

EGBA NEWS

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Editorial



The European Commission has closed its consultation on online gaming and betting and we eagerly await the European Parliament own-initiative report.

Meanwhile, legislation continues to be adopted by EU Member States, leading to varying approaches to our sector. Against this backdrop, EU policymakers are starting to think in earnest about the need for an EU framework and what it might contain. There is no shortage of questions that could be tackled at EU level. Items that immediately spring to mind are streamlining licensing and auditing requirements in order to avoid duplication of cost and effort, considering the fairest way to tax the sector, and formalising coordination between European regulators.

But this issue of EGBA News deals with another central question: online safety and ethics. Keeping consumers – especially children – aware and safe online will also be the first question for policymakers when they debate the EU framework. To borrow an Americanism: ‘we have the technology’. Indeed it would be self-defeating if online business sectors such as ours had not thought deeply about how to create secure online environments. So we have the requisite tools, and innovation constantly brings technical improvements. But it is counter-intuitive that, in a single market of 500 million, Europe does not yet have harmonised online consumer protection standards. Let’s use the current momentum to put this right.

Sigrid Ligné
EGBA Secretary General



Online safety and ethics

Responsibility in advertising matters: how are betting and gaming operators faring in responsible marketing practice?



Oliver Gray,
Director General,
European Advertising
Standards Alliance



1. What does the European Advertising Standards Alliance do?

The European Advertising Standards Alliance (EASA) brings together national advertising self-regulatory organisations (SROs) and organisations representing the advertising industry in Europe and beyond. It is the single authoritative voice on advertising self-regulation issues, and promotes high ethical standards in commercial communications. EASA does so by publishing best practice recommendations and guidelines to ensure effective self-regulation, while being mindful of national differences of culture, legal and commercial practice.

2. How is online gambling covered in the advertising rules and how does it fare in terms of complaints?

The gambling sector is not a new area for advertising SROs. While some may have specific provisions in place for

advertising of gambling products and services, all SROs cover advertising for on and offline gambling through rules on protection of minors, misleading advertising, offensive advertising, gender portrayal, and digital marketing communications. This is why it is vital for online gambling operators to know the relevant codes and contact national SROs to ensure that marketing campaigns contain legal, decent, honest and truthful advertising.

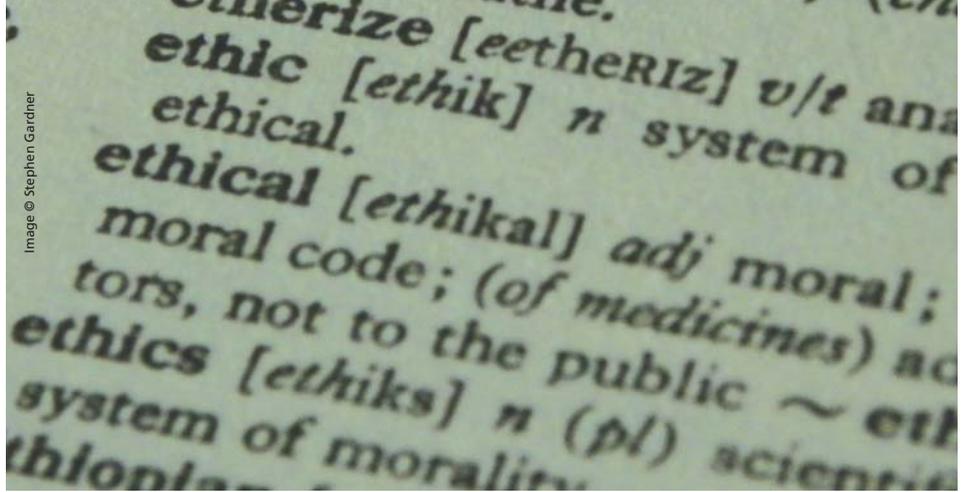
SRO juries will independently adjudicate on received complaints to determine if an ad breaches the codes and what action to take. The number of complaints is not necessarily proportionate to the number of upheld decisions. The Advertising Standards Authority (UK), for example, received 1,313 complaints for a Paddy Power ad (the second most complained about UK TV ad that year) and on the basis of the rules did not uphold complaints. Thus far in 2011 the ASA has upheld 40 complaints related to 7 different ads. In Spain, despite there only being 3 cases related to gambling



All self-regulatory organisations cover advertising for on and offline gambling.



