



Hon Ed Vaizey MP  
Minister for Culture, Communications and Creative Industries,  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London, SW1Y 5DH

Dear Ed,

The BBFC, CAA and CEA welcome the Government's consultation on the future regulation of cinema advertising and wish to submit a common position in support of Part A Option 1 for a self regulatory regime under the CAP Code through an amendment to the Licensing Act 2003 to remove any requirement for the BBFC to classify cinema advertisements.

We believe that pre release scrutiny of cinema advertisements under the CAP Code alone would be an effective and proportionate means of regulation. This change would not damage child protection or consumer protection more generally; and would remove an extra regulatory hurdle, albeit one which enjoys public recognition and trust.

We believe that the BBFC should continue to classify all other theatrical works, including trailers and public information and campaigning films. In order to avoid confusion we would urge the Government to have a clear definition of what constitutes an 'advertisement' in any amendment to the current regime.

We therefore attach a joint proposal drawn up by all three bodies in support of Part A Option 1 and which defines what we collectively understand by advertising, namely paid for marketing communications promoting a commercial brand or service.

Yours sincerely,

*David Cooke*

David Cooke, BBFC

*Kathryn Jacob*

Kathryn Jacob, Pearl & Dean on behalf of the CAA

A handwritten signature in cursive script, appearing to read 'S Rees'.

Simon Rees, Digital Cinema Media on behalf of the CAA

A handwritten signature in cursive script, appearing to read 'Phil Clapp'.

Phil Clapp, CEA



## **CINEMA ADVERTISING: JOINT PROPOSAL BY THE BBFC, CAA AND CEA**

### **Executive Summary**

The British Board of Film Classification (BBFC), Cinema Advertising Association (CAA) and Cinema Exhibitors' Association (CEA) believe that future pre-clearance of cinema advertisements – namely paid for marketing communications promoting a commercial brand or service – should be carried out by one regulator rather than two under a self-regulatory regime – ensuring pre-clearance in line with the advertising codes. The ASA would continue to play a corrective role.

The BBFC should however continue to classify all other theatrical works, including trailers and public information and campaigning films.

### **Detail**

#### **Who we are**

The BBFC is an independent, private, not for profit company which classifies films and video works based on years of expertise and published Guidelines which reflect public opinion and the risk of harm. The CAA is the representative body for cinema advertising contractors in the UK and maintains a dedicated copy panel for clearance. The CEA represents the interests of well over 90% of UK cinema operators by number and market share; ranging from single screen/owner-managed sites to the largest circuit and multiplex operators.

The paper below represents the views of all three organisations.

#### **Present regulatory regime**

The pre-clearance of on-screen cinema advertising is currently done by two organisations: the CAA and the BBFC.

The CAA maintains a Copy Panel to pre-clear cinema commercials in compliance with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP code). Correct application of the code is overseen by the Advertising Standards Authority (the ASA) which ensures that all advertising is 'legal, decent, and honest and truthful' under the terms of the CAP code.

The BBFC classifies the commercial according to its published Classification Guidelines, which are themselves the result of extensive public consultation. (The BBFC sought the views of 20,000 people during each of its two most recent Guidelines consultations in 2005 and 2009.)

Applying the CAP Code and BBFC Guidelines involves a duplication of responsibilities with regard to the protection of children and some aspects of legality. But only the CAP code regulates cinema commercials to ensure that they are 'honest and truthful'.

#### **The CAP code and legality**

All the Acts of Parliament that apply to films shown in the cinema apply equally to cinema advertising – for example, the Cinematograph Films (Animals) Act 1937. This will continue to be the case. Also, all Acts the BBFC applies to theatrical works such as feature films, are equally applicable to advertisements under the CAP Code alone.

Besides adhering to the above and other Acts, the CAP Code itself requires attention to further legal and trading matters not encompassed by the BBFC Guidelines. For instance, the terms, conditions and warnings required in financial advertising. Or the definition of a 'free' offer. The concept of 'legality' as conceived in the CAP Code is therefore broader than that contained in the BBFC Guidelines. Crucially, the CAP Code requires that no marketing communication should incite anyone to break the law and this requirement has been broadly interpreted by ASA Council.

The ramifications of this interpretation are seen most clearly in the Motoring section of the codes. Commercials may not show cars being driven on a public highway in such a way as would break the Highway Code. Safety-belts must be worn by occupants. A car should always appear to be driving within the applicable speed limit for the environment. An impression of high speed created through editing or use of wide-angle lenses is as illegitimate under the CAP Codes as a straight visual of a speedometer indicating 40mph as the car speeds through a 30mph limit. Furthermore, marketers must not make speed or acceleration the main message of their advertisements.

Advertisements for goods in the specialist areas of Weight Control and Slimming; Medicines, Medical Devices, health Related Products and Beauty Products; Food, Food Supplements and Associated Health or Nutrition Claims must comply with specific codes. These are designed to ensure compliance with legal requirements such as MHRA registration, safe usage and other health concerns, as well as appropriate targeting.

Gambling ads must clear the minimum legal age for making use of the good or service, and must also make clear that gambling is not a solution for financial problems. In addition, the advertising of some forms of gambling is illegal in certain parts of the UK and the CAA must restrict their screening accordingly.

