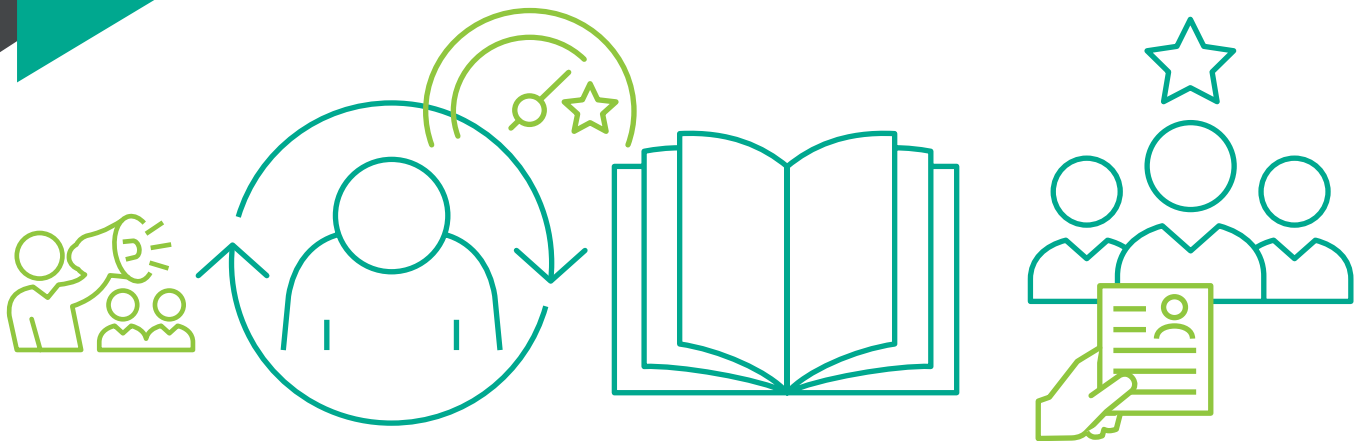


**THE BENEFITS  
OF ADVERTISING  
SELF-REGULATION  
IN ENSURING  
RESPONSIBLE  
AND COMPLIANT  
ADVERTISING**

## THE BENEFITS OF ADVERTISING SELF-REGULATION IN ENSURING RESPONSIBLE AND COMPLIANT ADVERTISING



### THE BENEFITS OF ADVERTISING

Advertising and other forms of marketing communications are vital means of communicating between marketers and customers. They help to create efficient markets, both nationally and internationally, promote economic development and bring significant benefits for both consumers and companies, as well as for society in general. Not only does advertising contribute to economic advancement but it is also essential for free markets, fair competition, media and trade. Advertising is an essential means to fund the media. It promotes news, entertainment and sports, builds awareness of social issues, and thus advances access to information, consumer choice and fosters economic development.

