

August 2023

## International Survey on timeframes and policies in place in which an ad is not reconsidered if it has already been adjudicated

Ad Standards (Australia) requested information from SROs on their approach regarding past decisions made about the same/similar ads and submitted the following questions:

1. *Is there a specific timeframe within which your SRO will not consider the same or similar complaint about an advertisement that has already been determined?*
2. *For instance, would you consider the advertisement again after a period of 3 or 5 years (if you received a complaint), or do you have other policies in place?*
3. *Additionally, based on your experiences or observations, what can you say about the rate of change in community standards/ codes and how often they should be reviewed, and does it vary depending on the subject matter?*

ICAS and EASA received a total of 17 answers from SROs from across the world.

Country	SRO	Response
Austria	Österreichischer Werberat (ÖWR)	<p><b>To 1 and 2: Timeline in which an ad is not reconsidered and policies in place:</b></p> <p>Regarding ÖWR, we receive the same complaint about an advertisement that has already been decided, we look at whether the decision was made by the current panel or the previous one.</p> <p>In Austria, the decision-making body is re-elected every three years. If it was made by the previous one, we let the current panel decide again.</p>

		<p>This makes sense for us because the decision-making body with new members brings in new perspectives. Especially in the area of gender discrimination or the environment and sustainability, societal views change quickly and so we can represent these developments well in our decisions.</p>
Chile	<p><b>Consejo de Autorregulación y Ética Publicitaria (<a href="#">CONAR</a>)</b></p>	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> Conar Chile doesn't have any rule in this matter. If the ad is being complained about again, we don't have problems in taking a new decision.</p> <p><b>To 2: Policies in place:</b> If there are new arguments or the context changed, the decision can change.</p> <p><b>To 3 - Rate of change to community standards:</b> We are now making a review of our code (last time was in 2018) to prepare our 7th edition. We think changes depend in the development of new topics and how quick they appear, generating the necessity to change de code, but an advisable rate to change the code can be 5 years.</p>
Czech Republic	<p><b>Rada Pro Reklamu (<a href="#">RPR</a>)</b></p>	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> If RPR considers a similar or the same ad, the decision is mostly based on the past decision to create a predictable self-regulatory environment.</p> <p><b>To 2: Policies in place:</b> There is no such case in RPR's history.</p> <p><b>To 3 - Rate of change to community standards:</b> Predictability is one of the core values of any (self-)regulatory system. Therefore, changes should be made as rarely as possible. All changes in code or procedures should be initiated by members themselves and widely discussed. Self-regulation is based on the general agreement of the members/market participants.</p>
France	<p><b>Autorité de régulation professionnelle de la publicité (<a href="#">ARPP</a>)</b></p>	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> We don't have a pre-determined timeframe. It would depend if the context has changed: e.g., a new Code has been adopted since the last decision, new public sensitivity on the subject, new law passed on the subject etc.</p> <p><b>To 3 - Rate of change to community standards:</b> The reviewing of Codes depends on the subject, some subjects like digital advertising need to be updated very often, other subjects don't.</p>

Germany	Deutscher Werberat (DWR)	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> No, there is no specific timeframe. Usually we uphold the complaint (without a time limit), if the advertiser has not removed the ad and is still using it. In cases where we did not see a breach we might reconsider a decision, if for example the societal discourse has changed. There is no specific timeframe for this though.</p> <p><b>To 2: Policies in place:</b> We usually take a look at our old decision and stick to it, except in some cases, as mentioned above.</p> <p><b>To 3 - Rate of change to community standards:</b> It depends on the subject. There are some codes that have been in place for a long time (for example on advertising with accident-risk image motifs) and others that need to be looked at more frequently (alcohol, food for example).</p>
Germany	Zentrale zur Bekämpfung unlauteren Wettbewerbs (Wettbewerbszentrale)	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> There is no specific time frame in which we would disregard a past evaluation of an ad. However, new laws or court rulings may change our legal assessment of an ad.</p>
Greece	Advertising Self-Regulation Council (SEE)	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> There is no specific timeframe. A case for the same ad and the same or similar complaint can “re-open” after a Jury decision has been issued, <u>provided there are sufficient/substantial reasons to do so</u>. So, what we take into consideration is not the time frame but whether there are solid grounds that justify reconsidering a case.</p> <p>For example, considering that market conditions may have changed (e.g., new players have entered the market, sales figures have changed), a superiority claim can be examined again, to decide whether it may/or may no longer be valid.</p> <p>Also, (in case of competitor complaints) the complainant / competitor being different may be considered a solid reason to re-open a case, as he might have new/different data at his disposal, capable of changing the previous decision.</p>
Luxembourg	La commission pour l'éthique en publicité (CLEP)	Not applicable for Luxembourg.

