

Digital Advertising and Marketing Communications Code

Preamble

Digital advertising and marketing communications must comply with rules based on the principles of the International Chamber of Commerce.¹ (ICC)

The goal of this Code is to create a trusted electronic environment that will be fully reliable for consumers and help them appreciate the new possibilities offered by digital media.

The Code's scope:

*All advertising and marketing communications addressed electronically, other than those broadcast on radio and television services (as defined in the 30th September 1986 law on Freedom of Communication).²

*All targeted advertising and marketing communications matching that definition, whatever the format, including those published on advertisers' websites.

These types of advertising and marketing communications are covered by the law, by all ARPP Codes and by professional rules issued by ARPP's members and organisations ARPP is associated with. The purpose of this Code is to gather specific and general rules for digital advertising and marketing communications (for example focusing on their particular interactive nature).

1- Identification

1/1. Identification of Advertising

Marketing communications and advertising should be clearly distinguishable as such, whatever their form.

That identification can be achieved by any means whereby the consumer can clearly and immediately understand that the message is advertising.

Two cases must be distinguished:

¹ Advertising and Marketing Communication Practice Consolidated ICC Code including chapter D on Advertising and Marketing Communications Using Digital Interactive Media

² As an example, without pretending to cover everything, that definition includes: "the ads display" on internet or mobile phones, advergames, in-game advertising, social media advertising, advertising on SMS/MMS, advertising widgets, paid for blogs, paid for links, email advertising, augmented reality, advertising on connected objects, including in dedicated applications, native advertising or gamification...

a) First case: the commercial nature of the message is obvious, either because it uses a common advertising format or because of the content. Therefore, no further identification elements are required.

b) Second case: the commercial nature of the message is obvious

b1 – In such case it is recommended to add a clear notice identifying the commercial nature of the message. When the message is surrounded by news or editorial content, it should be presented in a way that it is instantly recognisable as an advertisement. The notice must be legible or audible, and intelligible.

b2. When the form of the advertisement, by its nature, doesn't allow an instant identification of its commercial nature³, its identification must be done following the requirements prescribed within the annex of this Code.

Presentations likely to create confusion about the nature of message are prohibited. (ex: imitation of the graphic of non-promotional messages issued by the computer software).

1 / 2. Identification of Advertiser

The identity of any advertiser addressing digital advertising or marketing communication must be apparent. The identity of the advertiser must be clearly visible and easily accessible.

Identification can be done through the advertiser's brand(s) or by any other distinguishing feature/sign attributed, without any doubt, to the advertiser.

In no case should an advertising or marketing communication mislead the consumer about the identity and the quality of the advertiser.

2- Protection of children and teenagers

As digital media offers easily accessible information and great interactivity, it is often used by children and teenagers. Therefore the advertiser and the media must be particularly careful.

Digital advertising and marketing communication, no matter the form used, must respect ICC and ARPP self regulation rules specific to children and teenagers.⁴

Therefore:

Advertising and marketing communications must not contain statements or visual elements that could harm mentally, morally or physically children and teenagers.

Special care must be taken:

- not to encourage illegal, aggressive, dangerous or antisocial behavior

³ For example, viral teasing

⁴ Children ARPP Code and Advertising and Marketing Communication Practice Consolidated ICC Code

- not to undermine the authority of parents, teachers and other educators
- not to present children and teenagers in a degrading way
- not to display indecent and/or violent images and/or comments, that could shock them
- not to exploit their inexperience and/or credulity

The above must be ensured above and beyond the application of other rules contained in ARPP's Children Code.

With regard to web sites, home pages, internet portals and any digital service primarily targeting children and teenagers, it's particularly important to ensure that the object of the advertising or marketing communication and its content are not harmful for them.

When a message addresses children directly, and a cost is involved, (invitation to subscribe to a paid-for service, premium rate number...), the invitation must explicitly associate parents.

When collecting personal data from individuals, care should be taken to respect and protect their privacy by complying with relevant rules and regulations, in particular those of the CNIL.

In particular, it's essential:

- to encourage, in particular for data input forms, children to ask permission from their parents or those legally responsible for them, before providing any personal data,
- not to ask a child to provide personal data concerning another person

In order to increase consumer confidence in advertising and marketing communications, it is recommended to use targeted information (such as age or date of birth, etc.), in order to avoid children and teenagers from gaining access to inappropriate content which might harm them.

