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

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

**the digital environment**

**Submission from the Obesity Policy Coalition**

**November 2020**

**Background**

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

**Protecting children from digital marketing of unhealthy food[[1]](#footnote-1)**

The OPC’s key focus in the digital environment is on protecting children from digital marketing of unhealthy food.

Children should be able to participate in the digital environment free from exposure to unhealthy food marketing. As the draft General Comment highlights, digital media is an important part of children’s lives, and they use it for education, to access information, to communicate with friends and family and for leisure time. Children use digital media in much the same way that adults do, and we know that they use many of the same platforms. Children should be protected from unhealthy food marketing whenever they are in a digital environment of any kind.

We focus on protecting children from unhealthy food marketing because of its impact on children’s health and wellbeing. In Australia, around a quarter of children are above a healthy weight,[[2]](#footnote-2) and many have poor diets, with around 40% of energy coming from unhealthy food, for children aged 4‑18 years.[[3]](#footnote-3) Strong evidence shows that marketing influences children’s food preferences, purchases and consumption,[[4]](#footnote-4) and contributes to overweight and obesity.[[5]](#footnote-5) Children are more vulnerable than adult consumers as they cannot properly understand or interpret marketing messages or understand that they are intended to persuade rather than entertain.[[6]](#footnote-6)

The digital environment provides rich and varied opportunities for corporations to target children with and expose children to unhealthy food marketing. The processed food industry uses many tactics to reach children online, including paid advertisements appearing alongside content, sponsored social media posts, paid posts by social media influencers, content created by users or corporations themselves, branded games and activities, and product placement or advertising on online gaming or video streaming platforms.

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

**OPC comments on draft General Comment**

We support many elements of the draft General Comment, in particular the discussion on data and research, independent monitoring, allocation of resources, dissemination of information and cooperation with civil society.

We make the following comments in response to specific issues in the draft:

*Commercial advertising and marketing*

Whilst we support statements 40-43 in the draft General Comment we do not think this part of the draft General Comment goes far enough to promote State action to protect children from digital marketing of unhealthy food, as these principles do not ensure children are protected from exposure to digital marketing of unhealthy food.

Many of the ways that children are exposed to unhealthy food marketing in the digital environment will not be captured by the principles set out in this section of the draft General Comment. In particular, paragraph 41 would still allow for general marketing of unhealthy food to children provided it is age appropriate. Somewhat perversely, enabling children to see age-appropriate marketing designed for children means marketing is likely to be more effective in reaching and influencing children.

We recommend the General Comment be amended to expressly advise that States should ensure that children are not exposed to any advertising and marketing of unhealthy food in the digital environment.

We strongly believe that paragraph 42 is essential for protecting children from targeted unhealthy food marketing.

*Access to information (Articles 13 and 17)*

Article 17 confers the right to access information from diverse sources, along with protection from *‘material injurious to his or her well‑being’.* The drafting of this Article highlights the need to balance children’s important participatory rights, including in a digital environment, with the need to protect children from harm and protect, respect and fulfil other rights, including the right to health.

Marketing of unhealthy food to children is injurious to their well-being. Such marketing sends children the wrong message about healthy eating and living, promoting consumption of unhealthy food that doesn’t best support a healthy life and can contribute to overweight and obesity, and a higher risk of obesity and associated chronic conditions as an adult.[[7]](#footnote-7) Strong controls on unhealthy food marketing to children are required to protect the child’s right to health while participating in social, educational, cultural, economic and other activities in a digital environment.

We recommend that the Draft General Comment be amended to provide guidance to States on how to balance the right to health with children’s participatory rights. Specifically, in providing guidance on the application of Article 17 in the digital environment, the General Comment should advise that marketing of unhealthy food is material that is injurious to children’s wellbeing, and recommend that digital marketing of unhealthy food should be regulated to ensure children are not exposed to it. This would allow children to participate and engage in the digital environment without compromising their health and wellbeing.

*Privacy (Article 16)*

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

The nature of digital media means that large amounts of personal information are collected, including specific information about an individual’s online behaviour, purchase preferences, social networks and physical location.[[8]](#footnote-8) This information can then be used by marketers, including corporations who market unhealthy food, to target their marketing directly to particular groups of consumers, including children, based on their individual profiles.[[9]](#footnote-9) This large scale collection and use of personal and other information is a significant risk to the protection of children’s privacy, particularly as it is difficult to monitor and to prevent.

We support the General Comment’s advice in paragraph 42 under the discussion of commercial marketing and advertising, that ‘*States should prohibit by law the targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics*.’ Further we recommend that children’s personal information cannot be collected, used or disclosed for the purposes of advertising and marketing. This will protect children from corporations using their information to inform and develop marketing campaigns, as well as from using it to target those campaigns to children.

*Health (Article 24)*

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

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

We know the Committee has already recognised the need for controls on children’s exposure to unhealthy food marketing in the context of applying the right to health, saying that States should address childhood obesity and take action to regulate marketing of unhealthy food to children.[[12]](#footnote-12)

We do not consider that the position in the draft General Comment is strong enough. The current draft in paragraph 105 advises that ‘*States should regulate targeted or age-inappropriate advertising, marketing or service designed to prevent children’s exposure to the promotion of unhealthy food and beverages, alcohol, drugs, tobacco and other nicotine products*’. We strongly recommend that this drafting is amended to advise that States should regulate to ensure children are not exposed to any promotion of unhealthy food and beverages, alcohol, drugs, tobacco and other nicotine products.

