketer-owned websites.
- Notes the evolving expectations surrounding data protection/privacy issues in the field of digital marketing communications and acknowledges the role of statutory bodies (the data protection authorities in this respect) while at the same time encourages industry to further develop existing privacy initiatives.
- Encourages local SROs and advertising industry representatives to ensure that self-regulatory remit at national level is aligned with the recommendations set out in this document.





This Communication is divided into 4 main sections:

- Section I introduces the concept of EASA Best Practice Recommendations (BPRs). It also sets out the background to EASA's Best Practice Recommendation on Digital Marketing Communications (DMCs), and its relevance to the future development of national self-regulatory systems.
- Section II contains the Best Practice Recommendation on Digital Marketing Communications, including definitions and terminology.
- Section III explains how EASA intends to address monitoring and compliance issues, as well as possible resource and training implications the Best Practice Recommendation may raise for the national self-regulatory organisations (SROs).
- Section IV contains detailed annexes including a glossary of terms as well as a series of Frequently Asked Questions.

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SECTION 1



1. What is an EASA Best Practice Recommendation

EASA's Best Practice Recommendations (BPRs) offer support and advice to EASA Self-Regulatory Organisations (SROs) and industry members on the practice of advertising self-regulation. SROs are independent, national bodies, actively supported by the constituent parts of the local advertising industry. SROs are responsible for administering their respective self-regulatory systems and applying national codes of advertising practice.

BPRs are designed to stimulate and assist national discussions on the development of self-regulation according to the Best Practice model (see below), and are intended as a means for taking clear actions at both European and national level.

The BPR on Digital Marketing Communications is the result of intensive discussions EASA has held with the media, agencies, advertisers and SRO members, starting in early 2007, as well as the process of informal stakeholder consultation undertaken by EASA throughout 2008. For this purpose EASA created a special discussion platform within the EASA Media Committee, called the Digital Marketing Communications Taskforce.

BPRs are not formally binding: the implementation of the subject matter of a BPR is the result of a process of negotiation between SRO members at national level within the context of the existing (self) regulatory framework, as there are different ways for each SRO to achieve the optimal solution for its country. The text of a BPR is commonly agreed upon by the advertising industry and SROs at European level. This enables each country to adopt the approach best suited to local circumstances, based on the principles outlined in the BPR, thus helping to ensure consistency of remit and application throughout Europe. A national SRO may choose to adopt provisions in its advertising code which go beyond those recommended by EASA; some indeed, have already done so.

All EASA BPRs are based on EASA's "Common Principles and Operating Standards of Best Practice" and "Best Practice Self-Regulatory Model". In June 2004 the advertising industry committed itself to achieving these by signing EASA's "Advertising Self-Regulation Charter" for a stronger self-regulatory network in the enlarged European Union, while recognising that advertising self-regulation encompasses a wide variety of systems for business responsibility, complementing the law.

2. The challenge of regulating Digital Marketing Communications

Self-regulation through co-operation is the advertising industry's contribution to the challenge of regulating marketing communications. In 2005 DG SANCO (Health and Consumer Protection) organised an EU Advertising Round Table, resulting in agreed criteria for effective self-regulation, based on established self-regulatory systems which have hitherto concerned themselves principally with traditional media (cinema, direct mail, outdoor, print, radio, TV). This is achieved by the application, by independent national SROs, of national advertising codes.

It has become increasingly evident that the rapid and ongoing evolution of digital marketing communications means that developments often outpace legislation. Moreover, today's consumers have grown used to high standards, arising from the activities of SROs in the traditional media, which they expect to see maintained, irrespective of the method of communication. These factors - the evolution of marketing communications in the digital sector and the demands of consumer protection, together with the need to maintain confidence in existing self-regulatory systems - have led to unanimous agreement by the advertising industry on the need for a level playing field across all media. This agreement is in line with the International Chamber of Commerce's decision that its Code should apply without exception to all forms of marketing communication. The Advertising Roundtable Report supports this premise:

"Advertising SROs today in Europe aim to cover not only pure advertising but all other forms of "Commercial" or "marketing communication". The aspiration is a global coverage for all types of marketing or commercial communication. It is important to find a generic definition, encompassing all advertising techniques using any medium or distribution channel based on new technology."

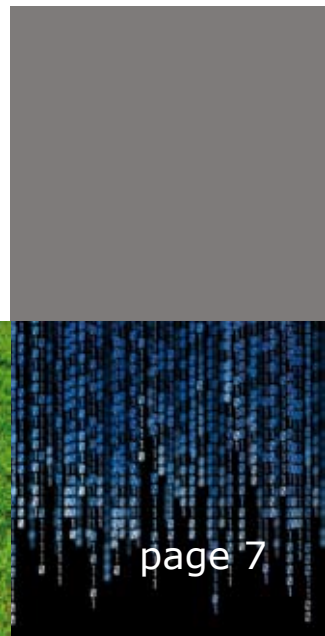
The task of extending self-regulation into the digital media falls logically to Europe's existing national SROs. It is worth noting, however, that national approaches to regulation differ widely across the EU and the extent of a national SRO's remit depends on the scope allowed by EU and, more importantly, national legislation.

3. Remit and responsibility

3.1 Establishing remit for Digital Marketing Communications and Self-Regulation

The Advertising Round Table recognised that the creation of a level playing field does not require a new code of practice but rather the extension of existing principles and rules, supplemented by guidelines on their application, specific to the new digital media.