3- Taste and decency

All advertising and marketing communications should be decent and respect human dignity and be compliant with ARPP's "Portrayal of Human Being" and "Race, Religion and Ethnic" Codes.

Regarding those Codes:

- advertising should not shock or offend with representations or situations, explicit or implicit, that can be perceived as degrading or humiliating
- advertising should not depreciate a person because of their sex, age, sexual orientation, disability, social group, in particular by minimizing their role or responsibilities
- the use of stereotypes (sexual, racial, religious, social, etc), must be handled with an increased sense of social responsibility, and especially, with respect towards the dignity of the person concerned

- advertising must not condone, incite or trivialize violence, whether moral, physical, explicit or implicit

4- Fair, truthful and honest advertising

All advertising and marketing communication must comply with the law and be fair, truthful and honest. They must be made and broadcast with a strong sense of social responsibility and must comply with principles of fair competition as generally accepted in trade relations.

No advertising or marketing communication must undermine consumer confidence in advertising.

In this respect:

- The communication must not mislead consumers about the offer really proposed and/or the company proposing it, nor exploit fear.
- Offer and sales conditions must be clearly specified and easily accessible

Consequently, concerning legal notes and overlays, the following rules apply:

- The notes must immediately visible or directly accessible;
- They must be legible or audible, and intelligible, without any prejudice of compulsory provisions applicable to certain sectors;
- They must be easily identified and not immersed under other information

It is recommended not to advertise about techniques allowing the substitution of ads by other ads.

5- User Generated-Content

Generally speaking, when users are invited to create some content for advertising purposes (ex : an ad creation contest set up on a “User Generated Content” video platform), respect of these principles will have to be organized, for example via a moderation of the contributions.

6- Comfort of use

Digital advertising and marketing communications must respect user’s comfort, in particular by ensuring the weight, size, sound and the exposure time of the commercial.

In addition to these rules, any professional addressing digital advertising and marketing communications can consult, if necessary, the following interpretation grid.

This interpretation grid identifies concrete and specific rules applicable to different formats or techniques.

Digital Advertising and Marketing Communication Code Interpretation Grid

In addition to the cross-cutting rules displayed in the Code, professionals will be able to refer to this grid, in order to adapt to some specific formats or techniques. Provisions contained in this grid are meant to be read in addition to the general provisions.

Moreover it is necessary while using these techniques to implement all legal requirements concerning the protection of personal data.

- 1/ Advergame
- 2/ Applications
- 3/ Promotional Blogs / Sponsored-Posts / Promotional Forums
- 4/ Emails/ SMS / MMS
- 5/ Gamification
- 6/ In-game Advertising
- 7/ Paid-for links
- 8/ Native advertising
- 9/ Connected objects
- 10/ Behavioral advertising and retargeting
- 11/ Augmented reality
- 12/ Social Network
- 13/ VOD / Connected television
- 14/ Teasing
- 15/ Virtual world
- 16/ Viral

1 / Advergame

Definition:

Advergame refers to videogames made to promote a product, a service, a brand or an event.

- a) Identification of the commercial nature of the advergame.

The commercial nature of the advergame should be identified, without ambiguity, in a clear and immediate way before the game starts. If the advergame is a teaser, the rules applicable to teasers apply (see point 14/Teasing).

- b) Protection of children and teenagers

When an advergame mainly targets children and teenagers, it should not harm them in any way. The elements appearing in an advergame mainly targeting children and teenagers must not refer to any content which could be harmful for them.

Professionals should not use visual elements or statements making the game especially appealing to children and teenagers if the content isn't suitable for them.

- c) Fair, truthful and honest advertising

The advergame shall not mislead the consumer on the content of the offer and/or the company offering it. The access to legal notes and overlays must be easily noticeable. These notes must be immediately visible or benefit from direct access. They must be legible, audible, and intelligible, without prejudice of the application of provisions specific to some sectors.

- Also see points on “teasing”¹⁴, “in-game advertising”⁶ and “virtual universe”¹⁵.

2/ Applications

Definition:

Software meant to be set on a device (e.g. mobile apps, video games, utility apps)

- a) advertising in the apps

Identification of the commercial nature

Advertising in the app must be clearly identified as such.

Comfort of use

Advertising displayed in the apps must respect user's comfort, and notably must not hinder access to functions or orders (ex: sound, time, switch functions)

Protection of children and teenagers

The content or the items to which the advertising gives access, when targeting mainly children or teenagers, must not be harmful.

