



CAP and BCAP consultation on proposals for guidance on the use of “up to” speed claims in broadband advertising

Communications Consumer Panel Consultation Response
February 2011

1. Summary

The Communications Consumer Panel is a panel of independent experts established under the Communications Act 2003 to advise Ofcom, Government and industry on the interests of consumers and citizens in the communications sector. This is our response to the Committee of Advertising Practice (CAP) and the Broadcasting Committee of Advertising Practice (BCAP) consultation on broadband speeds advertising. CAP and BCAP are the code committees of the Advertising Standards Authority (ASA) which has responsibility for the regulation of advertising.

In the Panel’s view, the “up to” descriptor is no longer credible or sustainable and must be replaced by some type of typical speed descriptor. This descriptor must be clear and simple to ensure consumers are able to understand which speeds they are likely to receive from different types of service. The descriptor must be short, use a single speed and indicate that the speed achieved is not the same for all. Sales materials and adverts should include a prominent statement encouraging consumers to ask for the actual speed at point of sale rather than describing in small print the reasons why speeds may be different.

2. Background

The Panel has been concerned for several years about the way in which broadband is advertised and about the information that is provided to consumers about broadband speeds. The Panel’s view is that the current approach of advertising “up to” headline speeds misleads consumers as actual download speeds are significantly

below advertised or headline speeds, as evidenced by independent research commissioned and published by Ofcom.¹

The Panel originally raised the issue of broadband speeds with Ofcom and industry in 2007. In September 2009 the Panel responded to the Business and Enterprise Committee Inquiry into Broadband Speeds stating that consumers needed accurate information about the speeds they could expect as there were considerable differences between the headline speeds advertised by many providers and the actual speeds individual consumers received. The Panel added that this issue had become even more important, because Panel research in 2009 had found that nearly three-quarters of people with broadband at home couldn't live without it and predicted that it would soon be essential for everyone². In December 2009 the Panel wrote to Guy Parker, Chief Executive of the ASA stating that it thought the advertising of broadband speeds was misleading and had the potential to distort the market, resulting in less choice for consumers.

During 2010 the Panel continued to engage with Ofcom and the ASA on this issue. In August 2010 the Panel wrote to Ed Vaizey, Minister for Culture, Communications and Creative Industries, stating that the Panel believed ISPs should change their advertising practices in order to avoid the danger of misleading consumers. The Panel wanted to see the strengthening of the CAP Code in order to require ISPs to advertise average or typical speeds rather than up-to-speeds. We therefore welcome this review.

3. Speed claims that are likely to be acceptable in advertisements

In the Panel's view, the “up to” descriptor is no longer credible or sustainable and is causing widespread scepticism amongst consumers. Using the “up to” descriptor in combination with a typical speed or speed range is also unacceptable. Such combined information does not pass the ‘simple’ test; consumers are likely to see the two descriptors as contradictory, which could lead to further confusion and scepticism. The Panel is clear that the “up to” descriptor must be replaced by a better descriptor, in our view some type of typical speed descriptor.

Whilst the Panel is not in a position to recommend a particular typical speed descriptor, it is clear that it should be designed and presented with the consumer in mind. To ensure that consumers are not confused about the speed they are likely

¹ *UK Broadband speeds*, May 2010 (Ofcom) <http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/broadband-speeds/broadband-speeds-2010/>

² *Not online, not included*, Communications Consumer Panel research report, June 2009 <http://www.communicationsconsumerpanel.org.uk/downloads/not%20online%20-%20not%20included%20-%20June%202009.pdf>

to receive CAP and BCAP should consider the following points when deciding which typical speed descriptor to choose:

- Descriptions of the service should be kept short and simple and important information must not be relegated to the small print.
- The descriptor should indicate that speed is not the same for all, therefore prompting consumers to ask for actual speeds for their property at point of sale.
- A single speed rather than a speed range is less confusing for consumers.
- The mathematical “average” term is confusing and irrelevant for many consumers.
- Not all consumers understand percentages and therefore could find a descriptor using a percentage figure confusing. Consumers generally find it is easier to understand descriptors such as “half”, “two thirds” or “three quarters”.
- Consumers are more interested in what they can do with a speed than what the speed actually is, so slow, medium and fast descriptors could be useful as part of a definition, provided the ASA give clear examples of what can be done with slow, medium and fast speeds.