India	<p><b>The Advertising Standards Council of India (ASCI)</b></p>	<p><b>To 1: Timeline in which an ad is not reconsidered:</b></p> <p>Assuming that we are referring to an earlier advertisement which is being re-published with the same content, at present ASCI does not have any particular time frame within which the same advertisement or a similar complaint would be reconsidered. Unless we find that the advertisement could potentially violate a new or revised guideline. To determine if we should reconsider, the complaint we would check if the product has undergone a change in formulation or if there are any new guidelines / revised Guidelines under which the advertisement could potentially violate the code.</p> <p><b>To 2: Policies in place:</b></p> <p>If it is a case which was found in violation of the ASCI Code, the advertisement would be considered as a continued violation of the ASCI recommendation. The complainant would be provided with the recommendation.</p> <p>We would reach out to the advertiser again to ensure compliance referring to the earlier ASCI recommendation. This helps us understand whether the advertiser has any additional data which was not provided earlier to support the complaint. If there is additional data, we would take this up as a fresh matter. However, if we find that the advertiser still does not attempt to comply with the earlier recommendation, then we would escalate the case to the Regulatory Authority for necessary action in accordance with the Law.</p> <p>If it is a case which was not found in violation of the ASCI Code, we will only reconsider the case provided that the product has undergone any change in formulation.</p> <p><b>To 3 - Rate of change to community standards:</b></p> <p>In a digital era where the advertising landscape is constantly evolving in response to rapid socio-economic changes, there may arise a need to check if the already established codes/guidelines require additions to address certain current issues or concerns. This is subject matter dependent; for example, the Influencer guidelines may require changes more frequently as the space is dynamic and constantly evolving.</p> <p>There may be instances where complaints against a particular issue may require a need to visit the code to understand if there is a requirement to modify an already well-established code. For example- ASCI made an addition to the ASCI Code in Chapter III - Against harmful products &amp; Situations to include deriding of a body shape <i>3.1(b) no advertisement shall be permitted which derides any individual or group on the basis of race, caste, colour, religion, gender, body shape, age, sexual orientation, gender identity, physical or mental conditions or nationality.</i></p>
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		Another important guideline on harmful stereotypes was issued in response to an observation that as society progresses and evolves, norms on what is acceptable to consumers and other stakeholders also evolve. While harmful stereotypes are not only present in advertising, and advertising is not the only factor that reinforces these stereotypes, it was important for advertising to play its rightful role and not contribute to the perpetuation of such stereotypes. As the gender landscape is a complex issue, the guidelines provide a specific interpretation of ASCI Chapter III (against harmful situations) as it relates to harmful gender stereotyping in advertising.
New Zealand	The Advertising Standards Authority ( <a href="#">ASA</a> )	<p><b>To 1 and 2: Timeline in which an ad is not reconsidered and policies in place:</b>            ASANZ does not have a formal policy, but current guidance is a two year timeframe if the complaint is the same or substantially similar.</p> <p>Complainants are sent the following text and a copy of the relevant decision:</p> <p>"Similar issues to those that you have raised were recently ruled on by the Complaints Board (or Chair of the Complaints Board).</p> <p>A copy of the Decision is attached for your information.</p> <p>When we receive complaints that raise matters which have already been determined, the earlier decision is deemed to apply. Further complaints are not processed for a separate ruling and therefore do not have right of appeal."</p> <p>The Chair may determine that a shift in community standards warrants a complaint being referred to the full board – we have an example from 2019.</p> <p><b>To 3 - Rate of change to community standards:</b>            Our codes policy aims to have substantive code reviews every five years. There is some flexibility in this timeframe to assist with workload management.</p>
Philippines	Ad Standards Council ( <a href="#">ASC</a> )	<p><b>To 1: Timeline in which an ad is not reconsidered:</b></p> <p><b>FOR ADS THAT WERE <u>CLEARED WITH THE ASC (PH)</u> AND ARE BEING COMPLAINED BY A COMPETITOR:</b> A complaint may be filed against the ad within a 60-day prescription period from the time</p>

of first implementation of said ad. If the complaint is filed BEYOND the 60-day, then the ASC will no longer accept the complaint for hearing.