When the advertising targets children and encourages expenditure by interactive means, the fact that it is representing a paid-for service must be clearly presented. The call for paid-for services must explicitly require parent's supervision.

- b) advertising for the apps

Fair, truthful and honest advertising

When advertising promotes a "free" app, all the functions of the app must be free. Otherwise, if the app includes paid-for services at one level or another, that information must appear in the commercial.

Protection of children and teenagers

When advertising targets mainly children or teenagers, the content or the items to which the commercial gives access, must not be harmful.

When advertising targets children and encourages expenditure by interactive means, the fact that it is representing a paid-for service must be clearly presented. The call for paid-for services must explicitly require parent's supervision.

When the app has been classified in order to protect youth, advertising must clearly indicate it.

3/ Promotional Blogs / Sponsored-Posts / Promotional Forums

Definitions:

Sponsored-post: a paid-for message published by a user on behalf of an advertiser

Promotional blog: a blog which intends to promote a product, a service, a brand or a society in the context of a company communication.

Promotional forum: a forum which intends to promote a product, a service, a brand, or a society.

a) Identification of Advertising

The commercial nature of promotional forums, blogs and sponsored-posts must be identified, without ambiguity, in a clear and immediate way, with an explicit indication if needed.

For example, identification might be realised by the mention of the contributor's function (ex : a sponsored-post written by the product manager).

b) Respect for truthful and honest advertising

Special care must be taken regarding the veracity and honesty of the content of these messages, because of their editorial appearance.

4/ Emails/ SMS / MMS

a) Identification of advertising

The commercial nature of such advertising must be clearly apparent.

For electronics mails, identification must be possible as soon as the consumer receives it, with no need to open the email.

Two different kinds of emails can be distinguished:

- The case where the commercial nature is obvious (ex: the advertiser name appears in the message subject). In this case, it would not be necessary to provide additional identification elements.
- The case where the commercial nature of the message is not immediately visible. In this case, it is recommended to indicate in the mail subject or within the sender's designation an explicit indication enabling immediate identification of the commercial nature of the email.

With regard to SMS or MMS, the identification must be explicit at the beginning of the message. The identification can be satisfied by all means noted above (the advertiser's name appearing at the beginning of the message, for example). The identification must be clear enough to avoid any confusion with an electronic mail/SMS/MMS sent by a private contact.

b) Fair, truthful and honest advertising

Offer and sales conditions must be clearly specified and easily accessible.

Consequently, legal notes and overlays must be accessible directly by any means, in particular:

- On a mobile website, for a clickable mobile message (sent in the context of a direct marketing campaign).
- Within a distinct SMS or MMS from the one conveying the advertising message (in particular by using the concatenation technique).⁵

The conditions must be legible or audible, and intelligible, without any prejudice of compulsory provisions applicable to specific sectors.

⁵ Technique allowing to attach several SMS in order not to be limited by the number of characters

5/ Gamification

Definition :

A process using signals and mechanics of games in the context of advertising.

a) Identification of the commercial nature of advertising

When using gamification techniques in advertising, the identification of the commercial nature must be presented during the process or at the end.

If the gamification technique is used for a teaser, rules applicable to teasing must be respected. See point “teasing” 14.

b) Protection of children and teenagers

When the advertising mainly targets children or teenagers, its content or the items to which it gives access must not be harmful.

6/ In-game Advertising

Definition:

Advertising or marketing communication present within video games, in order to promote a brand, a product or a service.

a) Identification of the advertising

If the message appears in a place that advertising would normally appear in real life, its commercial nature is considered obvious. Therefore, there is no need for further identification elements.

If the commercial nature isn't obvious, it is recommended to add an explicit indication of the commercial nature of the message.

b) Protection of children and teenagers

Advertising in video games targeting children and teenagers must not harm them in any way.

Therefore, if the video game has a PEGI classification, it must be taken into account. The advertising must not give access or refer to content that isn't suitable for children and teenagers.

c) Fair, honest and truthful advertising

Advertising in video games must not mislead the consumer on the reality of the offer or the company proposing the offer.

Access to legal notes and overlays must be immediately visible and easily accessible. They must be legible or audible and intelligible, without any prejudice of compulsory provisions applicable to specific sectors.

d) Comfort of use

Advertising in video games should in no way hinder the playability, notably by reducing access to functionalities, commands, orders or reducing the visibility of elements of the game.

- Also see the points “Advergaming”¹ and “virtual universes”¹⁵

7/ Paid-for links

Definition:

Paid-for links is advertising formed by the purchase of key words.