The complexity of the many ways digital marketing is created and delivered to children online, means that only regulating marketing that is targeted to children is not likely to be effective. In general, we agree with the view that regulations relating to the digital environment should be compatible with and keep pace with regulation in the offline environment. It is important to note, however, that regulation must be fit for purpose in each environment, and that differences are likely to be necessary to ensure children are effectively protected in all environments.

*Culture, leisure and play*

We support the recognition in paragraph 119 that spending leisure time in the digital environment may expose children to risks of harm through surreptitious advertising. We recommend this discussion also include specific reference to the importance of government regulation to protect children from exposure to advertising for unhealthy food while engaging in play and leisure in a digital environment.

*The role of parents*

We support the approach taken to the role of parents in the draft General Comment, in particular the focus on providing education and guidance to parents on various issues related to the digital environment (including in paragraphs 33, 58 and 77). We support the General Comment’s emphasis on the role of States as responsible for regulating corporate conduct that can be harmful to children in the digital environment, and not shifting the burden of responsibility to parents (including in paragraphs 36 and 42).

*Business practices and human rights*

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

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

We support many of the draft General Comment’s statements on the business sector. In particular we support the view that States should take necessary measures, including legislation, to ensure that the business sector meets its responsibilities for children’s rights in relation to the digital environment (paragraph 36). We also agree that it is important to ensure that there are strong frameworks in relation to the design, engineering, development, operation, distribution and marketing of their technological products and services (paragraph 39). We do not agree, however, that these important issues should be left to business to develop. Where strong frameworks are required to protect, respect and fulfil children’s rights, the development and implementation of these frameworks should be government led and managed.

1. Note: throughout this submission references to unhealthy food includes unhealthy food and drinks. [↑](#footnote-ref-1)
2. Australian Bureau of Statistics. 4364.0.55.001 - National Health Survey: First Results, 2017-18. 2018. [↑](#footnote-ref-2)
3. Australian Institute of Health and Welfare. Nutrition across the life stages. Canberra, Australia 2018. [↑](#footnote-ref-3)
4. For example, Boyland EJ, Whalen R. Food advertising to children and its effects on diet: review of recent prevalence and impact data. *Pediatr Diabetes*. 2015 Aug;16(5):331-7; Kelly B, King L, Chapman K, Boyland E, Bauman AE, Baur LA. A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *Am J Public Health*. 2015 Apr;105(4):e86-95; Kelly B, Freeman B, King L, Chapman K, Baur LA, Gill T. Television advertising, not viewing, is associated with negative dietary patterns in children. *Pediatric Obesity*. 2015; Bruce AS, Pruitt SW, Ha OR, Cherry JB, Smith TR, Bruce JM, Lim SL. The Influence of Televised Food Commercials on Children's Food Choices: Evidence from Ventromedial Prefrontal Cortex Activations. *J Pediatr*. 2016 Oct;177:27-32; Norman J, Kelly B, Boyland E, & McMahon A.-T. (2016) The Impact of Marketing and Advertising on Food Behaviours: Evaluating the Evidence for a Causal Relationship. *Current Nutrition Reports*, 5 (3), 139-149; Dixon H, Niven P, Scully M, Wakefield M. Food marketing with movie character toys: Effects on young children's preferences for unhealthy and healthier fast food meals. *Appetite*. 2017 Oct 1;117:342-350. [↑](#footnote-ref-4)
5. Zimmerman, F and Bell, J. Associations of Television Content Type and Obesity in Children.*Am J Public Health*. 2010 February; 100(2): 334–340; Kelly B, King L, Chapman K, Boyland E, Bauman AE, Baur LA. A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *Am J Public Health*. 2015 Apr;105(4):e86-95. [↑](#footnote-ref-5)
6. Kunkel D, Wilcox BL, Cantor J, Palmer E, Linn S & Dowrick P. *Report of the APA Task Force on Advertising and Children*. Washington DC: American Psychological Association, 2004. [↑](#footnote-ref-6)
7. World Health Organization, Obesity: preventing and managing the global epidemic WHO Technical Report Series 894, Geneva: World Health Organization, 2000; Lobstein T, Baur L and Uauy R, Obesity in children and young people: a crisis in public health. Obesity Reviews, 2004. 5(Suppl 1), pp4–85 [↑](#footnote-ref-7)
8. World Health Organisation Regional Office for Europe, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives* (2016), Denmark, page 8. [↑](#footnote-ref-8)
9. *Ibid*, pages 8-9. [↑](#footnote-ref-9)
10. World Health Organization. *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Geneva: World Health Organization, 2010, endorsed by the World Health Assembly, of which Australia is a member, in 2010: http://apps.who.int/iris/bitstream/10665/44416/1/9789241500210\_eng.pdf. [↑](#footnote-ref-10)
11. World Health Organization *Report of the commission on ending childhood obesity,* 2016. [↑](#footnote-ref-11)
12. *General Comment No 15*, UN Doc CRC/C/GC/15, 12 as cited and discussed in Elizabeth Handley and Belinda Reeve, ‘Holding Food Companies Responsible for Unhealthy Food Marketing to Children: Can International Human Rights Instruments Provide a New Approach?’ (2018) 41(2) *University of New South Wales Law Journal* (Advance). [↑](#footnote-ref-12)