

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

The Communications Council

The Communications Council was formed on 1 January 2010, merging the former Advertising Federation of Australia (AFA) with the Account Planning Group (APG) and Australasian Writers and Art Directors Association (AWARD) and more recently the Australasian Promotional Marketing Association (APMA). The Communications Council is the peak body representing companies in the marketing and communications industry to government, industry, media and the public.

The Council embodies members from a wide spectrum of creative disciplines, ranging from healthcare to design agencies.

We help grow member businesses and develop individual careers through the provision of professional development services, advocacy and support.

The Communications Council represents businesses in the creative industriesⁱ, a sector which contributes \$ 31.1 billion towards Australia's GDP and employs over 315,000 workers. The fastest growing segment of the creative industries is the marketing and advertising segment, with around 15,000 businesses employing 60,000 people.

On behalf of its membership, the Communications Council welcomes the opportunity to submit the following comments in relation to the Committee's Inquiry into the Adequacy of Protections for the Privacy of Australians Online.

The Committee's Terms of Reference:

- (a) privacy protections and data collection on social networking sites;
- (b) data collection activities of private companies;
- (c) data collection activities of government agencies; and
- (d) other related issues.



The Communications Council's Self-regulatory System

The Council regularly leads debate, discussion and education on the different acts, codes and guidelines that may impact on marketing communications businesses with the intention to promote legal compliance and reduce legal and commercial risks to advertisers and their agencies.

The Council champions the principle of effective and responsible self-regulation as an effective mechanism to respond to evolving technologies and marketing practices and changing consumer needs. It believes the right to market brands responsibly across all channels is paramount. To this end, the Council supports, often in partnership with other industry organisations, a self-regulatory system.

Where it concerns privacy protection and data collection, the Council believes its members should operate responsibly and within the confines of its self-regulatory system, outlined under (a) as well as relevant state and federal legislation.

Where new legislation may be incoming, the Council will seek to educate its members to the best of its ability, and update its current guidelines to that end.

The Communications Council is aware that the Minister for Broadband Communications and the Digital Economy, Senator the Hon Stephen Conroy, has previously emphasized the importance of industry self-regulation in the rapidly evolving digital media environment.

The Council welcomes the support for self-regulation in this space and will continue to work with members and other organizations to ensure effective self-regulation in this environment.

(a) privacy protections and data collection on social networking sites

The Communications Council, in partnership with Von Muenster Solicitors & Attorneys, last year released a guide on legal compliance for the marketing communications industry. It highlights the legal issues digital agencies may face in the online space and includes explanations of relevant acts and codes including the Trade Practices Act, the Copyright Act, Do Not Call Register Act 2006 or the Spam Act 2003, and various other codes impacting on agencies operating in this space.

The Council, again in partnership with Von Muenster Solicitors & Attorneys also regularly holds workshops for members around legal compliance on an ongoing basis. Currently it offers workshops on the legal considerations in social media, which outlines agency and client responsibilities in the social space.

(b) data collection activities of private companies;

In line with the current Privacy Amendment Bill, which encourages industries to draw up their own privacy codes to address their specific industry's privacy considerations, the Council has adopted online privacy guidelines for marketers which are in accordance with the Bill.

The guidelines are provided to members as a help and checklist for the development of all interactive advertising campaigns, customer relationship marketing campaigns and web sites.

More broadly, the online privacy guidelines assist in the development of business-wide actions towards an environment of industry regulation and serve to increase trust between advertisers and consumers, and to foster the protection of consumer's privacy.

- The guidelines stipulate that businesses should adopt and communicate a privacy policy, which gives users the choice and consent over how their information is used and shared.
- The guidelines also recommend giving users access to their personally identifiable information while putting data security and quality, and access measures in place.
- The guidelines suggest that organizations take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.
- The guidelines recommend responsible use of marketing communications via email and other devices such as mobile phones, ie through making communications readily recognizable as marketing messages/solicitations.
- The guidelines propose for agencies to use only use opt-in 'lists' and provide customers the opportunity to easily opt-out in every communication through providing company details and contact information or a link to these details.
- The guidelines also advise members to ensure that the recipient country of data has privacy laws similar to the Australian National Privacy Principles.
- Finally, they recommend responsible Interactive Marketing to Children.

Additional existing Code of Practices

The AANA Code of Ethics was adopted by the Australian Association of National Advertisers (AANA) as a means of advertising and marketing self-regulation in Australia and is intended to apply widely to advertising and marketing communications. It is the building block for other industry codes and an important component of other industry self-regulatory codes and initiatives.

- AANA codes are voluntary, self-regulatory codes that articulate standards for conduct by Australian advertisers. The aim of the codes is to enhance standards throughout the advertising and marketing sector to ensure consumer confidence and public trust is maintained in ethical and responsible advertising.
- The object of the Code of Ethics is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.
- The code stipulates that advertising and marketing communications ought to comply with Commonwealth law and the law of the relevant State or Territory, which would refer to the current Privacy principles, as well as other legislation on trade practices, the Do Not Call Register Act 2006 or the Spam Act 2003.

The Ethics code is currently under review with the aim to update and where necessary develop the Code to ensure that it continues to meet all stakeholders' requirements and expectations. The review will include discussions on privacy.



The Communications Council is contributing to the ethics review to ensure the code's effectiveness in the long term and to uphold the very highest standards of ethical practice within the advertising industry. .

