Three Generations of Advertising Self-Regulation: Learning from our Forefathers

Debra Harker and Glen Wiggs

On a global scale, the advertising industry spends billions of dollars each year reaching and persuading its target markets through daily bombardment of thousands of ads in most developed countries. However, when advertising offends, misleads, or is untruthful, a structure needs to be in place in order to provide protection to all parties and, in most cases, a country's legal system is complemented by a self-regulatory scheme. Australia's scheme was dismantled at the end of 1996 and is currently in a state of flux as the industry formulates and introduces a new system. This article discusses the elusive aim of 'acceptable advertising' and compares the advertising regulatory systems in the United Kingdom, Australia, and New Zealand.

Keywords: advertising, self regulation, Australia, New Zealand, United Kingdom

Introduction

Advertising is pervasive (Drake 1988, p21), intrusive (Blakeney & Barnes 1982, p35) and, at times, pernicious. Moreover, the purveyors of the art have been known to be mischievous in their attempts to reach and persuade their target markets (Mittal 1994). It is estimated that worldwide expenditure on advertising has been 'growing faster than the world gross product' (Mooij & Keegan, cited in Agrawal 1995), indeed 1995 saw a 9% increase in world spend on the previous year (Advertising Age 1996). Globally, we are told, developed and developing societies are bombarded by 'several hundred millions of different advertisements' which are published and broadcast each year (Boddewyn 1992, p22). On the one hand, these figures are testament to the importance of this, the most visible, element of the marketing mix (Boddewyn 1989, p22), however they also raise concerns about the potentially harmful effects advertising can have on more vulnerable members of society.

A small proportion of advertisements are offensive, false, misleading, unfair, or socially irresponsible, or they are perceived as such by the marketplace. When this is the case, a structure needs to be in place in order to provide protection to all parties. To complement their legal systems, developed countries have established programs of regulation which in the main operate on a self-regulatory basis, where the industry is responsible for controlling the conduct of its own members.

The achievement of acceptable advertising through self-regulatory systems is a topic that has been debated in the leading marketing journals for over twenty years. This extant literature can be classified into two key areas. The first provides a significant, although somewhat descriptive, body of knowledge of advertising self-regulation in general and examines, for example, how various schemes function around the world (Neelankavil & Stridsberg 1980; Miracle & Nevett 1987; Boddewyn 1988, 1992). The second area is more prescriptive and provides normative guides for regulators and advertisers to develop *effective* advertising self-regulation programs. However, the current breakdown of the long established advertising self-regulatory system in Australia (Media Council of Australia 1996; Strickland 1996) highlights the fact that regulators and advertisers are still seeking a robust framework for effective advertising self-regulation.

Despite these research themes, little is known about how acceptable advertising can be defined and monitored. Thus, this article has three objectives: first, to present and discuss the key variables associated with acceptable advertising. Second, to use these variables as a framework for analysing the way advertising is regulated in the United Kingdom, Australia, and New Zealand.

Acceptable Advertising

Irrespective of whether they work within a legal or self-regulatory system, advertising regulators must still attempt to define 'acceptability'. Defining any value-laden term such as 'acceptability' is problematic, and this difficulty is exacerbated by the competing interests that enter into debates on advertising. That is, advertisers typically hold the view that, in a free society, they should be permitted to promote their products and services as they wish, provided they do not breach the privileges of free speech (i.e., their messages are not misleading, deceptive or defamatory). Agencies concur with this view, since it allows them to exercise their creative craft freely. Consumers and particular groups within the public believe such freedom needs boundaries. They argue that different product types and promotion styles should operate within constraints which recognise high risk elements (such as potential product abuse) intrinsic to the product.

Regulators attempt to deal with this issue by considering 'prevailing community standards', by ensuring complaints boards contain representatives from throughout the community, and by publicising their adjudications widely. These measures (discussed in more detail later) mean 'acceptability' is defined by default as advertising that did not clearly fall foul of legal or self-regulatory standards. This approach is pragmatic, since regulators must take decisions, but it needs also to be recognised that these decisions are subjective.

