

Various forms of official recognition for advertising self-regulation

Introduction

Self-regulation is a system for enforcing standards managed by representatives of a given industry sector. It does not replace regulation but complements it by providing an additional layer of consumer protection. It is especially helpful to address issues on which it is difficult to legislate, such as issues with an ethical dimension.

Advertising Self-Regulatory Organizations (SROs) are funded by the advertising industry and they operate independently from public authorities. **A legal recognition of SROs is therefore not necessary for an advertising self-regulatory system to be put in place and to function well.** In fact, in several markets where advertising self-regulation has been working efficiently for years, there is no legal text referring to the SRO.

Irrespective of any legal recognition, SROs often have a close relationship with governments and other public authorities. This is because they work to ensure that the advertising self-regulatory system complements the regulatory framework in the best possible way.

In some countries, the concept of self-regulation and/or the role of the advertising SRO is formally mentioned or defined in legislation or in other statutory texts issued by public authorities. **This paper provides an overview of those markets where such legal recognition exists.**

Importantly, ICAS would like to stress that a formal recognition of advertising self-regulation, or the existence of signed cooperation agreements between SROs and governments, is not a necessary condition for effective advertising self-regulation. Whether such formal recognition is useful will depend in great part on the regulatory culture of the given market.

In order to compile this paper, ICAS sent a survey to its 24 SRO members in November 2019. As of 9 December 2019, **20 answers had been received.**

The markets/SROs for which no answers were received are highlighted in grey below:

<i>Country code</i>	<i>Country</i>	<i>Short name of the SRO</i>	<i>Long name of the SRO</i>
AE	United Arab Emirates	ABG	Advertising Business Group
AU	Australia	Ad Standards	Ad Standards Australia

BE	Belgium	JEP	Jury d'Ethique publicitaire / Jury voor Ethische Praktijken inzake reclame
BR	Brazil	CONAR	Conselho Nacional de Autorregulamentação Publicitária
CA	Canada	Ad Standards	Ad Standards
CL	Chile	CONAR	Consejo de Autorregulación y Ética Publicitaria
CO	Colombia	Autocontrol	Autocontrol Colombia
ES	Spain	AUTOCONTROL	AUTOCONTROL
FR	France	ARPP	Autorité de régulation professionnelle de la publicité
IE	Ireland	ASAI	The Advertising Standards Authority of Ireland
IN	India	ASCI	The Advertising Standards Council of India
IT	Italy	IAP	Istituto dell'Autodisciplina Pubblicitaria
MX	Mexico	CONAR	Consejo de Autorregulación y Ética Publicitaria
NL	The Netherlands	SRC	Stichting Reclame Code
NZ	New Zealand	ASA	Advertising Standards Authority
PE	Peru	CONAR	Consejo Nacional de Autorregulación Publicitaria
PH	The Philippines	ASC	Advertising Standards Council
PT	Portugal	ARP	Auto Regulação Publicitaria
RO	Romania	RAC	Romanian Advertising Council
SE	Sweden	RO	Reklamombudsmannen
SV	El Salvador	CNP	Consejo Nacional de la Publicidad
UK	United Kingdom	ASA	The Advertising Standards Authority
US	USA	BBB NP	BBB National Programs
ZA	South Africa	ASA	The Advertising Standards Authority of South Africa

1. Legal recognition of self-regulation

In a majority of the markets surveyed (60%), advertising self-regulation is officially recognized in the law or in some other regulatory text (decrees, etc.). This figure should however be handled with caution because legal provisions often only refer to certain types of ads (e.g. ads on broadcast media, ads for certain products like alcohol) and/or to a subset of the SRO's activities (e.g. consumer complaints).

In the US for example, there is no official mention of advertising SROs in the law. Nonetheless, Title 16, Part 312, paragraph 11 of the [Children's Online Privacy Protection Rule \(COPPA\)](#) explicitly refers to "self-regulatory program guidelines" in relation to safe harbor programs, as well as to an "effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines".

Interestingly, Peru very recently adopted a Decree promoting and regulating "the voluntary implementation of regulatory compliance programs on consumer protection and commercial advertising". This legislation establishes incentives for implementing self-regulation systems, i.e. fines and administrative inspections can be reduced or even eliminated in case a self-regulatory solution is adopted.

Overall, legal recognition appears to be more frequent in European and Asian markets than in the Americas. The SRO may or may not be explicitly mentioned in the law, and compliance with the self-regulatory standards may or may not be required for certain type of companies engaged in advertising and marketing activities. Besides, it is interesting to note that some of the largest and oldest advertising SROs do not benefit from an official legal recognition (e.g. Canada).

