Foundation for Alcohol Research & Education

Submission to the Draft Online Safety (Basic Online Safety Expectations) Determination 2021 Consultation

Introduction

The Foundation for Alcohol Research and Education (FARE) thanks the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to provide input to the Draft Online Safety (Basic Online Safety Expectations) Determination 2021 Consultation.

FARE is a not-for-profit organisation working towards an Australia free from alcohol harms. Together with values-aligned organisations, health professionals, researchers and communities across the country, we develop evidence-informed policy, enable people-powered advocacy and deliver health promotion programs.

FARE commends the Basic Online Safety Expectations (BOSE) consultation paper for acknowledging the need to place greater responsibility on online platforms by implementing a regulatory approach that goes beyond industry developed and administered codes of practice. As acknowledged in the BOSE consultation paper, online platforms have demonstrated that without legal and regulatory measures that set standards for online safety and ensure transparency and accountability, they will continue to promote harm through their platforms. This is because online platforms have vested commercial interests that conflict with promoting a truly safe online environment.

This has most recently been made evident by leaked Facebook research and documents that show Facebook is aware of how its platforms create harm to its users, including to children, but refuse to take meaningful actions that counter this because it conflicts with their core business objectives.[1, 2] Speaking to these issues, former employee of Facebook, Frances Haugen, has stated:

> *"The thing I saw at Facebook over and over again, was there were conflicts of interest between what was good for the public and what was good for Facebook. And Facebook, over and over again, chose to optimise for its own interests, like making more money*[1]*…*
>
> *Facebook has realised that, if they change the algorithm to be safer, people will spend less time on the site, they will click on less advertisements, they will make less money."*[3]

Given many online platforms are built for selling marketing opportunities to companies, and subsequently target their users with marketing via their platforms, we cannot expect, or trust, online platforms to implement effective measures that limit current marketing activities for the purpose of ensuring a safe online environment. Their interests are too conflicted on this matter. The Safety by Design principles imbedded in the BOSE must also be extended to marketing online, so that harms from digital marketing practices are minimised before they occur.

At the present, online platforms have designed digital systems that are geared to target people's susceptibilities and create vulnerabilities, to increase profit from digital advertising. Harmful industries, such as alcohol, gambling, tobacco and highly processed food industries, pay to access these sophisticated digital systems and tools to aggressively market their products that hurt people's health and wellbeing. By design, people who purchase harmful products the most, are also targeted by digital marketing models the most. The below-the-line and ephemeral nature of digital marketing also means that companies selling harmful products can target their digital marketing to children and young people out of sight. In these ways, the current digital marketing model used by harmful industries is creating an unsafe online environment that is actively undermining people's health and wellbeing, particularly children and people recovering from addiction.

With digital connection more important in our everyday lives than ever, a regulatory system that ensures a safe and healthy online environment for everyone is essential.

To this end, we make the following recommendations for the final BOSE:

1. An additional 'expectation regarding safe use' that online platforms proactively minimise the extent to which marketing material, methods and models, might be harmful.
2. Expanded 'expectations regarding certain material and activity' that address a wider set of factors that impact whether the online environment is safe for everybody, including digital marketing of harmful and addictive products such as alcohol.
3. An additional 'expectation regarding reports and complaints' that online platforms have clear and readily identifiable mechanisms that enable users to report, and make complaints about, additional material they find to be harmful (i.e. that is not captured in Division 4 (13) of the BOSE). This should include a corresponding additional 'expectation regarding dealings with the Commissioner' that online platforms will provide requested information to the Commissioner, relating to this additional expectation.
4. An additional 'expectation regarding making certain information accessible' that online platforms make information accessible about the use of automated decision systems to make predictions, recommendations, or decisions about which, and how, marketing content is sent to individuals.

Creating safe online environments

Everyone should be able to enjoy the benefits of using digital technologies to work, learn and play. This can happen when we have safe digital environments that enable people's health and wellbeing, rather than undermining it.

Expectations regarding safe use

Recommendation 1 – Include an additional 'expectation regarding safe use' in the BOSE, that online platforms proactively minimise the extent to which marketing material, methods and models, might be harmful.

