

Help Note

Committee of Advertising Practice (CAP)

Broadcast Committee of Advertising Practice (BCAP)

Use of speed claims in broadband advertising



Background Introduction

This Help Note is intended to help the industry interpret the Misleading Advertising sections of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and the UK Code of Broadcast Advertising (the BCAP Code). It relates to “up to” speeds claims as they appear in both business-to-consumer and business-to-business broadband advertising (the CAP Code and BCAP Code are together referred to as “the Codes”).

CAP and BCAP guidance is intended to help advertisers, agencies and media owners interpret the Codes but it is not a substitute for them. This Help Note reflects CAP and BCAP’s intended effect of the Codes but neither constitutes new rules nor binds the Advertising Standards Authority (ASA) Council in the event of a complaint about a marketing communication that follows it.

Application of the Help Note

The Help Note covers marketing communications for fixed-line broadband services, such as DSL, VDSL and cable.

The primary focus of the Help Note is on marketing communications that make numerical speed claims, for instance, “Up to 10Mb Broadband”, but it also applies to other approaches used to indicate the speed of a service, such as “superfast”.

Pending further work by CAP and BCAP, the Help Note does not apply to mobile data services. However, mobile providers should endeavour to ensure that marketing communications for mobile services that make speed claims should conform to the spirit of the Help Note and, where possible, the principles outlined below.

The Help Note and the legislative framework

The ASA Council has agreed to have regard to this Help Note when considering whether “up to” speed claims in broadband advertising comply with the relevant Advertising Code. The guidance may be revised as a result of ASA Council rulings and changes in the industry.

The ASA’s interpretation of the Misleading Advertising sections of the Codes takes into account factors identified by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and The Business Protection from Misleading Marketing Regulations 2008 (BPRs).

- The CPRs require that advertising must not contain misleading claims, or omit material information, to the extent that the advertisements are likely to affect adversely consumers’ transactional decisions about products. The effect on consumers is considered from the point of view of the average consumer. The average consumer is assumed to be reasonably well-informed, reasonably observant and circumspect. If an advertisement is targeted at a particular group of people, it is considered from the point of view of the average member of that group.

The BPRs protect businesses targeted by business-to-business advertising. The BPRs state that an advertisement is misleading if it deceives the traders to whom it is addressed and is therefore likely to affect their economic behaviour.

The Help Note recommends an approach that CAP and BCAP consider is likely to be acceptable within the legal framework. For the avoidance of doubt, it does not proscribe other approaches, nor is it intended to stifle innovation in telecommunications advertising. If complaints are received about a marketing communication in which a marketer has chosen to depart from the approach recommended by the Help Note, the ASA will simply expect the marketer to be able to justify why they did so and why the marketing communication does not mislead as a result.

Advice on marketing communications

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404, or you can log a specific written enquiry via our online request form <http://www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx>.

The Copy Advice website at www.copyadvice.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

For advice on specific radio advertisements, contact the Radio Advertising Clearance Centre (RACC), www.racc.co.uk or, for TV advertisements, Clearcast, www.clearcast.co.uk

The Guidance

Advertising of broadband services

In practice, different customers of the same Internet Service Provider (ISP) achieve different broadband speeds. The variation in speeds can be negligible or highly significant depending on a number of different factors. This has implications for how broadband speed claims may be communicated by advertisers.

A range of factors affects the maximum speeds achieved by individual customers: for instance, the variation in achievable speeds from customer to customer caused by signal attenuation¹ on ADSL networks is likely to be very significant. Individual users' speeds also vary over time due to factors such as contention², traffic management and network capacity. As a consequence, along with variations in performance between different platforms, there are variations in performance between different ISPs on the same platform.

¹ The depreciation of signal strength between the end user and their local telephone exchange as the broadband signal travels over copper wire.

² The effect of multiple users sharing the same bandwidth on a provider's network.

1. Speed claims

Principle

CAP and BCAP consider that maximum speed claims should be based on the actual experience of users and therefore marketers should be able to demonstrate that the speeds claimed in their advertising can be achieved by a reasonable proportion of the ISP's customers.

Policy

Where advertisers make a numerical speed claim that is likely to be understood by consumers as the maximum speed of their service, they should be able to demonstrate that the speed is achievable for at least 10% of the relevant customer base. This applies to a claim wherever it appears in the marketing communication and if the claim is a part of the name of the service.