Here are some links to find out more:

Country	Legal text referring to ad self-regulation	Comments
ES	<ul style="list-style-type: none"> • Law 3/1991 on Unfair Competition (art. 37) • Law 7/2010 on General Audio-visual Communication (art. 12) • Law 13/2011 on gambling (art 7.4 & 24.5) • Law 3/2013 on the creation of the Spanish Commission of Marketing and Competition (17th Additional Ruling) • Circular 6/2010 of the Bank of Spain, for credit institutions and payment institutions, regarding advertising of banking products and services (rules 3 & 4) • Order EHA/1718/2010 on the regulation and control of the advertising of banking products and services • Order EHA/1717/2010 on the regulation and control of the advertising of investment products and services • Law 17/2011, of July 5, on food safety and nutrition (art. 45 & 46) • Law 7/2017 on the alternative resolution of consumer disputes (art. 39) • Organic Law 3/2018 on Protection of Personal Data and Guarantee of Digital Rights (art. 38) 	<p>Spain is the country with the highest number of legal texts referring to advertising self-regulation. The Spanish system has therefore a strong co-regulatory dimension, whereby the SRO and public authorities work in close coordination.</p> <p>It is also worth noting that AUTOCONTROL was the first SRO worldwide to be officially recognized as an Alternative Dispute Resolution (ADR) body.</p>
FR	The links to individual laws and decrees were not provided by ARPP.	Several regulatory texts (laws and decrees) mention advertising self-regulation and/or the SRO.
IN	<ul style="list-style-type: none"> • Cable Television Networks Rules, issued by the Ministry of Information and Broadcasting (art. 7) • Insurance sector regulation (link not provided) 	The Cable Television Networks Rules explicitly mention the ASCI Code.
IT	<ul style="list-style-type: none"> • Law 125/01 on alcohol • Legislative Decree 219/2006 on Medicines • Ministry Decree on veterinary medicines of 13 June 2003 	Self-regulation is also indirectly referred to in into State Law 3.5.04 n. 112 and Act 31.7.05 n. 177. This legal text incorporates the 2002 self-regulatory Code for Media and

Country	Legal text referring to ad self-regulation	Comments
		Minors, which in its article 4 recognizes the IAP self-regulatory Code.
NL	<ul style="list-style-type: none"> • Media Act (the law which implements the European AVMS Directive) (art. 29.92 & 3.6) • Regulation 2006/2004 and Consumer Enforcement Act - Decree designating bodies with a legitimate interest 	<p>According to the Media Act, all media services that include advertising in their program offer must adhere to the Dutch Advertising Code and join the SRO.</p> <p>Under the Decree, the SRO is designated as an “institution with a legitimate interest” in the termination or prohibition of intra-community infringements.</p>
NL	<ul style="list-style-type: none"> • Broadcasting Act • Regulations relating to the Copyright Act – Section 13 	The SRO Complaints and Appeal Boards are explicitly mentioned in the Broadcasting Act.
PE	<ul style="list-style-type: none"> • Law 29571 on consumer protection (art. VI item 6 & art. 112) • DS 006-2017-PCM on the National Consumer Protection Public Policy (# 3) • DS 185-2019-PCM on the promotion of advertising self-regulation (art. 4 & 10-13) 	<p>The Law and the first Decree recognize self-regulation as public policy tool.</p> <p>The second Decree, adopted in November 2019, cover incentives for implementing self-regulation systems.</p>
PH	<ul style="list-style-type: none"> • Implementing Rules and Regulation (IRR) of Republic Act 7394 on consumer protection (Rule XIV, Section 1 on Advertising Materials) 	The Regulation requires certain advertising materials to conform to the self-regulatory Code of Ethics.
RO	<ul style="list-style-type: none"> • Advertising Law 148/2000 • Audiovisual Law 504/2002 • Law 158/2008 regarding misleading and comparative advertising 	
UK	Communications Act of 2003	The law requires all broadcasters with an official license to operate in the UK to ensure that their ads comply with the self-regulatory code (BCAP).
US	Children’s Online Privacy Protection Rule (COPPA)	Title 16, Part 312, paragraph 11 explicitly refers to “self-regulatory program guidelines”.
ZA	Electronic Communications Act (s55)	The Act specifically mentions “the Advertising Standards Authority of South Africa” but is phrased in broad terms, so that the Advisory Regulatory Board was able to take over.

2. Formal agreements between SROs and public authorities

Whether or not the law of a given market officially mentions advertising self-regulation, SROs have the possibility to conclude special agreements with public authorities. As in the case of legal provisions, **written agreements with authorities are not necessary for self-regulation to be effective.** Nonetheless, in certain cases, agreements such as Memoranda of understanding (MoU) between SROs and public authorities (e.g. national or local governments, as well as specialized public agencies) may be useful to determine the respective role and responsibilities of regulation and self-regulation.

A majority of the SROs surveyed by ICAS (60%) have signed some form of written agreement with public authorities. In three cases (BR, CL, PT), these agreements were signed without the need for an official recognition of self-regulation in the law. Conversely, three markets where advertising self-regulation is recognized by law do not have MoUs in place (NZ, US, ZA).