FARE supports the expectation that online platforms take reasonable steps to ensure people using the platform can do so safely. This expectation clearly underpins the BOSE. FARE also supports the additional expectation that service providers proactively minimise unlawful and harmful material activity on the service. However, in its current form, the scope of the BOSE limits its capacity to ensure a safe online environment for everybody. FARE acknowledges that the scope of the BOSE is largely set out in the Online Safety Act and that this issue is driven by limitations in the scope of the Online Safety Act. The purpose of both the Online Safety Act and the BOSE is fundamentally about keeping pace with rapidly evolving digital technologies to ensure people's safety. To achieve this outcome, we suggest that regulatory frameworks addressing online safety are expanded to address a wider set of factors that contribute to a safe online environment.

FARE's specific concern when it comes to online safety, regards the harms that arise from the promotion and sale of harmful products online, primarily alcohol, but similarly gambling, tobacco (including e-cigarettes) and highly processed junk foods. While the BOSE begins to address harmful content and activities by individuals online, such as bullying, abuse and violence, it fails to address harmful content and activities by companies through their digital marketing practices, which are greatly facilitated by online platforms. The BOSE and the underlying Online Safety Act must address advertising. The online environment cannot be safe when advertising by corporations is not also held up to safety standards.

The digital marketing system is geared toward creating harm.

When considering online safety, the harms perpetuated by the digital marketing models available through online platforms must also be considered. Increasingly, online platforms enable advertisers to learn and target people's predispositions, to target them in specific times and settings, often directly through personal devices, with content that is most likely to appeal and resonate with them. The programmatic advertising systems used by online platforms aim to identify people online who are likely to make a purchase, and to spend higher amounts when doing so, who then become a core target group for advertisements.[4-6]

In this way, online platforms are currently designed to target people's susceptibilities and to create vulnerabilities to increase their profit from advertising. Companies selling harmful and addictive products, such as alcohol, gambling, tobacco and highly processed food companies, pay to access these sophisticated digital systems and tools to aggressively market their products that hurt people's health and wellbeing.[5, 7, 8] This means that people most at risk of harm from these products are being disproportionately targeted by marketing for these harmful products.

In the case of alcohol, this often means that people who already buy and drink alcoholic products in high amounts are the ones that are targeted most aggressively by alcohol companies through their digital marketing practices. The methods afforded to alcohol companies by digital platforms enables them to deliver highly personalised digital marketing campaigns that target specific demographics and behavioural profiles, including frequency of consumption. For example, if people are using alcohol products in large quantities, alcohol companies target more marketing material to these people, encouraging them to continue a high level of alcohol use.[12] Companies continue to build profiles of the purchasing behaviour of individuals as each purchase is made, which is then used to further target marketing material to them. Alcohol companies know that these sophisticated marketing databases result in higher use of alcoholic products than traditional forms of marketing.[13]

Online platforms similarly engage in harmful behaviours online for the purpose of selling advertising opportunities that enable companies, including those selling harmful and addictive products, to effectively target children for marketing purposes. Many examples have recently come to light demonstrating this repeated behaviour by the online platform Facebook. Leaked Facebook documents showed that Facebook gathered psychological insights on almost 2 million children in Australia and New Zealand to sell targeted advertising.[9] This included monitoring children in real time to identify their current mood, including when they feel 'overwhelmed' and 'anxious' to sell targeted advertising.[9] Research has also found Facebook tags children and young people as being interested in harmful products such as alcohol, gambling and junk food,[10, 11] and approves sponsored content promoting these harmful products to be targeted at children.[11] Further facilitating this harmful marketing to children, Facebook charges approximately $3 for alcohol advertising to be sent to 1000 Australian children aged 13-17 years old, and just $1 per 1000 children for junk food advertising.[11] Evidence clearly shows that young people's exposure to alcohol product marketing increases their alcohol consumption and increases their likelihood to start drinking earlier.[8]

The current behaviours of online platforms undermine children's rights. In their General Comment on children's rights in relation to the digital environment, the United Nations Committee on the Rights of the Child set out that businesses should be prohibited by law from "profiling or targeting children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics."[12] They further set out that regulatory frameworks should be comprehensive in ensuring that online platforms adhere to the highest standards of ethics, privacy and safety in relation to the design, engineering, development, operation, distribution and marketing of their products and services, and that this includes the need for high standards of transparency and accountability.[12]

