ASA submission to the DG Connect consultation:
Green Paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

1. Introduction

1.1 The Advertising Standards Authority (ASA) is grateful for the opportunity to respond to the European Commission’s Green Paper ‘Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values’.

1.2 The ASA is the UK’s self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful for the benefit of consumers, business and society. For 50 years the ASA has provided effective advertising regulation at no cost to the tax payer.

1.3 Media convergence is an on-going process. A measure of the success of the ASA system is the extent to which we have been able to extend and adapt to meet the regulatory imperatives of an evolving media landscape - without the need for legislation.

1.4 That we have been able to do so is due, in part, to our self-regulatory approach which naturally allows a greater degree of flexibility than a legislative approach. Today, consumers benefit from a proportionate set of protections that apply to ads in all media. Business benefit from joined-up and consistent regulation.

1.5 Consequently, the ASA argues for the maintenance of an open approach by policy makers when considering regulatory solutions to convergence: one that recognises the benefits to consumers and business of a single, cross-media advertising regulator, and therefore continues to allow the space for self-regulatory solutions to regulatory challenges as they emerge.
1.6 This submission provides an overview of:

- The ASA’s role as the UK’s advertising regulator
- The changing advertising regulatory environment
- The ASA’s view of convergence and its impact on content standards regulation

2 The ASA’s role as the UK’s advertising regulator

2.1 The independent ASA administers the UK Advertising Codes that are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)\(^1\). Members of these bodies include representatives of advertisers, agencies, media owners, broadcasters and other industry groups, all of which are committed to upholding the highest standards in advertising.

2.2 The Advertising Codes\(^2\) are developed in line with widely accepted better regulation principles. These require that regulation is transparent, accountable, proportionate, consistent and targeted. The Codes are designed to protect those whose circumstances put them in need of special protection (e.g. children) while retaining an environment in which responsible advertising can operate to the benefit of the wider economy. Code provisions relating to harm, offence and social responsibility exceed substantially what is required in law – including the AVMS Directive.

2.3 The Advertising Codes cover ads in all media including broadcast (television and radio), non-broadcast (e.g. billboards, magazines, newspapers, direct mail and including video-on-demand) – which also includes online (e.g. marketing communications on companies’ own websites and social media under their control, pop-up and banner ads, email, paid-search).

2.4 The ASA system is both self-regulatory\(^3\) (for non-broadcast advertising) and co-regulatory\(^4\) (for TV and radio advertising). Whilst the regulatory structures behind the broadcast and non-broadcast Codes may therefore differ (e.g. the CAP and BCAP Code writing bodies have different industry memberships) both sets of Codes are predominantly aligned and the spirit of the Codes is consistency applied by the independent ASA.

2.5 In 2012 the ASA received complaints about 18,990 ads across all media (31,298 complaints). As a result of ASA action, 3,700 ad campaigns were amended or withdrawn.

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\(^1\) [www.cap.org.uk](http://www.cap.org.uk)
\(^2\) [http://asa.org.uk/Advertising-Codes.aspx](http://asa.org.uk/Advertising-Codes.aspx)
2.6 Compliance with the Codes is mandatory for all advertisers and broadcasters – there is no opt-out. Our compliance surveys show that the majority of advertisers, and the millions of ads that appear in the UK each year, overwhelming comply with the rules.

3 Responding to a changing regulatory environment

3.1 The UK advertising industry, through CAP and BCAP, is responsible for ensuring that the UK Advertising Codes and the ASA itself has the appropriate remit and authority to keep UK advertising legal, decent, honest and truthful, in line with consumer expectations and in the face of a constantly shifting media landscape.

3.2 Consequently, in response to changing technology and consumer behaviour, industry has expanded our remit significantly over the last decade:

- **Broadcast advertising (2004):** In 2004 the ASA took on the regulation of broadcast advertising from Ofcom, under a co-regulatory partnership. This move effectively created a ‘one-stop-shop’ for advertising complaints whereby the ASA has day-to-day responsibility for maintaining standards and for acting on complaints about TV and radio ads alongside non-broadcast media.

- **Video-on-demand (2009):** In December 2009 the ASA entered into a further co-regulatory partnership with Ofcom to regulate advertisements accompanying VOD services (e.g. ITV Player, 4OD).

- **Companies’ own websites (2011):** Since March 2011, and in a landmark move, the ASA’s online remit was extended to include advertisers’ own marketing communications on their own websites and in other non-paid-for space online under their control (e.g. on Facebook and Twitter).

  Previously, the ASA’s online remit had applied only to advertisements in paid-for space (e.g. display ads and paid search) and sales promotions wherever they appeared.

- **Online behavioural advertising (2013):** In February 2013, we took up responsibility for new rules to provide the public with notice of, and control over, online behavioural advertising (OBA), a form of targeted advertising.

3.3 The self-/co-regulatory system of ASA and CAP and BCAP has proven, time and again, that it is capable of adapting its regulation in line with wider business, technical and societal need. In its recent policy paper, ‘Connectivity, content and consumers: Britain’s digital platform for growth’, the UK Government commented that the ASA was an “…exemplar of successful self-regulation” and that the “UK has
found self-regulation of (...) emerging advertising practices to be a useful and effective approach

4 ASA view of convergence and content standards regulation

4.1 The impact of convergence and how we’ve responded

4.2 Media convergence is an on-going process, and advertising has not been immune from its impact. Today, a television ad once limited to appearing in traditional linear broadcasting may also appear before or during a VOD programme, on a company’s own website or on its social media page. All may be viewed through one, internet ready TV set – or a computer or mobile phone. The ASA system has worked hard to respond successfully to these changes (as detailed in the previous section), meaning that today a “TV ad” is subject to ASA regulation whether it appears online, during a VOD programme or on linear TV.

4.3 Indeed, the rapid growth of online advertising and marketing has, perhaps, been the greatest test facing advertising regulation in recent times. By extending the ASA’s online remit, industry successfully met these matters head on.

4.4 The ability of industry to have done so can be attributed in part to a common sense and flexible approach to regulation by policy makers at UK and European level. Whilst being part of the conversation, they have considered statutory regulation to be a last resort rather than first consideration and have allowed the self-regulatory system enough space to develop its own solutions.

4.5 Of course, leaving such a space presupposes such systems can be effective. We believe that the success of the ASA system is in no small part due to our approach to regulation that is based on the enduring principles that ads should be legal, decent, honest and truthful, with rules applied in an appropriate manner, commensurate with consumer expectations and the media context in which they appear. By approaching each new regulatory challenge from these first principles, we have been able to successfully adapt our remit and approach to meet each new context.

4.6 How we regulate social media, which can carry videos and other types of content that would previously exist separately, is a good example of how principles based regulation is applied to new media or advertising platforms.

4.7 Encouragingly, recent monitoring activity by the ASA system of children’s experience of advertising on social media showed that 98.4% of the ads they see stick to the rules. However, we also found that a significant number of children

appear to be providing a false age when they register. As a result, we’re exploring whether we need to take a tighter line on age-restricted ads in social media or if further research in this area would be helpful. The Committee of Advertising Practice will also be considering whether new guidance for advertisers on targeting ads online is needed.

4.8 It is not just through changes to our remit that we have adapted. In 2009 CAP and BCAP conducted a full Code Review to ensure that the rules, in their entirety, remain fit-for-purpose now and into the future, with consumer protection and social responsibility at their heart. The Code Review brought in harmonisation (as far as practicable) across media, and reduced the number of Codes from five to two. The Codes are not set in stone – they are constantly updated, must faster than would be possible through legislation.

4.9 Consumer expectations

4.10 Recent research by the UK Communications regulator Ofcom has shown that audiences have nuanced expectations when it comes to regulation in a converged world. Whilst views on the appropriate level of regulation differ between media (e.g. the internet compared to linear TV), the blurring of the lines between regulated and less regulated content brought on by convergence (e.g. single platform hosting open internet, VOD and TV services) is naturally one area of concern, especially with regard to the protection of minors from inappropriate content.

4.11 In addition, we know from the complaints we have received about ads appearing on companies’ own websites that, whilst consumers may have nuanced expectations when it comes to offensive content in different media, they don’t expect to be misled by advertisements wherever they appear. As we conduct more of our commercial lives online, this is, perhaps, unsurprising.

4.12 This all points to a need for the ‘right’ type of regulation, rather than identical regulation. Consumers expect certain standards and sometimes they expect those standards to be the same, but they also recognise that sometimes the context is different. Even in a converged world, regulation should be appropriate to each context.

4.13 By taking an approach to regulation that is guided by our enduring principles that ads should be legal, decent, honest and truthful, with rules applied in a common-sense way, we have been able to build a regulatory system that is sensitive to nuances in consumer expectation, but consistent in principle and approach.

4.14 The European Advertising Standards Alliance’s (EASA) cross border complaints mechanism has enabled self-regulation to deal with issues arising from cross-

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7 [http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf](http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf)
border regulation, which is particularly important in an online market. The existing approach to cross border referrals, administered by the EASA, has proven to be effective in ensuring that the advertiser (whose advertising may circulate in more than one country) is answerable only to their domestic regulator.

4.15 This approach avoids double jeopardy (different national regulators reaching different decisions) and advertisers being confused as to which rules to adhere to. Whilst we acknowledge that there may be concerns about the multiplicity of territories from which people sell into the EU using websites, we consider that a country of destination approach would not be the best way to mitigate the effects of a global web-based marketplace.

4.16 Benefits of the ASA ‘one stop shop’

4.17 With the landmark extension of the ASA’s remit online, consumers and society benefit from a cost free, fast and established cross-media complaints-handling service. They do not have to track down different complaints bodies for the same advertising appearing in different places, e.g. on a poster or a website, and can be confident that robust rules apply to advertising wherever it appears.

4.18 As well as this the ASA joined up with other media regulators to create the online information portal called Parent Port. The website is designed to make it easier for parents to understand the standards that businesses and organisations have to follow across media, it also helps them to find the right regulator if they want to make a complaint or provide feedback on a particular issue (https://www.parentport.org.uk/).

4.19 It isn’t, however, just consumers who benefit. Advertisers whose marketing extends both to traditional media and their own websites now enjoy joined-up, consistent regulation which strengthens the principles of fair competition that are generally accepted in business. If an ad appears on a website, on a poster or on TV – advertisers and business can be confident that by complying with the Advertising Codes they are getting it right.

5 Conclusion

5.1 Convergence is an on-going process. We cannot say for sure how the landscape will change or how ads might reach consumers in five, ten or even 20 years’ time. But this has always been the case. That is why we strongly subscribe to taking a consistent approach based on the enduring principles that ads are legal, decent, honest and truthful, wherever they appear, and making sure that these are applied in an appropriate manner.

