

Supplementary consultation Placing digital adverts responsibly

Consultation response form

- 1.1** This template is provided for responses to the Gambling Commission's supplementary consultation on *Placing digital adverts responsibly*. Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **20 June 2016**.

Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Eddy Leviten

Organisation:

Alliance for Intellectual Property

Email address:

eddy@allianceforip.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body	<input checked="" type="checkbox"/>	Regulatory body	<input type="checkbox"/>
Government body	<input type="checkbox"/>	Charity	<input type="checkbox"/>
Local authority	<input type="checkbox"/>	Help group	<input type="checkbox"/>
Academic institution	<input type="checkbox"/>	Faith group	<input type="checkbox"/>
Other (please specify)			

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

The proposed wording should be sufficient to ensure that ads from gambling businesses and brands are not associated with criminal websites and therefore are not also helping to fund criminal activity.

Q2. Do you have any other comments?

The Alliance for Intellectual Property represents 23 trade associations across the creative, branded and design industries concerned with ensuring that intellectual property rights are valued in the UK and that a legislative regime exists which enables the value and contribution of these rights to be fully realised. Our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, book and magazine publishers, retailers and designers.

Alliance members have been instrumental in generating initiatives that protect brands and consumers from harm when ads are placed on so-called 'pirate' websites (sites that host or provide access to copyright infringing digital content). The Alliance and members also work actively with PIPCU and Operation Creative, ensuring that sites are submitted for review by the police before being added to the IWL and helping to monitor the effectiveness of decreased advertising on those sites.

We encourage the use of measures to prevent ad misplacement listed in the consultation which might include (but are not limited to):

- access to and proactive use of the Police Intellectual Property Crime Unit's (PIPCU) Infringing Website List (IWL)
- clear messaging/guidance to affiliates
- tightening contractual terms and conditions with affiliates to make very clear that adverts must not appear on illegal sites and ensuring robust action can be taken when breaches are found to have occurred
- proactive monitoring of advert placement through the use of commercial content verification software

We also encourage the use of the JICWEBS/DTSG Good Practice Principles (<http://www.jicwebs.org/agreed-principles/digital-trading-standards-group-good-practice-principles>) and support continued cooperation between brands, rights holders and all in the ad supply chain.

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- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
 - 1.7** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk.
 - 1.8** The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.
 - 1.9** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.

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Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	Tim Cooper
Organisation:	BPI (British Recorded Music Industry)
Email address:	tim.cooper@bpi.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body	X	Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)			

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

BPI has reviewed the wording and proposes the following:

“Licensees must not place, nor authorise or allow (expressly or otherwise) any affiliate or third party with whom Licensees contract with for the provision of any aspect of Licensees’ business (including, without limitation, marketing and advertising) to place, any advertising relating to Licensees (or their brands) on websites engaged in intellectual property infringement.”

Q2. Do you have any other comments?

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From: Nick Matthew <Nick.Matthew@fact-uk.org.uk>

Sent: Monday, 6 June 2016 10:50

Subject: Re: Gambling Commission LCCP crime review - links to the docs - for consideration/action.

We have reviewed the document and consulted with our members. We believe that the wording of the new licence conditions are proportionate and fair in relation to the problem. FACT are committed to working with the industry and representatives to tackle the problems and prevent continuing infringement.

Regards,

Nick Matthew
FACT

Supplementary consultation Placing digital adverts responsibly

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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **20 June 2016**.

Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	Simon Reynolds
Organisation:	Gala Coral Group
Email address:	simon.reynolds@coral.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body		Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)			

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

The Gala Coral Group (“GCG”) note that in the earlier consultation that discussed this topic (“The prevention of crime associated with gambling: amendments to licence conditions and codes of practice (LCCP)”) the Commission asked for views on a new licence condition to ensure digital adverts do not appear on copyright infringing websites and what “reasonable” measures operators can take to prevent this happening. The proposed wording drops the word reasonable and thus is not what operators were originally consulted on. GCG believe “reasonable” should be put back in otherwise the wording is too broad and we are concerned operators would often be found in breach despite best efforts to remain compliant. As mentioned in our reply to the earlier consultation the placing and removal of advertisements by third parties can happen very quickly and it is impractical to constantly monitor every single website that Coral adverts appear on in real time. Nevertheless, the GCG have been meeting these challenges head on by taking measures, including those four measures listed under section 2.8 of the consultation, to prevent this happening and have been actively engaging with the Police Intellectual Property Crime Unit (PIPCU) on this matter.

GCG would welcome if these four measures were included as part of a guidance note to operators on how they can comply with the new licence condition. Given the open ended nature of the wording a guidance note would assist operators in outlining what reasonable endeavours operators can do to comply. Any further measures need to be proportionate and GCG request that operators be consulted first before any new measures are suggested as it may be the case that the Commission suggest other measures that operators have already looked into but found to be impractical.