Expectations regarding certain material and activity

Alcohol advertising online creates harmful online environments

The COVID-19 pandemic has provided an unfortunate example of how online platforms have been utilised for harmful alcohol advertising. During a time when the Australian community were experiencing heighted levels of isolation, anxiety, and economic uncertainty,[13] alcohol companies used online platforms to capitalise on Australians when they were doing it tough to promote alcoholic products as a way to cope and feel better during the pandemic (see examples below).[14] Advertising alcohol in this way was extremely harmful, as scientific evidence shows that alcohol use can contribute to increased stress, anxiety, and depression in the long-term and increased risk of attempted suicide.[15, 16] Further, this advertising went directly against the evidence-based NHMRC Australian Guidelines to Reduce Health Risks from Drinking Alcohol, which state that alcohol should not be used to cope with stress and anxiety, as it can amplify these problems.[16]
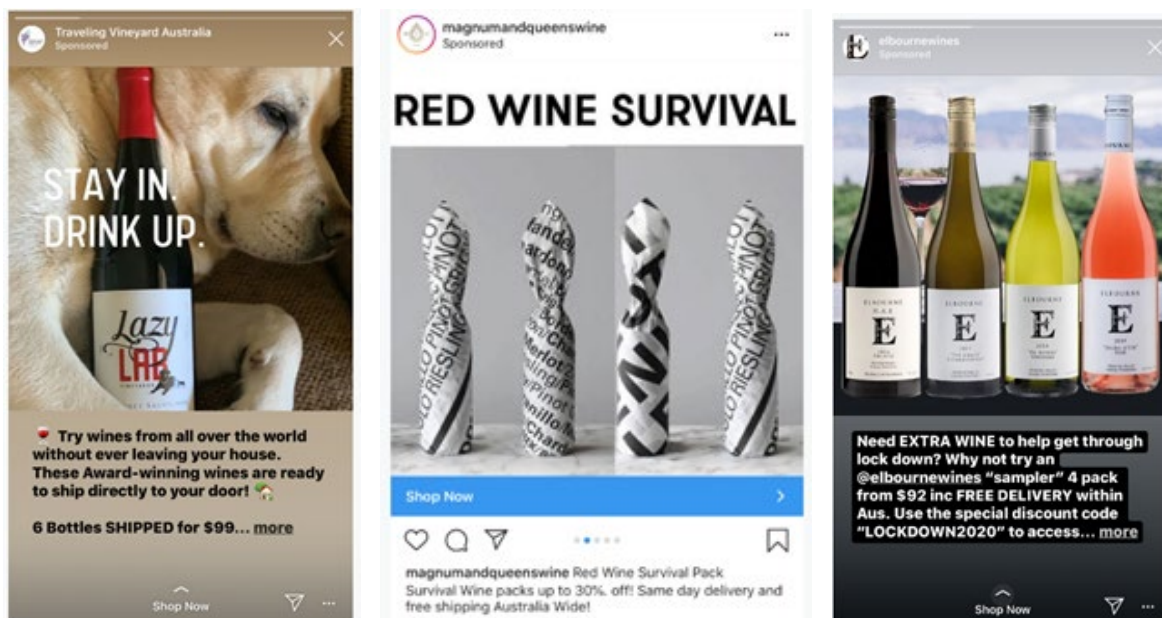
When FARE asked the community to share how they have been impacted by alcohol companies' marketing during the pandemic, the volume of alcohol advertising, and the harmful sentiments promoted in this advertising, were reflected in comments by the community.

> *"I've noticed an increase in alcohol advertising on Spotify, for example Smirnoff vodka. As someone who has been proudly sober for 12 years, I wish I could opt out of certain kinds of ads appearing in my playlists as this makes listening to music, something I usually use to soothe me, triggering."*

> *"I have noticed a huge increase in ads for alcohol on social media and streaming websites - even SBS on demand of all places. I have found them disgusting and blatant. My Mother has an alcohol dependence and to see this type of explicit advertising at a particularly vulnerable time for her and many people is beyond unethical."*

> *"I get numerous ads on social media promoting alcohol every day. It's a disgrace."*

"Ads whilst watching YouTube, as well as advertising at bus stops, and on sports banners. It's unfair for recovering alcoholics to have to look at a bottle shop every time we enter a supermarket, let alone deal with blocking constant alcohol advertising [online] also."

"It is disgraceful this issue is not governed more strictly. The same with online gambling. The advertising on TV and social media is criminal and ruining lives & families."

