

Supplementary consultation Placing digital adverts responsibly

Response July 2016

1 Introduction

- 1.1** In a consultation published on 9 May 2016, the Gambling Commission (the Commission), set out proposals for the specific wording of a new licence condition to ensure that licensees take responsibility for ensuring that advertisements placed by themselves or others do not appear on websites providing unauthorised access to copyrighted content.
- 1.2** In September 2015, we consulted on [Proposed amendments to licence conditions and codes of practice \(LCCP\) for all operators in relation to the prevention of crime associated with gambling](#). As part of the consultation we sought views on the principle of introducing new provisions to ensure that licensees take responsibility for ensuring that advertisements placed by themselves or others do not appear on websites providing unauthorised access to copyrighted content. After considering views, we concluded in our consultation response, [The prevention of crime associated with gambling: amendments to licence codes and conditions of practice \(LCCP\) for all operators](#) that we would take the proposal forward by introducing a new licence condition. Having established the principle for the new provision in the original consultation, we undertook this supplementary consultation on the specific wording of the new condition.
- 1.3** This month, we are publishing responses to a number of consultations. These include:
- Controlling where gaming machines may be played.
 - Extending to the non-remote lottery sector the requirement to assess and manage money laundering risks to the business
 - High turnover bingo operators and multi-operator self exclusion requirements
- 1.4** In the summer, we will publish on our website the revised consolidated LCCP, which will incorporate all the changes from the consultations conducted this year. All of the changes will come into force in the autumn.

2 Background

- 2.1** As explained in paragraph 1.2, we previously sought views on whether we should introduce new requirements for licensees to take more responsibility for ensuring that digital adverts placed by them or their affiliates do not appear on websites providing unauthorised access to copyrighted content.
- 2.2** Although respondents agreed in principle that licensees' adverts should not be appearing on these websites, opinion was divided about how to resolve the issue. Respondents from within the gambling industry were concerned about how they might meet any new requirement in practical terms, for example in relation to the large number of affiliates that some operators have. Some noted the cost implications of using commercial content verification software to address this problem.

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- 2.3** We currently take reactive measures, which involve bringing instances to the attention of major gambling operators. These are not sustainable in the long term. Despite our efforts, adverts for licensed gambling operators continue to appear on websites providing unauthorised access to copyrighted content. This demonstrates clearly the need for additional controls.
- 2.4** We did not consider that an ordinary code would be sufficient to give adequate weighting to the serious nature of this issue. Having considered further the focus of this area on keeping crime out of gambling rather than on consumer protection, we determined that a new licence condition rather than a social responsibility code was the most appropriate response.

3 Consultation proposal

- 3.1** Having established the need for and the principle behind this issue, we consulted on the wording of a new licence condition. This will put a clear onus on licensees to address the issue.
- 3.2** We noted that respondents from within the industry had concerns that new provisions should be proportionate and that our expectations are clear.
- 3.3** We therefore proposed a new licence condition which would require licensees to ensure that they or third parties with whom they contract for the provision of any aspect of the licensee's business related to the licensed activities, do not place digital advertisements on websites providing unauthorised access to copyrighted content.

4 Consultation responses

- 4.1** The Commission received eleven responses to the consultation. A list of non-confidential respondents can be found at Appendix A. We are grateful to all those who responded to the consultation.

Consultation question

- Q1. Do you have any comments on the proposed wording of the new licence condition?

Respondents' views

- 4.2** We received a wide range of views, with four respondents expressing agreement with the wording of the proposed licence condition, and two stating that they did not use affiliates in the course of their business.
- 4.3** Other respondents expressed concern about our decision to implement a licence condition as the original consultation had indicated that we were considering a social responsibility or ordinary code provision.
- 4.4** A number had strong concerns with the absolute nature of the wording and cited practical difficulties that operators would experience in controlling the activities of third parties and therefore complying with the licence condition. Some felt that reinstating the wording 'reasonable' or 'reasonable measures' (as the Commission suggested in the original consultation) would be a more proportionate way in which to address this issue and provide a workable solution.