Applying the Framework

The Legal Regulatory Framework

The 'fundamental determinant' (Miracle & Nevett 1987, pxxii) of a developed or developing country's advertising self-regulatory system is a sound *legal regulatory framework* which complements the self-regulatory structure. The legal regulatory framework in this instance refers to the laws and regulations in place to protect society from unacceptable advertising, and also to those bodies charged with implementing the laws and regulations.

Much legislation which deals with advertising relates to aspects of consumer protection or regulation of competition (Sverdrup & Sto 1992). However, in most developed countries illegal advertising practices, encompassing 'unacceptable advertising', are governed by laws pertaining to 'marketing' or 'broadcasting' and many countries have umbrella legislation of this kind in place[1]. Further, there has been a recent world-wide trend to outlaw tobacco

[1] For example, New Zealand's Fair Trading Act 1986, the UK's Broadcasting Act 1990, Australia's Broadcasting Services Act 1992, the UK's Fair Trading Act 1973 and Australia's Trade Practices Act 1974.

advertising in many countries[2]. Regulatory agencies or bodies which complement this legislation are also apparent in all three countries[3].

There is an important overlap between a country's legal regulatory framework and its self-regulatory framework in relation to advertising. In order for the two frameworks to co-exist effectively many tasks and responsibilities can be delegated to each other, if the system is mature enough. For example, in countries which have established a national tripartite system (Boddewyn 1992, P9; Sinclair 1992, p3), whereby the advertisers, agencies and media are involved in the process, the chances of industry compliance with decisions are greatly enhanced. In this system, unacceptable advertising will not be published or broadcast by the various arms of the media. However, this aspect of the process was at the heart of Australia's demise as the Australian Consumer and Competitor Commission (ACCC) found the collusive nature of the practice to be illegal.

Whilst many critics of advertising would argue that the perpetrators merely opt for self-regulation as a protection against government intervention, it is this very situation that has assisted in the evolution of the more effective ASR systems. For example, systems such as New Zealand and the UK which do not have the luxury of a tripartite system still succeed in ridding their airwaves and soundwaves of unacceptable advertising with few problems. Indeed, the New Zealand regulators make a virtue of this *voluntary* approach, boasting that their advertisers willingly accept the Authority's decisions without a murmur. Indeed, there is a significant moral and peer pressure to comply otherwise the whole system is at risk and the possibility of government interference is apparent.

Many developing countries are now seeking to regulate their advertising in line with other more developed countries, such as the UK. Some South American countries, for example, are trying to develop an ASR system amid hundreds of laws and statutes relating to adverting in some way (Adriaensens 1998), making development of an effective and efficient system both arduous and lengthy.

All three countries in this study – Australia, New Zealand and the United Kingdom – have a *legal regulatory framework* that complements the *self-regulatory framework*, and in each case the two variables work together. Whilst there are many similarities between the three countries in terms of the types of laws in place to regulate advertising, it is apparent that establishment of a sound, committed, and supportive self-regulatory framework enhances the legal environment.

The Advertising Self-Regulatory Framework

Self-regulation has evolved differently in Australia, New Zealand and the UK (see Appendix One for diagrams). Whilst the UK and Australia's advertising self-regulation systems are funded in a similar way, by a proportion of billings, the UK percentage is six times greater than Australia's. This means that the UK's Advertising Standards Authority is more able to undertake *extra* activities which benefit the system overall, for example, many of its educational and informational services. However, it should be noted that the UK's system handles levels of complaints that are ten times the Australian levels. Thus, funding is a vitally

[2] Canada 1989, New Zealand 1990 and Australia 1992.

[3] For example the Australian Competition and Consumer Commission and New Zealand's Broadcasting Standards Authority. The UK's Fair Trading Act of 1973 established the Office of Fair Trading which was given wide powers to regulate advertising and marketing practices and practitioners (Boddewyn 1992).

important component of an effective advertising self-regulation program, indeed the lack of sufficient funds had a serious impact on the demise of the Australian system (Harker, 1998). New Zealand is cautious in this respect, opting for only half of their funds to be collected in this way, with the other half being made up by subscriptions.

