



Response to Health Canada’s Consultation: Restricting Food Advertising Primarily Directed at Children

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Dedicated to the responsible growth of the \$14.2B online advertising industry in Canada, IAB Canada represents over 250 of Canada’s most well-known and respected stakeholders in the digital advertising and marketing sector, including advertisers, advertising agencies, media companies, digital media publishers and platforms, social media platforms, adtech providers and platforms, data companies, mobile and video game marketers and developers, measurement companies, service providers, educational institutions, and government associations operating within the space. Our members include numerous small and medium sized enterprises and are actively involved in policy discussions with various government departments including ISED, the OPC, the CAI, Elections Canada, AGCO and Health Canada.

Recognizing the severity of the current obesity epidemic IAB Canada continues to support Health Canada’s important work designed to make the healthier choice the easier choice for people living in Canada particularly for those vulnerable populations including children. Our industry is committed to doing their part to support a healthy Canada. IAB Canada members have reviewed the proposed policy updates to the Food and Drug Act that would restrict food advertising primarily directed at children and would like to share a response to Health Canada on the suggested amendments focusing specifically on the requirements of those operating in the digital advertising industry.

As an active participant on Health Canada’s previous consultations and discussions on this issue since the inception of former Bill S-228, IAB Canada is pleased to see some revisions that have been made to the policy and believe that this iteration addresses some of the concerns expressed in our earlier dialogues. While our community is supportive of your mandate and grateful for the FAQ document that was

recently shared, we are still left with several outstanding questions and concerns relating to what is being put forth by your department.

IAB Canada assumes that the sole compliance responsibility lies on behalf of the advertiser. We feel this would be the most appropriate approach as only the advertiser will have knowledge as to whether the food being advertised falls within the restricted category, or if the advertisement itself could constitute being primarily directed at children. In the consultation briefing it states that more detail around obligations will be released in the future. As the industry prepares for any technical requirements to comply with the law we remain concerned with the lack of detail and request additional clarity today so our members can be reassured of where liability sits before regulations are implemented.

We also ask for a greater acknowledgement and recognition of industry efforts to date including the Code and Guide for the Responsible Advertising of Food and Beverage Products to Children (the Code) which provides marketers with the information they need to advertise food and beverage products to children in a responsible manner. Great strides have been made by industry in the development of this framework and we would like to see closer alignment between the standards set out in the code and the proposed policy changes outlined by Health Canada and a potential recognition of participation in self-regulatory frameworks as an act of demonstrable accountability. More detail on these two points is provided in this submission and we have organized our comments on the proposal under the following topics:

1. Defining advertising that is primarily directed at children & targeting restrictions to advertising on television and digital media
2. Restricting advertisements for foods that contribute to excess intakes of sodium, sugars or saturated fat
3. Liability and Enforcement

Defining advertising that is primarily directed at children and targeting restrictions to advertising on digital and television media

The proposed policy change outlines that two factors are used to determine whether or not an advertisement is primarily directed at children.

1. The nature and intended purpose of the medium where the ad is communicated
2. Whether the advertisement targets, or is reasonably expected to appeal particularly to, children

While the removal of the audience composition requirements that appeared in Bill S-228 is appreciated, we remain concerned with the proposed criteria and require additional clarity in some areas.

The nature and intended purpose of the medium where the ad is communicated

The proposals states that “A medium would likely be considered specifically intended for children if:

- it is rated, classified or described as being specifically intended for children, **or**
- the subject matter or content of the medium is specifically intended for children or intended to be engaged with by children

While reputable publishers in Canada do their best to ensure inappropriate content (beyond food and beverage advertising) does not appear in front of minors, the proposal implies that content on the open web is rated or publicly classified for advertising purposes. While content publishers do their best to label their content to allow for appropriate targeting and effective media buying, a standardized rating system does not currently exist for content across the open web (as it currently does for apps).

As discussed with Health Canada in the past, it is important to note that online advertising is almost entirely automated, and automated systems are generally not very good at ascertaining context or weighing subjective factors. Consequently, in the online environment, advertisers cannot be provided absolute assurance of the contextual setting where their ad is being seen, and it will be imperative to ensure a level of flexibility is maintained. The policy changes articulated risk placing an unfair burden on an already struggling publisher community to operate in this highly competitive medium, which we do not believe is the intent of the legislation.

The policy proposal outlines that foreign advertising will also fall under the new amendments. While we understand your concerns, the borderless nature of the Internet will undoubtedly continue to expose Canadians of all ages to food and beverage advertising on websites, platforms and apps that are not based in Canada, and we believe, cannot be effectively regulated in our jurisdiction. As an extension to the lack of clarity regarding the liability holder, applying similar obligations to foreign entities would be very challenging to enforce and could result in the diminishment of advertising investment in Canada resulting in a devastating financial impact on Canada's online advertising sector without any meaningful impact on the original mandate to address exposure to advertising. IAB Canada would like to more clearly understand how Health Canada proposes to address the issue of foreign advertising in our market and we encourage discussions between our two groups to discuss potential solutions.