DMCs will be subject to all the existing rules of the SRO's advertising code, as is the case with





marketing communications in traditional media. Sometimes, as is the case on marketer-owned websites, it is not always immediately apparent to what extent content may constitute a marketing communication within the remit of self-regulation. This will be further addressed in section five.

The generally accepted definition of what constitutes a marketing communication is provided by the 2006 ICC Consolidated Code on Advertising and Marketing Communication Practice.

This definition, as agreed by the advertising industry, unambiguously extends the remit of advertising self-regulation to all forms of marketing communications, including in the digital media, and indeed media which have yet to be developed.

The rapid growth of DMCs and their widely-differing importance in terms of market share in various European countries have resulted in a degree of variation between national self-regulatory approaches to regulating this sector. A 'one size fits all' approach is neither appropriate nor proportionate, as developments are likely to occur at different speeds in different countries. Nevertheless, the members of EASA recognise the importance of working together to ensure high standards for DMCs, as evidenced by, for example, the existing EASA cross-border complaints co-operation mechanism.

3.2 Applied definition of a Digital Marketing Communication

The 2006 ICC consolidated code provides the following guidance:

"The consolidated ICC Code deals with marketing communication, which is to be taken in a broad sense (see definitions), but obviously does not extend indiscriminately to every type of corporate communication. For instance, the Code does not apply to corporate public affairs messages in press releases and other media statements, nor to information in annual reports and the like, or information required to be included on product labels. Likewise, statements on matters of public policy fall outside the scope of this Code. Finally, communications whose primary purpose is entertaining or educational and not commercial, like the content of television programmes, films, books, magazines or videogames, are not intended to be covered by this Code." (2006 ICC Code, introduction)

[-----]

The consolidated ICC Code applies to all advertising and other marketing communication for the promotion of any kind of goods and services, corporate and institutional promotion included. Its standards of ethical conduct should be observed by everyone concerned with marketing communication, whether as advertisers, marketers, advertising practitioners or agencies, in the media, or in related functions. [...]" (2006 ICC Code, purpose of the code)

Self-regulation should, subject to statutory limitations, cover all forms of marketing communications. For the purposes of advertising self-regulation, EASA has decided to maintain the current ICC definition of a marketing communication as the most appropriate general definition.

Marketing communications shall be defined as:

“[...] advertising as well as other techniques, such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any form of communication produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour” (2006 ICC Code definition)

Consequently, content under the influence or control of marketers, intended primarily to promote products or to influence consumer behaviour, may also be assessed as a marketing communication. This definition is intended to enable a more informed decision to be taken on what SROs should be able to regulate, regardless of the media platform, and will therefore allow SROs to engage in more detailed discussions with their national industry partners in order to establish an unambiguous national remit.

It is worth noting that the ICC Code widely defines ‘product’ as “anything that constitutes the subject of an advertisement” adding that ‘where appropriate the Code may be applied more widely, e.g. to concepts’. A number of SROs include in their remit cause-related advertising (also known as advocacy advertising) intended to influence public opinion. An example of cause-related advertising is a World Wildlife Fund advertisement highlighting the situation of endangered species. The inclusion or exclusion of cause-related advertising in an SRO’s remit should be consistent across all media platforms.

3.3 Responsibility

The ICC Code places primary responsibility on advertisers, adding that everyone involved shares a responsibility proportionate to their respective position. In most cases, a co-operative approach between media, advertisers and agencies will be appropriate in the same way as in the offline world.

In the case of User-Generated Content (UGC) it may not always be immediately clear where responsibility lies. Clearly advertisers cannot be held responsible for all UGC/virals mentioning their products which are shared via the digital media. However, an advertiser who orders the creation of a particular UGC or viral and/or promotes its seeding and continued circulation with the intention primarily to promote its products or to influence consumer behaviour cannot disclaim responsibility for it. This is further elaborated upon in section 5 of the BPR.





4. Consultation and implementation



4.1 Consultation with stakeholders

During the process of developing the BPR, EASA organised an informal stakeholder consultation meeting, attended by participants of the EASA Media Committee, representatives of Commission services (DG SANCO), NGOs (Family, consumer and youth representatives), independent academics and SRO lay-expert jury members. EASA will continue to consult with a variety of experts on an informal basis, and intends to organize a wider stakeholder meeting following the results of feedback which EASA anticipates receiving from SROs in the first quarter of 2009.

Likewise SROs are encouraged to consult with a wide range of industry stakeholders including representatives of the digital marketing communications sector and carry out appropriate non-binding consultation with non-industry stakeholders including youth representatives.

4.2 Timetable and testing

EASA will if necessary make relevant adjustments to the BPR based on the feedback from SRO members resulting from national discussions and testing. The suggested listing of techniques covered within remit and criteria for defining remit will be reviewed by the EASA Media Committee and Self-regulatory Committee within a year of adoption to ensure these continue to be up to date and relevant.

The intention is for agreement to be reached at national level, and the BPR consistently implemented across EASA's SRO network, by mid-2009.

4.3 How should SROs use the BPR?

Bearing in mind that the application of self-regulation to DMCs is at different stages of development in different European countries, SROs will find the BPR useful in the following areas:

- to ensure consistency of national code(s) with the ICC Consolidated Code of Advertising and Marketing Communications Practice, particularly as regards its definitions of advertising and marketing communications;
- as a basis for discussions with industry representatives on the application of self-regulation to DMC and, where appropriate, non-binding consultation with non-industry stakeholders;
- as an aid in identifying any structural and/or procedural changes (juries, enforcement, sanctions and monitoring etc) which may be needed to extend an SRO's remit;

- as a basis for discussions between SROs and key DMC operators and associations which are not already in membership of the SRO, with a view to their support to the SRO's code and its role;
- as a means of identification and assessment of an SRO's eventual needs in terms of resources, (i.e. technical and logistical support, additional personnel, staff training and creating awareness) in order to extend its remit to DMCs.

