Consultation response

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

Date: 30 September 2013

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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 successful self-regulation, the Advertising Standards Authority” and that the UK “has found self-regulation 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%2fNONSML%2bREPORT%2bA7-2013-0212%2b0%2bDOC%2bPDF%2bV0%2f2f%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](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 services⁷ 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.

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>
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<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 £</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
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 costs.\(^{10}\)

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.

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 viewing.\(^{12}\)

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

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\(^{10}\) \[http://www.iabeurope.eu/files/7113/7000/0832/white_paper_consumers_driving_the_digital_uptake.pdf\]

\(^{11}\) 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. 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.

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 – 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 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
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”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 ecommerce market18 due to its considerable impact on the ability of SMEs and multinational companies to ‘scale up’, innovate and grow19.

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 Pledge20 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 Policy21.

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.

4.27 The AA believes that the current high-level rules for advertising set out in the AVMSD continue to be appropriate. As mentioned in section 3, the Advertising Codes in the UK provide a comprehensive set of strict – yet proportionate – rules that apply to all media regardless of where the advertisement appears. These standards often exceed those contained in the AVMSD, in particular with regard to the protection of minors in the context of alcohol and HFSS advertising.

4.28 In addition, regular reviews of the Codes take place to determine whether changes to the rules are required. This has allowed the ASA to expand its remit on the basis of a thorough understanding of the changes taking place around us and around those most in need of protection.

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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 Port23, a cross-regulator initiative which offers a centralised platform to parents for any comment or complaint arising from something seen in the media.

23 http://www.parentport.org.uk/