

Full title of law or regulation Code on Native Advertising and Related Commercial Communications. From [JEP](#)  
*Code en matière d'identification des publicités natives et communications commerciales connexes*  
[https://www.jep.be/sites/default/files/inline-media/code\\_native\\_advertising\\_2019\\_fr.pdf](https://www.jep.be/sites/default/files/inline-media/code_native_advertising_2019_fr.pdf)

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Title of relevant section

All

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## INTRODUCTION

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Clauses **The ICC Advertising and Marketing Communications Code (hereinafter "ICC Code") includes the following general provisions concerning the identification of commercial communication and the identity of the advertiser:**

### **Article 7. Identification and transparency.**

Marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement, including so-called "native advertising", appears in a medium containing news or editorial matter, it should be so presented that it is readily recognisable as an advertisement and where appropriate, labelled as such. The true commercial purpose of marketing communications should be transparent and not misrepresent their true commercial purpose. Hence, a communication promoting the sale of a product should not be disguised as, for example, market research, consumer surveys, user-generated content, private blogs, private postings on social media, or independent reviews.

### **Article 8. Identity of the marketer.**

The identity of the marketer should be transparent. Marketing communications should, where appropriate, include contact information to enable the consumer to get in touch with the marketer without difficulty. The above does not apply to communications with the sole purpose of attracting attention to communication activities to follow (e.g. so-called "teaser advertisements").

*Note: the original JEP Native Advertising Code from which this text is taken references articles 9 and 10 of the ICC code. The most recent (2018) version of that latter code carries articles 7 and 8 (shown above) on the issue of Identification, with some minor changes from the previous articles.*

Given that the concept and format of native advertising are in principle in harmony with those of the medium in which this commercial content appears, the Advertising Council insists that the whole industry must ensure that consumers can easily distinguish between editorial and commercial content.

Even though the contextual approach of native advertising and related forms of commercial communication is in itself not problematic, this Code is intended further to develop the general provisions set out above.

This Code was approved on December 12, 2018 by the Advertising Council and may be applied by the Jury of Advertising Ethics (JEP) from 4 February 2019. The operation of this Code will be evaluated after a period of one year.

The examples used below are for illustrative purposes only. When processing complaints, JEP will assess complaints on a case-by-case basis, taking into account the specific circumstances of each situation.

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## II. CONCEPTUAL FRAMEWORK AND SCOPE

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Clauses

The term "native advertising" is used as an international generic term for commercial brand content, adapted according to the context in which it sits, whose format/ design reflects the

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media in which the contents are published. Native advertising can take the form of an article, or an illustration, a video, etc. With native advertising, the advertiser wishes to encourage the consumer to read the content or to click on a link. Other terms used in this context are, for example, "content advertising" or "branded content". Native advertising can be used to promote a brand as well as a specific product.

The question of identifying branded content adapted to its context is not confined to the Internet and digital media, but also concerns traditional 'advertorials' and their new variants. Nevertheless, several principles outlined below relate more specifically to digital media.

Not all content in the media which mentions a brand or includes the logo of an advertiser constitutes a commercial communication. Moreover, the relationship between the advertiser and a medium can take different forms that generate different types of (commercial) communication.

**In order to determine whether or not a communication is commercial, it is appropriate to assess that on the basis of the following criteria:**

- The creation and / or distribution of the content is payment or other consideration;
- The advertiser has control over the content. This control can take many forms, from delivering fixed content to the development of suggestions and approaches, through to the approval of the content before publication.

The examples below clarify the distinction between editorial and commercial content:

#### Example 1

An advertiser provides reporters with a press kit that may include samples, in order to present a new product, without any obligation to write about the product or any instructions related to it. The resulting item should be considered as editorial content and not as commercial communication.

#### Example 2

A brand sponsors an event and a medium independently decides to pay attention to the event and the brand is displayed or mentioned. The resulting item must be considered to be editorial content and not as commercial communication.

#### Example 3

A classic advertising banner appears next to an article whose content is related to the product promoted by the banner. If the content of this article was created independently of the advertiser whose product is advertised, it is a contextual placement of the banner, and the article beside which the banner is placed should also be considered to be editorial content and not as commercial communication.

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### III. APPLICATION OF THE GENERAL RULES ON IDENTIFICATION TO NATIVE ADVERTISING AND RELATED COMMERCIAL COMMUNICATIONS

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Clauses

#### A) IDENTIFICATION OF COMMERCIAL COMMUNICATION

##### A1) CONTEXT AND USE OF IDENTIFIERS

The commercial nature of native advertising and related communications must, in accordance with article 7 of the ICC Code, be **instantly and clearly identified** by the target group.

