

# Consultation on the proposed BCAP Broadcast Advertising Standards Code

## **BCAP Consultation Document**

This document sets out the review of the existing BCAP Broadcast Advertising Standards Codes and proposes a new, single BCAP Broadcast Advertising Standards Code.

BCAP welcomes feedback on its proposed code. Please see Annex 3 for information on responding to this consultation.

The consultation ends at 5pm on Friday 19 June 2009.

## **Part 2 - Section 10**

# **Prohibited Categories**

Please read the proposed rules for this Code section before responding to the questions below. To see the proposed rules, please [click here](#).

## **Background**

### **The law**

#### **Communications Act 2003**

**10.1** The Communications Act 2003 sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The most relevant standards objectives to the Prohibited Categories of Advertising and Indirect Promotion section of the proposed BCAP Code are:

319(2)(a) that persons under the age of eighteen are protected;

319(2)(b) that material likely to encourage or to incite the commission of crime or lead to disorder is not included in television and radio services;

319(2)(f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;

319(2)(h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.

**10.2** So that those standards objectives can be secured, the Act states that the standards code:

321(1)(b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).

**10.3** See the text of the Act at: [www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=817413](http://www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=817413)

#### **Firearms Act 1968 (as amended)**

**10.8** The Act states that it is an offence to sell a firearm or ammunition (as defined by Section 1 of the Act) or a shotgun unless the vendor is registered as a firearms dealer and sells that firearm, ammunition or shotgun to a person with a firearms certificate.

**10.9** See the text of the Act at: [www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=1628564](http://www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=1628564)

### **Obscene Publications Act 1959 (as amended)**

**10.10** The Act states that it is an offence to publish an obscene article whether or not for gain. The Act defines an article as 'containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures'. It defines obscene as something that has the 'effect ... such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it'.

**10.11** See the text of the Act at: [www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=1128038](http://www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=1128038)

### **Violent Crime Reduction Act 2006**

**10.12** The Act makes provision about real and imitation firearms, ammunition, knives and other weapons. Although it does not deal with the acceptability of advertising them, it states that it is an offence to manufacture or sell a realistic imitation firearm or cause one to be brought into Great Britain.

**10.13** See the text of the Act at: [www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=2922565](http://www.statutelaw.gov.uk/legResults.aspx?activeTextDocId=2922565)

### **Offensive weapons and replica guns**

**10.65** The Television Code prohibits advertisements for guns; the Radio Code prohibits advertisements for firearms and other weaponry, which includes combat knives.

**10.66** BCAP proposes to extend the present TV prohibition on advertisements for guns to advertisements for all offensive weapons and, therefore, provide consistency between the requirements on TV and radio advertisements. Offensive weapons are items made or adapted to cause injury.

**10.67** BCAP makes its proposal because it is mindful of public concern about violence and gun and knife crime. BCAP considers that an advertisement for offensive weapons would be unsuitable for broadcast because it would be likely to cause serious or widespread offence and to condone or encourage the use of offensive weapons.

**10.68** The present Radio Code prohibits advertisements for replica guns; the Television Code does not expressly prohibit advertisements for replica guns.

**10.69** The Violent Crime Reduction Act 2006 states ‘A person is guilty of an offence if he manufactures a realistic imitation firearm ... [or] ... sells a realistic imitation firearm’ (s. 36). The Act defines a ‘realistic imitation firearm’ as ‘an imitation firearm which has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm and is neither a de-activated firearm nor itself an antique’ (s. 38).

**10.70** Although replica guns are not, in and of themselves, harmful, BCAP considers that there are compelling reasons for including an explicit ban on advertisements for replica guns in the proposed BCAP Code. A TV advertisement for a replica gun could be viewed as glamorising the use of real guns, which BCAP considers could cause serious or widespread offence to the audience. BCAP also considers that a TV advertisement for a replica gun could be construed as an indirect promotion of an unacceptable product (and as such could already be implicitly prohibited under rule 3.2 of the Television Code). Although they are not, unlike real guns, intended to murder or maim, realistic replica guns can be used for criminal activity, such as for threatening people or using them to commit ‘armed’ robbery, and replicas can be converted into functioning weapons.

**10.71** BCAP proposes including this revised rule into the Prohibited Categories section:

**10.1**

Advertisements for products or services coming within the recognised character of or specifically concerned with these are not acceptable:

**10.1.4**

guns (including replica guns), gun clubs and offensive weapons. “Offensive weapons” are items made or adapted to cause injury. References to clay pigeon shoots are permitted only as part of a wider range of outdoor pursuits.

**Question 55**

Given its policy consideration, do you agree with BCAP's proposal to strengthen the present prohibition on TV advertisements for guns by prohibiting advertisements for offensive weapons and replica guns? If your answer is no, please explain why.

**10.72** The present Radio Code states:

**Section 3, rule 17**

**Firearms and Weaponry: Unacceptable Categories**

**No advertisement may promote the supply of firearms or other weaponry.**

This includes manufacturers, distributors, gun clubs, combat knives and replica guns. Businesses that supply such items amongst a wide range of other goods may be advertised, provided that there is no promotion of, or gratuitous indication that, the prohibited items are available. References to clay pigeon shoots are permitted only as part of a wider range of outdoor pursuits.