4.4 How should EASA Industry members use the BPR?

To stimulate discussions at national level, it is recommended that EASA's Industry members should issue a specific communication encouraging their corporate and national association members to support the BPR's aims and objectives.

This communication could include:

- an appreciation of the urgent political desirability of action in this area and the prompt initiation of national discussions;
- wholehearted support for the extension of self-regulation to DMCs as described in the BPR;
- practical and, if and where necessary, financial support for any necessary restructuring and/or procedural changes within the national SRO;
- support for the appropriate involvement of DMC and digital media organisations and representatives in the process of code revision and enforcement;
- regular reporting on progress of national discussions (progress and challenges/problems) from January 2009.





SECTION 2

5. Best Practice Recommendation on Digital Marketing Communications

5.1 Introduction

This Best Practice Recommendation (BPR) is intended to provide detailed guidance to EASA SRO and industry members on the operation and practice of advertising self-regulation. It is designed to stimulate and assist national discussions on the development of self-regulation according to the Best Practice Model.

The BPR is based on EASA's Common Principles and Operating Standards of Best Practice (hereafter referred to as Common Principles) and the Best Practice Self-Regulatory Model. The advertising industry committed itself to achieve these through the signing of EASA's Advertising Self-Regulation Charter.

The Charter sets out EASA's commitment to the practical and effective operation of self-regulatory bodies and contains ten principles. The following principles are the most relevant to DMCs:

Art.1 Comprehensive coverage by self-regulatory systems of all forms of advertising and all practitioners,

Art. 3 Comprehensive and effective codes of advertising practice

- based on the globally accepted codes of marketing and advertising practice of the International Chamber of Commerce (ICC)
- applicable to all forms of advertising

Based on the principles outlined by the EASA Common Principles, the Best Practice Self-Regulatory Model and the Advertising Self-Regulation Charter, this BPR offers a goal for self-regulatory systems throughout the Single Market while recognising that the means of achieving it may differ. It is a practical example of 'unity through diversity'.

¹SROs are independent, national bodies, actively supported by the constituent parts of the local advertising industry. SROs are responsible for administering their respective self-regulatory systems and applying national codes of advertising practice.

5.2 Recommendation

5.2.1 Coverage in general

EASA has reviewed various techniques and applications of marketing communications in the digital media. These ranged from viral marketing, through online websites, mobile phones and online gaming, all using digital-based technologies. However, due to the constantly evolving nature of these marketing communications, no analysis can be more than a 'freeze-frame' of the situation at the moment when it was written, and continuous monitoring and updating will be required. As such this BPR will help SROs differentiate between marketing communications (see definition below) and editorial content.

Marketing communications are defined by the ICC Code (see below) and should thus fall within a wider remit of advertising self-regulation. The ICC code clarifies that the definition of marketing communications "*does not extend indiscriminately to every type of corporate communication. For instance, the Code does not apply to corporate public affairs messages in press releases and other media statements, nor to information in annual reports and the like, or information required to be included on product labels. Likewise, statements on matters of public policy fall outside the scope of this Code. Finally, communications whose primary purpose is entertaining or educational and not commercial, like the content of television programmes, films, books, magazines or videogames, are not intended to be covered by this Code.*" (2006 ICC Code, introduction)

Section 5.2.6 lists content that is not a marketing communication and, by definition, falls outside the remit of self-regulation.

5.2.2 Definitions

- A 'marketing communication' is an advertisement or other technique, such as a promotion, sponsorship or direct marketing. The term should be interpreted broadly to mean any form of communication produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour. [Source: The Consolidated ICC Code of Advertising and Marketing Communication Practice, August 2006.]

This includes content under the influence or control of marketers that is intended primarily to promote products or to influence consumer behaviour, irrespective of its creative origin.

- The term "advertising" or "advertisement" means any form of marketing communication carried by the media, usually in return for payment or other valuable consideration.
- A 'product' is anything that constitutes the subject of an advertisement. That usually means a good or service, but the term is not restrictive: where appropriate, it may also be applied more widely, e.g. to concepts.





- The term 'marketer' refers to persons or companies, including advertisers, sales promoters and direct marketers, who publish or disseminate marketing communications for their products

- A 'marketer-owned website' is a website owned, in whole or in significant part, by a marketer.

- 'Editorial content' includes news, policy, social, or financial content, where the primary purpose is to inform or comment but not to advertise/promote.

- 'Corporate reports' include corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like

5.2.3 Within Self-Regulation Remit

All the techniques listed below fall within the remit of SROs. There are a few exceptions in some jurisdictions where other bodies may be responsible, e.g. in the UK, where Ofcom (the statutory regulator) deals with regulating TV sponsorship credits.

Examples are:

- Display ads (moving, non-moving)
- Text ads
- Paid inclusion/Paid search
- Marketer-generated virals
- Online in-game advertising
- Red button
- Online 'public' classified
(i.e. classified ads placed by companies not private individuals)
- DVD/CDrom
- MMS/SMS
- Digital outdoor

This list is non-exhaustive. Full definitions of the concepts above are available in Annex 2.

