



## ASAI GUIDANCE NOTE



### Marketing Communications for mobile phone and broadband services

The Advertising Standards Authority for Ireland's (ASAI) Code of Standards for Advertising and Marketing Communications in Ireland sets out the standards for marketing communications in Ireland and advertisers are encouraged to familiarise themselves with its requirements. In the context of this Guidance Note, particular attention is drawn to the requirements for marketing communications in Appendix I.

It is a general principle of the ASAI Code that advertisers should not mislead consumers by including or omitting information. Evidence of the significance of a given factor will be considered on a case by case basis and the ASAI will take into account the impression created by the marketing communication, as well as specific claims. Adjudications will be made on the basis of the likely effect on consumers when taken as a whole or in context, not the advertiser's intention.

This Guidance Note represents the completion of Part 1 of a two part review of telecommunications advertising. Part 2 relating to the circumstances when descriptors such as 'unlimited' can be used will now be undertaken and guidance will be developed.

This guidance is provided in addition to the obligations that service providers have in respect of the open internet ("Open Internet Regulations").<sup>1</sup> Of particular relevance to this guidance note is the requirements regarding advertised speeds associated with the contractual terms and conditions of internet access service.

Attention is also drawn to the requirements of the Consumer Protection Act, 2007.<sup>2</sup>

**Effective Date: 1<sup>st</sup> September 2019<sup>3</sup>**

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<sup>1</sup> REGULATION (EU) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance)

<sup>2</sup> <http://www.irishstatutebook.ie/eli/2007/act/19/enacted/en/html>

<sup>3</sup> A three month lead in will be permitted to allow advertisers time to amend, if necessary, their advertising.

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## General

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### *Coverage and availability*

Coverage and availability of mobile phone and broadband services are dependent on the extent of the infrastructure roll out and the technologies used.

- Not all services are available to all or in all geographic locations.
- Where services are available, there may be limiting factors on the extent to which consumers can avail of them.
- The actual consumer experience can be impacted by a range of factors, some of which may not be within the control of the telecoms provider, but which nevertheless result in a reduced consumer experience.

### *Information resources*

Advertisers are therefore encouraged to develop information resources for consumers to explain their technologies, their limitations and what can impact on consumer experience, as well as what ameliorating actions consumers can take.

It is recommended that advertisers provide these information resources on their website and that they direct consumers to this information on all marketing communications. A non-exhaustive list of the areas that might be relevant are listed in Appendix II.

Notwithstanding the provision of additional information resources, individual marketing communications may require further information to alert consumers to potential restrictions on the advertised service. For example (on a non-exhaustive basis):

- for fixed line services, that availability of the service may be dependent on distance from the exchange,
- for mobile services, that availability of the service may be dependent on the number of masts in a particular location and other factors<sup>4</sup>,
- for wireless and satellite services, that the service may be impacted by external structures in the line of sight.

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<sup>4</sup> See ComReg <https://www.comreg.ie/factors-that-may-affect-consumers-quality-of-mobile-experience-2/>

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## Speed claims<sup>5</sup>

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ASAI accepts that arising from the technology involved, advertisers could use ‘up to’ speed claims in their advertising in relation to broadband services.<sup>6</sup> The experience of individual customers using the same technology can vary significantly. Maximum speeds, even when advertised at ‘up to’ speeds do not in all cases clearly alert consumers to the fact that speeds can and do vary. There are a range of elements that will impact on the end user’s experience (see Appendix II). Two examples are

- fixed line fibre to the exchange broadband: the distance from the exchange to the premises, the quality of the ‘last mile’ copper wire to the premises,
- mobile broadband: the distance from the mast, the number of other users in the cell and other factors.

There are a number of approaches that advertisers can take when promoting the speed capability of their products, including those below. **If an advertiser chooses to use a different approach they will be required to demonstrate that their approach is not likely to mislead consumers.**

### *Numerical Speed Claims*

#### *a) absolute speed claim*

If an advertised speed claim is unqualified, advertisers must ensure that they hold evidence to demonstrate that all relevant customers, i.e. customers on the advertised plan,<sup>7</sup> can achieve the advertised speed.

Where the provision of the service is limited, this must be made clear in the body copy of the advertising.