### **The CAP code and the protection of children**

The protection of children is central to the BBFC Guidelines and its 'U', 'PG', '12A', '15' and '18' classifications. In its classification decisions, the BBFC considers whether the material, either on its own, or in combination with other content of a similar nature, may cause any harm at the category concerned. This includes not just any harm that may result from the behaviour of potential viewers, but also any 'moral harm' that may be caused by, for example, desensitising a potential viewer to the effects of violence, degrading a potential viewer's sense of empathy, encouraging a dehumanised view of others, suppressing pro-social attitudes, encouraging anti-social attitudes, reinforcing unhealthy fantasies, or eroding a sense of moral responsibility. Especially with regard to children, harm may also include retarding social and moral development, distorting a viewer's sense of right and wrong, and limiting their capacity for compassion.

The protection of children is also essential to the CAP code. This is largely articulated through Sections 5 (Children) and 4 (Harm and offence), which follow closely the protection of children encompassed in the BBFC guidelines. They are

designed to prevent children from being enticed into moral, physical or psychological harm, and reflect the norms of society with regard to what is appropriate for children to see and hear.

The CAP codes specific to commercials featuring or addressed to children have been refined in their interpretation over the years. A young child may not be seen in a room with an unguarded fire even in the presence of adults. A young child may not be seen on a public street without direct adult supervision being established, unless it is on the grounds of promoting safety. Ads addressed to children must not actively encourage them to pester their parents and must make clear that adult permission is required if a prize or incentive might cause conflict between a child's desire and a parent's authority. Equally, such ads must not tend to make children feel inferior or lacking in duty or loyalty if they do not buy a product.

### **Restricting the screening of cinema commercials**

When the CAA Copy Panel approves a commercial under the CAP codes, it bears in mind the fact that the codes can be interpreted in light of the likely audience. An advertisement acceptable for older children might not be acceptable for younger ones. Some ads may be appropriate only for teenagers and adults. Others for adults alone. The BBFC works in exactly the same way when making age related classification decisions against its Guidelines.

Cinema advertising is sold on the basis of the films it is booked to accompany. Because of this fact, the Panel therefore has two ways to restrict the screening of an ad to ensure it plays before an age-appropriate audience, and it applies these restriction methods bearing in mind that the audience has chosen to see the feature film, not the advertisements.

The first method is to restrict a commercial to screening with films of a certain BBFC category and above. This may be for the protection of children, or on the grounds of public expectations with regard to the content of advertising in general. The second method is to take into account the genre of the film the advertisement is to accompany and the audience it is likely to attract: a 'U' certificate documentary on global warming will be seen by a very different audience to the 'U' certificate *Arthur Christmas*.

The most commonly used method of restriction is the first: relating the screening of a commercial to a particular BBFC certificate level. A classification category may be said to encompass a broad band of material. A film may be given a BBFC '15' certificate for one or more elements drawn from discrimination, drug use, horror, imitable behaviour, language, nudity, sex, theme or violence. But whatever the reason, the audience will have actively chosen to see the movie, however extreme it may be, based on expectations of the particular genre at the given classification and on the Consumer Advice and Extended Classification information provided by the BBFC. In contrast, the audience will not have chosen to see the accompanying commercials.

Both the Copy Panel and BBFC therefore take a cautious approach when judging what will be acceptable in a commercial to run with a '15' film.

It is fair to say that the Copy Panel perceives the middle-to-lower end of the band that defines a '15' film as properly reflecting what may be seen or heard in an ad which must only accompany '15' films and above. An ad which presented material at the top end of the BBFC '15' certificate would likely receive a CAA restriction to

screen only with '18' certificate films. This cautious approach is applied to all commercials in relation to the certificates of films they are allowed to accompany.

For the same reasons, it is fair to say that the BBFC's classification decisions for trailers advertisements may be more restrictive than for equivalent material in a main feature. For example, strong language is not permitted in advertisements or trailers at any category below '15'.

### **Impact on public of moving to a single, industry regulator**

The above description of the current process demonstrates the similarities between the CAA and BBFC's pre-release scrutiny of commercials and how the two systems dovetail. In the event of the BBFC withdrawal from cinema advertising clearance, the public should not therefore perceive any change in their cinema experience. The cinema audience will not suddenly be presented with commercials it felt inappropriate to be seen with a particular certificate of film.

Nevertheless, when applying any code or guideline, some degree of judgement is always necessary. Presently any discrepancy of judgement between the BBFC and the CAA Copy Panel over a commercial is resolved by always applying the more restrictive of the two decisions. Thus, an ad deemed suitable for accompanying '12A' films by the BBFC might be judged suitable only for '15' films by the CAA. It therefore screens only with '15' films. Higher restrictions are regularly imposed on commercials by the CAA Copy Panel (though these are generally down to bilateral agreements between the BBFC and CAA to allow the CAA a wide margin for discretion rather than because the BBFC and CAA Copy Panel have widely differing standards).

With a sole pre-clearance body this mechanism would no longer exist but a corrective role would remain with the Advertising Standards Authority, which oversees the interpretation of the CAP Code. The ASA would continue, as now, to respond to public complaints, to monitor the proper application of the Code, and in the event of investigation, to issue ASA Council decisions to the advertiser and the CAA Copy Panel.

The industry will continue to restrict the exhibition of commercials by way of relating them to BBFC certificates. Therefore a degree of ongoing liaison will continue between the BBFC and the Copy Panel. This would ensure the integrity of the BBFC Guidelines coherent with public expectations regarding advertising.

### **Other options**

Another option would be for the BBFC to be the single regulator of theatrical advertisements. However, we do not favour this approach. This is because the BBFC restricts its classification considerations to issue of harm, offence and legality outside advertising rules. It does not consider certain legal and trading issues relevant only to advertising. It could do so but the relevant expertise presently lies with the Copy Panel and we see no compelling reason to move where this expertise resides.

BBFC/CAA/CEA

July 2012