5.2.4 User Generated Content

The Internet has enabled new marketing techniques which incorporate UGC sometimes including elements of viral material. Although UGC can be used as a form of marketing communications, it is more difficult to assess due to possible ambiguity over its origins. In establishing whether a given case of UGC should be regarded as a DMC, and consequently fall within the SRO's remit, the primary areas of enquiry to be considered are:

- Did the marketer create or distribute the UGC and/or viral material?
- If not, does the marketer endorse the UGC and/or viral material created by a third party?

If the answer to either question is yes, the UGC under consideration constitutes a marketing communication in the sense of the agreed definition, and the SRO is entitled to review the UGC in question. If the SRO concludes that the UGC breaches its code, the advertiser should take all reasonable steps to amend or remove it. On the other hand, if the answer to both is negative, the UGC is considered not to be a DMC and therefore falls outside the SRO's remit.

5.2.5 Marketer-owned websites

As established in the previous sections, all marketing communications, as defined by the ICC Code, fall within the remit of SR systems. It is not, however, always immediately apparent to what extent content on marketer-owned websites may constitute marketing communications and thus fall within the remit of SR.

It should never be automatically assumed that a marketer-owned website is a marketing communication in its entirety. The actual content of the website must be reviewed to determine that which is marketing communication content and that which is not.

For this purpose the following criteria establish whether or not the content, or part of the content of a marketer-owned website constitutes a marketing communication:

- Claims (implied, direct, written, spoken and visual) about products or marketers, where the claim is not made in the context of editorial content, annual reports, CSR reports, or similar
- Where they pertain to the marketing communications, that relate to commercial practices covered by the Unfair Commercial Practices Directive (for example price promotions and invitations to purchase)
- Third-party UGC and/or viral marketing that has been distributed or endorsed by the marketer





- Marketing communications that have previously appeared, in the same or comparable form, on other media platforms, including online media platforms

Note: all rules apply, including those on harm, offence and social responsibility, provided the content concerned has already been established as a marketing communication.

The EASA recommendation on marketer-owned websites proposes a set of commonly agreed upon principles which can form the basis of national discussion across the EASA network. EASA recognises that, subject to local parameters and membership agreement, SROs may chose to go beyond what is suggested in this document.

SROs will, where appropriate, advise marketers about complaints that are outside remit so that the marketer will be made aware of the complainant's concerns.

5.2.6 Outside Self-regulation Remit

The following content is not a marketing communication and, by definition, is outside the remit of self-regulation:

- Any form of editorial content
- Corporate reports
- Independent review websites (i.e. the review content itself);
- Blogs (editorial content on a blog);
- Third-party UGC and/or viral marketing that has not been distributed or endorsed by the marketer
- Content that constitutes the product itself (e.g. a virtual product).

5.2.7 Data protection/privacy

EASA acknowledges the evolving expectations surrounding data protection/privacy in the field of digital marketing communications. As is the case in other areas, the ICC code provides a useful starting point for consideration. The ICC code asks marketers "*when collecting personal data from individuals, to take care to respect and protect their privacy by complying with the relevant rules and regulations*". Like all the other aspects of the ICC code, this also applies to DMCs.

The enforcement of applicable regulatory and/or self-regulatory standards in the area of data protection lies in most cases outside the remit of the SROs within the membership of EASA. Data protection industry rules are frequently negotiated by the representatives of data-base sectors with their national data protection authority. Their application can be shared between relevant associations (eg the Direct Marketing Associations or Interactive Advertising Bureaus) and the national SROs. SROs are usually only responsible for ensuring that rules relating to the content of advertising are observed.

A number of industry initiatives build on this general principle. For example, FEDMA (Federation of European Direct and Interactive Marketing) has agreed a Code of Practice for the use of personal data in direct marketing at European level with the grouping of national Data Protection Authorities of the Member States (the so-called Article 29 Working Party), including an annex which specifically covers online marketing. The full text of this document can be found in Annex 3.

Also, the IAB (Interactive Advertising Bureau, www.iab.net) Europe network is discussing the development of BPR guidance to help address privacy concerns relating to behavioural advertising.

In the US, the NAI (Network Advertising Initiative, www.networkadvertising.org) has developed a set of self-regulatory measures, including an opt-out tool that allows internet users worldwide to “opt- out” of the targeted advertising delivered by NAI member ad networks.

In accordance with the ICC provisions, EASA actively encourages its industry members to comply with existing legislation and relevant industry-negotiated agreements in their digital marketing communications. EASA is also committed to actively support initiatives aiming to strengthen further the standards for data protection/privacy in the field of digital marketing communications.





SECTION 3

6. *SRO implications*

6.1 Resources & membership

Discussions on an SRO's remit at national level should not be limited to future aspirations, but should also focus from the start on the practical implications of an extended remit. An increased number of complaints and copy advice requests in this area could require additional resources (hardware, software, personnel), and will have implications for promotional activity to ensure public and industry awareness.

To ensure the necessary resources, as well as for practical reasons of effectiveness, it will be essential to ensure that the SRO's funding and membership systems are comprehensive and robust, strengthening them if and where necessary.

From an operational point of view it would be desirable for SROs to include relevant digital media practitioners (e.g. practitioners in membership of the IAB) within their systems. Any policy can be implemented properly only if all the parties involved are in general agreement about the steps to be taken and committed to providing the necessary support and resources.

6.2 Consumer/user awareness

To encourage consumers/users to help identify potential problems at an early stage, it will be essential that SROs are easy to find and contact online. This could be achieved by effective promotional activities, including the active use of keywords in online search engines. EASA's BPR on Communications and Awareness emphasises that SROs should ensure that they have an easy-to-locate presence on the web, including a dedicated website (or section of a website), and that the SRO's online complaints form is linked to from other related websites. The SRO's web address should be widely publicised, e.g. on all the SRO's communication material.

