



Submission to

**ICC Code revision**

on behalf of

**Australian Association of National Advertisers**

**7 June 2017**

## Background

The Australian Association of National Advertisers (AANA) represents Australia's national advertisers and established the current self-regulatory system for advertising and marketing communications in 1997. Since that time, new codes have been introduced and the existing over-arching codes have been amended to keep pace with the ever evolving advertising, marketing and media industry.

The AANA Code of Ethics is the cornerstone of the advertising self-regulatory system and is supplemented by the Code of Advertising and Marketing to Children, Food & Beverages Code, Environmental Claims Code and Wagering Advertising Code.

The AANA has long supported the ICC Code as the basis for best practice advertising self-regulation. The current advertising self-regulatory system in Australia has successfully operated since 1997 with a very high participation and compliance rate by industry.

## AANA's comments on the ICC Code revision

AANA welcomes the ICC Code Revision Taskforce's initiative in revising the Code and sees a great opportunity to rationalise the ICC Code to reflect current practice and emerging technology.

### *Platform neutral approach*

The AANA Codes do not make a distinction between traditional media advertising, including outdoor advertising, and digital advertising. The definition of "Advertising or Marketing Communication" in the AANA Codes ensures virtually all commercial communication is captured and the Codes has evolved in recent years to include social media and consumer public relations communication.

In the AANA Codes, **Advertising or Marketing Communication** means *any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, and*

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

The definition excludes labels and packaging, corporate reports and promotion of broadcast programs on the same channel as the promotion appears.

**Medium** is defined as *any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.*

These definitions allow the Code to embrace new technology without needing constant amendment. They also allow for practice notes and guidelines to be developed to further explain the application of the Codes as new issues arise, without the need to amend the Codes and without constraint from a rigid checklist.

The AANA would urge the ICC similarly adopt a platform neutral approach in the revised ICC Code.

### ***Article 9: Identification***

If a platform neutral approach is taken to media within the ICC Code then the AANA does not believe any change is needed to reinforce the principle of transparency in light of issues related to ad identification as well as paid bloggers, user generated content, and the like.

The AANA has recently introduced a provision similar to Article 19 into the Code of Ethics with effect from 1 March 2017. It states:

*Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.*

Because “advertising or marketing communication” is defined to include any medium, the provision in and of itself applies to material published via bloggers and user generated content, where the advertiser has a reasonable degree of control over the material. The AANA also produced a Best Practice Guideline for Clearly Distinguishable Advertising to give guidance to advertisers on what factors to consider when seeking to comply with the code provision. It provides a range of guidance for new and traditional media. This guideline is based in part on information produced by the FTC in the US and CAP in the UK.

In addition, the AANA has produced a Best Practice Guideline for Responsible Marketing Communication in the Digital Space based in part on guidelines produced by EASA. Both guidelines are attached for your reference.

Rather than changing Article 9, it may be preferable to provide a guidance note as to how the principle of transparency applies in social and other media if that is of concern to the ICC.

The AANA is also in favour of consideration being given to remove the need for cross-referencing between Articles, for example Article 9, which refers to Article 10, but also contains the principle requirement from Article 10 in any event, in terms of identity of the advertiser.

### ***Article 19: Data Protection and Privacy***

The AANA believes Article 19 adequately addresses personal data, transparency, rights of the consumer and children’s personal information in a principles based format. In our view it is better to adopt a more general approach instead of detailed requirements as privacy laws differ in every country.

In particular, given that the GDPR will bring in a range of requirements that may significantly differ to local privacy regulatory requirements, it does not make sense to adopt more stringent provisions in the ICC Code, which many countries look to as the basis for their local codes. It is easier to align local codes with a principles based approach within the ICC Code, rather than having to track and justify areas of difference.

### ***Chapter C: Direct Marketing; Chapter D: Digital Interactive Media***

The current Chapters mention in their introduction that they must be read in conjunction with the General Provisions as well as applying Chapter D when reading Chapter C and Chapter C when reading Chapter D, which makes for a complicated application of rules. A platform neutral approach with requirements located together would make the Codes more user-friendly and easier to apply.

If additional guidance is required for certain delivery mediums, or methods of contacting consumers, the AANA suggests a specific guideline might offer a better approach, particularly given many local jurisdictions already have specific legislation in relation to privacy, direct marketing and telemarketing. A principles based guideline or code criteria (such as the current Article 19) may be

more useful from which each jurisdiction can draw from, rather than stipulating exact criteria which may well differ from local regulatory requirements.

### *Children and young people*

Children, for the purposes of advertising, are defined in the current ICC Code (12 years and under) and the Reference Guide on Advertising to Children provides a well-established and long documented justification by professionals in the field demonstrating that the age 12 is when children develop the cognitive ability to think critically about advertising. The research also acknowledges that it is earlier than age 12 that most children understand that advertisers are trying to sell them something.

Given the research, the AANA questions the need to have provisions in relation to “young people” as this creates an added layer of complexity for advertisers that does not appear to be necessary. The AANA is in favour of a more singular approach, removing references to “young people”. Article 18 states that “the provisions apply to children and young people as defined in national laws and regulations relevant to such provisions” – as such, local codes are able to adopt extra provisions in relation to young people where this may be required, but there is no need to make this an absolute requirement.

Applying the same requirements to both children and young people in the ICC Code appears to obviate the need for a distinction between the two and go against the research that has been referred to, with the potential to create greater uncertainty for advertisers rather than clarity.