



MPA

EMEA

MOTION PICTURE ASSOCIATION EMEA RESPONSE TO THE CMA CONSULTATION ON DRAFT UNFAIR COMMERCIAL PRACTICES GUIDANCE

January 2025

The Motion Picture Association (MPA) serves as the global voice and advocate of the international film, television, and streaming industry. Our members are Netflix, Paramount Pictures Corporation, Prime Video & Amazon MGM Studios, Sony Pictures Entertainment Inc, Universal City Studios LLC, Walt Disney Studios Motion Pictures and Warner Bros. Discovery.

MPA member companies offer a wide range of services and content that is enjoyed daily by millions of UK consumers. This includes providing both traditional linear television channels and on-demand direct to-consumer services, as well as producing and distributing a rich and diverse selection of content, including entertainment, news, children's programming and sports coverage.

MPA members believe that providing a high-level of consumer protection is vital for maintaining a positive brand reputation and being able to grow their services in a highly competitive marketplace. For this reason, they are keenly aware of the need to design services which are both easy to use and deliver important information in a transparent and upfront way, avoiding any misleading or other unfair commercial practices which could lead customers to take transactional decisions they would not have taken otherwise.

The MPA therefore welcomes this opportunity to respond to the CMA's public consultation on its Draft Guidance on unfair commercial practices and would like to make the following recommendations for clarifications to the Draft Guidance.

1. Digital content examples of 'already apparent from the context'.

Paragraph 9.12 of the Draft Guidance provides a useful example of information which is likely to be 'already apparent from the context' for a physical store. However, we request that the CMA provides examples which are relevant for digital content. For example, we assume that if a consumer views a clearly-branded advert for a well-known streaming service provided by a particular trader, the identity of the trader will be obvious from the context.

2. Omission of material information

Paragraph 7.6 of the Draft Guidance clarifies that the "price of a product in most circumstances is material information", and that failing to provide this in a timely fashion before a transactional decision is made is likely to amount to a misleading omission. The restaurant example (prices of food and drink must be displayed to consumers before they order) is clear. For clarity, it would be helpful if the CMA could express confirm that not all promotions must include pricing information in order to avoid being a misleading omission (i.e. provided this information is given in a timely fashion prior to the transactional decision). Examples given in a digital context would also be useful.

This clarification would be particularly useful in the context of the new strict liability provisions relating to omissions of material information from an invitation to purchase - Paragraph 9.8 of the Draft Guidance helpfully clarifies that a commercial practice that does not include a price is not an invitation to purchase, and that in many cases, advertisements that promote a trader's "brand" rather than a particular product will not be invitations to purchase (i.e. anticipates that some promotions will not include pricing information).

By way of example, our understanding of the Draft Guidance, in a SVoD¹ context, is that it would be permissible to continue to run "coming soon" or "tune in" styles of promotion (i.e. promoting the service rather than specific products/tiers) without pricing information and that these promotions would not amount to "invitations to purchase". However, it would be useful if the CMA could make this distinction clear.

3. Use of hyperlinks to disclose "material information"

VoD services, and indeed the wider digital sector, may struggle to accommodate the detailed 'material information' set out in the DMCC Act. The Draft Guidance clarifies that the CMA will consider whether the trader has conveyed this information via other means (examples of which indicate that it is sufficient to provide "material information" from an invitation to purchase using a prominently labelled link (see page 56 of the Draft Guidance). SVoD providers would be grateful for explicit confirmation that the full material information required can also be delivered, e.g. via a hyperlink rather than in the main promotional message. It would also be helpful for the CMA to expressly confirm that the size of digital advertising inventory is a relevant consideration when assessing compliance.

[REDACTED]

¹ (Subscription video-on-demand)