IAB Canada participates in global discussions with other IABs who also face similar regulation to create technical solutions to borderless issues to support government efforts.

We would like to draw Health Canada's attention to some of the ongoing work out of the IAB Tech lab and the recent additions to the IAB Content Taxonomy to demonstrate a growing commitment to addressing a limit on specified food advertising to children. This initiative establishes tagging criteria for food advertising with high contents of sodium, fat and sugar (HSFS) representing a cross border industry effort to help advertisers and publishers work together to prevent the promotion of foods subject to regulation to children.

Whether the advertisement targets, or is reasonably expected to appeal particularly to, children

The requirements set out here closely resemble those set out in the Code which we suggest be recognized by and aligned with Health Canada to meet these obligations. Ad Standard's preclearance process outlines several factors that are utilized to determine whether an ad is directed at children. These include assessment of messaging, text, characters, time of day and place the ad is shown.

If Ad Standards deems an ad to be not child-directed it is given clearance and able to run. Efforts should be made to align requirements so the work that has been completed by industry and Ad Standards – set

to launch this month, can carry on supporting Health Canada's mandate. This has been an effective tool in other regulated industries such as health and beauty and pharmaceutical.

Restricting advertisements for foods that contribute to excess intakes of sodium, sugars or saturated fat:

While we support the underlying efforts to address childhood obesity, IAB Canada does not have specific recommendations on the criteria used to determine which food products fall under the proposed restrictions. That said we would recommend that the requirements outlined by Health Canada and those currently in the industry Code be more closely aligned. The Code represents great strides being made by advertisers and as it launches this month, we would like to see these efforts recognized. We believe that there is a middle ground that can be met that remains outside of IAB Canada's mandate or area of focus that will allow for the Code to be an instrumental tool aiding in compliance.

Liability and Enforcement:

It is our interpretation that liability is only applied to the advertiser and that the advertiser bears sole responsibility under the proposed policy. However, we are concerned with the lack of language and specificity included in the proposal and while the FAQ states that "Guidance, education and awareness will be provided to ensure all parties are aware of their responsibilities to comply with the M2K restrictions" we cannot stress the importance of receiving this detail in advance of any regulation.

Digital advertising is a complex ecosystem – with a complicated and arms-length relationship between advertising and content that can make compliance very difficult to solve for programmatically. With a multitude of players across the supply chain being involved in a single advertisement appearing on a web page the definition and clarity around who is liable becomes increasingly important. Our members need to fully understand the potential implications and what could be required to comply with this legislation in advance of the implementation of any regulation so they can do the work required to prepare for such changes. IAB Canada would welcome the opportunity to meet with your team to take you through some of the complexities around digital advertising and demonstrate some of the challenges we face with the policies being put forth to ensure that we are able to support your mandate.

IAB Canada also believes that considerations should exist that acknowledge stakeholder efforts to comply - not unlike what is being proposed in our new federal privacy law. The recognition of participation in industry frameworks and self-regulatory codes of practice (the Code) or the implementation of technical mechanisms (either existing or future) is becoming more common in legislation, and we believe that implementing reasonable measures should provide for safe harbour from liability under the regulations. Our members want to do the right thing and would like to be rewarded for all efforts being made towards that goal.

One of Health Canada's criticisms of the Advertising Code is that not everyone is a signatory. However, if Health Canada were to recognize the Code under the law as a means of demonstrable accountability and good faith efforts it would undoubtedly result in more advertisers becoming involved. We also believe that Health Canada could work with the industry coalition to revise the current requirements to more closely align with the objectives of your policy recommendations creating a more seamless and collaborative approach. A broader recognition of the industry code would also help the publisher

community as more ads would be going through a preclearance process before being put into the supply chain preventing a lesser likelihood of inappropriate advertising being seen by vulnerable children.

IAB Canada and its members would also ask for more clarity on how enforcement will be operationalized and managed and what potential fines/infractions could look like in a more detailed way including examples of the “activities and tools” that will be utilized by Health Canada and the CFIA. Our members would also like to understand more clearly what the process and penalties for non-compliance will entail.

Summary:

Thank for you considering our submission to your consultation on “Restricting food advertising primarily directed at children”. IAB Canada strongly supports your Healthy Eating Strategy, and we would like to reiterate our willingness to participate in discussions around solutions to achieving Health Canada’s ultimate goal of addressing childhood obesity in Canada and promoting a healthier Canada. IAB Canada encourages you to reach out to us at any time with any questions or feedback regarding this submission and look forward to participating in upcoming consultations and discussions to further address the specifics of the legislation and the impact on the digital ecosystem.

Sincerely,

A handwritten signature in black ink that reads "J. Briggs". The signature is fluid and cursive, with the first letter 'J' being particularly large and stylized.

Jill Briggs
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