

Appendix 3: The EASA Best Practice Self-Regulatory Model (April 2004)

This document sets out the European Advertising Standards Alliance's (EASA) recommendation for advertising self-regulatory systems as adopted by the EASA's Board on April 1 2004. It is based on the EASA's Statement of Common Principles and Operating Standards of Best Practice, as well as the EASA Best Practice Action Programme.

This document describes the various component parts of the model self-regulatory systems which the EASA wishes to see in place in all existing EU member states and in Accession countries. It is designed to help the EASA and its members to evaluate, initiate and develop effective and efficient systems across Europe. It will also help identify areas where investment is needed to develop existing national arrangements in order to improve the provision and operation of self-regulation with regard to EASA's Best Practice Self-Regulatory Model.

1. Universality of the Self-Regulatory System

An effective advertising self-regulatory system should apply without exception to all practitioners – advertisers, agencies and media. To achieve this, there needs to be a general consensus on the need for a self-regulatory system and the practical, active support of all three parts of the industry. Additionally, a self-regulatory organisation (SRO) must be able to depend on the moral support of a large majority of the industry, to lend credibility to its decisions and ensure that they can be applied even to unco-operative advertisers. This can be achieved only if the system covers all significant forms of advertising and has the active participation of practitioners in all areas of commercial communications, including Direct Marketing and new forms of advertising e.g. the so-called New Media, where traditional enforcement mechanisms may not be available.

2. Sustained and Effective Funding

Effective self-regulation is the best means of maintaining the freedom to advertise and freedom has a price. Self-regulation is not a cut-price option: it can function effectively only if it is properly funded. A self-regulatory system requires a robust method of funding involving the commitment of all the parties involved in the various sectors of commercial communications. It is important that such a method is sustainable, i.e. affordable and not extravagant, but it should also be buoyant, i.e. so designed that it cannot be placed in jeopardy by the unilateral action of any company or industry sector. Finally, the funding method should be indexed to ensure that it keeps pace with increased costs and reflects changes in the advertising market. A levy system based on a small percentage of all advertising expenditure has been found to be a very satisfactory way of fulfilling all these criteria.

3. Efficient and Resourced Administration

SROs should be managed in a cost-efficient and business-like manner with defined standards of service. To maintain public confidence in the system, an SRO must be – and be seen to be – independent of the industry which funds it. To achieve this, it requires a dedicated secretariat within a structure that provides the necessary independence and external credibility. The number of staff will depend to some extent on the size of the country, but it must be adequate to ensure the efficient functioning of the SRO. Even the smallest SRO is unlikely to be able to function properly with fewer than two full-time staff and most will need substantially more. Staff numbers should be reviewed regularly to ensure that they are appropriate to the workload and the SRO's budget should be reviewed each year and kept at a level adequate to meet its needs. To maintain impetus, the SRO is encouraged to have a strategic action plan, put in place at its inception and updated on an annual basis. To establish and maintain awareness of its activities, it is also advisable to have a communications plan, conducted on the same basis.

4. Universal and Effective Codes

A key element of any self-regulatory system is an overall code of advertising practice. This should be based on the universally-accepted ICC Codes of Marketing and Advertising Practice; it may subsequently be extended and developed in response to national requirements. It is important that the code should apply to all forms of advertising. It is equally important to establish a procedure for the regular review and updating of the code, ensuring that it keeps abreast of developments in the market place, changes in public concerns and consumer sensitivity, and the advent of new forms of advertising. Finally, the code must be made widely available and advertisers, agencies and media must be familiar with its contents.

5. Advice and Information

One of self-regulation's key roles is to prevent problems before they happen by providing advice to advertising practitioners. The advice provided by an SRO takes several forms: first, copy advice, i.e. confidential, non-binding advice about a specific advertisement or campaign, supplied on request before publication. Secondly, the SRO offers general advice on code interpretation; this advice will also draw on 'case law', i.e. precedents established in previous adjudications. General advice of this kind can also be made available in the form of published guidance notes, which supplement the code and indicate best practice, for example in high-profile or problem areas. Like the code itself, guidance notes can be updated as necessary.