#### *b) ‘up to’ speed claim*

- (i) The ASAI is aware that the measurement of the speed delivered to consumers varies by technology. For non-fixed line services it may not be possible to determine the actual speed that will be delivered to users who may have seen a relevant advertisement. In these cases, advertisers should be able to demonstrate that the technology can deliver the advertised speed and that they have provisioned their network to deliver the advertised speed, while noting the factors that may limit the speeds achieved.

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<sup>5</sup> For the purposes of this Guidance Note, ‘Speed’ relates to download speeds

<sup>6</sup> Advertisers are reminded of the requirements of the Open Internet Regulations regarding references to advertised speeds in contractual terms and conditions.

<sup>7</sup> Where it is a new plan, current customers on a similar plan should be used for planning and comparison purposes.

- (ii) Where it is possible to determine the actual speed delivered to users, if an advertised claim is based on an 'up to' maximum attainable speed, advertisements must include the % of customers on the advertised plan<sup>8</sup> that the 'up to' speed is delivered to (for at least 80% of the time<sup>9</sup>). This statement must be included in the body copy and not in the small print sections (or equivalent) of the advertising.

Additionally, advertisers may also indicate the normally available or minimum speed.

**c) user experience**

If an advertised claim is based on actual user experience, it must be based on the experience of at least 50% of users (of the promoted plan). Descriptors such as 'average' must be used.

Advertisers are reminded of the requirements of the Open Internet Regulations regarding references to advertised speeds in contractual terms and conditions.

***Non-Numerical Speed claims***

If a product is described by a narrative, such as 'high speed', 'superfast' or similar, advertisers must ensure that the use of language does not mislead, bearing in mind the existing comparator products available, e.g. superfast must not be used for products which are significantly slower than the maximum generally available product on the market. ASAI will assess non-numerical claims on a case by case basis.

***Claims and Product Names***

Advertisers should note that the Code provides at Section 1.1(h) that the name of a product can constitute a claim.

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## Availability

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### General

In general, advertisers offering mobile phone and broadband services must take care in the design and presentation of their marketing communications so as not to exaggerate the availability of their products, particularly when new products/technology are launched.

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<sup>8</sup> Where a plan is new to market, advertisers should have regard to the experience of an existing cohort of customers for the previous three months to the introduction of the plan.

<sup>9</sup> The 'up to' speed should be available to 80% of customers on the particular product as evidenced by monthly tests on a rolling six month basis.

## Limitations

Where the provider offers limited geographical coverage, advertising in national media must include a prominent and transparent reference to this fact. If there are any other limitations attached to providing the service, these must also be referenced in the advertising, and may, if appropriate, be stated in a footnote or equivalent.

## Online

Where maps or address checkers are provided as a means to check availability of a service at a particular location, they must be updated at least quarterly or as the information becomes available, to ensure the accuracy of the information provided. It must be stated that such checkers are indicative and not a guarantee of service (unless the advertisers can substantiate 100% accuracy of information).

Where there is no guarantee of service on foot of the result of an address checker/map, absolute commitments of service, such as 'we can offer', 'you can now get', etc., must be avoided.

## Local / direct advertising

Local or direct advertising may not need to carry the same level of qualifications as national advertising. Care is needed to ensure that headline claims do not over-promise the extent of availability of the service. For example, if a service is being rolled out in a particular area but may not be available to all, caution must be exercised in the use of absolute claims. Headline claims indicating the service is rolling out to a specific location, accompanied by an invitation to see if it is available to individual consumers, are likely to be compliant with the Code.

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## Substantiation

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Advertisers must ensure that they have robust evidence to demonstrate the accuracy of speed claims in advance of making the claims in their advertising.

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## Terms and Conditions / General Claims

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Where terms and conditions are applicable, advertising must include an indication that terms and conditions apply. In the case of digital advertising, consumers must be able to click through to the applicable terms and conditions, either directly or via a product page. Significant<sup>10</sup> terms and conditions must be included in the advertising. Any claims made in the body copy of a marketing communication must not be contradicted by the footnotes or terms and conditions.

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<sup>10</sup> Significant relates to terms that could affect a consumer's transactional decision, for example where contract duration are longer than 12 months.

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## Fibre

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The ASAI notes that recent technological developments have led to the development of full fibre to the home (FTTH) services and while not available to all consumers, they are becoming increasingly prevalent.