5.2 Taking this approach over fifty years has meant that the self-/co-regulatory ASA system has a very successful track record of dealing with new regulatory developments as they have emerged and, even in the fast moving communications
landscape of the last decade, the public has continued to benefit from a high level of protection and business has benefited from a level playing field.

5.3 This success has been recognised by the Government, most recently by the Rt Hon Jeremy Hunt MP, former Secretary of State for Culture, Media and Sport:

“The Government recognises the ASA as a highly successful model of both self and co-regulation; and that the UK’s advertising regulatory system is well respected and seen as a gold standard worldwide.\(^8\)”

5.4 Looking ahead to a more connected world of internet-ready TVs, smarter phones and even more social media, we ask that policy makers remain sensitive to the benefits (to consumers and business) of a single, media-neutral advertising regulator; one with a strong track record and determination to regulate effectively

5.5 What, ultimately, we seek from policy makers at UK and European level is the continued trust in a flexible and open-minded approach to policy making that has allowed the ASA to become the highly respected and effective ad regulator it is today.

6 **Contact details**

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\(^8\) Letter to Rt Hon Chris Smith of Finsbury, ASA Chairman, on 2 March 2012
EASA response to the EU Commission Connected TV Green Paper:
"Preparing for a fully converged Audiovisual World: Growth, Creation and Values"

Background
EASA is the single authoritative voice on advertising self-regulation issues and promotes high ethical standards in commercial communications by means of effective self-regulation, while being mindful of national differences of culture, legal and commercial practice.

We welcome the initiative of DG CONNECT to obtain input at an early stage of the AVMS directive review process, and in relation to other legislative instruments such as the E-Commerce and Privacy directives. With this in mind, EASA has responded to the specific questions and areas related to the role, consideration and practice of self-regulation.

Media convergence is an ongoing process. We believe the flexibility and speed of advertising self-regulation in advertising to adapt to the new environments has considerable advantages vis a vis detailed legislation. Today consumers can benefit from a proportionate set of protections that apply to advertisements in all media.

Growth
We believe that self-regulatory approaches allow for an effective approach which contributes to growth and innovation through fast, flexible and proportionate regulation while providing a means for overall industry standards meeting public interest and values to be met.

Values
EASA has worked carefully to ensure that the role of effective advertising self-regulation is appreciated and seeks to further enhance the use and appreciation of self (as well as co-) regulatory approaches.

EASA has supported the development of EU initiatives which have appreciated the role and practice of self-regulation for advertising standards such as the Advertising Roundtable and the recent CSR/ Community of Practice initiative by DG CONNECT. Such initiatives have enhanced the consideration of effective self-regulation (SR) and recognise the role and scope for SR to be used. We applaud the approach taken in the existing AVMS directive to encourage self and co-regulatory measures which are well suited to the converged digital media. We believe that the regulatory assessment should
ensure that the impact of effective SR measures is properly assessed and taken account of before consideration or introduction of any other regulatory approaches.

**Question 11: Does the definition of AVMS providers need to be changed to ensure values are still protected and in which areas should emphasis on self-/co-regulation be applied?**

Self-regulation has shown that it is well suited to the new digital areas of media; the scope of advertising standards systems have been extended to cover content issues arising from marketing communications, as well as maintaining the existing values in SR codes there. Principles such as the identification of the advertisement and the advertiser are important in the area of connected TV and are present in both the ICC and national codes. EASA has developed clear best practice recommendation on digital marketing communications in 2010 which have been adopted by all SRO members with regard to the extension of their codes to marketing communications particularly in the digital area. These clearly indicate EASA’s will to ensure advertising standards and self-regulation stays relevant within a developing and more converged digital environment. Current work is extending to ensuring consistency with social networks and the mobile environment.

Advertising self-regulation refers to the commercial content of digital marketing communications and not the editorial content. In its digital marketing communications best practice recommendation EASA clearly identified that corporate information websites, press releases and public relations materials would typically not lie within the remit of advertising self-regulation for commercial content.

We believe that self-regulatory values and responsibility should be maintained up and downstream of the marketing communication chain and should be commensurate to the involvement of the constituent actors i.e. advertisers have prime responsibility. This relationship is referred to in the ICC consolidated code of practice, Chapter D Digital Interactive Media, Article 8;

“...Anyone taking part in the planning, creation or execution of digital marketing communications including OBA, has a degree of responsibility, as defined in article 23 of the General Provisions, for ensuring the observance of the Code towards those affected, or likely to be affected. The rapidly changing and developing nature of digital interactive media makes more detailed guidance impracticable and inappropriate. However, whatever the nature of the activity, responsibility is shared by all the
parties concerned, commensurate with their respective role in the process and within the limits of their respective functions....”

In addition, this responsibility has been encouraged to be present in formal contracts between parties involved in the marketing communications process. This is referred to in Article 26 of the ICC code which states:

“...All parties are encouraged to include in their contracts and other agreements pertaining to advertising and other marketing communication, a statement committing the signatories to adhere to the applicable self-regulatory rules and to respect decisions and rulings made by the appropriate self-regulatory body. Where no effective self-regulatory codes and arrangements are in place in a particular country, all parties are encouraged to include in their contracts and other agreements pertaining to advertising and marketing communication a statement committing the signatories to respect the current Consolidated ICC Code...”

**Question 12: The impact of change of the audiovisual regulatory approach on the country of origin principle and single market**

The country of origin underpins the approach taken in the global ICC code and national advertising self-regulation and is also at the heart of the cross-border complaints mechanism coordinated by EASA. We have adapted its application in relation to the different digital platforms where the responsibility of the advertiser is key (See answer to Question 11 above). We believe that any move to abandon the country of origin principle would be a big mistake as it:

a) Underpins both the national and cross-border complaints handling systems for advertising standards
b) Provides the most relevant point for the local application of advertising self-regulation
c) Has been shown to be adaptable to digital forms of media;

Recently EASA used the principle for the application to online behavioural targeting where the third parties must declare the country of origin in terms of location of the competent decision making entity of the company in the EU in relation to OBA. This ensures feedback and complaints can be efficiently and effectively handled. Other jurisdictions where the complaint is received are also involved in redirecting the complaint and informing the complainant in their own language about the outcome.

**Question 14: Improving media literacy**
EASA supports approaches to improve media literacy as well as specific initiatives such as the 'Media Smart' programme developed by the advertising industry to help provide free of charge educational materials to primary schools.

The Media Smart programme includes a specific module to help teachers and parents teach children about commercial messages as they engage with digital content and services (The Digital Adwise pack).

We believe that a media literate population is one that can be discerning about marketing communications and, in the case that these are inappropriate, be aware of the relevant mechanisms to make complaints.

3.3 Commercial Communications

**Question 17: Are AVMS rules still appropriate in a converged environment?**

We believe that the rules of the AVMS are still relevant in a digital environment. AVMS rules should preserve the balance between the protection/empowerment of the consumer, minors and the liberty of communication/expression. We have adapted existing self-regulatory regimes to ensure AVMS and areas excluded are subject to effective self-regulation. Self-regulatory rules are applicable to all media, with no distinction and are therefore able to supervise a converged world.

Concerning privacy issues, SR rules already tackle that issue and can be applied to connected TV; OBA is an example of this in practice. EASA has worked together with advertising industry associations including the interactive advertising industry to design, launch and operate a technology enhanced self-regulatory programme to provide transparency and choice for consumers related to OBA as well as dealing with feedback and complaints from consumers. This solution brings together the existing self-regulatory bodies for advertising standards with a technological solution for providing consumer control over OBA.

A description of the programme to date prepared by the EDAA is attached. The initial EDAA Icon (2) and Certification Providers (4) have been selected and approved by EDAA. We are expecting the first audited self-certification reports to be made in late October. The link up with the programme and SROs is now active in France, Germany, Ireland and the UK. We are expecting the systems in Hungary, Sweden, Finland, Spain, Belgium and Poland to be active by the end of the year.
Question 18: What are the appropriate regulatory instruments for new areas and is there more scope for SR/COR?

The field of digital marketing communications is constantly evolving; it takes advantage of new digital marketing techniques and technological innovations related to interactive digital platforms. Clearly the current text of the directive explicitly recognizes and encourages the ability of self/co-regulatory means to help achieve the policy objectives in a flexible, fast, cost efficient and accountable way. We believe that an appropriate balance between regulatory and self-regulatory means needs to be maintained in developing any new regulatory framework for commercial communications in a converged audiovisual media environment.

The main principles of self-regulation with regard to legal, decent, honest and truthful advertising remain unchanged however the new forms of media may require the application of self-regulation combined with technological solutions, such as those that have been developed for online behavioural advertising to allow consumers to complain and have control of their choices to receive marketing communications. Equally the use of different platforms including links with social media mean that self-regulatory solutions may need additional technical means to ensure responsibility with regard to sensitive products and children (see response further on re age-gating).

The blurring of the lines between commercial and other forms of content is an area where self-regulatory bodies and EASA have stressed the need to continue clearly distinguishing for consumers in a transparent manner. The flexibility of self-regulation means that it embodies a major response in this constantly changing field. We thus believe there is more scope for detailed self-regulatory approaches which are backed up by general framework legislation. This has been recognized in the existing directive. It is important that future regulation addresses the key areas where creative and technological investment as well as consumer interest is focusing. Clearly self-regulation cannot be expected to do all, or replace the role of general legislation with which it has a complementary role. It is thus important that the legal backstop is a real one which is adequately policed and implemented. Adequate coordination between statutory and self/co-regulatory authorities is essential to ensure a more joined up approach in monitoring and compliance.

3.4 Protection of minors:

Self-regulatory rules in advertising hold a specific responsibility for children. This is reflected in both the ICC’s consolidated code and in national codes. At both levels, safety, pester power, appeal and targeting of sensitive products and privacy are covered.
The ICC consolidated code, in Chapter D Art D5 refers to ensuring adequate age-gating:

"…Websites devoted to products or services that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures to restrict access to such websites by minors…"

EASA is currently assessing best practice guidance with regard to social media including engaging on the issue of age gating in a meaningful way other than just inserting a birth date.

**Question 24: Should consumers be better informed or empowered to complain and are complaints mechanisms appropriate?**

We think consumers should be well informed about where to complain. We want consumers to avail themselves of the existing online complaint facilities available in the local language in each country and we have actively worked with the ECC Net mechanism of the European Commission which provides a single portal for complaints to be channeled. We would welcome the European Commission enabling more of our SROs to participate in this scheme and for appropriate links and linkups to be made on EU consumer orientated sites.

