



MANAGING THE PORTRAYAL OF PEOPLE

INDUSTRY PRACTICE NOTE

INTRODUCTION

This Industry Practice Note is designed for marketers, their agencies and the community, to help them understand what reasonable steps should be taken to ensure people are not portrayed inappropriately in advertising and marketing communication.

The AANA Codes are platform and media neutral and apply to all advertisers and marketers who promote brands, products or services to Australian audiences. This note provides guidance to help ensure best practice in relation to consent, dignity and security in managing the portrayal of people.

1. HOW DOES THIS INDUSTRY PRACTISE NOTE APPLY?

References to minors should be taken to mean those people under 18 years of age. However, bear in mind relevant Commonwealth, State and Territory legislation and regulation as the circumstances where minors may require parental consent (in addition to their own consent) varies.

This information provided is of a general nature and should be considered together with the context and particular circumstances for the use of the relevant material.

2. WHAT ARE THE KEY PRINCIPLES?

Privacy

Individuals should be protected from unwarranted infringements of privacy. Advertisers and marketers should obtain written permission before:

- referring to or portraying a member of the public or their identifiable possessions (the use of a crowd scene or a general public location may be acceptable without permission); or
- implying personal approval of the advertised product or service as this may result in a legal action.

Care should be taken when referring to a person with a public profile (references that accurately reflect the contents of a book, an article or a film might be acceptable without permission).

Consent

When obtaining consent, advertisers and marketers should clearly detail the relevant permissions in written contracts with relevant contractors (eg a photographer) and those portrayed (or the parent/guardian) including:

- what material is to be created and how the person will be portrayed;
- who retains the copyright to the images or material created;
- who retains the images or material created, including arrangements made for negatives, digital file and proofs;
- the intended media in which the material will be used, geographies where the material may be placed or accessed and likely duration of its use;
- any restrictions on use by third parties or sale.

One way of obtaining consent is for the advertiser or marketer to have a standard consent form available for a parent or guardian, and minor, to sign.

Particular care should be taken where a minor will be portrayed nude or not fully clothed and the rationale for this should be clearly spelt out (e.g. modelling underwear for a catalogue) and explicit written consent should be obtained. If you are working with anyone under the age of 15 and they are to be fully or partially naked, this may be prohibited by law, depending on the relevant State or Territory.

Consent may not be required for materials of people portrayed incidentally and where they were not employed by or on behalf of, or did not take direction from, or on behalf of,

the advertiser or marketers in the creation of the material.

It should be remembered when producing alcohol or wagering marketing communication that there are restrictions on using people under the age of 25 as talent.

Portrayal

Discrimination or vilification

Section 2.1 of the Code of Ethics prohibits discrimination or vilification against people within certain groups based on race, ethnicity, nationality, gender, age, sexual preference, religion, disability or political belief. Discrimination describes unfair or less favourable treatment and vilification describes content which humiliates, intimidates or incites hatred, contempt or ridicule.

A negative depiction of a group of people in society may be found to breach section 2.1 even if humour is used. Advertising can suggest stereotypical aspects of an ethnic group or gender with humour provided the overall impression created is not a negative impression of people of that ethnicity or gender. A depiction will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement. More information is provided in the AANA Code of Ethics Practice Note.

Sexual appeal which is exploitative and degrading

Section 2.2 of the Code of Ethics requires that advertising and marketing communication should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people. For material to breach this section, it must contain sexual appeal, however not all images or other material depicting people who are scantily clad or naked will be unacceptable. This section restricts the use of material only if it employs sexual appeal in a manner which is exploitative of, or degrading to, any individual or group of people. The context or medium in which the material appears may also be relevant. More information is provided in the AANA Code of Ethics Practice Note.

Sex, sexuality and nudity

Section 2.4 of the Code of Ethics requires that sex, sexuality and nudity in advertising and marketing communication must be treated with sensitivity to the relevant audience. This section applies equally to men, women and minors. Images which are not permitted are those which are highly sexually suggestive and inappropriate to the relevant audience. Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and fashion) is generally permitted however full frontal nudity is not permitted.

Rights and dignity of minors

Advertisers and marketers must respect the rights of minors by taking action to protect them from ill-treatment and exploitation, ensuring that advertising or marketing communication does not employ sexual appeal at all where minors, or people who appear to be minors, are portrayed. This will always be regarded as exploitative and degrading. Advertisements must not state or imply that minors, or people who appear to be minors, are sexual beings or that ownership or enjoyment of an advertised product or service will enhance their sexuality. Minors, or people who appear to be minors, must not be portrayed in a manner which treats them as objects of sexual appeal.

Security

People portrayed in advertising or marketing communication have the right to be protected from being harmed – physically or mentally.

Advertisers and marketers must take reasonable steps to ensure that:

- all personal details, images or material portraying people are securely stored so that they cannot be accessed by an unauthorised third party. Technological measures should be applied, where appropriate, to reduce the ability for unauthorised access, modification and copying of electronic/digital images. Examples include, but are not limited to disabling the 'right click mouse function, encoding with digital watermark, blocking unauthorised access to source data, tagging information in metadata;
- no identifying or contact information is used in the publication of, or accompanies the circulation/distribution, of the relevant material, unless prior written consent has been given;
- when working with minors, where they are to be fully or partly naked, that the parent or guardian commits to direct supervision of that person. Note that persons 16 years and over may not require parental consent for a range of matters including employment, and this will vary depending on the relevant State or Territory.
- provide details to the person portrayed, or their parent or guardian, of who to contact and what to do if concerns or complaints of inappropriate behaviour or use of material are raised.