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Digital marketing of alcohol:

CHALLENGES AND POLICY OPTIONS FOR BETTER HEALTH IN THE WHO EUROPEAN REGION

WHO European Office for the Prevention and Control of Noncommunicable Diseases

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FOR BETTER HEALTH IN
THE WHO EUROPEAN REGION

ABSTRACT

The WHO European Region has the highest level of adult alcohol consumption of the six WHO regions. In 2016, the regional average for adults (aged 15 years and older) was 9.8 litres of pure alcohol per capita (comprising 8.0 litres of recorded alcohol and 1.8 litres of unrecorded alcohol). Restricting marketing of alcohol is a WHO recommended “Best Buy” – a cost-effective policy to reduce alcohol consumption and attributable burden. However, with smartphones and tablets becoming ubiquitous, young people and others are increasingly exposed to alcohol marketing in all of their social spaces.

This report draws on previous WHO reports on marketing and digital marketing and on consultations with Member States and civil society to stress the need for urgent action to protect public health and human rights. The report discusses the fast-changing digital ecosystem and the methods employed to invade online personal spaces with alcohol marketing. It provides a snapshot of regulatory contexts in a small selection of countries in the WHO European Region, as well as at international level. A range of policy options is suggested, with the overall conclusions emphasizing the urgent need for concerted action by countries and international institutions. A global and comprehensive approach is required, with the intention of protecting children and young people, people with (or at risk of) substance use disorders and the general population by removing marketing of alcohol altogether from digital spaces.

KEYWORDS

ALCOHOL DIGITAL MARKETING

ALCOHOL CONSUMPTION

ALCOHOL CONTROL POLICIES

ALCOHOL MARKETING

ALCOHOL SOCIAL MEDIA

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FOREWORD

The United Nations Convention on the Rights of the Child proclaims the right to health. In the digital sphere, this must include protecting children's health from exploitation through their online social lives. This important new report highlights that the invasion of children and young people's digital social spaces by companies promoting alcohol consumption normalizes a drinking culture from a very young age, placing them especially at risk of harm.

In 2020, the Regional Director convened the Advisory Council on Innovation for Noncommunicable Diseases (NCD Advisory Council). The intention is to inspire action to energize and accelerate progress to implement the ongoing Action Plan for the Prevention and Control of Noncommunicable Diseases in the WHO European Region 2016–2025, with a view to achieving concrete results by 2025. The Council has adopted a signature initiative to prioritize actions that will protect children and young people from exposure to unhealthy commodities, including alcohol, in digital contexts. All of this is within the framework of the European Programme of Work, 2020–2025 – “United Action for Better Health in Europe” and its flagship initiative on empowerment through digital health.

Just as with tobacco, a global and comprehensive approach is required. The best way to protect not only children and young people but all people with (or at risk of) substance use disorders and the general population from exposure to digital marketing of alcohol is to remove it, as far as possible, from all online contexts if effective statutory regulation, including enforcement, is not possible. This will require political commitment, with focused, well-resourced partnerships between national governments and international agencies, academia and scientists, supported by civil society actors. It will also require active cooperation from economic operators in the digital sector, marketing agencies, digital platforms and from other different fields of experience.

Our mission is urgent. The WHO Regional Office for Europe stands ready to work with and support Member States in considering how they can respond to the challenges identified in this report and select appropriate policies to achieve the safest possible online environment for children and young people. Our vision is of a SAFER WHO European Region for everyone, free from harm due to alcohol.

Carina Ferreira-Borges

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ABBREVIATIONS

ABV	alcohol by volume
ARPP	Autorité de Régulation Professionnelle de la Publicité (Professional Advertising Regulation Authority) (France)
ASA	Advertising Standards Authority (United Kingdom)
ASAI	Advertising Standards Authority for Ireland
AVMS Directive	Directive 2010/13/EU on Audiovisual Media Services (European Union)
BCAP Code	Code of Broadcast Advertising
CAP	Committee of Advertising Practice (United Kingdom)
CAP Code	Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (United Kingdom)
CLICK	Comprehend the digital ecosystem, Landscape of campaigns, Investigate exposure, Capture on-screen and Knowledge-sharing
COVID-19	Coronavirus disease
DSA	Digital Services Act (European Union)
ECU	Estonian Consumers Union
FAS	Federal Antimonopoly Service (Russian Federation)
GDPR	General Data Protection Regulation (European Union)
GPS	Global Positioning System
MENA	Middle East and North Africa
NTAKD	Drug, Tobacco and Alcohol Control Department (Lithuania)
SEO	search engine optimization
TFEU	Treaty on the Functioning of the European Union
UCP	unfair commercial practices
UNICEF	United Nations Children's Fund
VSPP	video-sharing platform provider

GLOSSARY

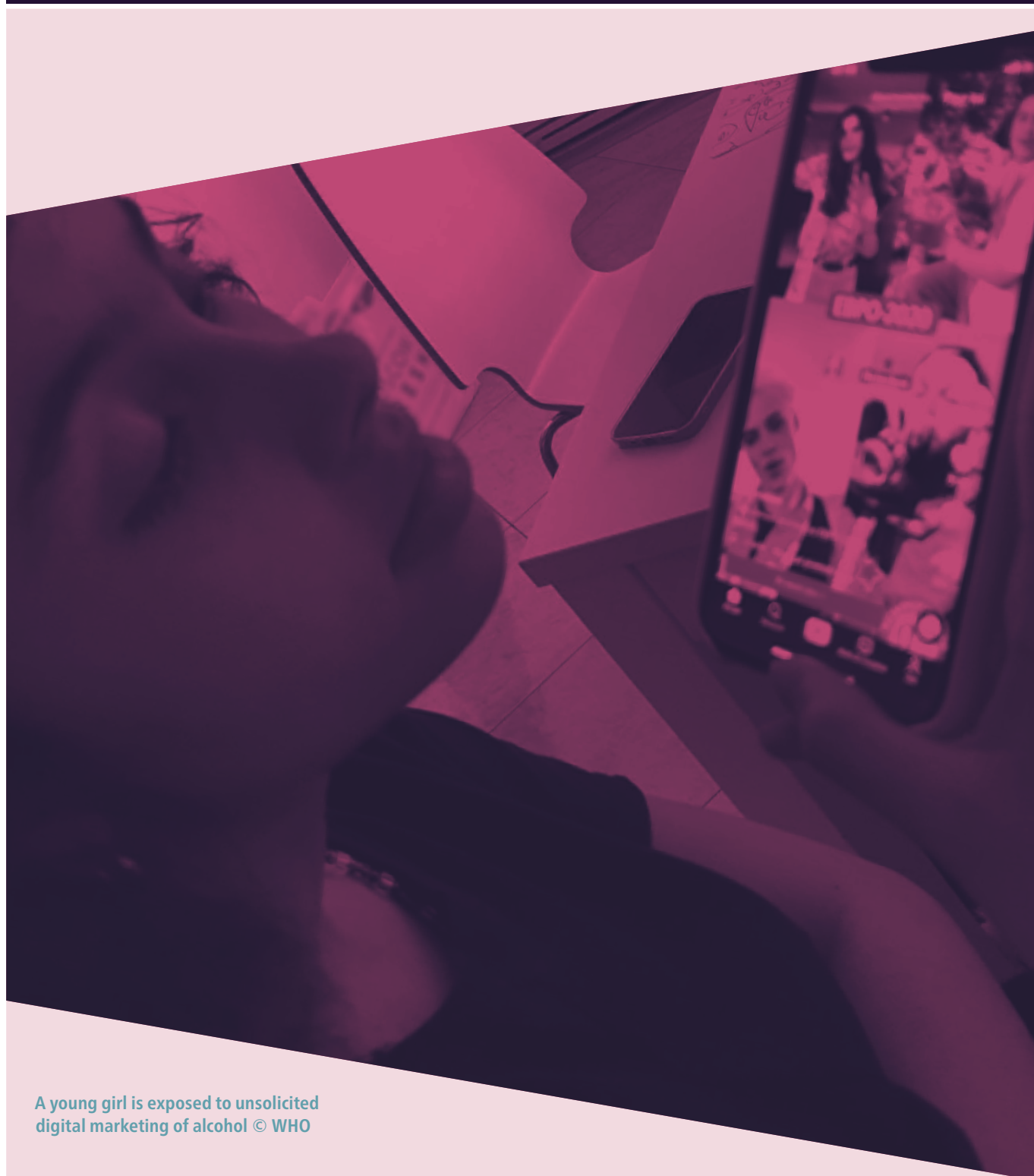
App	short for “application”, which is another name for a computer program. Usually refers to programs that run on mobile devices, such as smartphones or tablet computers
Blog	an online context in which someone records their thoughts or experiences or writes about a subject
Blogger	someone who blogs
Digital	relating to digital signals and computer technology
Digital advertising	a form of promotion involving payment, part of the marketing mix
Digital extension	a file containing programming that serves to extend the capabilities of, or data available to, a more basic program
Digital marketing	umbrella term to encompass all promotional techniques that use digital technologies
First-party data	customer data that are collected and owned by the same individual
Google tags	a system within Google whereby tags are configured and published from within the Google Tag Manager user interface
Marketing mix	the individual components and dynamic relationships between the different factors that can be used to satisfy the target market
Metadata	a description of and context for data, supports to organize, find and understand data
Programmatic	automated
Pure-play	focusing on a single product or activity
Second-party data	customer data that were collected by someone else but are owned by an individual
Third-party data	customer data that are held and sold by people who are not the original owners
Vlog	a video version of a blog
Vlogger	someone who vlogs

EXECUTIVE SUMMARY



Digital marketing of alcohol

CHALLENGES AND POLICY OPTIONS FOR BETTER HEALTH IN THE WHO EUROPEAN REGION



A young girl is exposed to unsolicited digital marketing of alcohol © WHO

Key points

The United Nations Convention on the Rights of the Child proclaims the right to health. Much of the evidence discussed in this report frames it as a human right that children should be protected from exploitative marketing that can harm their health and well-being. Restricting marketing of alcohol is a WHO recommended “Best Buy” – a cost-effective alcohol policy to reduce alcohol consumption and attributable burden. In the digital sphere, this must include protecting children from the exploitation of their online social lives. The best way to protect children and young people, people with (or at risk of) substance use disorders and the general population from exposure to digital marketing of alcohol, with its associated risks, is to have a global and comprehensive approach that removes it, as far as possible, from all online contexts.

The best protection from exposure of digital marketing of alcohol, with its associated risks, is to remove it from all online contexts

Just as with tobacco, a global and comprehensive approach is required to tackle global marketing and transnational advertising, promotion and sponsorship of alcohol. The more comprehensive the policy, the easier it will be to ensure clarity in communication and interpretation of the legal intention, and to monitor and enforce the policy. There are some emerging opportunities. The digital ecosystem is continuing to develop so that spending on digital media is increasingly consolidated on a small number of platforms – notably, Amazon, Apple, Facebook, Google and Microsoft.¹ This presents potential spaces for WHO, other United Nations institutions and Member States to work in collaboration with these major bodies to make the internet a safe space for children and young people, moving closer towards our vision of a SAFER WHO European Region for all people, free from harm due to alcohol.

NEXT STEPS

In 2022–2023, WHO European Region plans to develop intersectoral policy dialogues to implement policy considerations identified in this report, as well as policy briefs on the various components of digital marketing. WHO European Region will also convene an action-driven expert network on digital marketing of alcohol and establish plans to pilot the WHO CLICK² methodology (monitoring of digital marketing of unhealthy products) in the alcohol context at Member State level. Findings from the present report will also inform priority actions under the WHO noncommunicable diseases signature initiative in the area of actions to protect children and young people from exposure to unhealthy commodities in digital contexts.

1 More on this subject can be found in an upcoming WHO Regional Office for Europe report entitled *How the evolution of the digital marketing ecosystem impacts food advertising*.

2 CLICK: Comprehend the digital ecosystem, Landscape of campaigns, Investigate exposure, Capture on-screen and Knowledge-sharing.

Summary of policy options

INTERNATIONAL CONTROL SYSTEMS

1. The WHO Framework Convention on Tobacco Control (FCTC) could provide WHO and other United Nations agencies with a model for an international instrument that could strengthen the implementation of national and international alcohol control policies.
2. The WHO–UNICEF–Lancet Commission has called for an optional protocol to the Convention on the Rights of the Child, in other words an additional component to the treaty that must be independently ratified, to protect children from the marketing of a range of products, including alcohol, and from potentially damaging social media and the inappropriate use of their personal data. This optional protocol could address the transnational elements of the problem and simultaneously drive national action for legal protection. However, it would not resolve the conflict-of-laws issue for European Union Member States, which would have to abide both by the demands of the future optional protocol to regulate alcohol marketing strictly and the demands of the Treaty on the Functioning of the European Union (TFEU) on the protection of free movement. Only strict regulation at European Union level could resolve this issue.
3. The development of the European Union Digital Services Act (DSA) provides some opportunities to address the shortcomings with the current legislative framework as it exists in the European Union. Though alcohol is not specifically mentioned, it refers in several places to the protection of health and of minors, including “manipulative techniques and disinformation with a real and foreseeable negative impact on public health”.³
4. The WHO European Health Data Governance Charter could include consideration of public health requirements in relation to monitoring digital marketing of alcohol. WHO can encourage the development of new national and transnational regulatory and monitoring approaches, as well as disseminating evidence about possible technological and policy gaps and likely effective policy approaches.

MAPPING AND REGULATING THE DIGITAL ECOSYSTEM

5. The interplay between the digital marketing ecosystem and global platforms needs to be mapped and understood by policy-makers at local, national and international levels, with regulatory systems being established across borders and across platforms that can move quickly to protect public health and consumer

3 European Commission (2020a). Digital Services Act package: open public consultation. In: European Commission [website]. Brussels: European Commission (<https://ec.europa.eu/digital-single-market/en/digital-services-act-package>, accessed 7 November 2021).

rights. Governments should establish and fund research to monitor developments, evaluate the impact of changes to the regulatory landscape and explore future policy options. Research foci should include children and young people's exposure to and engagement with digital marketing of alcohol, as well as how data is used to optimize the targeting of messages and calls to action to consumers, in addition to analysing content, volume and placement.

6. To support Member States, the WHO CLICK framework supports monitoring of digital marketing of unhealthy products, including alcohol, to children; the resulting tool is flexible and can be adapted to national contexts. WHO should develop plans to expand the applicability of the CLICK tool to alcohol contexts, including exploring the expansion of the target groups that would benefit.
7. Governments could ensure that the leading platform groups (including Amazon, Apple, Facebook, Google and Microsoft) develop policies and technologies which can measure, control and restrict alcohol marketing, compelling them by regulation to act where voluntary schemes have not been effective and requiring them to share relevant information, including audience data for their advertisements. Given the increasing dominance of these platforms in the digital marketing context, United Nations agencies, including WHO and the United Nations Children's Fund (UNICEF) could play an important role in establishing discussions with these platforms about the prevention of exposure of children, young people and vulnerable adults to alcohol marketing in online contexts.
8. Alcohol producers and distributors could be required to supply to governments relevant marketing data, including marketing spending, media used and data on the demographics of audiences reached.
9. In the event that some alcohol marketing activities continue to be permitted, any messages and images should be limited to factual content, without links to celebrities, such as influencers, for the purposes of promotion. Regulatory codes should state what is permitted, rather than what is not, with the legal presumption that what is not named is not allowed.

RESTRICTING ACCESS

10. Public health strategies that seek to regulate the commercial or public availability of alcohol through laws, policies and programmes are important ways to reduce the general level of harmful use of alcohol. Such strategies provide essential measures to prevent easy access to alcohol by vulnerable and high-risk groups, including children. Policies to limit exposure to alcohol advertising and sales in the digital space should be considered an essential component of countries' alcohol strategies.

AGE VERIFICATION

11. All children under the age of 18 are vulnerable to the effects of digital marketing, as it operates through emotional and unconscious routes. Older children and teenagers are especially susceptible to emotional, social and identity-based advertising. While the situation persists that alcohol marketing is permitted in online contexts, having effective age-verification systems should be considered as an important component of strategies to restrict the exposure of minors to these activities, with action taken to make these more effective.
12. Many countries have legislation to prevent minors from accessing alcohol advertising content by using age-verification systems. Where different online sites and games have different age limits, alcohol-related material and advertising should be prohibited and anyone accessing the sites should be required to use verified age-verification tools including, for example, an e-ID with a password or code. Legally binding regulations, accompanied by sanctions where standards are not upheld, should be implemented.
13. International and national systems to verify age data more effectively, so as to restrict minors' online exposure to alcohol marketing, also need to be developed as a priority.

CONTENT RESTRICTION

14. Social media platforms could voluntarily include, or be compelled by regulation to include, labels that clearly identify alcohol advertisements, including the brand name and product information in a consistent way. Full disclosure should enable individuals to see whether a piece of content is being paid for and, if so, by whom, and the data that have been used to target the individual. Health bodies should also have access to data sources indicating at scale what kinds of content are being circulated and how targeting of populations and individuals happens. Sanctions imposed for inappropriate activities need to be strong, with robust enforcement.
15. As well as tagging of metadata, platform providers could require marketing companies to make it clear in a very obvious way when they are advertising, by displaying this in writing, and having minimum requirements in relation to size, style, placement and duration of the disclosure statement. Commercial content could also be required to be spatially separated from unsponsored user-generated content, or some other visual identifier, such as colour, could be used to indicate commercial content.

FISCAL STRATEGIES

16. Governments should consider how they can introduce and implement new taxation systems, including e-commerce taxes, that can be used to limit digital marketing of alcohol. Governments could also act to ensure that alcohol digital marketing activities are not considered as part of the cost of doing business, thereby reducing tax liabilities. It is clear that international governmental cooperation will be required to take forward any fiscal regulatory initiatives, which are likely to face opposition from the technology companies and the alcohol industry alike.

