

DIRECTRICES DE LA CÁMARA DE COMERCIO INTERNACIONAL SOBRE LA UTILIZACIÓN DE MEDIOS ELECTRÓNICOS EN MARKETING Y PUBLICIDAD*

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ICC GUIDELINES ON MARKETING AND ADVERTISING USING ELECTRONIC MEDIA

Commission on Marketing and Advertising. December 2004

These ICC Guidelines provide principles on marketing including advertising, which use the Internet, online and interactive services, and electronic communication networks including the telephone.

Introduction

This edition of the ICC Guidelines on Marketing and Advertising using electronic media follows the well-established ICC policy of promoting high standards of ethics in marketing via self-regulatory codes and guidelines intended to complement the existing framework of national and international law. These Guidelines, which were first issued in 1996, and revised in 1998, are an expression of the business community's recognition of its social

* Las presentes directrices, del año 2004, son especialmente relevantes en materia de publicidad, pero no han tenido la suficiente relevancia. Por ambos motivos, se ha considerado importante su publicación.

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responsibilities in respect of marketing activities and communications. The Guidelines have been updated in light of experience acquired, and ICC, conscious of the ongoing development, commits itself to regularly review them to ensure their continued viability.

ICC is the world's foremost developer of self-regulatory codes for marketing and advertising practices. ICC believes that marketing and advertising using electronic media should reflect the highest standards of ethical conduct as laid down in the ICC International Code of Advertising Practice and other relevant ICC Codes, thereby leading to efficient international markets and significant benefits for both consumers and companies, as well as for society as a whole.

The Guidelines are designed primarily as an instrument for self-discipline, but they are also intended for use by the courts as a reference document within the framework of applicable laws.

The new communications technologies are of great public interest, and their global nature has to be fully taken into account as businesses and governments discuss the best ways of introducing these technologies and of sharing with consumers the benefits they offer.

In the current communications environment, traditional notions of time and place linked to media consumption are gradually disappearing. The type of media and the means of transmission, may become obsolete criteria when it comes to regulating the different forms of marketing and advertising messages.

Electronic media must be able to develop fully within a broadbased framework of trust and stability, in the interests of both the users and of the various parties operating within this environment.

It is in the interest of business to be able to use legitimate commercial e-mail and be associated with ethical email marketing using industry codes of conduct such as these guidelines.

Given fast moving technological and economic developments, business and consumers alike benefit from a normative framework that is sufficiently flexible and dynamic. Therefore, such a framework should be largely based on

a coherent self-regulatory approach where all parties in marketing and advertising share responsibility, commensurate with their role in the communication.

With the above in mind, ICC recommends the world-wide use of the guidelines below, which intend to fulfil the following objectives:

- to enhance overall confidence of the public at large in marketing and advertising using the electronic media;
- to ensure an adequate level of privacy to maintain consumers' trust in the electronic media;
- to honour consumer preferences;
- to safeguard freedom of expression for advertisers and other marketers, hereafter advertisers/marketers;
- to provide practical and flexible solutions; and
- to minimize the need for governmental and/or inter-governmental legislation or regulations;

Scope of the Guidelines

These Guidelines apply to all marketing and advertising using electronic media for the promotion of any form of goods and services. They highlight and address issues of particular importance in that field. However, the Guidelines are not exhaustive; they build on the ICC International Code of Advertising Practice and the ICC International Code of Direct Marketing and should be read in conjunction with those. Those codes provide the general principles to be observed, and contain certain specific rules of relevance, such as those on data collection and use of the telephone.

Depending on the nature and contents of the communication or activity in question, other ICC codes may need to be consulted (see below).

- ICC International Code of Advertising Practice
- ICC International Code of Direct Marketing

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- ICC International Code of Environmental Advertising
- ICC International Code of Sales Promotion
- ICC International Code on Sponsorship
- ICC International Code of Direct Selling
- ICC/ESOMAR International Code of Marketing and Social Research

Recommendations on best practices for customer redress and dispute resolution in online business are found in the ICC documents "Putting it right" and "Resolving disputes online".

These Guidelines set standards of ethical conduct to be followed by all (e.g. advertisers/marketers, agencies or media) involved with marketing and advertising using electronic media within the scope of responsibilities laid out in Article 13.

Interpretation

The Guidelines are to be applied in the spirit as well as in the letter, bearing in mind the characteristics of different kinds of marketing and advertising messages and the varying degrees of knowledge, experience and discriminatory ability of those to whom they are directed. The guidelines are to be applied within the framework of applicable laws.

Definitions

For the purpose of these guidelines:

- Consumer: Any person to whom a marketing or advertising message is addressed or who can reasonably be expected to be reached by it whether as a final consumer or as a trade customer or user.
- Content: Any information, such as text, picture, animation, video, and audio including that which is embedded in software.
- Electronic Media: Any media providing electronic, interactive communications, such as the Internet, online services, electronic and communication networks including the telephone.
- Interactive service: Any content or service sent out in a manner which

allows the receiving party to reply, send back a message or engage in automated communications.

- Personal data: Any information relating to an identified or identifiable individual.
- Preference service: The administration and operation of suppression files i.e a list of consumers who have registered their wish not to receive unsolicited marketing approaches, against which marketing lists can be matched.

Basic Principles

Article 1

All marketing and advertising using electronic media should be legal, decent, honest, and truthful. It should be prepared with a due sense of social responsibility and should conform to the principles of fair competition as generally accepted in business.

Marketing and advertising should not be designed or transmitted in such a way as to impair public confidence in the use of electronic media.

Rules

Origin and jurisdiction. *Article 2*

Marketing and advertising using electronic media should be subject to the rules and regulations in the country of origin or, where permissible, of the country stipulated by the advertiser/marketer. Advertisers/marketers are urged to be cognizant to the rules and regulations of the jurisdictions where they target their advertising or marketing messages as the applicable laws may differ.