EASA’s SRO members invest yearly in consumer awareness campaigns and also surveys to ensure that awareness remains high. Consumers are generally well informed about the role and work of local SROs. In Ireland for example, when questioned 1 in 2 were aware of the presence of the Irish SRO. All have websites with online complaint forms, and the majority of these display the decisions of their juries. SROs always look to improve their knowledge of how to complain; online and using trade media.

SROs handled 62,232 complaints on advertising across Europe in 2012 the majority of which originate from consumers and are about audiovisual media. The biggest area of complaint is about misleadingness followed by taste and decency issues. Feedback from SROs indicate for example with regard to company own websites, that while consumers may have nuanced expectations when it comes to offensive content in different media, they don’t expect to be mislead by ads wherever they appear.

Following the adoption of EASA best practice, EASA SRO members in Europe have transparent procedures, impartial juries whose composition include independent lay experts, decisions which are published and the outcome sent to the complainant.
Question 25: Should users be better informed about how complaints are handled etc in particular involving children?

We believe consumers should be better informed about how complaints are handled. Clearly for marketing communications new enhanced and easy ways for consumers to complain and understand at what stage their complaint is should be available. Currently consumers are informed by advertising SROs of whether their complaint is actionable, whether it requires transfer to another SRO in Europe and when actionable an estimate of the amount of time before it is judged by a jury. They are also informed of the decision of the jury based on the complaint, the advertiser’s response and whether a sanction has been imposed in terms of modification or withdrawal of the ad. The decisions are made by the SRO juries, 95% of whom include independent experts such as specialists regarding children, elderly, gender and psychology. Regular consumer awareness campaigns are conducted in many countries.

We do not provide specific reports on harmful or illegal content but there are examples of marketing communications which enter into this area often from rogue operators and these can be found in existing complaint reports.

We recommend encouraging initiatives such as ParentPort in the UK which provide a single portal website set up in October 2011 to make it easier for parents to complain about material they see or hear across the media, communications and retail industries. ParentPort was jointly developed by the Advertising Standards Authority (ASA), the Authority for Television On Demand (ATVOD), the BBC Trust, the British Board of Film Classification (BBFC), the Office of Communications (Ofcom), the Press Complaints Commission (PCC) and the Video Standards Council (VSC)/Pan-European Game Information (PEGI).

We would recommend that EASA and SROs be further involved in regulatory discussions regarding measures to improve compliance regarding children and commercial communications.
**egta response to the European Commission Green Paper**

“Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”.

egta is the trade association of television and radio sales houses that commercialise the advertising space of both private and public TV/radio channels all over Europe.

- 87 TV members and 41 Radio members
- 31 European countries including 24 EU Member States
- More than 75% of the European TV advertising market and 50% of radio advertising market in countries represented by the egta members

The television market in Europe is in a healthy, robust position. Year on year viewers are watching more and more linear TV content. One of the major reasons for this continued success is the diversity of Europe’s audiovisual offerings. Broadcasters continue to innovate by providing audiences with creative ways to enjoy content in a fashion that appeals to how consumer habits are changing.

While broadcasters are embracing this new reality, there are challenges that are presented by a converged audiovisual landscape. As a consequence broadcasters are competing for users’ attention with a whole variety of services. The use of other devices at the same time as television and the potential temporary abandonment of television services can reduce television’s unique appeal for the advertising industry and thereby result in funding problems for premium content.

The European audiovisual market has developed considerably since the publication of the Audiovisual Media Services Directive (AVMSD). While the cornerstones of that directive, such as the protection of minors and the core qualitative values, remain appropriate certain areas need to be looked at to ensure a truly competition-based regulatory framework. We believe that the Commission should assess whether the quantitative rules and the scope of the directive are still fit for purpose in this new media environment. One of the aims of the AVMSD was to afford broadcasters new opportunities in particular with regard to audiovisual commercial communications (e.g. product placement and sponsorship); however in the current viewing environment the distinction between linear and non-linear services, as included in the AVMSD, is no longer the key issue. Instead the principal concerns surround the levels of regulation that apply to content. Firstly, those audiovisual service providers subject to the AVMSD compared to those outside its scope and secondly, those subject to EU legislation in this area as the service originates from within the EU as opposed to those that fall outside the geographical reach of the directive. This has resulted in a distortion of competition in the audiovisual market.

For the purposes of this public consultation egta, as the trade body for television and radio sales houses, has chosen to focus on those questions directly related to commercial communications.
(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete examples?

While the AVMSD became community law in 2007, full transposition across all Member States was only realised in 2013. In most national markets the relationship between the media regulator and broadcasters regarding the rules on commercial communications as set out in the AVMSD remains a work in progress however one which is thus far satisfactory, for the most part, to the relevant stakeholders.

Nevertheless it is important to acknowledge that the increasingly converging audiovisual landscape creates certain legal challenges. The reality is that in this environment, the fact that different rules apply to the same content on the same screen is not only of concern to consumers but also to the industry whose services though offering similar content might have to abide by a set of different legal norms (for instance the ‘e-commerce directive’ which states in article 6 that advertising should be clearly identifiable. However it is not clear which kind of information society services are subject to this obligation). For example, a service that does not meet all the conditions of an ‘audiovisual media service’ as defined in the AVMSD or whose supplier does not fall under EU jurisdiction since the AVMSD does not apply.

With regard to the qualitative advertising rules, the AVMSD often distinguishes between television services and on-demand audiovisual media services.

- For both linear and non-linear services, any type of audiovisual commercial communication (sponsorship and product placement) must be recognisable as such (Art. 9(1)(a)), while television advertising and teleshopping must also be distinguishable from editorial content (Art. 19(1)).

- Audiovisual commercial communications for alcoholic beverages that are shown in or in connection with an on-demand service must not be targeted specifically at minors or encourage immoderate consumption of such beverages (Art. 9(1)(e)). Article 22 lists more detailed rules which apply to television advertising and teleshopping.

Therefore the possibility of using audiovisual commercial communications depends on what type of service is being offered and used. If the viewer is watching a film from a VoD catalogue on a convergent device, the level of protection is lower than if the same film appears on a television broadcasting schedule.

egta believes that a similar discrepancy exists with regard to the quantitative rules on advertising (including sponsorship and product placement) such as the hourly 12 minute limitation. Our members feel that these provisions may hamper European broadcasters while our competitors (offering similar content on different devices) face no such restrictions. Basic qualitative values should remain in place and apply to all, but there needs to be a de-regulation of the quantitative rules allowing broadcasters to regain their investments.

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egta was encouraged by the European Parliament resolution of 4 July 2013 on connected TV, led by rapporteur Petra Kammerevert MEP, which calls on ‘the Commission to have an eye to the future challenges of Connected TV, in terms of competitiveness in the industry, by allowing greater flexibility for quantitative rules on advertising...’.

What becomes increasingly apparent is that the qualitative standards applicable to the AVMSD provide high levels of consumer protection. The challenge is to ensure that the same high levels of protection are guaranteed by all media service providers on all platforms offering commercial communications in order to safeguard the quality of the consumer experience and protect those who wish to access television like content. egta recommends that a single set of rules for both linear and non-linear services would be advantageous to all.

One set of rules would provide more clarity in a rapidly changing converged environment where the distinction between linear and non-linear services is no longer apparent. A single regime would similarly benefit cross-border trade and the free movement of services.

Advertising is an essential source of revenue for the media, ensuring high-quality content, the independence as well as the pluralism and the diversity of the European media landscape. This revenue is necessary for the continued creation of premium European works. A prime concern moving forward is how purely national players will be able to compete on the same terms as the very strong global players that are establishing themselves in the national markets. It is imperative that policy makers promote and enhance European and local content in an even more global media environment.

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

As today’s audiovisual landscape continues to develop at an unprecedented rate, the regulatory instruments needed to address such change should be capable of adapting at an equal pace. egta does not believe that further regulatory restrictions should be introduced at present. As an association we support the European Parliament resolution on connected TV which notes ‘that the introduction of new, or the extension of existing, advertising bans or other measures which have an impact on advertising as a source of funding should be prevented so that new business models can also be employed in the digital TV sector’.

By avoiding the inherent complexities of a legislative process, co- and self-regulation offer consumers a quick, uncomplicated, easily-accessible and often cost-free means of addressing challenges presented by technological progress. Co- and self-regulation are also flexible enough to adapt to changing societal views.

egta recognises that self-regulation should not be seen as a replacement for general legislation with which it has a complementary role. It is important that the legal backstop is a real one and is adequately controlled and implemented for all players on the market.

One concrete example of what can be achieved via self-regulation is the European Interactive Digital Advertising Alliance (EDAA), launched in October 2012 by leading media and marketing trade bodies, including egta. The aim is to provide information directly to the consumer about online behavioural

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2 European Parliament resolution of 4 July 2013 on connected TV
advertising (OBA) or interest-based advertising, as well as empowering Internet users across Europe by enabling an operational mechanism that provides real transparency, choice and control for consumers with regard to targeted ads across Europe. The EDAA does this by licensing the ‘OBA Icon’ to companies involved in OBA: by clicking on the icon internet users are taken to www.youronlinechoices.eu where they can find easy-to-understand information on the practice of OBA as well as the mechanism for controlling the targeted advertisements that they wish to receive. The programme has been actively welcomed and supported by the European Commission.

Co- and self-regulation therefore constitute potentially important responses in the field of audiovisual commercial communications.

(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

The emergence of, and interaction between, convergent devices has led to a proliferation of advertising possibilities. One such technique is overlays however there are many other varied means of brand interaction such as split screen, virtual product placement and screen crawlers.

As they invest heavily in programmes and services, broadcasters have a vital interest in ensuring that the content they provide is displayed on screen in an unaltered form, without unauthorised overlays. Preserving the quality of the broadcasting picture assures the broadcasters' services, reputation and credibility. This is equally the case for media content and media services delivered via the Internet. Broadcasters and sales houses must be protected against the unauthorised exploitation of their services by third parties, especially in cases where third parties remove or add commercial communications or use broadcaster’s audiences for their own purposes which include alteration of their display. Technology means that TV manufacturers can also place a commercial message over the picture broadcast by the TV signal. Advertisers can now place commercial communications next to broadcasters’ content directly, without using sales houses as intermediaries, thus profiting via association without any of the revenue benefiting the broadcasters. Another possible source of concern for broadcasters is that by placing their portals and app menus between the content and the user, device manufacturers are entering the value chain themselves. Such practices clearly undermine the broadcasters' mission and commercial revenue. For the foreseeable future this will damage the funding of media content.

egta therefore supports the European Parliament resolution on Connected TV which calls on the Commission ‘to safeguard by law the integrity of linear and non-linear services on hybrid platforms and, in particular, to prohibit the overlay or scaling of these services by platform providers or third parties with content or other services...’

egta believes that there is a distinction between overlays of personal communication (e-mails, instant messaging, LinkedIn etc.) and overlays of commercial communication where a third party monetises content clearly owned by a broadcaster.

