New digital remit comes home to roost

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Topic: On-line advertising

Who: the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP)

Where: the UK

When: March–August 2011

Law stated as at: 6 September 2011

What happened

From March 2011 the remit of the UK's highly regarded self-regulatory system for advertising control was extended dramatically. The change focused on advertising on-line.

For instance whereas before, pretty much the only advertising material on websites that was covered by the CAP Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) was paid-for banner ads and online promotions, under the new regime, all advertising and marketing content contained in organizations' own websites had to comply with the CAP Code, as enforced by the ASA.

But that was not all. In remit were also any marketing communications 'in other nonpaid-for space online under [the advertiser's] control that are directly connected with the supply or transfer of goods, services, opportunities and gifts'. Thus, potentially ensnared was social media site content uploaded or controlled by advertisers as well as third party product reviews adopted by the product's makers.

Two areas of concern

Concerns were expressed as the changes were confirmed.

First, there were worries as to the ASA's ability to cope with potentially exponential growth in its case load. This was despite an additional income stream from a 0.1 per cent levy on paid-for ads appearing on internet search engines through media and search agencies.

To deal with this, the ASA said it was increasing case investigation staff levels by 10 per cent.

An increased case load

Another related concern was that given the naturally global nature of the web, how the ASA was going to determine what websites were within its territorial jurisdiction, as clearly worldwide jurisdiction was not an option.

On this issue, CAP announced in September 2010 that the new remit would apply to co.uk sites and also 'marketing communications on a .com website, for example. The new remit covers the marketing

communications of organizations operating from the United Kingdom, on their own websites and in other non-paid for space online under their control’.

Recent developments give real cause for concern

So how have things panned out so far in these two areas?

Well, on the caseload issue, there has undoubtedly been a significant increase. So much is confirmed by the striking numbers of adjudications in respect of advertising on advertisers’ own websites published by the ASA in August 2011 alone.

For instance of the 15 adjudications published for the week of 3 August 2011 not less than 8 related to claims on advertisers’ own sites. On 10 August it was 9 out of 18 and on 17 August it was 8 out of 15. This looks dangerously close to exponential.

Dangerous numbers

On the international reach point, there was also cause for concern. Websites whose content was investigated and adjudicated on in the reports for 3 and 10 August included sites based in Canada, New Zealand and the United States. None of these seemed on the face of it to be within CAP’s set criteria of being either .co.uk sites or sites operating from the United Kingdom.

Why this matters

If the adjudication patterns for August 2011 are in any way indicative of future trends, then there are real causes for concern and even alarm.

If own website content case levels are going to hover around the level of 40–50 per cent of all reports, then bearing in mind that in a sense, the reported cases are only part of the picture in terms of complaints received and needing processing, staff increases of 10 per cent look unlikely to come even close to answering the resourcing questions posed at the outset.

As for international website content, there are signs that the initial criteria delineated by CAP have been departed from, with a far more relaxed test being applied.

Whatever this new test is (and perhaps we should be told) this development also threatens a dramatic increase in caseload.

Questions to be answered

All will be well of course if the new levy is delivering, but will it be yielding the sort of revenue increase levels that look like being needed? Perhaps the answers to this and the solutions to both these challenges will be contained in the still awaited final report on the now years-long ASA ‘Process Review’.

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