



ISBA RESPONSE TO DCMS CONSULTATION ON EXEMPTIONS TO THE VIDEO RECORDINGS ACT AND ON ADVERTISING IN CINEMAS, MAY 2012 : PART A – CINEMA ADVERTISING

ABOUT ISBA

ISBA is the representative membership body of British advertisers. We embody some 430 members, whose combined expenditure on marketing communications exceeds £11bn, or roughly two-thirds of all such expenditure. For further information, please see www.isba.org.uk.

According to recognised industry source Nielsen Media Register (NMR), our members' combined expenditure on cinema advertising in the year to March 2012 (the latest period for which data is available), was £93.3m. This represents some 55% of the £172m total spend on cinema advertising.

ISBA is aware that the Advertising Association (AA), of which ISBA is a key member, has also responded to this consultation. We fully support its response, but are also making our own as we have been involved in the issue in question at first hand for many years.

THE CONTEXT - UK ADVERTISEMENT CONTENT REGULATION

The UK is widely recognised to have a (perhaps *the*) world-class system of advertisement content *self*-regulation through the Advertising Standards Authority (see <http://www.asa.org.uk>), which handles all consumer and trade complaints about advertisement content. So effective is the system that the ASA hardly ever has to call on the powers of its statutory backstop regulators OFT and Ofcom.

Television advertisements are pre-cleared by Clearcast, a body set up and funded by broadcasters in order to ensure that the advertisements they carry are compliant with their broadcast licences (see <http://www.clearcast.co.uk/>). Radio commercials are pre-cleared similarly by the Radio Advertising Clearance Centre (<http://www.racc.co.uk>).

ISBA maintains close relationships with all of these bodies, helping to ensure that advertisers both realise and meet their responsibility to advertise legally, decently, honestly and truthfully. Most non-broadcast media also operate less formal pre-vetting systems for ensuring that the public is not exposed to unsuitable material.

CINEMA ADVERTISING CONTENT REGULATION

Advertisers using cinema must submit their copy for clearance by the Cinema Advertising Association (CAA, see <http://www.cinemaadvertisingassociation.co.uk/index.html>), which determines if the copy is acceptable and whether any scheduling restrictions should be imposed, for example to prevent unsuitable material being shown to minors.

However, advertisers are also then required to submit each advertisement for classification by the British Board of Film Classification (BBFC, see <http://www.bbfc.co.uk>), another self-regulatory body

but one whose primary role is to classify film content in a manner which prevents (or helps parents prevent) exposure to unsuitable film content.

This leads to a duplicated and completely disproportionate regulatory burden for advertisers embarking on cinema advertising activity which in turn acts as a restraint on the trade of cinema advertising airtime.

THE PROBLEM

Advertisers embarking on cinema activity face the 'double jeopardy' of scrutiny of their advertisements by two bodies prior to exhibition. Our understanding over time is that the views of each are sometimes not at all well-aligned and the outcomes are therefore different and often unpredictable.

The CAA has to balance its members' keenness to enjoy the revenue from advertising against the need to ensure advertising is compliant with the prevailing advertising code, in this case the Committee of Advertising Practice (CAP) Code (see <http://www.cap.org.uk>). The natural tension and balance in this system works well as it constrains excesses at both ends of the spectrum, whether from commercial, regulatory or even pressure group interests.

By contrast, the BBFC is widely considered the more cautious body. This is easily explained by the fact that it has no *prima facie* interest whatsoever in helping get advertising to air. (Though as we outline later, it does have a strong interest in the revenues from advertising content clearance).

Not only do advertisers have to face the 'double jeopardy' of CAA and BBFC, but like all advertising they are subject to the ASA post-hoc, taking it literally to 'triple jeopardy'. Moreover, many commercials are derivative or even replicas of commercials appearing on TV, which are subject to clearance by Clearcast, making for 'quadruple jeopardy' in many cases.

Such an (overly) elaborate procedure of checks and balances is utterly disproportionate for a medium whose viewing is a much more elective activity than, say, television. (A cinema visit after all typically requires premeditation; a planned trip; the booking of and payment for tickets; and attendant refreshments, if not also a meal out, in many cases).

HISTORICAL PERSPECTIVE

ISBA has long supported the UK cinema advertising industry in its quest for a reduction in the disproportionate regulatory burden which its advertiser customers face.

The issue goes back far enough to predate some of our retained records, but we recall engaging with the CAA, which in turn engaged with but was robustly rebuffed by the BBFC on this very issue, in the 1990's.

In August 2000, we and others, such as the Institute of Practitioners in Advertising (IPA, see <http://www.ipa.co.uk>) wrote to Lord Haskins of the Cabinet Office's Better Regulation Task Force of the time drawing attention to the issue and alluding to a then-recent decision to refer the matter to the Home Office for their consideration. No response was forthcoming.

Periodic correspondence between ISBA and the CAA shows that the issue has remained under discussion but has sadly and frustratingly been unresolved ever since. We have always seen it as the role of the CAA to lead representations in this area as it is their primary interest. However, the CAA has not always given it the attention it deserves as it has had to negotiate its own existence and resourcing during sometimes difficult economic times, not least recently.

We believe with some disappointment that the BBFC has clung to its unnecessary duplicative role over time not least because it has represented an easy way of extracting incremental income from advertisers with little choice via their advertising agencies, albeit under some duress.

A NOTE ON THE ACTUAL IMPACTS

The AA estimates that the BBFC extracted some £90k pa thus in 2010. This figure may be an accurate reflection of what the BBFC extracts financially, but it does not factor in advertisers' significant costs arising from their agencies' having to deal with and often navigate between *two* pre-clearance bodies.

It is perhaps worthwhile to explain how the adverse economic impacts for the cinema advertising medium arise, as the effects are both insidious and medium- to long-term.

In truth, most advertisers running a burst of cinema advertising have already committed themselves to the production of advertisements and the booking of cinema media space long before their commercial will be submitted for (multiple) clearance. It is by then both too late and too costly for advertisers to withdraw from the medium and seek alternative routes to their target consumers.

Rather, the impact is felt later, when those same advertisers fail to return to the cinema medium despite its many attractions because they have bitter experience of the 'multiple jeopardy' they will face - 'once bitten, twice shy'.

Over time, marketers carry their experience from company to company. Cinema has earned a reputation not only as a 'niche' medium (because of the demographic skews of its core audience), but also a somewhat 'difficult' medium because of the fraught nature of content clearance.

Successive generations of cinema advertising sales executives have had to contend with this against the background of the greatly increased competition for advertising revenue amongst the media which has accompanied the arrival and growth of the internet.

CONCLUSION

ISBA fully supports the Advertising Association in arguing that the requirement for cinema advertisements to be age rated by the BBFC when they are shown with a feature film at the cinema places a disproportionate burden on all advertisers considering using the otherwise vibrant and exciting cinema medium.

We have no doubt that this has adverse economic impacts which are surely unintended, as it deters some advertisers from using or returning to the medium.

ISBA welcomes the consultation's point 2.10 which indicates that DCMS sees a "strong case for simplifying the regulation of cinema adverts".

We therefore urge DCMS to remove the requirement for cinema advertisements to be age rated by the BBFC when they are shown with a feature film at the cinema; and rely in future on the self-regulatory regime of the CAP Code, enforced by the CAA and ASA respectively.

Bob Wootton

Director of Media & Advertising, ISBA, July 2012