Similar sentiment was expressed in a survey of 187 Sober in the Country community members in May 2020. Sober in the Country is a not-for-profit organisation providing support for rural and remote Australians to cut back on their drinking. When asked about the changes during COVID-19 restrictions that were making it more challenging to not drink alcohol, increased advertising and promotion of alcohol online, and the cultural norms this advertising perpetuated online around drinking alcohol to cope, featured in community responses.

"Seeing ads all the time."

"So many jokes and memes about drinking alcohol to get through this hard time."

"Increase in "mummy drinking culture" on social media."

"Memes about home schooling and alcohol."

"Social isolation and advertising encouraging to drink."

"Alcohol is everywhere all the time."

To create a safe online environment that is inclusive and protects those most at risk, a wider set of factors that impact whether the online environment is safe for everybody needs to be considered. This must include digital marketing of harmful and addictive products such as alcohol. We acknowledge that this will also require amending the online content outlined in the Online Safety Act to include marketing content of harmful and addictive products such as alcohol and removing the exclusion of advertising in the online Safety Act (Section 3 (3)).

Ensuring safe online environments through creating transparency and accountability

Regulatory measures compelling transparency and accountability in the actions of online platforms is essential to creating safe online environments and prioritising safe online environments ahead of vested corporate interests.

Expectations regarding reports and complaints

Recommendation 3 – Include an additional 'expectation regarding reports and complaints' in the BOSE, that online platforms have clear and readily identifiable mechanisms that enable users to report, and make complaints about additional material they find to be harmful (i.e. that is not captured in Division 4 (13) of the BOSE). This should include a corresponding additional 'expectation regarding dealings with the Commissioner' in the BOSE, that online platforms will provide requested information to the Commissioner, relating to this additional expectation.

As a basic standard for transparency, FARE supports the expectations regarding reports and complaints in the BOSE, which require online platforms to have safety policies in place and compel

online platforms to ensure reporting and complaints mechanisms are in place. However, the BOSE only compels online platforms to ensure report and complaint mechanisms are in place for the material currently outlined in the BOSE/Online Safety Act and for breaches in terms of use. FARE recommends that online platforms are also compelled to ensure report and complaint mechanisms are in place that enable the community to identify and report any additional material they find to be harmful, so that online platforms, and the e-Safety Commissioner, can be aware of emerging harmful content and ensure safety procedures are adapted accordingly. Information about complaints of other harmful material should be available on request by the Commissioner so that the Commissioner can be aware of any emerging safety issues reported by the community.

FARE strongly supports the additional expectation that service providers must provide readily accessible information to end-users on how to make a complaint to the Commissioner. It is important that online platform users have readily available mechanisms to make complaints to an independent oversight, to ensure that companies are held accountable to community standards of online safety matters.

Expectations regarding making certain information accessible

Recommendation 4 – Include an additional 'expectation regarding making certain information accessible' in the BOSE, that online platforms make information accessible about the use of automated decision systems to make predictions, recommendations, or decisions about which, and how, marketing content is sent to individuals.

In line with our above recommendation, that regulatory frameworks for online safety also address harmful digital marketing practices, FARE would also like to see transparency in the advertising models provided by service providers and expectations that service providers must ensure a safety by design approach to advertising on their platforms. Digital marketing is becoming increasingly personalised, targeted and ephemeral. Digital platforms and advertising agencies have access to extensive and detailed data about the digital marketing activities they provide. However, there are no existing requirements for transparency in digital marketing practices through online platforms, meaning the true nature of digital marketing practices remains largely under the radar. Without transparency in their digital marketing models, online platforms are not being held accountable for the harm perpetuated by their digital marketing practices.

FARE recommends an additional expectation that online platforms are transparent about the use of automated decision systems to make predictions, recommendations, or decisions about which, and how, marketing content is sent to individuals. This would align with expectations that are addressed in the Digital Charter Implementation Bill, currently under consideration in Canada.[17] Corresponding expectations should also be included for reporting and complaint mechanisms for online platform users to report harmful advertising content and suspected harmful targeting of marketing material on platforms, and that this information be requestable by the Commissioner.

Conclusion

This is a critical moment for ensuring that the protections we set up to ensure online safety will be fit-for-purpose in a rapidly evolving digital landscape. In this context, it is critical to consider the harm caused by online platforms through digital marketing, and to ensure that this recognition informs the BOSE and related legislation and regulations.

We again thank the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to provide input to this consultation.

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