Q2. Do you have any other comments?

LCCP Social Responsibility code provision 1.1.2 already makes licensees responsible for third parties with whom they contract for the provision of services and given that any breaches of this new licence condition would more than likely be the result of actions by an affiliate rather than the licensee GCG ask that the Commission be mindful of this when enforcing the new condition. GCG ensure all affiliates are aware of the issues around copyright infringing websites and any contract GCG has with an affiliate to place digital adverts will contain an explicit reference that the adverts must not appear on these sites. If an affiliate is in breach licensees like GCR will take appropriate action against them but GCG ask that any enforcement action the Commission take against the licensee be proportionate given the best endeavours licensees like GCG already make to ensure the affiliate is aware of their responsibilities and the legal contracts that they have in place.

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- 1.7** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk.
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Supplementary consultation

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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **20 June 2016**.

Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	Chris Hobbs
Organisation:	Microgaming
Email address:	

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body		Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)			

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

We understand that the proposal intends to prevent digital adverts from being placed on “piracy” websites which encourage users to make infringing copies of copyrighted materials. These websites encourage users to engage in acts of copyright infringement which are criminal offences under Section 107 of the Copyright, Designs & Patents Act 1988 (the “Act”).

We understand the need for and support initiatives to prevent such crimes being associated with gambling. However, the proposed wording does not describe anything that is in fact either a copyright infringement or (without considerable speculation) an illegal act.

The relevant law is in [Section 107 of the Act](#). The Act clearly sets out that a person commits an offence under Section 107 if the offender makes or deals with an article which he knows infringes a copyright work. In other words, the offender will be guilty of an offence if he knowingly commits an act of copyright infringement.

As the purpose of the condition is to prevent gambling being associated with criminal activity, we propose that the wording of the condition be amended to bring it in line with the Act and with common international copyright provisions.

Furthermore, the current wording of the condition places a heavy burden on Licensees to ensure that third parties with whom they contract do not place digital adverts on these websites, without any basis in law. Licensees should only be required to take reasonable steps to ensure that third parties do not step out of line.

We propose that the wording of the condition read as follows:

Licensees shall take reasonable steps to ensure that they and any third parties [including affiliates] with whom they contract for the provision of any aspect of the Licensee’s business related to the licensed activities, do not knowingly place digital advertisements on websites which are intended to, or can reasonably be expected to, cause or encourage users to commit acts which criminally infringe copyrights under the Copyright, Designs & Patents Act 1988.

Q2. Do you have any other comments?

No further comments.

- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you

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Supplementary consultation

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Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Elizabeth Speed

Organisation:

Novomatic UK

Email address:

elizabethspeed@luxuryleisure.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body		Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)	Integrated Gaming Group		

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

Our response on the proposed wording is subject to our response to question 2 below.

If, contrary its consultation document and our comments below, the Commission proceeds to introduce an additional condition on this matter, our comments on the proposed wording is as follows:-

i. Licensees can make reasonable attempts to ensure that digital advertisements for their products do not appear on inappropriate websites. For example, Licensees can insert provisions in their terms of contract which prevent third parties from placing advertisements on such websites and which allow for the contract to be terminated if a third party acts in a manner inconsistent with the Licensing Objectives (as indeed is already required by LCCP SR code provision 1.1.2). Licensees might also use commercial content verification software to monitor advert placement. However, these measures and the use of the PIPCU IWL, are partly reactive and cannot “ensure” that advertisements do not appear on inappropriate websites. While Licensees might use their reasonable endeavours to ensure that advertisements do not appear in that way, they cannot be held responsible for third party contravention of requirements imposed by the Licensee, whether:-

(i) the advertisements are placed directly by the Licensee (and where for example a website could change its approach and provide unauthorised access to copyrighted content after the Licensee has placed its advertisement and in contravention of contractual terms); or

(ii) third parties place the advertisements under contractual terms (and where the third party breaches those contractual terms).

Accordingly, with respect, it would be inappropriate to require that Licensees “must ensure” that advertisements are not placed on inappropriate websites. Taken to its extreme, this would not be possible. At most they should be required to use their reasonable endeavours.

ii. Plainly, any requirement must be restricted to the Licensee’s products and as such the words “for the Licensee’s gambling products”, should, we suggest, be inserted after “digital advertisements” so that the provision reads “... do not place digital advertisements for the Licensee’s gambling products on websites providing unauthorised access to copyrighted content”.

Q2. Do you have any other comments?

1. We note that the Commission has decided (despite its proposals in the primary consultation in relation to the Prevention of Crime Associated with Gambling), to introduce a new licence condition rather than a Social Responsibility code provision.