Marketers may, however, choose to round their maximum speed claims down to a figure that is more convenient for marketing purposes.

See section 5 for information on how substantiation to support such claims should be collected.

2. Qualifying speed claims

Principle

The maximum speed achieved by customers of all ISPs varies to different extents. Advertisers should therefore include appropriate qualifying information to accompany the maximum speed claim to ensure the average consumer is not likely to be misled.

It is a general principle of the Codes that advertisers must not mislead consumers by including or omitting information, if the inclusion or omission of that information is likely to cause consumers to take a transactional decision they would not otherwise have taken.

Below are several different qualifications that are likely to be necessary depending on the level of variation in speeds achieved by customers of an ISP.

Policy a) "Up to"

In circumstances where some customers' maximum speed falls below it, the maximum speed claim must be prefixed with "up to".

Where a marketer makes a different type of speed claim, for example a claim for the average speed of a service, an "up to" qualification is not required.

b) Significant factors that limit speeds achieved by customers

If a marketing communication does not mention factors that are likely to cause some customers

to receive speeds significantly below the claimed maximum speed, the marketing communication might mislead. Significant factors affecting a service should therefore be stated.

For instance,

- The ASA currently requires ISPs to include a qualification referring to the effects of signal attenuation on ADSL2+ services.
- Some forms of traffic management result in a proportion of customers receiving speeds at certain times that are significantly below the stated maximum.

Evidence of the significance of a given factor will be considered on a case-by-case basis in accordance with consumers' likely expectations of the service.

The wording of a qualification must make clear, in terms easily understood by consumers, the likely effect of the relevant factor on consumers' ability to achieve an advertised speed. In particular, marketers should avoid technical terms unless they are widely understood by consumers or are explained clearly within the marketing communication.

Qualifications should be prominent, appearing in the body copy of non-broadcast marketing communications and the equivalent for claims appearing in broadcast advertisements.

c) Criterion for further qualifying information

In certain instances, one of the factors relevant to (b) above may cause a significant proportion of an ISP's customer base to receive a maximum speed that is so much lower than the advertised maximum that it prevents those customers from carrying out (including to an acceptable performance standard) the types of online activity that they might reasonably expect to undertake on the service advertised. Where this happens, marketers must include further qualifying information that bears out, in terms easily understood by consumers, the likelihood of the service not being able to meet the expectations of that element of the customer base.

'Types of online activity' includes, for instance, streaming of content using an application that requires a minimum speed to function properly.

For instance, the advertiser might include:

- A statement that a proportion of customers can expect to achieve speeds below a certain speed. For example, "X% of our customers receive speeds below YMbit/s", or
- A statement that a proportion of customers can expect to achieve speeds above a certain speed. For example, "X% of our customers receive speeds above YMbit/s", or
- A statement that a proportion of users achieve speeds within a certain range, for example, "X% of our customers receive speeds between YMbit/s and ZMbit/s".

It is for advertisers to decide the values, as illustrated by X, Y and Z in the examples above. However, the levels chosen should satisfy the criterion set out above.

The qualification should be prominent, appearing in the body copy of non-broadcast marketing communications and the equivalent for claims appearing in broadcast advertisements.

If a marketing communication for an ADSL2+ service contains information of the kind described above, that will obviate the need to refer to the effects of signal attenuation in the marketing communication.

3. Other claims

Non-numerical speed claims

Terms that are likely to significantly influence a consumer's expectation of the speed of a service such as "superfast" should, where relevant, be qualified with the information detailed in the Section 2 above.

The ASA will assess non-numerical speed claims on a case-by-case basis.

Upload speed claims

The Help Note is primarily focused on download speeds as these are the speeds most commonly presented in broadband marketing communications. Upload speed claims should conform to the guidance where relevant.

Comparisons

Comparative advertising should comply with the Comparisons sections of the CAP and BCAP Codes. It is important when making comparisons with identified competitors or their products on the basis of speed testing data that the methodologies used are based on the same principles (see Section 5 'Substantiation') and that the marketing communication includes enough information to allow the consumer to verify the comparison.

General guidance on comparisons can be found on the CAP Copy Advice website [requires free registration].