ENFORCEMENT

17. Strategies, including legislation to restrict digital marketing online, need to be supported by effective monitoring and enforcement systems, requiring transnational cooperation by governments, with the support of international organizations and the cooperation of the platform providers. Geoblocking involves the blocking of content in regions in which the content is not intended to reach certain individuals for legal reasons. IP (Internet Protocol) address blocking is a modification to a network service so that requests from hosts with certain IP addresses are rejected. Monitoring compliance with restrictions on content and volume will certainly be easier with a complete rather than a partial approach.
18. More research is required to understand how effective regulatory approaches have been. Lessons can be learned from other contexts, such as the experiences of three European countries, Italy, Latvia and Lithuania, which have completely banned advertising of gambling.
19. Most major platforms have algorithm-based processes, often semi-automated, that browse through posts made on the platforms, searching for offensive, inappropriate, harmful or hateful content. These tools include keyword filters, spam detection tools and hash matching algorithms. The same processes could be trained to scout for alcohol-related brand names and to block access to these.
20. Alcohol advertising content could also be pre-screened before publication. This would require the platform provider to set up a pre-screening service that would advise whether advertising content complies with regulations and advise the platform not to accept advertising that does not meet required standards.

INTRODUCTION



The WHO European Region has the highest level of total alcohol consumption among adults (aged 15 years or more) of the six WHO regions. In 2016, the European average for alcohol consumption for adults was 9.8 litres of pure alcohol per capita, comprising 8.0 litres of recorded alcohol and 1.8 litres of unrecorded alcohol⁴ (WHO Regional Office for Europe, 2021a).

Overall, in 2016, 10.1% of all deaths in the European Region were caused by alcohol – in absolute numbers, this amounted to almost 1 million people. A higher proportion of alcohol harm occurs early in the life course, compared with other major noncommunicable disease risk factors, with alcohol causing one in four deaths among people aged 20–24 years (WHO Regional Office for Europe, 2021a).

In total 10.1% of all deaths (almost 1 million people) in the European Region were caused by alcohol in 2016

While new technologies and social media have substantial opportunities and benefits to offer (OECD, 2018), they also present opportunities for exploitation of children and young people, people with (or at risk of) substance use disorders and the general population for the sale of alcohol and other harmful products.

Various reports (inter alia OECD, 2018; WHO Regional Office for Europe, 2016, 2018, 2019a) have drawn attention to both the benefits and the risks that young people experience in relation to social media, with excessive use being linked with mental disorders, including sleep deprivation (OECD, 2018).

Relationships with consumers are developed, maintained and nurtured on “public” social media and other digital platforms (e.g. Facebook, Instagram, TikTok, YouTube) and “private” social media – such as the messaging services Messenger and WhatsApp. Unlike traditional advertising contexts, consumers on social media platforms interact with branded content (Atkinson et al., 2014; Carah, 2014; Carah et al., 2015; Nicholls, 2012; Purves et al., 2014; Winpenny et al., 2014); as a result, their personal data can be harvested and used to target them directly with highly sophisticated, personalized marketing pitches. Increasingly, the placement of advertisements can happen in near-real time, orchestrated across different devices and applications, and with content fine-tuned according to the actions of an individual, often not consciously registered by the person. As well as this, user-generated alcohol-related videos on platforms such as TikTok have been shown overwhelmingly to promote positive associations with alcohol, including humour and camaraderie, while rarely showing negative outcomes associated with alcohol consumption (Russell et al., 2021).

The dynamism of the digital context creates challenges for those who wish to regulate this environment, not only in relation to alcoholic beverages but for a wide variety of products. Increasingly, networks such as Amazon, Facebook, Google, Microsoft, Snapchat, TikTok and Twitter publish digital advertisements using their own marketing technology systems: “walled-garden” businesses (WHO Regional Office for Europe, 2019a). As with other industrial sectors, such as food marketing, alcoholic beverage enterprises now operate sophisticated computer

4 “Unrecorded” alcohol is a broad umbrella term for various alcoholic products, such as home-made or informally produced alcohol (licit or illicit), smuggled alcohol, surrogate alcohol (which is alcohol not intended for human consumption) and alcohol obtained through cross-border shopping (which is recorded in a different jurisdiction).

processing applications that ingest, analyse and make actionable information on individuals. These companies are now able to generate and place their own advertising, including on websites and online services they control, or partner with leading platforms for more effective delivery of marketing (Center for Digital Democracy, 2021; Schiff, 2021).

There is evidence that children and young people are especially at risk of harm from exposure to alcohol marketing (Buchanan et al., 2018; Chambers et al., 2018; Jernigan et al., 2017; Noel et al., 2020; Rose et al., 2019). This exposure affects the onset of alcohol use, as well as frequency of drinking and drinking patterns, especially among young people (Anderson et al., 2009; Finan et al., 2020; Jernigan et al., 2017; McClure et al., 2016; Noel et al., 2020; Sargent and Babor, 2020; Smith and Foxcroft, 2009). It has also been argued that people who drink more alcohol will likely be targeted for more alcohol marketing because algorithms will target them with digital promotions for alcoholic products (Carah, 2017).

Children and young people are especially at risk of harm due to exposure to alcohol marketing

While most countries of the WHO European Region have implemented policies that regulate alcohol advertising to protect the youngest and most vulnerable segments of the population, so far very little is known about regulation in the area of alcohol marketing specifically in the digital space (WHO Regional Office for Europe, 2020b). As shown in **Table 1**, more than half of the Member States of the Region (30 out of 49 of those who submitted data) reported that they had an active surveillance system for marketing infringements. At the same time, fewer than half (21 out of 49) gave any response about whether or not they have a ban on alcohol marketing on the internet, and specifically on social media platforms (WHO, 2018). Only 14 Member States indicated that they have a marketing ban on the internet and on social media.

Table 1. Overview of existing alcohol marketing bans on the internet and specifically on social media, 2016

	Internet marketing ban			Social media marketing ban			Active surveillance of marketing infringement
	Beer	Wine	Spirits	Beer	Wine	Spirits	
Andorra	–	–	–	–	–	–	No
Armenia	–	–	–	–	–	–	–
Austria	No	No	No	No	No	No	No
Azerbaijan	Yes	–	–	–	–	–	No
Belarus	–	–	–	–	–	–	Yes
Belgium	–	–	–	–	–	–	No
Bulgaria	–	–	–	–	–	–	No
Croatia	–	–	Yes	–	–	Yes	No
Cyprus	–	–	–	–	–	–	No
Czechia	–	–	–	–	–	–	Yes
Denmark	–	–	–	–	–	–	No
Estonia	–	–	–	–	–	–	Yes
Finland	–	–	Yes	–	–	Yes	Yes
France	–	–	–	–	–	–	Yes
Georgia	–	–	Yes	–	–	Yes	Yes
Germany	–	–	–	–	–	–	No

Table 1. contd.

	Internet marketing ban			Social media marketing ban			Active surveillance of marketing infringement
	Beer	Wine	Spirits	Beer	Wine	Spirits	
Greece	–	–	–	–	–	–	No
Hungary	–	–	–	–	–	–	N/A
Iceland	Yes	–	–	Yes	–	–	Yes
Ireland	–	–	–	–	–	–	Yes
Israel	–	–	–	–	–	–	Yes
Italy	–	–	–	–	–	–	Yes
Kazakhstan	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kyrgyzstan	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Latvia	–	–	–	–	–	–	No
Lithuania	Yes	–	–	Yes	–	–	Yes
Luxembourg	–	–	–	–	–	–	No
Malta	–	–	–	–	–	–	Yes
Monaco	–	–	–	–	–	–	–
Netherlands	–	–	–	–	–	–	Yes
North Macedonia	–	–	–	–	–	–	No
Norway	Yes	–	–	Yes	–	–	Yes
Poland	–	Yes	Yes	–	Yes	Yes	Yes
Portugal	–	–	–	–	–	–	Yes
Republic of Moldova	No	No	No	Yes	Yes	No	Yes
Romania	–	–	–	–	–	–	Yes
Russian Federation	Yes	Yes	Yes	Yes	Yes	Yes	Yes
San Marino	No	No	No	No	No	No	No
Serbia	No	No	No	No	No	No	Yes
Slovakia	–	–	–	–	–	–	No
Slovenia	–	–	Yes	–	–	Yes	Yes
Spain	No	No	No	No	No	No	No
Sweden	–	–	–	–	–	–	Yes
Switzerland	–	–	–	–	–	–	Yes
Tajikistan	–	–	–	–	–	–	Yes
Turkey	Yes	–	–	Yes	–	–	Yes
Turkmenistan	Yes	–	–	Yes	–	–	Yes
Ukraine	No	No	No	No	No	No	Yes
United Kingdom	No	No	No	No	No	No	Yes

Source: based on the 2016 iteration of the WHO Global Survey on Alcohol and Health. N = 49. – = no data. Changes in the legislation since 2016 are not reflected (WHO, 2018). Four countries of the WHO European Region did not submit data.

While there are certain limitations on these data, including the fact that they were collected more than five years ago, they nevertheless indicate that, at that time, comprehensive bans on alcohol marketing on the internet were not widely used in the WHO European Region.

The WHO Regional Office for Europe supports Member States in the implementation, evaluation and monitoring of alcohol policies, according to their needs, culture and socioeconomic contexts. This report is intended to supplement other sources of information and evidence for Member

States, including the WHO European Region “Focus on Best Buys Series” reports on alcohol marketing and pricing (WHO Regional Office for Europe, 2020c and 2020d), the Health Evidence Network synthesis report on labelling of alcoholic beverages (Jané-Llopis et al., 2020) and Making the European Region SAFER: Developments in Alcohol control policies 2010–2019 (WHO Regional Office for Europe, 2021a). WHO has also developed the CLICK tool (WHO Regional Office for Europe, 2019a), a monitoring framework to support governments in taking action to restrict the online exposure of children to marketing of unhealthy products, including alcohol (WHO Regional Office for Europe, 2019b).

The vast majority of alcohol advertising online is “dark”... only visible to the consumer to whom it is marketed

The fact that the vast majority of alcohol advertising online is “dark”, in the sense that it is only visible to the consumer to whom it is marketed, makes regulation and enforcement difficult (Carah and Brodmerkel, 2021). Member States of the WHO European Region have indicated their concern and also suggested the inadequacy of self-regulatory measures, including in the regional consultation on the implementation of the WHO European Action Plan to Reduce the Harmful Use of Alcohol (2012–2020) (WHO Regional Office for Europe, 2020b). Challenges that have been described in relation to countering commercial interests include the following.

- The newly merged repertoires of marketing channels, techniques and platforms make alcohol advertising a complex, ubiquitous, constantly changing phenomenon, with many forms of expression and the overall effect of alcohol being normalized in the digital environments (WHO Regional Office for Europe, 2020b).
- Regulating private content/communication platforms, where most content is shared, is extremely difficult (WHO Regional Office for Europe, 2020b), although recent developments in both data protection and competition policy provide potential openings.
- Adding to the complications of such oversight is the increasing role of both influencers and the major enterprises (e.g. brands and sports bodies) that provide a platform for social media and marketing (WHO Regional Office for Europe, 2020b).
- There has been insufficient collaboration with other sectors (e.g. gaming, gambling, and nutrition) that face similar challenges in the developing marketing environment (WHO Regional Office for Europe, 2020b).

Responding to these concerns, this report has been compiled using a range of methods, including desk-based literature reviews and web searches. Technical experts have been engaged to write specific sections, and an expert technical meeting in November 2020, including some Member States, provided important inputs to the drafting process. For Section 4, WHO drafted each of the country sections then checked them with the country focal points to ensure accuracy and correction where needed.

Reducing the marketing of alcohol remains one of WHO’s “Best Buys” (WHO Regional Office for Europe, 2021a) to mitigate the public health harms of alcohol consumption. This report is

especially timely, given the growing capabilities of data-driven digital marketers to deliver both highly personalized ads and engaging, interactive “experiences” across the online landscape. The policy options discussed here are intended to be useful rather than prescriptive. The urgent need to take concerted action at national and international levels is strongly emphasized. The need for a global and comprehensive approach is repeatedly stressed.

Section 1 of this report summarizes how digital marketing has grown in economic and social stature, infiltrating all areas of contemporary life. New digital strategies to recruit consumers present serious new risks, including encouraging dependency among children and young people, people with or at risk of, substance use disorders and the general population; this can be exploited for commercial and other gains and is difficult to regulate.

Section 2 summarizes key challenges that have been identified in regulating digital marketing.

Section 3 describes briefly some of the approaches that have been identified as digital marketing techniques to encourage alcohol consumption and to sell alcohol, providing some real-life examples.

Sections 4 and 5 discuss the range of approaches that have been taken at national and transnational levels in the WHO European Region to respond to the challenges in relation to alcohol marketing that digital marketing presents. Current regulations may be inadequate to protect children and young people, people with, or at risk of, substance use disorders and the general population, at both national and international levels, and there is unfortunately a dearth of research to assess the impacts of policy interventions.

Section 6 lays out a range of policy options to reduce the risks of harms due to alcohol through digital marketing, without restricting the opportunities that the internet offers.

Section 7 draws some conclusions, including highlighting some important opportunities that changes in the digital ecosystem might present. The need for a comprehensive and multilateral approach is emphasized, based on substantial evidence that the best way to protect children, young people and vulnerable adults from harms due to alcohol marketing in online contexts is to remove it altogether from digital spaces.

1. THE SPREAD, IMPACT AND SPECIFIC CHALLENGES FROM DIGITAL MARKETING



1.1 Spread and impact of digital marketing

Digital advertising was forecast to be worth \$37 billion in 2020

From global estimates in December 2020 and mid-2021 (Group M, 2020, 2021), at a global level, it was forecast that, during 2020, digital extensions of TV, radio, print and outdoor advertising would equal US\$ 37 billion, or 15% of traditional media activity, up from US\$ 23 billion, or 7%, five years earlier. Digital extensions were predicted to equal 16% of advertising spending on traditional media by 2024. Digital advertising, narrowly defined to exclude traditional media extensions, was expected

to grow by 8.2% during 2020, excluding United States political activity, following nearly a decade of double-digit growth, including the prior six years, when it was above 20% globally. It was also estimated that growth would accelerate in 2021, so that pure-play digital media companies would collectively capture 61% of all advertising in that year. Within these totals, it was estimated that search advertising, whereby advertisements are placed from results from search engine enquiries, would account for US\$ 120 billion in revenue during 2020, with other forms of digital advertising accounting for US\$ 223 billion, rising by 12.6%.

It is difficult, however, fully to assign geography to digital advertising activity. For example, it has been disclosed that marketers operating exclusively in China are responsible for significant volumes of spending to reach consumers in other markets, despite these platforms lacking any consumer-facing presence in China. It is also notable that during 2020, it was estimated that the 25 largest media companies accounted for 67% of all industry advertising revenue. That same group of companies represented only 42% of advertising in 2016 (Group M, 2020, 2021).

1.2 The “marketing mix” and emerging dominance of digital marketing

The concept of the “marketing mix” emerged in the 1950s and 1960s (Goi, 2009) as a way of conceptualizing all of the factors at a marketing manager’s command to satisfy the target market. Widespread adoption of this framing method simplified the concept to what has become known as the “4 Ps” – Product, Price, Place and Promotion. The last P, Promotion, has typically focused on traditional advertising, but the rapid proliferation of digital media has now created additional challenges, with digital marketing now promoting products to individuals all over the world who use the internet in many different ways. Evidence suggests that digital marketing of alcohol is linked to construction of online identities that are directly and indirectly related to alcohol consumption (Geusens and Buellens, 2021).

By their very nature, traditional broadcast media show the same advertisement to all people who are consuming the media content – i.e. everyone watching the same TV show, reading the same newspaper or watching the same film in the cinema would see the same advertisement. However, the exponential growth of the consumer internet has changed the nature of marketing and the relationships between advertisers and consumers. The amount of content available to

view on the World Wide Web has multiplied. Technology platforms, with Google increasingly dominant, have become gateways for consumers to find content on the web, while developing sophisticated online data gathering methods, enabling them to develop individual consumer profiles. This enables brands to target individual consumers with personalized advertising on their digital devices in real time, based on detailed information about their behaviour (Gandomi and Haider, 2015). Increasingly, broadcast TV and newspapers are also able to leverage digital technologies to deliver more personalized, data-driven ads.

Algorithmically driven alcohol marketing can target people with tailored marketing messages at specific times and in specific places when they would be most vulnerable to them (for a recent example, see Cancer Council Western Australia, 2020). GPS (Global Positioning System) information combined with other data can result in the intensification of alcohol marketing, in ways that are linked to time and context. This kind of marketing, as it appears on mobile platforms, becomes part of everyday social media activities and practices and is thus not viewed as unusual by users.

Real-time marketing on mobile devices also poses an intensified risk because it can appear in users' digital feeds while they are drinking, including while they are intoxicated (Moewaka Barnes et al., 2016). It can use GPS data so that it can link users to place-specific marketing and promotion. Social media marketing agencies use GPS and real-time data to create digital marketing campaigns for the alcohol sector, as described below.

Digital marketing of alcohol is linked to a user's online identity

Brands target individuals with personalized advertising in real time

Algorithms can tailor messages to people at times and in specific places at times when they would be most vulnerable

"We leverage proprietary, real-time receipt-level data and third-party consumer intelligence to target the right consumer, and can provide you with tools to execute successful digital marketing campaigns that can keep you ahead of your competition and deliver measurable results at the click of a button."

