

26 November 2021

Guy Parker
Chief Executive
Advertising Standards Authority
Castle House
37-45 Paul Street
London EC2A 4LS

Kevin Bakhurst
Group Director
Broadcasting & Online Content Group and
Executive Member, Ofcom Board
Direct line: 020 7783 4264

Kevin.Bakhurst@ofcom.org.uk

Dear Guy Parker

Information sharing for non-VSP-controlled advertising

In November 2020 Ofcom was given new powers to regulate video-sharing platforms (“VSPs”) established in the UK. These are set out in the Communications Act 2003 (“the Act”), as amended by the Audiovisual Media Services Regulations 2020.¹ They include a duty to ensure that standards around advertising are met.²

Under the Act, Ofcom is responsible for assessing the appropriateness and effectiveness of measures taken by Ofcom-regulated VSP providers to protect users from harmful content, including in relation to advertising that is not marketed, sold or arranged by VSP providers (i.e. non-VSP-controlled advertising).³ Recognising that the ASA regulates online advertising on a self-regulatory basis that is entirely separate from the regime under the statutory framework, Ofcom is proposing to collaborate with the ASA to identify any relevant information it can provide us with to help inform our assessments under the Act.

This letter reflects discussions between Ofcom and the ASA. The ASA and CAP (as appropriate) will provide Ofcom with information they become aware of in the course of their self-regulatory activity, which they consider relevant to our assessment of the measures taken by Ofcom-regulated VSP providers in relation to non-VSP-controlled advertising. This information should include, but is not limited to:

¹ [Communications Act 2003](#), as amended by the [Audiovisual Media Services Regulations 2020](#).

² The Act refers to ‘audio-visual commercial communications’ (“AVCCs”). AVCCs are defined as follows: “Audiovisual commercial communication’ means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which—(a) is designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity, and (b) accompanies or is included in a video in return for payment, or for other valuable consideration, or for self-promotional purposes; and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement.’ For ease, ‘advertises’ and ‘advertising’ are used as shorthand in this letter.

³ VSP-controlled advertising (i.e. advertising that is marketed, sold or arranged by VSP providers) is dealt with separately under the statutory framework.

- *Complaints.* A high volume of complaints about advertising on a particular VSP could alert Ofcom to a potential issue with the measures taken by the VSP provider to protect users from harmful content. **The ASA will report on: (i) the number of complaints and cases received about adverts on Ofcom-regulated VSPs (broken down to show the number of complaints received in respect of each such service); (ii) the number of adverts on Ofcom-regulated VSPs about which complaints have been received (again broken down in respect of each individual Ofcom-regulated VSP).** The ASA will also provide an explanation of the issue(s) involved, as appropriate.
- *Investigations and breaches of relevant rules in the CAP Code.* The CAP Code contains protections that are consistent with the statutory provisions in the Act covering non-VSP-controlled advertising.⁴ A high volume of breaches of relevant rules in the CAP Code, enforced against advertisers under the self-regulatory system by the ASA, may indicate a failure by a VSP provider to deliver the appropriate protection for users. The relevant provisions of the Act, as set out in Part 4B, Sections 368Z1(1) and 368Z(2)-(5), are included as an annex to this letter. The ASA and CAP are best placed to determine which CAP Code rules are relevant to these provisions, in consultation with Ofcom. **The ASA will provide details of investigations and breaches under relevant CAP Code rules, relating to non-VSP-controlled advertising on Ofcom-regulated VSPs (including details of the advert, the CAP Code rule(s) it was investigated under, the outcome of the investigation, and any action taken).** This information should be broken down in respect of each individual Ofcom-regulated VSP.
- *Other information.* This may include the ASA's or CAP's findings from monitoring projects and other research; market intelligence; and any other information they deem relevant to an understanding of their regulation of advertising on VSPs. **The ASA/CAP will supply Ofcom with all other information they become aware of in the course of their self-regulatory activity which they consider would be helpful to Ofcom in exercising its statutory duties in relation to non-VSP-controlled advertising.**

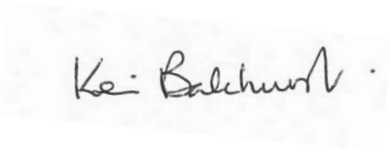
The information specified above should be provided to Ofcom in written form on a biannual basis, i.e. on 1 April and 1 October each year. In addition, the ASA will make Ofcom aware of any matters it considers to be particularly significant and/or urgent outside of this schedule as appropriate.

Either Ofcom or the ASA may propose alterations to this information-sharing arrangement (including its termination) in writing at any time, which the other party will discuss in good faith as soon as practicable, with a view to reaching agreement. It is our intention for the arrangement to be flexible, given that the UK Government has stated that it is considering the future regulation of online advertising.

Ofcom would be grateful for your assistance in this matter, in light of your experience regulating online advertising, and our established relationship in relation to broadcast and on-demand advertising. We would welcome confirmation in writing that the ASA is prepared to enter into the proposed information-sharing arrangement, as set out in this letter.

⁴ <https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html>

Yours sincerely,

A handwritten signature in black ink on a light-colored rectangular background. The signature reads "Kevin Bakhurst" in a cursive style, followed by a period.

Kevin Bakhurst