Identity. *Article 3*

Advertisers/marketers of goods and services who post marketing and advertising messages via electronic media should always disclose their own

identity and that of the relevant subsidiary, where appropriate, in such a way that the consumer can contact the advertiser/marketer without difficulty.

Identification. *Article 4*

Where electronic communications have a commercial purpose, this should be apparent through the subject matter and context. Subject headers should not be misleading and the commercial nature should not be obscured.

Clarity. *Article 5*

Any material factor likely to affect consumers' decisions, e.g. the price and other sales conditions, should be communicated in such a way and at such a time that the consumers can take it into account before accepting an offer or making any other commitment. Software or other technical devices should not be used to conceal or obscure such factors.

Consumers should always be informed beforehand of the steps leading to the placing of an order, a purchase, the conclusion of a contract or any other commitment. If consumers are required to provide data for this purpose, they should be given an adequate opportunity to check the accuracy of their input before being subjected to any commitment. Where appropriate, the advertiser/marketer should respond by accepting or rejecting the consumer's order.

Cost of communications and premium rates. *Article 6*

When the cost of accessing a message or service is higher than the basic telecommunication rate e.g. premium rate, the marketer/advertiser should provide consumers with notice of the cost, expressed either as cost per minute or cost per connection. This information should be provided in all marketing materials as well as at the time the consumers are about to access the message or service.

The notice mechanism should allow consumers a reasonable amount of time, once the notice has been given, to disconnect from the service without incurring the charge.

When a connection is made to a service charged at a premium rate, the marketer/advertiser should ensure either that the rate is not charged until the consumer can fulfil the purpose of the connection, or that the consumer is not kept waiting an unreasonable time in order to fulfil the purpose of the connection.

Respect for public groups. *Article 7*

Advertisers/marketers should respect the terms and conditions of particular electronic media, e.g. news groups, forums or bulletin boards and general server software for web page content editing which may have rules and standards as to acceptable commercial behaviour. Marketing and advertising messages posted to such public meeting places are appropriate when the forum or site has implicitly or explicitly indicated consent to the receipt of such messages.

Data and privacy rules. *Article 8*

When collecting personal data from individuals, advertisers/marketers should ensure they respect and protect their customers by complying with relevant privacy rules and regulations and the ICC International Code on Direct Marketing, which governs the following:

- Informing the data subject.
- Collection, use and transfer of data.
- Security of data.
- Provision and use of privacy policy statements.

In jurisdictions where no privacy legislation currently exists, companies are encouraged to implement privacy principles such as those elaborated in the ICC Privacy Toolkit .

Advertisers/marketers should give a clear statement of any collection or processing that is taking place which is not self-evident so that the consumer can at any time easily obtain further information on the privacy policy e.g. via a link to a privacy policy posted on a website.

Consumers should be able to accept, refuse or delete such data collection methods according to their privacy preference settings and be made aware of these options.

Unsolicited messages. *Article 9*

Advertisers/marketers who send unsolicited marketing and advertising messages via electronic media should have reasonable grounds to believe that the consumers who receive such messages will have an interest in the subject matter or offer.

Honouring consumer preferences. *Article 10*

Advertisers/marketers should respect consumer's preferences expressed to them either directly to the sender or through participation in a preference service programme. They should also ensure that the application they use to enable consumers to open other marketing or advertising messages are transparent and do not interfere with the users' normal usage of electronic media.

Marketing and advertising sent via electronic media should provide a clear and transparent mechanism through which consumers may express their wishes not to receive future solicitations. Such mechanism should only be used for this purpose, and should be easy to find, easy to understand, and easy to implement.

Advertising to children. *Article 11*

Advertisers/marketers offering goods or services to children via electronic media should respect provisions on marketing and advertising to children in the ICC International Code of Advertising Practice and other codes mentioned above and in particular observe the following:

- not exploit the inexperience or credulity of children or strain their sense of loyalty towards their parents and guardians;
- refrain from using content which might result in harm to children;
- collect only the information reasonably required to allow the child to engage in the activity;

- encourage parents and/or guardians to participate in and/or supervise their children's interactive activities;
- encourage children to obtain their parent's and/or guardian's permission before they provide information via electronic media, and make reasonable efforts to ensure that parental consent is given;
- refrain from using the data collected from children to advertise and promote products or services other than those designed for/appropriate for children;
- not collect from children data related to the financial situation or to the privacy of other members of the family;
- only disclose identifiable personal information of children to third parties after obtaining parental consent or where authorized by law. Third parties do not include agents or others who provide support for operational purposes of the website and who do not use or disclose a child's personal information for any other purpose.

Advertisers/marketers are encouraged to make available information to parents and/or guardians about ways to protect their children's privacy when using electronic media.

Respect for the potential sensitivities of a global audience.

Article 12

Given the global reach of electronic networks, and the variety and diversity of possible recipients, advertisers/marketers should:

- be especially sensitive that a particular marketing and advertising message should not cause offence or be inconsistent with the general principles on social responsibility as expressed in the ICC International Code of Advertising Practice; and
- clearly identify material intended only for adults.

Responsibility. Article 13

All marketing and advertising using electronic media should conform to these Guidelines. Responsibility is shared by all parties commensurate with the

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role they play in the process, from the conception to the diffusion of the marketing and advertising practice on electronic media, within the limits of their respective functions.

All concerned parties are encouraged to include in their contracts and other agreements pertaining to marketing and advertising, in electronic media, information about their commitment to adhere to the applicable self-regulatory rules and respect decisions thereon of the relevant self-regulatory bodies.

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The World Business Organization