Based on the above, we suggest that consumers are likely to respond favorably to typical descriptions, such as, “2 out of 3 people receive at least xMb” or “half of our customers receive at least xMb.” But this brings us to a final and critical requirement, that all concrete proposals will need to be tested with consumers.

4. Additional information

As previously mentioned the Panel does not advocate the use of the “up to” descriptor at all in broadband speeds advertising, as it has lost credibility with consumers. It follows that the Panel does not think the “up to” descriptor should be used in any qualifying phrase either.

Behavioral economics shows that disadvantaged consumers are more likely to become disadvantaged by confusing and lengthy information in adverts.³ Further it is widely accepted that consumers rarely read the small print in adverts. This leads the Panel to conclude that adverts must be short, simple and with minimum information included in small print.

³ Communications Consumer Panel Report: Behavioural economics and vulnerable consumers identifies how disadvantaged consumers are more likely to be confused, <http://www.communicationsconsumerpanel.org.uk/BE%20intro%20final%20with%20date.pdf>

Notwithstanding the above, the Panel would like sales materials and adverts to include a prominent statement encouraging consumers to ask for the actual speed at point of sale.

5. Substantiation Requirements

The Panel agrees that measures of performance should be representative of actual performance. The onus should be on ISPs to substantiate speed claims by providing robust data which is representative of the actual average or typical speeds its consumers receive.

6. Other points

Enabling consumers to make an informed choice between the packages offered by different providers encourages competition and investment. This is because providers who have invested in delivering actual speeds that are close to headline speeds are likely to be rewarded by consumers purchasing their packages. Consumers can make such informed choices only if they can easily compare the different packages and providers. Advertising is a key way in which consumers gain this information.

The Panel would like CAP and BCAP to bear in mind that what matters to consumers most is what they can do with a particular speed. We acknowledge that this is difficult to achieve in an appropriate and consistent way for advertising, but any steps in this direction would be particularly helpful to consumers.

The Panel recognises that there is an argument presented by some providers that a typical/average speed is unfair to those providers who have invested in rural areas with longer average line length and therefore lower average speed. We believe the appropriate response to this issue would be for providers to calculate the typical/average speed for each package available. This ought to encourage providers to place consumers on the most appropriate speed package and so reduce the gap between actual and headline broadband speeds.

The Panel recognises that as superfast broadband networks are rolled out and speeds in general increase, information about speeds could become less important for some consumers and so also less important for providers of service. But until the take-up of superfast broadband services is widespread it is important for current-generation broadband to be advertised with integrity and clarity, not least because otherwise consumers are likely to underestimate the benefits of switching from current-generation to superfast broadband.

7. Conclusion

The broadband market has changed significantly in recent years with a huge increase in the number of consumers using broadband and more and more consumers opting for packages claiming to provide much faster speeds. The Panel believes advertising practices for broadband speeds should be changed to avoid misleading consumers.

A clear and simple way of advertising broadband speeds should be developed to ensure consumers are able to understand which speeds they are likely to receive from different types of service. The Panel wants CAP and BCAP to choose a better, typical speed descriptor which does not use the “up to” descriptor at all and which is presented to consumers in a clear and meaningful way. It should be short and simple, using a single speed and indicate that the speed achieved is not the same for all. In describing how many customers are likely to achieve the advertised speed, percentages should be avoided. Instead descriptors such as “2 out of 3 people receive Xmb” or “half of our customers receive Xmb” should be used. Sales materials and adverts should include a prominent statement encouraging consumers to ask for the actual speed at point of sale rather than describing in small print the reasons why speeds may be different.