Each of the systems in Australia, the UK and NZ operate in a similar precedential manner but each has a varying degree of effectiveness in this regard. All three systems require a complaint to be in writing and this in itself is problematical for the illiterate, poorly educated and inarticulate members of society who, nevertheless, have a fundamental right to complain. Each of the three systems then filters the complaints to gauge if a prima facie case exists, or if the complaint is outside the jurisdiction of the body. In the UK *all* complaints are eventually considered by the Advertising Standards Authority for final adjudication (Boddewyn 1992).

In all three systems, once determination is made, a formal written communication is sent to advertisers, complainants and the media involved. However, in Australia this part of the process was severely curtailed due to a lack of funds and the final situation saw only abbreviated summations of determinations being sent to the parties, which had a detrimental impact on precedent (Harker 1998).

Another unfortunate feature of the Australian system was the influence of rival advertisers on the complaints process. Whilst the majority of complaints made to Australia's Advertising Standards Council were made by members of the public, an increasing number came from industry sources. When in operation, the Australian complaint handling system visibly strained under the weight of rival advertiser complaints; this segment accounted for less than 10% of complaints made to the Advertising Standards Council (ASC Annual Reports, 1984-1996), yet often represented 25% of Council time spent in deliberation at meetings (Harker 1996). This situation has also been documented in other countries, such as Canada (Boddewyn 1992). The implications of this trend being that the system that segregates rival advertiser complaints, and perhaps opts for a 'user-pays' system, will be more effective in generating only those rival advertiser complaints that are for serious consideration, rather than frivolous. Also, such a system would allow appropriate time for consideration of complaints from other sources, such as the general public.

Understanding the advertising self-regulatory process involves examining *how* the systems operate as well as *who* is involved in the system. All three systems involve the public in the complaint adjudication process which, arguably, leads to increased effectiveness of the program (La Barbera 1980, p32; Boddewyn 1983; Armstrong & Ozanne 1983, p26; Moyer & Banks 1977, p194; Trade Practices Commission 1988, p53), and provides a credible and transparent process which is open.

There is no 'magic mix' regarding the make-up of a complaint handling body and there is little in the literature to guide us as to what ratio works best. Whatever the mix, the public persons who are involved in determining complaints are generally not 'ordinary people' but rather are of the 'great and the good' (Boddewyn', 1983, p83) and 'amateur, but often distinguished' (Tunstall 1983, p237). In essence, the public members of a complaint handling body are better educated and better known people and, usually, members of the 'Establishment'. However, one might question the appropriateness of selecting people such as these to represent the prevailing community standards of a society. Are the 'great and the good' *mislead* by advertising as easily as the 'ordinary people', are they *offended* to the same degree and by the same advertisements, can they be hoodwinked by *untruthful* advertising as easily as the

'ordinary people'? Generally there appears to be little creativity amongst the advertising self-regulation systems in operation around the world when it comes to the representation of prevailing community standards. However regular marketing research conducted with members of the public to gauge the prevailing community standards with regard to advertising would be one way of improving this representation.

Industry Compliance

Achieving *industry compliance* in an advertising self-regulation system is vitally important; else the program will be accused of impotence. Compliance is usually achieved through sanctions such as prosecution under law, in the most extreme circumstances, and financial incentives to comply with rulings from charter bodies. Both the UK and Australian ASR bodies have, in the past, resorted to passing on details of recalcitrant advertisers to the relevant government body for the necessary action (i.e. Australia's Trade Practices Commission[4]) when they have refused to comply with rulings. Similarly, as a first line of attack on recalcitrant advertisers who refused to comply, the Media Council of Australia, when in operation, would relieve advertisers of various trade allowances and discounts as an incentive to toe the line.

Complaint handling bodies achieve varying levels of success in relation to encouraging industry compliance; for example, where the advertising self-regulation system incorporates a national tripartite system (Boddewyn 1992, p9; Sinclair 1992, p3) and the advertisers, agencies and media are involved in the process, the chances of compliance are greatly enhanced as the complaint handling bodies are given 'teeth'.

Once New Zealand's complaint handling body, the ASCB, has determined that an advertisement is in breach of a particular code, modification or withdrawal of the offending material is usually sought. In most cases such action is forthcoming. However, where this is not the case, the advertising self-regulatory systems in New Zealand and the UK rely on an *unwritten* undertaking by advertisers not to publish or broadcast an advertisement which has been determined in breach of the Codes of Practice (ASA NZ 1993), whereas in Australia the tripartite nature of its system ensured that all members had to comply with the rulings of the complaint handling body.