### ENSURING ADVERTISING IS RESPONSIBLE

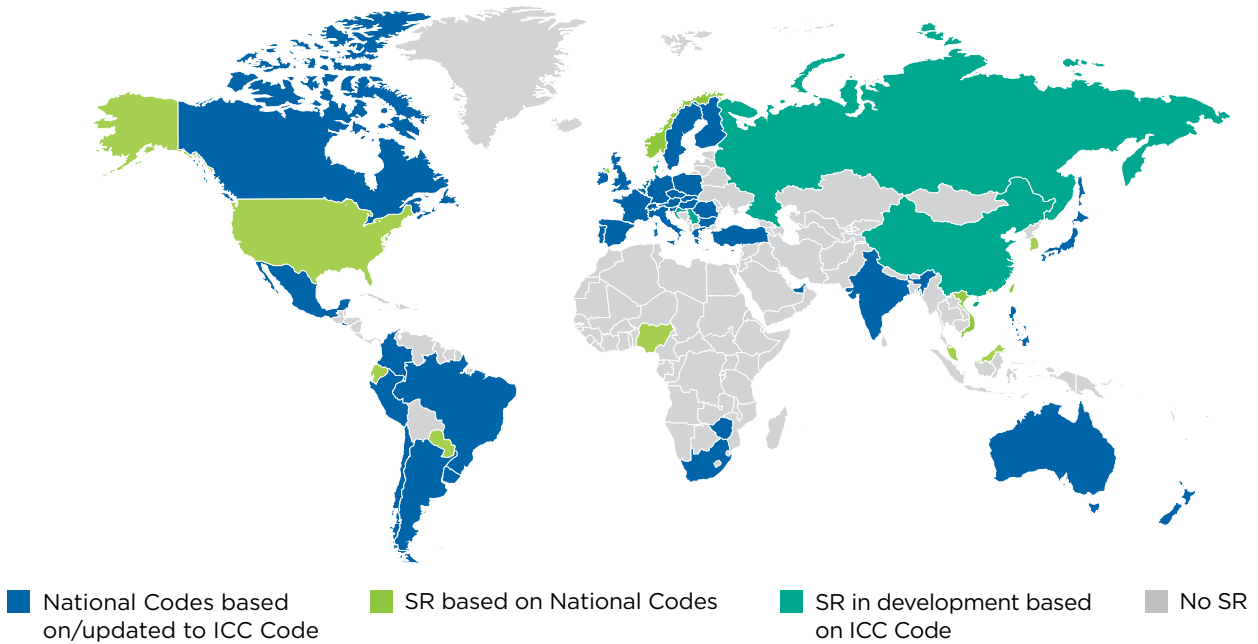
Consumer trust is paramount for the sustainability of brand reputation and effective advertising. To ensure this trust, members of the advertising and marketing community – marketers, agencies, media providers and other actors of the commercial communication ecosystem – recognise that advertising and marketing practices must be responsible. Standards of responsible conduct shall apply to all forms of marketing communications through all media and platforms, including digital.

### LEADING THROUGH STANDARDS

For that reason, around the world, advertising industry members have developed, managed and supported robust self-regulatory systems which serve as regulation and control systems for marketing and advertising practices. These systems typically include codes of conduct, and governance systems which feature industry guidance and training, as well as enforcement mechanisms. In some countries or regions, these systems are otherwise referred to as self-governance systems, and may incorporate a broader system beyond the governance and compliance aspects of traditional self-regulatory systems, including additional bodies and mechanisms that essentially serve the same purpose.

**Globally endorsed by the advertising industry, recognised and trusted by governments, the International Chamber of Commerce (ICC) [Advertising and Marketing Communications Code](#) serves as the basis for such codes of practice in many jurisdictions around the world. It provides a foundation for building a coherent international framework for companies to conduct business in a sustainable and responsible way. The harmonisation of international standards, through recognition of the ICC Code, helps reduce non-tariff barriers to trade and facilitates the free flow of goods and services.**

Figure 1: ICC CODE USE AROUND THE WORLD



Whatever the model, the goals of advertising and marketing self-regulation are the same worldwide: to demonstrate and ensure that the industry, and particularly advertisers, are compliant, and to produce responsible advertising with sound ethical standards of marketing and advertising practice to promote consumer confidence, a level competitive playing field, and a robust marketplace where consumer choice and trust thrive<sup>1</sup>.

## Advertising self-regulation promotes consumer trust. It is:

GOOD FOR CONSUMERS		<u>Comprehensive</u> <u>Media neutral</u> <u>Nimble and smart</u> <u>Impartial and transparent</u> <u>Preventive and flexible</u> <u>Quick and efficient</u> <u>Effective</u> <u>Cost effective</u> <u>and Recognised</u>
	<b>PROTECTS CITIZENS</b> > Responds quickly and efficiently to consumer concerns > Addresses societal changes	
GOOD FOR BUSINESS		
	<b>BUILDS TRUST</b> > Contributes to brand reputation > Guarantees an impartial and level playing field	
GOOD FOR POLICYMAKERS		
	<b>COMPLEMENTS THE LAW</b> > Adapts to technological developments > Drives jobs & growth	