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- All SROs cover advertising for on and offline gambling through rules on protection of minors, misleading advertising, offensive advertising, gender portrayal, and digital marketing communications.
- It's vital that marketing campaigns contain legal, decent and truthful advertising.
- Rather than an alternative, advertising self-regulation is complementary to legislation.



ads, the Spanish SRO (Autocontrol) upheld all of them.

EASA also manages a cross-border complaints mechanism. Between 1992 and 2011, EASA SROs handled 2,318 cross-border complaints, 421 of which were related to gambling and lotteries. A large number of these complaints related to bogus competitions and lotteries by unlicensed, unregulated operators attempting to defraud vulnerable consumers. Up until 2009 this represented the product category with the second highest number of cross-border complaints.

3. Is advertising self-regulation simply an alternative to national and EU-level legislation?

As reflected in our response to the recent EU Green Paper on online gambling, rather than an alternative, advertising self-regulation is complementary to legislation.

We firmly believe that advertising self-regulation should be considered as a viable policy option, in conjunction with EU legislation, in the field of commercial communications as an effective means to ensure consumer protection.

4) How has the online gambling industry reacted to the growing influence of self-regulatory advertising codes?

We are encouraged by EGBA's willingness to raise ad standards across the sector and work closer with EASA.

A number of players in the online gambling industry, however, still see their advertising campaigns stopped by self-regulatory organisations for irresponsible marketing communications. One big UK operator, for example, had three ad campaigns ruled against by ASA, the UK SRO, this year alone. Such adjudications can prove costly for gambling operators since they usually enforce the removal of ads and damage a company's reputation. We recommend that online gambling operators, before launching new advertising campaigns: a) ensure they are compliant with national advertising self-regulatory codes, as well as relevant national and EU law, in countries where they wish to advertise and b) seek copy advice from national SROs via EASA's copy advice link: www.ad-advice.org.

For more information about your SRO, reports and statistics and other EASA activities, visit: www.easa-alliance.org.



Image: <http://www.safeinternetday.org>

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Since the new gambling law became operable we have not heard of a single case where a child has evaded a gambling sites' controls.

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Keeping children safe online



John Carr, Secretary of the Children's Charities' Coalition on Internet Safety in the UK

1. What is the Children's Charities' coalition on Internet Safety?

The Children's Charities' Coalition on Internet Safety (CHIS) is an advocacy and lobbying organisation. The focus of our work is the internet and its associated digital technologies and devices. We aim to make them as safe and rewarding as they can possibly be for children and young people. Internationally CHIS normally works through the European NGO Alliance for Child Safety Online (eNACSO).

CHIS was officially born in 1999 although it can trace its roots back to the 1980s. CHIS now has 11 member bodies. These include all of the UK's largest professional children's organisations.

Every CHIS member is a charity. Representatives of CHIS member bodies are frequently found on Government advisory and expert bodies, both national and international, contributing to public policy development, regularly commenting in both the general media and in professional journals.

2. What was the background to the 2010 briefing and what was the main outcome in relation to gambling?

CHIS first got involved in the question of online gambling in 2002, after a

number of parents got in touch with us to complain that their children had been diagnosed as gambling addicts. It turned out that their addiction had started in the online space. Mainly through the use of plastic, solo cards for example, they had been going online and spending their pocket money on the horses, or in casinos and what have you. We thought this was outrageous. 18 was the minimum age, yet some kids as young as 12 and 13 were now in a bad way.

The gambling industry was sympathetic to our protests but it was not until the law changed, in the Gambling Act, 2005, that anything serious happened. Now every gambling web site that wants a licence from the UK Gambling Commission has to put in place a robust age verification mechanism. This is done by working closely with leading third-party verification providers that will cross check the customer's data with a number of public data sources such as credit cards, directory inquiries and electoral lists. Since the new gambling law became operable in 2007 we have not heard of a single case where a child has successfully evaded the gambling sites' controls in the same ways that previously were commonplace. This is even more remarkable because some claim that it is very difficult to regulate the internet and that because of its highly devolved nature there is little or nothing that can be done anyway. That may have been true once, but it is far from being the case today.

3. Are there any lessons that can be learnt from the gambling sector

and that could be replicated to other parts of e-commerce?