All of the above should link into an overall SRO communications plan (see EASA BPR on Communications and Awareness), which addresses all stakeholders and aims to increase awareness and understanding of advertising self-regulation and all of its components. This plan should be an integral part of the annual strategic action plan of the SRO.

Finally, EASA encourages SROs, whenever appropriate, to co-operate with other non-member organisations which have conducted consumer research on topics of interest. This type of initiative may range from informal information exchanges to sector-wide monitoring exercises.

7 Enforcement and compliance

7.1 Sanctions

SROs have at their disposal a variety of sanctions. These include instructing the media to refuse advertisements, creating adverse publicity through the publication of decisions (naming & shaming) and expulsion from trade associations. The array of sanctions and approaches available to SROs for traditional media remain valid for DMCs.

With DMCs the responsibility of the advertiser is paramount and advertisers are expected to respect the decision of an SRO even if they do not agree with it. SROs may also encourage the use of compliance clauses in advertising contracts, which enable a media owner to refuse a marketing communication which has been found by an SRO to be in breach of a code.

As with traditional media, on the rare occasions where all else fails, the SRO may have to refer the case to the statutory authorities, who will have the power to prosecute the advertiser with regard to unfair commercial practice and misleadingness. This sanction of last resort is usually necessary only in the case of “rogue traders” who have no intention of complying voluntarily with any form of regulation. Although the decisions reached by an SRO do not have legal force, in the event of a subsequent court case the opinion of an SRO is likely to be taken into account by the court.

7.2 Monitoring of compliance

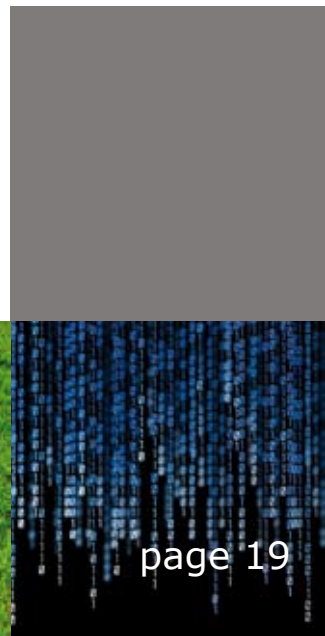
Central to the EASA Common Principles is the notion of effectiveness. The public perception of a self-regulatory system will depend to a very large extent on how efficiently it is seen to deal with complaints. Monitoring digital marketing communications will allow a SRO to take action on its own initiative and be seen to play a proactive role in ensuring code awareness and compliance. This will be important in determining whether the rules and their interpretation and application are continuing to be relevant.

See EASA Best Practice Recommendation on Monitoring.

7.3 Copy advice

EASA encourages its members to extend the provision of copy advice to DMCs. This will not only benefit the marketer, agency and media immediately concerned, but also the wider advertising industry, by avoiding complaints and promoting an image of social responsibility. This will encourage greater interaction of digital marketing actors with the self-regulatory process and raise their awareness of the rules in place. Consequently, marketers, agencies and (digital) media should be actively encouraged to seek copy advice.

See EASA Best Practice Recommendation on Copy advice.





7.4 EASA monitoring of BPR implementation

SROs are invited to keep EASA informed of any difficulties encountered with regard to the use of this BPR such as with SR procedures, resources or implementation. EASA aims to update its members on progress made, in the first quarter of 2009. The findings of this review will help to identify any arising issues, and any necessary adjustments to be made to the BPR.

EASA will also continue to support the development of SROs' own monitoring capacity at national level.

SECTION 4

ANNEX 1 - Frequently Asked Questions

What is EASA's Digital Marketing Communications BPR?

This Best Practice Recommendation offers advice and support to EASA's national SRO and industry members on the application of self-regulation (SR) to Digital Marketing Communications (DMCs). More specifically it explains in what ways SROs can extend the remit of their advertising codes, if they have not already done so, to include DMCs.

The text of a BPR is commonly agreed upon by the advertising industry and SROs at European level. This enables each country to adopt the approach best suited to local circumstances, based on the principles outlined in the BPR, thus helping to ensure consistency of remit and application throughout Europe.

What difference will this make to SR codes?

SROs and national industry associations will need to assess how they currently define marketing communications and ensure that their definitions are in line with those of the ICC Code.

Will new rules need to be written?

In most cases, SROs will be applying existing code principles and will not need to produce additional code chapters. However, additional guidance may facilitate the introduction of new industry players (service providers, mobile phone operators, internet agencies etc.)

Surely DMC is a global phenomenon, can SR deal with international aspects at a local level?

The issue with DMCs is primarily one of identification, for the purposes of which the EASA BPR on DMCs was created. Once identified, the procedures for SROs to effectively deal with them do in principle not differ from those used for legacy media.

What are the resource implications of including DMCs within SR remit?

Discussions on a SRO's remit at national level should not be limited to future aspirations, but should also focus from the start on the practical implications of an extended remit. An increased number of complaints and copy advice in this area, as well as requiring additional financial resources (hardware, software, personnel), is also likely to make additional demands on existing staff training systems, and will have implications for promotional activity to ensure public and industry awareness.





How will the clarification of SR remit be communicated to other stakeholders?

SROs will need to establish and maintain awareness of their activities. Therefore they are encouraged to consult with a wide range

of industry stakeholders including representatives of the digital marketing communications sector and carry out informal consultation with non-industry stakeholders including youth representatives.



Has EASA consulted on its approach with DMC practitioners, regulators and non-business parties?