6. Prompt and Efficient Complaint Handling

The public perception of a self-regulatory system will depend to a very large extent on how efficiently it is seen to deal with complaints. One of self-regulation's principal advantages over the judicial process is, precisely, its speed. Consequently it is essential that complaints are seen to be handled promptly. The amount of time required to investigate a complaint will depend on its complexity. Business to business complaints typically may take longer to resolve. SROs however should manage their activities particularly in this area against defined standards of service, including complaint handling targets.

The same principle applies in the case of cross-border complaints, with the added consideration that a large number of cross-border cases concern marginal or 'rogue' advertisers; in such cases, it is important not to spend too long waiting for a response from the advertiser, which is unlikely to materialise.

In cases alleging misleadingness, a fundamental principle of self-regulation is that the advertiser must bear the burden of appropriately substantiating his claims. The SRO should ensure that it has the means to evaluate technical evidence produced by advertisers to support their claims, including access to independent, specialist experts. Competitive complainants should be able to show prima facie evidence of a code breach in order to avoid abuse of the system.

7. Independent and impartial adjudication

A self-regulatory system must be able to demonstrate that it can judge cases brought before it efficiently, professionally and above all impartially. The complaints handling process itself, the complaints committee and its adjudications, must be conducted in an independent manner. They must be subject neither to the influence of the advertising industry or any particular industry sector or company, nor of government, NGOs or other interest groups.

The complaints committee should have a majority of independent members and its chairman should be an independent person. Where an individual member of a complaints committee is drawn from the industry or from a consumer organisation, for example, it must be clearly understood that they serve in a personal capacity and not as a representative or delegate of any interest group.

The adjudication process is incomplete without some provision for the review of decisions in case of appeal. The review process should be thorough but need not be elaborate; it should be so designed that it cannot be used merely as a delaying tactic to postpone the implementation of a decision.

8. Effective Sanctions

Although in most cases self-regulatory systems can count on voluntary compliance (however reluctant) with their decisions, their credibility depends in no small measure on an ability to enforce them. The so-called 'name and shame' principle, involving routine publication of adjudications, with full details of the complaint and the name of the brand and the advertiser, has proved to be a powerful deterrent. It can, where necessary, be reinforced by deliberately publicising a case where voluntary compliance with a decision is not forthcoming. However, perhaps the most effective means of enforcing a disputed decision is media refusal of the offending advertisement. This requires a commitment on the part of the media as a whole to uphold the decisions of the SRO and is likely to depend on the adoption of a standard 'responsibility clause' in all advertising contracts, by which both parties agree to be bound by such decisions.

9. Efficient Compliance and Monitoring

To be truly effective, an SRO cannot afford to restrict its activities to responding to complaints: if it does so, its interventions will inevitably be haphazard and lack consistency or thoroughness. To proceed effectively against violations of the code, it will need to put in place a planned programme of systematic monitoring, based on specific product sectors or problem areas. This allows the SRO both to institute cases on its own initiative and to evaluate levels of code compliance. This, in its turn, enables potential problems to be discussed with the industry and eliminated before they become too serious; regular dialogue with the industry should be a routine part of the SRO's activities. Monitoring and compliance surveys will also indicate areas where the code may need to be strengthened or changed.

10. Effective Industry and Consumer Awareness

An effective self-regulatory system should maintain a high profile: consumers should be aware of where and how to complain and the industry should be aware of the codes and procedures by which it regulates itself. To achieve this, the SRO will need to undertake regular publicity campaigns to create and maintain awareness of the system among consumers. It can be assisted by the provision of free media space, both in traditional media and the increasingly important electronic media. It should be simple and straightforward for consumers to complain, both on- and offline. Simultaneously, an ongoing programme of promoting its codes and procedures to the advertising industry – paying particular attention to those joining the business – will enable the SRO to establish practical awareness at working level.

Finally, the SRO will need to be able to produce information and evidence of its activities, in the form of published surveys, case histories and statistics (for example, numbers of complaints handled or copy advice requests). Information of this kind is essential, at European as well as at national level, to demonstrate the effectiveness of self-regulation.