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**COMPETITOR:** There is no prescription period in filing of a complaint against an ad which was not cleared by the ASC. Aside from a panel hearing to discuss the content claims, a procedural complaint will be raised to the ASC Technical Committee for evaluation to determine if a procedural infraction was committed, i.e., implementing an ad containing claims that must be pre-screened with the ASC BUT was implemented without ASC review and clearance. This is subject to a penalty for pre-screening violation.

If a material was already complained on and a PANEL has already rendered a decision on certain complained points (copy/visual), these complained points (copy/visual) may no longer be cited by a new complaining party IF the same code provisions are cited as being violated. However, if the code provisions allegedly being violated are different from what were cited in the first complaint hearing, then the complained points (copy/visual) will be accepted, and a hearing will be scheduled.

Note that our PANELISTS are composed of industry volunteers who spend around two (2) hours hearing a complaint. They come from various sectors such as the advertisers, creative agencies, and media and should have no conflict of interest with the product category being heard.

**To 2: Policies in place:**

Ad materials which are found to have valid complained copy/visual points are subject to a Cease-and-Desist Order. The advertiser has the option to address the valid complained copy/visual points and immediately re-apply with the ASC to get a clearance so the advertiser can implement this again. This is truer for ad materials which were not pre-screened with the ASC prior to implementation. For ads cleared with the ASC and were complained, the hearing panel generally tends to uphold ASC's clearance given to the material because the complainant is not able to provide enough evidence to disprove the claim(s) cleared by the ASC.

Note that clearances issued by the ASC generally have a maximum of one (1) year validity. Should the advertiser wish to continue implementation of the material, it has to be re-applied with the ASC to determine whether the claims being made are still factual, truthful and accurate.

**To 3 - Rate of change to community standards:**

The ASC generally undergoes a major review of the Code of Ethics and Standards every 3-4 years. This is to make sure that the latest developments in consumer behavior and media landscape are up-to date. We also take into consideration the updates in the Global ICC Code which is issued every 2 - 3 years, I

		believe. In between the major review of the Code, the ASC issues Circulars to the industry on new government regulations affecting advertising and these are implemented immediately. When the major update is done, we make sure that the items issued as circulars are incorporated in the updated COE and Standards. These changes are also concurred by the member organizations comprising the ASC.
Romania	Romanian Advertising Council ( <a href="#">RAC</a> )	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> No</p> <p><b>To 2: Policies in place:</b> For us, the market data should have changed in order to analyse the same ad again. Also, the substantiation for claims made should be recent, which means 1 or 2 years old, if there is no other similar claim made by another competitor. For example, when it comes to telecoms, when companies claim to be the No 1 in country reach or No 1 in providing 5G, or other specific technical claims it will depend on the studies backing the claim. Every year the market data changes, so in this case we would consider another complaint after 12 months.</p> <p><b>To 3 - Rate of change to community standards:</b> We usually update the code every two years.</p>
Slovakia	Rada Pre Reklamu ( <a href="#">RPR</a> )	<p><b>To 1: Timeline in which an ad is not reconsidered:</b> In general RPR does not have a specific time frame.</p> <p><b>To 2: Policies in place:</b> Re-assessment of an advertisement (if we received a complaint) shall be considered in the following cases:</p> <ul style="list-style-type: none"> <li>a) When the same content of the advertisement is used for distribution (or subsequently discovered) on a different medium (communication channel) than the one used in the previous assessment.</li> <li>b) When the advertisement with the same content is placed (or subsequently discovered) in a different context (e.g., especially concerning children and youth, believers, etc.) than the one used in the previous assessment.</li> </ul>