New Zealand's appeals procedure is accessed through the quite separate Advertising Standards Complaints Appeal Board which has three members (two public, one industry) who adjudicate on any appeals (ASA NZ 1993). Australia's system, by comparison, required the discontented advertiser to produce *new* evidence before the same body, the Advertising Standards Council, would hear the case again. The availability of Australia's appeals system was not actively promoted and was rarely used (Harker 1996).

A key difference between the countries' advertising self-regulation systems is the capacity for New Zealand and the UK to consider rival advertiser complaints separately from others. The existence of New Zealand's 'Large Competitors' Sub-Board' and the UK's CAP, effectively removes lengthy, technical, deliberation from the regular complaint handling meetings. The Australian system, when in operation, visibly strained under the weight of rival advertiser complaints (Harker 1998).

[4] Now known as the Australian Competition and Consumer Commission.

Summary and Conclusions

Despite the difficulty of defining 'acceptable advertising', self-regulatory frameworks draw upon a wider range of views than do legal structures (which rely on judge, counsel and, occasionally, consumer surveys), and provide an efficient and cost-effective alternative to legal proceedings. This article has suggested that there are three key variables that need to be addressed when constructing an effective advertising regulatory system: the legal regulatory framework, the self-regulatory framework, and achieving industry compliance. Three countries have been examined using these variables in an attempt to understand how each country approaches its mix and what can be learnt from each approach. Table 1 provides a comprehensive summary of the comparison between the three chosen countries.

Table 1. Summary of Comparison: Advertising Regulation in New Zealand, Australia and the United Kingdom

	New Zealand **ASCB**	**Australia** **ASC**	**United Kingdom** **ASA**
Established	1988	1974	1962
Funding	50:50 levy:subs	0.017% all billings	0.1% all billings
Number of Codes or guidelines	13	5	1
Complaint procedure	Written & signed	Written	Written
Number of complaints per year	546 (1996)	1,135 (1996)	12,055 (1996)
Complaint turnaround	6 weeks	6 weeks	'Quickly'
Monitor ad trends?	No	No	Yes
Monitor complaints?	Yes	Yes	Yes
Complaint handling body - industry:non-industry members	4:4	6:10	4:8
Industry complaints considered?	Separate - at Large Competitors' Sub-Board	At ASC meeting - increasing demand	Separate - CAP
Industry Compliance Sanctions?	Voluntary Modification or withdrawal of ad.	Compulsory Modification or withdrawal of ad. Else: loss of $ privileges	Compulsory Modification or withdrawal of ad. Else: adverse publicity, refusal of space, removal of $ incentives.

Whilst all three countries try to achieve *industry compliance* through their advertising self-regulation schemes, where the scheme incorporates a national tripartite system (Boddewyn, 1992:9; Sinclair, 1992:3) and the advertisers, agencies and media are involved in the process, the chances of compliance should be greatly enhanced as the complaint handling bodies are given 'teeth'. When the Australian body was in place, prior to 1997, the system achieved *compulsory* industry compliance with this method. New Zealand and the UK, on the other hand, rely on the goodwill of the industry to achieve compliance.

What does all this mean for advertising self-regulatory schemes? This article suggests that those formulating new advertising self-regulatory frameworks in countries such as Australia can learn from other successful schemes. The UK system has been described as the most developed and effective scheme in the world (Boddewyn 1992), whilst New Zealand's system was originally based on both the UK and Australian systems. However, perhaps the key to successful evolution is New Zealand's approach of adapting the best of each to suit its own needs and then continually reassessing the needs of the stakeholders to remain current.

With several hundred million advertisements (Boddewyn 1992) being broadcast or published each year, developed and developing societies are demanding advertising that is acceptable to all; that is, commercials that do not mislead, are truthful and do not offend. In this endeavour, society is assisted by a structure of regulation which has the same goal - acceptable advertising. One way of building for the future is to look to the past and learn from other, successful, schemes.