<sup>1</sup> Annex II Implementation Guide for the ICC Marketing Codes. [ICC Advertising and Marketing Communication Code](#), ICC, 2018

## 1 ADVERTISING SELF-REGULATION PROMOTES CONSUMER TRUST



**Advertising self-regulation (SR) is an instrument that complements legislation, through setting and enforcing codes of practice, and promotes legal, decent, honest and truthful advertising. It thus fosters consumer trust and a level playing field among competitors.**

Consumer trust is the ultimate goal for advertisers, agencies and the media, as it makes advertising more effective. Likewise, a system promoting legal, decent, honest and truthful advertising is also in the interest of the general public, as responsible advertising can help consumers in their buying decisions and promotes competition and economic development. Codes of practice cover specific issues of potential concern, such as marketing to children and teens, or product-specific marketing considerations. The ICC Code, for example, is enhanced by additional framework guidance that addresses specific issues, such as [food marketing](#), [alcohol beverage advertising](#), or [environmental claims](#), and resources such as the [ICC Toolkit: Marketing and Advertising to Children](#).

A strong and effective programme of advertising self-regulation advances the interests of both consumers and the advertising industry by promoting responsibility in advertising and a level playing field among competitors and compliance across the industry (advertisers, agencies, and media) to a shared standard. Industry engagement in developing rules helps promote industry buy-in and financial support. Enforcement initiatives applying the rules help make sure that advertising is legal, decent, honest and truthful and, in turn, helps build consumer trust in advertising.

- 30 to 50% of a brand's market capitalisation comes from its reputation.<sup>2</sup>
- In Canada, 96% of consumers believe that it is 'somewhat' to 'very' important for advertisements to have a set of rules and regulations that advertisers must follow.<sup>3</sup>

## 2 COMPREHENSIVE—Covers all industry participants



**Actors in the advertising ecosystem are encouraged to take part in the self-regulatory system. All share a common interest in upholding high standards as loss of consumer and public trust can undermine the entire advertising industry. This inclusiveness also allows for checks and balances.**

Effective advertising self-regulation works best when all sectors and market players are involved. Being part of the system helps put pressure on those that are not yet involved and helps create a level playing field promoting fair competition and good business practice.

In many countries, the advertising self-regulation process of challenges and decisions applies to all advertisers, whether large, medium or small companies, even if they are not formally "members" of system. Their ads are under the remit of the relevant self-regulatory organisations (SROs) and may be subject to consumer or competitor challenges, or to review by the SRO itself.

Self-regulation also raises standards across the ecosystem of participating companies and their partners. As companies adopt self-regulatory frameworks, they embrace a common understanding of compliance. Other companies doing business with them can be confident that a certain standard has been met, and this dynamic essentially links compliance and accountability

<sup>2</sup> [World Intellectual Property \(WIPO\) Report Brands - Reputation and Image in the Global Marketplace](#), WIPO, 2013

<sup>3</sup> [Ad Standards Canada consumer research](#), Ad Standards, Canada, 2019

across a marketplace or media ecosystem. In doing so, consumers and advertisers are protected, and enforcement is made easier through the isolation of rogue companies.

Advertising self-regulation was not created to deal with rogue traders, whose practices are usually illegal. Complaints regarding such actors and practices can be referred to the statutory authorities who have the power to close these types of businesses down. The very effectiveness of advertising self-regulation in resolving questions by legitimate advertisers allows statutory authorities to focus their efforts and resources on dealing with rogue traders.

### 3 MEDIA NEUTRAL—Covers all media, channels and platforms



**Advertising self-regulation is designed to cover marketing communications in all forms of media and channels, including digital.**

The ICC Code has always addressed all forms of advertising and media, including emerging forms of advertising and marketing communications. For instance, SROs include in their remit traditional media such as TV, radio, outdoor, press as well as social media platforms. Direct mail is usually covered in partnership with the relevant national Direct Marketing Association.