It is anticipated that the final report and a revised Code of Ethics will be completed by year-end 2010.

Online Behavioral Advertising (OBA) in Australia

Last year, the Communications Council engaged in a cross-industry initiative to establish standards for privacy on online behavioural advertising in Australia. It included representatives from the AANA, the Interactive Advertising Bureau Australia (IAB), the Australian Direct Marketing Association (ADMA), Australian Interactive Media Industry Association (AIMIA) and the Internet Industry Association (IIA).

At its 10 August 2009 meeting these parties:

- Unanimously supported the development of a joint industry initiative to respond to concerns regarding OBA.
- Supported the need to educate the public about OBA.
- Agreed to convene further meetings with representatives of the industry associations and key online stakeholders providers (eg Google, Yahoo) to scope the issues with a view to developing consumer protection standards.

Discussion around this issues are ongoing and the Communications Council continues to engage with stakeholders on this issue.

Specific Provisions relating to Children

The Council has recently submitted its comments on the Senate Committee on Cyber Safety in regard to its inquiry into Cyber Safety. The submission is included as an attachment with this submission.

In its submission it has detailed the provisions around cyber safety that its members comply with, both legislatively and self-regulatory.

The Council is aware that where it concerns minors, marketers and their agencies need to take extra care with regard to safety and privacy of children.

It is worth noting that the Communications Council (previously the Advertising Federation Australia) has long been a supporter of the digital media initiative 'Smart Online, Safe Offline', (SOSO), a collaboration between industry, media and the not-for-profit sector, run by the National Association for Prevention of Child Abuse and Neglect (NAPCAN). The SOSO initiative delivers online campaigns educating young internet users about the dangers of the online environment. The Communications Council supports the initiative as an important step in digital media industry taking responsibility for the online spaces in which these dangers may be present. It supports any agencies that engage, through research, sponsorship and resources, in partnerships with SOSO.

In addition, it has identified advertising in the digital space as an effective vehicle through which children may be made aware of cyber safety threats.

- (c) data collection activities of government agencies;

Data collection activities outlined in the terms of reference are issues that are beyond the Council's remit.

- (d) other related issues.

Proposed Privacy Reforms

The Communications Council believes the above outlined codes and initiatives reflect community standards and provide a self-regulatory framework within which agencies and members should operate. It strives to regularly update its guidelines and codes and is currently in the process of working with Von Muenster Solicitors & Attorneys to review its legal compliance guide in light of political developments and changing technologies.

The Communications Council is aware that the current government is looking at reforming existing privacy legislation and that the Senate Finance and Public Administration Committee are in the process of conducting an inquiry into the exposure draft of Australian privacy amendment legislation.

In recent years an array of digital and interactive media options and channels have become available to advertisers and marketers, giving them unprecedented opportunity to reach and interact with their consumers. At the same time consumers have been empowered with more information, choice and alternative sales channels, changing forever their expectations of brands, the purchase experience and customer service.

The Internet provides the ability to deliver on consumer's expectations of a highly relevant and personal brand and shopping experience. At the same time, the tools that make this all possible may raise concerns for consumers about their privacy.

To be successful in the interactive marketplace advertisers must build trust with consumers. The Communications Council fundamentally believes that 'consumer privacy is a right and not a privilege' and that consumers should not have to work to protect their privacy, but rather marketers should have to work to earn their trust and seek permission to use these new tools to develop more personalised and ultimately one-to-one relationships.

The Council encourages agencies to engage in interaction solely where consumers have genuinely consented to be contacted and/ or have opted into receiving communications. As mentioned previously, where it concerns data collection, it encourages agencies to take reasonable steps to put data security and quality, and access measures in place to safeguard, update, and correct personally identifiable information, while taking reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.

The Council does however note that in order for agencies to design and develop successful campaigns which deliver value to clients, it is reliant on the right for an agency to get customers participating and interacting with them. From the stages that an agency is generating ideas for campaigns, through to focus groups, through to contacting customers to increase brand experience or data collection from promotions, these are reliant on the marketers right to contact customers and collect their data.

In considering any reforms the Council therefore would state that the right of agencies and their clients to contact consumers is paramount and should be preserved.

It does also note that if reforms go ahead it may be worth noting that agencies, and their clients may face increased compliance costs as a result of the requirements to update privacy policies and to implement new internal policies and practices. It also notes that it is likely to result in more stringent and strict controls on entities, with a particular heavy impact in the digital space. This may mean increased expenditure for agencies, and ultimately marketers should tighter measures be required.

The Council is in the process of examining the specific implications of the exposure privacy drafts and will be reporting on these to the Senate Finance and Public Administration Committee.

The Council thanks the Committee for the opportunity to comment on the adequacy of protections for the privacy of Australians online and welcomes the opportunity to discuss this submission in further detail.

Yours sincerely,

Daniel Leesong
Chief Executive Officer
The Communications Council

Attachments:

- I. The Communications Council's Submission to the Joint Select Committee on Cyber Safety's 'Inquiry into Cyber Safety'
- II. The Communications Council's Online Privacy Guidelines
- III. The NAPCLAN Online Guidelines

ⁱ Creative industries comprise advertising, marketing, architecture, design and visual arts, film, tv and radio, music and performing arts, publishing, software and digital content.