Source: Wine Industry Network, 2020

Digital marketing is a truly global venture. Internet reach has grown to 4.7 billion people worldwide (59%), the number of active social media users has reached 4.1 billion (Statista, 2021a) and smartphone penetration has reached 3.3 billion/41.5% of the global population (85.9% Android and 11.8% Apple) (Statista, 2021b). Average screentime is increasing for all age cohorts, digital advertising continues to grow faster than other methods, and there is constant innovation in digital programmatic technologies for video, in-game, audio/podcast and digital out-of-home (WHO, 2021b). European Union countries have 87.7% of internet penetration (Internet World Stats, 2020) and in 2019, around 75% of European Union citizens (aged 16-74 years old) accessed the internet through mobile devices (European Commission, 2020a). By

By 2025, global digital advertising spend is predicted to be over US\$ 600 billion, representing 60% of total global advertising spending

2025, global digital advertising spending is predicted to be over US\$ 600 billion, representing 60% of total global advertising spending, and mobile advertising spending will reach US\$ 360 billion.⁵

Digital advertising spending has grown as a proportion of total advertising spending over several years, as well as including estimates for the coming years.⁵ The research company eMarketer reports: “Digital’s share of total media advertising spending will cross the 60% threshold this year for the first time and is on track to reach nearly a 70% share by 2025” (eMarketer, 2021).

1.3 The impact of coronavirus disease (COVID-19)

According to WHO,⁵ the COVID-19 pandemic caused a considerable drop in advertising spending, while in-home (digital) media usage went up. TV viewership has climbed and digital consumption has increased even more: use of social platforms and streaming services have risen almost everywhere; gaming has also grown dramatically. Advertisers have adapted by following consumers, shifting spending to digital, particularly for “direct response” campaigns. There was also a decrease in the value of Pay-TV to the benefit of ad-supported streaming video services.

COVID-19 has strengthened the position of digital platforms in two ways:

- first, they appear to be suffering less, relative to others in the advertising ecosystem, enabling them to emerge faster and stronger from the crisis;⁴
- second, they own behavioural data collected during the pandemic. In an industry where all players are trying to understand consumer habits, this will give platforms a competitive edge going forward. In addition, brands—including alcoholic beverage companies—have invested in a variety of e-commerce strategies so that they can sell directly to individuals.⁵

Publicly available data on alcohol marketing expenditures are scarce, but it is estimated that the global total marketing spending for six of the largest alcohol companies was US\$ 17.7 billion in 2017 (Jernigan and Ross, 2020). As digital marketing is now the most important marketing platform for alcohol brands (Alhabash et al., 2015) there is an urgent need to develop adequate regulatory frameworks and technical tools and skills to monitor and restrict this.

Zenith’s Business Intelligence 2021 report on the beer and spirits advertising marketplace noted the “pandemic has forced alcohol brands to ramp up digital operations”, in part due to the “rapid shift to online purchasing” from consumers. Zenith predicts that spending on digital

⁵ More on this subject can be found in an upcoming WHO Regional Office for Europe report entitled *How the evolution of the digital marketing ecosystem impacts food advertising*.

advertising by alcoholic beverage companies will grow to around 30% by 2023 of their overall advertising expenditures, up from 21% in 2019 (Zenith, 2021).

1.4 Digital media strategies for consumer engagement

Mobile devices accessing the internet are now the most important marketing platforms for alcohol and other marketers and the use of online video to deliver compelling messaging is ubiquitous, regardless of device or application used (Lobstein et al., 2017). Activities include paid advertising (e.g. display ads), owned media (e.g. brand websites) and consumer-generated content (Arnhold, 2010). When these three categories are combined with the functions of word of mouth, customer relationship management and brand-work, such as sponsored content (Alalwan et al., 2017), it has been suggested that there are nine hypothetical combinations of formats and functions of online advertisement that consumers are likely to come across. These are displayed in Table 2, but in this fast-moving space it can be difficult to slot major formats into any one of these spaces; for example, paid native advertising, such as sponsored posts and stories on Facebook and Instagram and sponsored filters on Instagram and Snapchat that combine paid targeting with consumer participation.

Table 2. Formats and functions of new media advertisement that consumers come across

	Word of mouth	Customer relationship management	Brand work
Paid advertising	Influencers and other online personalities are paid to recommend products on the basis of their own experience.	Upholding images of alcoholic beverage brands that the loyal consumers can continue to identify with through campaigns and events.	Associating brand with images and significations that are convincing and attractive for target groups.
Owned media	Consumers react and engage in brand sites and reactions are displayed in the users' own social media community.	Synchronizing image and brand profile in the ecosystem of online marketing in order to keep old costumers and engage new ones.	Forming social media profile in line with the messages and images associated with brand.
Consumer-generated content	Consumers react, refer to or make recommendations for brands and products.	Consumers are encouraged to react to games and events and so create the marketing through their engagement.	Getting the right people to react in the right way, strengthening the product brand. Brand spokespersons and celebrities.

1.5 Segmenting the digital market

There are several methods of gathering information which will group together potential consumers. These include the following:

- **identity information** – e.g. age, sex, home location, work location, education level, income level, family size;
- **location-based targeting** – e.g. based on country, region or zip code/postcode;
- **behavioural targeting** – e.g. based on history of content consumed, apps downloaded or webpages viewed;
- **event tracking** – e.g. tracking customers' preferences on the basis of online action, such as signups for newsletters, purchases, form-fills or cart additions;
- **profile targeting** – e.g. continuous optimization of audiences and content by testing and refining to build profiles based on the way individuals agree to engage in a certain activity, such as a survey, and provide personal information.

1.6 Algorithmic marketing

One of the most concerning areas of online marketing, especially in relation to potential harms for young people, is behavioural targeting using computer algorithms in real time to customize marketing in view of consumer interests: thus, for example, the more someone shows an interest in any alcohol-related issues, the more they will be exposed to alcohol marketing (Carah, 2017; Montonen and Tuominen, 2017). Optimal performance is achieved by matching the marketed offer to individuals' interests, based on knowledge of what they view, backed up with information about their identity, demographics, geographical location and other relevant data. It is also possible to create algorithms based on multiple data points which might have nothing to do with alcohol and to use that information for targeted marketing. The technologies

learn to manipulate users' vulnerabilities and affective experience through data extraction and real-time algorithmic processing (Bucher, 2018; Zuboff, 2019) that enables companies to predict people's desires and influence their consumption behaviour. Online content is also tested and refined to make sure it delivers highly compelling messages, including through the use of "neuromarketing" and emotional analytic tools that are designed to influence emotional and subconscious processes. Through algorithms, display advertisements can be targeted and can influence searches by consumers (Goldfarb and Tucker, 2011; Kireyev et al., 2016).

The more someone shows an interest in any alcohol-related issues, the more they will be exposed to alcohol marketing

Algorithms are also employed in search engine optimization (SEO): the use of techniques that help a website rank higher in search engine result pages. By optimizing their content creation processes, brands can improve their SEO scores and rank higher for a growing number

of keywords, from specific ones to general ones. Similarly, with search engine marketing, advertisers pay to be linked to keywords on search engines that users might enter when looking for certain products or services. The algorithms are powered by a complex set of data applications derived from information gathered by companies, platforms, data brokers and other marketing partners, enabling alcohol brands to develop a robust analysis of particular individuals and those who share similar characteristics and interests (Singh, 2021; Search Engine Land, 2021; Google Search, 2021).

There is a substantial and growing body of evidence that, for many children and young people, social media engagement feels like a requirement for their participation in society, giving them the ability to exercise autonomy and self-determination (Boyd, 2014; Dobson et al., 2018; Niland et al., 2017; Robards, 2014). Social media use and engagement and alcohol use can both be ways that young people create and express their identities, including particular gendered identities and fluid gender identities (Emslie et al., 2014; Hunt and Antin, 2019; Lennox et al., 2018; Hunt et al., 2019).

Platforms can make themselves feel indispensable in young people's lives, including offering "free" access and services, to generate "network effects" (Srnicsek, 2017). Data that are captured can be used to connect advertisers to individual users through tailored marketing that draws upon new forms of predictive analytics and artificial intelligence (Zuboff, 2019). Online platforms can provide help in discussing topics that might be more difficult in offline contexts, fostering a sense of social inclusion and even providing opportunities to support young people with a range of mental health problems, including depression and anxiety (OECD, 2018). However, when money-making opportunities for businesses are involved, there is a danger that individuals may feel that they are exercising agency in their online interactions, as they interact with alcohol marketing practices as part of identity-making (Atkinson et al., 2017), when these are actually being shaped by algorithmically driven platform media that have harvested data about those individuals. This is then used to construct an online relationship that drives them towards consumption of the products being promoted, including alcohol.

Platforms can make themselves feel indispensable in young people's lives

1.7 Google and Facebook

A forthcoming WHO report⁶ describes the changing nature of the digital ecosystem. According to this report, the platform providers Google and Facebook increasingly dominate the market for internet use. Drawing on United Kingdom data, in April 2020, while most households were confined to their homes, the average internet user spent 3 hours 56 minutes online, of which 39% was on Google and Facebook content (Competition and Markets Authority, 2020).

6 How the evolution of the digital marketing ecosystem impacts food advertising.

The platform providers can gather a vast amount of data that can be used for marketing purposes. Google gathers user data from three main sources: from its user-facing services (it provides over 50 such services, including Google Search and Gmail); from mobile devices running Android, Google's operating system; and from the analytical technology it places on third-party sites and apps (known as tags).⁷

Google and Facebook provide brands and agencies with the ability to measure the performance of digital advertising that is bought through them. Google tags are known to be present on roughly 80% of the highest-traffic websites, while Facebook has pixels present on around 40–50% of the highest-traffic websites.⁷

For many young people **social media engagement** feels like a requirement for their participation in society

Some social media platforms do not allow their users to turn off personalized advertising while continuing to use their services, but there is some movement towards consent management procedures with major platform services.⁷ This situation is in contrast to search engines; for example, both Apple Safari and Firefox allow consumers to opt out of personalized advertising, and some search engines such as DuckDuckGo do not use personalized advertising at all.⁷

1.8 Eastern Europe and Central Asia

In many countries in the east of the WHO European Region, a range of platforms exist in competition with companies such as Facebook and Google. These include social platforms such as vk.com and ok.ru, search engines and services like Yandex and Mail.ru and messenger services such as Telegram or Viber. The Russian Federation and several countries of the Commonwealth of Independent States have bans in place on alcohol marketing on the internet and social media (Neufeld et al., 2021), but many local alcohol retailers and international alcohol brands nevertheless have a strong presence on social media platforms, including Instagram.

International brands use the Russian online social media and social networking service VK (VKontakte), which has over 400 million registered users worldwide (Statista, 2021c). For instance, a major beer retailer promotes free tours to its breweries in the Russian Federation on VK (Heineken, 2021a), as well as actively using the platform to promote the brand through their alcohol-free beer, which is in line with Russian legislation and advertising as it is not classified as an alcoholic beverage (Heineken, 2021b).

⁷ (WHO Regional Office for Europe, in press).

2. CHALLENGES IN REGULATION OF DIGITAL MARKETING



Existing regulations are inadequate

Challenges in relation to the regulation of digital marketing include what has been described as the “dark” and ephemeral nature of this advertising, whereby the vast majority of this advertising is not “published” in any meaningful sense where it can be subjected to monitoring (Carah and Brodmerkel, 2021). It has also been suggested that existing regulations are inadequate as they tend to focus on volume, placement and content, whereas in digital contexts it is “predatory” data-driven models of profiling and targeting that seek to optimize attention and consumption to consume with symbolic messages that do an enormous amount of harm (Carah and Brodmerkel, 2021). Other specific challenges that have been identified include the following.

- The fact that digital marketing operates beyond country borders means that consumers can access global content but the responsibility for regulation does not sit rigidly within one country; also, different countries have different regulations, so there is a lack of consistency at international policy level (Critchlow et al., 2019).
- Content is promoted beyond brand-controlled spaces; marketing codes often do not account for user-generated branding, such as personal user posts including content shared on social media, even if the content was originally published as marketing (Critchlow et al., 2019).
- The fact that widespread age information is not available in the market, combined with inadequate tools to verify age, makes it difficult to restrict access to online content for children and young people. The emerging concept of the “unauthenticated” web whereby it is not possible to target users by data any more presents additional challenges for age verification (Critchlow et al., 2019).
- Constant innovation in digital media means that there is a need for ongoing assessment of the impact of new developments, especially on vulnerable populations, including young people, and of whether these innovations are adequately covered by existing regulations (Critchlow et al., 2019).

The fact that widespread age information is not available in the market, combined with inadequate tools to verify age, makes it difficult to restrict access to online content for children and young people

The fact that much of the process of buying and selling advertising space online has been automated (also known as programmatic advertising) means that, regardless of regulations, imperfections in models can lead to advertising being placed in inappropriate online contexts; this includes exposing children and young people to advertising of alcohol and other health-harming products (Critchlow et al., 2019).

The varied range of stakeholders involved in regulating digital marketing, including media operators, producers and regulators, has created challenges for developing and applying regulation in a consistent manner. The inaction of media operators and their representative bodies in regulating online content and designing best practice and the lack of data-sharing that could usefully inform regulation adds to the challenges (Critchlow et al., 2019).

A key challenge for regulators that has also been highlighted is that trade agreements that have been negotiated may present obstacles to the effective regulation of digital alcohol marketing (e.g. restricting rights to move and hold data anywhere in the world); keeping source codes and algorithms secret; not requiring companies that provide digital services from offshore to have a presence in a country; and not requiring them to take a particular legal form if they do (Kelsey, 2020).

3. DIGITAL MARKETING TECHNIQUES IN RELATION TO ALCOHOL



The following section provides an overview of some of the techniques that are used to market alcohol in online contexts. It will specifically define and present examples of

- digital sponsorship
- viral, content and product placement/embedded marketing
- augmented reality
- native advertising
- targeting blogs and vlogs and influencer marketing
- sweepstakes and online contests and user-generated content
- drinking games
- localized digital marketing
- carousel and buy button.

This is not an exhaustive list; digital strategies to market alcohol are constantly evolving.

3.1 Sponsorship

“Alibi” marketing techniques often use distilled brand elements such as slogans to circumvent regulations on advertising restrictions

Sponsorship is a marketing technique that has been appropriated into digital contexts. It involves agreements between companies for mutual benefit, such as sponsoring or naming events or premises. Sponsorship related to alcohol often associates itself with sporting and cultural events in online contexts. It employs techniques such as “alibi” marketing, which involves distilling a brand identity into its key components — for example phrases from the brand slogan, colours or typeface — and using these in place of a conventional logo or brand name to circumvent established regulations that restrict advertising. An online example of this is a tweet containing a video with a famous retired footballer, which was shared during the EURO 2016 football tournament (Purves et al., 2017). Behind the retired footballer is a notice which says “Probably the best place to be” and includes “#probably”, which is an alibi reference to the brand which does not explicitly name it.

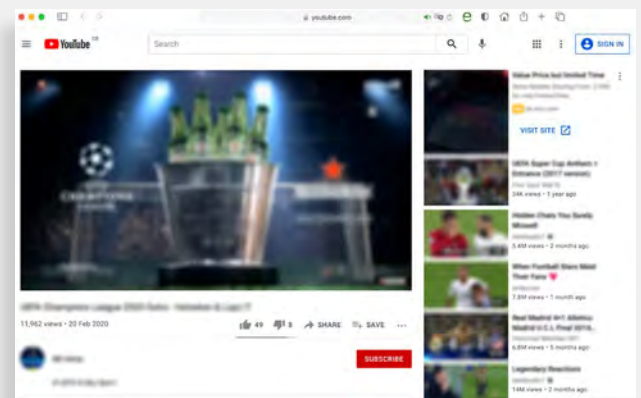
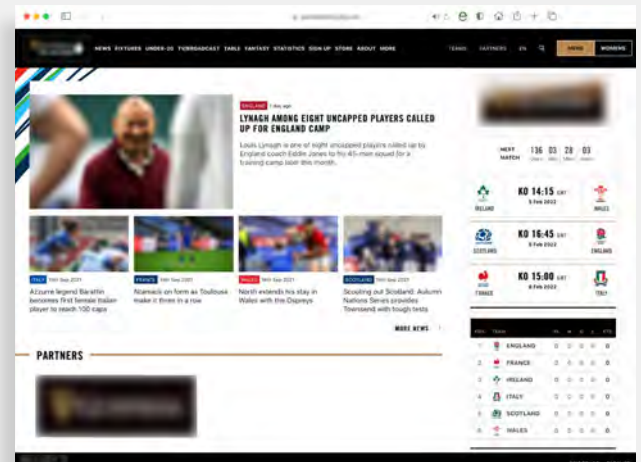


Behind the retired footballer is a notice which says “Probably the best place to be”

One of the biggest rugby competitions in Europe bears the name of the alcohol brewing company that sponsors it. On the main competition website the company's logo is clear. According to the company that developed the website, it receives 49 000 visitors per minute and 55% opt in using fan engagement tools such as taking part in online polls or competitions. The brewing company's Twitter account in 2021 has around half a million followers and the company has regular campaigns using a hashtag that includes the product name. For fans using Twitter, this is one of their main sources of information about the tournament. The branding of the alcohol product is intertwined with information about the sport and there are no age verification systems in place to prevent exposure of minors to the alcohol advertising.

An international brewing company gives its name and sponsorship to UEFA (Union of European Football Associations) Champions League. Research carried out on behalf of the brewers found that globally more than eight out of 10 people follow this League using at least one digital channel (for example online live streams or social media), while approximately one in six exclusively use digital channels to follow matches (Fleming, 2020). The "reach" to potential consumers therefore using social media and live streams through their sponsorship of these competitions is expanded rather than relying or using simply traditional forms of marketing.