- The 2018 ICC Advertising and Marketing Communications Code addresses the Code's applicability to technology-enhanced marketing communications and techniques.
- In Europe, the European Advertising Standards Alliance (EASA) approved in 2008 a Digital Marketing Communication Best Practice that paved the way for extending the remit of European SROs to digital media platforms such as internet advertising, SMS/MMS, in-game advertising and others. In 2018, EASA released a best practice recommendation for influencer marketing to adapt SR rules and guidance to new forms of media and communication.
- With the growth in digital marketing initiatives, self-regulatory efforts have for many years addressed possible privacy concerns, starting in 2000 with the adoption of a code by the US Network Advertising Initiative (NAI), and later with the US Digital Advertising Alliance's (DAA) principles. These have informed similar self-regulatory programmes for interest-based advertising in other parts of the world, including in Australia, Canada and Europe.

### 4 NIMBLE AND SMART—Respects existing national differences in culture, legal and commercial practices and adapts to technological and societal changes



**Through efficient code drafting processes that leverage industry knowledge in response to emerging consumer concerns, advertising self-regulatory principles can be quickly adapted to respect national differences and societal changes.**

Advertising self-regulation complements and enhances existing general framework laws and regulations governing advertising and marketing practices. Detailed regulation can be a tool that in many cases is not flexible or rapid enough to respond to market, societal or technological changes. Rigid regulations may also stifle innovation or present significant operational compliance burdens that are particularly challenging for SMEs. Effective self-regulation, on the other hand, offers a faster and less expensive way to respond to issues that spring up in society. Also, because the advertising industry has good insight into how emerging issues may affect consumers and ways to address concerns, it can provide realistic and practical solutions to tackle them at a far earlier stage than legislators can. Self-regulatory organisations listen and reach out to

stakeholders to understand concerns. They serve as forums where business stakeholders report on concerns in their local market, generally reflecting new practices in the marketplace and concerns raised by consumers and regulators. The industry has a keen interest in ensuring that codes of practice reflect new technologies and advertising techniques and respond to concerns expressed in the marketplace.

- The ICC Advertising and Marketing Communications Code is often used and adapted locally, resulting in codes that respect existing national differences in cultural, legal and commercial practices.
- Code bodies obtain effective input from stakeholders, both formally and informally, while assuring that the process remains nimble and recommendations can be operationalised.
- In Europe, it is standard practice to consult external stakeholders when the advertising industry is revising its code or parts thereof.

## 5 IMPARTIAL AND TRANSPARENT—Ensures accountability and legitimacy



**Advertising self-regulation is designed to be transparent. This is demonstrated by the regular availability and publishing of procedures, codes and guidance, and decisions as well as public reports and assessments by self-regulatory systems.**

Furthermore, the existence of appeal procedures and the possibility for industry actors to lodge complaints against their peers furthers the goal of balanced adjudications. In some regions, the SRO system involved refers to “juries”, or complaint committees, while in others, expert staff at the SRO evaluate complaints.

As the advertising self-regulatory system is funded by the advertising industry, the system is under constant scrutiny, especially by NGOs, consumers and public authorities; this helps to promote the impartiality and transparency of complaint decisions. Lastly, uptake of the self-regulatory system is a means for the industry to demonstrate its accountability and its commitment to Corporate Social Responsibility.

- The complaint juries that adjudicate complaints through SROs in some regions (such as Europe) generally include independent lay experts, such as academics, psychologists, representatives of civil society, etc.
- The advertising SRO in most of the EU countries and in the U.S. typically relies on an independent jury made up of public/academic representatives, advertisers and agency representatives to handle appeals of SRO decisions.

## 6 PREVENTIVE AND FLEXIBLE—Responsibility ensured throughout



**Self-regulatory systems are designed to actively uphold advertising standards, from the start of code drafting and updates to the implementation, application and enforcement phase.**

Self-regulatory systems very often include training and awareness raising initiatives which complement monitoring exercises and complaint handling to help ensure advertising is responsible at all stages of the process, starting from the initiation of the campaign. Very often, self-regulatory bodies can open cases ex-officio when they come across a non-compliant ad



in monitoring exercises, without waiting for a complaint to be filed. They can also proactively conduct compliance monitoring to help marketers better assess compliance levels and improve if necessary.