Absolutely. If it can work for gambling it can work for any product that is also rated age 18 or above. Consideration should be given to establishing a licensing system similar to that which exists within the gambling industry i.e. in order to sell any age restricted product or service online a licence would be required and this would only be issued if the vendor could show they had put in place a robust age verification system which works at the point of sale. The recent emergence of prepaid credit cards which can, in effect, be used anonymously over the internet has heightened our anxieties, not so much about gambling but other online age-restricted products and services.

4. Do you think this model could be followed in the rest of the EU? What are the conditions for it to function?

Without doubt. All that is needed is the political will on the part of the legislators. Age verification can be implemented rapidly, cheaply and at scale. However, in practice, every EU Member State seems to interpret the data protection rules a little bit differently and even though we all use more or less the same sorts of public data sources to verify customers' identities, these differences in how the data protection rules are interpreted mean that age verification is currently a challenge to implement successfully across the EU in the absence of common rules.



In each issue of EGBA News, Professor Dr. Dr. h.c. Claus-Dieter Ehlermann provides his opinion on legal questions at the heart of the online gaming debate.



Professor Dr. Dr. Ehlermann, Senior Counsel at WilmerHale and a former Director-General of the Legal Service of the European Commission.

On the brink of its 2011 summer break, the European Union Court of Justice provided major clarifications on how EU law requirements must be applied to online gambling in the *Zeturf* judgment¹. This is important, as much of the previous gambling jurisprudence was in the context of 'traditional' gambling and therefore questions remained about how some requirements related to online gambling.

In the earlier landmark judgment *Carmen Media*², the Court had clarified that the gambling legislation of each Member State must ensure proportionality between the degree of regulatory restriction and the degree of achievement of the pursued objective (the 'comprehensive sliding scale concept of consistency').

However, *Carmen Media* had left unclear whether and how to apply this consistency requirement to online games. It had suggested that a complete prohibition of all online games "may, in principle, be regarded as suitable". But this statement could only be true if every single type of game played online posed higher risks for the pursued objective than every single type of game that is allowed in the traditional channels. This would require the internet to have some mystical capability of dramatically increasing the consumer risks associated with all types of games, even



The legal view

Online gambling regulation must be consistent

those that have low inherent product risks associated with them. If the internet does not have that mystical capability, a complete prohibition will not be consistent and therefore not in compliance with EU law.

In the *Zeturf* judgment, the Court has removed all doubts raised by this statement in *Carmen Media*.

Consistency requirement applies also to online games

In paras. 81-83 of *Zeturf*, the Court considers that the risk level of online games is an important factor (among others) in determining how the restriction on online games should be assessed and that, in many cases, the online channel does not at all increase the risk level of a given game beyond the risk level associated with the traditional channels.

This clarifies that the comprehensive sliding-scale concept of consistency is fully applicable also to online games. This also does away with the above mentioned internet-risk mysticism. No one could make this clearer than the Court itself makes it by plainly stating in para. 75 that the internet is "a simple channel through which games of chance may be offered".

Internet is equivalent and offers advantages

What is more, in para. 74 the Court refers to previous judgments in which it had found that, when it comes to consumer protection, the internet distribu-

tion channel is equivalent to, and in some respects even offers advantages over, traditional distribution channels. The Court also points out that the internet is a "particularly effective" distribution channel.

Consistency assessment across channels

In paras. 76, 77 and 81 of *Zeturf*, the Court finds that (at least) where the pursued legal objective is consumer protection, the consistency requirement must be applied across the online and the traditional channels to the extent that customers consider the channels mutually substitutable, unless the consequence of using the internet is "to increase the risks linked to games of chance beyond those that exist in relation to games marketed through traditional channels".

Moreover, in para. 82 of *Zeturf*, the Court holds that, if the national legislation of the respective Member State does not differentiate between the online and the traditional distribution channels, then it is automatically presumed that the online channel does not pose higher risks than the traditional channels, with the consequence that these channels should be assessed together.

These findings are convincing and comply fully with the principle of proportionality under the primary law of the TFEU. The *Zeturf* judgment must therefore be welcomed.

¹ Judgment of 30 June 2011 in Case C-212/08, *Zeturf v Premier Ministre*.

² Judgment of 8 September 2010 in Case C-46/08.