The Commission states that this change of approach is appropriate because the issue “is focused around keeping crime out of gambling rather than on protecting consumers”. We would however draw the Commission’s attention to the LCCP Ordinary Code provisions for anti-money laundering (at 2.1): those provisions are

plainly focused on keeping crime out of gambling rather than on protecting consumers, but in that instance the Commission thought it appropriate to adopt an ordinary code provision rather than a condition. The difference in approach suggested in the current consultation would be to introduce an undesirable inconsistency. Furthermore, the introduction of a licence condition on this matter was not suggested by the Commission in its primary consultation and was therefore not considered by consultees as part of that consultation.

2. As the Commission accepted in its primary consultation (paragraph 4.8) Social Responsibility code provisions already exist requiring Licensees to take responsibility for third parties. The requirement that the Commission proposes to introduce will significantly overlap with existing social responsibility code provisions. This would be undesirable, dealing as each provision would do, with identical issues. Not least, the proposals would lead to an unnecessary complication of the LCCP and confusion for Licensees.

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Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	Malcolm Fleming
Organisation:	People's Postcode Lottery
Email address:	Malcolm.Fleming@postcode.lottery.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body		Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)	Society Lottery		

- 1.5** If you are responding as an individual, please indicate your own interest:

N/A

Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?
<p>We agree with the proposed wording of the new licence condition.</p>
Q2. Do you have any other comments?
<p>The People's Postcode Lottery does not use affiliates, specifically to avoid the possibility of our adverts being used on websites which are the subject of this consultation.</p> <p>We believe the Gambling Commission could clarify what you mean by the term “robust action” in relation to an affiliate placing an advert or adverts despite tight contractual terms and conditions – as mentioned in Paragraph 2.8, bullet point three, of the consultation document.</p> <p>We also believe it would be helpful to have clarity on the Gambling Commission's expectations of the licensee if they have complied with the measures set out in Paragraph 2.8, but an affiliate breaches the rules despite this.</p>

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Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Clive Hawkswood

Organisation:

Remote Gambling Association

Email address:

chawkswood@rga.eu.com

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body	X	Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)			

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

Our primary concern about the proposed wording of the new licence condition, revolves around the departure from the terminology used by the Gambling Commission (GC) in the previous consultation. The fundamental difference is that the conversation has shifted from discussing a principle, whereby licensees have to take all **reasonable measures** to ensure that digital adverts placed by themselves, or third parties, do not appear on copyright infringing websites to the proposed wording below:

“Licensees must ensure that they, or third parties [including affiliates] with whom they contract for the provision of any aspect of the Licensee’s business related to the licensed activities, do not place digital advertisements on websites providing unauthorised access to copyrighted content.”

The removal of the term ‘reasonable measures’ is critical, as what we are presented with now is something quite different to the previously established principle for the new condition in your earlier consultation: [The prevention of crime associated with gambling: amendments to licence conditions and codes of practice \(LCCP\) for all operators](#).

Within the supplementary consultation you suggest four measures which will help ensure that gambling adverts do not appear on websites providing unauthorised accesses to copyrighted content. They are copied below for ease of reference:

- access to and proactive use of the Police Intellectual Property Crime Unit’s (PIPCU) Infringing Website List (IWL)
- clear messaging/guidance to affiliates
- tightening contractual terms and conditions with affiliates to make very clear that adverts must not appear on illegal sites and ensuring robust action can be taken when breaches are found to have occurred
- proactive monitoring of advert placement through the use of commercial content verification software.

By their very definition the above provides the reasonable measures criteria that can form the basis of a GC guidance note in this area. This is a far more sensible way to progress and will build on the practices currently in place and advance the constructive dialogue the RGA and our members(see more detail under question 2) have maintained with the likes of FACT, IPO and PIPCU over the last three years in the absence of GC involvement.

The proposed licence condition wording flies in the face of what the operators were originally consulted on, is not proportionate and runs the risk of derailing the excellent work and progress we have made on this in recent years. In a real world environment it is not fair, reasonable or in practice any way workable to set the bar so high as to impose an absolute obligation requiring operators to ‘ensure’ that third parties do not wrongly place digital advertisements.

The GC states under 2.6 of the current consultation document that the wording of the licensing condition would ensure that new requirements will remain proportionate; as stated above, the proposed imposition of such an absolute obligation is neither proportionate or in practice workable and we suggest that the only way to achieve this is to return to the original thinking and reinsert the words “reasonable measures” into the licence condition.

Q2. Do you have any other comments?

We believe it would have been better if the GC had engaged with the industry at an earlier stage. This is a matter which the RGA has been actively engaged on with the Police Intellectual Property Crime Unit (PIPCU), Federation Against Copyright Theft (FACT) and the Intellectual Property Office (IPO) since 2013 and yet we have never been invited to have direct dialogue with the GC on this issue.

