

Online advertising and marketing Q&A: Ireland

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Ireland-specific information concerning issues that need to be considered when planning an online advertising campaign.

This Q&A provides country-specific commentary on *Online advertising and marketing: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

Information concerning a company's business

1. What information concerning a company's business is required to be published on its website or provided in emails?

The European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003) (eCommerce Regulations), which implement Directive 2000/31/EC, state that a provider of "information society services" (as defined in the Directive) must provide the following information in a manner which is easily, directly and permanently accessible to the recipients of the service:

- The name of the service provider.
- The geographic address at which the service provider is established.
- The details of the service provider, including its electronic mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner.
- Details of how individuals can register their choice regarding unsolicited commercial communications. These should be prominently displayed on the service provider's website and at every point where individuals are asked to provide information on the service provider's website (for example a registration form).
- Where the service provider is registered in a trade or similar public register, the trade or other such register in which the service provider is entered and its registration number, or equivalent means of identification in that register.
- Where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority.

- Where the service provider is a member of a regulated profession:
 - any professional body or similar institution with which the service provider is registered;
 - the professional title of the provider and the member state where it has been granted; and
 - a reference to the applicable professional rules in the member state of establishment and the means to access them.
- Where the service provider undertakes an activity that is subject to value added tax, the registration number assigned to that provider.
- Where the relevant service refers to prices, those prices must be indicated clearly and unambiguously and, in particular, must specify whether they are inclusive of tax and delivery costs.

Every Irish company which has a website is also required to display the following information in a prominent and easily accessible place on its website:

- The company name and legal form.
- Place of registration and registration number.
- Registered office address.
- If the share capital of the company is mentioned on the website, the reference must be to paid-up share capital.

(section 151(4), Companies Act 2014.)

Further information provisions apply on a sector specific basis. For example, a financial services entity that is regulated by the Central Bank of Ireland must provide its legal name, trading name, address, contact details, confirmation that it is authorised, licensed or registered and the name of the competent authority that has authorised, licensed or registered it.

General information requirements

2.What other requirements as to the provision of information apply to online advertising and marketing generally?

Where a website collects or otherwise processes personal data for online advertising or marketing purposes, the General Data Protection Regulation (GDPR) provides that information must be provided to users, typically via a privacy statement. The information should include details of:

- The identity and contact details of the controller and, where applicable, the controller's representative.
- The contact details of the data protection officer, where applicable.
- The purposes of the processing and the legal basis for the processing.
- Where the processing is based on legitimate interests, the legitimate interests pursued by the controller or by a third party.
- The recipients or categories of recipients of the personal data, if any.
- Where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation, any adequacy decision in place, or the appropriate or suitable safeguards and the means by which to obtain a copy of them.
- The period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period.
- Details of the data subjects' rights in relation to personal data (such as the right of access, the right to erasure, the right to object and so on) and how to exercise those rights.
- Whether the provision of personal data is a statutory or contractual requirement, and the possible consequences of failure to provide the data.
- The existence of automated decision-making (where applicable), including profiling, and the significance and the envisaged consequences of such processing for the data subject.

The privacy statement should be distinct from other terms and conditions on the website and should be readily accessible to the user.

Separately, under the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (ePrivacy Regulations), a website operator must provide "clear and comprehensive information" regarding its use of cookies in a way which is "prominently displayed and easily accessible". This is typically done via a cookies policy.

Tobacco products

3. How is the online advertising and marketing of tobacco products regulated?

Section 33 of the Public Health (Tobacco) Act 2002, as amended, prohibits tobacco advertising in contravention of the Directive on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (2003/33/EC) (Tobacco Directive).

The Tobacco Directive provides that advertising tobacco products in the press and other printed publications is permitted only in publications intended exclusively for professionals in the tobacco trade, and publications which

are printed and published in third countries where those publications are not principally intended for the EU market. All other advertising in the press and other printed publications is prohibited.

The Tobacco Directive further provides that advertising that is prohibited in the press and other printed publications will not be permitted in information society services (that is, internet communications). The law is, therefore, interpreted as prohibiting tobacco advertising in internet communications from providers based in EU member states or that target the public of EU member states.

Alcoholic drinks

4. How is the online advertising and marketing of alcoholic drinks regulated?

The Public Health (Alcohol) Act 2018 introduced significant new rules on the advertising of alcohol. The Act has not been fully brought into force yet. A phased implementation is planned.

Section 13 of the Act, which deals with advertising of alcohol, has not been brought into force at the time of writing.

Under the Act, "advertising" means any form of commercial communication with the aim, or direct or indirect effect, of promoting an alcohol product. A person may not advertise an alcohol product unless the advertisement includes:

- A warning intended to inform the public of the danger of alcohol consumption.
- A warning intended to inform the public of the danger of alcohol consumption when pregnant.
- A warning intended to inform the public of the direct link between alcohol and fatal cancers.
- Details of a website providing public health information in relation to alcohol consumption.

(Section 13, Public Health (Alcohol) Act 2018.)

An advertisement may contain any of the following (together with the above warnings):

- An image of, or reference to, one or more alcohol products, either in a container or containers (which may be opened or unopened) or in a glass or glasses.
- Details of whether the product concerned is intended to be diluted with a non-alcoholic beverage, and where it is intended to so be diluted, an image of or reference to the non-alcoholic beverage.
- An image of, or reference to, the country and region of origin of the product concerned.
- An image of, or reference to, the method of production of the product concerned.
- An image of, or reference to, the premises where the alcohol product concerned was manufactured.