In the first case one has to respect the personal choice of consumers and their right to accept overlays. It is their active and informed decision and therefore the final choice with regard to these overlays lies with the consumer.

In the second case as the integrity of broadcaster’s programming is at stake, an authorisation given by the user cannot justify unfair commercial practices by third parties, such as an overlay of commercial
advertising on a broadcaster’s programme. In this instance the agreement by the broadcaster must be required. Parasitic commercial practices of this kind undermine the audiovisual value chain to the detriment of broadcasters and weaken the revenue stream which finances the production of the original programme. In addition they destroy the distinctive character of the broadcaster’s service. Where programme services free of advertising are provided –news programmes as required in the AVMSD for example – the impact of commercial overlays may be particularly detrimental.

Finally, egta welcomes and supports the recent decree by the Flemish (Belgium Flanders) Parliament which introduces the notion of signal integrity and requires distributors and over-the-top players to ask permission from Flemish broadcasters if they wish to add functionalities such as ad-skipping or other insertions to the broadcaster’s signal.

Conclusion

Overall broadcasters are developing their commercial communications offerings to meet the demands of a converged market. Advertising will continue to be a vital source of revenue for media service providers and as long as the high standards that broadcasters currently adhere to are applied in a flexible manner by all providers of commercial communications, consumers will continue to receive a high standard of entertaining and informative content. In 2011 television advertising expenditure amounted to €29 487 billion across the now 28 EU Member States. A large proportion of this was reinvested into original content and content acquisition. By way of example a 2012 study from the e-media institute showed that all commercial television broadcasters (large and small commercial television broadcasters) as well as public broadcasters, invest around 40% of their overall income (€84 billion per year) in such programmes. egta believes that in order to continue this virtuous circle of investment within the EU in a sustainable manner broadcasters should be able to monetise their own content.

One of the goals of the AVMSD was to allow broadcasters to remain competitive via the use and proliferation of new advertising techniques such as product placement. However, strict interpretations from national regulators can in fact have the opposite effect and hinder competition. Thus highlighting the need for an adaptable approach to commercial communications.

As has been already mentioned, egta member sales houses feel that the Commission should assess the current legislative framework for audiovisual commercial communications, paying specific attention to its scope. Clarity and flexibility is needed moving forward in order to cater for a fragmented media environment. We would welcome a regulatory framework which would enable European actors to remain competitive at a local and regional level.

egta, whose members are experts in advertising techniques, look forward to continuing our constructive and open dialogue with the Commission on these issues.

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3 Source: European Audiovisual Observatory 2012 yearbook
4 Source: CREATIVE MEDIA EUROPE Audiovisual Content and Online Growth, 2012
Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values
DG Communications Networks, Content & Technology

ISBA Consultation response
19 September 2013

ISBA - the Voice of British Advertisers is the Representative body for UK advertisers. We have over 400 members including business, charity, not for profit and public sector. We are the UK member of the World Federation of Advertisers (WFA) and are full participants in the WFA committees. We support their response to this consultation. Globally we are members of the ICC Advertising and Marketing Commission and are participants in the code development. In the UK ISBA is the advertiser representative member of the UK Advertising Association which brings together media, agency and advertisers into a single voice.

Green Paper
As the nature of the media and media consumption change this paper raises valid questions for consideration. ISBA has addressed those questions most closely related to our work within commercial communications. Our sister bodies representing the media and agencies will be better equipped to address other questions.

Response Summary
The AVMS Directive and UCP Directive broadly regulate our daily lives in advertising. Both provide a sound legislative basis for business and consumers. ISBA does not see a case for substantial changes in the near future. It is a fact that the nature of the media we all consume is changing. New technologies are offering many more choices. Although it is worth noting that the presence of choice has not led directly to a widespread change in viewing habits.

- The EU regulatory framework should be principles based. Detailed platform led regulation is misplaced.
- Self and co-regulation are an effective means of delivering implementation in a fast changing technological environment where content and platforms are as likely to come from outside the EU as from within the single market.
- Advertisers will follow the audience, wherever that is to be found in a converging media scene. Regulation to aid consumers and advertisers in making their choices and not seek to restrict the choice.
**Question 12** – What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

The **country of origin principle** underpins the single market. It enables business and consumers to enjoy a level playing field that respects Member State cultures and traditions.

COO is equally crucial to the **cross-border self-regulatory complaints system** for advertisements in Europe. European Advertising Standards Alliance (EASA) brings together all European self-regulatory organisations enabling consumers to complain about adverts directed from other countries, to their own MS regulator, in their own language.

**Question 14** - What initiatives at European level could contribute to improve the level of media literacy across Europe?

ISBA is a founding member of **Media Smart** and with the WFA have encouraged other Member States to adopt the model. It was originally directed exclusively at helping the under 11 year olds understand what adverts are and what they seek to do. We are now extending the scope to help parents and adults tackle issues like understanding digital media, and coping with body confidence issues.

Media Smart is a not for profit movement funded by the advertising industry. It seeks to offer independent help to educators and parents based on expert involvement from teachers and specialists.

We would welcome EU support to further roll out of Media Smart across the EU.

**Question 17** – Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

Yes the Directive and the UCPD are technology neutral. They provide a lasting basis for EU regulation.

Convergence and more importantly the internet have changed the accessibility of content from linear to 24 hour, at will. The rules on minutes of advertising per hour still work for those viewers consuming linear network but is irrelevant for online access. Interestingly Ofcom has recently shown that 88.5% of viewing in the UK remains linear. Advertisers do not support a free for all that would dilute the viewer’s preparedness to view adverts as this % increases. However this consumer behaviour may well of itself dictate a solution to media providers.

**Question 18** – What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

ISBA concurs with the WFA in arguing that the regulatory framework:

- should be technology neutral
- be principles based
- be able to respond promptly and effectively to new challenges, and
- be able to reflect the borderless nature of digital media

AVMSD meets these concerns and also makes provision for implementation through self-regulatory mechanisms. This approach to self-regulation should continue. EASA encourages high standards amongst the 26 SRO in the EU and ensure a cost effective, speedy and consumer facing mechanism, whilst keeping the backstop powers of the law where it is needed to tackle rogue traders.

The WFA submission sets out case studies of EU wide self-regulation for food and soft drink, alcohol and for Online Behavioural targeting.
Question 19 – Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Users and consumer will have the final say. The converging media space empowers consumers to switch over to access content that is acceptable to them. Media providers and their advertisers who fund them will seek to meet these expectations.

To support the growing EU digital economy the regulatory structure should avoid excessively prescriptive rules which may stifle innovation.

Question 20 – Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

Yes, the current rules are set at an appropriately high level to protect young viewers. The advertising content rules are robust and clear. They are effectively implemented by our SROs. The case of the UK ASA’s extension of powers to cover website content is a case in point. It is true however that converging digital media provides new challenges in meeting these standards. Advertisers however demand and expect that media providers are able to restrict access by children to inappropriate content regardless of whether it has commercial communication intent or is simply entertainment.

Question 21 – Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

The work of UK Media Smart in reaching out to parents and other adults to help them understand the changing digital media that their children appear to inhabit with confidence is a model ISBA would welcome Commission support for.

Question 24 – Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

Yes, we believe that the SROs are achieving wide recognition. However this is not something that can be taken for granted. To achieve informed and empowered consumers requires regular investment and is part of the permission to self-regulate.

The WFA submission sets out the EU wide SRO record of dealing with complaints.

Question 25 – Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO’s and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?

SROs have as a core commitment to handle complaints promptly and transparently. Advertisers share this commitment.

There will be times when advertising leads to outcomes that are more properly dealt with by the police and other law enforcers. It is important that the Member States have easily accessible routes open for consumers in these extreme circumstances.

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Prepared for a Fully Converged Audiovisual World: Growth, Creation and Values

Date: 30 September 2013

Advertising Association
7th Floor North, Artillery House
11 – 19 Artillery Row
London, SW1P 1RT
www.adassoc.org.uk
1. About us

1.1 The Advertising Association (AA) is the single voice in the UK for all sides of the advertising and promotions industry – the agencies that create and buy campaigns, the commercial media that carry them and the vast array of brands that use advertising to communicate with customers and drive their businesses. The AA’s remit is to protect and promote the role, rights and responsibilities of advertising. It works to keep advertising high on the business agenda, develop support and understanding with policymakers and ensure that responsible practice earns their continued confidence and that of the public and regulators. In 2012, advertising expenditure in the UK reached £17bn.

1.2 We support and promote responsible advertising self-regulation and have a seat on the code-owning bodies responsible for establishing self-regulatory advertising rules in the UK, CAP (Committee of Advertising Practice) and BCAP (Broadcast Committee of Advertising Practice).

1.3 A list of AA members can be found here: http://www.adassoc.org.uk/Members.

2. Executive summary

2.1 The Advertising Association welcomes the opportunity to comment on the European Commission’s Green Paper ‘Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values’. In this response, we will focus on the elements in the consultation document that are relevant to the AA’s interests and fit within its remit.

2.2 Advertising plays a crucial role in creating competitive, efficient markets that encourage innovation and benefit consumers in terms of product choice and price. These outcomes are best achieved on the premise that all forms of advertising must be legal, decent, honest and truthful regardless of the medium that carries them.

2.3 The country of origin principle for European audiovisual media services is essential. It provides legal certainty and is therefore paramount to the success of the Internal Market, as companies can provide their advertising services freely across the continent. Importantly, it also underpins the cross-border self-regulatory complaints system for advertisements in Europe. The system is managed by the European Advertising Standards Alliance (EASA). EASA brings together all European self-regulatory organisations with the aim to promote high ethical standards in advertising by means of effective self-regulation, taking into account different cultural, legal and commercial national practices across Europe. The Advertising Standards Authority (ASA) is the self-regulatory organisation for advertising in the UK. The existing system is evolving to take account of market and technological changes, as is shown by the EU self-regulatory initiative for Online Behavioural Advertising (OBA) (see paragraph 3.4).

2.4 The process of media convergence is ongoing with neither a deadline for completion nor a clear-cut vision for what the future holds. Convergence is likely to take the form of “a messy but exciting period of innovation in technology and services whose cumulative disruptive impact will be significant”\(^1\), and changes will be manifold. Consumers are increasingly looking at audiovisual media through internet-enabled devices – though the take-up of smart TVs is still in its infancy, the spread of broadband has allowed people to view on

\(^1\) http://stakeholders.ofcom.org.uk/binaries/research/tv-research/Future_of_Commercial_Comms.pdf
tablets, smartphones and computers as well as TVs. Rapid market change suggests that the European regulatory framework should be kept as principles-based as possible, so as not to curb new forms of content and services that could benefit the consumer. We are thus not calling for a wholesale update of the system of advertising regulation in the UK and Europe.