What are known as "e-sports," online competitions by individual or teams of video gamers, are now among the most successful commercial businesses, with hundreds of millions of viewers playing in countries across the world generating revenue of approximately US\$ 1 billion in 2020. Leading alcohol companies are among those sponsoring the various leagues and games produced by the e-sports industry, which are able to take advantage of the virtual formats to promote their brands in prominent spaces, and often to children and young people (Chambers, 2020). There is also evidence of vulnerability to alcohol sponsorship among 25–34 year olds and heavy

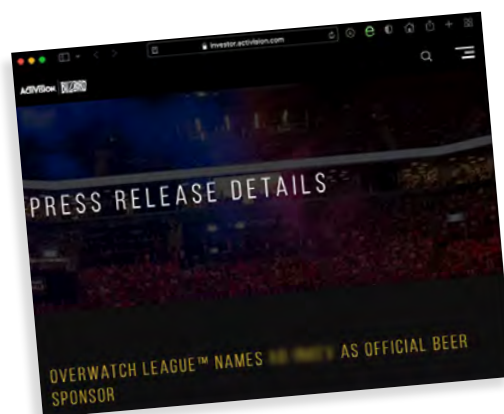


Top: the rugby competition online presence includes a hashtag with the alcohol brand name. Bottom: The brewing company is a major sponsor of the UEFA Champions League

Leading alcohol companies sponsor events produced by the e-sports industry that are often aimed at children and young people

gamer cohorts (Kelly, S.J. and Van Der Leij, D, 2021). A multiplayer online battle arena video game has been sponsored by a vodka producer in Ukraine (Gameinside.UA, 2018). Another example is the Overwatch League for the Overwatch video game, which is sponsored by a major global beer producer (Activision/Blizzard, 2019).

Overwatch press
release naming a brand
of beer as a sponsor



3.2 Viral marketing

Viral marketing
is a process where
digitally created content
is circulated rapidly
online by social media
users, who may be
unaware that this is
happening

Viral marketing describes a process whereby content created digitally is circulated rapidly and widely from one internet user to another, through online social sharing by social media users, who may sometimes be unaware that this is happening. The following are some examples of viral marketing:

An Italian beer company launched a campaign announcing five new beers just before Italy came out of its first COVID-19 lockdown in May 2020. The advertisement repeated the voice of the Italian Prime Minister's announcement on 4 May 2020 that "We are finally going out, but we will do so step by step" (translation from Italian). "Step by step" is not a direct translation from the Italian version which is "per grado" (in the advertisement), this is a pun used to indicate the different alcohol content percentages of the different beer products. A social media hashtag was also developed with the link promoted #finalmentefuori (#finallyout).



"Andrà tutto bene" which means
"everything will be fine"

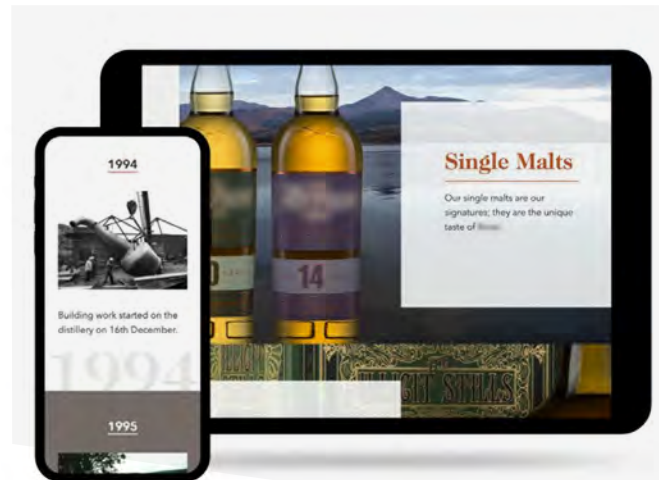
The same beer company also developed another hashtag using an emblem that became famous during the pandemic in Italy, seen among many balconies and broadcast throughout the country: "Andrà tutto bene", which means "everything will be fine". The sentence was changed into "Andrà tutto bere"; and "bere" in Italian means "to drink". This campaign was shared by many social media users, helping the brand gain visibility.

3.3 Content marketing

Content marketing refers to a technique which persuades the consumer that they are receiving useful information but which always has the intention to encourage profitable customer action. This could, for example, take the form of informative content about brewing processes, pairing suggestions with a specific food or outlining product information, such as the alcohol volume. Such content marketing could reasonably be perceived by individuals to be helpful to the consumer and/or presenting health information.

Content marketing could reasonably be perceived as being helpful to the consumer

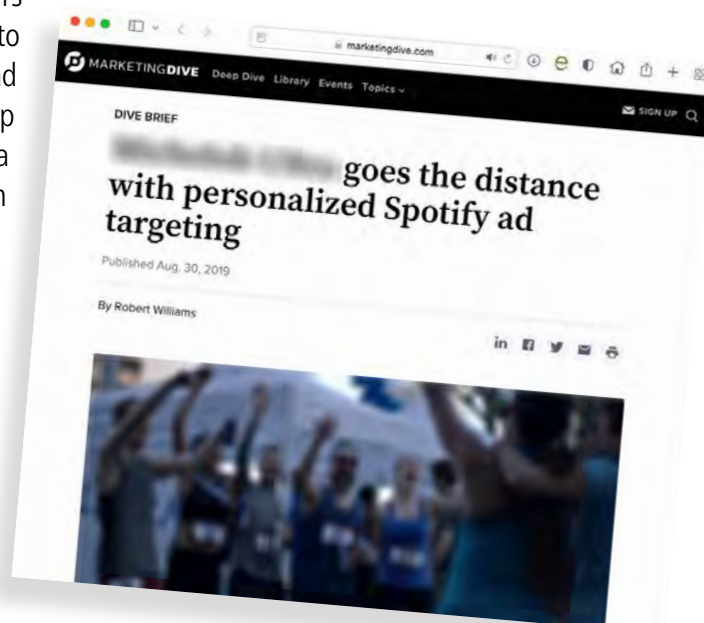
Producers of a Scotch whisky advertise on TikTok to convey “the essence” of the whisky brand and in doing so use this as a core platform for sales. TikTok reports that there has been a 52% increase in organic traffic year-on-year and 53% profit year-on-year since the launch of the partnership in 1994. To date, the company has amassed over 40 000 Instagram followers and over 31 000 Facebook followers.



The whisky producer uses TikTok to convey “the essence” of the brand

In another example, a global beer brand partnered with audio streaming service Spotify on a campaign aimed at runners in the United Kingdom and Mexico. Spotify’s technology was used to reach listeners with tailored messages based on their location, time of day and weather, through an announcement shared with Mobile Marketer. The campaign urged runners to visit a microsite to create a playlist customized for their desired distance, intensity and location. The site also linked to Spotify’s playlist and offered a chance to receive a free pint of the beer. Runners were also given a chance to run in a half marathon race as members of a team with a name related to the brand. Runners had to upload a screenshot of a running app from their most recent run for a chance to win a place in the team (Williams, 2021).

The beer company encourages runners to create a customized Spotify playlist, to receive a free drink and to run as part of a sponsored team



3.4 Product placement

Technology enables brands to target **product placement** so that different viewers see different brands

Product placement, also known as “embedded marketing”, is a marketing technique whereby references to specific brands or products are incorporated into other contexts, with specific promotional intent. Typical strategies include alcohol brands advertising using smartphone applications such as bar trackers, bottle shop finders, drinking games, happy hour finders, and cocktail recipes (Weaver et al., 2013). Technological developments have enabled brands to target product placement to intended audiences, so that different viewers see different brands when they are viewing content. For example, an online magazine published descriptive videos on how to make a cocktail. Below is an example of a cocktail being made using a branded gin, a clear example of product placement, with no other gins mentioned or disclaimers given.



A single brand of gin features in a video of how to make a cocktail

3.5 Augmented reality

Augmented reality filters can create alcohol promotions that are location, time, and context-specific

Tactics such as ephemeral or short-lived video stories, augmented reality filters and sophisticated algorithms create alcohol promotions and advertisements that are location, time, and context-specific (Carah and Brodmerkel, 2021; Hawker and Carah, 2021). These are especially prevalent on Instagram, Snapchat and TikTok and they are hidden in the social media feeds of individual users and are ever changing. Carah and Brodmerkel (2021) set out the example of a beer company using sponsored filters on Snapchat for the football World Cup.



The brand developed sound-activated as well as reactive filters so fans could keep track of scores and share their reactions in real time. The Snapchat advertising model is organized around sponsored filters and lenses, which are made available to targeted users in specific times and places. Users take these filters and lenses and apply them to their selfie-taking practices to augment their face and surroundings with brand logos and paraphernalia (Hawker and Carah, 2021).

3.6 Native advertising

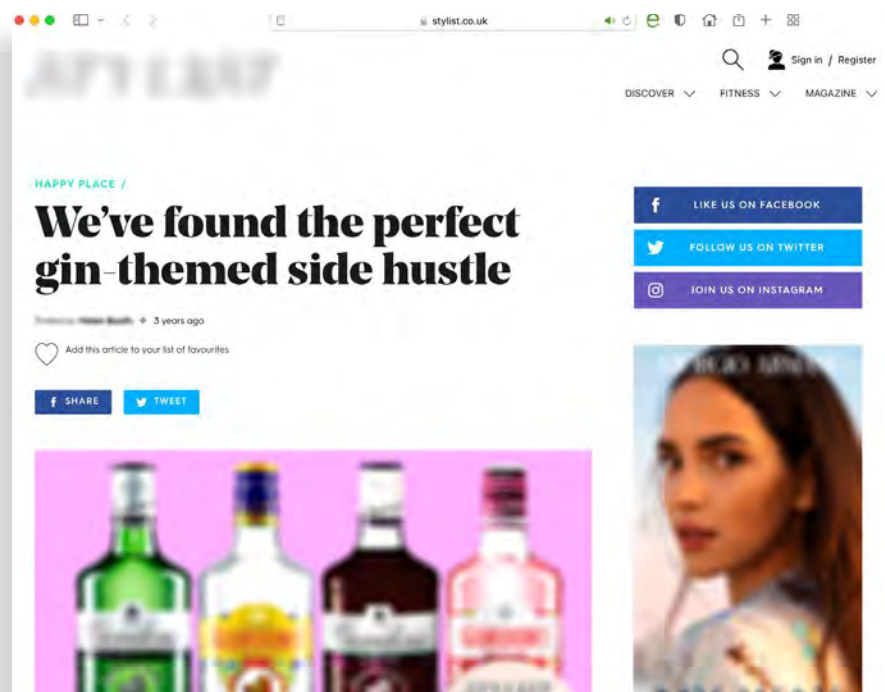
Native advertising is akin to product placement, and is a technique which embeds branded content designed to resemble non-commercial online content and similar to the platform in which it is published, for example news articles or social media posts (Wojdyski., 2016; Wojdyski and Evans, 2016). Owing to its covert nature and resemblance to the surrounding non-commercial content, native advertisements are often perceived as informative or entertaining content rather than advertising (Matteo and Dal Zotto, 2015; Wojdyski and Evans, 2016).

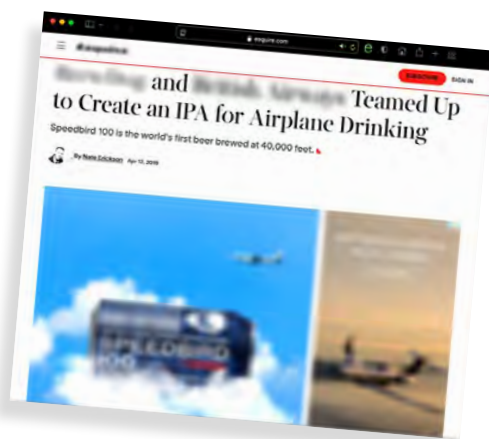
Native advertisements are often perceived as informative or entertaining content rather than advertising

The dominant form in the Facebook ecosystem is the sponsored post or story – these are “native” in the sense that they are indistinguishable from other content on the platform. The following are examples of native advertising:

In an online magazine targeted at women, an article appears to be advertising the opportunity to be a product tester for a gin brand, but it is really a covert advertisement for the alcohol brand.

A covert ad for a major gin brand designed to look like an article





An ad for a new beer disguised as an article about a business partnership

In an online magazine targeted at men, an article was presented as describing a business news about a new relationship between an airline company and a brewer, but it is really an advertisement for a new alcoholic product.

On a smaller scale, an online community of Belgian based food bloggers has 643 followers on Instagram. Although the website mainly reviews food, pictures with product placement of specific alcoholic brands are also included and therefore are advertising them to their followers without any disclaimers or information that this is the case.



Product placement of alcohol brands feature in a food review blog

3.7 Targeting blogs, vlogs and online influencers

Targeting blogs, vlogs and online influencers engage in an advertising process whereby the advertiser promotes its products through other agencies' or individuals' online communications. Central platforms for influencer marketing are Instagram and YouTube (Djafarova and Rushworth, 2017; Jin and Phua, 2014; Thourmrungrroje, 2014). On YouTube, influencer marketing occurs as bloggers or vloggers feature products in their videos (Lee and Watkins, 2016) as if by chance, when in fact the audience has often been precisely targeted by algorithms programmed by an economic operator.

Online personalities often influence a customer's purchasing decision, but are seldom accountable for their actions

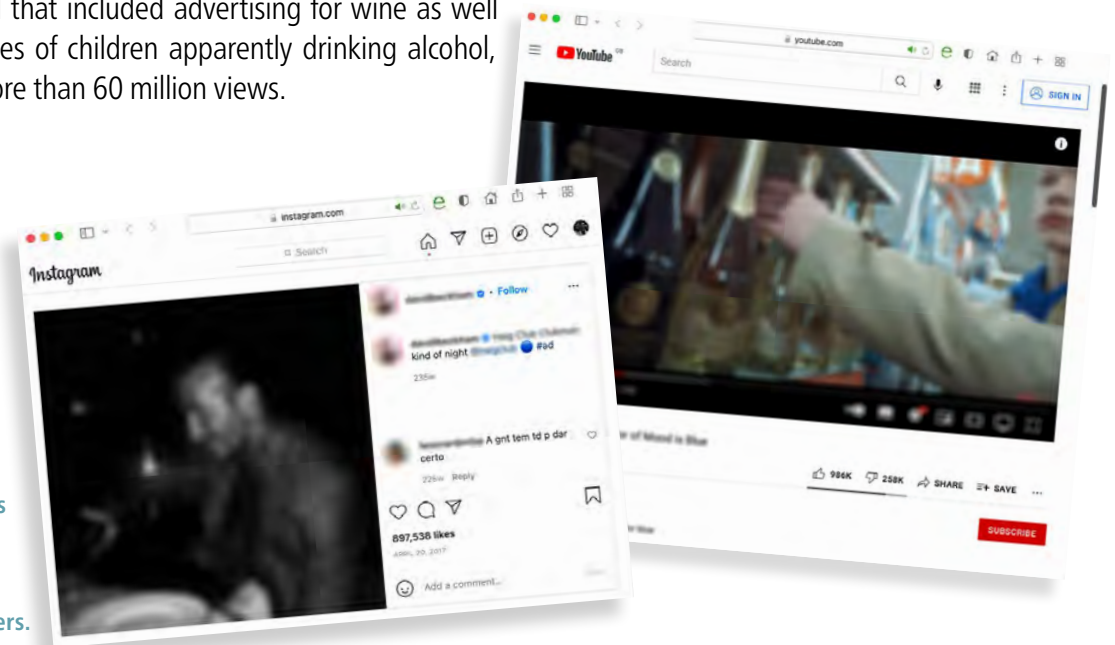
Digital influencers are online personalities, often presenting themselves as ordinary and relatable figures, who can significantly shape a customer's purchasing decision, but may never be accountable for it (Brown and Hayes, 2007). Some influencers may have been famous before engaging in these activities but there are also many examples of "ordinary" individuals promoting alcohol brands using this method. Although influencers may seem very natural in their behaviours, their prescribed advertising activities rely heavily on sources of data about the intended consumers that enable the pitch to be as

targeted as possible to an individual's interests. Research shows that influencers reach minors and are effective in making alcohol consumption popular and normative. Influencers post many alcohol brands but often do not disclose this; moreover, when they do, there is evidence that these posts are not liked or shared as much as posts without disclosure (Hendriks et al., 2020).

There are many examples of people who are already famous using their fame to advertise alcohol to their online followers. A pop star in the Russian Federation placed a video on his YouTube channel that included advertising for wine as well as showing scenes of children apparently drinking alcohol, which gained more than 60 million views.

A pop video featuring what appears to be an under-aged teen selecting a bottle of wine

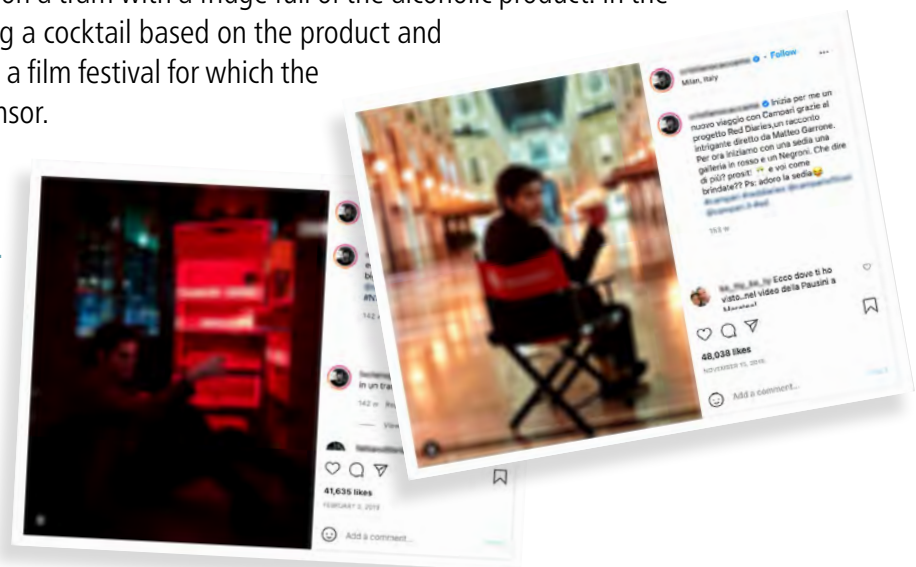
A whisky brand was advertised on the star's Instagram account which has 66.5 million followers.