During the process of developing the BPR, EASA organised an informal stakeholder consultation meeting, attended by participants of the EASA Media Committee, representatives of Commission services (DG SANCO), NGOs (Family, consumer and youth representatives), independent academics and SRO lay-expert jury members. EASA will continue to consult with a variety of experts on an informal basis, and intends to organize a wider stakeholder meeting following the results of feedback which EASA anticipates receiving from SROs in the first quarter of 2009.

Is EASA's initiative intended to result in a European code?

No. EASA BPRs are not formally binding: the implementation of the subject matter of a BPR is the result of a process of negotiation between SRO members at national level within the context of the existing (self) regulatory framework, as there are various ways for each SRO to achieve the most optimal solution for its country.

How will EASA monitor the discussion and adoption of the best practice?

SROs are invited to keep EASA informed of any difficulties encountered with regard to the use of this BPR such as with SR procedures, resources or implementation. EASA aims to update its members on progress made, in the first quarter of 2009. The findings of this review will help to identify any arising issues, and any necessary adjustments to be made to the BPR.

EASA will also continue to support the development of SROs' own monitoring capacity at national level.

ANNEX 2 - Glossary of Terms

This glossary of terms is not exhaustive and is mainly derived from a similar document provided by the IAB.

Banner

This form of online advertising entails embedding an advertisement into a web page. It is intended to attract traffic to a website by linking to the website of the advertiser.

Blog

Generic name for any website featuring regular posts arranged chronologically, typically inviting public comments from readers. Blog postings are generally short and informal and blog software is generally free and very easy for individual users, making it a popular tool for online diaries as well as more professional publications.

Cookie

A cookie is a text-only string of information that a website transfers to the cookie file of the browser on your computer's hard disk so that the website can remember who you are.

Email Marketing

Messages by email which can only be provided with the consent of the consumer. Often email marketing provides e-bulletins about the product (for example, charities send reports on their projects in order to encourage repeat donations).

In-game advertising (IGA)

Refers to the use of computer and video games as a medium in which to deliver advertising.

Interstitial ads

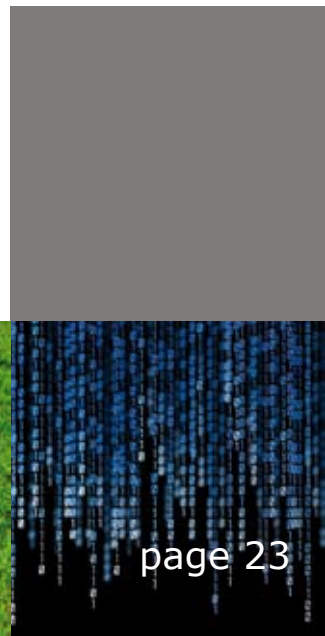
Ads that appear between two non commercial content pages. Also known as transition ads, intermercial ads and splash pages.

MMS

Multimedia Messaging Service (MMS) is a standard for telephony messaging systems that allows for sending messages that include multimedia objects (images, audio, video, rich text) and not just text messages as in Short Message Service (SMS). It is mainly deployed in cellular networks along with other messaging systems like SMS, Mobile Instant Messaging and Mobile E-Mail.

Pop-under ad

Ad that appears in a separate window beneath an open window. Pop-under ads are concealed until the top window is closed, moved, resized or minimised.



**Pop-up ad**

Ad that appears in a separate window on top of content already on-screen.

Red-button (Interactive TV Services advertising)

The remote control (interactive keypad) the viewer uses has a red button to press for Interactive TV, and related advertising. In many cases while watching an ad, a 'press of the red button' will allow the viewer to connect directly to the advertiser's website.

Skyscraper

A tall, thin online ad, which is significantly larger than a regular banner. The IAB guidelines recommend two sizes of skyscrapers: 120 X 600 and 160 x 600.

**Search**

Fees advertisers pay Internet companies to list and/or link their company site or domain name to a specific search word or phrase.

SMS advertising

Short Messaging Service (SMS) is a standard for a telephony messaging systems that allows for sending text messages.

Sponsorship

Sponsorship represents custom content and/or experiences created for an advertiser. Sponsorships fall into several categories:

- Spotlights are custom built pages incorporating an advertiser's brand and housing a collection of content usually around a theme and
- Content & Section Sponsorship is when an advertiser exclusively sponsors a particular section of the site or email (usually existing content), re-skinned with the advertiser's branding.

Superstitials

Superstitials are highly interactive, low memory usage non-banner ads that can be any size on the computer screen, featuring full animation, sound and graphics capable of effectively conveying integrated advertising while protecting a website's performance.

Viral marketing

Any advertising that propagates itself. In a digital media context it can be defined as a marketing technique that seeks to use pre-existing social networks to produce increases in brand awareness.

ANNEX 3 - FEDMA European Code of Practice



FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING

EUROPEAN CODE OF PRACTICE FOR THE USE OF PERSONAL DATA IN DIRECT MARKETING ON-LINE ANNEX

This Annex is designed primarily as an instrument of best practices, and it is intended for use as a reference document within the framework of applicable laws.

Direct members of FEDMA will operate to the standards laid down in the FEDMA Code and its Annex, subject always to their obligation to comply with their relevant national laws or self-regulatory provisions.

Neither the FEDMA Code nor this Annex are intended to reduce or replace the applicability of national laws and regulations.

The provisions in the Annex, concerning On-line marketing, are to be seen as complementary to those set up in the FEDMA Code.