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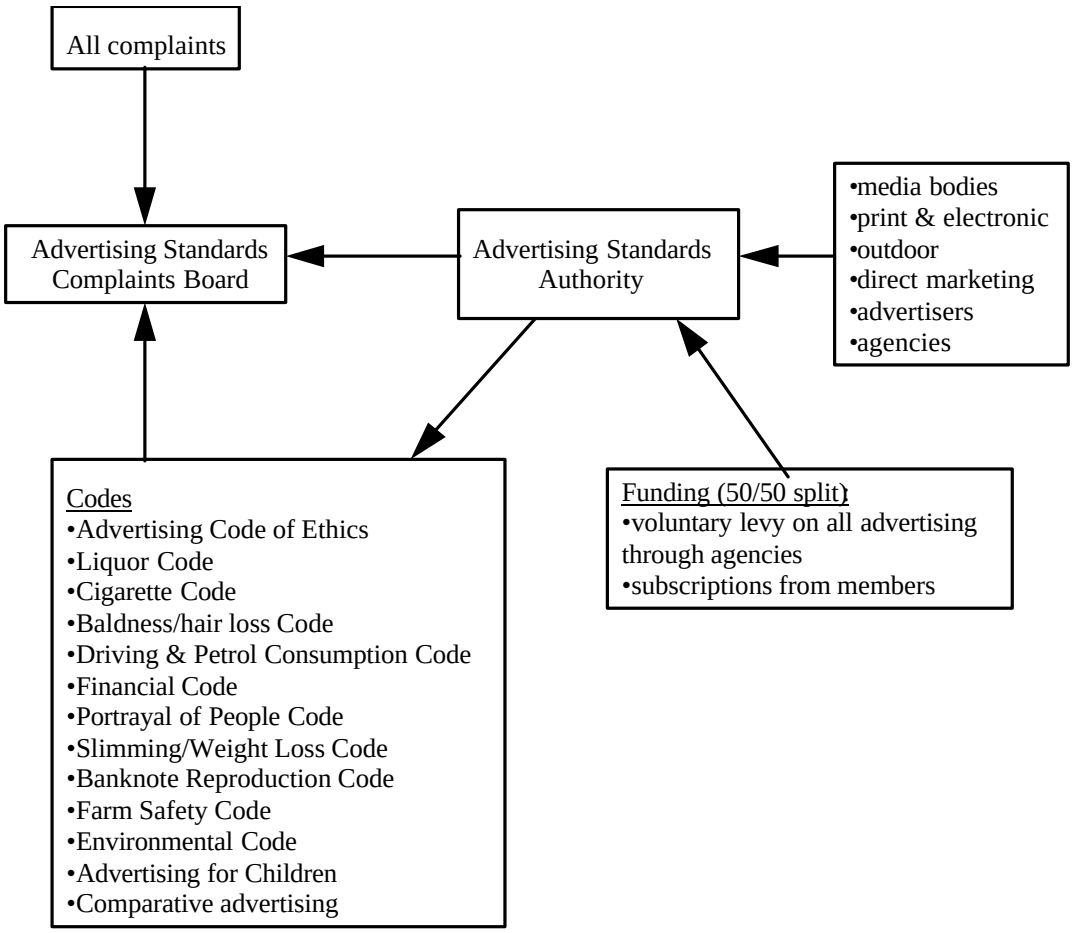
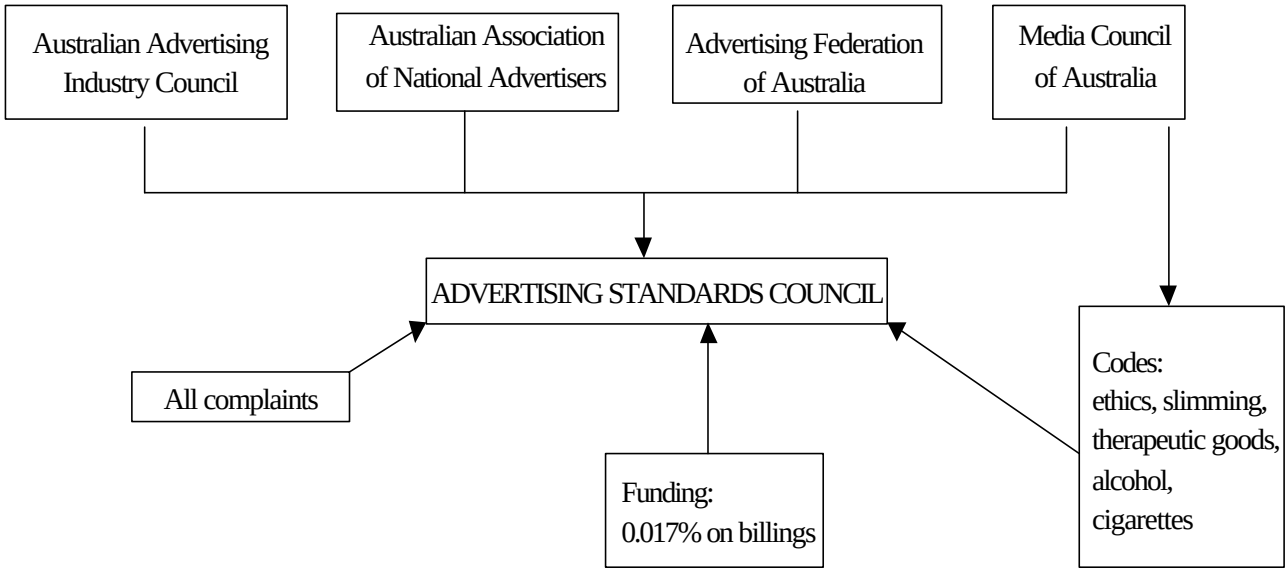
Appendix One