A former England international footballer advertised a whisky brand to his 66.5 million followers on Instagram. In this picture he appears to be having a night out partying and has chosen this whisky at random to drink from the bottle. In fact, according to the alcohol company website he is a "partner" in this business. The only hint that this is the case is the hashtag "ad" on the Facebook post. The former footballer's followers can receive this advertisement without any age-verification checks.

An Italian actor and influencer, with around one million followers, is the Italian brand ambassador for an alcohol brand, which he advertises using his Instagram account with staged pictures. In the first picture below he is on a tram with a fridge full of the alcoholic product. In the second picture he is drinking a cocktail based on the product and saying "cheers" to celebrate a film festival for which the alcohol company is the sponsor.

An Italian actor and influencer advertises a popular alcohol brand on his Instagram account.



The following are examples of Targeting Blogs or Vlogs and online influencing by people whose fame is established mainly by engaging in social media activities:

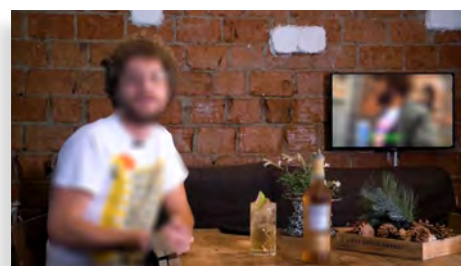


A model drinks an alcoholic product in support of an event sponsored by the brand

An Italian-Dutch model with 463 000 followers on Instagram drinks an alcoholic product and states that he is happy to see what the company is doing with its sponsored film festival. The post ends with a #ad21 tag and a tag with the alcohol company's name. At the time this picture was downloaded, over 55 000 people had commented on or "liked" this advertisement.

In 2019, a Russian vlogger with more than 1.5 million subscribers on YouTube named and displayed a specific whisky brand in his video, which then was classified as alcohol advertising by the Federal Antimonopoly Service and thus not in line

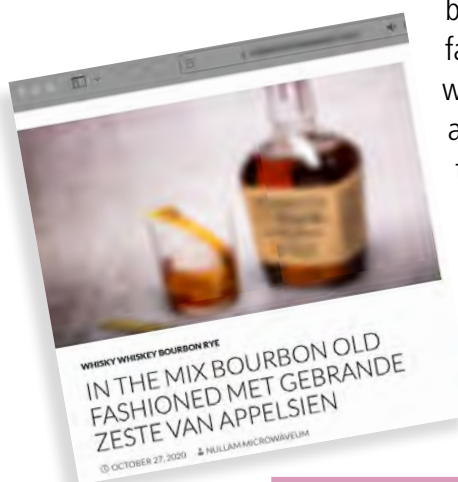
with the Russian Federal law "On advertising". He was required to remove the relevant frame from his video.



The display of a whisky brand was classified as alcohol advertising, not in line with the Russian Federal law "On advertising"

In another example, a Dutch food blogger explains how to make an old fashioned cocktail using a specific whisky brand. He also blogs about a competition with a name related

to a specific brand where the product placement is clear. People accessing this account have exercised a choice to engage with alcohol. However, there are no disclaimers or information provided to make the viewer aware of any connection between the blogger and the alcohol brands being endorsed.



A Dutch blogger endorses a specific whisky in an article about cocktails

3.8 Sweepstakes, online contests and user-generated content

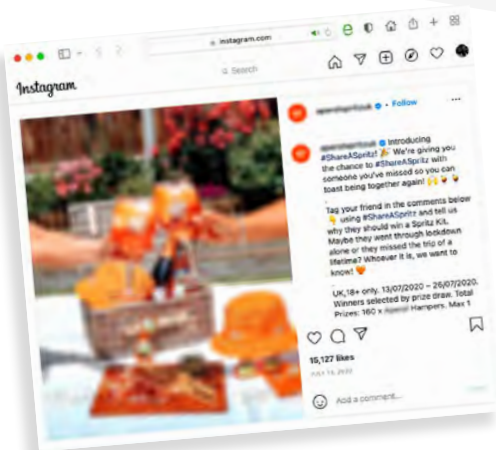
One of the ways that social media is used to obscure when marketing is taking place is to encourage users to generate their own content. There are many ways this can be done, including through use of a range of sweepstakes and online contests. The user-generated content performs the function of increasing awareness of alcohol brands, supplementing more direct marketing.

In the partnership between a vodka producer and an American singer, rapper and actress, a limited edition vodka was created which was accompanied by a social media campaign asking consumers to define "A Beautiful Future"; in a series of co-created content on social and digital platforms the star read aloud a selection of inspiring posts, calling for a beautiful future to start now. Also on Instagram the hashtag "#A beautiful future" trended.

User-generated content increases awareness of alcohol brands



This social media campaign co-created by an alcohol brand and a popular singer courted consumer participation



An Instagram competition encourages people to interact with the brand

Many companies have online competitions that are really ways of advertising alcohol. For example, an Italian aperitif company invited people to make a video with their friends making their alcoholic product.

The same company put up posts on Instagram in the United Kingdom with a hashtag #Shareaspritz, encouraging people to post a picture of themselves drinking the beverage and using the hashtag with the chance of winning a branded food and drinks hamper.

Another example of co-creation is of an Italian sparkling wine company, which in 2018 had a competition inviting people to create a cocktail recipe using their brand and to upload this with a photo and the hashtag related to the brand name for a chance to win a holiday through public voting for the best entry. The company also encouraged participants to share and invite friends and family to vote for their entry.

For a chance to win a holiday participants need to upload photos of them using the alcohol brand



3.9 Drinking games

Another example of online marketing of alcohol includes when online drinking games are embedded with alcohol messaging. These can be found on blogs or on YouTube in games such as Fortnite (which has 350 million users) (Statista, 2020) and Minecraft (140 million users) (Statista, 2021d).

Online drinking games
are embedded with
alcohol messaging

A specific strategy known as “gamification” involves incorporating digital games or game elements into brands’ marketing mix. Game elements may include, for example, avatars, storylines, bonuses and leaderboards. The integration of “advergames” into digital marketing strategies (Chester et al., 2010; Nicholls, 2012) presents online games as if only entertainment is being provided; however, when embedded with brand identifiers, including logos, branded characters and package images, the intention is to create positive associations with brands and products (An and Kang, 2014; Gross, 2010; Folkvord et al., 2017; Nairn and Hang, 2012; Terlutter and Capella, 2013). Research suggests that exposure to advergames has immediate and long-term effects on children’s identification with brands (Agante and Pascoal, 2019; Chen and Yao, 2019).

The first picture on the right shows a snapshot of an online drinking game on YouTube targeting Minecraft players and advertising a beer brand, also using sexually provocative pictures of women.

The second picture is of an online gamer encouraging people to drink cognac while playing the game Fortnite on YouTube.



Examples of online drinking games
embedded with alcohol messaging

3.10 Localized digital advertising

An area of advertising particularly challenging to regulate is online advertising by local bars and restaurants through social media that flout guidelines applied to traditional media. A recent Canadian study suggested the failure of a self-regulatory system in this context, so that bars that did not comply with advertising codes were especially successful in attracting student drinkers (Paradis et al, 2021). The study calls for new legislation and increased regulation in this area.

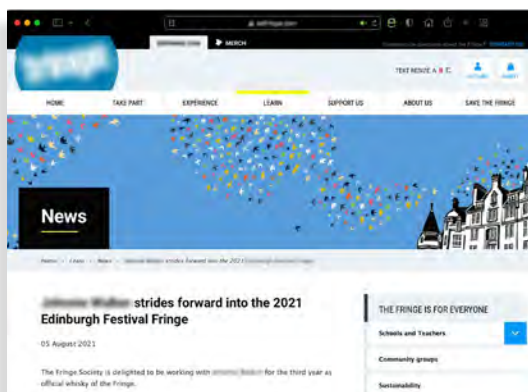


A Christmas promotion for "unlimited" drinks

An example of this type of advertising which contravened guidelines was the case in the United Kingdom where a pub company advertised a "barrow of booze" on their website, which was declared irresponsible by the regulatory body, the Advertising Standards Authority, and removed because it incited excessive drinking. Nonetheless, there are other such examples – for example, the pictured advertisement for a bar in Liverpool, England which includes Christmas packages, including unlimited drinks, for a set price.

There are also many examples of alcohol-sponsored cultural festivals, sponsored by alcohol companies which are heavily marketed in online spaces. In 2019, a Scottish arts festival (Edinburgh Fringe, 2021) sold 856 541 tickets and had more than 285 000 followers on Twitter.

Since 2019, the festival has been sponsored by a Scotch whisky brand. Its 2021 website includes "news items" such as this one which announces "<Whisky brand name> strides forward into the <festival name>". This announces the brand as the "official whisky of the <festival name>", inviting people to attend "its popular <festival name> Club, a dedicated bar space for visitors to the festivities, for the entire duration of the festival". The website



also explains that with each ticket bought online, customers can click on the ticket banner in their booking confirmation email to be entered into the prize draw which includes the "<Brand name> Ticket prize giveaway, including complimentary highballs at the Fringe Club" and "bottles of <brand name alcoholic beverage>".

The festival website announces partnership with a major whisky brand

Other local alcohol-related activities are promoted online with engagement and tagging on social media, using lottery, special offers and other tools to make sure that the content is shared and that more people come to the event. In Moscow, Russian Federation, the booming bar scene is supported by digital marketing to attract people to events such as this "Tour de bar" YouTube video, which has been viewed by more than 100 000 people. Although it states "18+", there is no age verification process.



Many cultural festivals are sponsored by alcohol companies and are heavily marketed in online spaces

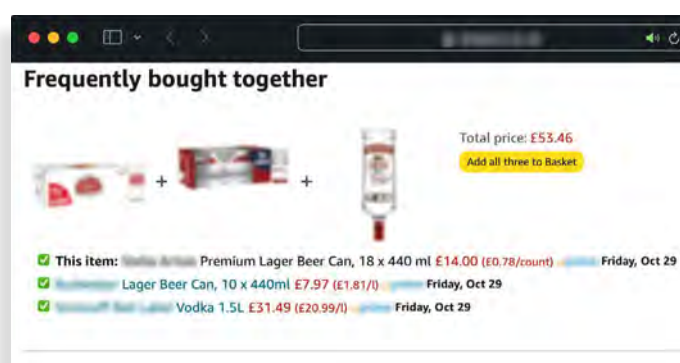
Local alcohol-related activities use online promotion and social media engagement to maximize awareness

The Moscow bar scene runs a collaborative digital marketing campaign

3.11 Home deliveries and Carousel and buy button

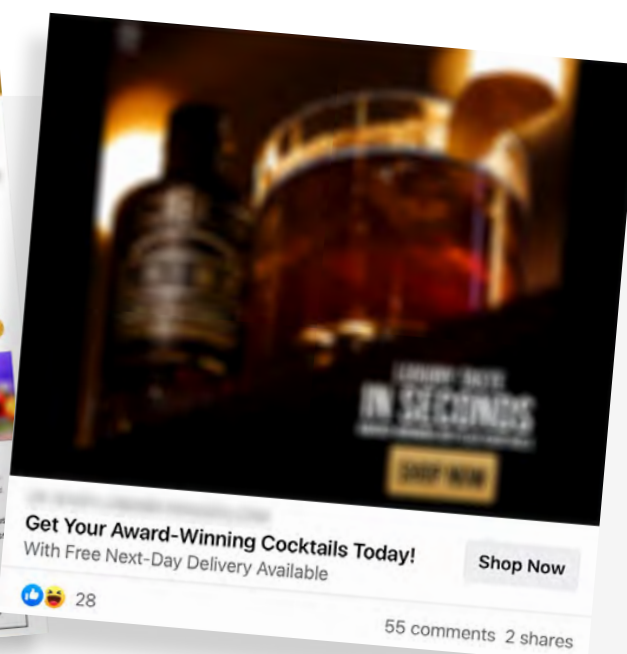
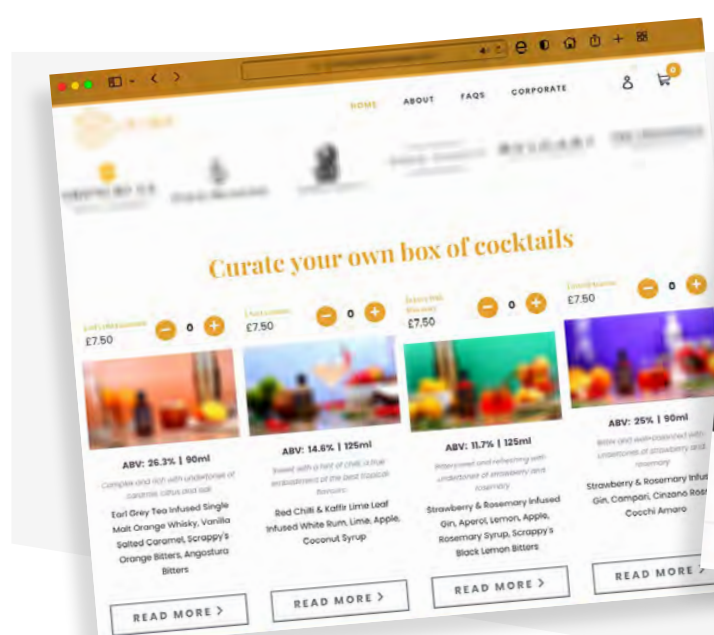
Mobile apps are increasingly being used for home deliveries of food and alcohol from hospitality industries

Although in some countries, it is not permitted to sell and deliver alcohol online, in many countries, mobile apps are being used for home deliveries of food and alcohol from hospitality industries and this has become more common as a result of the COVID-19 restrictions. In some countries, general consumer product websites are increasingly engaged in marketing of alcohol, with limited restrictions. The picture below provides an example from the United Kingdom of how purchasers of a beer brand are encouraged of to buy other alcoholic products as well – a named vodka and a different beer – as a package. The webpage states that to confirm the recipient is over 18 years, “valid photographic ID with a date of birth may be required upon delivery. The driver will input your year of birth into their device and may then require an ID check to complete the age verification process” (our emphasis).



Online encouragement to extend purchase of further alcoholic items

Increasingly prevalent on Facebook, Instagram, Snapchat and TikTok, the Carousel and buy button integrates one-click shopping into advertisements, further reducing barriers to availability. The following advertisements on Facebook for a United Kingdom based alcohol home delivery service includes a “Shop now” button on the Facebook post.



Example of one-click shopping advertising on a social media platform; the homepage of the linked online shop.

4. COUNTRY CASE STUDIES



4.1 Introduction and overview

The following section provides examples of countries where there have been a range of responses by governments to deal with the challenges presented by digital marketing, as relevant to the issue of alcohol control. For each country we provide some background information, a summary of the policy response, what is known about how policies are enforced and outcomes that have resulted from this.

Countries' approaches are grouped under four headings:

- specific new regulations have been added to existing legislation, or new legislation has been created – Finland, Estonia, Ireland, Lithuania;
- existing marketing regulations have been applied to the digital context – Norway, Russian Federation, Sweden;
- existing marketing regulations have been applied until it was deemed necessary to have specific digital marketing legislation – France; and
- a largely self-regulating system has been created – United Kingdom.

4.2 Specific new regulations have been added to existing legislation or new legislation has been created

4.2.1 ESTONIA

Background: In 2008 the Advertising Act laid down that “advertising of alcohol must be focused on the product and be presented neutrally” (Riigi Teataja, 2020). This meant that advertisements of alcohol could not contain a living being, animated image or voice of a well-known person or character, incite buying or consuming alcohol or indicate that it has a positive effect, depict the serving or consumption of alcohol, link alcohol to any events or dates, or be linked to driving. The legislation prescribed that any advertising needs to include a health warning, with 20% of the space allocated to this. There are significant limitations on the places where alcohol advertising is permitted in public spaces, including restrictions on the general visibility of alcoholic beverages at the point of sale (Neufeld et al., 2021).

The Advertising Act 2008 was updated in 2018 to prohibit the advertising of alcohol in social media

Policy response: the Advertising Act 2008 was updated in 2018 to prohibit the advertising of alcohol in social media networks, except on the website and in the social media account of the alcohol “handler”. Sharing of information by a “handler” of alcohol on social media which have been created by consumers or which contain an incitement to share is prohibited.

Enforcement: monitoring for violations is conducted by the Estonian Consumers Union (ECU), a nongovernmental and not-for-profit organization, and complaints can also be made by the public and media to the organization and investigated. Sanctions, where appropriate, are imposed by the ECU in the form of a fine.

Outcomes: more data are required to assess the effectiveness of the new legislation and enforcement by the ECU.

4.2.2 FINLAND

Background: the legislation relevant to this area is the Alcohol Act, which came into force originally in 1995. This legislation has prohibited marketing of strong alcohol beverages, mild alcoholic beverages if aimed at minors, and marketing linked to driving a vehicle, emphasized as being positive or giving untruthful or misleading information about alcohol, its use, effects or other properties. There are also specific broadcast time limits around advertising of alcohol on the radio or television to prevent exposure of minors.

Finland's Alcohol Act includes special regulations to protect minors and restricts alcohol advertising on social media

The marketing regulation was updated in 2015 (Finland Ministry of Social Affairs and Health, 2018). After that, the Alcohol Act was completely renewed in 2018, keeping alcohol marketing regulation basically the same (Statute 1102/2017).

Policy response: in January 2015, Finland became the first country in the world to incorporate special regulations of social media into its Alcohol Act (Kauppila et al., 2019). Finland's Alcohol Act includes special regulations of social media to protect minors and restricts alcohol advertising using social media, banning:

- interactive games, competitions and lotteries;
- user-generated content through social media pages governed or sponsored by an alcohol advertiser;
- content that is intended to be shared by consumers (Finland Ministry of Social Affairs and Health, 2018).