2.5 However, while the AVMSD provides an adequate framework for now, we encourage the Commission to afford all media service providers as flexible an interpretation of the rules as possible in order to incentivise innovation and foster growth. Also, the continuing effectiveness and relevance of the regulatory regime should be regularly assessed, for example by conducting a scenario analysis.

2.6 The health of the advertising industry is critical in allowing the media sector in all its guises to continue to innovate and grow. For this reason, European and national policymakers should pay due regard to the success of the advertising industry and avoid rules that could lead to unnecessary or unworkable controls. This is particularly relevant for new forms of advertising. We, therefore, welcome the statement in the recent European Parliament Kammerevert report2 that there will be no further bans or restrictions on television advertising at a European level.

2.7 The ASA provides a “one stop shop” for advertising in all media in the UK, providing a single point of contact for members of the public and for businesses. Having one body dealing with all advertising allows a “joined up” approach, regardless of the medium in which the advertising is placed and also allows flexibility to respond to future technological developments in the most appropriate way.

2.8 Self-regulation has time and again proven that it is flexible, proportionate and cost-effective, thus well-adapted to deal with emerging challenges in the interest of both consumers and businesses. In its recent update of its media and communications policies, the UK Government shared this view underlining that the UK “benefits from a healthy and successful advertising sector, underpinned by an exemplar of (…) emerging advertising practices to be a useful and effective approach”3.

3. Overview: Evolving advertising regulation in the UK

3.1 The AA is at the heart of the UK’s advertising sector and has a key role in shaping the self-regulatory codes that govern the industry. With a seat on both code-owning bodies, CAP and BCAP, the AA, together with its industry partners, ensures that the self-regulatory system remains fit for purpose in light of constant changes in consumer behaviour and the general marketplace.

3.2 The broadcast (BCAP) and non-broadcast (CAP) Advertising Codes4 follow the five better regulation principles5, and include general rules requiring advertising to be responsible, not

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2 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA7-2013-0212%2b0%2bDOC%2bPDF%2bV0%2f%2fEN


4 http://www.cap.org.uk/Advertising-Codes.aspx

5 These are: transparent, accountable, consistent, proportionate, and targeted.
to mislead or offend, and specific rules that cover advertising to children and advertising for specific sectors like alcohol, gambling, motoring, health and financial products.

3.3 The Codes apply to all media including broadcast (television and radio), non-broadcast (e.g. posters, magazines, newspapers, direct mail and digital, including VOD).

3.4 The Codes are regularly reviewed formally as well as on an ad-hoc basis in order to assess and monitor their continued effectiveness. Recent examples of the industry’s ability to accommodate changing realities.

- In 2010, to match the changing regulatory landscape with the implementation of the AVMSD in the UK, CAP included a new Annex to the Code to formalise the rules on advertising on VOD platforms.

- In 2011, the ASA’s remit was extended to cover marketing communications on companies’ own websites and in other non-paid for space within the marketer’s control, including social media. Prior to this, digital ads in paid-for space were already regulated by the ASA.

- From 4th February 2013, new rules governing Online Behavioural Advertising (OBA) came into effect. The rules – which signify the UK implementation of the pan-EU self-regulatory framework for OBA developed by the Internet Advertising Bureau Europe (IAB Europe) and EASA – provide greater consumer transparency and control over behavioural advertising through a pan-EU opt-out mechanism. This approach takes account of EU principles, symbolised by a strengthened country of origin approach reflecting the pan-European/global nature of the behavioural advertising market. This will be complemented by proactive compliance checks – regardless of any consumer complaint – backed up by a new trust mark in order for businesses to demonstrate their compliance to advertisers and agencies.

3.5 Enforcement of the Codes falls with the ASA and compliance is mandatory for all advertisers, media service providers and third-party “intermediary” businesses (for OBA purposes).

3.6 From a consumer point of view, the ASA provides a “one stop shop” for all advertising complaints. The ASA’s Annual Report 20126 shows that, in 2012, the ASA received 31,298 complaints about 18,990 advertisements, leading to 3,700 ads being changed or withdrawn. It further reveals that 96% of the complaints were made by the public.

3.7 In addition, on the day that the AVMSD came into force broadcasters that are also VoD publishers launched a self-regulatory mechanism, through Clearcast, to obtain VoD advice for any video advertisement used on their VoD platforms.

6 http://www.asa.org.uk/AboutASA//~media/Files/ASA/Annual%20reports/ASA_CAP%20Annual%20Report%20Online.ashx
4. Responses to specific questions

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

4.1 There are some differences in the broadcast and non-broadcast Advertising Codes, for example as regards the rules on food advertising and the responsibility for the accuracy of claims made in advertisements, but there is no evidence to suggest that, at this stage, this has resulted in significant market distortions.

4.2 However, rapid market developments might change this situation. A healthy and competitive advertising marketplace is in the interest of all parties involved. We note with interest the findings of the report *Industry Perspectives on the Future of Commercial Communications on TV and TV-like services*\(^7\) which was recently commissioned by the independent regulator and competition authority for the UK communications industries, Ofcom. The report states that although the current regulatory framework for broadcast advertising is broadly effective, as convergence between audiovisual platforms accelerates, regulatory frameworks may struggle to keep up with the pace of change. “Regulators will face increasingly difficult choices about the appropriate scope of regulation, how to implement regulatory change, and how to balance consumer protection, innovation, investment in content and economic growth.”

(12) What would be the impact of change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

4.3 The country of origin principle allows companies to provide their services and products across the EU subject to the regulatory requirements of the country of establishment. This facilitates the proper functioning of the single market, significantly reduces costs and provides legal certainty. Due to its enabling nature, the principle represents a key pillar for content investment and growth across the EU and also reflects the cross-border nature of most media. As such, we support the consistent application of the principle as set out in Article 3(1) of the AVMSD.

4.4 The country of origin principle (along with the principle of mutual recognition) also plays a critical role in the self-regulation of advertising at European level. EASA is responsible for handling the European advertising cross-border complaints system (CBC) which has been in operation since 1992. Its central premise is to provide a mechanism through which potential problems can be resolved as a result of advertising appearing in media in one Member State but originating in another. It derives its value from offering the same levels of redress that are available in the country of origin to the consumer based in the country in which the complaint is filed. This approach has shown to be flexible as with the OBA self-regulatory programme where pan-European businesses (as well as consumers) deal / liaise with one self-regulatory organisation (SRO) in their country of origin rather than many.

\(^7\) [http://stakeholders.ofcom.org.uk/binaries/research/tv-research/Future_of_Commercial_Comms.pdf](http://stakeholders.ofcom.org.uk/binaries/research/tv-research/Future_of_Commercial_Comms.pdf)
4.5 In light of the above, we strongly oppose changing the country of origin principle. This would have considerable negative effects on the industry, above all on content investment, due to the risk of legal uncertainty and substantial costs increases. Furthermore, removing the principle would undermine the successful European cross-border complaints mechanism for advertising which continues to evolve to meet the needs of the market, consumers and new technology.

(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete examples?

4.6 The process of convergence is open-ended and does not follow a clearly defined path, making any predictions on the future of the rules of the AVMSD subject to guesswork at this time. Below we set out some key facts about the current state of advertising that fall within the scope of this Green Paper, while highlighting some general consumer trends with respect to media consumption.

4.7 Advertising revenue funds commercial broadcasters and a great deal of audiovisual media. It enables diversity and competition amongst media, delivering choice of editorial content and media plurality benefitting consumers. The funding stream it generates is a pre-requisite for the continued creation of high-quality content.

4.8 The most recent statistics reveal that advertising made up 30% of all revenue generated by commercial television broadcasters\(^8\) in 2012 in the UK. Total TV advertising expenditure in 2012 amounted to £4.5bn\(^9\). Figure 1.0 shows the breakdown of this expenditure into spot advertising, sponsorship, product placement, advertiser funded programming, video on demand (VOD), and “other revenues” (i.e. interactive fees & pub TV) for 2011-12 and a forecast for 2013 and 2014.

**Figure 1.0 TV advertising expenditure by source (2011-2014)**

<table>
<thead>
<tr>
<th></th>
<th>Total TV (Spots, S/ship, PP, AFP, VoD)</th>
<th>Total TV spots</th>
<th>TV sponsorship</th>
<th>TV product placement</th>
<th>TV advertiser funded programming</th>
<th>TV VOD</th>
<th>TV other revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
</tr>
<tr>
<td>2011</td>
<td>4461.3</td>
<td>4159.3</td>
<td>218.0</td>
<td>2.0</td>
<td>7.0</td>
<td>60.0</td>
<td>15.0</td>
</tr>
<tr>
<td>2012</td>
<td>4479.6</td>
<td>4115.6</td>
<td>223.0</td>
<td>5.0</td>
<td>9.0</td>
<td>104.0</td>
<td>23.0</td>
</tr>
<tr>
<td>2013 (f)</td>
<td>4654.8</td>
<td>4210.8</td>
<td>233.0</td>
<td>15.0</td>
<td>11.0</td>
<td>150.0</td>
<td>35.0</td>
</tr>
<tr>
<td>2014 (f)</td>
<td>4974.3</td>
<td>4436.3</td>
<td>245.0</td>
<td>30.0</td>
<td>13.0</td>
<td>200.0</td>
<td>50.0</td>
</tr>
</tbody>
</table>

*Source: AA/Warc Expenditure Report*

4.9 Figure 1.1 provides an overview by share of the TV advertising market in the UK. This reveals that established forms for television advertising continue to attract the vast majority of advertisers’ TV spend. Indeed, advertising in the form of traditional TV spots continues to grow in real terms. At the same time, we identify a steady uptake in advertising expenditure on non-traditional forms of TV advertising.