**10.73** BCAP proposes to retain the exception to the present radio rule that allows references to clay pigeon shoots in advertisements but only if they form part of a wider range of outdoor pursuits, for example in advertisements for a country fair. BCAP makes an on-balance proposal to extend that exception to the rule to cover TV because it considers that the policy that is likely to underpin the radio rule also underpins the TV rule, and therefore BCAP’s proposed rule. In BCAP’s opinion, an advertisement that includes incidental references to clay pigeon shooting as part of a range of outdoor activities is unlikely to cause serious or widespread offence or have the clear potential for harm, for example by condoning the use of guns. Conversely, an advertisement that had the sole focus of promoting guns, replica guns

or a gun club could, BCAP considers, cause serious or widespread offence or condone the use of guns.

**Question 56**

Given its policy consideration, do you agree with BCAP's proposal to extend the present radio exception to the rule for references to clay pigeon shoots in advertisements only if they are promoted as part of a wider range of outdoor pursuits? If your answer is no, please explain why.

**Rules for Specific Categories**

**Annex 1 - Section 10**

[Click here to return to this section of the Consultation Document](#)

## Prohibited Categories

**Principle**

Broadcast advertisements for some products or services are not permitted either because those products may not legally be advertised or because of a clear potential for harm or serious or widespread offence to the audience or to society.

**Rules**

**10.1**

Advertisements for products or services coming within the recognised character of or specifically concerned with these are not acceptable:

**10.1.1**

breath-testing devices and products that are intended to mask the effects of alcohol

**10.1.2**

betting systems and products that are intended to facilitate winning games of chance

**10.1.3**

all tobacco products. Also non-tobacco products or services that share a name, emblem or other feature with a tobacco product (as provided for by rule 10.3), rolling papers and filters

**10.1.4**

guns (including replica guns), gun clubs and offensive weapons. "Offensive weapons" are items made or adapted to cause injury. References to clay pigeon shoots are permitted only as part of a wider range of outdoor pursuits

**10.1.5**

prostitution and sexual massage services.

To respond to this consultation, you will need to respond specifically to Questions 55 and 56, highlighted in **red** above.

**Responding to this consultation**

## How to respond

BCAP invites written comments including supporting evidence on the proposals contained in this document, by 5pm on 19 June. Respondents should complete a consultation cover sheet, which is made available [here](#). (Also available at the end of this section.)

When responding, please state if you are doing so as an individual or if you are representing an organisation. Also, please make clear what your individual interest is or who your organisation represents. It will be helpful if you explain fully and clearly why you hold your opinion.

We strongly prefer to receive responses as e-mail attachments, in Microsoft Word format, because that helps us to process the responses.

Please send your response to [BCAPcodereview@cap.org.uk](mailto:BCAPcodereview@cap.org.uk).

If you are unable to reply by e-mail, you may submit your response by post or fax (+44 (0)20 7404 3404), marked with the title of the consultation, to:

BCAP Code Review  
Code Policy Team  
Broadcast Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London WC1V 6QT

## Accessibility

We want our consultation process to be accessible to everyone. If you have particular accessibility needs please contact the Code Policy team and we shall be happy to help.

Telephone: 020 7492 2200

E-mail: [BCAPcodereviewquestions@cap.org.uk](mailto:BCAPcodereviewquestions@cap.org.uk)

Fax: 020 7404 3404

Textphone: 020 7242 8159

Note that we do not need a hard copy in addition to an electronic version. Also note that, other than an automated response to responses received by email, BCAP will not routinely acknowledge receipt of responses.

BCAP has sent written notification of this consultation to the organisations and individuals listed in this annex. We welcome suggestions of others you think should be informed of this consultation.

## More information

If you have any questions about this consultation or need advice on the form of response, please contact BCAP's Code Policy team on +44 (0)20 7492 2200 or email us at [BCAPcodereviewquestions@cap.org.uk](mailto:BCAPcodereviewquestions@cap.org.uk).

## Confidentiality

BCAP considers that everyone who is interested in the consultation should see the consultation responses. We shall publish all non-confidential responses on our website, [www.cap.org.uk](http://www.cap.org.uk), when we announce the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by e-mail or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that non-confidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

**Please use the following cover sheet:**

## **COVER SHEET FOR A CAP OR BCAP CONSULTATION RESPONSE**

### **BASIC DETAILS**

Consultation title:

To (CAP or BCAP contact):

Your name:

Are you responding as an individual  or on behalf of an organisation

Organisation name:

E-mail, postal address or fax no.:

### **CONFIDENTIALITY**

What do you want CAP or BCAP to keep confidential?

Nothing  Your name/contact details/job title

Whole response  Organisation

Part of the response  If you have not put the confidential parts of your response in a separate annex, please identify them here:

If part of your response is confidential, can CAP or BCAP include it in a general summary of responses that does not disclose the specific information provided or enable you to be identified?

**DECLARATION**

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. Unless otherwise specified on this cover sheet, this response can be made public by CAP or BCAP and, if it is sent by e-mail or fax, CAP or BCAP can disregard any standard e-mail or fax cover sheet confidentiality disclaimers. I authorise CAP or BCAP to make use of the information in this response to meet their regulatory objectives.

CAP and BCAP may make responses public before a consultation has ended. If all or part of your response is not confidential but you would like us to make it public only once the consultation period has ended, please tick here

**Name:**

**Signature:**