In relation to the last point, this law is to prevent alcohol brands from encouraging consumers from sharing content that is produced for the purpose of advertising alcohol (Kauppila et al., 2019).

Enforcement arrangements: the National Supervisory Authority for Welfare and Health (Valvira), a government body operating under the Ministry of Social Affairs and Health, is responsible for the implementation and enforcement of marketing regulations. Valvira offers supervision and guidance to alcoholic beverage producers and importers on early supervision

and self-monitoring and is responsible for alcohol product control (Valvira, 2021). The regional state administrative agencies are primarily responsible for supervising the advertising and sales promotion of alcoholic beverages in their area. Valvira supervises alcoholic beverage advertising taking place across regional state administrative agency boundaries or at national level.

Legislation has made alcohol brands more aware of the need to monitor their social websites

Formal monitoring is not currently in place. If potentially prohibited advertising is detected, the supervisory authorities provide guidance on correcting the breach; if this is ignored, a provisional prohibition on advertising activities is issued; and if this is not actioned, then the company's business activities may be blocked, requiring corrective action within a set time frame. Given that children are likely to be exposed to advertisements even if they are not specifically targeted, the guidance is of limited use – and no fines have been issued to date.

Outcomes: a report by University of Helsinki Centre for Research on Addiction, Control and Governance explored the effects of the legislation (Kauppila, 2019). They found that the use of content contravening the 2015 amendment – interactive games, competitions, lotteries and consumer-generated content – decreased in Finland. This indicates that the legislation has made alcohol brands more aware of the need to monitor their social websites, and violations were rare.

They also found, however, that only 33% of the alcohol brands had developed age checks (13% on Instagram) (Kauppila et al., 2019). This suggests that the specific regulations have an effect, but there remain loopholes and gaps that make enforcement difficult.

4.2.3 IRELAND

Background: The Public Health (Alcohol) Act was passed in 2018 to cut down on alcohol consumption and related harms. Some provisions came into effect in 2019 and 2021, others will take longer to implement and some will require further legislation to achieve implementation (Health Service Executive 2019a, 2019b). This Act prohibits adverts for alcohol in or on public service vehicles, at public transport stops or stations and within 200 metres of a school or crèche/playground. It has also banned alcohol advertising in cinemas except in films with an 18 classification or in licensed premises in the cinema. Children's clothing that promotes alcohol is also illegal. Retailers displaying large amounts of alcohol must now confine alcohol products and advertising to a separate area with a 1.2 metre-high barrier, and alcohol cannot be visible behind the counter. From November 2021, alcohol advertising will also be banned in a sports area during a sports event or at events for children.

Policy response: the Public Health (Alcohol) Act 2018 regulates all alcohol advertisements, including digital. Advertisements can give only specific information about the nature of the

product, such as where it is from, price and an “objective” description of the flavour. They must also contain health warnings regarding alcohol consumption, including during pregnancy, and a link to a public health website, www.askaboutalcohol.ie, which gives information on alcohol and related harms.

Enforcement: the Act states that authorized officers and namely Environmental Health Officers of the Health Service Executive should enforce this legislation. Penalties on conviction for breaches of the Act include fines up to €250 000 and a term of imprisonment of up to 3 years.

The Advertising Standards Authority for Ireland (ASAI) is the independent self-regulatory body set up and financed by the advertising industry. The ASAI Code is a self-regulatory code with responsibility for compliance resting with advertisers, promoters and direct marketers (Finlay et al., 2019). Complaints can be made to the ASAI and are investigated free of charge; the identity of the person making the complaint is not revealed. The ASAI may also investigate issues identified through its monitoring programme.

Where there is a case to answer, the advertiser is informed of the complaint and invited to comment before an adjudication is made. An ASAI committee decides whether the ASAI Code has been breached and publishes a case report. An advertisement or promotion that is found to be in breach of the ASAI Code must be withdrawn or amended. Organizations that are found to have breached the ASAI Code may also be publicly named.

The ASAI Code is broad in scope and applies to all digital marketing. There are three main principles – that advertising should:

- be legal, decent, honest and truthful
- be conceived with a sense of responsibility to consumers and to society
- respect the principles of fair competition generally accepted in business.

Outcomes: ASAI publish on their website any actions taken. At the time of writing four complaints have been made since the legislation has been in place in relation to digital marketing and alcohol, and all were upheld, with content either removed or health warnings added.

4.2.4 LITHUANIA

Background: a first full ban on advertising alcoholic beverages was adopted within the initial version of the Law on Alcohol Control in 1995, but this was not well enforced and it was relaxed in 1997, so that all alcohol advertising was permitted except that targeting children (Miščikienė et al., 2020). New restrictions were introduced in 2000 when alcohol advertising on TV and radio during daytime hours was banned (Miščikienė et al., 2020). In 2018, Lithuania

Advertisements must contain **health warnings** regarding alcohol consumption, including during pregnancy

In 2018, Lithuania implemented its Law on Alcohol Control 2017, which **completely banned** all alcohol advertising

implemented its Law on Alcohol Control 2017, which completely banned all alcohol advertising. This legislation also raised the minimum legal age limit for drinking alcohol from 18 to 20 years (Miščikienė, 2020) and introduced stricter restrictions on hours of sale in off-premises.

Policy response: the Law on Alcohol Control 2017 explicitly includes digital marketing and social media. To support enforcement, the Drug, Tobacco and Alcohol Control Department (NTAKD), a government body, issued recommendations that the law should be interpreted in its broadest sense. Any mention of a brand, or the name of a producer or product shall be treated as an advertisement, with exceptions in points of sale and producers' and sellers' websites. Neither companies nor employees are allowed to show alcohol images in their social media profiles.

Enforcement: NTAKD can block Internet sources that publish online alcohol advertisements for the Lithuanian market. No information could be obtained on whether or not this has been enforced.

Outcomes: further research is required to assess the impact of the regulations in Lithuania.

4.2.5 RUSSIAN FEDERATION

Background: alcohol advertising and marketing limitations were introduced in the Russian Federation as early as the 1990s, but were gradually expanded over time in response to public health concerns. In 2006 a new Federal law No. 38-FZ "On Advertising" was introduced, which was then further amended several times in line with the overall national strategy of reducing alcohol per capita consumption and alcohol-attributable harms. Similarly, the Federal Law No. 171-FZ "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcohol and Ethanol-containing Production", which is the main instrument of Russian alcohol policy, has been amended several times since its introduction in 1995 to accommodate restriction of off-premises sales and the ban on online sales (Neufeld et al., 2020; WHO, 2019c).

In 2012, the Federal law "On Advertising" was amended to **prohibit alcohol advertising on the internet, including social networks**

Policy response: in 2012 the Federal law "On Advertising" was amended to prohibit alcohol advertising on the internet, including social networks. However, there remain ways to promote alcohol online, owing to incomplete enforcement. In addition, alcohol producers and distributors often use their websites for promotion purposes, since their content is not recognized as marketing but as a platform where they can share information on their products with potential consumers, including information on prices and special offers. The only regulations that exist in this case are that websites are clearly marked as being intended for people who are at least 18 years of age and feature the following message: "Excessive alcohol consumption harms your health". Such websites can also use newsletters or lotteries as interactive elements. Moreover, indirect marketing techniques are not prohibited, such as faux-pas surveys, which are actually designed to promote a certain product or brand rather than to collect data (Neufeld et al., 2020).

Enforcement: the Federal Antimonopoly Service (FAS), a Government body, is the principal regulator across all industries. FAS may issue injunctions and impose administrative fines. Its decisions may be appealed to a commercial court (Goryachev, 2018).

The agency issues fines for the violation of the law when taking money for alcohol advertising in digital content is clear, but it does not seem to react when certain brands of alcohol are repeatedly displayed in online content without explicit information about money payment.

Outcomes: according to the Association of Communication Agencies of Russia, the internet was the only growing platform of advertising distribution (Shurmina, 2020). The main challenges identified relate to enforcement (Shurmina, 2020). However, as in the case of the vlogger Varlamov, as mentioned above, there are instances where action has successfully been taken to remove YouTube content that contravened regulations

4.3 Application of existing marketing regulations to the digital context

4.3.1 NORWAY

Background: The Norwegian Alcohol Act (1989) applies a total ban on alcohol marketing across all media and channels, including digital marketing and social media (Helsedirektoratet, 2020). Section 9-2 specifically states:

“The advertising of alcoholic beverages shall be prohibited. The prohibition also applies to the advertising of other products carrying the same brand or distinctive mark as beverages containing more than 2.50 per cent alcohol by volume. Moreover, such products must not be included in advertisements for other goods or services.”

Policy response: advertising in the meaning of the Alcohol Act is “any form of mass communication for the purpose of marketing”. The Directorate of Health is responsible for supervising compliance with the provisions on prohibition of advertising and has issued guidance to clarify that this applies to “all channels, including social media and the product labelling/packaging” (Vin- og brennevinleverandørenes forening, 2018).

Some exemptions to the total ban exist, however. For example, producers may present their products on their websites using what is deemed to be “neutral”

The Norwegian Alcohol Act (1989) applies a **total ban on alcohol marketing** across all media

language – this is obviously open to different interpretations. Similarly, the “webshop” of the State monopoly can provide “neutral” information about its products.

Enforcement: the Directorate of Health supervises and can impose sanctions if the law has been broken. If the Directorate of Health finds that the prohibition of advertising has been violated, it may order the situation to be rectified. The Directorate of Health may obtain written confirmation from the offender that the unlawful circumstances will cease. A coercive fine may be fixed.

Outcomes: Rossow (2021) observes that reported violations of the ban in Norway appear to occur mainly on social media; this may reflect the difficulty of disentangling commercial advertising messages and user-generated content on social media, making enforcement especially challenging.

Reported violations of the ban in Norway appear to occur mainly on social media

Rossow (2021:3) further states that “it is claimed, for instance by the Norwegian Breweries Association, that enforcement of the ban on social media is lacking completely” and this is said to indicate the need for further efforts to strengthen enforcement to ensure the ban is effective.

In short, Norway has affirmed that the existing ban is applicable to digital marketing, but challenges with enforcement mean that this area often becomes reliant on self-regulation.

4.3.2 SWEDEN

Background: the Swedish Alcohol Retailing Monopoly (Systembolaget Aktiebolag) has the sole right to retail alcoholic beverages in Sweden, with the purpose of minimizing alcohol-related problems by selling alcohol in a responsible way, without profit being a principal motive (Government Offices of Sweden, n.d.).

Sweden prohibits the advertising of alcohol on television or radio. An alcoholic drink is classified as anything containing more than 2.25% of alcohol by volume (Kauppila et al., 2019). Since 2004, it has been legal to advertise alcoholic drinks with less than 15% alcohol in printed media with warning texts accompanying them and taking up at least 20% of the advertisement (Kauppila et al., 2019).

Sweden treats alcohol marketing on the internet in the same manner as older formats of marketing, and has not developed separate regulation or regulations

Policy response: Sweden treats alcohol marketing on the Internet in the same manner as older formats of marketing, and has not developed separate legislation or regulations. Online, the promotion of alcohol must be targeted at those 25 and over and knowingly doing otherwise is prohibited (Kauppila et al., 2019).

A Government White Paper in 2018 set out the need to reduce the exposure of children and young people to online alcohol marketing and proposed sanctioning violations with fines. However, the legislation has not yet been implemented.

Enforcement: The search for violations is conducted by the Swedish Consumer Agency, a Government body. This is the supervisory authority at the national level. Complaints can be made to the Swedish Consumer Agency through its homepage online. Sanctions, where appropriate, in the form of a fine are imposed by the Swedish Consumer Agency following a court ruling.

Outcomes: in a study of digital marketing of alcohol in Sweden, it was noted that only a few violations of the industry's self-regulatory codes or content were identified that would be specifically appealing to minors (Kauppila et al., 2019). However, minors could obtain access to alcohol marketing messages, and specifically only 57% of the producers had introduced age limit controls on Facebook and none had put these restrictions in place on Instagram (Kauppila et al., 2019).

Only 57% of the producers had introduced age limit controls on Facebook

4.4 Application of existing marketing regulations accompanied by new digital regulations

4.4.1 FRANCE

Background: France's 1991 Loi Évin limited alcohol advertising content to factual information and to media specifically listed in the legislation. All drinks over 1.2% alcohol by volume are classified as alcoholic beverages (Gallopel-Morvan et al., 2017). Advertising targeted at young people, or on the television or in the cinema, and sponsorship of cultural or sports events are not permitted. Advertising of alcohol is permitted in the press or at special events directed towards adults, on billboards and on radio channels (under precise conditions). In these cases, the content is controlled, so that messages and images should refer only to the qualities of the products such as origin, composition and means of production. In addition, a health message must be included stating: "Alcohol abuse is dangerous for health". An amendment was passed in 2015 that relaxed the law in relation to journalistic discussion of alcohol.

France's 1991 Loi Évin limited alcohol advertising content to factual information and to media specifically listed in the legislation

Policy response: the Loi Évin preceded the development and proliferation of the Internet, and online marketing was not specifically named in the legislation, which would have implied that it was illegal. However, this changed in 2009 when the Bachelot Law allowed online alcohol advertising, with the exception of sport websites and websites targeting young people (Braillon and Dubois, 2010).

Social media were not defined under this legislation as targeting minors, which meant that online alcohol advertising was permitted, albeit with some limited restrictions (Braillon and Dubois, 2010). However, in a landmark case on 20 May

The core principles on alcohol advertising of the Loi Évin should be strictly applied

2020, led by the Association Nationale de Prévention en Alcoologie et Addictologie [National Association of Prevention in Alcohol and Addiction] (ANPAA, now Association Addictions France), the Court of Cassation upheld the decision of the Tribunal de Grande Instance that advertising on a beer producer's website broke the rule that alcohol advertising must be strictly informative. The Court of Cassation decision was therefore important in reaffirming that the core principles on alcohol advertising of the Loi Évin should be strictly applied.

Enforcement: the Autorité de Régulation Professionnelle de la Publicité (ARPP) (Professional Advertising Regulatory Authority) is a self-regulatory organization. ARPP is financed and managed by advertising-related businesses. It does not receive any subsidies provided by public institutions. Its role is to create ethical and professional standards within the sector and to carry out monitoring. A Jury de Déontologie Publicité (advertising panel) was created under ARPP. It handles consumer complaints concerning advertisements that seem to breach the codes. The application of the law is the preserve of the courts.

In France, if a nongovernmental organization brings a successful complaint, it receives the fine levied on the advertiser. This model serves to incentivize civil society to do the monitoring and collaborate in the enforcement. ANPAA undertook seven actions in 2019 against the alcohol industry, mainly for advertisements on social networks (Eurocare, 2021), and led the landmark case that was taken forward in 2020.

Outcomes: no information could be found on the success of the ARPP or the Jury de Déontologie Publicité (Publicity Ethics Jury) on enforcing alcohol digital marketing regulations.

ANPAA have publicly criticized the Government's Anti-Addiction Plan, arguing that there is a need to be stronger on the regulation of internet advertising (Institute of Alcohol Studies, 2019). In short, digital marketing in France was not subject to the same restrictions as conventional marketing, and the new regulations developed in 2009 had meant that digital marketing did not have the same rigour applied in terms of regulation. However, this landmark case in 2020 indicates that this is changing, with the Loi Évin reasserted across all forms of communication and the position moving back towards an application of the existing legislation and market regulations. It is not known what the actual effect has been on the alcohol industry in terms of its compliance with the case law established in 2020.

4.5 Largely self-regulating approach

4.5.1 UNITED KINGDOM

Background: advertising generally in the United Kingdom is regulated by the Advertising Standards Authority (ASA), a non-statutory organization funded by a levy on the advertising industry (Searle et al., 2014). The ASA is responsible for advertising standards and customer

complaints, and for broadcast (e.g. TV, radio), non-broadcast (e.g. print media), and online advertising. There are two codes of practice that United Kingdom alcohol advertisements must comply with: the United Kingdom Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) (Committee of Advertising Practice, 2014), and the co-regulatory United Kingdom Code of Broadcast Advertising (BCAP Code) (Advertising Standards Agency (ASA) and Committee of Advertising Practice (CAP) (n.d.)), the latter of which is set and overseen by the Office of Communications (Ofcom). The membership of CAP and BCAP includes alcohol-industry-funded bodies that are involved in setting the marketing rules. As such, the United Kingdom's approach to alcohol marketing regulation may be regarded as largely a combination of self-regulation and co-regulation. The CAP and BCAP codes relevant to alcohol advertisements apply to drinks containing more than 0.5% alcohol by volume (ABV). These rules also apply when advertisements refer to or promote alcoholic drinks even if they are not specifically for alcoholic drinks, such as when soft drinks are positioned as mixers. Rules relevant to low-alcohol products apply to drinks containing more than 0.5% ABV up to 1.2% ABV.

The alcohol-industry-funded Portman Group operates the Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks (Portman Group, 2019), and the Code of Practice on Alcohol Sponsorship (Portman Group, 2014). In short, the Portman Group is responsible for the alcohol industry's self-regulation of all forms of marketing not covered by ASA, namely the naming, packaging and promotion of alcoholic products. The Code of Practice on Alcohol Sponsorship applies to all new sponsorships undertaken by the United Kingdom alcohol drinks industry for an alcoholic drink which is marketed for sale and consumption in the United Kingdom, where such activity is activated in the United Kingdom, is primarily United-Kingdom-focused and is not already subject to regulation by other regulators. The code states: "prior to sponsoring an event, team or activity, drink companies must use their reasonable endeavours to obtain data on the expected participants, audience or spectator profile to ensure that at least the aggregate of 75% are aged over 18 years".