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\(^8\) Ofcom Communications Market Report 2013

\(^9\) AA/Warc Expenditure Report
Figure 1.1  TV advertising expenditure in the UK by share (2011-2014)

<table>
<thead>
<tr>
<th></th>
<th>Total TV spots</th>
<th>TV sponsorship</th>
<th>TV product placement</th>
<th>TV advertiser funded programming</th>
<th>TV VOD</th>
<th>TV other revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of total</td>
<td>% of total</td>
<td>% of total</td>
<td>% of total</td>
<td>% of total</td>
<td>% of total</td>
<td>% of total</td>
</tr>
<tr>
<td>2011</td>
<td>93.2</td>
<td>4.9</td>
<td>0.0</td>
<td>0.2</td>
<td>1.3</td>
<td>0.3</td>
</tr>
<tr>
<td>2012</td>
<td>91.9</td>
<td>5.0</td>
<td>0.1</td>
<td>0.2</td>
<td>2.3</td>
<td>0.5</td>
</tr>
<tr>
<td>2013 (f)</td>
<td>90.5</td>
<td>5.0</td>
<td>0.3</td>
<td>0.2</td>
<td>3.2</td>
<td>0.8</td>
</tr>
<tr>
<td>2014 (f)</td>
<td>89.2</td>
<td>4.9</td>
<td>0.6</td>
<td>0.3</td>
<td>4.0</td>
<td>1.0</td>
</tr>
</tbody>
</table>

Source: AA/Warc Expenditure Report

4.10 Advertising also sits at the heart of the evolution of the media sector, allowing innovators to monetise their products and services as they seek to establish themselves in a highly competitive and fast-paced consumer marketplace. It plays a crucial role in the development of the digital economy by providing, amongst other things, funding for free search activities, social media, apps, and the vast majority of content on websites. Global management consultancy McKinsey & Co estimated that without the immense benefits of digital advertising, households across Europe would, on average, each have to pay an extra £44 a month for content and services on top of internet connection costs10.

4.11 Digital advertising revenues in the UK have seen tremendous growth over the years. Figure 1.3 shows this development in more detail, while also highlighting the uptake of mobile and tablet as popular digital advertising platforms.

Figure 1.2  Digital advertising expenditure in the UK (2011-2014)

<table>
<thead>
<tr>
<th></th>
<th>UK – Total internet</th>
<th>UK – Mobile</th>
<th>UK – Tablet</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
<td>UK £ (millions)</td>
</tr>
<tr>
<td>2011</td>
<td>4784.1</td>
<td>203.2</td>
<td>2.5</td>
</tr>
<tr>
<td>2012</td>
<td>5416.1</td>
<td>526.0</td>
<td>6.8</td>
</tr>
<tr>
<td>2013 (f)</td>
<td>6004.4</td>
<td>979.7</td>
<td>15.9</td>
</tr>
<tr>
<td>2014 (f)</td>
<td>6590.5</td>
<td>1467.0</td>
<td>27.6</td>
</tr>
</tbody>
</table>

Source: AA/Warc Expenditure Report

4.12 Ofcom recently published its Communications Market Review 2013, which indicated that traditional linear viewing remains strong despite the increase in ways to access content on a non-linear basis. Analysing consumer trends within its remit, the report indicates that 7% of the UK population currently own a smart TV with a little over three quarters of them making use of connecting it to the internet (77%)11. Set-top boxes such as game consoles (15%) and desktop/laptop computers (13%) provide popular alternatives to enable internet connectivity on TV sets without inbuilt internet functionality. Despite the rise in the opportunity to watch non-linear programming, consumers in the UK continue to prioritise live television. In the UK, 88.5% of all time spent watching programmes, on any device, was live viewing at the time of broadcast, opposed to catch-up and other VOD services accounting for 2.5% of total viewing12.

4.13 People are now watching audiovisual media on different devices. The majority (51%) of all UK adults now own a smartphone, although a more detailed analysis reveals a large

11 Ofcom Communications Market Report 2013
12 Ibid.
generation gap with 77% of 16-24 year olds having a smartphone, while only 11% of 65-74 year olds do so\textsuperscript{13}. The growth in smartphone take-up is also reflected in the market for tablets with 24% of all UK households reporting that they own at least one tablet\textsuperscript{14}.

4.14 The above underlines how linear business models and linear viewing remain strong, with income from TV spot ads continuing to grow and viewing of linear TV continuing to dominate. At the same time new ways of viewing, while still relatively marginal, create exciting opportunities for businesses and consumers alike. Further analysing the future of the EU audio visual sector is therefore sensible, not least to evaluate the appropriateness of regulation as these changes occur. Like the Commission, we are firm proponents of evidence-based regulation and policy making and feel a scenario analysis – for example, along the lines of the Ofcom report\textsuperscript{15} – could help in this regard.

4.15 We nevertheless believe that, for now, the current rules of the AVMS still provide an adequate framework for the audiovisual sector, but encourage the Commission to afford all media services providers as flexible an interpretation of the rules as possible, without fear of regulatory sanction or enforcement proceedings. Failure to do so will result in real and tangible costs – as Ofcom’s report\textsuperscript{16} observes, an inflexible approach and inaccessible regulation around product placement has led to a risk-averse culture that discourages innovation. In the same way, increased flexibility for sponsorship and advertiser funded programmes should be encouraged to open more opportunities for content investment.

4.16 In summary, while in need of monitoring, it would be premature to determine any concrete changes to the AVMSD or the need for a revised EC Interpretative Communication based on today’s media landscape. Instead, we promote flexibility within the current rules, in which consumers continue to enjoy a comprehensive and strict set of safeguards provided by the evolving self-regulatory system in the UK which is complemented by initiatives at EU level (see section 3 and below).

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

4.17 Given its pivotal role in financing content, creating the best environment for advertising to flourish must be at the forefront of the Commission’s thinking, not least as this will increase the quality and relevance of advertisements that consumers view and interact with. The success of Europe’s media industry depends on supportive policymakers and regulators which encourage innovation within a framework that works in the interests of both consumers and business.

4.18 Today’s media landscape allows users more choice and control than ever before and new advertising techniques present exciting opportunities for them and industry alike. Having regard to this rapid pace of change, we believe that any debate in this area needs to take into account this inherently creative process.

4.19 This principle is not followed in the debate on the proposed General Data Protection Regulation. Many of the novel advertising techniques use data to customise and personalise

\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid.
\textsuperscript{15} http://stakeholders.ofcom.org.uk/binaries/research/tv-research/Future_of_Commercial_Comms.pdf
\textsuperscript{16} Ibid.
their services and applications. The benefit of more targeted advertising to consumers and the funding of content are often overlooked and not well understood and this is why the UK Government’s recent statement that “targeted advertising is an important revenue generator for industry and is welcomed by many consumers”\(^\text{17}\) is important. The proposal would implement an overly prescriptive data protection framework for advertising which will weigh particularly heavy on the UK as Europe’s leading e-commerce market\(^\text{18}\) due to its considerable impact on the ability of SMEs and multinational companies to ‘scale up’, innovate and grow\(^\text{19}\).

4.20 The AA strongly contends that self-regulation – built on a principles-based legal framework – is particularly suited to deal with the challenges of today’s media landscape. Self-regulation provides a cost-effective regulatory solution that is capable of swiftly acting upon the changes and realities that the marketplace requires. The co-/self-regulatory system in the UK – enforced by the Advertising Standards Authority (ASA) and praised by the UK Government – exemplifies this approach through providing effective, proportionate and readily adaptable regulation at no extra cost to the taxpayer.

4.21 The UK advertising sector has perennially proven to take ownership of its responsibility to keep up with changes within the industry in the interest of safeguarding consumers, and self-regulation has been used to address emerging challenges. To this end, the industry, through CAP and BCAP, has extended the remit of the ASA to ensure that the system remains fit for purpose as evidenced in point 3.4 of this submission.

4.22 Further to national responses to regulatory challenges, the advertising industry at EU level has time and again committed itself to developing European solutions where appropriate and applicable. For example:

- The Green Paper itself highlights one of the latest success stories of European self-regulation, namely the EU self-regulatory initiative for OBA, and we welcome the Commission’s inclusion of this as an example of best practice. The initiative has received wide praise from Neelie Kroes, Commissioner for the Digital Agenda and Director-General (DG CONNECT) Robert Madelin, as well as at UK level from Culture Minister Ed Vaizey MP.

- In the context of the AVMSD, leading food and beverage advertisers have come together under the EU Pledge\(^\text{20}\) to support parents in making the right diet and lifestyle choices for their children. The effectiveness of the Pledge was recently endorsed by Tonio Borg, Commissioner for Health and Consumer Policy\(^\text{21}\).

4.23 In summary, changes in the content and delivery of audiovisual services undoubtedly require careful consideration of the regulatory environment within which they are embedded. Against a background of an ever-evolving marketplace, the AA advises against


\(^{18}\) The Internet Economy in the G-20, Boston Consulting Group

\(^{19}\) Please see the following link for our position on this issue: http://www.adassoc.org.uk/Privacy-data-and-e-communications/AA-response-to--Justice-Select-Committee-inquiry-into-European-Union-Data-Protection-proposals

\(^{20}\) http://www.eu-pledge.eu/

any statutory developments that may attempt to predict future developments when, in reality, current discussions often deal with hypotheticals. Instead, we encourage the increased use of self-regulation at national and EU level and recommend that the Commission do so likewise.

4.24 New technology has shown its potential to enhance the user’s experience of the audiovisual world. For example, one quarter (25%) of all UK adults now enjoy media “meshing” – interacting with or communicating about the TV content that is being viewed. This has also allowed advertisers to interact with consumers in innovative new ways, customising their offerings to make them more personal, relevant and interactive to the user they are engaging with. These direct response mechanisms provide powerful opportunities that can turn viewers into instantaneous customers, responding directly to ads that are relevant to them.

4.25 Beyond the delivery of these ads lies an enormously complex eco-system which enables and facilitates these innovative forms of advertising. Fostering their development is an integral part in keeping the industry as cutting-edge as possible to allow content producers and providers to monetise their products and services.

4.26 It is in the vital interest of media service providers and rights holders to display their content as intended and unauthorised overlays could run counter to this interest and to consumer expectations. It is therefore important for media service providers and rights holders to maintain protection of content integrity and have safeguards that achieve the end of protecting and encouraging advertising revenues as a sustainable basis for content creation. We believe that Article 20(2) of the current AVMSD takes this principle into account and support its regulatory intention.

22 Ofcom Communications Market Report 2013
4.29 Consumers require complaints handling mechanisms that are simple to understand and not complicated to use. They need an effective and trusted regulatory regime which affords them satisfactory recourse for any complaints they might have.

4.30 The ASA’s system for advertising complaints in the UK is a prime example of an effective complaints-handling mechanism. It offers a “one stop shop” for all advertising which the wider public is well aware of and which is appropriate with respect to the redress it offers to consumers, and is easy to use. See also paragraphs 2.6 and 3.6.

4.31 In its effort to protect children from inappropriate material, the ASA has also joined forces with other UK media regulators to create Parent Port, a cross-regulator initiative which offers a centralised platform to parents for any comment or complaint arising from something seen in the media.