Some self-regulatory bodies conduct training to raise awareness about the rules among advertising professionals. It is common for SROs in many regions to set up platforms bringing together relevant stakeholders, including experts in advertising, technology and public policy, providing a pedagogical vector and a vehicle to discuss new issues and challenges, as well as the status of industry compliance.

Furthermore, most SROs offer a copy advice service to advertisers, which enables advertisers, agencies and even, in some cases, the media to get non-binding advice on whether a proposed advertisement or advertising campaign complies with the codes, and in some cases, legal standards, prior to its launch. Copy advice services are designed to ensure that advertisements comply with acceptable standards and help educate advertisers on how to implement standards set by the codes or the legislation in some SROs, in a particular ad. Concerns about elements of an ad can thus be resolved informally between the SRO and the advertiser before the ad is disseminated.

- Copy advice can often be provided in a matter of days, if not hours, resulting in an advertiser dropping or modifying the ad prior to it being publicly disseminated. In total, 97,481 requests for copy advice were submitted to the SROs of EASA's network in 2018<sup>4</sup>.

## 7 QUICK AND EFFICIENT—Consumer friendly



**Through the self-regulatory system, consumers can file a complaint regarding an advertisement at no cost and expect a very responsive handling of their case.**

When responding to a complaint, an advertiser must demonstrate that its advertisement did not breach the codes, rather than the complainant providing proof that it did. Self-regulatory bodies review and respond to each complaint they receive. SROs typically operate under a set of written procedures and set timeframes designed to promptly resolve complaints while giving advertisers the opportunity to respond.

- In Europe, on average, self-regulatory bodies handle 89% of received complaints within two months and 76%<sup>5</sup> in less than one month, although many cases are resolved even faster.
- This is in sharp contrast to litigation routes where consumers often have to pay to have their complaint considered in court. Judicial proceedings on advertising issues in some countries, take much more than one year to be completed. The advertiser under challenge will have the opportunity to conduct further campaigns of a similar nature within this time period before a decision or precautionary measures are taken.
- Some SROs in Latin America provide urgent injunctions which ensure immediate action and limit consumer exposure to harmful advertising.

<sup>4</sup> [European Trends in Advertising Complaints, Copy Advice and Pre-clearance report](#), EASA, 2018

<sup>5</sup> [European Trends in Advertising Complaints, Copy Advice and Pre-clearance report](#), EASA, 2018

## 8 EFFECTIVE—Impact on brand reputation and sanctions serve as deterrents



**There is strong incentive to follow self-regulatory decisions, as continued non-compliance leads to reputational damage for brands and may result in a referral to an appropriate regulatory body. These decisions also serve as deterrents, as withdrawing a campaign incurs financial costs.**

As SRO decisions are published, advertisers will generally ensure they comply with advertising standards to avoid the adverse publicity from failing to comply. Furthermore, as advertising campaigns tend to be costly, other advertisers tend to carefully review SRO decisions. Those advertisers will often revise claims or campaigns to avoid similar challenges.

Most advertisers voluntarily comply with SRO decisions by changing or withdrawing an ad or claim determined to fall outside code provisions. Should they not do so, in some regions, self-regulatory decisions are addressed to media which must refuse to publish/run or air the campaign. Ultimately, self-regulatory bodies may refer a situation where an advertiser refuses to comply with a decision or to participate in the self-regulatory process to the appropriate statutory authorities. Options available to the self-regulatory body will depend on the existing legal framework.

- The US Federal Trade Commission (FTC) routinely accepts referrals from the US advertising SROs in instances where an advertiser refuses to participate in the process or does not agree to modify or halt a campaign after an adverse decision. The fact of the referral may result in an advertiser agreeing to participate in the advertising self-regulatory process or to revise its claim or campaign.