We agree that it is a very important issue, but we are unclear how the GC has gone from non-engagement (even at remote sector meetings) to making this in to such an absolute licensing condition and this is something of a concern.

The RGA and our members worked hand in hand with PIPCU as part of ‘Operation Creative’ and they even spoke at our AGM in 2014 to thank us and our members for the proactive approach we had taken. PIPCU and more recently the IPO have been very realistic and understand that there are difficulties in monitoring and controlling the way affiliates and ad intermediaries utilise these copyright infringing websites. We have continued to support their project and continually encourage members to work with law enforcement and request access to the portal containing the infringing website list (IWL). Eventually we got to a position where PIPCU offered this portal facility to 14 RGA companies so that it could be referenced before advertising was placed on websites.

As recently as last month we had a meeting with the Director of Copyright & Enforcement from the IPO, to revisit the issue and see how our members can build on the previous work and further reduce the placement of such adverts on copyright infringing websites. They are in the process of sending us a proposal (attached to this consultation response for your ease of reference) that will be put to all our members at the end of the month. In short much of our dialogue with them is largely based around the four reasonable measures you mention in the ‘Placing digital adverts’ consultation. A guidance note, along these lines from the GC would probably be sufficient in this area but if it must be a licence condition then, as stated above, to be workable and proportionate it cannot be categorised as an absolute obligation and the wording will need to be amended to include the phrase ‘reasonable measures’ as was your original intention.

1.6 Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of

numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.

- 1.7** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk.
- 1.8** The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.
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Supplementary consultation Placing digital adverts responsibly

Consultation response form

- 1.1** This template is provided for responses to the Gambling Commission's supplementary consultation on *Placing digital adverts responsibly*. Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **20 June 2016**.

Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Rob Capener

Organisation:

Talarius Ltd

Email address:

Rob.capener@tattsgroup.com

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body		Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)	AGC Operator		

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?
Within our operation we do not use any third party supplier or affiliates so this addition would not cause us any concerns.

Q2. Do you have any other comments?
Nothing further to add

- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
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Supplementary consultation

Placing digital adverts responsibly

Consultation response form

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Alternatively, responses can be sent by post to:

Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:	Andrea Macqueen
Organisation:	William Hill
Email address:	amacqueen@williamhill.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Industry body	X	Regulatory body	
Government body		Charity	
Local authority		Help group	
Academic institution		Faith group	
Other (please specify)			

- 1.5** If you are responding as an individual, please indicate your own interest:

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Section 2.1 – 2.11 of the consultation:

Placing digital adverts responsibly

Q1. Do you have any comments on the proposed wording of the new licence condition?

Preferred wording would be:

“Licensees must **put into effect suitable policies and procedures designed to ensure** that they, or third parties (including affiliates) with whom they contract for the provision of any aspect of the Licensee’s business related to the licensed activities, do not place digital advertisements on websites providing unauthorised access to copyrighted content **and that any such activity is identified and removed as soon as is reasonably practicable.**”

Q2. Do you have any other comments?

As outlined in paragraph 2.8 of the consultation, licensees should have a range of measures in place designed to ensure that their adverts do not appear on websites providing unauthorised access to copyrighted content. We note the Commission’s view that the particular measures employed are likely to depend on the size/type of a licensee’s business model. To specify exact measures in the licence condition is not appropriate and would limit the Commission’s discretion in respect of further tools which might become available in the future.

We further note the Commission’s aim, stated in paragraph 2.6, that the new requirements should remain proportionate. In our view the Commission’s draft licence condition wording is not proportionate bringing as it does automatic criminal sanction for operators based, potentially, on the wholly unauthorised action of a third party. Indeed, this could occur despite written assurances previously given by the third party to the licensee. Further, we have encountered a number of instances where the infringing website or app will change a profile within the network to avoid being blocked by the network provider. This can lead to the affiliate advertiser themselves being unaware that they are appearing on an infringing websites or apps.

It should be for the Commission to assess the adequacy of the preventative measures in place based on the best practice adopted by major operators. There will be instances which arise despite the best effort of the operator concerned and it is disproportionate for operators to find themselves committing a criminal offence in such circumstances.

William Hill already uses the industry leading WhiteBullet protection system to identify those affiliates who are in breach of their terms and conditions relating to infringing sites and has removed such affiliates without remuneration. Might there be a scheme under which Operation Creative (PIPCU) becomes aware of repeat offenders?

Whilst sharing the Commission’s concerns on this subject, we believe that the licence condition should be for operators to be able demonstrate stringent procedures and appropriate refinement based on lessons arising from particular cases. Indeed, this is an approach already adopted by the Commission in licence condition 5.1 (cash handling).

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