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Green Paper - Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

Contribution from the World Federation of Advertisers

**WFA** is the only global organization representing the common interests of marketers. It brings together the biggest markets and marketers worldwide, representing roughly 90% of global marketing communications spend, almost US$ 700 billion annually. WFA champions responsible and effective marketing communications.

About our response

The questions raised in the Green Paper about changes in technology, media and media consumption go far beyond marketing communications alone. WFA has addressed those questions most closely related to our work within commercial communications.

Summary

The AVMS Directive, along with the UCP Directive, are the primary laws governing commercial communications in the EU. Together they provide a sound legislative basis for business and consumers. WFA does not see a case for substantial changes in the near future.

It is a fact that the nature of the media we all consume is changing, and that new technologies are offering many more choices. It is worth noting however that the presence of more choice has not led directly to a widespread change in viewing habits, and that the AVMS Directive continues to provide effective and proportionate standards for audiovisual commercial communications.

- The EU regulatory framework should continue to remain principles-based and technology neutral. Detailed platform-led regulation is misplaced.
- Self and co-regulation are an effective means of helping to achieving policy objectives in a fast changing technological environment where content and platforms easily cross national borders and are as likely to come from outside the EU as from within the single market.
- Advertisers will follow the audience, wherever that is to be found in a converging media environment. Regulation should aid consumers and advertisers in making their choices, and should not seek to restrict their choice.

Detailed responses

**Question 14** - What initiatives at European level could contribute to improve the level of media literacy across Europe?

As technologies develop and behaviours evolve, media literacy will have an increasing role to play to ensure that consumers are well informed and fully empowered. Advertisers have a long track record of promoting media literacy to encourage consumers to think critically about advertising or to raise awareness on certain
health issues. The Media Smart project is an illustration of this track record. Media Smart is a not-for-profit organisation, funded by the advertising industry but run by independent experts, that develops and provides free of charge educational materials to primary schools. These materials, freely downloadable online, teach children to think critically about advertising in the context of their daily lives. Media Smart – supported by the EU and national governments – started in the UK in 2002 and is now present in 9 EU countries.

The Media Smart programme includes a specific module to help teachers and parents teach children about commercial messages as they engage with digital content and services. The Digital AdWise Pack is an illustration of Media Smart’s pertinence and flexibility, a sign that as media consumption evolves, the programmes adapts to new needs.

Further roll out of Media Smart across the EU should be promoted to increase media literacy about new and evolving advertising techniques. We would welcome the support of the European Commission and Member States to encourage further adoption and dissemination of this programme.

Question 17 – Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

The rules enshrined in the AVMSD continue to be fully relevant in the digital world, and thanks to the technology neutrality of the Directive already respond to the challenges brought by media convergence. This is the case for the definition of commercial communications, the requirements of truthfulness and decency of commercial communications, prohibition of subliminal and surreptitious advertising, the protection of minors and rules for specific categories (alcoholic beverages, food and beverages). Furthermore, provisions prohibiting misleading and unfair commercial practices are fully technologically neutral, as are the rules protecting individuals’ privacy.

There is one notable exception to the full applicability of current rules regarding commercial communications in a converged environment. Insofar as they are no longer consumed on the basis of a clock hour, non-linear media are not subject to the AVMSD quantitative rules (setting the maximum amount of advertising to 12 mns per hour). While there is no simple way to translate these rules to non-linear media, there is however a need to find the right balance for viewers, advertisers and content providers. As advertising models and viewing habits are still evolving, this balance will naturally emerge, driven in part by advertisers’ understanding that the quality of ad space is negatively affected when the quantity of advertising is perceived to be excessive.

In an environment where users are ever more in control of their viewing experience and where their media consumption habits (including the amount of commercial communications they do or don’t accept) can be accurately measured, a balance is likely to emerge naturally.

Question 18 – What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

The most appropriate regulatory framework should reflect a number of key principles in order to effectively address a rapidly changing media and advertising landscape:

- It should be technology neutral
- It should be principles based
- It should be able to respond promptly and effectively to new challenges
• It should be able to reflect the inherently borderless nature of digital media

In WFA’s view, the AVMS Directive reflects these principles, and therefore continues to be the right regulatory instrument for a converged audiovisual media landscape.

Critically, the AVMSD explicitly recognised and encouraged the ability of self-/co-regulation to help achieve the policy objectives in a flexible, fast, cost-efficient and accountable manner. A good balance between regulation and self-regulation – similar to the one struck in the context of the AVMSD – should therefore continue to be at the heart of the regulatory framework for commercial communications in a converged audiovisual media environment.

The advertising industry – brand owners in particular – have a long and widely recognised track record of setting standards for commercial communications by means of effective self-regulation. Backed up by the right framework legislation, these can be more dynamic and more effective than statutory regulation on its own. The work currently undertaken by DG CONNECT to design a Community of Practice for Better Self- and Co-regulation takes inspiration from the advertising industry’s experience and will help further identify best practice and disseminate more broadly.

In order to be effective, advertising self-regulation must meet certain requirements relating to the code, the body enforcing the code, and to the organisations applying it. These requirements were set out in the European Commission report of the EU Advertising Roundtable, a multi-stakeholder initiative organised by the European Commission’s DG SANCO in 2006. The key features of a successful self-regulatory model include:

- It must be endorsed and embraced by a critical mass of the industry
- It must contain clear and precise rules which effectively address consumers concerns
- It must be designed in a transparent way, in collaboration and consultation with interested stakeholders
- It must be pertinent, up-to-date, and meaningful
- It must be respected in spirit and letter.

Codes must be enforced by a self-regulatory organisation (SRO) which is independent, sufficiently resourced and able to deal with complaints in a fast, impartial and efficient manner. Meaningful sanctions must act as a deterrent and rulings must be regularly published.

There are 26 advertising SROs in Europe. The industry’s self-regulatory model is able to address new challenges by enacting or updating advertising codes, and enforcing these in the context of the existing SRO network, coordinated by the European Advertising Standards Alliance (EASA). For example, this was the case in 2008 when EASA adopted a Best Practice Recommendation on Digital Marketing Communications clarifying how advertising self-regulation ought to be applied to “new” forms of digital marketing.

The advertising sector will continue to promptly respond to trends in media convergence by designing and enforcing appropriate self-regulatory standards.

Case study

A closer look at advertising self-regulation in four sectors
Online Behavioural Advertising (OBA). The issue of OBA provides a good case study of the advantages of self-regulation. Encouraged by the European Commission to emerging consumer concerns on the privacy aspects of OBA, the European digital advertising community joined forces to implement an innovative self-regulatory programme on OBA across all EU and EEA markets. Following multi-stakeholder consultations coordinated by the European commission, the European Interactive Digital Advertising Alliance (EDAA) was launched in 2012 as the competent authority to oversee the pan-European standards to ensure transparency and user control for OBA, while the national SROs were mandated to ensure independent monitoring and enforcement of the rules. A campaign for awareness raising – a key feature to ensure wide recognition of the system by consumers – was launched in 2013.

Food and beverage advertising. A self-regulatory approach has framed advertising for food and beverages in and around children’s programmes, as endorsed and encouraged in the AVMSD (Article 4.7). Since the adoption of the Directive in 2007, the industry has adopted a number of self-regulatory measures, including a commitment called the "EU Pledge", which has achieved – under the close scrutiny of the European Commission – significant results in reducing the exposure of children under 12 years old to ads promoting certain food and beverages.

Alcohol advertising. In 2012, leading producers from the beer, wine and spirits sectors launched a comprehensive initiative to strengthen advertising self-regulatory schemes for alcohol beverage marketing by establishing a set of common, rigorous standards for their marketing communications throughout the European Union. Under the Responsible Marketing Pact, alcohol beverage producers representing a majority of European alcohol advertising spend are developing common standards for ensuring advertising and marketing, including on social media, is aimed at adults of legal purchase age. The standards will be subject to external scrutiny through independent monitoring and public reporting.

Over-the-counter drugs advertising. In the context of over-the-counter drugs, significant distortions in the market due to inconsistent and conflicting national rules have not enabled the sector to develop a robust, cross border and uniform system for the advertising of non-reimbursable non-prescription medicines. The heavy fragmentation of regulatory approaches in the EU are confusing for consumers who are increasingly eager to look for information about OTC online, and will look for information beyond their home country where it is of better use. The regulatory framework is therefore outdated in light of media convergence. Both consumers and the industry would greatly benefit from a more modern approach whereby industry would be encouraged to adopt effective and consistent pan-European self-regulation, building on models successfully implemented in a number of EU Member States.

Question 19 – Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Media consumption patterns are evolving, giving viewers much more control over their experience and allowing content providers to better understand, and adapt to, their viewing habits. As advertising techniques are tested and tried, users will be the ones to have the final say on how they think brand owners should interact with them to promote products and services. In an age where consumer opinions can be voiced with a click, a tweet, or a remote control, no level of regulation can anticipate what consumers expect from advertisers or when they feel commercials deteriorate their viewing experience.

As it stands, innovative commercial communications taking full advantage of media convergence are embryonic. In order to avoid excessively prescriptive rules which may stifle innovation without necessarily benefitting viewers, regulation must lay down horizontal, technology neutral provisions – which the AVMSD
does – and allow for industry actors to understand consumers’ expectations and design the appropriate responses.

**Question 20** – Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

A converging media world raises some challenging questions for the protection of minors, but as far as advertisements are concerned, the AVMSD rules protecting minors are technology neutral – much like most of the provisions governing commercial communications – and therefore apply in a converging media world.

According to the AVMSD, advertising must not take advantage of children’s credulity or inexperience, it must not feature children in dangerous situations or exploit the trust children place in parents, teachers or other persons. The AVMSD effectively regulates the advertising of certain products – e.g. food and beverages, alcoholic beverages – on all media. These provisions, in their current wording, are fit to apply to evolving media in so far as they rely on broad but measurable criteria (e.g. Article 9.1.e) stipulates that “commercial communications for alcoholic beverages shall not be aimed specifically at minors”), and are easily applicable to e.g. digital media.

These rules apply to commercial communications in all audiovisual media, and are well enforced, as evidenced by the Commission’s first application report of the Directive. An analysis of 100 of the most aired advertising spots in a given period revealed that the Directive’s provisions protecting minors are rarely breached.

Similarly, other rules protecting children enshrined in other text (e.g. the Unfair Commercial Practices Directive bans direct exhortations to children) are technology neutral and are therefore perfectly able to be applicable to converged media.

**Question 24** – Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

In the context of advertising self-regulation, Self-Regulatory Organisations (SROs) are in charge of hearing consumer complaints. In 2011, SROs across Europe received a total of 60,234 complaints regarding the content of advertisements. A large portion of those complaints were about advertisements appearing on audiovisual media services (34%). Outdoor advertising ranked second with a European average of 16.59%, followed by digital marketing communications (16.42%) and press/magazines (14.93%). (Source: European trends in advertising complaints, copy advice and pre-clearance, EASA 2011).