1. The Structure of New Zealand Advertising Self-Regulation



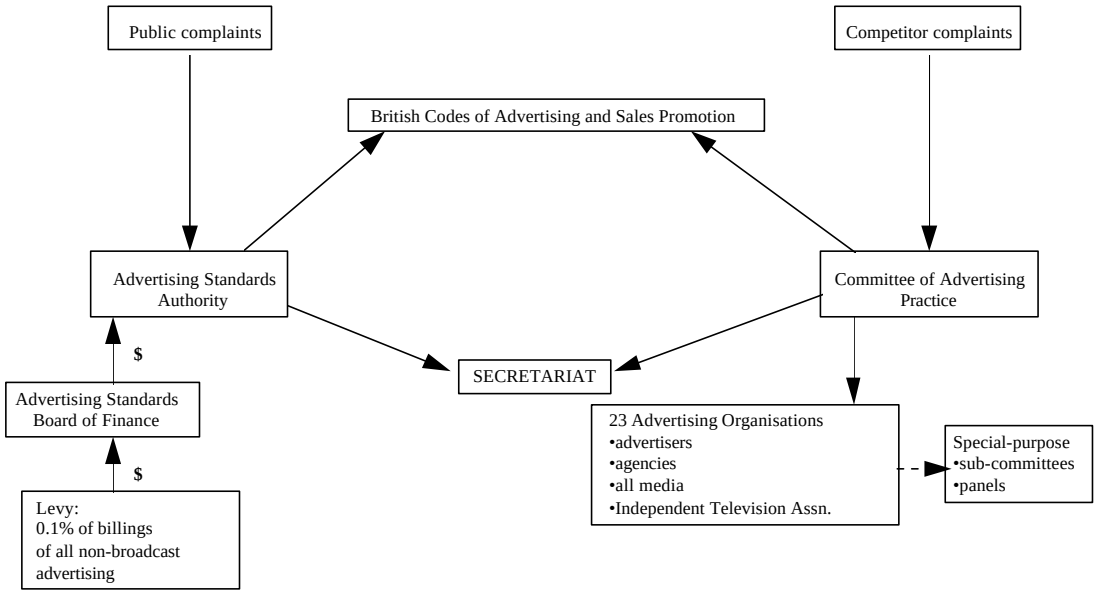
(Source: Harker 1996)

2. The Structure of Advertising Self-Regulation in Australia



(Source: Harker 1996)

3. The Structure of Advertising Self-Regulation in the United Kingdom



(Source: Harker 1996)