All provisions of this code apply without prejudice to the provisions of the applicable national legislation. Where specific requirements exist at national level, this will have to be complied in accordance with the applicable law rules set out in this Code and in accordance with EU legislation.

Brussels, March 2007





Definitions

Commercial Communications - Any form of communication designed to promote, directly or indirectly, the goods, services, image of a company, organization or person pursuing a commercial, industrial or craft activity or exercising a regulated profession.

Unsolicited Commercial Communications - Any communication sent to customers with whom the sender does not have an ongoing commercial or contractual relationship or where such a communication is otherwise uninvited.

On-line marketing - A component of electronic commerce and refers to the use of the Internet to advertise and sell goods and services. It includes e-mail marketing, pay per click advertising, banner ads, interactive advertising, search engine marketing (including search engine optimization), blog marketing.

Electronic mail - Any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.

Processing of Personal Data - Any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, blocking, erasure or destruction.

Data Supplier - Any data controller who makes data available to third parties for use in their direct marketing activities.

Data User - Any organisation making use of either its own data or of data obtained from other sources for any direct marketing purpose.

Database or List - Means of holding personal information for direct marketing purposes and normally accessed by reference to names and addresses and held in the form of paper or electronic list.

Recipient - A natural or legal person, public authority, agency or any other body to whom the data are disclosed, whether a third party or not.

Consent - Any freely specific and informed indication of the data subject's wishes by which he signifies his agreement to personal data relating to him being processed.

Sender - A person including an individual, sole trader, partnership or corporate body that either sends or instigates the sending of an Electronic Mail communication through a communications network.

(All other definitions are contained in the general Code)

Law applicable

For the law applicable to On-line Marketers and Data Controllers please consult the FEDMA European Code of Practice for the Use of Personal Data in Direct Marketing.

Obtaining personal data directly from the data subject

2.1 General principles for fair processing of Data

Data Controllers who wish to collect Personal Data from Data Subjects in a fair and transparent manner must do so in conformity with the provisions of the FEDMA European Code of Practice for the Use of Personal Data as well as current EU and national legislation, where applicable.

Data Controllers must ensure that Data Subjects are informed of:

- a) the identity of the Data Controller (e.g. name and address) and Electronic Mail contact details, if communications are sent via Electronic Mail
- b) the purpose(s) of the processing (e.g. transactional or promotional purposes).

The essential information should be given at the time of the collection, unless it is completely clear from the context (for example, as regards the identity of the Data Controller, if the name of the company is clearly shown on the website and the purpose if it is clear from the form used), or the Data Subject already has the information (for example, if the Data Subject has a contract or ongoing relationship with the Data Controller).

Data Controllers must ensure that Data Subjects are informed of:

- a) their right to access and correct erroneous data related to them,
- b) their right not to be approached for Direct Marketing purposes and
- c) their right to object to the processing of his/her Personal Data for Direct Marketing purposes.

2.2 Specific situations

2.2.1 Data used for the controller's On-line Marketing activities

In the case where the data are intended to be used by the Data Controller for its own On-line Marketing use, the Data Controller must ensure that the Data Subject is aware of the essential information, and of his/her right to opt-out from such use.





This information must be made known to the Data Subject in a clear, visible and accessible manner during the data collection process. In cases where this is difficult or impossible, the Data Subject may be provided with a website address where he/she may access the essential information. Where permitted by national legislation, this essential information may be given as soon as possible after data collection, for example, when the Data Subject receives the first documentation (invoice, receipt, etc.) in written or any other durable medium.

It is equally important that the right of the Data Subject to object to the use of Personal Data for Direct Marketing purposes is offered in an explicit and unambiguous way on the website.

Personal Data of Data Subjects cannot be used for the purposes of Direct Marketing via Electronic Mail without the prior consent of the Data Subject except for the cases mentioned in point 2.3.

All Electronic Mail Commercial Communications must contain an unsubscribe facility as set out in point 2.6 below.

2.2.2 Information in the case of disclosure to Third Parties

Where Personal Data are intended to be communicated to Third Parties for Direct Marketing via Electronic Mail by Third Parties, Data Controllers must ensure that Data Subjects are informed of:

- a) any recipients or classes of recipients of the data and the purpose for which the data will be disclosed,
- b) their right to object to disclosure of the data for Direct Marketing purposes.

This information should be given at the time of data collection, and every effort should be made to do so. The Data Subject may be provided with a website address where he/she may access this information but where this might be difficult or impossible and it is permitted by national legislation, this information may be given as soon as possible after the data collection. This information must be given before any such communication to Third Parties takes place.

This point does not apply where the Personal Data is passed on to Data Processors acting on behalf of the Data Controller.

2.2.3 Information in the case of use of on-line questionnaires and other forms

Data Controllers must ensure that Data Subjects are informed of whether the replies to questions are obligatory or voluntary, and the possible consequences of a failure to reply to obligatory questions (for example, including but not limited to, not receiving a gift/voucher/special offer/reward. The Data Controller should also ensure that no unnecessary questions are asked.

This information should be given at the time of data collection.

2.3 Collection of Personal Data from Customers

2.3.1 In the context of a sale or service contract

Where a Data Controller obtains from Data Subjects their Electronic Mail contact details it may use the Electronic Mail contact details for Direct Marketing provided all the following conditions are met:

- 1) the Data Controller collected the Electronic Mail contact details in the course of a sale or negotiations for the sale of a good or service,
- 2) the Data Controller offers an unsubscribe facility from receiving marketing messages via Electronic Mail at the time of data collection and on all subsequent marketing messages sent via Electronic Mail,
- 3) any marketing messages sent via Electronic Mail only relate to similar goods or services provided by the Data Controller,
- 4) the identity of the sender of the Electronic Mail marketing message is not disguised.