The alcohol-industry-funded Portman Group operates the **Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks** and the **Code of Practice on Alcohol Sponsorship**

Policy response: the CAP Code (Committee of Advertising Practice, 2014) includes media placement restrictions protecting (1) under-18s from being targeted with marketing for alcoholic drinks at or above 1.2% ABV; and (2) under-16s from being targeted with marketing for drinks less than 1.2% ABV if presented as a low- or ultra-low version of an alcoholic drink. The code includes rules mostly relating to the content of alcohol advertisements, as opposed to exposure. For example, anyone who features in an alcohol advertisement must be 25 years of age or over, and appear to be that age. Breaches of the code include linkage of the consumption of alcohol to increased popularity, sexual success, confidence, sporting achievements or mental performance; the portrayal of drinking alcohol as a challenge; promotion of binge drinking; and any suggestion that alcohol has therapeutic qualities or that it can solve problems is banned.

Enforcement: the ASA actively monitors all marketing, including in the digital sphere, as well as investigating complaints received from the public.

The CAP offers general guidance on the interpretation of the CAP Code in relation to non-broadcast marketing communications. In 2017, the CAP published “Media placement restrictions: protecting children and young people advertising guidance” and in 2021 “Age-restricted ads online advertising guidance (non-broadcast)” (Advertising Standards Authority, 2017, 2021) but neither of these binds the ASA in the event of a complaint about an advertisement.

Outcomes: ASA publishes rulings, including those relating to complaints about online content, on their website on a weekly basis. They also publish a list of companies and organizations which, following receipt of a complaint, agreed to amend or withdraw their advertisement without the need for a formal investigation. The ASA’s website lists 20 cases since 2016 where complaints about online advertising have been upheld.

In August 2020, in accordance with the principles of the United Nations Convention on the Rights of the Child that recognize the right to safety and care in all aspects of a child’s life, the United Kingdom Parliament enacted legislation under the Data Protection Act 2018 which authorized a statutory “Children’s Code”. The aim of the Code is to protect minors online when interacting

In accordance with the United Nations Convention on the Rights of the Child the United Kingdom Parliament authorized a statutory “children’s code”

with digital products and services that process personal data and are likely to be accessed by children (i.e. those aged under 18). The Children’s Code builds on a policy framework established by the European Union General Data Protection Regulation (GDPR) law. The Code authorizes the United Kingdom data protection authority—the Information Commissioner’s Office—to enforce a set of 15 “standards” to ensure that online entities design their services promote the “best interests of the child”. The Code requires companies to engage in “impact assessments” regarding their youth-facing data practices, and limits the use of geolocation and profiling data, along with a number of other requirements. If digital service providers are found to have breached the

statutory Code, penalties can be imposed in line with those listed in the GDPR and Privacy and Electronic Communications Regulations. This Code is the first of its kind and is widely viewed as a model for regulators worldwide. Enforcement of the Code began in September 2021 after a 12-month transition period.

4.6 Conclusion

These country case studies demonstrate a range of approaches to deal with the harms caused by digital marketing of alcohol. Further research is required to understand the impacts of the different approaches in achieving their intended outcomes. In all contexts, it is clear that countries need to prioritize enforcement of regulations. Existing regulatory frameworks need to be reviewed and expanded to respond to the new challenges in the digital sphere.

WHO has suggested previously that bans or comprehensive restrictions on alcohol advertising are one of the top three most effective and cost-effective interventions to address the harmful use of alcohol (WHO Regional Office for Europe, 2020c). Digital marketing should be included in such regulatory frameworks (WHO Regional Office for Europe, 2020c) in order to keep up with the pace of development, to prevent harms in the first place and to identify and intervene where regulations are violated.

Existing regulatory frameworks need to be reviewed and expanded to respond to the **new challenges** in the digital sphere

5. TRANSNATIONAL LEGAL FRAMEWORKS



5.1 Regulation of alcohol advertising at international level

It is difficult for a country to control digital alcohol marketing that is broadcast into its territory from another country, or which is accessed in its territory through a digital platform established in another country. Consequently, there have been calls for countries to collectively regulate alcohol marketing at international level through some form of international convention (Casswell, 2012; Landon et al., 2017).

This has not yet happened due to some of the following reasons.

- Alcohol corporations employ a multitude of strategies to persuade individual governments that alcohol marketing should not be heavily regulated (Savell et al., 2015; Yoon and Lam, 2013).
- Some governments may be unwilling to hamper the development of the platforms that host digital alcohol marketing – there are different perspectives on the digital transformation of society, and some governments are less willing to employ legislative interventions in the digital realm than others (Adamski, 2018).
- Political momentum towards regulation is even harder to establish when transnational organizations such as the European Union are encouraging their Member States towards self-regulation of digital alcohol marketing which, it has been argued, is ineffective (Bartlett and Garde, 2015).
- It is difficult to establish international political momentum for an international convention on alcohol – the WHO FCTC (WHO, 2004) took 10 years to negotiate, and since the social, cultural and economic status of alcohol is very different, the political will to attempt international regulation of alcohol is far more fragmented (Lien and DeLand, 2011).
- It is also difficult to agree a collective international position on the substantive content of an international treaty on alcohol. The length of time needed to agree upon and draft the precise provisions of a treaty will be significant even if countries agree on the treaty content, and will be prolonged – perhaps indefinitely – if there is disagreement on content (Room and Cisneros Örnberg, 2020).

There is a greater chance of adopting transnational regulations between smaller groups of countries. Hence, the European Union has been able to adopt some limited controls on alcohol marketing; however, the extension of these controls to digital alcohol marketing has proved difficult. This issue will be considered in the section below.

5.1.1 EUROPEAN UNION REGULATORY FRAMEWORK

Controls on digital alcohol marketing established in European Union audiovisual media legislation: Directive 2010/13/EU on Audiovisual Media Services (AVMS Directive) obliges European Union Member States to place certain restrictions on the provision of alcohol marketing (Articles 9(1)(e) and 22). In 2018, the European Union revised the AVMS Directive to extend its coverage of on-demand services and video-sharing platforms. However, “media service providers” and “video-sharing platform providers” (VSPPs) were deliberately regulated more lightly by the revised Directive, in order not to impede the development of digital platforms (Katsarova, 2016; Kuklis, 2020).

Although social media platforms such as YouTube, Facebook, Instagram or TikTok – and by extension “influencers” who use these platforms (Goanta, 2020) – fall within the scope of the Directive as VSPPs, the revised Directive only obliges Member States to place a very light level of regulation on VSPPs. This is unfortunate, given that (as this report outlines above), these platforms carry the most novel forms of digital alcohol marketing.

There are now, in effect, four “tiers” of regulation that apply to alcohol marketing, depending on the type of platform it is accessed through. These tiers are summarized below.

- The highest tier consists of a prohibition on aiming alcohol marketing directly at minors (article 9(1)(e)), together with a set of rules on what alcohol marketing cannot depict or infer (article 22). This tier is applicable to television advertising and on-demand services, such as Netflix.
- A second tier of regulation consists of an obligation to protect minors from harmful audiovisual commercial communications (article 28b(1)(a)), and an obligation to ensure that audiovisual commercial communications that are “marketed, sold or arranged” by a platform do not contain alcohol marketing that is directly aimed at minors. This tier applies to VSPPs.
- A third tier of regulation consists only of the obligation to ensure that alcohol marketing is not targeted at minors. This appears to apply to alcohol sponsorship and product placement appearing in on-demand services. Although these services are specifically excluded from the scope of article 22 (Art 9(2)), there is no mention in the Directive of them being excluded from the scope of article 9(1)(e). The recitals to the Directive make clear that its purpose was to liberalize the regulation of sponsorship and product placement; however; in the absence of indications to the contrary, it might be assumed that if an on-demand service or VSPP arranges alcohol sponsorship or product placement directly, those commercial communications should be subject to the provisions of article 9(1)(e).
- The lightest tier of regulation applies to content that is hosted by a VSPP, i.e. “not marketed, sold or arranged” by the VSPP (for example, advertisements from alcohol brands that are merely hosted by a platform such as YouTube, but

not actually produced by YouTube. Content created by influencers also fits this definition). This tier of regulation only places an obligation on the hosting VSP to take “appropriate measures” to ensure that alcohol marketing that they have not directly created is not directly aimed at minors, while “taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications”.

These regulations are the minimum level that European Union Member States **must** transpose into their own laws

These regulations are the minimum level that European Union Member States must transpose into their own laws – Member States can adopt stricter regulations if they wish (article 4(1)). However, Member States are also encouraged by the Directive to use co-and self-regulatory mechanisms in order to implement the minimum regulations. Thus, the extent to which Member States will be motivated to actually go beyond the controls established by the Directive is debatable.

Even if a Member State does choose to regulate digital alcohol marketing more strictly, it may be able to do so only with respect to marketing that originates in its own territory. The “country of origin” principle underpinning the AVMS Directive means that Member States are only permitted to regulate digital alcohol marketing that originates in other Member States for a limited set of reasons. Prejudice to public health is one of these reasons; however, this means that Member States must go through the process of justifying their regulatory choices if they wish to strongly regulate digital alcohol marketing that originates from outside their territory.

Consumer protection legislation: Directive 2005/29 on Unfair Commercial Practices (UCP) adds useful controls on alcohol marketing that is in some way disguised within content created by influencers, or where a commercial relationship between an influencer and an alcohol company is not disclosed to viewers.

Under the rules established by the UCP Directive, an influencer must disclose to viewers any commercial promotion of alcohol products that appears in his/her content (article 7(2)). This would not be the case when an influencer simply discusses alcohol products as part of the creative content without having a commercial agreement with an alcohol producer (Ducato, 2019).

Influencers must disclose if they have been paid by an alcohol company to generate creative content

The UCP Directive also obliges influencers to disclose the fact that they have been paid by an alcohol company to generate creative content that directly promotes their products. The UCP Directive contains a blacklist of specific commercial practices that are always prohibited – one of these is using editorial content to promote a product where a trader has paid for the promotion without making that clear in the content.

However, influencer videos or blog posts might not count as “editorial content”, as this blacklisted practice has only been considered in the context of printed newspapers (RLvS, 2013). At a minimum, the limited case law tells us that influencers are not required by the UCP Directive to police their creative content for possible undisclosed commercial communications. Instead, if an alcohol producer pays an influencer to create content that promotes their products, it is the responsibility of the alcohol producer to ensure that the viewer knows this is the case, either from the substance of the content itself or by images or sounds attached to the content (Ducato, 2019).

Further practices contained in the UCP Directive’s “blacklist” mean that influencers cannot pretend that they are giving their personal views as a consumer, when they are in fact acting under a commercial agreement between themselves and an alcohol producer, and cannot directly persuade children or their parents to buy an alcohol product that they have a contractual arrangement to promote. However, nothing in the UCP Directive prevents an influencer from conveying genuine personal opinions about alcohol products in the absence of such a commercial agreement.

It is worth emphasizing that the rules in the UCP Directive relate solely to disclosure. The Directive does not prevent influencers from promoting alcohol on behalf of producers; it only ensures that consumers will recognize when this is taking place.

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Digital services legislation: in December 2020, the European Commission published its proposal for a Regulation on a Single Market for Digital Services (The Digital Services Act) (European Commission, 2020b; 2020c). The DSA is one half of the larger Digital Services Act Package, the second half being a proposal for a Regulation on contestable and fair markets in the digital sector (the Digital Markets Act) (European Commission, 2020d). The DSA leaves largely intact the existing legal framework for the regulation of digital services established by the E-Commerce Directive (2000/31/EC), but seeks to build upon it by creating various extra protections for the online rights of consumers, establishing new transparency and accountability frameworks for online platforms, and creating new rules to encourage economic growth.

The DSA could have significantly increased the protections afforded to children against digital marketing of alcohol. However, despite the encouragement of public health organizations to include specific provisions that allow for the control of content that is harmful to health (Eurocare, 2020), the Commission decided not to define “harmful” content or subject it to removal obligations, due to fact that it is “a delicate area with severe implications for the protection of freedom of expression” (European Commission, 2020b).

The DSA could have significantly increased the protections afforded to children against digital marketing of alcohol

As a result, the additional rules in the proposed Regulation do not appear to add very much to the existing protection afforded to children against digital alcohol marketing. Article 6 of the E-Commerce Directive provides that a commercial communication “shall be clearly identifiable as such” and that “the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable”. Articles 24 and 30 of the proposed Regulation will add more detailed rules on the steps that online platforms must take to make users aware that they are viewing advertising; however, the substance of these disclosure obligations does not appear to go significantly beyond the protections already established in the UCP, AVMS and E-Commerce Directives. Article 36 encourages the development of European-Union-level codes of conduct for online advertising, and there is a suggestion in the preamble to the proposed Regulation that refusals to participate in such codes could be taken into account when determining whether an online platform has infringed its obligations under the Regulation. However, the inadequacy of self-regulation for generating meaningful protection against harmful digital alcohol marketing means that this provision also does not add much to existing safeguards.

General principles of European Union law on the ability of European Union Member States to adopt controls on digital alcohol marketing: if Member States wish to regulate

Member States
must ensure that
their regulations are
compatible with EU law

digital alcohol marketing beyond the limited controls established by European Union legislation, they must still ensure that their regulations are compatible with other provisions of European Union law. The most relevant are the prohibition on placing restrictions on the free movement of goods and services (Articles 34 and 56 of the TFEU (European Union, 2012) and the prohibition on restricting the freedom of expression (article 11 of the Charter of Fundamental Rights of the European Union (CFREU)).

Free movement: the Court of Justice of the European Union has made several rulings to clarify the circumstances in which marketing restrictions (and, by extension, digital marketing restrictions) will be compatible with the prohibitions on placing restrictions on the free movement of goods and services. The main lessons for Member States are summarized below.

- Most legislation that seeks to regulate digital alcohol marketing will violate the prohibitions of either article 34 or article 56 (depending on whether the complaint against the legislation is that it indirectly impacts the volume of trade in alcohol products, or directly makes it more difficult to sell advertising services, or – more likely – does both simultaneously). Total bans on television advertising (*Gourmet*, 2001) and electronic advertising (*Vanderborght*, 2017) are always considered to constitute a restriction on free movement. Limited advertising bans also constitute a restriction on free movement (*Aragonesa*, 1991).
- However, if an advertising restriction is considered to be a **proportionate** way of protecting public health, it will be lawful, i.e.:
 - appropriate for achieving the public health objective pursued (i.e. objectively able to protect public health in the way that is claimed); and

- necessary for achieving the public health objective (i.e. more effective at protecting public health than other less restrictive measures that could plausibly be taken to protect public health) (Scotch Whisky, 2015).
- Demonstrating that an advertising restriction is proportionate requires a Member State to take certain practical steps.
 - Identify a specific target audience, and identify the controls that are the most important for preventing that target audience from being harmed by alcohol marketing. The Gourmet case demonstrated that blanket bans on alcohol marketing are unlikely to be considered proportionate, while a series of cases concerning the French Loi Évin (Commission v France, 2004) demonstrated that limited and targeted regulations were proportionate, and that the more targeted a restriction is, the more likely it is to be proportionate (Commission v France, 2004; Bacardi, 2003; Bacardi France, 2004).
 - Identify very precisely the public health objective that provides the ground of justification for the marketing restriction. The Scotch Whisky case demonstrated that, if the public health objective for a law is ambiguous, or too broadly defined, there will be greater scope for alternative and less restrictive laws and regulations to be considered equally effective. If this is allowed to happen, it will be more likely that a planned marketing restriction will be considered unnecessary and thus disproportionate.
 - Conduct a thorough impact assessment that sets out in detail the scientific evidence that supports the fact that a marketing restriction is more effective than other regulations in achieving the specific public health objective being pursued. The Court of Justice has developed a clear requirement that the proportionality of laws must be established with specific evidence (Bartlett and MacCulloch, 2020). This impact assessment should not only demonstrate the effectiveness of the marketing restriction being pursued, but should also demonstrate the lower effectiveness of laws that might be raised as less restrictive alternatives to marketing restrictions.

Fundamental rights: the rulings of both the Court of Justice and the European Court of Human Rights are relevant to the interpretation of article 11 of the Charter of Fundamental Rights, which protects the freedom of expression. A number of cases have provided some clarity as to how this right should be interpreted in the context of marketing restrictions that are adopted to protect public health. The main lessons for Member States are summarized below.

- Marketing statements fall within the scope of the right to free expression that is protected by article 11 (Casado Coca, 1994; Karner, 2004; Philip Morris, 2016), and the digital marketing regulation will likely restrict this right.
- However, the right to free expression is a qualified right, meaning that it can be restricted in pursuit of other legitimate objectives, which includes the protection of public health. Using a process similar to that outlined above in the

The right to free expression is a qualified right ... it can be restricted in pursuit of other legitimate objectives ... such as **the protection of public health**

context of free movement, if a Member State can demonstrate the proportionality of a digital marketing regulation, it will be allowed to stand as a justified restriction on the right to free expression. It appears that strong restrictions imposed in pursuit of public health objectives can potentially be justified (Philip Morris, 2016).

- When designing digital marketing restrictions, Member States must pay particular attention to the potential impact of the restrictions on the speech of influencers. Individual expression is protected far more strongly than commercial expression (Markt intern, 1989; Krone Verlag, 2003), and therefore marketing restrictions that apply to influencer content must be designed so as to target only content that results from a commercial arrangement with an alcohol producer. Restricting unpopular opinions on health-related issues simply because they are unpopular or without merit is not lawful (Hertel, 1998).
- Member States should emphasize the fact that marketing restrictions are designed to protect the rights of children. Influencers in particular can exert a powerful and potentially exploitative persuasive force on children (Verdoodt and Feci, 2019), which means that the protection of children should be given particular weight in the rights-balancing exercise that courts conduct when faced with the restriction of one right in order to protect another (Philip Morris, 2016). Therefore, regulations should be framed as a protection of those rights in order to increase the likelihood of their being determined to be lawful (WHO Regional Office for Europe, 2016; UNICEF, 2018).