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- 4.5** One respondent argued that despite using the tools available to them, licensees could not ensure that adverts would not appear on inappropriate websites. Another claimed that imposing such a licence condition in a real world environment set the bar too high to reach, and was thus unfair.
- 4.6** Some respondents suggested alternative wording, for example, including a reference to the Copyright, Designs and Patents Act 1988 which would bring the licence condition in line with this Act and common international copyright provisions. Another respondent suggested that licensees must 'put into effect suitable policies and procedures' in relation to preventing adverts appearing on websites of this nature 'and that any such activity is identified and removed as soon as is reasonably practicable'. Another suggestion was to amend the requirement to make it clear that the reach of the licence condition extended only to the licensee's products. BPI proposed that inappropriate websites should be referred to as 'websites engaged in intellectual property infringement'.
- 4.7** Respondents provided examples on the nature of issues and complexities that licensees faced with regard to managing relationships with third parties. One operator noted that placement and removal of advertisements by third parties happens very quickly. As a result, it is impractical to monitor every single website that adverts appear on in real time. Another noted that a website could change its approach and provide unauthorised access to copyrighted content after the licensee has placed an advertisement, in contravention of contractual terms. Another operator referred to instances when the infringing website or app changes a profile within the network to avoid being blocked by the network provider. This can lead to the affiliate advertiser themselves being unaware that they are appearing on infringing websites or apps.
- 4.8** In order to overcome these challenges, some respondents asked the Commission to consider providing a guidance note based on the four suggested measures referenced in the supplementary consultation. Another operator asked us to provide further information around the nature of these websites.
- 4.9** In their response, the Federation Against Copyright Theft (FACT) made a commitment towards working with the industry and representatives to tackle the problems and prevent continuing infringement. We welcome this commitment.

Consultation question

Q2. Do you have any other comments?

- 4.10** We were pleased to note that respondents had been working with the Commission's partner organisations such as The City of London Police Intellectual Property Crime Unit (PIPCU) and FACT and utilising the tools at their disposal, including commercial content verification software. Operators also told us that they were taking action against affiliates who breached the rules in this area.
- 4.11** Two operators called for the Commission's further involvement in this area, for example, by clarifying the expectations we have of operators in the event of non-compliance by an affiliate. Another suggested that we need to maintain a list of websites that provide unauthorised access to copyrighted content and questioned whether we would consider investing financially in the work undertaken by PIPCU.
- 4.12** We received some comments regarding the new licence condition's relationship with provisions that are currently within LCCP. One example is Social Responsibility code 1.1.2 (Responsibility for third parties) – one respondent felt that implementation of the new licence condition would cause unnecessary complication of LCCP and confusion for licensees. One respondent asked that the Commission be mindful when enforcing the new condition that any breaches would more than likely be the result of actions by an affiliate.

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- 4.13** One respondent commented that the decision to introduce a new licence condition rather than any other LCCP provision contradicts our approach in relation to Ordinary Code 2.1. This provision relates to anti-money laundering and is plainly focused on keeping crime out of gambling rather than protecting consumers and in their view this difference in approach would introduce an undesirable inconsistency.
- 4.14** One respondent observed that the licence condition should allow operators to demonstrate stringent procedures and appropriate refinement based on lessons arising from particular cases as in licence condition 5.1 (cash handling).

The Commission's position

We have decided to implement the new licence condition requiring operators to take responsibility for preventing digital adverts advertising their brand from appearing on websites providing access to unauthorised content. We have taken account of respondents' views and have amended the wording of the licence condition to make clear that in the case of third party advertising operators should implement all reasonable steps to prevent marketing appearing on such websites, and to react quickly and effectively if they do appear.

This requirement will be implemented alongside all other changes to LCCP in the autumn.

We have carefully considered the varied responses received but, given the seriousness, persistency and nature of the issue, we still consider that implementing a licence condition will address this issue in a proportionate manner. Social responsibility code provisions are related to standards of consumer protection, while this matter is principally concerned with keeping crime out of gambling. Therefore, a new licence condition is the most appropriate measure.

Although we are very clear in our expectation that this practice must cease, we acknowledge that a licence condition requiring licensees to 'ensure' digital adverts are not placed on such websites presents some practical issues when managing complex third party arrangements. We have therefore amended the licence condition to require licensees to ensure that they do not place adverts on such sites and to take all reasonable measures to ensure that third parties do not do likewise. This includes a requirement on licensees to ensure that the terms upon which they contract with such parties enable them to terminate the third party's contract promptly if they are found to have placed adverts on such sites.

New licence condition

Responsible placement of digital adverts

All licences

Licensees must:

- a) ensure that they do not place digital advertisements on websites providing unauthorised access to copyrighted content
- b) take all reasonable steps to ensure that third parties with whom they contract for the provision of any aspect of their business related to the licensed activities do not place digital advertisements on websites providing unauthorised access to copyrighted content.
- c) ensure that the terms upon which they contract with such third parties enable them, subject to compliance with any dispute resolution provisions, to terminate the third party's contract promptly if, in the Licensee's reasonable opinion, the third party has been responsible for placing digital advertisements for the licensed activities on such websites.

Appendix A

Non-confidential respondents to the consultation

Respondent
Alliance for Intellectual Property British Recorded Music Industry The Federation Against Copyright Theft Gala Coral Group Microgaming Novomatic UK People's Postcode Lottery Remote Gambling Association Talarius William Hill

Gambling Commission July 2016

Keeping gambling fair and safe for all

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