In order to be fully effective, the self-regulatory model must rely on a very high level of awareness amongst consumers, and SROs therefore work to create awareness of the self-regulatory system among key stakeholders, namely consumers, regulators and the advertising industry. This is one of the key features of the Best Practice Model designed by the European Advertising Standards Alliance, and the 10th commitment of the Self-Regulatory Charter.

Part of an SRO’s mission is to communicate on the self-regulatory system and to ensure that consumers know how to complain. All support from regulatory authorities, the European Commission or Member States to increase the awareness of the national SROs and encourage people to use them in case of complaints are welcome.
Question 25 – Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO’s and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?

In the context of advertising self-regulation, SROs have a commitment to handle consumer complaints promptly and in full transparency. The timeframes for adjudicating on complaints are set by EASA best practice guidance. Jury decisions are communicated upon adoption, and consumers are regularly updated of the various steps of the complaint handling procedure. For more information, please see the consultation response from EASA.

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Stellungnahme
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zur öffentlichen Konsultation der EU-Kommission zum

Grünbuch „über die Vorbereitung auf die vollständige
Konvergenz der audiovisuellen Welt: Wachstum, Schöpfung und Werte“
- COM(2013) 231 final -

Stand: 26.09.2013

Register-Nummer: 12238962750-40
Der Zentralverband der deutschen Werbewirtschaft (ZAW) ist die Dachorganisation von 41 Verbänden der am Werbegeschäft beteiligten Kreise. Er vertritt die Interessen der werbenden Wirtschaft, des Handels, der Medien, der Werbeagenturen sowie der Werbeberufe und der Marktforschung. Er ist die gesamthafte Vertretung der Werbewirtschaft in Deutschland.

Der ZAW repräsentiert ca. 30 Milliarden Euro Investitionen in Medienwerbung und rund 940.000 Beschäftigte in den Arbeitsbereichen der Markt-Kommunikation. Zur Dachorganisation gehört auch der Deutsche Werberat, die zentrale Werbeselbstkontrolleinrichtung in Deutschland.

I. Einleitung

Der ZAW bedankt sich für die Gelegenheit, im Rahmen der Konsultation zu dem von der EU-Kommission vorgelegten Grünbuch „über die Vorbereitung auf die vollständige Konvergenz der audiovisuellen Welt: Wachstum, Schöpfung und Werte“ Stellung zu nehmen.

Die Entwicklung neuer Vertriebswege für audiovisuelle Mediendienste birgt auf Grund der damit verbundenen Möglichkeiten für zusätzliche Angebotsformate und Geschäftsmodelle sowohl für Verbraucher als auch für Unternehmen große Chancen. Mit den technischen Entwicklungen ist zugleich auch die Herausforderung verbunden, den regulatorischen Rahmen ausreichend flexibel, praktikabel und zukunftstauglich zu gestalten, um innovativen Angeboten und Formaten den notwendigen – finanziellen, technischen und rechtlichen – Raum für die weitere Entwicklung und Etablierung zu gewähren.


Bei der Beantwortung der Fragen aus dem Konsultationspapier beschränkt sich der ZAW nachfolgend auf die Aspekte, die für die deutsche Werbewirtschaft von besonderer Relevanz sind.

3.1. Rechtsrahmen

(11) Muss die Definition des Anbieters von audiovisuellen Medien und/oder der Geltungsbereich der AVMD-Richtlinie angepasst werden, um einen Teil der oder alle Verpflichtungen der AVMD auch für diejenigen einzuführen, die gegenwärtig nicht unter die Richtlinie fallen, oder können die Werte auf andere Weise geschützt werden? Welche Bereiche sollten schwerpunktmäßig der Selbst- bzw. Koregulierung unterliegen?

Wird weiterhin an den besonderen Vorschriften für audiovisuelle Mediendienste festgehalten, so erscheint das Prinzip der redaktionellen Verantwortung auch künftig geeignet, den Adressatenkreis der in der AVMD-Richtlinie festgelegten Rechte und Pflichten zu bestimmen.

Um flexibel und adäquat auf die schnelle technische Entwicklung und die damit auch verbundenen neuen Werbeformen reagieren zu können, ist es nach Auffassung des ZAW erforderlich, die Selbstregulierung im Bereich der Werbung weiter zu stärken und auszubauen (s. auch Frage 18).


(12) Wie würden sich Veränderungen des Regulierungsansatzes im audiovisuellen Bereich auf das Herkunftslandprinzip und damit auf den Binnenmarkt auswirken?

Das in Artikel 2 der Richtlinie verankerte Herkunftslandprinzip ist ein unverzichtbares Instrument zur Gewährleistung eines funktionierenden Binnenmarktes für audiovisuelle Mediendienste. Der ZAW hält daher ein Festhalten an diesem Prinzip für zwingend erforderlich.

Für Unternehmen ist das Herkunftslandprinzip elementar und alternativlos, um ausreichende Rechtssicherheit bei grenzüberschreitenden Aktivitäten zu erreichen. Andernfalls müssten audiovisuelle Mediendienste bei grenzüberschreitender Verbreitung stets an die jeweiligen Rechtsvorgaben der einzelnen Empfangsstaaten angepasst werden, was mit hohen Kosten und bürokratischen Unwägbarkeiten für die Anbieter verbunden wäre. Dieser finanzielle und bürokratische Aufwand ginge letztlich zu Lasten von Angebotsvielfalt und –qualität.
Auf welche neue Art und Weise und in welchen Bereichen wird das Verhältnis zwischen den Bestimmungen der AVMD-Richtlinie und denen der Richtlinie über den elektronischen Geschäftsverkehr durch die zunehmende Konvergenz auf die Probe gestellt? Bitte geben Sie konkrete Beispiele.

Sollte für bestimmte Regelungsbereiche eine Vereinheitlichung der Werbebestimmungen der AVMD- und E-commerce-Richtlinie erwogen werden, muss jedenfalls sichergestellt werden, dass keine weiteren Beschränkungen oder Verbote der kommerziellen Kommunikation vorgesehen werden. Wie bereits einleitend dargelegt, ist Werbung ein unverzichtbares (Re-) Finanzierungsinstrument der redaktionellen Beiträge der Anbieter und als Teil der Meinungs- und Informationssfreiheit der werbenden Unternehmen verfassungsrechtlich geschützt. Auch außerhalb des Anwendungsbereichs der AVMD-Richtlinie findet Werbung im Internet bereits derzeit nicht im rechtsfreien Raum statt. Vielmehr gelten auch hier - wie die Kommission selbst ausführt – u.a. die medienübergreifenden Werbevorgaben der Richtlinie über unlautere Geschäftspraktiken.

Weitere Beschränkungen der kommerziellen Kommunikation würden die Entwicklung innovativer Angebote und Geschäftsmodelle im digitalen Bereich unverhältnismäßig behindern, die Angebotsvielfalt und –qualität zu Lasten der Verbraucher einschränken und in die Meinungs- und Informationssfreiheit der Werbungtreibenden eingreifen.


Welche Initiativen könnten auf europäischer Ebene zu einer verbesserten Medienkompetenz in ganz Europa beitragen?

Anzeigenmotiven, die die Nutzer dazu animieren, hinter die Kulissen bei OBA zu blicken – und dabei ihre informationelle Selbstbestimmung wahrzunehmen.²

Bildungsinitiativen wie beispielsweise Media Smart sind ebenfalls geeignet, europaweit zu einer Stärkung der Medienkompetenz beizutragen.

### 3.3. Kommerzielle Kommunikation

(17) Werden die derzeitigen Bestimmungen der AVMD-Richtlinie über die kommerzielle Kommunikation nach wie vor angemessen sein, wenn die Konvergenz immer mehr zur Realität wird? Könnten sie einige konkrete Beispiele angeben?


Hybride Endgeräte sind in der Lage, zur gleichen Zeit Fernseh- und Internetinhalte nebeneinander darzustellen. Für diese Angebote gelten jedoch unterschiedliche Werbevorgaben. Ersichtlich muss die Weiterentwicklung der Technik auch hier Berücksichtigung finden und dies in einer Form, die die Angebots- und Programmvielfalt weiterhin sichert. Vor diesem Hintergrund haben sich auch das Europäische Parlament, der Deutsche Bundesrat und die Landesmedienanstalten der Bundesländer in ihren Stellungnahmen zum Grünbuch für eine Flexibilisierung der quantitativen Werberegeln ausgesprochen.³


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hier nur die Zwangsangaben bei Werbung für energieverbrauchsrelevante Produkte, für Verbraucherkredite bzw. Finanzierungshilfen oder aber die Vorgaben und Restriktionen bei der Werbung für Arzneimittel.

Zusätzlich könnten die mit neuen Medienvertriebswegen verbundenen innovativen Angebote zum Anlass genommen werden, klar zu stellen, dass das medienübergreifend geltende Trennungs- und Erkennbarkeitsgebot nicht maßgeblich durch eine räumliche Trennung von Werbung und redaktionellen Inhalten erfüllt werden muss. Um den Anbietern einen angemessenen Handlungsspielraum bei der Gestaltung ihrer Angebote zu ermöglichen und zugleich das durch den Trennungs- und Erkennbarkeitsgrundsatz gewährleistete hohe Verbraucherschutzniveau beizubehalten, sollte dieser offen ausgestaltet werden. Dies könnte dadurch erfolgen, dass die Erkenn- und Unterscheidbarkeit von Werbung und redaktionellem Inhalt übergeordnet in den Vordergrund gestellt wird.

(18) Welche regulatorischen Instrumente würden sich als Reaktion auf die sich rasch wandelnden Werbetechniken am besten eignen? Gibt es noch mehr Spielraum für die Selbst-/Koregulierung?


Mit Blick auf die erfolgreiche Werbeselbstregulierung in Deutschland ist es erstrebens- und wünschenswert, den Einsatz von Selbstregulierungsmechanismen weiter zu stärken. Für die Akzeptanz von Selbstregulierungsmaßnahmen ist entscheidend, dass diese nicht mit
zusätzlichen gesetzlichen Vorgaben „aufgeladen“ werden. Jedenfalls sollte der gesetzliche Rahmen so gefasst sein, dass der Wirtschaft ein ausreichender Spielraum zur autonomen Regelsetzung für eine sachgerechte, praktikable Lösung im Interesse aller Marktbeteiligten verbleibt.

(19) Wer sollte letztlich bestimmen, ob kommerzielle Einblendungen oder andere neuartige Techniken am Bildschirm akzeptiert werden sollen?


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