## 9 COST EFFECTIVE—Reduces legal and policy costs, as the advertising and marketing industry shoulders its maintenance and enforcement



**As advertising self-regulatory systems are financed by the industry, complaints handling come at no cost for the consumer or for public authorities.**

Competitor challenges typically involve a fee, but in either case the costs incurred for participating advertisers are often much lower than those for standard court proceedings. This provides an added incentive for industry participation. Furthermore, the system of advertising self-regulation allows governments to focus their enforcement attention on specific actors or issues, particularly companies that engage in fraudulent claims, activities or techniques.

- As self-regulation systems in many countries deal with complaints about individual advertisements and ensure industry compliance with rulings, they free up government resources to deal with those who will not comply, and rogue traders.
- In jurisdictions like the US, litigation is generally extremely expensive and can take many years to resolve.



## 10 RECOGNISED—Self-regulation is recognised by policymakers and international organisations as well as judiciary systems in some instances



**Advertising self-regulation is acknowledged as a mark of professional diligence and, more generally as an essential complement to government policy.**

The decisions of SROs are a mark of professional diligence and as such are used at times in court cases. Assessing advertising almost always involves subjective judgments of the claims, both express and implied, based on context and perceived consumer understanding. In several countries advertising self-regulation is recognised and acknowledged in the general legal framework as a viable policy option.

- In Europe, effective advertising self-regulation is promoted as a complement to general legislation within several policy and regulatory initiatives, such as the Audiovisual Media Services Directive. The European Union’s Better Regulation package of 2015<sup>6</sup> commends principles for effective self-regulation and its inclusion in the policy toolkit and regulatory impact assessment.
- The US FTC recognises the role and efficacy of advertising self-regulation, and actively promotes participation by members of the advertising ecosystem.<sup>7</sup> FTC guidance has spurred evolution of self-regulatory requirements, and the enforcement programmes of the NAI and DAA, regarding interest-based advertising offer a first line of compliance enforcement, reducing the burden on regulators.
- The Asia Pacific Economic Corporation (APEC)<sup>8</sup> and the Organisation for Economic Cooperation and Development (OECD) have both recognised advertising SR’s important role and called for greater capacity building of such systems.

<sup>6</sup> [European Union’s Better Regulation Package](#), European Commission, 2015

<sup>7</sup> See [Letter from Federal Trade Commission to National Advertising Division](#) in re Advertising by Creekside Natural Therapeutics LLC, for Creekside Focused Mind Jur. Dietary Supplement, March 31, 2020; see also [Electronic Retailing Self-Regulation Program](#) in re Advertising by Alo LLC, d/b/a Alo Yoga, June 20, 2019

<sup>8</sup> [Asia Pacific Economic Cooperation \(APEC\) Joint Ministerial Statement](#), APEC, 2017

## ANNEX 1: FURTHER INFORMATION AND REFERENCES

### Scoreboard of self-regulation best-practices

ICC highlights below some key elements to be considered for effective implementation of self-regulation:

- > Self-regulatory body
- > Code
- > Copy advice
- > Own-initiative monitoring
- > Free handling of consumer complaints
- > Online complaints facility
- > Publication of decisions
- > Appeals procedure
- > Process to address new issues (drafting and updates)
- > Promotional activity to build awareness of codes and complaint-handling options
- > Website
- > Remit includes digital marketing communications

Reference documents are available for more information.

### Useful links

[EASA/ICAS International Guide to Developing a Self-Regulatory Organization](#), ICAS, 2017

EASA's members: <https://www.easa-alliance.org/members/europe>

EASA's SR Charter: <https://easa-alliance.org/about-easa/charter>

EASA's video on 'What is advertising self-regulation?'

[European principles of better self- and co-regulation](#)

ICAS' frequently asked questions: <https://icas.global/advertising-self-regulation/faq>

ICAS members: <https://icas.global/about/members/>

### ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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