The question of whether this requirement is satisfied will have to be examined on a case-by-case basis, taking into account the specific circumstances, since the general impression given by the communication in question is key.

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In some cases, it already appears immediately from the content and / or from the context of the native advertising that it is a commercial communication. The criteria that can be considered in this regard include the following:

1. **(Audio) visual characteristics** of the communication contributing to clear identification of its commercial nature

*Example: A commercial communication on a web page of a medium uses the (audio) visual characteristics of the featured brand or clearly departs from the medium's usual layout.*

2. **Characteristics of the content** of the communication contributing to clear identification of its commercial nature

*Example: A commercial communication with an obvious call to action.*

Where the commercial purpose of the communication is not immediately and clearly apparent from the content and / or context, **an explicit identifier** must be used.

## A2) USE OF IDENTIFIERS

There are different identifiers that help instantly to identify the commercial nature of a communication.

**The terms** that can be used as an identifier are, for example:

« annonce », « publicité », « publiereportage », « advertorial », « promotion », « proposé par (...)», « réalisé en étroite collaboration avec (...) », « powered by (...) ».

This list is not exhaustive and the clarity of each identifier must be assessed on a case-by-case basis in combination with other factors likely to make a commercial communication identifiable. In particular, the following criteria may be taken into account:

1. Use of the **logo** or the **(audio) visual features of the brand**. To allow a clear identification of commercial content, an identifier may be combined with the advertiser's logo and other characteristics of the brand.
2. **The language of the identifier**. An identifier in the target audience's language facilitates identification.
3. **The positioning of the identifier**. The identifier is preferably positioned where it is sufficiently visible such that the consumer can immediately identify that it is commercial content.
4. **The (audio) visual characteristics of the identifier**. The identifier must be sufficiently visible (if applicable, audible). A contrasting colour and sufficient size is recommended, taking into account the characteristics of the medium in which the content appears.
5. **The duration of appearance of the identifier**. The consumer must have enough time to absorb the identifier and recognise that this is commercial content.
6. **The communication's target market**. Particular attention should be paid to the comprehensibility of the identifier used when the target group is children or young people.
7. **The accompanying text**. An identifier can also be accompanied by brief text (for example via use of a "mouseover") in order to clarify the nature of the advertising and to explain that there is a commercial relationship between the medium and the advertiser.

## A3) REFERENCE TO NATIVE ADVERTISING

Not just the native ad content itself, but additionally the references to that content must also be identifiable as commercial communication. That can take the form of, for example,

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summaries of the content appearing on other pages of the website.

The consumer must be clearly informed that this is commercial content before clicking on the advertising.

#### **A4) DISSEMINATION OF NATIVE ADVERTISING**

Commercial communication must also remain identifiable as such if the media concerned allows the consumer to distribute the content him/ herself, for example via social networks or by email. Each recipient should be informed that it is commercial content. However, if the distributing consumer removes identifiers or other distinctive features of the communication on his/ her own initiative, the advertiser or the media concerned will not be held responsible.

#### **A5) RECORDS OF NATIVE ADVERTISING**

Commercial communication must also remain identifiable as such, including after the end of the campaign. This principle applies in particular to native advertising that remains searchable by the consumer in media records that also include editorial content. Readers should at all times be informed that this is commercial content.

#### **B) AFFILIATE MARKETING**

If, with the help of partners such as 'content aggregators' or 'content discovery networks', a website places or authorises third parties to place hyperlinks to other websites, which should be considered to be advertising, the latter must also be clearly identifiable as such.

The above principles apply mutatis mutandis to this form of native advertising.

Where the commercial nature of these advertisements does not sufficiently stand out from the context, it is recommended to use an identifier that clarifies that commercial nature.

Equally in this case, the commercial nature of the content must in any case be clearly identified by the reader before he/ she clicks on the advertising

#### **C) RESPONSIBILITY**

In accordance with Article 23 of the ICC Code, advertisers have overall responsibility for the commercial communication of their products and are also the primary contact for JEP regarding compliance with this Code. However, this provision does not remove the responsibility of the media and the relevant communications agencies.

In the case of complaints relating to native advertising and related commercial communications, JEP will ask the advertiser and the media concerned to react and, where appropriate, they will be mentioned as parties when the case is published on the site. As stated above, JEP reserves the right to involve other partners in these complaint procedures.

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