4. Invitations for consumers to check their line speed

As individual consumers can only receive the most accurate indication of their likely speeds by checking with the provider or a third party website, providers may wish to include a statement urging consumers to check their likely speed independently or with the provider themselves.

5. Substantiation

Principle

The substantiation required for speed claims must be robust and reasonably representative of actual performance.

Data used to support claims should be relevant to the audience targeted by the marketing communication.

The ASA will judge each submission on a case-by-case basis, taking into account the context in which speed claims are used in the marketing communication and the criteria set out below.

Acceptable approaches

There are different approaches to measurement, sampling and normalisation and statistical methods that can be combined to produce data that meets the criteria outlined in the paragraphs below.

The Help Note does not require a specific method or approach to gathering and processing speed testing data.

- The ASA has previously accepted data gathered and processed on behalf of ISPs by independent third parties and from ISPs' own tests. In principle, data based on either approach is acceptable.
- The ASA has also recognised that many services have large customer bases making it very difficult to test the lines of all customers. It is therefore acceptable to use an appropriate sample of a particular customer base and apply statistical methods to make the data representative of actual performance.

Marketers should be able to explain clearly to the ASA how they designed their speed testing regime and how the approach taken is relevant to the claims made.

Relevant factors

Marketers should account for all the relevant factors that cause a reduction or variations in speeds. The principal factors are not limited to:

- Signal attenuation
- Congestion/contention
- Traffic/network management
- Protocol overheads

CAP and BCAP acknowledge that some factors have an impact on speeds which are negligible and therefore do not need to be accounted for specifically by a testing regime.

Marketers may also choose not to take into account certain factors in designing their speed testing regime for a particular claim. In both instances, they should be able to explain why the factor was not relevant for the service or the audience targeted.

Factors beyond marketers' control

Factors beyond a marketer's responsibility, such as those affecting a user's hardware set up within their home, would not ordinarily need to be taken into account by a testing regime.

Measurement

There is no established standard for testing broadband speeds. Marketers should therefore use methods based on relevant industry standards.

Measurements used should be appropriate to the claims made, for instance:

- Specific claims, such as “50Mb Download speed”, should be based on tests of protocols relevant to downloading large files.
- Speed claims for a service in general should be based on speed testing that is representative of the activities that users generally perform.

Marketers might take various factors into account at the measurement stage, for instance:

- Line testing could be carried out at peak and off-peak times in order to account for congestion and contention issues.
- Measuring actual speeds could take into account the effects of protocol overheads.

Sampling

The ASA is likely to accept testing based on a sample of lines from a relevant customer base within the context of the claims being made.

Sample sizes should be statistically robust.

The selection of lines, exchanges or areas tested should be representative of the target audience:

- A general campaign intended for a broad or national audience should use data relevant to the whole customer base of a particular service.
- A campaign targeted at a specific area might use data from tests carried out in that area. Any other data used should not be unrepresentative of performance in the area targeted by the campaign.

Marketers should also be able to demonstrate that the lines chosen for testing are not unrepresentative. The selection of lines, exchanges or areas for testing could be used to take into account, for instance:

- The effects of signal attenuation on ADSL service.
- Variations in network capacity between particular areas.

Normalisation and statistical methods

Marketers may use statistical methods to account for the impact of certain limiting factors either to enhance the accuracy of testing data or as an alternative to testing for a particular factor. For example:

- For ADSL technology, where signal attenuation caused by line-length is the primary determinant of a users’ speed, marketers might use normalisation to make the results of their testing of a sample of lines representative of the wider customer base. If the target audience is national or general, they should use a normalisation curve based on the national profile of line lengths.
- Data may be adjusted to account for protocol overheads such as IP headers to ensure that it is representative of what users actually achieve.

- Marketers may use data related specifically to the effects of their traffic management policies to take account of the impact of traffic management. Where the number of customers affected is very small, providers might use statistical methods to adjust testing data to account for the effect.

Updating data

Data should be periodically updated, for instance every six months, to ensure that it remains sufficiently representative.

ISPs should employ reasonable statistical methods to account for short term variations in their customer base that might have a significant impact on the performance of a service, for instance, customer turnover.

Where there is a significant change to a network, for instance, an upgrade in carrying technology or capacity, data should be updated accordingly.

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