A pre-contractual negotiation should be understood to be a situation where an individual has actively expressed an interest in purchasing a company's products. For example, a consumer visits a website in search for a product and invites the seller to provide additional information either electronically or by any other media. Personal Data collected automatically (by a cookie or webspider) to identify a person's area of interest while browsing a website if he/she have not expressly communicated their interest in purchasing the available products in any way, cannot be used for further marketing purposes.

Similar products should be understood those which can be reasonably expected by the customer having into account the type of products or services sold and the range of products dealt with by the seller. For example, if a customer buys a book from a seller who deals with a diversity of products and cultural services the customer should expect to receive information on all products and services of the same category offered on the website by that company.

2.4 Collection of Personal Data of Legal Persons related to business products or services

Data Subjects clearly linked to their organization or company can be contacted for Direct Marketing purposes through Electronic Mail without their prior consent but only in the context of the position they hold in either the public or private sector, without prejudice to national laws. The electronic mail must contain an unsubscribe facility by which the Data Subject can object to receiving future unsolicited commercial communications via e-mail.

The webpage on which the collection takes place should clearly state the Data Subject's right to object to every future commercial





use of his/hers Personal data for Direct Marketing both by the data collector as well as its intermediaries.



2.5 Identification in the context of commercial Electronic Mail

All Commercial Communications sent via Electronic Mail regardless of their recipient should contain the identity of the sender on the "From header" as well as information about the nature of the message on the subject line.

2.6 Unsubscribe facility

All Commercial Communications sent via Electronic Mail should offer its recipients a simple, direct and easily accessible method of unsubscribing from receiving further such messages. This facility should be made available to the recipient free of charge other than the normal cost of communication and the sender should act upon the unsubscribe request within a reasonably short period by the sender.

Obtaining personal data from other sources than the data subject

3.1 Requirement to provide Information

Where Data Controllers do not collect Personal Data from the Data Subjects themselves, eg. via rented-in lists, member-get-member campaigns, or data collected from Third Party questionnaires), they are obliged to take such steps as are necessary to ensure that the Data Subjects are provided with the information (point 2.1) they would have received if they had provided the Personal Data direct to the Data Controller (eg. rented-in lists, member-get-member campaigns, or data collected from third party questionnaires).

Data Controllers should provide the information referred to in point 2.1:

- a) at the time of undertaking the recording (i.e. processing) of the data,
- b) or where a disclosure to a Third Party is envisaged no later than the time of disclosure, unless the Data Subject had already been informed.

3.2 Member-get-member Campaigns

Regarding the treatment of Electronic Mail contact details collected by Data Controllers via Third Parties (eg. via member-get-member campaigns and similar) the Data Controllers should respect the principles relating to the consent of the Data Subject.

3.3 Solicited Requests

If a Data Subject provides his Electronic Mail contact details to a Data Controller in order to receive a specific offer or further information this shall be considered as explicit consent to receive the offer or information requested via Electronic Mail. The Data Controller should notify the Data Subject if the Electronic Mail contact details are to be used for future marketing purposes, or if that data is to be offered to Third Parties and the requirements in point 2 above must be complied with. In the case of marketing via other channels (post, fax, voice telephone, the national law shall apply as regards the consent of the Data Subject to such marketing).

3.4 Host Mailings

The Data Controller for a Host Mailing service must be clearly identifiable. A host mailing service is where the advertiser is willing, for a fee, to send (or to instigate the sending through the advertiser's normal outsourcing arrangements under a data processing agreement), on behalf of Third Parties, email marketing promoting the third party's goods and services to the advertiser's own email database. In this case, the advertiser's email database is not passed to the Third Party and the advertiser must appear in the "From" box of the email as the sender of the email. Advertisers should note that they must obtain the express consent (i.e. opt-in) of individuals in accordance with point 2 and therefore they cannot rely on the provisions of point 2.3.1 for any such host mailing activities to Data Subjects. Selective criteria which has a detrimental effect on the rights of the Data Subject – for example, the use of sensitive data linked to a sales pattern (past purchases of a pharmaceutical product) must not be used.

Preference service systems

For information on Preference Service Systems and In-House Suppression Lists, please consult the FEDMA European Code of Practice for the Use of Personal Data in Direct Marketing (point 5).

Data controllers who are sending out unsolicited commercial communications should consult the e-mail preference services of the US DMA if they are sending e-mails to individuals outside EU/EEA member states.





Privacy policy & use of cookies



5.1 Privacy Policy

If Personal Data are being collected on-line, the privacy policy should be easily accessible or available via a link from every e-mail delivered. If collected off-line, the privacy policy should be set out, as a matter of best practice, in full and attached to the material used to collect the data.

5.2 Use of Cookies

Data Controllers and Data Processors should also include a clear link and comprehensive information on the cookie policy of the Data Supplier where clear and comprehensive information about any cookie, clear gif or similar device within the e-mail is provided, including the purpose of any storage of and access to any information stored on the recipient's terminal equipment, and an opportunity for the recipient to refuse its deployment, as well as the consequences of refusing to accept such deployment.

5.3 Reference to the FEDMA Code of Conduct

Data controllers and Data Processors should make express reference to this Code of Conduct in all contracts related to the sending of On-line Marketing mail messages.

Specific provisions for children

For the collection of electronic Children's Data, please consult the FEDMA European Code of Practice for the Use of Personal Data in Direct Marketing.

This publication is endorsed by all members of EASA



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