

CAP submission to ICO's consultation on its Age appropriate design code

1. Background to CAP and the ASA

- 1.1. This submission is provided by the Committee of Advertising Practice (CAP). CAP welcomes the opportunity to respond to the ICO's consultation.
- 1.2. CAP is the self-regulatory body that creates, revises and enforces the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). The CAP Code covers non-broadcast marketing communications, which include those placed in traditional and new media, promotional marketing, direct marketing communications and marketing communications on marketers' own websites. The marketer has primary responsibility for complying with the CAP Code and ads must comply with it. Ads that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from rulings by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.
- 1.3. CAP's members include organisations that represent advertising, promotional and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those organisations agree to comply with the Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.
- 1.4. By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including Directive 2005/29/EC (on misleading advertising). Self-regulation is accepted by the Department for Business, Energy and Industrial Strategy and the courts as a first line of control in protecting consumers and the industry. Further information about CAP is available at www.asa.org.uk.
- 1.5. CAP's submission to this consultation concerns general points relating to the overlap between existing law and regulation and matters covered by the consultation; it does not seek to address many of the specific matters contained in the call for evidence, as these fall outside CAP's remit and expertise.

2. CAP rules / guidance and the law relating to matters covered in the call for evidence

- 2.1. Protecting children and young people is at the core of the work of CAP and the ASA.
- 2.2. The CAP Code defines a “child” as anyone who is under 16 and a “young person” as anyone who is 16 or 17.
- 2.3. The CAP Code includes rules on the use of data for marketing ([section 10](#)), and CAP carried out a [consultation](#) on these in May and June 2018 to align them with changes introduced by the General Data Protection Regulation (GDPR), and a [further consultation](#) on matters raised by the Data Protection Act 2018, including consent of under-13s in relation to online services. These rules complement the statutory regime administered by the ICO, and CAP pre-consulted with the ICO before publicly consulting on its rules.
- 2.4. [Section 5](#) of the CAP Code contains comprehensive rules relating to the protection of children (defined as anyone under 16) from a wide range of potential harms relating to the content, placement and targeting of advertising. These general rules apply to all advertising and are complemented by product-specific rules relating to advertising which has particular potential to cause harm to children; the rules cover products like alcohol ([section 18](#)), gambling ([section 16](#)), electronic cigarettes ([section 22](#)) and lotteries ([section 17](#)).
- 2.5. CAP produces extensive guidance to assist marketers with compliance with its rules by ensuring that they prepare and target marketing communications with child audiences in mind. The following pieces of guidance are particularly important to matters covered by the ICO’s consultation:

<https://www.asa.org.uk/news/new-guidance-on-placing-non-broadcast-ads.html>

<https://www.asa.org.uk/resource/children-age-restricted-ads-online.html>

3. Consultation proposals

- 3.1. CAP welcomes the aim of the Code to provide protection to children online, and the evidence-based approach taken by the ICO, an approach which CAP also [follows](#) in drafting its rules and guidance. Most of the areas concerning the design of online services are outside CAP’s remit, and therefore it will not comment on these.

3.2. CAP would welcome clarity from the ICO on how its proposals relate to online content that is already regulated under the law (the General Data Protection Regulation, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the CAP Code. CAP would be happy to meet with the ICO to discuss these matters should it be useful and welcomes the ICO's reference to CAP's regulation in the draft Code.

3.3. CAP would like to understand better whether the Code is intended to go further than the existing law in setting standards for advertisers. Section 10 of the CAP Code is intended to reflect the standards contained in the existing law without setting stricter or less strict standards. CAP notes that some of the proposals appear to set additional standards to those included in the law, for example:

- it is not clear how the obligation to have regard to matters that have been shown to be detrimental to children's interests applies in situations in which an advertiser has obtained valid consent from an under-18 or, in the case of an under-13, valid parental consent; and
- the requirement that under-18s seek guidance from an adult before consenting to processing data seems to extend the principle that those aged 13 or over can give valid consent independently of their parents.

3.4. CAP welcomes the ICO's reference to the CAP Code in the draft Code but considers that further rules and guidance could be usefully highlighted. CAP considers it is important that its extensive work in relation to advertising to children and young people, which is in addition to matters covered by section 10 of the CAP Code, is not duplicated and such signposting would help to achieve this. Avoiding such duplication would also ensure that CAP Code standards that apply to under-16s would not be applied more widely by the ICO to under-18s.

3.5. CAP would welcome the opportunity to meet with the ICO to discuss the matters set out in this response.