It is generally placed in an identified and separated space, on the right or on the top of the results sorted by the web search engine after a user request.

It can also be placed within the web page of a partner of web search engine and be linked to the editorial content. That type of communication is therefore called paid-for contextual links.⁶

a) Identification of Advertising

The commercial nature of paid-for links must be immediately and clearly visible.

An explicit and non ambiguous distinction must be made between the paid-for links and the non commercial links or the editorial content.

In the case of contextual paid for links, (within an editorial content) the identification can be made by a simple overview of the link in order not to hinder the lecture of the text.

b) Protection of children and teenagers

Key words or paid-for links which can be considered as part of youth culture should not refer to a harmful content for them.

Concerning paid-for contextual links within youth culture, it must not refer to, or point towards, harmful content for them.

c) Fair, truthful and honest advertising

Key words generating paid-for links must not mislead the consumer concerning the real activities of the company and the offers proposed.

⁶ Cf. Internet and Mobile vocabulary– CESP - <http://www.terminologietim.org/>

8/ Native advertising

Definition:

Native advertising covers all advertising formats that adopt or are closely integrated within the design and appearance of the website on which they are displayed.

a) Identification of the commercial nature of advertising

The commercial nature must be identified, without ambiguity, in a clear and immediate way.

It is necessary to highlight the commercial nature of the content with a clear note as “advertising”, “sponsored by” or “in partnership with”...

That note must be readable or audible and legible in order for the commercial nature to be immediately understood.

b) Fair, truthful and honest advertising

Considering the editorial appearance of such advertising, special attention should be given to the truthfulness and fairness of the content.

9/ Connected objects

Definition:

Daily use objects, different from classic digital devices, for which the addition of an internet connection enables new functions for users to interact with their environment.

a) Identification of the commercial nature of advertising

The commercial nature of advertising delivered via connected objects must be easily understood. Therefore, it must be easily distinguishable from the rest of the information provided by the object and from the normal use that can be expected of it.

b) Protection of children and teenagers

Advertising received through connected objects must not be harmful.

10/ Behavioral advertising and retargeting

Definitions:

Behavioural advertising refers to the practice of collecting information over time on users' online activities across multiple (unaffiliated) websites/applications in order to create interest segments or to allocate such viewing behaviour into interest segments for the purposes of delivering advertisements tailored to a web user's inferred interests and preferences.

Such advertising depends on the technique used, on the actors involved and on the use or not of cookies or any other mean or technique used to provide a tailored marketing communication and the possibility to share information with third parties or not.

Retargeting is a targeting technique meant to deliver a commercial to users whom already expressed a prior interest in the brand or products being advertised, i.e. through previous browsing activity.

- a) Identification of the commercial nature of behavioral advertising

The commercial nature must be easily understood.

Therefore, the use of a specific symbol, distinguishable from the rest of the marketing communication, and perfectly legible will help the consumer know it is advertising.

It is recommended to give access by a simple click on the symbol to a dedicated platform where the consumer can find information on behavioural advertising.
(Nature of the data collected, methods of use for targeting...)

That platform must also contain information on how to refuse or accept behavioural advertising through a user preference management tool:

- Accept cookies or other tracking means for behavioural advertising
- Opt-out of the use of cookies or other tracking means for behavioural advertising
- Provide information to educate consumers on the choices available to them

- b) Protection of children and teenagers

Professionals must not create specific targeting categories (interest segments) concerning interests of children under 13 years old.

11/ Augmented reality

Definition:

Augmented reality is the superimposition of images of the real world – information from the digital world, in real time.

a) Identification of advertising

All adverts visible through augmented reality must be clearly identified.

When the advert received through augmented reality is accessible from a physical media which is a classic advertising media, the commercial nature of the message is considered to be obvious. There is no need for further elements of identification.

If the commercial nature isn't obvious, it is recommended to add an explicit notice.

b) Protection of children and teenagers

If the advert received through augmented reality is accessible from a place dedicated to children and teenagers, it must not be harmful.

If the advert received through augmented reality is accessible from a service targeting primarily children and teenagers, it must not be harmful or point towards inappropriate content.

c) Fair, truthful and honest advertising

Advert received through augmented reality must not mislead the consumer on the offer or the company offering it.

Access to legal notes and overlays must be immediately visible and easily accessible.

They must be legible or audible and intelligible, without any prejudice of compulsory provisions applicable to specific sectors.