Here are some further details on the type of activities/ads covered by existing MoUs:

Country	Areas covered by the MoU	Comments
BR	Intellectual property rights	The SRO and the main communication associations signed recently an MoU with the Consumer Protection Authority on the contribution of the advertising industry to the protection of intellectual property rights.
CL	Consumer protection	CONAR has signed an agreement with SERNAC, the Consumer Protection Authority.
ES	Various areas including food ads, gambling ads, data protection etc.	AUTOCONTROL has signed a total of 32 collaboration agreements with various national and regional authorities. At national level, agreements were signed with the following authorities: <ul style="list-style-type: none"> • The Ministry of Health, Equality and Social Policy; • the Ministry of Agriculture, Food and Environment; • the Information Society State Department and Agenda Digital; • the Spanish Agency of Food Security and Nutrition; • the General Secretary of Equality Policies; • the Markets and Competition Commission; • the Spanish Data Protection Agency; • the Directorate-General of Gambling Regulation; • Red.es.
FR	Audiovisual ads Financial ads Gambling ads Environmental claims Food & beverage ads	The SRO has signed agreements with: <ul style="list-style-type: none"> • the Audiovisual Authority; • the Financial Market Authority; • the Online Gambling Authority; • the Environmental State Agency; • the Health Ministry. More details on the ARPP website

Country	Areas covered by the MoU	Comments
IN	Misleading ads in all sectors	In 2015, ASCI signed an MoU with the Department of Consumer Affairs to look into complaints pertaining to misleading advertisements (across all sectors).
IT	Gender equality Out of Home Children rights Commercial communications	The SRO has signed agreements with: <ul style="list-style-type: none"> the Ministry of Equal Opportunities in 2011; the National Association of Municipalities (ANCI) in 2014; the Authority of the rights of children and minors in 2014; the Communication Authority of Italy, in 2018.
NL	General cooperation	The SRO has signed a cooperation agreement with: <ul style="list-style-type: none"> the Authority for Consumer and Markets; the Media Authority.
PE	General cooperation	The SRO has signed two agreements with Indecopi, the Consumer Protection Authority: an Institutional Agreement and a Protocol.
PH	Various ads and sectors (food & beverage ads, real estate ads, telecoms, movie ads, TV ads, etc.)	The SRO has signed an MoU with several government regulatory bodies including: <ul style="list-style-type: none"> the Food and Drug Administration; the Department of Trade and Industry. the Housing and Land Use Regulatory Board; the National Telecommunications Commission; the Movie and Television Review and Classification Board.
PT	General cooperation	The SRO has signed several protocols with the government (Consumer affairs Department) and Media Authority.
RO	Audiovisual ads	In 2003, the SRO and the public audiovisual body signed a protocol of cooperation.
UK	Broadcast ads (TV and radio)	Ofcom, the regulatory authority for communications, has delegated certain responsibilities as regards the oversight of broadcast media ads to the UK ASA. Link to the full text of the MoU

3. Other forms of recognition by public authorities

Beyond legislation and MoUs, **there are several ways in which public authorities can support the use of self-regulatory systems** as an efficient complement to advertising regulation.

A government entity may, for instance, include **a hyperlink to the SRO's website on their official website**. In Belgium for instance, both the [Federal State](#) and local governments (in [Flanders](#) and in [Wallonia-Brussels](#)) officially list the SRO on their website.

Government officials may also, in **speeches and public statements**, mention the importance of self-regulation and of the existing self-regulatory system. Several SROs have been mentioned, for instance,

in Parliamentary discussions around ethical issues in advertising. In Italy, the [Commercial Communications Guidelines relating to food products and beverages, for the protection of children and their proper nutrition](#) issued by the Ministry of Health make an explicit reference to the SRO.

In the absence of a cooperation agreement, some public bodies may unilaterally recognize the local SRO by granting it **a special status**. In Canada for instance, the SRO is recognised by the Ministry of Health as an [Advertising Preclearance Agency \(APA\)](#) for the purpose of reviewing and preclearing health product advertising.

Sometimes, **sectoral agreements on industry self-regulation enforced by SROs are steered and supported by public authorities**, although the authorities are not official signatories to the documents. In Belgium for instance, the Agreement on advertising for and marketing of alcoholic beverages was initiated by the Minister of Health. Endorsed by several industry bodies representing different types of alcohol, as well as the food and beverage sector, it is enforced by JEP, the Belgian SRO.

In several markets, public authorities may themselves **send complaints to the SRO** on ads considered inappropriate, or transfer complaints they received from consumers or other entities. Such actions also illustrate the trust placed by public authorities in the efficiency of self-regulatory systems.

In a limited number of cases, public authorities may have the possibility to **appoint a representative in the SRO's Complaints Committee** or in a governance body. This is without prejudice from the fact that SROs are funded by the advertising industry and managed independently from government. In Ireland for instance, the Consumer and Competition Protection Commission has a nominee on the SRO's Complaints Committee.

Moreover, **SROs are often consulted by public authorities** and sometimes invited to participate in advisory bodies, such as those dealing with consumer issues or with the oversight of the media. In Brazil for instance, CONAR has been consulted by the National Congress on a few occasions to provide information and advice on draft legislation regarding commercial communication.

Finally, in some cases, **the Courts may refer to self-regulatory advertising standards to substantiate their judgments**. In Brazil for instance, the Brazilian Supreme Court [declared](#) in 2015 that the self-regulation of ads for beer and wine was sufficiently effective, declaring valid the private control option as opposed to legal provisions.