- The price of the product concerned.
- A brand name or variant thereof, trade mark and brand emblem of the product concerned.
- A corporate name and corporate emblem of the product concerned.
- An objective description of the flavour, colour and smell of the product concerned.
- The name and address of the manufacturer of the product concerned (or of their agent).
- The alcoholic strength by volume of the product concerned.
- The quantity in grams of alcohol contained in the product concerned.
- The energy value expressed in kilojoules and kilocalories of the product concerned.

(Section 13, Public Health (Alcohol) Act 2018.)

An advertisement for an alcohol product cannot include an advertisement for another product or service.

Voluntary regulations and codes of practice

5. What are the main areas of voluntary regulation or self-regulatory codes of practice that apply to online advertising and marketing?

The main self-regulatory code in Ireland is the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland, as issued by the Advertising Standards Authority for Ireland (ASAI Code).

The ASAI Code is broad in its scope. It applies to marketing communications carried on any digital and electronic storage materials, media or computer systems, including:

- Online advertisements in paid-for space (including banner or pop up advertisements and online video advertisements).
- Paid-for search listings.
- Preferential listings on price comparison sites.
- Viral advertisements.
- In-game advertisements.
- Commercial classified advertisements.
- "Advergames" that feature in-display advertisements.

- Advertisements transmitted by Bluetooth.
- Advertisements distributed through web widgets and online sales promotions and prize promotions.

It also applies to marketing communications in non-paid-for space online that is under the control of the advertiser or their agent, including the advertiser's own websites, that are directly connected with the supply or transfer of goods, services, facilities, opportunities, prizes and gifts, or which consist of direct solicitations for donation.

The principal requirements of the ASAI Code are that advertising:

- Be legal, decent, honest and truthful.
- Be conceived with a sense of responsibility to consumers and to society.
- Respects the principles of fair competition generally accepted in business.

(Section 3, ASAI Code.)

Section 4 of the ASAI Code deals with misleading advertising and provides that obvious untruths, puffery or deliberate hyperbole are permitted so long as they are unlikely to mislead. A marketing communication should not contain claims which are likely to be regarded as objectively true by consumers unless those claims can be substantiated. Statistics, technical data and scientific terminology should be not used misleadingly or to exaggerate claims.

Prices must match the product illustrated or specified (*section 4.22, ASAI Code*). Advertisers should be able to meet any reasonable demand created by their advertising. Where there is limited availability, advertisers should not exaggerate availability, and should be able to demonstrate a reasonable supply. Advertisers should not use switch selling, for example, advertising one product and then trying to convince consumers to purchase another (*sections 4.27 to 4.30, ASAI Code*).

Section 5 of the ASAI Code sets out the standards with regard to promotional marketing practices - that is, marketing techniques which involve the provision of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to purchasers.

Sales promotions should be conducted equitably, promptly and efficiently. The terms and conditions of a promotion must be clearly presented, complete and easy to understand. If there are any terms or conditions which exclude consumers from the opportunity to take part in the promotion (such as age, location and so on) or impose requirements that are likely to affect the consumer's decision to take part in the promotion, these should be clearly and prominently presented to consumers before they enter into the promotion. There are strict and extensive requirements in the ASAI Code relating to promotions involving "free offers" or prizes.

The ASAI Code is a self-regulatory code. Primary responsibility for observing the ASAI Code rests with advertisers, promoters and direct marketers. However, complaints can be made to the ASAI. Complaints under the ASAI Code are investigated free of charge and the identity of the person making the complaint will not be revealed. The ASAI may also investigate issues identified through its monitoring programme.

Where there is a case to answer, the advertiser is informed of the complaint and invited to comment before an adjudication is made. An ASAI committee decides whether the ASAI Code has been breached and publishes a case report. An advertisement or promotion that is found to be in breach of the ASAI Code must be withdrawn or amended. Organisations that are found to have breached the ASAI Code may also be named and shamed.

Linking

6. Which of the following legal remedies are or may be available in respect of unauthorised linking to a website:

- Passing off;
- Unfair competition;
- Registered trade mark infringement;
- Copyright infringement;
- Database right infringement;
- Breach of contract; or
- Any others?

Each of these remedies is potentially available in relation to unauthorised linking, depending on the facts, with the exception of unfair competition (which is not a recognised cause of action in Ireland).

Framing

7. Which of the following legal remedies are or may be available in respect of unauthorised framing of content on another website:

- Passing off;
- Unfair competition;
- Registered trade mark infringement;
- Copyright infringement;
- Database right infringement;
- Breach of contract; or

- Any others?

Each of these remedies is potentially available in relation to framing, depending on the facts, with the exception of unfair competition (which is not a recognised cause of action in Ireland).

Metatags

8. Which of the following remedies are or may be available in respect of the unauthorised use of another party's registered or unregistered trade mark or other material in metatags or the hidden text of a website:

- Passing off;
- Unfair competition;
- Registered trade mark infringement;
- Copyright infringement;
- Any others? (Please indicate whether the position will be different if a registered or unregistered trade mark is used in this way for legitimate purpose rather than for the sole purpose of increasing traffic flow to the website owner's site).

Each of these remedies is potentially available in relation to unauthorised use of registered or unregistered trade marks in metatags, depending on the facts, with the exception of unfair competition (which is not a recognised cause of action in Ireland).

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