12/ Social Network

Definition:

A social network is a community of people or organisation of direct or indirect relations, assembled by a common interest (hobby, profession...)

a) Identification of advertising

Because of the specificities of social networks, if the commercial nature of the advert isn't obvious, it is recommended to add an explicit notice.

Adverts appearing in spaces which are dedicated to dialogue between users must be identified as advertising thanks to a clear indication (wall, statute...).

The use, for advertising purposes, of social network functions meant for the user (groups, fan pages...) must be clearly identified.

In no case must an advert create confusion with a user's message.

b) Protection of children and teenagers

For marketers proposing services that require prior identification it is recommended to use that data (age, date of birth...) in order to protect children and teenagers against harmful adverts.

c) Fair, truthful and honest advertising

The advert must not mislead the consumer regarding the offer proposed and the company offering it.

When the format doesn't enable the advertiser to provide legal notes (for example, a tweet), these must be directly accessible via a link.

They must be legible or audible and intelligible, without any prejudice of compulsory provisions applicable to specific sectors.

13/ VOD / Connected television

Definitions:

Advert sent on VOD services is any kind or form of advert covered by article 2 of the 30 September 1986 law concerning freedom of communication⁷ (ex: catch up TV...).

Advert sent on connected television is any kind or form of advert (ex: widget) sent by an online communication service and visible on a connected device (ex: Set Top Boxes, smartphones, tablets etc.).

a) Identification of advertising

The commercial nature of the message must be immediately visible.

If the commercial nature isn't obvious, it is recommended to add an explicit notice enabling identification.

b) Protection of children and teenagers

Such adverts targeting children and teenagers must not deliver harmful content. It is recommended to take into account the public targeted.

c) Fair, truthful and honest advertising

The advert, sent through this media, must not mislead the consumer on the offer proposed and the company offering it.

Access to legal notes must be easy and visible.

They must be legible or audible and intelligible, without any prejudice of compulsory provisions applicable to specific sectors.

d) Comfort of use

Advertising must respect the comfort of use of this media.

⁷ Article 36 of 5 March 2009 Law n° 2009-258 concerning audiovisual communication and new public television services

14/ Teasing

Definition:

Teasing consists of a series of small, cryptic, challenging advertisements that anticipate a larger, full-blown campaign.

a) Identification of advertising

Identification must be assessed by taking into account the whole global campaign. The organization of the teasing must take into account the necessity of identification in reasonable lapse of time after the teasing message.

If the teasing uses viral techniques to spread the advert, the requirements of point 12 on Viral Techniques must be respected.

b) Protection of children and teenagers

If the teasing is based on viral techniques, it is necessary to indicate in the teaser that the content could be harmful for children and teenagers.

If the content is harmful it must be clearly signaled.

Teasing often uses viral techniques. Please see point Viral 16.

15/ Virtual world

Definition:

Artificially created world where users can interact and act via online characters/ avatars.

a) Identification of advertising

When the commercial nature of the message and/or the virtual world isn't obvious, it is recommended to add an explicit notice.

Avatars, characters and their contributions must be identified (ex: indicate "advertising", « sponsored by » or "in partnership with") and enable the identification of the advertiser on behalf of whom the contribution is made.

If the message appears in classic advertising space as in real live, the commercial nature is presumed obvious. There is therefore no need for further elements of identification.

b) Protection of children and teenagers

Advertising in virtual worlds targeting children and teenagers must not be harmful for them.

Advertising in virtual worlds and accessible through a click and targeting children and teenagers must not deliver any inappropriate content.

c) Fair, truthful and honest advertising

Advertising in virtual worlds must not mislead the consumer on the reality of the offer and the company offering it.

Access to legal notes must be easy and visible.

They must be legible or audible and intelligible, without any prejudice of compulsory provisions applicable to specific sectors.

Also see points on "In-game advertising"⁶ and "Advergames"¹

16/ Viral

Definition:

Advertising technique based on the transmission of commercial message by the users and consumers themselves via electronic media.

a) Identification of advertising

The commercial nature of messages using this technique must be clear. Indeed, since these types of adverts are likely not to appear in classic advertising spaces, the need for a clear identification is even more important.

Therefore if the commercial nature isn't obvious, it is recommended to add an explicit notice.

b) Protection of children and teenagers

It is recommended to alert if the content could be harmful for children and teenagers. If the content is harmful it must be clearly signaled.

Also see the point on "Teasing"¹⁴.