		<p>c) When the original advertisement for the same product is supplemented, omitted, or otherwise altered in its content.</p> <p>d) When new facts are discovered regarding the advertisement that were not known to the Commission at the time of the previous assessment and which may currently have an impact on the modification of the finding's content.</p> <p><b>To 3 - Rate of change to community standards:</b> It depends on several factors. In general, the most significant influences on the change of the code are:</p> <ul style="list-style-type: none"> <li>-Current trends in marketing communication</li> <li>-Impact and changes in legislation</li> <li>-Consumer sensitivity to specific types of communication</li> <li>-The overall societal situation</li> </ul> <p>Every year, we evaluate these factors, taking into account the current situation, and if necessary, we adopt changes in the Code.</p>
South Africa	Advertising Regulatory Board ( <a href="#">ARB</a> )	<p>We see a decision binding once it is made – to do otherwise creates too much uncertainty in the marketplace.</p> <p>Before Covid we had a situation where we had ruled on an ad for Doritos pre-Covid. The complaint was about people licking each other's hands – and we said that it was over the top and humorous and nobody would actually do that.</p> <p>During Covid we got a new complaint, with the whole context of social distancing and being really careful about spit. We weren't sure what to do, because we did think that the context had changed, so we wrote to the advertiser and asked them to comment on whether they thought the context had changed with Covid. We got lucky, because at that point they decided to pull the ad, and we never had to decide whether we could revisit the decision.</p>
Spain	Asociación para la Autorregulación de la Comunicación Comercial	<p><b>To 1: Timeline in which an ad is not reconsidered and policies in place:</b></p> <p>The Rules of AUTOCONTROL Jury state that if it is a complaint about an advertisement on which the Jury has already adjudicated, the complaint cannot be processed. However, the Jury may accept the complaint</p>

	<p><u>AUTOCONTROL</u></p>	<p>if there are justifiable reasons, such as a change in standards that could alter the outcome of the complaint. If it is not the exact same advertisement or the issues complained about are different, there is not a time frame for the Jury to consider the complaint, as long as the advertisement is still being disseminated. This is because the Jury can only accept complaints against advertisements that had been disseminated during the last 12 months.</p> <p>For copy advice there is not any time frame. The legal team will review ads as often as it is demanded. In general, Copy Advices do not have period of validity, but we advise to request them on a regular basis (for example, once every year), and especially if there have been any regulatory changes that may affect the advertisement. There is one exception regarding toys advertisement. Toys Code establishes the term "new" may not be used for toys advertisements belonging to previous campaigns. Therefore, when a "new" claim is used in a toy advertisement under the scope of the Toy Code, the Copy Advice will only be in force during the current campaign.</p> <p><b>To 3 - Rate of change to community standards:</b> We do not follow a specific pattern. The timing and frequency with which codes are reviewed change greatly, depending on a variety of factors and the sector concerned.</p>
<p>UK</p>	<p>Advertising Standards Authority (<a href="#">ASA</a>)</p>	<p><b>To 1 and 2: Timeline in which an ad is not reconsidered and policies in place:</b></p> <p>We don't have a policy in place that dictates how much time needs to have passed before repeating an investigation. It would be context dependent, so we approach each case on its own merits.</p> <p>However, some general guidance would include:</p> <p>We're unlikely to consider an ad again within a very short timeframe. We give parties a reasonable amount of time to make any amendments. Changes to online ads are expected to happen very quickly, whereas more traditional media, where a run-in time applies (e.g. press), would be given a longer grace period.</p> <p>In terms of re-assessing more long term, it would depend on whether anything in the wider context has changed, such that our/Council's view of the ad is likely to be different. That could be a matter of months, or years, depending on the circumstances of the ad or the campaign.</p>

		<b>To 3 - Rate of change to community standards:</b> The last time we did a wholesale review of both Codes was in 2007-2010. Since then, various parts of the Codes have been reviewed as and when there is a need e.g. change in legislation, new evidence, etc.
USA	<a href="#">BBB National Programs</a>	<b>To 1: Timeline in which an ad is not reconsidered:</b> Our procedures provide that we cannot consider the same complaint once the issue has been decided.  <b>To 2: Policies in place:</b> No. But parties can petition to have us reopen and demonstrate that reopening the case warrants the expenditure of our resources. If the reopening is requested based on new evidence, the new evidence should not have been reasonably available to the party at the time the case was closed, and the new evidence would have likely changed the NAD or NARB decision in a material way.  <b>To 3 - Rate of change to community standards:</b> As we do not have a code-based system, this does not apply directly in the US. Of note, our general truth-in-advertising standard, under which we consider how ordinary reasonable consumers interpret ads, allows us to take into account changes in consumer understanding and expectations and remain current.