In light of these new developments, the ASAI consider that where the descriptor 'fibre' is used and where the service is not provided on a full fibre network, advertising must contain a prominent qualification that the network is 'part fibre'<sup>11</sup>. Information on the type of service offered can be provided in the consumer resources information, referenced on page 2 of this Guidance Note.

### Important Notice

This guidance note is issued on behalf of the Advertising Standards Authority for Ireland (ASAI). It does not bind the ASAI nor the ASAI Complaints Committee.

It is at the discretion of the ASAI to amend any of the guidance provided in this note at any time, should it be deemed necessary.

The Guidance Note does not negate the requirement for advertisers to take account of all relevant consumer protection legislation, including the REGULATION (EU) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance).

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<sup>11</sup> Indications such as "Fibre to the Cabinet" in full are acceptable.

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## Appendix I

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While advertisers must comply with all relevant rules of the Code of Standards for Advertising and Marketing communications, particular attention is drawn to the following requirements of the Code:

The Code requires:



**that** they should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise. (4.1)



**that** claims such as “up to” and “from” should not exaggerate the value or the range of benefits likely to be achieved in practice by consumers. (4.4)



**that** the design and presentation of marketing communications should allow them to be easily and clearly understood. (4.5)



**that** disclaimers, asterisked, footnoted or “small print” information should not contradict more prominent aspects of the message. Such information should be of sufficient size and/or prominence and be located and presented in such a manner as to be clearly and easily legible and/or audible; where appropriate such information should be linked to the relevant part of the main copy. (4.6)



**that** they should not contain claims – whether direct or indirect, expressed or implied – which a consumer would be likely to regard as being objectively true unless the objective truth of the claims can be substantiated. (4.9)



**that** before offering a marketing communication for publication, advertisers should satisfy themselves that they will be able to provide documentary evidence to substantiate all claims that consumers are likely to regard as objective. Relevant evidence should be sent without delay if requested by the ASAI and should be adequate to support both detailed claims and the overall impression created by the marketing communication. (4.10)



**that** if there is a significant division of informed opinion about any claim made in a marketing communication, the claim should not be portrayed as universally accepted. (4.11)



**that** they should not:

- a) misuse, mischaracterise or misleadingly cite any technical data, e.g. research results or quotations from technical and scientific publications;  
or
- b) use scientific terminology or vocabulary in such a way as to suggest falsely or misleadingly that an advertising claim has scientific validity. (4.13)



**that** if a price is stated in a marketing communication, it should relate to the product depicted or specified in the marketing communication. Care should be taken to ensure that prices and illustrated products match. (4.22)



**that** if the price of one product is dependent on the purchase of another, the extent of any commitment required of consumers should be made clear. (4.24)



**that** if the cost of accessing a message or service, or communicating with the advertiser, is greater than the standard rate, this should be made clear in any marketing communications. (4.25)



**that** if a marketing communication involves a claim or creates an impression that a product was previously offered at a different price or at a particular price, it should be the case that the product was in fact previously offered at the specified price openly and in good faith and for a reasonable period of time. (4.26)



**that** advertisers should be in a position to meet any reasonable demand created by their advertising. If a product proves to be unavailable for any reason, or only available in insufficient quantity to meet demand, advertisers should take immediate action to ensure that any further marketing communications are amended or withdrawn. (4.27)



**that** where there is limited availability of some or all of the products advertised, apart from indicating that there may be other terms and conditions which apply, advertisers should:

- a) not exaggerate the availability of any of those products, and
- b) be able to demonstrate that there is a reasonable supply or proportion of each of the various products available. (4.28).












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## Appendix II – information resources for consumers

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Advertisers are encouraged to develop information resources for consumers to explain their technologies, their limitation and what can impact on consumer experience, as well as what ameliorating actions consumers can take.

The areas that might be covered in the consumer resources include the following, alongside any other elements which the individual provider considers relevant:

-  The type of connection(s) involved
-  The physical or geographical impacts
-  The impacts of the built environment
-  The position of hardware within the location
-  The effect of multiple devices
-  The effect of multiple users
-  The age of devices
-  The types of applications being used
-  The impact of WiFi

In addition, providers of internet access services are required to publish information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data.<sup>12</sup>

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<sup>12</sup> Article 4 (1) (a) of the REGULATION (EU) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance)