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**United Nations Committee on the Rights of the Child**

**General Comment on** **children’s rights in relation to**

**the digital environment**

**Submission from the Obesity Policy Coalition**

**14 May 2019**

**Background**

The Obesity Policy Coalition (OPC) is an Australian public health advocacy partnership between four public health organisations: Cancer Council Victoria, Diabetes Victoria, VicHealth and the Global Obesity Centre at Deakin University; a World Health Organization (WHO) Collaborating Centre for Obesity Prevention. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children. We welcome the Committee’s decision to develop a General Comment on children’s rights in relation to the digital environment.

**Digital marketing**

The OPC’s key focus in the digital environment is on digital marketing of unhealthy food and drinks, and its impact on children’s diets and levels of overweight and obesity. Childhood overweight and obesity is an important public health issue around the world. In 2016, more than 340 million children and adolescents aged 5-19 years were overweight or obese, and 41 million children under the age of 5.[[1]](#footnote-1) Childhood obesity is associated with a higher chance of obesity, premature death and disability in adulthood.[[2]](#footnote-2)

We argue that in a digital environment, strong controls on children’s exposure to unhealthy food marketing are required to effectively realise the following rights embodied in the Convention: the right to health (Article 24), the right to access information from diverse sources, along with protection from *‘material injurious to his or her well‑being’* (Article 17) and the right to protection from arbitrary or unlawful interference with privacy (Article 16).

We know that children’s health is negatively affected by unhealthy food marketing. Strong evidence shows that marketing influences children’s food preferences, purchases and consumption,[[3]](#footnote-3) and contributes to overweight and obesity.[[4]](#footnote-4) Children are more vulnerable than adult consumers as they cannot properly understand or interpret marketing messages or understand that they are intended to persuade rather than entertain.[[5]](#footnote-5)

*The nature of digital marketing*

The digital environment provides rich and varied opportunities for corporations to market unhealthy food to children. Digital marketing can take many forms, including paid advertisements appearing alongside content, sponsored social media posts, paid posts by social media influencers, content created by users or corporations themselves, branded games and activities. Manufacturers and marketers are embracing digital marketing for its ability to amplify traditional advertising, increase the target audience and achieve greater attention, recall, brand awareness and intent to purchase.[[6]](#footnote-6) Digital marketing is also relatively inexpensive, allowing corporations to place their advertisements on multiple media platforms that seek out children as they navigate the digital world. Digital marketing has features and often uses techniques that set it apart from other forms of marketing:

* **Peer-to-Peer viral marketing** engages children in ‘liking’ and ‘sharing’ content posted by friends. It exploits the need of pre-teens and teenagers to define their identity. Research has found that social media users are engaging with digital marketing from unhealthy food corporations daily, enabling marketers to capitalise on the users’ social networks and magnify the reach and personal relevance of their marketing messages.[[7]](#footnote-7)
* **Interactive marketing** encourages children to interact with corporations using social media platforms (such as social media accounts, pages and channels created by corporations), competitions and games. Marketers seek to engage children in entertaining experiences and encourage them to share these with friends.
* **Unidentified marketing** blends paid advertising with unpaid content to create marketing that children may find difficult to distinguish from other content. This is particularly concerning as children are more vulnerable than adult consumers and are likely to have reduced capacity to understand the commercial and persuasive intent behind advertising messages.[[8]](#footnote-8) This type of marketing can include advergames that immerse children in a branded environment, or social media posts by brands or influencers that form part of normal social media content.
* **Targeted marketing** delivers personalised advertising based on information about a user’s digital footprint and is based on either the content they are watching online (contextual advertising), or information collected about their characteristics and preferences (behavioural advertising).[[9]](#footnote-9) This has implications for children’s privacy that will be discussed later.

*Digital marketing and children’s rights*

* *Health and wellbeing*

Article 24 of the Convention confers a child’s right to health, including that States will take appropriate measures to *‘combat disease and malnutrition’* and *‘to develop preventive health care’.* We argue that in a digital environment, effective controls on children’s exposure to unhealthy food marketing are required to effectively realise a child’s right to health. We have discussed earlier the strong evidence on the impact of unhealthy food marketing on children’s health.

The WHO recognises that children should be protected from unhealthy food marketing, with the *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* calling for effective controls to limit children’s exposure to unhealthy food marketing and reduce their risk of a poor diet, weight gain and chronic disease.[[10]](#footnote-10) The World Health Organization’s Committee on Ending Childhood Obesity included implementation of the *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* as a key recommendation in its final 2016 report.[[11]](#footnote-11)

We know the Committee has already recognised the need for controls on children’s exposure to unhealthy food marketing in the context of applying the right to health, saying that states should address childhood obesity and take action to regulate marketing of unhealthy food to children.[[12]](#footnote-12) We urge the Committee to expand on that position in this General Comment, providing clear guidance to states on the necessity of strong action to control children’s exposure to digital marketing of unhealthy food, in particular.

* *Access to information, freedom of expression and freedom of association*

The Convention embodies many important rights that enable children to fully participate in social, educational and cultural life, including freedom of expression, freedom of association and the right to access to information. We argue that states must ensure children can access a digital environment that fulfils these participatory rights while respecting and protecting other rights, including the right to health. Strong controls on unhealthy food marketing to children are required to protect the child’s right to health while participating in social, educational, cultural, economic and other activities in a digital environment.

This balance is expressly contemplated in the wording of Article 17, which confers the right to access information from diverse sources, along with protection from *‘material injurious to his or her well‑being’.* We argue that marketing of unhealthy food to children is injurious to a child’s well-being, in that it promotes consumption of unhealthy food that can lead to overweight, obesity and a higher risk of a number of chronic conditions or illnesses as an adult.

We would like to see the General Comment provide guidance to states on how to balance the right to health with children’s participatory rights. Specifically, the General Comment should advise that digital marketing of unhealthy food should be regulated to ensure children can participate and engage in a digital environment that promotes their health and development, rather than having a negative effect. In particular, we would like to see the General Comment provide guidance on the application of Article 17 in the digital environment, acknowledging that marketing of unhealthy food and drinks can be material that is injurious to children’s wellbeing.

* *Protection of privacy, identity and data processing*

Article 16 of the Convention provides a right to protection from arbitrary or unlawful interference with privacy. Children’s privacy is particularly at risk from digital marketing, including marketing on social media platforms such as Facebook, Instagram, YouTube and Snapchat, and search engines such as Google.

The nature of digital media means that large amounts of personal information is collected, including specific information about an individual’s online behaviour, purchase preferences, social networks and physical location.[[13]](#footnote-13) This information can then be used by marketers, including corporations who market unhealthy food, to target their marketing directly to particular groups of consumers, including children, based on their individual profiles.[[14]](#footnote-14) This large scale collection and use of personal and other information is a significant risk to the protection of children’s privacy, particularly as it is difficult to monitor and to prevent.

We argue that its negative impact on children’s privacy provides another reason for strong regulation to protect children from digital marketing of unhealthy food. We would like the General Comment to provide guidance on the privacy and data protection issues associated with digital marketing, and steps that businesses and states should take to address these issues and protect children’s rights to privacy.

**The role of parents**

The OPC advocates for policy and regulatory reform that will support parents to make healthier choices for their children, while acknowledging the minimal capacity of parents to protect their children from exposure to digital marketing of unhealthy food. The nature of the digital environment, and the targeted marketing that children are exposed to when in that environment, means that parents are unable to have meaningful oversight over the marketing their children see when using this platform.

In our view, the General Comment should consider the role of parents in the digital environment, together with the role of business and government. Parents should be empowered to assist their children to navigate the digital environment and to be aware of their child’s access and engagement. Parents should not, however, be given an unrealistic level of responsibility for ensuring their child’s rights are protected, respected and fulfilled in the digital environment. Government regulation should be imposed to protect children from exposure to unhealthy food marketing.

**Business practices and human rights**

Businesses operating in the digital environment must support the realisation of a child’s right to health by protecting children from exposure to unhealthy food marketing in digital media. Businesses should support the participation and engagement of children in the digital environment without exposure to material that may have a negative effect on their health.

One of the guiding principles of "Protect, Respect and Remedy" Framework for Business and Human Rights (Ruggie Framework)[[15]](#footnote-15) is business responsibility to respect human rights. This guards against businesses using the language of human rights to breach human rights. An example relevant to digital marketing to children is the concern that businesses could argue that marketing to children promotes a child’s right to access information pursuant to Article 17. As discussed above, it is imperative to balance this right with the right to be protected from material that harms a child’s well-being.

In reality, businesses cannot be relied upon to act in the interests of children’s health. There is an inherent and unavoidable conflict of interest that arises between business – primarily motivated and legally mandated to ensure a growth in profit for shareholders – and public health.

Accordingly, we argue that governments must be responsible for ensuring the implementation of these business practices. We know that self-regulation by the food and advertising industries has not proven to be effective – so government regulation of unhealthy food marketing to children is required. This action is supported by the first guiding principle Ruggie Framework. This principle requires Member States to protect against human rights abuses by third parties, including business.

**How can states better realise children’s rights in a digital environment?**

We argue that states can better realise children’s rights to health in a digital environment by regulating to protect children from unhealthy food marketing when they use this platform.

This regulation must:

* be government-led
* be legally enforceable
* protect children up to 16 years of age at a minimum
* clearly define ‘unhealthy food’ by reference to an appropriate nutrient profiling model
* apply to all forms of digital marketing, including social media posts and content, influencer marketing, and games and competitions
* restrict brand advertising (advertising for an unhealthy food brand without showing an unhealthy food product)
* impose meaningful sanctions for breach

**Conclusion**

Regulation to restrict children’s exposure to unhealthy food marketing in the digital environment should form part of a comprehensive set of regulations applying to all forms of media and to all settings where children could be exposed to marketing. As more and more states move to restrict unhealthy food marketing to children in some forms of media and settings, it becomes even more important that states also impose strong controls on digital marketing. If this doesn’t happen, unhealthy food marketing may migrate from non-digital media and settings into the digital environment, undermining the effect of existing regulation.

1. World Health Organization, ‘Overweight and obesity’ Fact Sheet, accessed at <https://www.who.int/en/news-room/fact-sheets/detail/obesity-and-overweight> [↑](#footnote-ref-1)
2. *Ibid*. [↑](#footnote-ref-2)
3. For example, Boyland EJ, Whalen R. Food advertising to children and its effects on diet: review of recent prevalence and impact data. *Pediatr Diabetes*. 2015 Aug;16(5):331-7; Kelly B, King L, Chapman K, Boyland E, Bauman AE, Baur LA. A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *Am J Public Health*. 2015 Apr;105(4):e86-95; Kelly B, Freeman B, King L, Chapman K, Baur LA, Gill T. Television advertising, not viewing, is associated with negative dietary patterns in children. *Pediatric Obesity*. 2015; Bruce AS, Pruitt SW, Ha OR, Cherry JB, Smith TR, Bruce JM, Lim SL. The Influence of Televised Food Commercials on Children's Food Choices: Evidence from Ventromedial Prefrontal Cortex Activations. *J Pediatr*. 2016 Oct;177:27-32; Norman J, Kelly B, Boyland E, & McMahon A.-T. (2016) The Impact of Marketing and Advertising on Food Behaviours: Evaluating the Evidence for a Causal Relationship. *Current Nutrition Reports*, 5 (3), 139-149; Dixon H, Niven P, Scully M, Wakefield M. Food marketing with movie character toys: Effects on young children's preferences for unhealthy and healthier fast food meals. *Appetite*. 2017 Oct 1;117:342-350. [↑](#footnote-ref-3)
4. Zimmerman, F and Bell, J. Associations of Television Content Type and Obesity in Children.*Am J Public Health*. 2010 February; 100(2): 334–340; Kelly B, King L, Chapman K, Boyland E, Bauman AE, Baur LA. A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *Am J Public Health*. 2015 Apr;105(4):e86-95. [↑](#footnote-ref-4)
5. Kunkel D, Wilcox BL, Cantor J, Palmer E, Linn S & Dowrick P. *Report of the APA Task Force on Advertising and Children*. Washington DC: American Psychological Association, 2004. [↑](#footnote-ref-5)
6. Brand awareness optimisation. In: Introducing new ways to buy, optimise and measure ads for a mobile world.

   Facebook website post, 30 September 2015 (https://en-gb.facebook.com/business/news/Ad-Week-UK). [↑](#footnote-ref-6)
7. 18Freeman B, Kelly B, Baur L, Chapman K, Chapman S, Gill T, et al. Digital junk: food and beverage marketing on Facebook. Am J Public Health 2014;104:e56–64. [↑](#footnote-ref-7)
8. Kunkel D, Wilcox BL, Cantor J, Palmer E, Linn S & Dowrick P. Report of the APA Task Force on Advertising and Children. Washington DC: American Psychological Association, 2004, <http://www.apa.org/releases/childrenads.pdf>. [↑](#footnote-ref-8)
9. World Health Organisation, ‘*Tackling food marketing to children in a digital world: transdisciplinary perspectives*’ (2016). [↑](#footnote-ref-9)
10. World Health Organization. *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Geneva: World Health Organization, 2010, endorsed by the World Health Assembly, of which Australia is a member, in 2010: http://apps.who.int/iris/bitstream/10665/44416/1/9789241500210\_eng.pdf. [↑](#footnote-ref-10)
11. World Health Organization *Report of the commission on ending childhood obesity,* 2016. [↑](#footnote-ref-11)
12. *General Comment No 15*, UN Doc CRC/C/GC/15, 12 as cited and discussed in Elizabeth Handley and Belinda Reeve, ‘Holding Food Companies Responsible for Unhealthy Food Marketing to Children: Can International Human Rights Instruments Provide a New Approach?’ (2018) 41(2) *University of New South Wales Law Journal* (Advance). [↑](#footnote-ref-12)
13. World Health Organisation Regional Office for Europe, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives* (2016), Denmark, page 8. [↑](#footnote-ref-13)
14. *Ibid*, pages 8-9. [↑](#footnote-ref-14)
15. UN "Protect, Respect and Remedy" Framework for Business and Human Rights, 2008. [↑](#footnote-ref-15)