Marketing restrictions are designed to **protect the rights of children**

GDPR and other data protection rules: since digital marketing relies on a wide range of data practices, rules governing data protection and privacy impact how advertisers can gather information from minors. The GDPR went into effect in May 2018, creating an European-Union-wide framework to govern the processing of data. There are policies governing the use of personal information and also the responsibilities of the companies that collect it. Member States have their own data protection authorities, but there is also an European-Union-wide board made up of data protection supervisors. The GDPR provides protection for minors, which has led to decisions against leading social media and other digital providers for violating the privacy of children (Autoriteit Persoonsgegevens, 2021; Hodge N, 2021; European Data Protection Board, 2021).

5.1.2 EURASIAN ECONOMIC UNION

The Eurasian Economic Union (EAEU), which officially started operating in 2015, is an economic union established by former Soviet States of Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation. Its objective is to ensure the free movement of goods, services capital, and labour, and to establish economic integration between Member States through harmonized common markets for the economic sectors designated in the founding treaty (Eurasian Economic Union, 2014).

There are currently no provisions at the level of the Eurasian Economic Union that directly regulate alcohol marketing in the Member States. Moreover, the Court of the Union has not considered any cases that relate to alcohol or to marketing.

An agreement for the economic integration of the advertising sector is still being negotiated, and in the meantime Member States can largely adopt their own laws to regulate alcohol marketing. This is demonstrated by the broad restrictions on alcohol advertising introduced by the Government of the Russian Federation in 2016.

There are currently no regulations at the level of the Eurasian Economic Union that **directly regulate alcohol marketing** in the Member States

6. OPTIONS TO PREVENT AND COUNTERACT HARMS FROM ALCOHOL-RELATED DIGITAL MARKETING



This section suggests approaches and actions that should be considered at international and national levels to improve the protection of children, young people and vulnerable adults from online marketing of alcohol.

6.1 International control systems

The model of the WHO Framework Convention on Tobacco Control ... could suggest a **global legal framework for alcohol**

The model of the WHO FCTC (WHO, 2004) could be referenced to suggest a global legal framework for alcohol (Taylor and Dhillon, 2013; Liberman, 2012). As the FCTC has succeeded in strengthening the implementation of national and international tobacco control policies, a growing interest has been shown in developing similar international instruments in other areas of public health, especially with aims to tackle noncommunicable diseases, including those that are due to alcohol consumption (Monteiro et al., 2017; Room, 2013; Taylor and Dhillon, 2013).

In 2020, the WHO–UNICEF–Lancet Commission proposed the adoption of a new protocol to the United Nations Convention on the Rights of the Child (United Nations, 1989), which would provide new protections in relation to marketing of alcohol and other health-harming products in online contexts (WHO–UNICEF–Lancet Commission, 2020). The Commission notes generally that marketing techniques exploit the developmental vulnerability of children and that products, including alcohol, can harm their health and well-being, contributing to non-communicable diseases. The Commission also asserts that industry self-regulation does not work, and that existing global frameworks are not sufficient. It calls for a “far stronger and more comprehensive approach to regulation” (WHO–UNICEF–Lancet Commission, 2020:606), and specifically an optional protocol to the Convention (i.e. an additional component to the treaty that must be independently ratified), to protect children from the marketing of a range of products, including alcohol, as well as potentially damaging social media, and from the inappropriate use of their personal data. The Commission notes the cross-border effects of commercial marketing, including through the internet and social media, and the multisectoral nature of the threat. This optional protocol could address the transnational elements of the problem and simultaneously drive national action for legal protection. For European Union countries, the optional protocol could provide greater impetus for States to adopt stronger laws than European Union legislation currently does, and it might resolve some of the diversity in legislation. However, it would not resolve the conflict of laws issue, whereby European Union Member States would have to abide both by the demands of this optional protocol to regulate alcohol marketing strictly and by the demands of the TFEU (European Union, 2012) to protect free movement. Only strict regulation at European Union level would resolve this issue.

Marketing techniques exploit the developmental vulnerability of children ... alcohol can harm their health and well-being

The development of the European Union DSA (European Commission, 2020b; 2020c) also provides some opportunities to address the shortcomings with the current legislative framework as it exists in the European Union. Though alcohol is not specifically mentioned, it refers in several places to the protection of health and of minors, including “manipulative techniques and disinformation with a real and foreseeable negative impact on public health” (European Commission, 2020b:33). Unfortunately, to date, these opportunities have not been taken. Rather than relying on interpretation of general provisions, it would have been more useful for public health if the DSA had explicitly included protections for children against digital marketing of alcohol and an amendment along these lines would be useful.

WHO’s European Health Data Governance Charter could include consideration of public health requirements in relation to monitoring digital marketing of alcohol

WHO’s European Health Data Governance Charter (WHO Regional Office for Europe, 2020e) could include consideration of public health requirements in relation to monitoring digital marketing of alcohol. WHO can encourage the development of new national and transnational regulatory and monitoring approaches, as well as disseminating evidence about possible technological and policy gaps and likely effective policy approaches.

6.2 Mapping and regulating the digital ecosystem

The interplay between the digital marketing ecosystem and global platforms needs to be mapped and understood at local, national and international levels by policy-makers, with regulatory systems being established across borders and across platforms that can move quickly to protect public health and consumer rights. Government policy on digital marketing needs to keep up to date with technological changes over time, including new social media, emerging “immersive” technologies and new formats (WHO Regional Office for Europe, 2019b).

To support Member States, WHO’s CLICK tool (WHO Regional Office for Europe, 2019b) provides a framework to monitor digital marketing of unhealthy products, including alcohol, to children; the resulting tool is flexible and can be adapted to national contexts. CLICK sets out five key steps that policy-makers and researchers can engage in to assess digital marketing to children (Bica et al., 2020; Tatlow-Golden et al., 2021). These focus on:

WHO’s CLICK tool provides a framework to monitor digital marketing of unhealthy products, including alcohol

- comprehending the digital ecosystem, to understand the marketing ecosystem and identify children’s online behaviours;
- mapping the landscape of campaigns, to evaluate major brands’ leading media campaigns;

- investigating exposure, to assess paid-for digital marketing;
- capturing on-screen, using screen-capture software to directly assess exposure to all forms of marketing, including paid-for and “earned” media;
- knowledge-sharing, to advance public education and policy advocacy (Bica et al., 2021).

CLICK includes guidance on how to improve systems for verification of the age of online users, and to make online advertising content clearly understood by the users to be such, underpinned by effective monitoring and enforcement through regulations. WHO should develop plans to expand the applicability of the CLICK tool to alcohol contexts, including exploring expanding the target groups for whom the benefits would ensue.

Governments should evaluate the impact of changes to the regulatory landscape and **explore future policy options**

Governments should establish and fund research to monitor developments, evaluate the impact of changes to the regulatory landscape and explore future policy options. Research foci should include children and young people’s exposure to and engagement with digital marketing of alcohol, as well as how data is used to optimize the targeting of messages and calls to action to consumers, in addition to analysing content, volume and placement (WHO Regional Office for Europe, 2019a).

Governments should ensure leading platform groups develop policies and technologies which can **measure, control and restrict alcohol marketing**

Governments could ensure that the leading platform groups (including Google, Facebook, Amazon, Microsoft and Apple) develop policies and technologies which can measure, control and restrict alcohol marketing, compelling them by regulation to act where voluntary schemes have not been effective and requiring them to share relevant information, including audience data for their advertisements. Given their increasing dominance in the digital marketing context, United Nations agencies including WHO and UNICEF could play an important role in establishing discussions with these platforms about the prevention of exposure of children, young people and vulnerable adults to alcohol marketing in online contexts.

Alcohol producers and distributors could be required to provide to governments relevant marketing data, including marketing spending, media used and data on the demographics of audiences reached.

In the event that some alcohol marketing activities continue to be permitted, any messages and images should be limited to factual content, without links to celebrities, such as influencers, for the purposes of promotion. Regulatory codes should state what is permitted, rather than what is not, with the legal presumption that what is not named is not allowed.

6.3 Restricting access

Public health strategies that seek to regulate the commercial or public availability of alcohol through laws, policies and programmes are important ways to reduce the general level of harmful use of alcohol. Such strategies provide essential measures to prevent easy access to alcohol by vulnerable and high-risk groups, including children (WHO, 2010). Policies to limit exposure to alcohol advertising and sales in the digital space should be considered an essential component of countries' alcohol strategies.

Policies to limit exposure to alcohol advertising the digital space should be considered essential

6.3.1 AGE VERIFICATION

All children under the age of 18 are vulnerable to the effects of digital marketing, as it operates through emotional and unconscious routes (Bica et al., 2020). Older children and teenagers are especially susceptible to emotional, social and identity-based advertising (WHO Regional Office for Europe, 2016). While the situation persists that alcohol marketing is permitted in online contexts, having effective age-verification systems will be an important component of strategies to restrict the exposure of minors to these activities. However, there is strong evidence that age-verification systems are inadequate in several respects. Alcohol advertisers often neglect age limit enforcement altogether (Barry et al., 2015, 2016; Lindeman et al., 2019; Winpenny et al., 2014). Also, where age-verification tools are in use, they can often be easily circumvented (Boelsen-Robinson et al., 2013; Ofcom, 2017; Sweney 2013a, 2013b).

Having effective age verification systems will be an important component to restrict the exposure of minors

Many countries have legislation to prevent minors from accessing alcohol advertising content by using age-verification systems. In addition, the alcohol industry and media service providers have their own codes, which they claim are intended to achieve the same outcome. However, age verification remains a complicated challenge. One issue that arises is that different online sites and games have different age limits (e.g. Roblox and Minecraft age 7 up, Fortnite and TikTok 12/13 years upwards). Where this is the case, alcohol-related material and advertising in these games / platforms should be prohibited by legislative means.

Alcohol companies and sites retailing alcohol should be required to ensure that anyone accessing the sites is required to use verified age-verification tools, including for example an e-ID, with a password or code (Grammatikaki et al., 2019). Legally binding regulations, accompanied by sanctions where standards are not upheld, should be implemented. International and national systems to verify age data more effectively, so as to restrict minors' online exposure to alcohol marketing, also need to be developed as a priority.

Legally binding regulations for age verification should be implemented

6.3.2 CONTENT RESTRICTION

Social media platforms could voluntarily include or be compelled by regulation to include labels that clearly identify alcohol advertisements

Consumers should have the right to be able to make a reasonable assessment of whether or not the medium they are using is promoting a product. A major barrier to this is that in social media contexts it may not be possible to identify the brand or product. Social media platforms could voluntarily include or be compelled by regulation to include labels that clearly identify alcohol advertisements, including the brand name and product information in a consistent way. Full disclosure should enable individuals to see if a piece of content is being paid for, if so, by whom and what data have been used for targeting them. Health bodies should also be able to have access to data sources indicating at scale what kinds of content are being circulated and how targeting of populations and individuals happens. Sanctions to be imposed for inappropriate activities need to be strong, with robust enforcement.

As well as tagging of metadata, platform providers could require marketing companies to make it clear in a very obvious way when they are advertising, by displaying this in writing, and having minimum requirements set in relation to size, style, placement and duration of the disclosure statement (Grammatikaki et al., 2019). Commercial content could also be required to be spatially separated from unsponsored user-generated content, or some other visual identifier, such as colour, could be used to indicate commercial content (Hörnle et al., 2019).

6.3.3 FISCAL STRATEGIES

Governments should consider how they can introduce and implement new taxation systems, including e-commerce taxes (Govindarajan et al., 2019), that can be used to limit digital marketing of alcohol. This presents some striking challenges, related to the fast-changing nature of the digital ecosystem. With the growth of “walled gardens” (WHO Regional Office for Europe, 2019a), platform providers are no longer mainly in the business of selling personal data to alcohol companies, instead retaining any data they gather themselves. The relationship that alcohol companies increasingly have with the platform providers relates to transactions to buy advertising space and, more challenging for regulation, marketing using influencers and other strategies on social media. Governments could also act to ensure that alcohol digital marketing activities are not considered as part of the cost of doing business, therefore reducing tax liabilities.

It is clear that international governmental cooperation will be required to support taking forward any fiscal regulatory initiatives, which are likely to face opposition from the technology companies as well as from the alcohol industry.

E-commerce taxes can be used to limit digital marketing of alcohol

Governments could ... ensure that alcohol digital marketing activities are not considered as part of the cost of doing business, therefore reducing tax liabilities

6.3.4 ENFORCEMENT

It is clear that strategies, including legislation to restrict digital marketing online, need to be supported by effective monitoring and enforcement systems, requiring transnational cooperation of governments, supported by international organizations and with cooperation from the platform providers. Monitoring compliance with restrictions on content and volume will certainly be easier with a complete rather than a partial approach.

This report has discussed experiences in a small number of countries but more research is required to understand how effective regulatory approaches have been (Rehm et al., 2019). Lessons can be learned from other contexts, such as the experiences of three European countries, Italy, Latvia and Lithuania, which have completely banned advertising of gambling (Hörnle et al., 2019.)

Geoblocking involves the blocking of content in regions in which the content is not supposed to reach certain individuals for legal reasons. IP address blocking is a modification to a network service so that requests from hosts with certain IP addresses are rejected. However, there is good evidence that these approaches can be circumvented by marketers e.g. by new mirror sites and by consumers with the help of virtual private network connections.

Most major platforms have algorithm-based processes, often semi-automated, that browse through posts made on the platforms, searching for offensive, inappropriate, harmful or hateful content. The tools include keyword filters, spam detection tools and hash matching algorithms. The same processes could be trained to scout for alcohol-related brand names and to block access to these. Adblocking devices such as Adblock Plus can be used to block specific advertisements and to disable tracking devices and malware. These could also be used to restrict alcohol advertising, although in the current context differentiating advertising from non-commercial content on social media would pose significant challenges (Kelly et al., 2015). Alcohol advertising content could also be pre-screened before publication (Grammatikaki et al., 2019). This would require the platform provider to set up a pre-screening service that would advise as to whether advertising content complies with regulations, providing advice to the platform not to accept advertising that does not meet required standards.

Legislation to restrict digital marketing online needs to be supported by enforcement systems ... cooperation of governments ... and with cooperation from the platform providers

Algorithm-based processes could be trained to scout for alcohol-related brand names and to block access

7. CONCLUSIONS



Member States of the WHO European Region and the WHO–UNICEF–Lancet Commission have made clear their belief that **self-regulation is insufficient to offer the protections that are needed**

Marketing of alcohol to children can have a long-term damaging impact on their health (UNICEF, 2018). Much of the evidence discussed in this report (inter alia, Bartlett and Garde, 2015; WHO Regional Office for Europe, 2016; UNICEF, 2018) frames it as a human right that children should be protected from exploitative marketing that can harm their health and well-being. Member States of the WHO European Region and the WHO–UNICEF–Lancet Commission have also made clear their belief that self-regulation is insufficient to offer the protections that are needed (WHO Regional Office for Europe, 2020a; WHO–UNICEF–Lancet Commission, 2020). WHO's vision extends more broadly to protecting anyone with, or at risk of, substance use disorders and the general population, from any exposure to digital marketing of alcohol, with its associated risks.

As has been discussed at length, the digital context presents substantial new challenges, not least due to considering interventions in what is deemed to be private content and communication sharing and consensual engagement.

However, even within contexts of such indirect marketing, there are adjustments that could be made, either voluntarily by actions of the platform providers or enforced by legislation. Changing policies within the “walled gardens” (WHO Regional Office for Europe, 2019a) is both theoretically and technically easier to achieve than changing the behaviours of an entire open ecosystem (WHO, 2021b).

The need for a **global and comprehensive approach** has been repeatedly stated

The need for a global and comprehensive approach has been repeatedly stated, so as to put in place legislative arrangements that will be robust enough to offer protection in the future, wherever businesses are based and wherever content is accessed. WHO has previously suggested that banning the presence of alcohol producers in social media milieus altogether might be a straightforward and cost-effective policy option (WHO Regional Office for Europe, 2020c). Arrangements need to cover the full range of marketing channels, techniques and platforms, the technologies and the infrastructure (Kelsey, 2020).

The process to achieve this will be challenging. There are many civil society partners working in the field of public health, as well as more broadly on issues related to privacy and digital rights who can support WHO's actions. The model of the WHO FCTC (WHO, 2004) provides inspiration as an evidence-based treaty that reaffirms the right of all people to the highest standard of health, which is undermined by the globalized actions of the tobacco industry. The more comprehensive the policy, the easier it will be to ensure clarity in communication and interpretation of the legal intention, and to monitor and enforce.

There are some emerging opportunities. Digital media spending and control is increasingly consolidated with a small number of platforms.⁸ This presents potential spaces for WHO, other United Nations institutions and Member States to work in collaboration with these major bodies to make the internet a safe space for children and young people, moving closer towards our vision of a SAFER WHO European Region for all people, free from harm due to alcohol.

In 2022–23, the WHO European Region plans to develop intersectoral policy dialogues to implement policy considerations identified in this report, as well as policy briefs on the different components of digital marketing. We will also convene an action-driven expert network on Digital Marketing of alcohol and establish plans to pilot the WHO CLICK methodology to the alcohol context at Member State level. Findings from this report will also inform the priority actions related to the WHO's NCD (Noncommunicable Diseases) Signature Initiative to actions to protect children and young people from exposure to unhealthy commodities in digital contexts (WHO Regional Office for Europe, 2021b).

The WHO Framework Convention on Tobacco Control provides inspiration

The more comprehensive the policy, the easier it will be to **ensure clarity in communication** and interpretation of the legal intention, and to monitor and enforce

Our vision is for a SAFER WHO European Region for all people, free from harm due to alcohol

8 websites (WHO Regional Office for Europe, in press).

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The WHO Regional Office for Europe

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